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Nov. 1867

COLONIAL HISTORY

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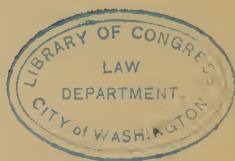
OF THE

CITY OF SAN FRANCISCO:

BEING

A NARRATIVE ARGUMENT IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE STATE OF CALIFORNIA, FOR FOUR SQUARE LEAGUES
OF LAND, CLAIMED BY THAT CITY UNDER THE
LAWS OF SPAIN, AND CONFIRMED
TO IT BY THAT COURT, AND BY THE SUPREME COURT
OF THE UNITED STATES.

FOURTH EDITION.



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BY JOHN W. DWINELLE,
COUNSELLOR AND ADVOCATE;

PRESIDENT OF THE ETHNO-HISTORICAL SOCIETY OF SAN FRANCISCO;
MEMBER OF THE AMERICAN ETHNOLOGICAL SOCIETY,
AND OF THE HISTORICAL SOCIETY OF NEW YORK.

SAN FRANCISCO :

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P R E F A C E .

THE following was prefixed to the first edition of this work: "It is hoped that the title given to this volume will not be considered pretentious, when it is stated that it resulted from an after-thought, based upon the following considerations: the discussion of the case was thrown into a narrative form, for the reason that although often treated analytically, with great ability, and with a conclusive result, still a class of persons has existed ever ready to resist the conclusions of the argument by the cry: 'There was never any Pueblo of San Francisco!' thus endeavoring to evade the result by forcing a re-examination of the main fact in the case. A chronological narrative, weaving into itself in their appropriate places the organization and acts of the PUEBLO, and its constant and often repeated recognition by the Executive, the Legislatures, and the citizens of California, both before and after the conquest by the Anglo-Americans, seemed the appropriate and only means of silencing this clamor, and of utterly and forever establishing the indisputable fact of the existence of the PUEBLO, in such a manner that whoever hereafter should assume to deny it would render himself ridiculous. When the work was nearly finished, the suggestion occurred that it was too valuable to be thrown as a mere waif upon the stream, as law-briefs and other pamphlets commonly are, and that whatever its merits or deficiencies in point of execution, the narrative, with its documents entitled ADDENDA, was not without a permanent value as the first essay towards the 'Colonial History of San Francisco.' It has therefore been honored with a title page, received an appropriate title, and been elevated from the low estate of a pamphlet to the dignity of a book. The documents in the Addenda contain precious *matériaux pour servir*, and present a

view of the wise and beneficent colonial policy of Spain and Mexico which will repay the study of the historian, the ethnologist, and the statesman.”

The Narrative Argument was first prepared for the District Court of the United States in and for the Northern District of California, in which the case was submitted for decision. But some two years afterwards the cause was removed to the Circuit Court of the United States for the State of California, and then it became necessary, from a variety of considerations, to enlarge the Addenda, by printing a large portion of documentary matter pertaining to the case which existed only in manuscript, and particularly these Executive and legislative acts, which showed a constant and repeated recognition of the Pueblo of San Francisco. The Supreme Court of the State of California and the Supreme Court of the United States had meanwhile made such great advances in a line of decisions bearing on the Pueblo case, that it had become necessary to rewrite and reprint nearly the whole of the argumentative portion of the brief. When this had been accomplished, the printed matter constituted the second edition of the book. It was then suggested by some of the executive officers of the city, that by adding a few pages to the Addenda, together with thorough indices of the contents of the whole, the book would constitute a Manual relating to the Real Estate of the city, whose value would more than compensate for the comparatively small increase in the cost of printing. I have acted upon this suggestion, and in this way the book has attained to what may be called its third edition. It is not, however, in any sense a Digest of laws relating to the City of San Francisco, for very few laws are inserted in full, and most of those referred to have been executed, and have no force as existing enactments. A Digest of laws relating to the city is much desired, and would be invaluable, but has not fallen either directly or incidentally within the scope of the duties which I have undertaken to perform.

ERRATA.

IN THE NARRATIVE ARGUMENT.

- Page 5, line 22, for "1847" read "1846."
- " 8, § 11, line 7, for "Tepic" read "Pitic."
- " 8, line 15 from the foot, for "*situ*" read "*situs*."
- " 12, in the note, for "*illuc*" read "*illic*," and for "FILLUS" read "FILIUS."
- " 27, line 1, for "1773" read "1779."
- " 28, § 38, line 15, for "convenga" read "convengan."
- " 32, § 42, line 5, for "Tepic" read "Pitic."
- " 32, § 42, line 8 from the foot of the text, read: "while of the Seris Indians, who then occupied the country, but whose designation seems to have puzzled the translators of this Plan,—(see §§ 2 and 6 of the Plan, ADDENDA, No. VII, pages 11, 12)—one portion, which is Christianized, reside," etc.
- " 35, lines 12 and 13, for "Romero" read "Romeu," and for "Nerva" read "Nava."
- " 38, § 51, line 6, for "los Llajas" read "las Llagas."
- " 39, line 4, for "Llagas" read "Llagas."
- " 43, § 58, line 2, for "tended" read "intended."
- " 73, line 3. The *fanega* is more than one and a half English bushels, and the estimates in bushels in § 107 of the Narrative Argument, and at page 97 of the ADDENDA, must therefore be increased by one-half.
- " 73, § 108, line 1, for "1848" read "1843."

IN THE ADDENDA.

- Page 51, line 20, for "Cosure" read "Cosme."
- " 58, Art. 2, line 5, for "Santa Frues" read "Santa Yuez."
- " 63, line 1, for "Justice of the Peace" read "to."
- " 66, Art. 1, line 2, for "Vagi" read "Viejo."
- " 73, line 20, for "Spencer" read "Spenee."
- " 75, line 18, for "Ruines" read "Briones."
- " 75, line 21, for "Matarin" read "Malarin."
- " 76, line 2, for "Gegino" read "Gregorio."
- " 76, line 16, for "Gegino" read "Gregorio."
- " 77, line 42, for "Matarin" read "Malarin."
- " 90, in the note. The mistake here noted was not made in Halleek's Report, but in printing it at Washington, and arose from making one copy from another several times, before the one last made was sent to the printer.
- " 106, No. II, line 9, read "C. V. Gillespie."
- " 108, line 5 from the foot, for "kept" read "left."
- " 111, line 24, for "Coz" read "Cruz."
- " 111, third line from the foot, for "Voiget" read "Vioget."
- " 222, in the map, for "eobles" read "cables," a nautical standard of measurement, each cable consisting of 120 fathoms, or 720 feet in length.

There are various other typographical errors which are not here noted, principally in proper names, which will be corrected at a glance by those who are familiar with Spanish names, and in regard to which orthographic precision is of no importance to the general reader.

THE SPANISH ARCHIVES OF CALIFORNIA.

By R. S. Hopkins.

IN the remote Province of California, the *Ultima Thulé* of the West, which for centuries, under the Spanish Government, remained almost a *terra incognita* to the rest of the world, rarely visited, save by the wandering trader, the adventurous explorer, and the self-sacrificing Jesuit Missionary, we should scarcely expect to find recorded, any very elaborate history of the country, or any thing indicating that the quiet Old Fathers and the Patriarchal Governors of this isolated region had any means of ascertaining, or troubled themselves about what was passing in other parts of the world. Yet, even here, we find recorded proof of that stately dignity, and clock-like precision, which, in the days of the Vice-Roys, marked the movement of the Spanish Government, even in her most distant Provinces.

The actual archives of the former Spanish and Mexican Government of California, extend back to the year 1767, and are comprised in about three hundred quarto volumes, mostly in manuscript, averaging about eight hundred pages each, besides some eight hundred *Expedientes*, or records of grants of land, made by the Mexican Government, under the laws of Colonization. These records consist of Royal Decrees, which, like the scattered fragments of some ponderous engine, though broken and rusted, tell of the grandeur and perfection of the ancient machine of which they formed a part,—of Official Documents and Correspondence, couched in the stately speech of the old *Hidalgos*,—of Civil, Military, and Ecclesiastical Records,—of Legislative and Judicial Proceedings,—of Private Papers and Personal Correspondence,—and, in fact, every thing that goes to make up the political and domestic history of the country is here elaborately recorded, from the day when the Spaniard first set foot upon the soil, down to the time when the dominion thereof was wrested from him by the grasping Saxon.

The political division of Upper California was originally into four Districts corresponding to the four so-called *Presidios* of San Diego, Santa Barbara, Monterey and San Francisco. These *Presidios* were fortified barracks, and thus received their name from the *Presidium*, the entrenched camp of the Romans. Under the protection of these *Presidios* the twenty-one Catholic Indian Missions of California were first established, and *Pueblos*, or settlements of whites, afterwards grew up. Subsequently, Upper California was divided into two Districts, and each District into two *Partidos* : a Prefect presided over the District, and under him, a Sub-Prefect over each *Partido* ; and in a still lower grade there existed local officers such as *Alcaldés* and Justices of the Peace, principally exercising judicial, and sometimes political functions ; while *Ayuntamientos*, or local democratic elective bodies, sometimes supplied the function of municipal legislation to *Partidos* and to organized *Pueblos* or Towns. If the California Archives were perfect they should contain official records of every document issued or received by the local Government during the Hispano-Mexican dominion ; of all orders and reports ; of the archives belonging to the different *Presidios*, Prefectures, and Sub-Prefectures. In fact, they do contain all that could be collected of the above mentioned papers, and, in addition, a large portion of the documents belonging to the Custom House and to several of the towns.

A slight description of some portions of these old records will be interesting as showing the customs of the times, and the striking contrast they form to the habits of this age of steam and lightning.

When a Royal decree of a general character in relation to the Spanish Indies, was issued at Madrid, a copy was forwarded to each one of the respective Vice Roys who governed the Provinces of the New World and the Philippine Islands; the Vice Roy communicated the same to his immediate subordinate the Comandante General, who directed the decree to the Governors of the different Provinces under his charge; and so on, from one officer to the next lower in grade, till the Decree of the Court of Spain was published by proclamation in every corner of the Spanish dominions, and some idea can be formed of the length of time required in those days to make those publications throughout the whole extent of the Spanish Indies; still, although the process was slow, it was nevertheless as certain as that water, when poured out, will find its level; and we are no longer surprised when the historian tells us that the Decree for the expulsion of the Jesuit Priests from the Spanish Dominions, in 1767, was, without previous warning, promulgated and executed on the same day, and at the same hour, throughout the whole extent of the Spanish world. And so, when on a certain occasion, the King of Spain learning that the country around the Bay of San Francisco abounded in herds of wild deer, and desiring some of them for his Royal Parks, ordered the Vice Roy of Mexico, to direct the Comandante General at Chihuahua, to command the Governor of California, to order the Captain of the Presidio of San Francisco, to send a soldier to capture some of these animals,—though it required a long time to fulfill the commands of the King, still these royal orders certainly reached their final destination, and if the deer were caught, and survived the voyage to Spain, they most certainly found themselves in process of time transferred from the wilds of California, to the Royal Parks of Don Carlos.

In these Archives we meet with frequent glimpses of the history of the times in other parts of the world, gathered from occasional intercourse with Spain and Mexico, and from the wandering voyager who sometimes touched on this coast for repairs and refreshments. We learn, that the fame even of the Great Napoleon extended to this remote region, for we find the old Fathers describing him to their dusky flocks, as *el Gran Luzbel* (the Great Lucifer) who was about to swallow up the whole earth, doubtless using him as a means to quicken the spiritual zeal of their Indian converts, and to stimulate them in their pious labors of building adobe churches.

Upon this coast the navigators of all nations have left their records, from the stately Admiral who held courtly intercourse with the Governor, down to the humble master of the Boston trader who had been up on the "Nor' West Coast," bartering his notions with the wild savages for furs and peltries, and on his return touched at Monterey, craving permission to remain long enough to repair his vessel, and take in supplies.

But perhaps the most interesting—certainly the most amusing—portion of those Archives is that which portrays the domestic habits of the people. These people appear to have been marked by that simplicity which generally characterizes the inhabitants of pastoral countries. Devoted children of the Catholic church, they applied to the Priest with the most unwavering trust in all matters where spiritual advice or consolation was required; and being imbued with that profound reverence for authority which has ever marked the masses of the Spanish people, they appealed to the Governor or some other official, in all matters in which they needed secular advice, or relief.

Was a strange sail seen off the coast, the Governor was advised of the fact, and immediately dispatched messengers to the Comandantes of the Presidios, who were ordered to keep a vigilant lookout for the same. Did two neighboring *rancheros* have a dispute about their landmarks, or did they, like the herdsmen of Abraham and Lot, quarrel about their flocks, the Governor was appealed to for a settlement of the difficulty. Was a shock of earthquake felt in any portion of the country, the Governor received an official communication, giving the particulars of the same; and one that occurred about 1804, is described by the Comandante of the Presidio of San Francisco, as being so severe as to destroy a portion of the Presidial buildings, gravely remarking, at the same time, that the only reason why

much damage was not done, was because there were no more houses to destroy. And here I will remark that the history of this country, as recorded in those old Archives, has taught me to look with much suspicion upon the tall brick buildings of San Francisco, and ever to prefer a night's lodging in the humble wooden tenement, rather than in the lofty brick hotels of our city.

Another anecdote will illustrate not only the paternal and provident solicitude of the Home Government for its subjects, but also the perfect diffusion of its orders and notices throughout all parts of the Spanish Empire. In some of the tropical latitudes of America there exists a troublesome insect which is apt to insert its eggs in the human body, either in a puncture made by the vermin itself, or under the nails of the hand or feet. This egg, when discovered, as it may readily be, is easily removed with the point of a knife, but if neglected, breeds a pernicious worm which penetrates the body or member, and causes a monstrous, permanent, abnormal development of the kind called *elephantiasis*,—a leg or a foot often expanding to the weight of forty, fifty and even sixty pounds. This explanation will render intelligible the following translation of an original official communication in the Archives, sent by Jacobo Ugarte y Loyola, Comandante General of the Internal Provinces of New Spain to Pedro Fages, Governor of California :

“ On the 20th of November last past, His Excellency the Marquis of Sonora, (Viceroy of Mexico) was pleased to communicate to me the following Royal Order—The Archbishop Viceroy of Sante Fé, (in South America) on the 2d of July last, gave me an account of a remedy happily discovered by his confessor, against the ravages of the Jigger (Nigua) in the hot countries of America, which consists in anointing the parts affected by the Jiggers with cold olive oil, which causes them to die, and the sacs containing them can be easily extracted—which the King desires should be published as a Bando (Proclamation) in the district under your government, in order that it may reach the notice of all ; and you shall take care that all those who are afflicted with said insect shall use said remedy, which is as effectual as it is simple. And I insert the same to you in order that you may cause it to be published. May God preserve your life many years. Arispe, April 22d, 1787. JACOBO UGARTE Y LOYOLA.”

There are no Jiggers in California ; probably none any where except in the strictly tropical latitudes of the New World ; but we may be certain that this same notice, emanating from the King in Old Spain, will be found in the same terms, in the Spanish Archives in the Philippines, Santiago de Chile, Louisiana and Florida ; and that any general order expedited from the same source during the period when the above countries were colonies of Spain, may be recovered from their archives, if they have been preserved.

Probably the following order from Governor PEDRO FAGES to Josef Arguello, Captain of the Fort and Presidio of San Francisco, originated from inaccurate information transmitted from the United States to Madrid, which there gave rise to an *oficio* that was transmitted to Mexico by ship, and thence expedited to California by swift couriers on horseback, so that “ General Washington’s ship named the Columbia ” slowly beating around the Horn, might be anticipated before her arrival at San Francisco :

“ Whenever there may arrive at the port of San Francisco a ship named the Columbia, said to belong to General Washington, of the American States, commanded by John Rendrick, which sailed from Boston in September, 1787, bound on a voyage of discovery to the Russian establishments on the northern coast of this peninsula, you will cause the said vessel to be examined with caution and delicacy, using for this purpose a small boat, which you have in your possession, and taking the same measures with every other suspicious foreign vessel, giving me prompt notice of the same.

“ May God preserve your life many years.

PEDRO FAGES.

“ SANTA BARBARA, May 13th, 1789.
“ To Josef Arguello.”

Probably General Washington died in happy ignorance of his being the owner of a “ suspicious foreign vessel ; ” but this little item of history, buried in the archives of a remote province which probably he never heard of, betrays the senti-

ment which an old legitimate monarchy entertained of his achievements, and an instinctive prescience of the ultimate catastrophe of Hispano-American Revolution and Independence. The "ship Columbia" however, did not enter the port of San Francisco, but, sailing further to the north, discovered and gave its name to "Columbia River."

The Governor appears to have exercised a kind of parental authority over his people. The following anecdote, will illustrate this: a certain school teacher, desiring to show the Governor how his pupils were progressing in the paths of knowledge, addressed him a polite note in relation to his "little school," forwarding him, at the same time, several leaves from the copy books of his scholars, as an evidence that they were progressing in penmanship. The following are some of the copies: "*The Ishmaelites having;*"—"*Jacob sent him to see his brothers;*"—"*Abimilech took from Abraham.*" These copies, written in a stiff old-fashioned hand, and which are now a part of the Archives, show that the worthy pedagogue, whoever he was, knew something of Biblical history, and that in the instruction of his pupils, this branch of learning was not neglected.

Some of the complaints made by the people to the Governors and Alcaldes, are exceedingly amusing. One poor fellow complains to the Alcalde: that coming home from his labors in the field about three o'clock one summer afternoon, and feeling in a pleasant humor, he made some good-natured remarks to his spouse, but from some cause unknown to him, she repulsed him with scorn; whereupon, he sought an explanation, but she refused him any satisfaction whatever; and when he advised her to visit the Priest, she made some very irreverent remarks in relation to the Holy Father, and gave sundry manifestations of ill-humor generally. That he had borne this with becoming christian resignation, with the hope that it was a mere whim which would soon pass away; but that when she had carried her perverse humor so far as to place obstructions in the way of his marital rights, he felt constrained to seek judicial relief at the hands of the Alcalde. The record, however, is silent, as to what action the Alcalde took in the matter.

In another case, a certain gay Lothario was surprised at an unseasonable hour by a vigilant old lady, in a somewhat suspicious proximity to her daughter, and on being attacked, could only reply in defence: "Madam, I am the flesh, you are the knife; I have nothing to say, save that my intentions were honorable and matrimonial."

But perhaps the most marvellous story recorded in those time-stained documents, is one, the truth of which will be denied by the learned disciples of Galen, as contrary to the laws of physiology. I give the story as it is found recorded:

"In the year 1797, when Don Diego de Borica governed the Province of California, and the Marquis of Branciforte ruled the Vice Royalty of Mexico, Governor Borica, in a most dignified communication to the Vice Roy, gravely informed him that he had recently received an official communication from the Comandante of the Presidio of Santa Barbara, in which he stated: that an Indian woman belonging to that Mission, on a certain night had given birth to '*dos perritos*' of a chocolate color, perfect in form, and without bearing any similitude to humanity; that while it was true that no one had witnessed this monstrous birth, save an Indian woman, yet the Fathers saw the defunct puppies a short time after they had been deprived of life by the Indians, from whom the Missionaries received the story, whose truth they did not doubt."

The Governor remarked, in the conclusion of his communication, that he thought it important to transmit the knowledge of so strange an event to the Vice Roy, and he therefore made it the subject of a formal official communication. As to the manner in which the story was received in Mexico, and whether or not it was credited by the *savans* about the court of the Vice Roy, history is silent, as nothing further is found recorded in relation to the matter.

Volumes might be filled with extracts from the Archives, similar to the foregoing, illustrative of the characteristics of this simple minded people.

I have ever looked upon these dusty papers with a certain feeling of reverence, as the records of a people that will soon pass away, and leave nothing save these, and a few crumbling adobés, to tell that they ever tilled the fertile valleys of California, and covered her hills and plains with their flocks and herds. And, too, the perusal of these records always inspires me with that feeling of sadness, which, to the thoughtful mind, is inseparable from a contemplation of the changes wrought

in human life by the ever-onward flight of time; and this feeling is still deepened by personal intercourse with the wretched remnant of the race, who are now almost strangers in the land where their fathers herded their cattle upon a thousand hills, and bounded their broad lands by mountain and river. Indeed, I can scarcely imagine a more melancholy picture than that presented by the elder portion of these people, those who remember the grand old days of the Vice Roys, as they wander through the crowded thoroughfares of our city, with a kind of Rip Van Winkle stare, bewildered and lost, amid the changes wrought by a progressive race. No wonder that they sigh for the pastoral quiet which they and their fathers enjoyed before "Revolution, Democracy, Liberty and Progress" were heard of in these remote regions,—the good, old, halcyon days,—"EN TIEMPO DEL REY!"

Alas, grey-haired old men!—the age of pastoral simplicity which nourished your childhood and youth, has passed away, and given place to one in which mankind struggle one with another, as the warrior does with his foe upon the battle field!—In this contest, you can take no part, for you are no match for the fair-haired children of the North, who now occupy the land where your fathers are sleeping,—their rest disturbed and broken by the shriek of the steam engine, and the heavy tread of the iron steed!—Has the change added to the aggregate of human happiness?—"*Quien Sabe?*"

R. C. HOPKINS.

HISTORICAL INTRODUCTION.

The City of San Francisco, which dates its importance only from the Conquest of California by the United States in 1846, and the discovery of gold there in 1848, was really founded in the year 1776; and the circumstances attending its settlement are preserved to us with a minuteness of *détail* which even much younger cities, such as Cincinnati, Milwaukie, and St. Paul can hardly be supposed to possess.

FOUNDATION OF SAN FRANCISCO, A.D. 1776.

The colonization of California is due to the missionary enterprises of the Roman Catholic Church. In the year 1772 by an order of the Vice-Roy of New Spain, made in Council, the Territory of Upper California (Alta California) was assigned to the Monks of the Regular Order of San Francisco de Assisi (St. Francis of Assis) as a missionary field, and that order, under the Presidency of Father Junípero Serra, a most active, zealous, and prudent soldier of the Church Militant, proceeded to take possession of the territory assigned to them.

The country, however, was occupied by various savage tribes of Indians, presumed to be hostile; and although these native people proved in the end to be of so mild a temper as to suggest that they were possibly not indigenous, but the product of a Polynesian immigration, still it was considered necessary to protect the missionary establishments by military establishments called *PRESIDIOS*—a tradition of the Presidium or fortified camp of Roman armies—which embraced the Fort, the barracks, the houses, and the gardens of the garrison. Around these *Presidios* it was expected villages, called *PUEBLOS*, would grow up, and that other *Pueblos* would spring into existence under their protection, more or less remote according to the influence of the military establishment. The plan of colonization was, therefore, three-fold: military, represented by *PRESIDIOS*; civil, represented by *PUEBLOS*; and religious, represented by Catholic Franciscan *MIS- SIONS*.

In the year 1772, Father Junípero Serra, whose zeal to go on with the conquest (*ir á la conquista!*) had not been abated by the establishment of six missions under the protection of the Royal *Presidios* of San Diego and Monterey, represented to the Vice-Roy of Mexico, the Marquis de la Croix, that it was a reproach both to his order and to the church that there was no mission bearing the name of San Francisco de Assis, the founder of the order. It is said that the Vice-Roy replied: "If our Father San Francisco wants a mission dedicated to him, let him show us a good port up beyond Monterey, and we will build him a mission there!" There was a report in Mexico that such a port existed, yet navigators sent to explore it had not succeeded in finding it, and even at Monterey nobody believed in it. But in 1772, Father Junípero, taking the Vice-Roy at his word, caused an overland expedition to set out from Monterey, under the command of Captain Juan Báu-tista Ainsa, to search for the apocryphal port. They were so far successful as to discover the present Bay of San Francisco, which they described as a large interior sea, communicating with the sea by a channel. But so unsatisfactory was their report, that in 1775, the *San Carlos*, a small brig, was sent up from Monterey, to

ascertain whether the Bay which had been discovered could be entered from the ocean by the "channel" which Ainsa's expedition had observed.

The details of the exploration made by the *San Carlos* are preserved to us in the Life of Father Junípero, written by Father Palou, one of the first missionary Priests at San Francisco:*

"This was accomplished with such success, that in nine days' sailing from Monterey, they arrived at the Port of our Father San Francisco, and found depth enough in the channel, which they entered in the night with great good fortune. The strait was barely a league in length, and about three-quarters of a mile across, and in some places more; the entrance had no bar, but with strong currents to come in or go out with, according to the flow or ebb of the tide.

"Inside, they found an interior sea (*un mar mediterraneo*) with two arms, one of which extended towards the southeast some fifteen leagues, and from three to five leagues towards the north; and still beyond this a great Bay [San Pablo] some ten leagues broad, of a round figure, into which the great river of our Father San Francisco discharged itself [Sacramento] which was about three-quarters of a mile wide, and formed of five rivers, which, all swelling with water, and meandering through a great plain, so vast that it met the horizon, united and formed that Great River; and all this immense flood of water empties itself through the straits into the Pacific Ocean, into the Bay of the Farallones.

"The vessel remained in the Port forty days, and succeeded in exploring it most satisfactorily with the launch, and communicated with many hamlets of the natives, whom they found very gentle, peaceful, and affable. They described everything which they saw and explored, taking note that the entrance of the Port was a few minutes short of 38° of latitude, † although in the northern arm of the Bay it is some few minutes more. The exploration being finished, they returned to Monterey in the middle of September, and told us all that is above stated; and some one asking the Captain if the Port appeared to be a good one, he replied that it was not one Port, but a series of Ports, and that several squadrons could be there at the same time without knowing the presence of each other, except that in entering or sailing out they might be seen, on account of the narrowness of the straits; but once inside, they would be safe."

Father Junípero Serra transmitted all this information, together with a map of the port, made by the captain of the vessel, to the Vice-Roy, with his congratulations upon the favorable prospects for the two missions, and notified him that he had named as missionary priests at Santa Clara, brothers José Murguira and Tomás de la Peña, and for the *Mission of San Francisco* brothers Pedro Benito Cambron, and Francisco Palou.

These reports were so favorable, and the importunities of Father Junípero so urgent, that it was determined to found a Presidio and a Mission at the newly discovered Port, which now for the first time received the name of San Francisco, and for this purpose an overland expedition and one by sea were dispatched from Monterey. Brother Palou thus continues the narrative:

"The said overland expedition left the 'Presidio' of Monterey on the appointed day, 17th of June of said year of 1776; it was composed of the said lieutenant commanding, Don José Moraga, 1 sergeant, and 16 soldiers clad in leather armor, all married men with large families; of seven colonists, married likewise and having families [todos casados y con crecidas familias, de siete pobladores tambien casados y con familias]; of some followers and servants of the same; of herdsmen and drovers, who drove the neat stock of the Presidio, and the pack train with provisions and necessary equipage for the road, the rest of the freight being left for the vessel which was about to sail. And as regards the Mission, we, the two Missionaries above named, joined the party with two young men servants for the Mission, two neophyte Indians of Old California, and another of the Mission of San Carlos, for the purpose of trying whether he could serve as an interpreter; but as the idiom was found to be a different one, he only served to take care of the cows that were brought for the purpose of raising a stock of cattle. The said expedition went on towards this Port.

* Vida del Venerable Padre Fray Junípero Serra por el Fray Francisco Palou. Chap. XLIV.

† It is actually 37° 38' 30" by recent observation.

“On the 27th of June we arrived in the vicinity of the Port, and a camp was formed of fifteen tents on the borders on the banks of a large pond* which empties into that branch of the bay which trends to the southeast, so that we could wait for the vessel, and then determine the site of the Presidio, according to the anchorage. * * * The day after our arrival we built a sort of shed, in which Mass was said, for the first time, on the Day of the Holy Apostles Peter and Paul; and we continued to celebrate Mass every day while we remained in that place. * * In the exploration we made, we found that we were on a peninsula which had no inlet or outlet except towards south by southeast, and that in every other direction we were surrounded by the sea. On the east was the branch of the bay extending to the southeast; and although it is some leagues wide, we could see the land and the mountains [of Contra Costa] on the other side very clearly. On the north is the other branch of the bay; and on the west the great Pacific Ocean, and the Bay of the Farallones, in which is the entrance and the mouth of the Port.”

The natives were kindly disposed, gentle, and peaceful, received them with joy, approached them without fear, and brought, of their poverty, presents of shellfish and seeds of wild plants. Their manners and customs were those of the most primitive simplicity. Their food was acorns, hazelnuts, strawberries, raspberries,

* The authors of the “Annals of San Francisco” make a curious mistake in designating this pond as the same known as “Washerwoman’s Lagoon.” But Palou says that this pond emptied “into that part of the bay which trends to the southeast,” and afterwards that the site for the Mission was selected “near the pond where we were encamped, and on the plain to the west of it: *en este sitio de la Laguna en el plan ó llano que tiene al Poniente.*” Now “Washerwoman’s Lagoon” not only does not empty into the Bay of San Francisco, but it does not, and probably never did, empty anywhere; and so far from being at or near the Mission it is three miles distant, with no “plain” but a hilly country intervening. I have heard that this encampment was made on the banks of a “pond called Dolores,” and that the Mission gradually came to be called the “Mission of Dolores” from this vicinity, in order to avoid the confusion when “San Francisco” was mentioned as a locality. May it not be that this pond was situated where “the Willows” now are, which even now occasionally assume a pond-like character? The accretions of the silt brought down by the rain of less than ninety years would suffice to fill up a shallow pond of a larger area, especially if willows were planted there.

It is well known that the ill-fated and gallant LA PEROUSE, of the Royal French Navy, touched at Monterey, in 1786, on his Exploring Expedition, before he sailed out into that great Pacific Ocean from which no tidings of him ever returned. While at Monterey he dispatched an expedition to the Port of San Francisco, which made a hydrographic chart of the Bay of San Francisco, which he sent to France, and which was published with the account of his explorations up to that point, and is therefore preserved to us. A copy of this chart is in possession of the Odd Fellows’ Library, in this city, and I have consulted it since writing the above note. On this chart “La Laguna de los Dolores” is laid down precisely where the Willows are now situated, with an outlet “into that portion of the Bay of San Francisco which trends towards the southeast,” answering precisely the description given by Palou. It is ten times as large as “Washerwoman’s Lagoon,” which is laid down on the chart as “Pequena Laguna”—little pond, and is five times as large as Mountain Lake, which is called “Laguna del Presidio”—Presidio Pond. While on this map, it is curious and interesting to observe that while Alcatraz and Angel Island have their present designations, Yerba Buena Island is called “La Isla del Carmel”—Carmel Island; Fort Point is “La Punta del Angel de la Guarda”—the Point of the Guardian Angel; (was it Swamp Angel?) Point Lobos is not named, although its Seal Rocks are laid down; Point Pedro is “Punta de las Almejas”—Mussel Point; and the “Laguna de la Merced” is represented as having a free, open communication with the ocean.

After writing thus far, I have been to the Mission of Dolores, and had an interview with a well known lady resident there, Doña Carmen Sibirian de Bernal. She was born of Spanish lineage, in Monterey, California, in the year 1804; was married at San José, in 1821, to José Cornelio Bernal, a resident of San Francisco, and came here to reside the same year. She is a woman of great vivacity and intelligence, and states that the tradition is that when the Missionary Fathers came here to establish the Mission, they encamped at a pond which existed where the Willows now are, and to which a great tide-creek made up from the Bay: *en donde son ahora los Sauciletos, en donde había en eso tiempo un estero grande de la Bahía.* I also visited the site of “the Willows,” and found that although the soil had been filled in there several feet during my own recollection, the fresh water was still flowing out towards the Bay; and I could not find any tree there which appeared to be more than forty years old. The “estero” or tide-creek still makes up nearly to the Willows, but must soon be obliterated by the progress of public improvements. Why this pond was called “Dolores” must be left for others to determine. De Mofras says it was from “los Dolores”—the anguish or sufferings of San Francisco. See the Narrative Argument, § 35; but it may more probably have taken its name from the “Mater Dolorosa”—Nuestra Señora de Dolores.

Instead of re-writing this Note, which has been put in type in three separate parts, as my inquiries proceeded, I have concluded to let it stand as it is, presenting at once process and result.

fish, caught as well in the ocean as in the bay, several kinds of mussels, cockles, venison, rabbits, geese, quails, and thrushes. But when a whale was stranded on the beach, it occasioned a great festival, "because," says Palou, "they have a great liking for its flesh, which is all grease or fat; they cut it into large strips which they roast underground; they suspend it from trees, and when they wish to eat, they cut off a piece and eat it with their other food; they do the same with the seawolf, which they cut up as they do the whale, because it is all fat." Much mention is made of wild plants (*semillas de las yerbas del campo*) of which the natives made flour for their gruel. It is difficult to understand what these were, unless they were wild oats. Also a black seed (*semilla negra*) is spoken of, of which they made cakes in the form of balls, as large as an orange, very savory, and tasting like a very oily almond roasted. It is doubtful whether this black seed has survived to the present day.

The fashions as to clothing were exceedingly simple. Adult women wore, suspended from the loins, a slight, short skirt, leaving the rest of the person exposed; and the rest—men, boys, and girls—rejected all clothing, except the men, who put on a suit of mud to protect themselves from the cold in the morning, and undressed themselves by washing it off when the sun grew warm. Palou compliments the climate of San Francisco, as newly arrived persons do to this day, saying that it is cold all the year round, particularly in the morning (*del frio que todo el año hace en esta Mision, principalmente en las mañanas*). They had no religion, "merely a negative infidelity," says Father Palou. If they married, they took as wives all the sisters of the bride, and her mother, also, if she was a widow. The children belonged to all the wives alike. Divorce was established by a simple declaration of renunciation by either party. Father Palou thus continues the narrative:

"Seeing that the vessel did not arrive, we began to cut timber for the Presidio buildings near the entrance of the port, and for those of the Mission near the Laguna, or pond where we were encamped, and on the plain to the west of it; and no news or orders arriving, the lieutenant left us six soldiers as a guard at the place determined upon for the Mission, and also two of the colonists, and went himself with all the rest of the company over near the entrance of the port to begin the work against the arrival of the ship. The vessel finally arrived on the eighteenth of August, having been delayed by contrary winds, which had driven it down as far as the thirty-second degree of latitude. With the assistance of sailors, whom the captain of the ship divided between the Presidio and the Mission, we erected at the Presidio a small building for a chapel, and another for a storehouse for provisions; and also a similar building at the Mission for a chapel, and another with proper divisions as a living house for the Fathers; and the soldiers likewise built their houses at the Presidio, as well as at the Mission—all of wood, thatched with flags (*tulé*).

"We took formal possession of the Presidio on the SEVENTEENTH DAY OF SEPTEMBER, the anniversary of the impression of the wounds of our Father San Francisco, the patron of the Presidio and Mission. I said the first mass, and after blessing the sites, (*despues del bendito*) the elevation and adoration of the Holy Cross, and the conclusion of the service with the *Te Deum*, the officers took formal possession in the name of our Sovereign, with many discharges of cannon, both on sea and land, and of the musketry of the soldiers."

THE SEVENTEENTH OF SEPTEMBER, A.D. 1776, MUST THEREFORE BE CONSIDERED THE DATE OF THE FOUNDATION OF SAN FRANCISCO.

The Mission, as Father Palou records, was founded with equal ceremonies on the ninth of October, 1776. But the good Fathers had already commenced their religious work. There are still extant, at the Mission Church of Dolores, three old volumes bearing the signature of Father Palou, and the date of August 1st, 1776, each strongly stitched together, with flexible covers of rudely dressed leather, and looped, instead of clasped, with thongs of raw buckskin, and little plugs of the same instead of buttons within the loops, labeled respectively: "Book of Baptisms—Book of Marriages—Book of Burials—Libro de Bautismos—Libro de Casimientos—Libro de Difuntos." The title pages of these volumes are all elaborately inscribed by Father Palou, and the following from the Book of Baptisms will serve as a sample of the rest:



“VIVA JESUS MARIA Y JOSEF !

“BOOK OF BAPTISMS, in which are recorded the births of those who are christened in this church, as well the children of the soldiers and colonists of the Royal Presidio, as of the Indians of this Mission of our Father San Francisco, which was founded by the Monks of the Apostolic College of San Francisco, in the port of the same name of our Father San Francisco, in Northern California, with the approbation and at the expense of our Catholic Monarch, King of the Spains, our Lord Don Carlos III, (whom God defend !) under the direction of His Excellency the Bailli Brother Don Antonio Maria Buccareli, Most Excellent Vice Roy and Captain General of this New Spain. At the same time there was founded in its immediate vicinity the new Presidio of the same name of San Francisco, on the first day of August of the year 1776. The first ministers being the Fathers Presbyter-Preachers,* Brother Francisco Palou and Brother Pedro Benito Cambon, Apostolic Presbyter-Preachers of the above mentioned College of San Fernando, of Mexico. This book consists of three hundred and fifty leaves, without the first and last, which are to be left blank ; in testimony of all which I have signed it.

“BROTHER FRANCISCO PALOU.

“In the name of the Most Holy Trinity, God the Father, God the Son, and God the Holy Ghost, of the Queen of Angels, Mary, Most Holy, Our Lady, and of our Father San Francisco, Patron of this Church and Mission, this Book of Baptisms is commenced !”

The first three children appearing in this register were baptized hurriedly *in articulo mortis*; Francisco Soto, August 10th, 1776; Juana Sanchez, August 28th, 1776; and Maria Bojorquez, October 20th, 1776—all children of soldiers at the Presidio. The fourth, which was baptized with all the ceremonies December 20th, 1776, was José Gabriel Amezquita, son of Manuel Domingo de Amezquita and Maria Rosalia Zamara Amezquita; the god-father and god-mother were Nicolas Berreyesa and his sister Ysabel—all pobladores or colonists of the Presidio. The first burial recorded was on December 21st, 1776, at the *Church of the Presidio*, of Maria de la Luz Muñoz, wife of José Manuel Valencia, a soldier there, who died in consequence of accident, and so did not receive extreme unction, but had confessed a few days before. The first interment made at the Mission Church was that of Juana Maria de Gama, wife of Antonio Maria de Gama, also a soldier. The first marriage was celebrated at the Mission Church, on November 28th, 1776, between Mariano Antonio Cordero, a soldier of the Presidio of Monterey, to Juana Francisco, daughter of Pablo Pinto, soldier of the Royal Presidio of San Francisco, and Francisca Xaviera, his wife. What a little episode of romance is here suggested: Juana came with her parents from Sinaloa to help people the new garrison of San Francisco, and, stopping at Monterey, cast her large, black Andalusian eyes upon poor Mariano, who found no relief until he had followed her to San Francisco, and they had received the nuptial blessing at the Mission Church!

In the California Hispano-Mexican Archives, in Vol. I, Provincial State Papers: Benicia: Military: A.D. 1767-1780, in No. 13, is found a volume of 115 pages, containing the first return of the Presidio of San Francisco, embracing the period of its foundation, in 1776, in the handwriting of Hermenegildo Sal, the first Comandante of that Presidio. A venerable and curious document: containing the account current of each soldier and settler with the Government for clothing and other supplies, which, after first going in the course of official routine to headquarters at the Royal Presidio at San Diego, has wandered about from one capital, port, and military position to another, following the fortunes of revolution and of war, and now finding a resting place in that same Port of San Francisco from which it set out on its travels ninety years ago! From this we find that Hermenegildo Sal was Comandante of the Royal Presidio of San Francisco; José Moraga, Lieutenant; Pablo Grijalva, Sergeant; and Domingo Alviso, Valerio Mesa, Pablo Pinto, Gabriel Peralta, and Ramon Bojorques, Corporals. Among the names of the thirty-three private soldiers, we recognize many which are still radicated in

* *Predicadores*, literally Preachers, seems to have a higher sense than the English term, and I have therefore translated it Presbyter-Preachers.

the soil : those of Pacheco, Alvarez, Garcia, Soto, Valencia, Bojorques, Arellano, De Castro, Bernal, Vasquez, Pico, Cordero, Galindo, Ochoa, Peralta, Gonzalez, Figueroa, Lopez, and Feliz. Among the *pobladores*—the colonists or settlers—are the surnames of Gonzalez, Berreyesa, Vasquez, Peralta, Alviso, Galindo, Arbolla, Otondo, Espinosa, Lopez, Sanchez, de la Cruz, Velez, Fontez, Cardenez, Olvera, Feliciano, Torrez, Molina, and Rodriguez. The Reverend Fathers at the Mission of San Francisco, were Brothers Francisco Palou and Pedro Cambon, above mentioned in the narrative of Father Palou.

CAPTAIN VANCOUVER VISITS THE PRESIDIO IN 1792.

The first picture we have of the Presidial Pueblo of San Francisco as taken by a visitor, is that of Captain George Vancouver, of His Majesty's sloop the *Discovery*, who touched at San Francisco on November 15th, 1792, in the Voyage Round the World which he made by Royal Commission in the years 1790-1795. The following is taken from his narrative.

"Thursday morning, November 15th, [1792] we discovered anchorage in a most excellent small bay, within three-fourths of a mile to the nearest shore, bearing by compass south; one point of the bay bearing north 56° west, the other south 73° east, the former at the distance of two and a half, the latter about three miles. The herds of cattle and flocks of sheep grazing on the surrounding hills, were a sight we had long been strangers to, and brought to our minds many pleasing reflections. On hoisting the colors at sunrise, a gun was fired, and in a little time afterwards several people were seen on horseback coming from behind the hills down to the beach, who waved their hats, and made other signals for a boat, which was immediately sent to the shore, and on its return I was favored with the good company of a priest of the order of St. Francis, and a sergeant in the Spanish army, to breakfast. The reverend father expressed the pleasure he felt at our arrival, and assured me that every refreshment and service in the power of himself or mission to bestow, I might unreservedly command, since it would be conferring on them all a peculiar obligation to allow them to be serviceable. The sergeant expressed himself in the most friendly manner, and informed me that in the absence of the commandant, he was directed on our arrival to render us every accommodation the settlement could afford.

"We attended them on shore after breakfast, where they embraced the earliest opportunity of proving that their friendly expressions were not empty professions, by presenting me with a very fine ox, a sheep, and some excellent vegetables. The good friar, after pointing out the most convenient spot for procuring wood and water, and repeating the hospitable offers he had before made in the name of the fathers of the Franciscan order, returned to the mission of St. Francisco, which we understood was at no great distance, and to which he gave us the most pressing invitation.

"With permission of the sergeant, I directed a tent to be pitched for the accommodation of the party employed in procuring wood and water; whilst the rest of the crew were engaged on board in repairing the damages sustained in our sails, rigging, etc., during the tempestuous weather with which we had lately contended.

"We amused ourselves with shooting a few quails on the adjacent hills, and in the afternoon returned on board to partake of the excellent repast supplied by our hospitable friends. Whilst we were thus pleasantly engaged, our boat brought off Father Antonio Danti, the Principal of the Mission of St. Francisco, and Seigneur Don Hermenegildo Sal, an Ensign in the Spanish army, and commandant of the port. This gentleman, like those who visited us in the morning, met us with such warm expressions of friendship and good will, as were not less deserving our highest commendations, than our most grateful acknowledgments.

"Whilst engaged in allotting to the people their different employments, some saddle horses arrived from the commandant with a very cordial invitation to his habitation; which was accepted by myself and some of the officers. We rode up to the Presidio, an appellation given to their military establishments in this country, and signifying a *safe-guard*. The residence of the friars is called a Mission. We soon arrived at the Presidio, which was not more than a mile from our landing place. Its wall, which fronted the harbor, was visible from the ships; but instead of the city or town, whose lights we had so anxiously looked for on the night of our arrival, we were conducted into a spacious verdant plain, surrounded by hills

on every side, excepting that which fronted the port. The only object of human industry which presented itself, was a square area, whose sides were about two hundred yards in length, inclosed by a mud wall, and resembling a pound for cattle. Above this wall the thatched roofs of their low small houses just made their appearance. Their houses were all along the wall, within the square, and their fronts uniformly extended the same distance into the area, which is a clear open space, without building, or other interruptions. The only entrance into it, is by a large gateway; facing which, and against the centre of the opposite wall or side, is the *Church*; which though small, was neat in comparison to the rest of the buildings. This projects further into the square than the houses, and is distinguishable from the other edifices, by being whitewashed with lime made from seashells; limestone or calcareous earth not having yet been discovered in the neighborhood. On the left of the church is the commandant's house, consisting, I believe, of two rooms and a closet which are divided by massy walls, similar to that which incloses the square, and communicating with each other by very small doors. Between these apartments and the outward wall was an excellent poultry house and yard, which seemed pretty well stocked; and between the roof and ceilings of the rooms was a kind of lumber garret; these were all the conveniences the habitation seemed calculated to afford. The rest of the houses, though smaller were fashioned exactly after the same manner; and in the winter or rainy seasons, must at the best be very uncomfortable dwellings. For though the walls are a sufficient security against the inclemency of the weather, yet the windows, which are cut in the front wall, and look into the square, are destitute of glass, or any other defense that does not at the same time exclude the light.

"The apartment in the commandant's house, into which we were ushered, was about thirty feet long, fourteen feet broad, and twelve feet high; and the other room or chamber, I judged to be of the same dimensions, excepting in its length, which appeared to be somewhat less. The floor was of the native soil raised about three feet from its original level, without being boarded, paved, or even reduced to an even surface; the roof was covered with flags and rushes, the walls on the inside had once been whitewashed; the furniture consisted of a very sparing assortment of the most indispensable articles, of the rudest fashion, and of the meanest kind; and ill accorded with the ideas we had conceived of the sumptuous manner in which the Spaniards live on this side of the globe.

"It would, however, be the highest injustice, notwithstanding that elegancies were wanting, not to acknowledge the very cordial reception and hearty welcome we experienced from our worthy host; who had provided a refreshing repast, and such a one as he thought likely to be most acceptable at that time of the day; nor was his lady less assiduous, nor did she seem less happy than himself in entertaining her new guests.

"On approaching the house, we found this good lady, who, like her spouse, had passed the middle age of life, decently dressed, seated cross-legged on a mat, placed on a small square wooden platform raised three or four inches from the ground, nearly in front of the door, with two daughters* and a son, clean and decently dressed, sitting by her; this being the mode observed by these ladies when they receive visitors. The decorous and pleasing behavior of the children was really admirable, and exceeded anything that could have been expected from them under the circumstances of their situation, without any other advantages than the education and example of their parents; which, however, seemed to have been studiously attended to, and did them great credit. This pleasing sight, added to the friendly reception of our host and hostess, rendered their lowly residence no longer an object of our attention; and having partaken of the refreshments they had provided, we remounted our horses in order to take a view of the surrounding country before we returned on board to dinner, where Seigneur Sal and his family had promised to favor me with their good company, and who had requested my permission to increase their party by the addition of some other ladies in the garrison.

* One of these daughters of Comandante Sal, Doña Josefa Sal, was so late as the year 1863, the guest in this city of R. C. Hopkins, Esq., the official keeper of the California Hispano Mexican Archives. She was then a maiden lady of more than seventy years of age, and is since deceased. Her reminiscences of the early history of San Francisco were fresh and exceedingly interesting.

“Our excursion did not extend far from the Presidio, which is situated as before described in a plain surrounded by hills. This plain is by no means a dead flat, but of unequal surface; the soil is of a sandy nature, and was wholly under pasture, on which were grazing several flocks of sheep and herds of cattle; the sides of the surrounding hills, though but moderately elevated, seemed barren, or nearly so; and their summits were composed of naked uneven rocks.”

VANCOUVER'S ACCOUNT OF THE MISSION, A.D. 1792.

“The next day, Sunday, the 18th, was appointed for my visiting the Mission. Accompanied by Mr. Menzies and some of the officers, and our friendly Seigneur Sal, I rode thither to dinner. Its distance from the Presidio is about a league in an easterly direction. Its situation and external appearance in a great measure resembled that of the Presidio; and, like its neighborhood, the country was pleasingly diversified with hill and dale. The hills were at a greater distance from each other, and gave more extent to the plain, which is composed of a soil infinitely richer than that of the Presidio, being a mixture of sand and black vegetable mould. The pastures bore a more luxuriant herbage, and fed a greater number of sheep and cattle. The barren sandy country through which we had passed, seemed to make a natural division between the lands of the mission and those of the Presidio, and extends from the shores of the port to the foot of a ridge of mountains, which border on the exterior coast; and appear to stretch in a line parallel to it. The verdure of the plain continued to a considerable height up the sides of these hills; the summits of which, though still composed of rugged rocks, produced a few trees.

“The buildings of the Mission formed two sides of a square only, and did not appear as if intended, at any future time, to form a perfect quadrangle like the Presidio. The architecture and materials, however, seemed nearly to correspond.

“On our arrival we were received by the reverend fathers with every demonstration of cordiality, friendship, and the most genuine hospitality. We were instantly conducted to their mansion, which was situated near, and communicated with the church. The houses formed a small oblong square, the side of the church composed one end, near which were the apartments allotted to the fathers. These were constructed nearly after the manner of those at the Presidio, but appeared to be more finished, better contrived, were larger, and much more cleanly.

“Whilst dinner was preparing, our attention was engaged in seeing the several houses within the square. Some we found appropriated to the reception of grain, of which, however, they had not a very abundant stock; nor was the place of its growth within sight of the mission;* though the richness of the contiguous soil seemed equal to all the purposes of husbandry. One large room was occupied by manufactures of a coarse sort of blanketing, made from the wool produced in the neighborhood. The looms, though rudely wrought, were tolerably well contrived, and had been made by the Indians, under the immediate direction and superintendence of the fathers; who by the same assiduity, had carried the manufacture thus far into effect. The produce resulting from their manufactory is wholly applied to the clothing of the converted Indians. I saw some of the cloth, which was by no means despicable; and, had it had the advantages of fulling, would have been a very decent sort of clothing. The preparation of the wool, as also the spinning and weaving of it, was, I understood, performed by unmarried women and female children, who were all resident within the square, and were in a state of conversion to the Roman Catholic persuasion. Besides manufacturing the wool, they were also instructed in a variety of necessary, useful, and beneficial employments, until they marry, which is greatly encouraged; when they retire from the tuition of the fathers to the hut of their husband. By these means it is expected that their doctrines will be firmly established, and rapidly propagated; and the trouble they now have with their present untaught flock will be hereafter recompensed, by having fewer prejudices to combat in the rising generation; they likewise consider their plan as essentially necessary, in a political point of view, for securing their own safety.

“By various encouragements and allurements to the children or their parents, they can depend upon having as many to bring up in this way as they require.

* The wheat of the Mission was grown at San Pablo and San Mateo.

Here, they are well fed, better clothed than the Indians in the neighborhood, are kept clean, instructed, and have every necessary care taken of them; and in return for these advantages they must submit to certain regulations—amongst which, they are not suffered to go out of the interior square in the day time without permission, are never to sleep out of it at night; and to prevent elopements, this square has no communication with the country but by one common door, which the fathers themselves take care of, and see that it is well secured every evening, as also the apartments of the women, who generally retire immediately after supper.

“The persons of the natives, generally speaking, were under the middle size, and very ill made; their faces ugly, presenting a dull, heavy, and stupid countenance, devoid of sensibility or the least expression. One of their greatest aversions is cleanliness, both in their persons and habitations; which, after the fashion of their forefathers, were still without the most trivial improvement. Their houses were of a conical form, about six or seven feet in diameter at their base, and are constructed by a number of stakes, chiefly of the willow tribe, which are driven erect into the earth in a circular manner, the upper ends of which being small and pliable, are brought nearly to join at the top, in the centre of the circle; and these being securely fastened, give the upper part of the roof somewhat of a flatish appearance. Thinner twigs of the like species are horizontally interwoven between the uprights, forming a piece of basket work about ten or twelve feet high; at the top a small aperture is left, which allows the smoke of the fire made in the centre of the hut to escape, and admits the most of the light they receive. The entrance is by a small hole close to the ground, through which, with difficulty one person at a time can gain admittance. The hole is covered with a thick thatch of dried grass and rushes.

“Close by stood the church, which for its magnitude, architecture, and internal decorations, did great credit to the constructors of it; and presented a striking contrast between the exertions of genius and such as bare necessity is capable of suggesting. The raising and decorating this edifice appeared to have greatly attracted the attention of the fathers; and the comforts they might have provided in their own humble habitations, seemed to have been totally sacrificed to the accomplishment of this favorite object. Even their garden, an object of such material importance, had not yet acquired any great degree of cultivation, though its soil was a rich black mould, and promised an ample return for any labor that might be bestowed upon it. The whole contained about four acres, was tolerably well fenced, and produced some fig, peach, apple, and other fruit trees, but afforded a very scant supply of useful vegetables; the principal part lying waste and overrun with weeds.

“On our return to the convent, we found a most excellent and abundant repast provided, of beef, mutton, fish, fowls, and such vegetables as their garden afforded. The attentive and hospitable behavior of our new friends, amply compensated for the homely manner in which the dinner was served; and would certainly have precluded my noticing the distressing inconvenience these valuable people labor under, in the want of almost all the common and most necessary utensils of life, had I not been taught to expect that this colony was in a very different stage of improvement, and that its inhabitants were infinitely more comfortably circumstanced.”

This picture of the primitive simplicity existing in San Francisco seventy-four years ago, is known but to few even of our own citizens. It is not necessary here to enter further into the history of the Mission, or the colonial history of San Francisco, which are fully *detailed* in the Narrative Argument which follows. It was hardly to be expected that two white priests, who were all that were allotted to the Mission, should in the short space of sixteen years from its foundation, have brought the barbarous natives, whom they first collected there, into a very advanced state of civilization, or even have been able to provide them with habitations much superior to their own. But it is well known that in the course of fifty years of the progress and prosperity of this Mission, the native neophytes were brought up to a comparatively high degree of advancement, well clad, well fed, instructed in religion, agriculture, and handicrafts, and comfortably sheltered in houses compactly built of *adobe*, and roofed with tiles. A sketch of the Mission, made in the year 1830 by an officer of the British Royal Navy (see page 50 of the Narrative Argument), represents the church as it still exists, in a state of perfect preserva-

tion, with the Mission Buildings proper, which are also preserved, while near them is a large body of the *rancherías*, the *adobé* huts of the neophytes. In front of them is the walled inclosure of the Mission Orchard, *la huerta de árboles frutales*; under the eaves of the church is seen the wall of the *Campo Santo*—the Holy Field—whose consecrated soil covers so many generations of the pious dead; while down in the middle foreground lies the small building of *la curtidería*, the tannery where leather was manufactured by a crude but substantial process. Many of these *adobé* houses of the Indian converts still remain, and are occupied as residences by the white population.

The subsequent Colonial History of the Pueblo, Presidio, and Mission of San Francisco is detailed in the Narrative Argument.

TOPOGRAPHY.

The Eastern Coast of the Pacific Ocean, from many miles to the south of San Francisco, runs in a northerly direction, till, at the entrance of the Straits of San Francisco, it meets a long line of ocean coast running nearly if not quite southeast. These two extended lines of coast, thus converging, form a deep indentation in the land, and the two points, respectively north and south of their junction, constitute the "Golden Gate," which is about a mile in width. This designation was given by the Anglo-Americans long anterior to the discovery of gold in California, and however appropriate it has since become on account of that discovery, and from the golden tide of commerce which has its flux and reflux through these portals, the name probably took its origin from the sunny, golden view which is always presented on a clear day to one approaching San Francisco from the ocean and through the straits. The southern point of the "Golden Gate" is bold and bluff, elevated probably two hundred feet above the tide, and at its foot has recently been constructed an extensive American Fort, upon the site of an old Hispano-Mexican military work, called Fort San Joaquin; from this fact it is called "Fort Point." The opposite northern point of the Golden Gate rises almost precipitously to the height of three thousand five hundred feet to the summit of Tamul Pais, or Table Hill, the most elevated mountain on the immediate coast of the Pacific.

The City of San Francisco, with a population of 120,000 inhabitants, is situated upon the northeastern extremity of the peninsula formed by the Pacific Ocean and the Strait and Bay of San Francisco, in latitude thirty seven degrees and forty minutes north, longitude one hundred and twenty-two degrees and thirty minutes west, about six miles from the Pacific. That portion of the peninsula which lies within the City and County of San Francisco is about six miles in average width. The natural features of the most thickly settled portions of the two are generally those of a slope ascending rapidly to the height of three hundred and seventy-six feet above tide water within half a mile of the bay, but in some places rising almost precipitously to the height of three hundred feet; while the character of the soil is for the greater part sandy, rocky, and barren.

The sand hills formerly existing to the south and southwest of the earliest settled part of the city have been transferred into the mud-flats of the water front, or into the marshes which formerly existed between the city and the Mission Dolores, which lies within the city, bringing into occupancy a large tract thus made level; and beyond this, on the south, lies a large tract of rolling land, formerly affording considerable pasturage, and to the southwest a sandy valley, which opens into a wide plain of drifting sand as it approaches the Pacific, to which it extends; and between the two lie the plains, valleys, and mountains of San Miguel. Lone Mountain Cemetery occupies the crest of a ridge of lofty hills, lying on the old Spanish trail leading from the Mission Dolores to the Presidio, and embraces in one sweep the Pacific Ocean, the whole extent of the straits, the great basin of the bays of San Francisco, San Pablo, and Suisun, the valleys of San Rafael, Petaluma, Sonoma, and Napa, and of the rivers Sacramento and San Joaquin—and, looking out upon the lofty peaks of Tamul Pais and Monte Diablo, it commands a view of unsurpassed magnificence and beauty, and is an appropriate resting place for those pioneers in the settlement of California, who will hereafter be ranked among its civil *conquistadores*. The names of Broderick and Baker have already connected this cemetery with history. Calvary Cemetery, situated directly to the south of the other, is a consecrated burial place of the Roman Catholics, embracing within its limits the "Lone Mountain," a designation which is perfectly descriptive of its

tall, conical, solitary mass, on whose lofty summit is planted the sacred symbol of faith and civilization, visible at a great distance from land or from the ocean.

The old barracks and entrenched camp of the Hispano-Mexican *régime*, called the Presidio, are situated about four miles west from the heart of the city and near the Fort. Upon the bay, and intermediate between the Presidio and the town, is a bold cliff of black rocks called indifferently Black Point, and Point San José, upon which a small battery named San José existed for sometime under the Mexican dominion, appurtenant to the other military works, and has lately been replaced by an American battery. In a southwestern direction from the principal Plaza, or Public Square, and about two and a half miles distant from it, are the church and buildings of the ancient Catholic Mission of Dolores, otherwise called the Mission of San Francisco de Asis.

This Mission is now extinct; and its buildings, inclosing a large open court, are mostly in a condition of good preservation, while the *rancherías*, or mud cabins, of the former Indian neophytes are for the greater part destroyed; but the church, a structure of *adobé*, or unburnt brick, is well preserved, and used as a parish church, and together with the adjoining *campo santo*, or cemetery, has been confirmed in ownership, by the Courts of the United States, to the Bishop of Monterey, as a corporation sole, representing the Catholic Church in that behalf. About four miles due west, from the centre of the city is situated a pond, or *laguna*, called Mountain Lake, without visible inlet or outlet; but a considerable stream rising within a short distance, called Lobos Creek, and flowing rapidly into the Pacific, furnishes a considerable portion of the water supply of the inhabitants of the city. In the same direction, upon the shore of the Pacific, and about six miles distant from the city proper, is a precipitous, rocky cliff, several hundred feet in height, called Point Lobos—*la Punta de los Lobos*—from a colony of sea-wolves—*lobos marinos*—which have immemorially inhabited an archipelago of large rocks lying about a furlong from the shore. Mission Creek is an estuary of considerable size, which penetrates the peninsula between the city proper and the Mission; the *Laguna de la Merced*—Lake of Mercy—is composed of two small freshwater lakes, but little elevated above the level of the ocean, situated near the beach, about eight miles southwest from the city, and the *Laguna Honda*—Deep Pond—is a natural funnel of great depth, but elevated three or four hundred feet above tide water, situated about five miles from the city in a southwesterly direction, which has been converted into a reservoir for the waters of the Pilarcitos Creek, brought about twenty-five miles by natural flow from the mountains, for the use of the inhabitants. About eight miles southward from the head of the peninsula, the picturesque San Bruno Mountains extend nearly from the bay to the ocean; while the island of Yerba Buena, or Goat Island, of considerable dimensions, lies in the bay, about a mile directly east of the city, beyond which, six miles from the city, lie the plains, and as many miles beyond them, the Mountains of *Contra Costa*—the counter coast. Alcatraz Island—*la Isla de los Alcatreces*—[Pelican Island]—a bold, barren, symmetrical rock, situate due north of the city, about a mile distant from it, and commanding the straits, the city, and the harbor, is crowned with fortifications, and bristles with cannon. These constitute all or nearly all the localities mentioned in the accompanying narrative; certainly all which are necessary to make it intelligible.

The inhabitants of the Pueblo of San Francisco formerly resided at the Presidio, where was the only settlement of whites previous to the year 1835, and during all this time "the harbor of San Francisco" was in the straits immediately opposite the Presidio, where the beach is clear, firm, gravelly, and sandy, and the water deepens rapidly. (See the Frontispiece.) This is now called the "Outer Harbor;" but even since the discovery of gold, in 1848, "ancient mariners," who had long previously visited San Francisco on coasting and whaling voyages, have often dropped their anchors in the outer harbor, supposing they had reached their real destination.

Frequent reference is made in the following pages to documentary evidence drawn from the "California Archives," so called. I have availed myself of a description of those archives furnished at my solicitation by the ready and accomplished pen of R. C. Hopkins, Esq., their official keeper, which is prefixed to this Introduction.

PRESENT CONDITION OF SAN FRANCISCO.

A wide and rapid stride brings the reader from the days of simplicity, sloth, and dullness, to the present era, and to San Francisco as she is. The City and County of San Francisco constitute but one Municipal corporation. Previous to 1856 there was a City corporation and a County corporation; but in that year it was deemed advisable to consolidate the two into one Municipal corporation; and because the County organization was created by the Constitution, the limits of the County were reduced, and the City united with it by the so-called Consolidation Act of 1856. The President of the Board of Supervisors is therefore the Chief Executive of the City, with the title of Mayor; the Board of Supervisors is the City Council, and the Supervisors are the Aldermen.

POPULATION, MANUFACTURES, INSTITUTIONS, ETC.

The population of San Francisco is estimated by good statist at 120,000. By the last census returns as digested by the Secretary of the Interior, she was ranked as fifteenth in population among the cities of the United States, and ninth in manufacturing importance. But since the census of 1860, both her population and manufactures have probably doubled. The market for her manufactures has an extent hardly rivaled by that of any American City: extending from Sitka on the north, to Valparaiso on the south, embracing the Sandwich Islands, Japan, and Australia; the Chinese coast, and that of Asiatic Russia. Its annual current expenditures exceed \$900,000; its outstanding Funded Debt is \$4,000,000; it possesses Hospitals, Orphan Asylums, Industrial Schools, Wharves, Street Railroads, Fire Telegraphs, Public Buildings, Water Works, Prisons, Gas Works, Cemeteries, a Board of Health, a Board of Education, Public Schools, Colleges, Medical Schools, Public Libraries, Public Societies of all kinds, and is about to introduce a Paid Fire Department. It has three District Courts, of original jurisdiction at law and in equity; a County Court; a Probate Court; a Police Court; Justices' Courts; and a Police Department. It possesses all the higher organizations of modern civilization, for the promotion of religion, morality, and health, and for the repression of idleness, vice, and disease.

The following are the present officers exercising jurisdiction and authority in the City:

MAYOR: Hon. Henry P. Coon;

SUPERVISORS: A. H. Titcomb, R. P. Clement, Isaac Rowell, Wm. S. Phelps, Monroe Ashbury, E. N. Torrey, Charles Clayton, Jacob Schreiber, A. J. Schroder, Jas. H. Reynolds, Frank McCoppin, Charles H. Stanyon; Clerk, J. W. Bingham.

DISTRICT JUDGES: Fourth District—Hon. E. D. Sawyer; Twelfth District—Hon. O. C. Pratt; Fifteenth District—Hon. S. H. Dwinelle; COUNTY JUDGE: Hon. Samuel Cowles; PROBATE JUDGE: Hon. M. C. Blake; POLICE JUDGE: Alfred Rix; CHIEF OF POLICE: Martin J. Burke; DISTRICT ATTORNEY: Nathan Porter; CITY ATTORNEY: John H. Saunders; COUNTY CLERK: Wilhelm Loewy; COUNTY RECORDER: Thomas Young; AUDITOR: Henry M. Hale; TREASURER: Joseph S. Paxson; TAX COLLECTOR: Charles R. Story; SHERIFF: Henry L. Davis; CITY SURVEYOR: George C. Potter; CORONER: S. R. Harris; PUBLIC ADMINISTRATOR: John W. Brumagim.

We have thus brought San Francisco through a period of ninety years, from the condition of a feeble colony situated on the very outskirts of the Spanish dominion, to that of a large, wealthy, and prosperous City of the United States, and destined to become, in a few years, the QUEEN OF THE PACIFIC.

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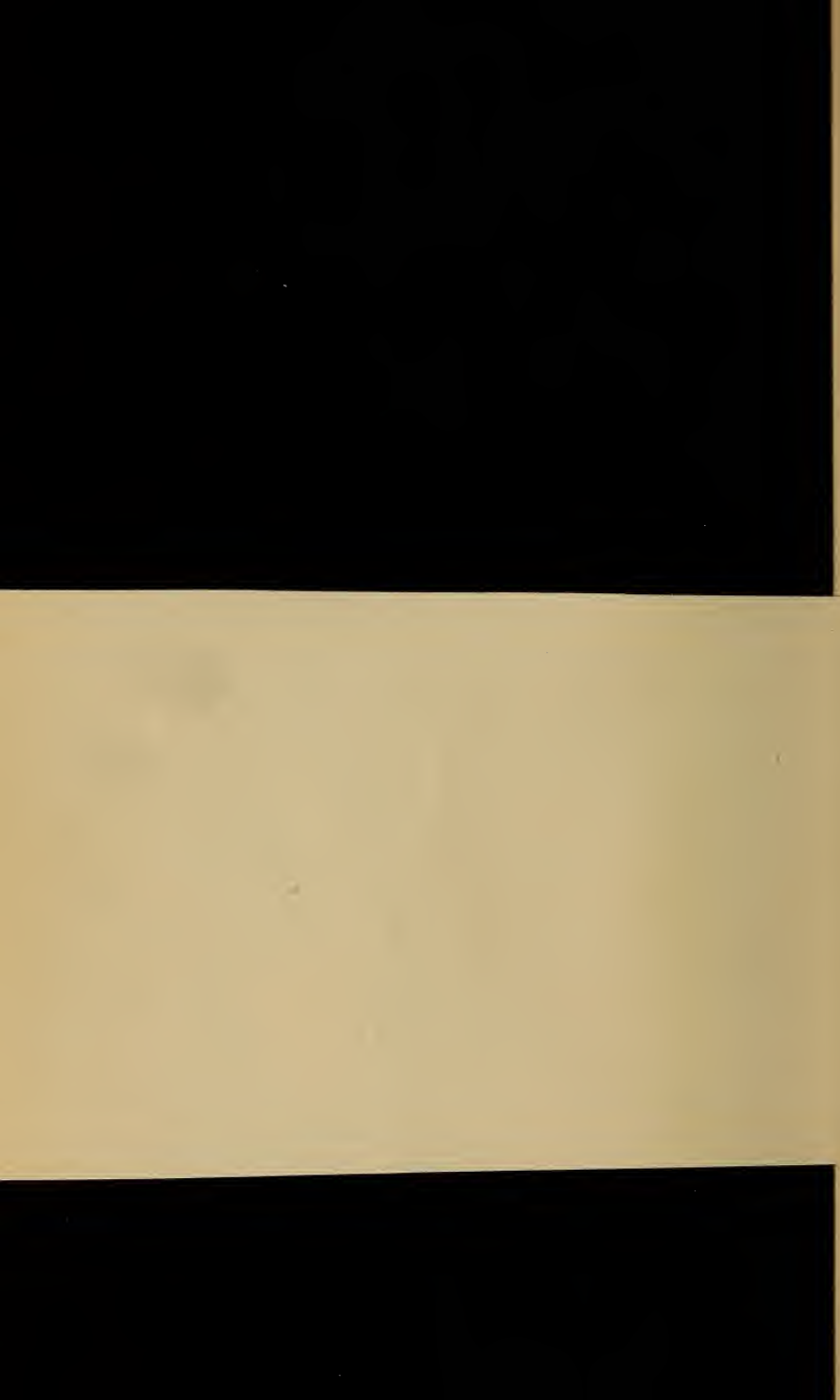
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Hon. E. D. Sawyer,
with compliments of
John W. Driscoll



NARRATIVE ARGUMENT.

STATEMENT OF THE CASE.

§1. This is a claim by the City of San Francisco for four leagues of Pueblo or town lands, including the present site of the City, and the lands immediately adjacent sufficient to make up that quantity. The claim was originally presented for confirmation to the Board of Land Commissioners of the United States for California, created under an act of Congress, entitled "An Act to Ascertain and Settle Private Land Claims in the State of California," passed March 3d, 1851. See the Act, ADDENDA, page 203, No. CVIII, and the petition of the city filed with the Board, ADDENDA, page 119, No. LXXXI. The Board confirmed the claim, but not to the full extent, there being evidence before them which satisfied them that the southern boundary of the Pueblo had been fixed by the Mexican government. See the ADDENDA, pp. 121, 159, Nos. LXXXII-LXXXIV; page 116, No. LXXX. From this decision the City of San Francisco appealed to the District Court of the United States for the Southern District of California; and the case was afterwards transferred to the Circuit Court of the United States for California, pursuant to an act of Congress, authorizing such transfer. ADDENDA, page 171, No. LXXXVII, *Id.* page 223, No. CXIV. The law and the facts upon which this claim is based, are stated in the two following propositions:

"FIRST: On the seventh day of July, in the year 1846, and long before that time, there existed, within the Northern limits of the present City of San Francisco, a Hispano-Mexican PUEBLO or town, which, by virtue of the ancient written laws of Spain and Mexico, was vested in proprietorship, in trust for the inhabitants thereof, with four leagues of land, including the site of the said PUEBLO or town, and the lands in the immediate vicinity of the same.

"SECONDLY: That the said four leagues of land are to be determined by taking all the land included by the natural tide-water

“boundaries of the northern portion of the peninsula upon which the present City of San Francisco is situated, and proceeding within those natural boundaries south to a parallel of latitude, which, with those natural boundaries, shall, when surveyed according to the Spanish and Mexican laws, include the full quantity of four square leagues.”

These two propositions will be discussed together.

The United States, on the other hand, insist that there was never an organized PUEBLO of San Francisco; that an attempt was made to convert the neighboring Catholic Indian Mission of Dolores into a PUEBLO, but that it was never accomplished.

A HISTORICAL STATEMENT NECESSARY.

§ 2. The discussion of this case cannot be confined to the presentation of a few sharply-defined propositions. The history of the whole country of California is involved in that of the City of San Francisco. It will be remembered that the proposition of the United States is, that there never was a PUEBLO or organized town of San Francisco, and that the claim of four leagues of lands for such PUEBLO is a modern invention, never heard of among the Hispano-Californian population, nor among the Anglo-Americans until within the last few years. On the other hand, it is contended, on the part of the City of San Francisco, that there was here a PUEBLO of San Francisco fully organized and in operation in its Political and Municipal capacity, and that to this PUEBLO or town, AS SUCH, and without any special grant for that purpose, belonged four leagues of land, including its site, and the lands adjacent to it. To demonstrate the facts which sustain these last propositions requires an extended historical disquisition, detailing the origin and progress of the SPANISH LAWS OF COLONIZATION which have from time to time been in force in California, their gradual development and improvement, and their application to the colonial establishments which grew up under them. It will require a critical sketch of the development, decline and final extinction of the plan of CATHOLIC MISSIONS among the Indians of California; of the system of PURE PUEBLOS; and of the military establishment of PRESIDIOS which were finally converted into PRESIDIAL-PUEBLOS. But before entering into this argument, it will be well to ascertain with precision the definition of certain terms which will be frequently employed in the discussion.

MODERN MUNICIPALITIES OR COMMUNES.

3. No portion of history is more interesting than that of the rise and development of modern Municipalities or Communes, or, in the better understood American terms, ORGANIZED VILLAGES, CITIES or TOWNS. At the same time no portion of history is more obscure. While it is evident that MODERN COMMUNES originated in the instinct of association and protection among the weak against the strong, the

indigenous conquered serf against his robber lord,—and became salient points of reaction for the democratic element in society against the aristocratic,—still the time, place and exact circumstances under which they were formed cannot be definitely ascertained, and are even difficult of conjecture. As the darkness of the middle ages recedes before the dawn of the new civilization, the modern *commune* EMERGES from the obscurity, perfect and mature, but with unknown antecedents. It is only until lately that history has busied itself with these democratic organizations: formerly they were beneath its notice. It is highly indicative of the small value attached to the municipal institutions which lie at the base of the liberties of the British races, that in the histories of the English law, written by Hallam, Reeves, Crabbe, and Blackstone, we find no account whatever of the rise and development of the English COMMUNE, although the House of Commons (*communes*) has for more than a century and a half been the most powerful branch of the British Legislature. Robertson was the first writer of eminence who considered the subject worthy of his research and illustration; Guizot and Thierry have exhausted the subject. Robertson's Charles V, Vol. 1, Proofs and Illustrations Notes XVI-XX; Guizot Hist. de la Civilization; Thierry, le tiers-Etat; Maddox, Firma Burgi, and Merlin, Questions de Droit, titres *Commune et Communaux*;—may be consulted with interest and profit by the archaeologist, and even by the general reader, but the present discussion does not demand any critical research of that nature.

SPAIN FIRST ORIGINATED A **System** OF COMMUNES, BURGHS, OR LOCAL MUNICIPALITIES.

§ 4. As Spain was the kingdom under whose laws was first built up, codified and published a complete system of civilized and Christian law [LAS SIETE PARTIDAS, enacted by Don Alfonso X in 1260,] so it was the country where the COMMUNES, whether called cities, villas, or towns, first obtained a representation in the Cortes, the National Legislature. The Hispano-American Communes are legitimately descended from those of Spain, but although resembling them in many features, yet in others they differ from them almost as widely as it is possible for two species of the same class of plants or animals to differ from each other. Guizot specially notes this great difference between the colonies of Greece and Rome and those of modern Europe, that the founders of the former carried with them and planted in the new colony the political distinctions of class, and the social distinctions of rank, so that the new city was a complete copy of the parent one; while the modern *communes* were all pure democracies, or nearly so. But the European *commune*, translated across the Atlantic, experienced the same enfranchisement which has attended most other civilized institutions in the like transit. If we bear in mind that the Hispano-American colonies or pueblos were *communes* entirely *sui generis*, built up from an uniform basis, perfectly resembling each other in *all* their features, and wholly emancipated from the irregularities, uncer-

tainties, and servitudes which deformed European communes, and even prevented them from attaining the dignity of a System, we shall comprehend in the outset why so little of the law applicable to the PUEBLOS of Spain will be of use to us in this discussion, and also avoid the bewildering labyrinths of useless law-learning. For example: suppose a dozen European communes,—each a city of refuge from the exactions of titled robbers,—had established themselves in fact upon certain lands,—one holding the lands occupied by it as its own in full property; another holding the same description of lands under a mere usurpment; another in common with the neighboring *lord*; another in common with the adjoining bishop, or monastery, or convent, or church; and others holding the same kind of property in trust for all comers;—what uniform rule of property, what system, could be evolved from such an aggregation of *exceptional* cases? Happily when we come to the Spanish Pueblos established in America, we shall find a Perfect System of Homogeneous Pueblos, sometimes differing in rank, but never in kind, or in organization.

DIFFICULTY IN ARGUING THE CASE.

§ 5. A serious difficulty in arguing the case arises from the fact that it has repeatedly been decided by the Supreme Court of the State of California. It could not be expected that land litigation should not attend the sudden growth of the City of San Francisco. Accordingly, the Supreme Court of the new State was called upon in the first year of its existence, to decide whether the Hispano-American town of San Francisco had such a proprietary interest in the lands lying within its limits as to constitute a source of title. This question was before that tribunal for several years, with various elucidations and solutions, until finally, in the year 1860, in the case of *Hart vs. Burnett*, 15 Cal. Rep. 530, it was decided in the affirmative, after such thoroughness of research and force of argument as to render it almost impossible to treat the question again in a purely forensic manner. I propose, therefore, to discuss the case in another manner, and to weave the proofs and illustrations into a chronological narrative of the HISTORY OF THE PUEBLO OR TOWN OF SAN FRANCISCO; and I hope in this manner to construct a SYNTHETIC ARGUMENT which shall lead conclusively to the same result that is reached by the admirable ANALYSIS in the case of *Hart vs. Burnett*.

CHARACTER OF THE TESTIMONY. LOSS OF PAPERS. DOCUMENTARY EVIDENCE—"ADDENDA."

§ 6. I shall rely almost entirely on documentary evidence, and shall make little use of parol testimony, except to show the loss of documentary evidence. The testimony of Hispano-Americans has been found to be proverbially unreliable for many reasons, and under no circumstances could stand in the face of authentic official documents. That most of the authentic official documents relating to the history of San Francisco, have been lost, is too well established by the testimony, both

documentary and parol. Among the documentary testimony is an original authentic document, annexed to the testimony of R. C. Hopkins, as Exhibit No. 1, containing an "inventory of all the documents contained in the Archives of the Juzgado of San Francisco de Asis," from the year 1829 to 1839, during which period the Ayuntamiento of San Francisco was organized, and finally superseded. Hardly any of these documents are to be found. They are not in the custody of the Mayor or of the City Clerk; they are not in the City Archives; a few have been produced from private hands; and only a few are in the California Archives. See testimony of R. C. Hopkins, keeper of the California Archives; of A. F. Teschemacher, Mayor of San Francisco; of J. W. Dwinelle. In the California Archives the official correspondence of the Governors of California from about 1834 to 1839, the most interesting period of the history of the Pueblo of San Francisco, is wanting. See R. C. Hopkins's testimony, *ut supra*. Whenever a trace has been found in this inventory of a document of peculiar interest in the case, and which from its nature must have shed light upon the points to be investigated, in almost every instance it has been found that this document could not be found either in the archives, or any where else. See testimony of Hopkins and Dwinelle. That the government itself is answerable for this loss of documents, is very easily demonstrated. On July 11th, 1847, a few days after the Americans took possession of San Francisco, Lt. J. S. Misroon, U. S. Navy, dating from Yerba Buena, reports that he had visited the Mission of Dolores, and adds:

"A collection of public documents was made and carefully brought to town, where they were packed, sealed, and superscribed, by Mr. Leidesdorff and myself, and witnessed by Don Andres Hoepender, (sealed with the consulate seal), and placed in the Custom House under charge of Military Commander Watson, subject to such disposition as you may be pleased to make." Executive Document, 2d Session 30th Congress, Vol. I, pages 1021, 1022. And J. B. Montgomery, the Commander U. S. Navy who took the town of San Francisco for the Americans, under date of July 20, 1846, reports to his superior:

"I sent an officer on Friday to the rancho of Don Francisco Guerrero, late sub-prefect of this department, who came in on the summons, and having delivered the papers of his department, which appeared to be of little importance, was permitted to return on his parol of honor not to go beyond the limits of this district without my passport; neither to instigate, take part in, or in any way to countenance movements or designs against the existing government or peace of the country." Exec. Doc. as above, pp. 1029, 1030. That the United States Government thus got possession of the archives of the Mission and of the Sub-Prefecture of the Juzgado of San Francisco, thus appears very clearly. That the documents thus obtained were the very documents most needed to elucidate the history of the Pueblo of San Francisco, is very evident from the inspection of the document Exhibit No. 1, annexed to the testimony of R. C. Hopkins, as above mentioned. What has become of these documents? Where are they? *We trace*

them into the possession of the Government; what has the Government done with them? Happily the existence of the PUEBLO can be clearly and indisputably established by the authentic original documents which have not been lost or mislaid, many of which we have discovered and produced for the first time in evidence. The most important and interesting of the proofs and illustrations in the case are printed and annexed to this argument under the designation of ADDENDA. They are published in full, because their purport could not be easily understood from selected extracts; and their length is amply compensated by their value, especially since it is graphically asserted in these latter times that the claim of Hispano-American Pueblos to four leagues of land is "a new pretense never heard of until since the conquest of California." These documents will ever remain monuments of the wise and pious benevolence which characterized the Colonial Policy of Spain. The original Spanish has been interjected in many phrases which are made the subject of comment. Many of the translations are absolutely grotesque in their solecisms and want of accuracy, frequently obscuring, and often reversing the sense of the original; but these are the translations which both suitors and the United States were formerly obliged to accept at the hands of some of the official translators, who, it is to be hoped, understood Spanish, for they certainly did not understand English. These remarks do not apply to the early translations furnished by Hartnell, Halleck, and some others, which are admirable, although sometimes liable to criticism when we descend from generic to specific terms.

DEFINITION OF TERMS.

§ 7. Before proceeding to the argument of the case, it is necessary to define certain terms which will be of frequent recurrence, and some of which have no exact synonyms in the English law. I shall make my own definitions, giving my authority for each of them, reserving, of course, to my opponents the right to criticise, to invalidate, and to destroy them. As I have chosen a synthetic form for my argument, I shall make no excuse for following that form in all its exigencies, among which I include those of definition. Says Locke: "Before entering into a discussion, be sure that you and your opponent are agreed as to the meaning of the terms employed, for I have known persons engaged a full ten days in discussing topics, and have finally found that they were perfectly agreed, only that they differed in the meaning of the terms employed."

DEPARTMENT—DISTRICT—PARTIDO.

§ 8. Sometimes the Mexican Republic was under a Federative Constitution, and then the Californias were called DEPARTMENTS, a designation corresponding to the TERRITORIES of the United States; at others, the Constitution of Mexico was centralized, and then, also, the Californias were called DEPARTMENTS. Each Department was divided into Districts; and each District into two Partidos. Under

either form the actual division of the Californias was the same. A Prefect presided over the District, and a Sub-Prefect over the Partido. See Constitutional Laws of 1821—1822; Constitutional Laws 1836, ADDENDA No. LXIX, page 100. Leyes Vigentes, 45.

PUEBLO.

§ 9. The term PUEBLO answers to that of the English word Town, in all its vagueness, and all its precision. As the word town in English generally embraces every kind of population from the Village to the City, and also, used specifically, signifies a town “corporate and politic,” so the word PUEBLO in Spanish, ranges from the hamlet to the city, but, used emphatically, signifies a town “corporate and politic.” San José was a pure pueblo, organized as such; so was Los Angeles, until raised in 1835 to the rank of a city. (Recopilacion de Arrillaya, A. D. 1835, p. 189.) We contend that San Francisco was a PUEBLO especial, a body politic and corporate, or *quasi*-corporate, thoroughly organized as a politico-economical Municipality, and the word PUEBLO, employed without any restriction, is used in this sense in this argument. At the same time the word PUEBLO was often used, and will often be found used in the documentary evidence in this case, in the sense of village. Thus the miserable, abandoned, forfeited Indian hamlet at the Mission Dolores, is sometimes called “Pueblo of Dolores,” which is an instance of the application of the word in its generic sense of settlement. The Spaniards preferred the word LUGAR to that of PUEBLO. The Hispano-Americans commonly used the word PUEBLO, probably because the American PUEBLOS differed so much from the Spanish LUGARES, as we have before shown: the variation in the terms denoted the specific varieties of members of the same general family, and the word PUEBLO as used in America, denoted one of the emancipated, homogeneous, American PUEBLOS which owed their existence to the experience, wisdom, piety, and bounty of the Kings of Spain. See ante §§ 2 to 5 of this argument.

But, without some further distinctions, we shall mislead ourselves. A PUEBLO manifested itself in various ways. It had a *political* jurisdiction, embracing all the *legal voters*, within a certain territory. It had a *judicial* jurisdiction: “by ‘termino Jurisdiccional,’ Jurisdiction, “‘Partido,’ or ‘Distrito,’ is understood all that is comprised within the “limits to which the *jurisdiction* of the Alcalde or Judge of the Pueblo extends.” Governor Gutierrez, Jan. 25, 1836, ADDENDA No. XXXIII, page 51, 3d ¶ from the foot. It had also a *proprietary* existence, embraced in the phrase “termino municipal,” “fundo legal,” “the lands owned by the corporation:” “that land which has been “assigned to the PUEBLOS for the relief of their herds, within which “neither the cattle nor inhabitants of neighboring PUEBLOS can enter, “for the purpose of grazing or cutting wood, without being denounced, “[prosecuted?] unless they have some letter of commonalty.” Governor Gutierrez, Jan. 25, 1836, ADDENDA No. XXXIII, page 51, 2d ¶ from the foot. So far as the documentary testimony throws any light

on the subject, the *political* and *judicial* authority of the pueblos seems to have extended to the same district or territory, and the *proprietary* ownership to have been restricted within narrower limits, namely, to the four leagues of land belonging to the pueblo, the "termino municipal." We shall see, in the course of this argument, how far these distinctions are justified and maintained.

PROPIOS AND ARBITRIOS.

§ 10. The PROPIOS were such lands, houses, or other property of cities and pueblos as were rented, and the proceeds thereof applied to the payment of municipal expenses. Salvá, Dic. Esp.; Escriche, Dic. de Legis. in verbo. ARBITRIOS, as applied to cities and pueblos, are taxes, licenses, and other impositions laid upon certain trades, occupations, pursuits, conveniences and luxuries, in order to defray the municipal expenses. Escriche, Dic. de Legislacion; Salvá Dic. Esp. in verbo. Febrero Mejicano, vol. 1, pp. 304, 305, etc. Escriche says: "This property is a part of the patrimony of the Pueblo, and is administered by the Ayuntamiento, or a special board established for that purpose:—estos bienes patrimoniales del Pueblo se llaman *Propios* y se administran por el Ayuntamiento ó una junta especial establecida al intento:" in verbo *Bienes concejiles*. Says Governor Gutierrez, over the date of January 25th, 1836: "The *terrenos de Propios* are lands assigned to the Ayuntamiento, so that by leasing them to the best bidders, for a term not exceeding five years, they may defray their expenses by the proceeds; and the Ayuntamiento may propose the amount of rent, mentioning it in the petition which is presented." See ADDENDA, No. XXXIII, page 51, last ¶ on the page.

SUERTES, SOLARES, SITIOS.

§ 11. SUERTES were the cultivable lots of land granted to colonists in California, near the Pueblos, and within the four leagues assigned to the Pueblo. Each SUERTE is defined by the Regulations of Colonization of Felipe de Neve of 1779-1781, to consist of two hundred varas in length, and two hundred in breadth. See ADDENDA, No. IV, § 5, page 4. The Spanish vara or yard, is 33 inches long. In the *Plan of Tepic*, A. D. 1789, the suertes are designated as being 200 × 400 varas. See ADDENDA, No. VII, Art. 14, page 13. But their area is of no consequence; it is sufficient for our present purpose, that they were tracts of cultivable lands granted to colonists. SOLARES, [*Solum, area, Salvá,*] building lots, granted to colonists, and which were to conform to a precise plan, and to the designated squares and streets. Regulations of Felipe de Neve of 1779-1781. ADDENDA, No. IV, § 4, page 4; Plan of Pitic. ADDENDA, No. VII, Art. 8, page 12. The word sitio originally meant only a "place," "*situs*," and when a person petitioned for a "sitio of land," he was understood to ask for a "place" to live upon. But afterwards it came to have a more specific meaning: a "sitio de ganado mayor,—a sitio of large (neat) cattle," signifying a square of 5,000 Spanish varas, or yards; and a "sitio

de ganado menor—of smaller cattle—sheep, etc.” signifying a square of $3,333\frac{1}{3}$ Spanish yards. Exec. Doc. 1st Sess., 31st Cong. Doc. 17, page 145. But “sitio,” without any qualification, is generally understood to signify a square league of land, and will be so used in this argument.

AYUNTAMIENTO—REGIDOR—PROCURADOR—SINDICO—MUNICIPALIDAD.

§ 12. The word Ayuntamiento is best rendered by the English term Common Council, [*commune* Council,] to which it exactly corresponds. If we restore the word to its barbarous Latin etymology, *adjungamentum*, its force becomes at once apparent. “AYUNTAMIENTO: el congreso ó junta compuesta de la justicia ó alcalde regidores y demas individuos encargados de la administracion ó gobierno economico-politico de cada pueblo. Suele llamarse tambien rejimiento, cabildo, concejo, *municipalidad* y cuerpo municipal. Escriche Dic. de Legislacion, in verbo. Ayuntamiento: the body or legislature composed of the justice, or alcalde, the regidores, and the like persons who are entrusted with the administration or politico-economical government of each pueblo. It is also called Regimiento, [*decurionum consessus*; Salvá] Cabildo, [*Senatus municipalis*; Salvá;] concejo, [council;] Municipalidad, [Municipality;] y cuerpo municipal, [municipal body.] Salvá gives the term the same substantial definition, and adds the Latin definitions: *Congressus, Senatus, Coetus*.

REGIDOR, a common Councilman; an Alderman. “Cada uno de los individuos del Ayuntamiento encargados del gobierno economico de los pueblos. *Decurio*.—Each of the persons belonging to the Ayuntamiento who are entrusted with the economical government of the Pueblos.” SALVA Dic. Esp. in verbo.

“PROCURADOR SINDICO. El sugeto que en los ayuntamientos ó concejos tiene el cargo de promover los intereses de los pueblos, defiende sus derechos, y se queja de los agravios que se les hacen. Tiene asiento en los ayuntamientos. *Procurator syndicus, municipii tribunus*. Procurador sindico: the person who in the Common Council is charged with promoting the interests of the Pueblos, defending their rights, and complaining [remedying by suit] public injuries when they occur. He has a seat in the Common Council.” SALVA, Diccionario Espanol in verbo. The functions of Procurador really answered to Fisc and City Attorney. So here we have Ayuntamiento, or Common Council; Regidores, Council men or Aldermen; and Procurador Sindico, or City Attorney, and Fisc, in exact correspondence to the organization and officers of an American or English Municipality. But it will be observed and hereafter shown, that although a PUEBLO could not have its Ayuntamiento, Councilmen and Attorney, without being fully organized and entitled to all the rights of a Pueblo, yet the converse was not true, and a Pueblo might be fully organized, and entitled to all the rights, political and proprietary, including its four square leagues of

land, without having an Ayuntamiento. Or, it might have an Ayuntamiento, and lose it, without losing its political or proprietary rights. for the basis upon which an Ayuntamiento rested was that of population; a basis often numerically changed by positive law, and often shifting from various causes. See §§ 47, 89 to 92 of this argument.

“MUNICIPALIDAD. Vos que va introduciendose sin necesidad en “lugar de Ayuntamiento ó Concejo—a word which is unnecessarily “getting itself introduced in place of ‘Common Council.’” SALVA, Dic. Esp. in verbo.

BIENES CONCEJILES. [TOWN PROPERTY.]

§ 13. “BIENES CONCEJILES—Los que en cuanto á la propiedad “pertenece al comun ó concejo de una ciudad, villa ó lugar, y en “cuanto al uso á todas y cada una de sus vecinos; como las fuentes, “montes, dehesas, pastos, etc. Partida 3, tit. 28, Ley. 9. TOWN “PROPERTY. That which in respect of ownership belongs to the pub- “lic or council of a city, villa, or town, and in respect of its use belongs “to every one of its inhabitants, such as fountains, woods, the pas- “tures, etc.” Escriche, Dic. de Legislacion, in verbo. “Town Prop- erty,” is the English synonym which both popularly and logically in- cludes the definition.

EJIDOS, OR EXIDOS.

§ 14. EJIDOS OR EXIDOS, [*Exitus*, Salvá, Dic. Esp.] The vacant suburbs of the PUEBLO. Our English word *commons* well translates this term, and I should employ that word exclusively were it not that it seems to have misled some of our early translators, who, with a stupidity which seems almost malicious, have translated *ejidos* by “common lands,” as if it included the pasture grounds of the PUEBLO, as well as the “commons.” Instances of this mistranslation will occur in many of the documents in this case which both parties have been compelled to accept at the hands of the official translators. But it simply means the vacant suburbs, and nothing more. Says Governor Gutierrez, in 1836: “By Ejidos, are understood lands that are immediate to and in “the circumference of the Pueblo, which serve both for the relief and “the convenience of the inhabitants, who may keep therein a few “milch cows and horses for their use, and to form walks or alleys which “may adorn the entrance of the place, so that the ejidos may have a “quarter or half a league around the town, which is sufficient for its “ventilation, and the Ayuntamiento may dispose of these lands for “building lots, [solares.]” See Expediente of the Presidial-Pueblo of Monterey, respecting its Ejidos, or Suburbs. ADDENDA, No. XXXIII, page 52, ¶ 2d. “EJIDOS—El campo ó tierra que está á la salida del “lugar, y no se planta ni se labra, y es comun para todos los vecinos. “Viene de la palabra latina *exitus* que significa *salida*. Los ejidos “de cada Pueblo estan destinados al uso comun de sus moradores: na- “die por consiguiente puede apropiarselos, ni ganarlos por prescripcion, “ni edificar en ellos, ni mandarlos en legado. EJIDOS: The field or land

“which is at the exit of the town, and can neither be planted nor cultivated, and is common to all the citizens. It comes from the Latin word *exitus*, which signifies the exit, or suburbs. The *ejidos* of each Pueblo are designated for the common use of its inhabitants: consequently no one can appropriate them, nor acquire them by prescription, nor build on them, nor devise them.” Escriche, Dic. de Legislacion, in verbo. These *ejidos* are recognized in the Regulations of Felipe de Neve, 1779—1781. ADDENDA, No. IV, § 4, page 4, and receive the same definition above given, in the Plan of Pitic, 1787. ADDENDA, No. VII, Art. 11, page 13. They were, therefore, a portion of the most inalienable patrimony of the Pueblo; they could be alienated only for the purpose of granting solares, or building lots, as Governor Gutierrez says above, and this only from absolute necessity, for the growth of the Pueblo would otherwise be circumscribed. By Law 13, Title VII, Book IV, of the Leyes de los Indias, each Pueblo was entitled to have its *ejidos* assigned out of its domain. This peculiarity of the vacant suburbs often appears in comparative jurisprudence. On this subject we can consult with interest and profit “Le Recueil Alphabetique de Questions de Droit,” par Merlin, Tome III, page 396, aux titres COMMUNE et COMMUNAUX, (biens,) for a résumé of the French jurisprudence on that point, which, it may well be presumed, has repeated itself throughout all modern Europe. The same inviolability was early recognized in the Hebrew theocracy: “the field of the suburbs of their cities may not be sold; for it is their *perpetual possession*.” Leviticus 34.

These PUEBLOS were usually called *Pueblos de Españoles*—Spanish Pueblos, or *Pueblos de gente de razon*—Pueblos of People of reason—to distinguish them from those of the Indians, who were not supposed to have that faculty. Concerning *Indian* Pueblos, see § 17 of this argument.

DEHESAS.

§ 15. The Dehesas were the *great* Pasture grounds where the large herds of the Pueblos roamed and grazed. An attempt has been made to confound them with the *Ejidos* (respecting which see ante § 14), and “*ejidos y dehesas*” are often translated in one phrase as “commons” or “pasture grounds.” But *dehesa* receives its definition in the Plan of Pitic (see ADDENDA No. VII, Art. 13, page 13, where it is designated as “la dehesa ó Prado Boyal—“*Pratum bovinum*—the GREAT HERD PASTURE. In this same article it is also contradistinguished from the *ejidos*: “los *ejidos y á la dehesa*, the *ejidos and the dehesa*.” In the Regulations of Felipe de Neve, the same contradistinction is observed: “*exido competente para el pueblo, y Dehesas; ejidos and dehesas;*” § 4. See ADDENDA, No. IV, § 4, page 4, and in § 8 of the same we have again “*exido y dehesa*.” As we proceed in the course of this narrative we shall find that *ejidos* has often been translated “commons, common property and landed property;” that “*dehesas*” has often been rendered by the same terms, and “*ejidos y dehesas*” again translated by the same terms, as if they were equiva-

lent. But as we have seen, ante §§ 13 and 14 and in this section, although both these terms were *generically* included in "commons," "landed property" and "town property," yet *specifically* they were different. *Ejid*os being those commons or vacant suburbs at the exit of the Pueblo which could never be sold, and *dehesas* the great cattle pastures in which the inhabitants had a right of commons, but which the Government could dispose of,—which the Government at one time *did* order to be sold,—and the greater part of which belonging to the Pueblo of San Francisco, the Government did actually grant to settlers, while at the same time the *ejidos* were positively forbidden to be granted or sold. See ADDENDA, No. XI, page 20, § 1, etc. By Law 14, Title VII, Book IV, of the *Leyes de las Indias*, each Pueblo was entitled to have its *dehesas* assigned.*

HOW THE PUEBLO LANDS MIGHT BE DIVIDED.

§ 16. Assuming that a Pueblo was entitled to four leagues of land, these lands were *capable* of being divided into several portions, each assigned to its respective uses. FIRST, the site of the town proper, including the public square and streets, the building lots fronting on them, and the *propios* to be rented for public revenue. De Neve's Regulations, ADDENDA, No. IV, § 4, page 4; Plan of Pitic, ADDENDA, No. VII, Art. 8, page 12. SECONDLY, the vacant Suburbs, or *Ejid*os, lying next to the Pueblo. See *Ejid*os, ante, § 14. THIRDLY, the *Suertes* or sowing grounds granted to each inhabitant. See ante, § 11. FOURTHLY, the *Dehesas*, or Great Cattle Pasture, lying beyond. See *Dehesas*, ante § 15. Common, everywhere, were the *Montes y Aguas*, the woods and waters. But although these four leagues *might* be thus divided, I do not find in the original law granting them to the Pueblos, nor in any subsequent enactment, any provisions imposing a forfeiture of the lands in case this division was not made. In fact the division depended upon the convenience of the Pueblo. It might or might not be made. But still the four leagues of land belonged to the Pueblo.

* NOTE.—DEHESAS.—We read in Catullus, LXXXII :

"*Chommoda dicebat, siquando commoda vellet
Dicere, et hinsidias Arrius insidias.*

* * * * *

*Ionios fluctus, postquam iliuc Arius isset
Jam non Ionios esse sed Hionios."*

The introduction of the aspirate by the Latin provincials, the supplanting of a letter by the aspirate, and the final softening and disappearance of the aspirate itself, with the substitution of cognate letters, will solve many etymological mysteries in French and Spanish. Thus CABALLUS, *chaballus*, *cheval*. CASA, *chasa*, *chez*. FILIUS, *filio*, *hilio*, *hijo*. CONCILIUM, *concilio*, *concejo*. CABALLUS, *caballo*, *cabayo*, *cavayo*. But *dehesas* presents an unusual modification of the original word: DEFENSAS, *defshensas*, *dehesas*, and sometimes *deesas*. Our English word "fence" is of the same etymology as *dehesas*. Says Escriche, Dic. Razonado de Legislacion: "Dehesa viene del verbo "latino *defendere* que significa defender ó prohibir"—"It comes from the Latin word *defendere*, which signifies to defend or prohibit." This was because neighboring proprietors were *prohibited* to pasture their flocks on the *dehesas*.

COMUNIDAD—COMMUNITY. INDIAN PUEBLOS.

§ 17. By the term Comunidad—Community, as used in the Spanish and Hispano-American law, I understand to be primarily designated a “body or congregation of persons who are united under certain constitutions or rulers, such as convents, colleges and other similar bodies: “la junta ó congregacion de personas que viven unidas bajo ciertas “constituciones y reglas, como los conventos, colegios, y otros cuerpos “semejantes.” Escriche Dic. Razonado de Legis., et Jurispr. in verbo comunidad. In England, where religious communities have for the greater part been abolished, and in the United States, where they have scarcely ever existed, the term community has become expanded into an indefinite application. But I shall insist, and hope to demonstrate, that in the Hispano-American law, the term “comunidad” never ceased to preserve its specific meaning, and was always applied to a body of persons living in “community” in the proper sense of the term. Thus we shall see that while the body of the citizens of the Pueblo of San Francisco was styled “the Municipality,” “the Corporation,” “the Public,—*el comun*,” the Mission of Dolores was styled “the community,—*la comunidad*,” that being the very term of law which defined the body of the Indian residents there, and their rights and relations to each other. The *Indian Pueblos* were of early origin. It was the policy of Spain, adopted as early as the year 1551 by the Emperor Charles V, and never departed from by his successors, that the Indians should be induced and compelled to live together in villages, this being considered the only possible condition of their becoming civilized. The ordinances decreed for this purpose are exceedingly minute and well digested, and are principally to be found in the *Leyes de las Indios*, Lib. V, titulo III. It was decreed that the Indians should be settled in villages; that churches should be established for them; that they should be governed by *Indian Alcaldes*, and *Indian Regidores* (council-men); that no Indian should remove from his own village to another, nor live outside of his own village; that no Spaniard, negro, mestizo, or mulatto should live in an *Indian Pueblo*, even though he bought lands there; that no Spaniard should sojourn in an *Indian Pueblo* beyond one day after the day of his arrival, and other like provisions of police. *Ibid.* It will be difficult to recognize any of these features in the PUEBLO of San Francisco, upon whose history we are about entering. The interesting fact of *Indian Alcaldes* and *Indian Common-Council men* will among others, be entirely wanting. The lands belonging to *Indian Pueblos* were called *Tierras de Comunidad*.

ESPEDIENTE—EXPEDIENTE. INFORME. VISTA. BORRADOR.

§ 18. The first two of these terms, which are of the same etymology,—*negotia* EXPEDIRE—signify that collection of papers or documents which shows the despatch or *expedition* of a matter in hand. In an ordinary grant of lands the *espediente*, or collected documents will generally consist of:

FIRST: The *petition*, setting out the situation, qualifications and claims of the petitioner.

SECONDLY: The *informe* or marginal order of the Governor, directing the respective (proper) inferior officer to *inform* himself and report to the Governor.

THIRDLY: The report of the respective officers.

FOURTHLY: The *vista*, or order of the Governor upon the report, so called because it almost always begins, "*Vista—having seen*," etc., which contains the grant or refusal of the Governor, and the *borrador* or rough draft of the grant, if one is made.

FIFTHLY: Any proceeding taken afterwards by the Departmental Junta, or Assembly, approving or disapproving the action of the Governor.

But in relation to any proceedings, the whole bundle (or, as the French say) the "*dossier*" of all the documents relating to any executive or administrative proceeding is called the "*expediente*," or as we say in Anglo-American English, "the Documents." Thus when the Ayuntamiento of the PRESIDIAL-PUEBLO of Monterey, in the year 1836 applied to have the EJIDOS of that PUEBLO assigned, the *whole series of documents* promoted (instituted) on that occasion are called ESPEDIENTE—EXPEDIENTE. See ADDENDA, No. XXXIII, page 49. So when certain citizens of the Department of Upper California wished, A. D. 1836, to separate themselves from the jurisdiction of the Ayuntamiento of the PUEBLO of San Francisco, and attach themselves to the jurisdiction of the PUEBLO of San José, the whole bundle (*dossier en Français*) of documents relating to that proceeding is styled in Spanish, the "*Expediente*." See ADDENDA, No. XXIX, page 44, etc. "ESPEDIENTE," Spanish, the bundle of papers showing how the matter was *expedited*; the *dossier* in French, the papers whose *endorsement* sufficiently indicated their contents; the "documents," as the Anglo-Americans expectorate the term; the "Record," in legitimate Anglo-Norman English; the papers showing "what it is all about" in the language of the frontiers. This term will be of constant recurrence. The Hispano-Americans, among other traditions, had that of order, association, and arrangement. They attached each "document" to the one which immediately preceded it in its respective series. Consequently their Archives have an extraordinary reliability, always excepting the case of theft, or of a systematic spoliation. As this argument is cast in a narrative, or popular form, it does not seem amiss to define anew this familiar law term.

THE PUEBLOS OF CALIFORNIA.

§ 19. Historical events, arranged and narrated in the order of their respective dates, follow each other in a natural logical sequence, and as the strength of my argument is derived from the constantly-recurring recognition of the Pueblo of San Francisco by all the legislative, executive, and ministerial authorities of California during a long period of years, I shall content myself by presenting, FIRST, a succinct history of the colonization of this country, and SECONDLY a specific history of the settlement and progress of this PUEBLO.

The Pueblos of California originated in three different ways. FIRST,

there were PUEBLOS which were founded *as such*: the Pueblo (afterwards city) of Los Angeles, the Pueblo of San José, and the Villa of Branciforté were of this class.

SECONDLY: PUEBLOS which originated in the settlement of the PRESIDIOS, and grew up under their protection. Of these PRESIDIAL-PUEBLOS there were four, namely: the PUEBLO of San Diego, the PUEBLO of Santa Barbara, the PUEBLO of Monterey, and the PUEBLO OF SAN FRANCISCO.

THIRDLY: PUEBLOS which grew out of Mission establishments. Of these last, a few struggled into a transient existence, but under such circumstances as to leave the circumstances of their origin in great obscurity. See ADDENDA, No. LXII, page 89, § 2.

THREE-FOLD PLAN OF THIS COLONIZATION OF CALIFORNIA: MISSIONS, PRESIDIOS, AND PUEBLOS, INCLUDING PRESIDIAL-PUEBLOS.

§ 20. The plan for the colonization of California was, therefore, three-fold: RELIGIOUS, MILITARY, and CIVIL.

“At the same time that the monks established MISSIONS to civilize “the Indians, the Governors founded military posts called PRESIDIOS, “and PUEBLOS (villages) composed of married soldiers and white “colonists who were brought from Sonora, Sinaloa, and Lower California.” 1 De Mofras, 261. A description of each of these establishments will show how impossible it is to confound the PUEBLOS of the whites with the missionary establishments founded for the christianization and civilization of the Indians, and particularly how distinct a PRESIDIAL-PUEBLO,—a PUEBLO growing up under the protection of a PRESIDIO and becoming an off-shoot from it,—was from any and every form of organized population which could result from either the success or the destruction of a MISSION of christianized Indians.

A. D. 1642—1773.

FOUNDATION OF THE MISSIONS. JESUIT VOYAGES.

§ 21. “In 1642, the Viceroy, the Duke of Escalona, sent into “Lower California the Governor of Sinaloa, with some members of “the Society of Jesus, to found missions there, and civilize the Indians.” “Exploration de l’Oregon et des Californies pendant les années 1840, 1841, 1842, par M. Duflot de Mofras, attaché à la Légation de France à Mexico,”—Vol. I, p. 102. M. Duflot de Mofras, an attaché of the French Legation at Mexico, was detached from that service in 1840, by Marshal Soult, at that time President of the Privy Council of Louis Phillippe, for the purpose of making a thorough reconnoissance of California and Oregon. This work he accomplished in the most faithful manner, and the results, embracing the most extended and accurate description of California, its natural history, climatology, social condition, politics, legislation, and religious institutions, and containing even plans and soundings of its harbors, with sailing directions for entering them from the ocean, were published at Paris by order of the

King, in 1846, in two volumes, 8vo., being the book above cited. It is a work of the highest authority, and was doubtless prepared as a *hand-book* for the acquisition of California by the French. De Mofras does not profess to have been in California later than 1842; and his work contains internal evidence that that year terminated his visit to that country.

"In 1683, the Admiral Atondo went to La Paz, (on the eastern shore of the Gulf of California), with the Jesuit Fathers. Salvatierra and Eusebius Kino, (Kuhn) a learned astronomer from Ingolstadt. It is from the date of this epoch that the regular clergy (*religiosos*) were invested with the ecclesiastical, civil, and military administration of the missions. In a short time they succeeded in converting all Lower California, (the peninsula), and the plan which they adopted will always serve as a model." De Mofras, Vol. I, p. 103. "In 1701 and 1703, Father Kuhn made his celebrated explorations to the north of California, and on the river Colorado. King Philip V granted to the Jesuit Missions in California an annual pension of \$13,000." De Mofras, Vol. I, p. 104. "In 1719, Father Guillen, and in 1721, Father Ugarte, extended the domains of their Missions, by means of several expeditions by land in California." De Mofras, Vol. I, p. 105. "In 1746, Father Consag explored the river Colorado, with the design of organizing other missions, which should render an overland route practicable from Sonora to California." De Mofras, Vol. I, p. 106.

THE JESUITS SUPPRESSED. THE MISSIONS CEDED TO THE FRANCISCANS.

§ 22. The Jesuits continued to extend their geographical limits, and to govern their missions in the most paternal manner until the year 1767, when they ceded them to the Franciscans of the Royal College of San Fernando at Mexico. De Mofras, Vol. I, p. 106. "By order of Charles III, King of Spain, the Marquis de Croix, Viceroy of Mexico, and the Inspector-General (Visitador) of that Kingdom, Don Joseph de Galvez, on the 25th of June, suppressed the Society of Jesus, and entrusted to the Franciscan Monks of the College of San Fernando at Mexico, the administration of the Missions which the Jesuits up to that time had managed with so much wisdom and success. The various donations and real estate which constituted the 'Pious Fund of California' passed into the hands of the Franciscans, (*fondo piadoso de California*). Sixteen of these monks, by direction of their Apostolic Prefect, the Reverend Father Junipero Serra, embarked at Loreto, Lower California, in April, 1758. On July 16, of the same year, the Inspector-General of New Spain, arrived in person, bearer of a royal order commanding him to found a missionary establishment either at the port of Monterey, or at that of San Diego." De Mofras, Vol. I, p. 255.

A. D. 1772.

THE FRANCISCANS YIELD THE MISSIONS OF LOWER CALIFORNIA TO THE DOMINICANS, AND ESTABLISH THEMSELVES IN UPPER CALIFORNIA.

§ 23. But this success of a rival order excited the zeal of the DOMINICANS, who demanded a share of this new field of missionary labor; the result of which was that the Dominicans of Mexico obtained a royal rescript, by which the FRANCISCANS were ordered to surrender to the DOMINICANS the administration of one or two Missions. "The Reverend Warden of the College of San Fernando, remarked, with reason, that the province of Lower California (where most of the Missions were at that time,) could not be divided; that its limits were well defined; and that serious inconveniences would arise if the two orders were found in competition in the same territory. He concluded by offering to the Dominicans, in case they would take exclusive charge of the whole province (of Lower California) from Cape St. Lucas to the port of San Diego, to cede to them, together with all the Missions then lately administered by the Jesuits, also that of Fernando de Vellicata, and the five others which were yet to be established there. The Viceroy assembled the Council, and on April 30th, 1772, decreed that the above agreement should be carried into effect. It was not, however, until the 1st of May of the following year, that the Dominicans entered into definitive possession of Lower California, and that the Franciscans retired into Upper California, where, being able to concentrate all their efforts upon a territory less extensive and more fertile, they soon obtained results which command admiration. At the end of fourteen years, Father Junipero, who died in 1784, had already founded fifteen Missions of Indians, or villages of Spanish colonists." 1 De Mofras, 259. In the printed ADDENDA at the end of this argument, No. LXVII, page 97, will be found a tabular statement of the foundation of all the Missions of Upper California, as well as a succinct history of their greatest prosperity and subsequent ruin.

DESCRIPTION OF A MISSION.

§ 24. DE MOFRAS takes as a type of the Missions, that of SAN LUIZ REY, which was like the others in its management and discipline, and differed from them only in a superior architecture and extent of decoration. "The building is a quadrilateral. The church occupies one of its wings; the façade is ornamented with a gallery. The building, raised some feet above the soil, is two stories in height. The interior is formed by a court. Upon the gallery, which runs around it, open the dormitories of the monks, of the major-domos, and of travellers; small work-shops, school-rooms, and store-rooms. The hospitals are situated in the most quiet parts of the Mission, where the schools also are kept. The young Indian girls dwell in the halls called the Monastery (el monjero) and they themselves are called

“nuns, (las monjas); they are obliged to be secluded to be secure from
 “outrage by the Indians. Placed under the care of Indian matrons,
 “who are worthy of confidence, they learn to make cloths of wool, cot-
 “ton, and flax, and do not leave the monastery until they are old
 “enough to be married. The Indian children mingle in the schools
 “with those of the white colonists. A certain number, chosen among
 “the pupils who display the most intelligence, learn music, chanting,
 “the violin, the flute, the horn, the violincello, and other instruments.
 “Those who distinguish themselves in the carpenter’s shop, at the
 “forge, or in agricultural labors, are appointed Alcalde’s, or chiefs,
 “(overseers), and charged with the direction of a squad of workmen.
 “Before the civil power was substituted for the paternal government
 “of the missionaries, the administrative body of each Mission con-
 “sisted of two monks, of whom the elder had charge of the interior,
 “and of the religious instruction, and the younger of the agricultural
 “works. In order to maintain morals and good order in the Missions,
 “they employed only so many whites as were absolutely necessary, for
 “they well knew that their influence was wholly pernicious, and that
 “an association with them only developed among the Indians those
 “habits of gambling and drunkenness to which they are unfortunately
 “too much inclined.” 1 De Mofras, 261 etc. “The regulations of each
 “Mission were the same. The Indians were divided into squads of
 “laborers. At sunrise the bell sounded the angelus, and every one
 “set out for the church. After mass they breakfasted, and then went
 “to work. At eleven they dined, and this period of repose extended
 “to two o’clock, when they returned to labor until the evening angelus,
 “one hour before sunset. After prayers and the rosary, the Indians
 “had supper, and then amused themselves with dancing and other
 “sports. Their diet consisted of fresh beef and mutton, as much as
 “they chose; of wheat and corn cakes, and of boiled puddings (or por-
 “ridges) called *atole* and *pinole*. They also had peas, large or small
 “beans, in all an ‘almud,’ or the twelfth part of a bushel (fanega) a
 “week. For dress, they wore a linen shirt, pantaloons, and a woollen
 “blanket; but the overseers and best workmen had habits of cloth, like
 “the Spaniards. The women received every year, two chemises, a
 “gown, and a blanket. When the hides, tallow, grain, wine, and oil
 “were sold at good prices to ships from abroad, the monks distributed
 “handkerchiefs, wearing apparel, tobacco, chaplets, and glass trinkets
 “among the Indians, and devoted the surplus to the embellishment of
 “the churches, the purchase of musical instruments, pictures, sacerdo-
 “tal ornaments, etc. Still, they were careful to keep a part of their
 “harvest in the granaries, to provide for years of scarcity.” 1 De Mo-
 fras, 263, 267.

DESCRIPTION OF A PRESIDIO.

§ 25. “All the PRESIDIOS were established on the same plan:
 “Choosing a favorable place, they surrounded it by a ditch, twelve
 “feet wide and six deep. The earth of the ditch served for the out-

“work. The enclosure of the Presidio was formed by a quadrilateral, “about six hundred feet square. The rampart, built of brick, was “twelve to fifteen feet high, by three in thickness; small bastions “flanked the angles; the Presidio had but two gates. Its armament “generally consisted of eight bronze cannon, eight, twelve, and sixteen “pounders. Although incapable of resisting an attack of ships of war, “these fortifications were sufficient to repel the incursions of the Indi- “ans. Not far from the Presidios, according to the topography of the “land, was an open battery, (*batterie découverte*) pompously styled “‘the castle,’ (*castillo*). Within the enclosure of the Presidio were “the church, the quarters of the officers and soldiers, the houses of col- “onists, store-houses, work-shops, stables, wells, and cisterns. Outside “were grouped some houses, and at a little distance was the ‘King’s “Farm,’ (*el rancho del rey*), which furnished pasturage to the horses “and beasts of burden of the garrison. Four coast batteries and four “presidios defended Upper California. Those of San Diego, founded “in 1769; Monterey, in 1770; SAN FRANCISCO, in 1776; and Santa “Barbara, in 1780. After the year 1770, the infantry in all these “garrisons were replaced by dragoons, called (*compañias de cuera*,) “companies with leather armor. These soldiers, who formed the presi- “dial garrisons of all New Spain, wore, besides their ordinary cloth “uniform, a sort of buckskin dress, like a coat of mail, which descen- “ded to the feet, and was impenetrable to arrows. They wore this uni- “form only when in the field, and at the moment of combat, with a “double visored helmet; a leathern buckler worn on the left arm, “served to ward off arrows and thrusts of the lance in single combat; “but, while they defended themselves with the sabre or the lance, they “could use neither their pistols nor their muskets. The horses them- “selves, like those of the old knights of chivalry, were covered with “leathern armor.” 1 De Mofras, 279, 281. “The equipment of each “Presidio was a Lieutenant, with a pay of \$550; a Health Officer, “\$450; an Ensign, \$400; a Sergeant, \$265; a Corporal, \$225; and “seventy soldiers at \$217 each. Each soldier had seven horses and “a mule, kept on the King’s Farm. Artillerymen were furnished “from the marine department of San Blas. The whole establishment “of Presidio and forts, including the pay of the Governor, at \$4,000, “(he having the rank of Lieutenant Colonel,) was \$55,000 per an- “num.” 1 De Mofras, 287. PRESIDIUM and PRESIDIO:—we have here the vital and persistent tradition of the Roman Camp, thus plant- ing itself in the American wilderness, and perpetuating its name for a period which cannot be estimated.

THE MISSIONS HAD NO PROPERTY IN LANDS.

§ 26. “The term ‘Mission’ includes only the collection of houses, “vineyards and orchards in the immediate vicinity of the churches, in- “cluding the stock of cattle, and other personal property in the posses- “sion of the priests, and useful and necessary in carrying on the es- “tablishments. The ‘Mission lands,’ lands adjacent and appurtenant

“to the Missions, used by them for grazing purposes, were occupied “by them only by permission, but were the property of the nation, and “at all times subject to grant under the Colonization Laws.” Ritchie’s Case, 17 Howard, U. S. S. C. Rep., pages 540, 561; Jones’ Rep., 13. These are the definitions and propositions of the law-Executive of the United States Government. But the Missionaries from the beginning resisted the application of this principle, and denounced as a robbery every attempt to convert any of the adjacent lands to private or secular purposes. An intelligent Spanish traveler, quoted by Mr. Bryant, writes, in 1822, as follows: “The Missions *extend their possession “from one extremity of the territory to another, and have made the “limits of one Mission form those of another. Though they do not “require all this land for their agriculture and the maintenance of their “stock, they have appropriated the whole; always strongly opposing any “individual who may wish to settle himself or his family on any piece “between them. But it is to be hoped that the new system of illus- “tration, [enlightenment?] and the necessity of augmenting private “property, and the people of reason, (*gente de razon*, white population,) “will cause the Government to take such adequate measures as will “conciliate the interests of all.” Bryant’s California, page 281. These immoderate pretensions of the monks undoubtedly hastened, if they did not invoke, the project of secularization. It may appear strange that when it became inevitable that the lands adjacent to the Missions must be granted to private settlers, the Missionaries did not then protect themselves at once and forever, by procuring the limits of their lands to be fixed, and formally granted to them. The answer to this suggestion is, that *the Missions were never intended to be permanent establishments.* The following from the opinion of Judge Felch, in the California Board of Land Commissioners, in the case of the Bishop of California’s petition for the churches, etc., at the Missions which were finally confirmed to him, clearly and concisely expresses the theory of the Missionary colonization: “The Missions were intended, “from the beginning, to be temporary in their character. *It was con- “templated that in ten years from their first foundation they should cease.* “It was supposed that within that period of time the Indians would be “sufficiently instructed in Christianity and the arts of civilized life, to “assume the position and character of *citizens*; that these Mission “settlements would then become PUEBLOS, and that the Mission “churches would become parish churches, organized like the other es- “tablishments of an ecclesiastical character, in other portions of the “nation where no Missions had ever existed. The whole Missionary “establishment was widely different from the ordinary ecclesiastical “organization of the nation. In it the superintendence and charge “was committed to priests who were devoted to the special work of “Missions, and not to the ordinary clergy. The monks of the College “of San Fernando and Zacatecas, in whose charge they were, were to “be succeeded by the secular clergy of the National Church, the Mis- “sionary field was to become a DIOCESE, the President of the Mis- “sions to give place to a BISHOP, the Mission churches to become*

“CURACIES, and the faithful in the vicinity of each parish to become “the parish worshippers.”

This policy of the Spanish law incorporated into the Missionary system itself, thus forbade the assignment of the ownership of lands to any Mission, inasmuch as the law of extinguishment was stamped upon the Mission itself. Mr. William Carey Jones remarks that they were always “liable to be secularized, that is, their temporalities delivered “to lay administration; their character as Missions taken away by “their conversion into secular curacies under charge of the secular “clergy, and the lands appurtenant to them to be disposed of as other “domain.” Jones’s Rep. 13. As early as the year 1813, the Spanish Cortez showed its impatience at what even then seemed the protracted existence of the Missions, *as such*, by passing a law indicating its purpose to enforce their secularization. *Id.* When, therefore, we read of lands “belonging,” “heretofore belonging,” or “appurtenant” to a Mission, we shall understand that lands are spoken of which are or have at some time been in the possession of a Mission, for the temporary uses of the establishments, lands in which the Mission had an easement, servitude or usufruct, until terminated by some legitimate act of a competent superior authority.

THE TERMS “RELIGIOUS,” “SECULAR” AND “SECULARIZATION.”

§ 27. The terms “religious” and “secular” are strongly contradistinguished in the Catholic Church, which distinction enter into the written law of Spain. A “Religious” (*religioso*) is one who has taken the habit and the vows of one of the “Regular Orders,” such as the Franciscans, the Dominicans, the Capuchins, and the like; hence he is also called a “Regular,” or one of the “Regular Clergy.” Having taken the three vows of chastity, obedience and poverty, he has renounced the world, and therefore is held to be *civilly dead*. For this reason he cannot make a contract, nor take or hold property, either by purchase or descent; nor sue or be sued; nor make a will; nor fill any fiduciary or civil office. A “Secular” Clergyman, (also called *clerigo*) who has not taken these vows, is not subject to these disabilities; he can contract, buy and sell; take by purchase or descent; make a will; and hold fiduciary and civil offices. He therefore has still a hold upon “secular” or worldly matters; hence the term “secular.” A thing is also said to be “secularized” when it is changed from an “ecclesiastical” use, purpose, or control, to a secular one. *Escriche*, Diccionario de Legislacion; *Religioso, Clerigo, Secular y Secularizacion*. A Mission is therefore secularized when its temporalities are given in charge to a secular or civil officer, when its Missionary establishment is superseded, converted into a curacy, and given into the charge of a Secular Priest. Jones’s Report, p. 13.

THE RIGHTS OF PUEBLOS, AS SUCH.

§ 28. The Hispano-American laws recognized the mode of founding towns by contract, and provided ample compensation for such *em-*

presarios—contractors or undertakers—as would agree to make such settlements under certain fixed conditions. Thus it was enacted by an ordinance of King Philip the Second, (who died in 1598,) that to every such contractor founding such a settlement, composed of at least thirty heads of families, and complying with the requisite conditions, there should be given four square leagues of land, to be measured in a square, or in a prolonged parallelogram, according to the nature of the ground. Recopilacion de Leyes de los Reynos de las Indias, Lib. IV, Tit. V, Ley 6. (Vol. II, folio 89, Madrid edit. of 1774.) See the law in full, ADDENDA, No. I. Subsequently, the same privileges and the same donation of land were extended to any number of married men, not fewer than ten. Ibid. Lib. IV, Tit. V, Ley X, (Vol. II, fol. 89.) See the law in full, ADDENDA, No. II. It has been very ingeniously suggested that this law did not apply to New Spain, but was confined to Old Spain; probably because the law is found among the laws enacted for the *Indies* only, which included Mexico and New Spain, and because it provided against encroachment upon the rights of the *Indian Pueblos*! In effect, it is suggested that these laws did not apply to the Spanish colonies, because in truth they were specially devised for those colonies, and had no application to anything else!

NO SPECIAL GRANT OF LAND WAS NEEDED.

§ 29. It is often asked where is the GRANT of these PUEBLO lands? Who has ever seen it? If a paper title, or a document written on parchment, signed, sealed and delivered, is to be produced, or its former existence proved, it may be conceded that there was no grant. But no such paper or parchment grant ever existed. It was enough that every PUEBLO, when it reached a certain state of development, became *ipso facto* entitled to certain rights in land. It is enough that that development was attained by the PUEBLO of San Francisco, was officially conceded to exist by the Government, and its rights in its Pueblo lands also recognized. It is not by an actual printed or written deed of conveyance that the present City of San Francisco holds its Beach and Water Lots, but only by a Legislative declaration in the form of a law. Laws 1851, chap. 41, page 307. When special corporations are created by a general statute, their general powers are not enumerated, but they obtain them from the general Act. Laws of 1850, page 347, which declares that “every corporation, *as such*, shall have power,”—etc., etc. So the laws of Spain and Mexico have declared from time immemorial that “every fully organized PUEBLO, as such, shall be entitled to four square leagues of land,” as we have just seen in the next preceding section.

HOW THE MEASUREMENT OF PUEBLO LANDS WAS TO BE MADE.

§ 30. The Spanish law, with that extreme minuteness and precision which eminently characterize it, provided for the survey of all donations or appropriations of public lands in those regulations called “*Ordenanzas de Tierras y Aguas*.” Without entering into the geo-

metrical and arithmetical details of these regulations, it is sufficient for our present purpose to observe that, in case there were no natural obstacles, such PUEBLO lands were to be surveyed in the form of a square, first establishing a central point, which in the case of a PUEBLO was the centre of the Plaza, or Public Square, from which transverse lines were drawn in the direction of the four cardinal points, and then squared; but that if the nature of the ground did not admit of that mode of surveying, as, for example, if the sea, mountains, lakes, deserts, rocky wastes, or the like, interposed, then the requisite quantity of land was to be made up in some other convenient direction; or the survey might be made in the direction in which mountains, lakes and other wastes were found, in which case they would be included within the boundaries, but rejected from the computed area of the measurement. Ordenanza de Tierra y Aguas, chap. XI, pages 181, 185, 187. (Edition of Madrid and Paris, 1855). For the *mode* of making such and the like surveys, see the same work, Figure 11, page 170 of the same edition. It is not necessary to refer minutely to these details, as the peninsula of San Francisco is of such conformation that the tide waters of the ocean and Bay present natural obstacles in every direction, except towards the south. The four leagues of the Pueblo must therefore be determined by taking all the land embraced in the peninsula north of such a parallel of latitude, as, with its tide-water limits, shall include four square leagues. See the maps of the U. S. Coast Survey, and the map prefixed to this argument. The map prefixed to Langley's San Francisco Directory for 1862 contains the section lines of the U. S. Land Office survey for the tract embraced in the county of San Francisco, and they can easily be extended through the whole map. I shall refer to it as Langley's map.

A. D. 1769—1770.

FOUNDATION OF THE FIRST TWO PRESIDIOS IN CALIFORNIA: SAN DIEGO AND MONTEREY.

§ 31. Pursuant to the above mentioned scheme of the Civil and Religious conquest of California, two Presidios were immediately founded in Upper California, that of San Diego, Lat. $32^{\circ} 39' 30''$ North, in 1769, (1 De Mofras, 328, 332,) that of Monterey, Lat. $36^{\circ} 37' 15''$ North, in 1770, (1 De Mofras, 395, 403). Near those Presidios, as a part of the plan of civil and religious colonization of the country, were founded, in the same years respectively, the Mission of San Diego, near the Presidio of that name, and the Mission del Carmelo, near the Presidio of Monterey. See ADDENDA, No. LXVII, page 97.

EXPLORATION OF THE HARBOR OF SAN FRANCISCO.

§ 32. But the establishment of these two Presidios of San Diego and Monterey, with the consequent support which they gave to the pious labors of the missionaries, did not satisfy those devoted men. Father Junípero Serra, the founder and first President of the Franciscan Missions of Upper California, and the real conqueror of this

region, with that pious zeal for the salvation of souls which prompted him ever to go on with the conquest (ir á la conquista!) represented to the Marquis de la Croix, the then Vice-Roy of Mexico, that it was a reproach to Catholic Christianity that there was no Mission dedicated to San Francisco de Asis, the founder and patron of the order which bore his name. There is a current and credible tradition among the old native Californians that the Vice-Roy replied: "If our Father "San Francisco wants a Mission dedicated to him, let him show us a "good port up beyond Monterey, and we will build him a Mission there!" Long before this there had existed a tradition, coming down from the early navigators, that on the North-Western Coast, about a hundred miles north of Monterey, there existed the entrance of a large bay, through which vast volumes of fresh water poured into the sea from rivers flowing from an unknown distance in the interior. But later explorers had not been able to find this entrance, probably because then, as now, a thick fog frequently obscured the entrance of the Golden Gate. Sir Francis Drake did not succeed in entering the straits, but anchored instead in the bay a few miles above to which he gave his name, designating the white cliffs which bound it as New Albion. This bay afterwards was often reached by the explorers who were seeking the *real* "Bay of San Francisco," as it has often in our time been mistaken for it by careless or eager navigators, and thus made the scene of numerous disasters; and in the time of the Marquis de Croix, the Bay of San Francisco had come to be considered quite as apocryphal as the Island of Formosa or the Antarctic Continent of Commodore Wilkes in our day. It was therefore with a feeling of prayerful humorousness that the Vice-Roy invoked the aid of Saint Francisco in the discovery of this concealed harbor. Father Junípero, however, took the Vice-Roy at his word, and, sailing from Monterey in 1772, happily established the existence of the Bay of San Francisco, which he re-discovered, and to which he permanently affixed the name of the patron of his order. Vida del Venerable Padre Fray Junípero Serra, por Palou Cap. XXX, etc.

A. D. 1773.

INSTRUCTIONS TO COMMANDANTS OF PRESIDIOS IN CALIFORNIA
IN 1773.

§ 33. As late as 1773 only the two Presidios of San Diego and Monterey having been founded in California, as I have stated in preceding § 31, instructions were given to the Commandantes of those Presidios to assign common lands, suertes, solares, and sitios to Indians and colonists, which instructions are found at large in the California Archives, Vol. I of Missions and Colonization, page 812, etc. A few of these instructions are printed in the Addenda, No. III, pages 2 and 3. They have the value of showing that at this early date there were *pobladores*, or colonists in California, and that the object of these Instructions was to provide that these colonists should have lands distributed to them, even though they were not sufficiently

numerous to form such Pueblos as were entitled to the four square leagues of land. They show, also, that these settlements were to be compact, to be made in general conformity with the laws which I have cited in the preceding § 30 of this argument; and were intended to form the cores of fully organized PUEBLOS. The Pueblo of San José, founded in the year 1777, 1 De Mofras, 413, seems to have been founded under these special regulations; and in fact the *expediente* on that subject found in the Archives seems to demonstrate that there were not ten heads of families among its colonists, and in that case the new Pueblo was not entitled to all the rights of a complete Pueblo under the laws contained in the ADDENDA, Nos. I and II. See California Archives, Vol. I, Missions and Colonization, p. 683, etc.

A. D. 1776.

FOUNDATION OF THE PRESIDIO AND MISSION OF SAN FRANCISCO.

§ 34. The Bay of San Francisco having been re-discovered, as I have stated in § 32 of this argument, the then Vice-Roy of New Spain—the Marquis de Croix—thereupon, by an order dated November 12th, 1775, gave directions for the foundation of a Fort, Presidio and Mission upon the Bay of San Francisco. California Archives, Vol. I of Provincial State Papers, page 100, etc. The colonists with their cattle and the necessary provisions for the journey were to go by land from Monterey, while the rest of the equipment was sent from the same port by sea.

“The said overland expedition left the ‘presidio’ of Monterey on the appointed day, 17th of June of said year of 1776; it was composed of the said lieutenant commanding, Don José Moraga, one sergeant and sixteen soldiers clad in leather—all married men with large families [todos casados y con crecidas familias, de siete pobladores tambien casados y con familias], of some followers and servants of the same, of herdsmen and drovers who drove the neat stock of the Presidio, and the pack train with provisions and necessary equipage for the road, the rest of the freight being left for the vessel which was about to sail. And as regards the Mission, we, the two missionaries above named, joined the party with two young men—servants for the Mission, two neophyte Indians of old California, and another of the Mission of San Carlos for the purpose of trying whether he could serve as an interpreter; but as the idiom was found to be a different one, he only served to take care of the cows that were brought for the purpose of raising a stock of cattle. The said expedition went on towards this port.” Vide de Junípero Serra, por Palou, Cap. XLV. The Presidio was founded the 17th of September, and the Mission the 9th of October, 1776. The colony, it will be observed, consisted of eight pure colonists and sixteen soldiers, all married, that is, of twenty-four heads of families. The Presidio and Mission occupied the localities designated by those names on the accompanying map. A Fort was soon after built upon the “Fort Point” indicated on the same map.

THE NAME "SAN FRANCISCO DE ASIS."

§ 35. The new settlements having been founded in honor of the Patron saint of the "Order of *Franciscans*," his name, "San Francisco de Asis,—San Francisco of Assisi," was properly given to them. The addition of "de Asis" was necessary to prevent confusion, to give a specific designation to the title "San Francisco," which, from the number of saints of that name was hardly more than generic. For in the calendar of Saints, there were at least three thus canonized. San Francisco *de Asis*,—so called because born at *Assisi*, in Italy, A. D. 1182, the founder and patron of the Franciscans; San Francisco *de Paula*, born at *Paula*, in Italy, A. D. 1416, the founder of the Missions; San Francisco *Salano*, born at Sales, in Savoy, A. D. 1567.* So that SAN FRANCISCO *de Asis*, as applied to the Mission, the Presidio, and the Presidial-Pueblo, was then the complete, and therefore the only correct designation of each settlement respectively, and without this full designation the term "San Francisco" simply must have created confusion, except when used in the immediate vicinity of those populations. San Francisco *Solano* had a Mission in this vicinity, at Sonoma. See ADDENDA, No. LXVII, page 97. In Lippincott's Gazetteer, A. D. 1860, are *five* San Franciscos, all Hispano-American, and none of recent origin. What would the simple term "San Francisco" have suggested to a Spanish king, colonial minister or viceroy, forty years ago? There is even a port of "San Francisco" on the Western Coast of Lower California, in Lat. 30° 45' N. Long. 113° 40' W.† and near it an old Jesuit Mission of the same name. Cal. Archives, Vol. I, Miss. and Colon., p. 288. The Mission of San Francisco de Asis early came to be called the Mission de los *Dolores* de nuestro Padre San Francisco de Asis," [of the anguish or sufferings] probably to avoid any confusion between the designation of the Mission and the Presidio, or *Presidial-Pueblo*. Thus when we find the Presidio or Pueblo styled "San Francisco *de Asis*," we should recognize only their full designation, and not confound them with the Mission, but rather the contrary.

A. D. 1779.

FELIPE DE NEVE'S REGULATIONS OF COLONIZATION FOR CALIFORNIA.

§ 36. Prominent among the acts of legislation respecting the colonization of California, stand the celebrated "Regulations for the government of the Province of California by Don Felipe de Neve, Governor of the same, dated in the Royal Presidio of San Carlos de

* See Butler's Lives of the Saints, and the Encyclopædias generally.

† NOTE.—There is a current and true anecdote of one of the early commanders of the Pacific Mail Steamship Company, who was sent from New York, in 1848, before the discovery of gold in California was announced there, to obtain a cargo of coal at Cardiff, Wales, and bring it to San Francisco, who, in good faith, made this port of San Francisco in Lower California, as his port of destination. *Vive Le Roy!*

1779

“Monterey, 1st June, 1778, and approved by his Majesty in a Royal order of the 24th October, 1781.”* The first section of this Title fully expresses the purpose of these Regulations.

“1st. The object of greatest importance toward the fulfillment of the pious intentions of the King, our master, and towards securing to his Majesty the dominion of the extensive country which occupies a space of more than two hundred leagues, comprehending the new establishment of the *presidios*, and the respective ports of San Diego, Monterey, and San Francisco, being to forward the reduction of, and as far as possible to make this vast country (which, with the exception of seventeen hundred and forty-nine Christians of both sexes in the eight missions on the road which leads from the first to the last named presidio, is inhabited by innumerable heathens) useful to the State, by erecting pueblos of white people, (*pueblos de gente de razon*) who, being united, may encourage agriculture, planting, the breeding of cattle, and successively the other branches of industry; so that some years hence their produce may be sufficient to provide garrisons of the presidios with provisions and horses, thereby obviating the distance of transportation and the risks and losses which the royal government suffers thereby. With this just idea, the Pueblo of San José has been founded and peopled; and the erection of another is determined upon, in which the colonists (*pobladores*) and their families, from the provinces of Sonora and Sinaloa, will establish themselves, the progressive augmentation of which, and of the families of the troops, will provide for the establishment of other towns, and furnish recruits for the presidio companies, thus freeing the royal revenue from the indispensable expenses at present required for these purposes.”

§ 37. The following regulations provide for the distribution of house lots and cultivable lands (*solares y suertes de tierra*) among the *pobladores* and *vecinos*; (*poblador conditor*, founder, settler; *vecino*, *municeps*, citizen; Salvá,) §§ 2, 4, 6; that moneys, rations, agricultural implements and domestic animals shall be furnished to the colonists, §§ 2, 3; that they shall be exempt from taxes for a certain period, § 9; that the lands granted to them shall be inalienable, not capable of hypothecation, and perpetually hereditary, § 6; and many other articles exhibiting a wise and beneficent spirit of legislation, curious to study, but not necessary to our present purpose, inasmuch as this system was soon superseded by another. It is curious, however, to note that § 16 provided that every colonist to whom lands were granted under that law, was bound to keep himself constantly equipped with two horses, a saddle complete, a musket, besides other arms, ready to march at the order of the Governor. It was provided by § 17 that the titles to lands should be made out by the Governor or commissary whom he might appoint for that purpose, and that records of the same

* The fourteenth title of these Regulations, relating to the colonization and political government of California, is printed in full in the ADDENDA, No. IV, page 3, etc. DE NEVE was Governor of California. See a list of the Colonial Governors ADDENDA, No. LXXIX.

should be kept in the general book of colonization in the Government archives. The municipal expenses are called, in § 14, "*gastos de REPUBLICA.*" See ADDENDA, No. IV, page 3, etc.

THE FOUR SQUARE LEAGUES RECOGNIZED.

§ 38. The principal value of this document consists in the fact that it incidentally assumes the existence of previous laws, which assigned four square leagues of land to each *Pueblo*, and that it everywhere avoids that confusion of terms which has been attempted to be introduced into this discussion. It is provided as follows by § 4 of this law: (ADDENDA, No. IV, § 4, page 4,) "the house lots to be granted to the new pobladores (colonists) are to be designated in the situations and the extent corresponding to the locality on which the new pueblos are to be established, so that a square and streets be formed agreeably to the provisions of the laws of the kingdom; and conformably to the same there shall be designated competent *ejidos* for the Pueblo, AND *dehesas*, together with the cultivable lands which may be suitable for propios: (conforme á lo prevenido por las Leyes del Reyna, y con su arreglo se señalará *exido* competente para et Pueblo y dehesas con las tierras de labor que convenga para propios.* In § 8 it is provided that the new colonists shall enjoy, for the purpose of maintaining their cattle, the use in common of the water and pasturage, fire-wood and timber of the *ejido*, forest, and *dehesa*, which are to be designated according to law to each new Pueblo. Addenda, No. IV, § 8, page 5. From these references and enumerations, it is established:

First: That each new Pueblo (cada nuevo Pueblo) had a right, according to previous laws alluded to, but not specifically mentioned, to the admeasurement of certain lands, and we find no such laws except those above cited in § 28 of this argument.

Secondly: That these lands were divided into Suertes, Solares, Propios, Ejidos, Montes and Dejesas, designations perfectly distinct, and in no case to be confounded with each other: and that these terms, as thus used, completely justify the definitions we have given them in §§ 10 to 15, inclusive, of this argument.

Thirdly: That in the ejidos, montes, and dejesas of a Pueblo all the inhabitants had a right of common.

The original of this document is to be found in the Archives, Vol. I, of Missions and Colonization, page 761.—An English translation is contained in 1 Rockwell, 445, and also in Halleck's Report, app., 2, Exec. Doc. No. 17, H. of Reps., 31st Cong., 1st Sess., p. 134, and printed in the ADDENDA, No. IV, page 3; but this translation is not to be always relied upon for the exact rendering of legal terms. For example, *comun* is not exactly rendered by *community*, nor is *common lands* a full translation of the term *ejidos*. See §§ 14 and 17 of this

* I shall show, hereafter, that although the four leagues belonging to a Pueblo were capable of being divided into ejidos and dehesas, that the right of property in these four leagues did not depend upon this division, but existed antecedent to, and irrespective of, such division, which might or might not be effected.

argument. The original rough draft and the perfected one, and the official printed copy, form one of the most valuable curiosities of the Archives, and are to be found in Volume I of Missions and Colonization, at pages 636, 507, and 733 respectively.

A. D. 1786.

A COTEMPORARY OFFICIAL CONSTRUCTION OF THE FOUR-LEAGUE GRANT TO PUEBLOS.

§ 39. That the construction I have put upon the preceding Regulations of Felipe de Neve is correct in regard to the four square leagues to which organized Pueblos were entitled appears from the highest authority, that of the Vice-royalty of New Spain, which I am about to cite. (In November, 1784, certain settlers in California petitioned the Governor of that province for grants of lands which were situated within the four square leagues belonging to the Pueblos. The Governor reported this fact to the Commandante General, together with his recommendation that the prayer of the petition be granted. The matter was referred by the Commandante General to Galindo Navarro, who was Asesor, an officer whose functions in this respect seem to have exactly corresponded to those of Attorney General under our laws.) In his report, dated at Chihuahua, October 27th, 1785, which was approved by the Commandante General on June 21st, 1786, and returned to the Governor of California for his instruction, where it now remains in the Archives, Vol. I Missions and Colonization, page 809, and is also in evidence in the case, Exhibit V, and printed in full in the ADDENDA, No. VI, page 9, referring to the preceding Regulations of Felipe de Neve, he says:

“In title 14 of the Regulation for that Peninsula,* approved by his Majesty in a Royal Order of the 24th of October, 1781, it is directed by Art. 8 that the new settlers should enjoy, for the maintenance of their stock, the common advantage of waters and pastures, wood and timber of the commons, (ejidos,) forests, (montes,) and pasture grounds, (dehesas,) which, in compliance with the laws, are to be marked out to each Pueblo: (Se ha de señalar á cada Pueblo).
* * * * *

“In allotting of tracts of land for cattle, (sitios,) which some settlers in California claim, and the Governor proposes in his official communication of the 20th November, 1784, cannot nor ought to be made to them within the boundaries assigned to each Pueblo, which, in conformity with the law 6, title 5, lib. 4, of the Recopilacion, must be (deben ser) FOUR LEAGUES OF LAND in a square or oblong body, according to the nature of the ground; because the petition of the new settlers would tend to make them private owners of the forests, pastures, water, timber, woods and other advantages of the lands which may be assigned, granted and distributed to them, and to deprive their neighbors of these benefits, it is seen at once that their claim is entirely contrary to the directions of the aforementioned

* California was always called a *peninsula* by the Spaniards.

"laws and the express provision in Art. 8 of the Instructions for settlements (Poblaciones) in the Californias, according to which all the waters, pastures, wood and timber within the limits which, in conformity to law, may be allowed to each Pueblo, must be for the common advantage, so that all the new settlers may enjoy and partake of them, maintaining therein their cattle and participating of the other benefits that may be produced: [result]."

From this opinion of Navarro it follows:

FIRST: That the Regulations of Felipe de Neve did not abolish law 6, title 5, liber 4 of the Recopilacion de los Leyes de los Indios, which assigned four leagues of land to each organized Pueblo, but that the said law remained in full force, as I have insisted in § 28 of this argument.

SECONDLY: That this dedication of the four leagues of land to each Pueblo was so absolute that even the Governor of California could not, at that time, (1784-6,) make any grants of grazing lands (sitios) within those four leagues.

THIRDLY: That the only object of the assignment of the four leagues by actual measurement, was to ascertain *what particular* four leagues were thus assigned, under such obstacles as might or might not be presented, "according to the nature of the ground," whence we are entitled to infer that if these natural obstacles were such that only one particular parcel of land could by any possibility be included in that assignment of four leagues, then that particular parcel of four leagues necessarily belonged to the respective Pueblo, without any admeasurement. As for instance, if the Pueblo were founded on an island containing exactly four leagues, or less, *or if it were situated, like the Pueblo of San Francisco, on a peninsula, less than two leagues in average breadth, and on which the measurement could be in only one direction, namely from the head of the peninsula southwards.* See map prefixed, and also Langley's map, mentioned in § 30 of this argument.

FOURTHLY: That although it was a historical and well known fact that the allotted tract of four square leagues had never been admeasured to any Pueblo in California in the years 1784, 1785, 1786, still the Government protected the proprietary rights of the Pueblos in those adjacent lands which it was presumed would fall within the limits of those four leagues.

A. D. 1789.

REGULATIONS FOR COLONIZATION FOR CALIFORNIA—CALLED THE PLAN OF PITIC.

§ 40. The first section of the regulations of Felipe de Neve recite that the Pueblo of San José had already been founded, and that it was in contemplation to found another. See Ante § 37, ADDENDA, No. IV, page 3, § 1. This other Pueblo, that of Los Angeles, was accordingly founded, under these regulations, by the Governor of California, in December of the same year, 1781. 1 De Mofras, 353. There is no record that any other Pueblo was ever founded under these regu-

lations, which, it will be borne in mind, were purely *civil* Pueblos of the first class mentioned in § 19 of this argument, and were, on the face of the regulations, wholly disconnected from the military Presidios, except as providing supplies and recruits for them, and furnishing a place of residence for the increase of their families, and a retreat for the soldiers in their old age. Regulations, §§ 1, 5, 14, 15. ADDENDA, No. IV, page 4. The whole system was almost immediately changed, by the substitution of what is called the PLAN OF PITIC.

BY WHOM THIS PLAN OF PITIC WAS PROMULGATED.

§ 41. (As matter properly introductory to this PLAN, and absolutely necessary to the comprehension of its legal effect, I am permitted to copy the following condensed statement from the manuscript memoranda of R. C. Hopkins, Esq., Keeper of the Archives: "In the year 1776, in order to assist the Viceroy in the discharge of the duties of his office, and in some degree to relieve him from the onerous burden the 'Comandancia General de Provincias Internas' was established, but as soon as his Excellency, Don Teodoro de Croix, who was appointed to the office of Commandante-General, had taken charge of the same, he foresaw the difficulties he would have in properly discharging the duties of the same, without subordinate assistance. He, therefore, petitioned his Majesty for a division of the territory embraced in the Comandancia General, representing that it was impossible for him at Arispe (his headquarters) to properly attend to matters in the distant Provinces of Coahuila and Texas. Although said petition was taken under consideration, yet, as the government was much occupied with the war with England, no steps were taken in the matter, till 1786, when royal instructions were issued, authorizing the Comandante-General to place the Provinces of Nueva-Vizcaya, and New Mexico under the charge of the Comandante-Inspector, and those of Texas and Coahuila under the charge of Don Juan Ugalde, the Comandante-General himself having charge of the Provinces of Sonora and California—and exercising general supervision of the whole extent of territory.

"But as these instructions did not meet the wants of the case, on the 3d of December, 1789, provisional Regulations were made by the Viceroy, subject to the royal approbation, to take effect on the 1st of January, 1788. Art. 1st of said Regulations provided that the then Comandante-General, Don Jacobo Ugarte y Loyola, should remain in command of the Provinces of the Californias, Sonora, New Mexico, and New Vizcaya, exercising in the same all the authority delegated to him by the King. This was styled the *Comandancia General of the Four Interior Provinces of the West*. Under this Comandante-General there was one Comandante-Inspector, and three Ayudante-Inspectors. The Comandante-General had no fixed residence, but went from place to place, wherever his presence might be most required. Art. 9th of said Regulation, established a second Comandancia General, comprising the Provinces of Coahuila, Texas, Nueva

"Reyno de Leon and the Colony of New Santander, under the style "of the *Comandancia of the Four Interior Provinces of the East*. "The same being under the charge of Colonel Don Juan Ugalde." Archives, Vol. I, of Missions and Colonization, page 378. So that the "Plan of Pitic" promulgated at Chihuahua, on the 14th of November, 1789, became at that time the law of colonization of the Comandancia—"General of the Four Interior Provinces of the West," namely, CALIFORNIA, SONORA, New Mexico, and New Vizcaya (Biscay). The authority of the Asesor Navarro and of the Comandante General Ugarte to construe the Regulations of Felipe de Neva, as set forth in § 39 of this argument, also distinctly appears from the above historical sketch.

A. D. 1789.

OCCASION OF THE PLAN OF PITIC.

§ 42. This plan of Pitic, Exhibit ZZ, ADDENDA, No. VII, page 11, is from the Archives, Vol. I, of Missions and Colonization, page 853. This town of Pitic which was thus founded, was, like San Francisco, Santa Barbara, and Monterey, a PRESIDIAL-PUEBLO, for the Presidio of San Miguel de Orcavitas was removed to the locality of Tepic in order to protect and guard the new settlement. Plan of Pitic, § 3, ADDENDA, No. VII, § 3, page 11. The pressing reasons in which this new plan originated are not stated in any of the documents, but in a map inserted in a curious History of Lower California, published in German at Mannheim, in 1773, by Father Begert, a Jesuit Ex-Missionary of that Peninsula, the site of Guayamas is marked with a cross and the inscription "Guayamas M. distr. per Apostatas Seris;" Guayamas Mission, destroyed by the apostate Seris (Indians.) (Nachrichten von der Amerikanischen Halb-Insel Californien; geschrieben von einem Priester der Gesellschaft Jesu, welcher lang darinn diese letzere Jahr gelebet hat. Mannheim, 1773). The Seris were a tribe of warlike and exceedingly barbarous Indians, who fought as they still fight, with arrows doubly poisoned, by means of a most horrible fermentation.* The modern city of Hermosillo, with a population of 20,000, represents the Pueblo thus founded, while of the Seris Indians, who then occupied the country, but whose designation seems to have puzzled the translator of this "Plan." (See §§ 2 and 6 of the Plan). ADDENDA, No. VII, pages 11, 12, —One portion, which is Christianized, reside in their own village near Hermosillo (Pitic) in the town provided for them in § 6 of the Plan, and the other, still savage, occupy the island of Tiburon, in the Gulf of California, north of Guayamas, a terror to the white inhabitants. Bartlett's personal narrative, Vol. I, pp. 463, 466; 1 De

* NOTE.—"They first kill a cow and take from it its liver; they then collect rattlesnakes, scorpions, centipedes, and tarantulas, which they confine in a hole with the "liver. The next process is to beat them with sticks, in order to enrage them, and being "thus infuriated, they fasten their fangs and exhaust their venom upon each other and "upon the liver. When the whole mass is in a state of corruption, the women take the "arrows and pass their points through it; they are then allowed to dry in the shade." Bartlett, as above. Hardy's Travels in Mexico, London, 1829, p. 293.

Mofras, 181. In their barbarous warfare, doubtless, originated this new "Plan" of colonization.

MAIN FEATURES OF THIS PLAN OF PITIC.

§ 43. The main features of this PLAN OF PITIC are those which generally characterize the wise, pious, and eminently practical schemes of colonization which emanated from the kings of Spain and the sagacious councillors by whom they were guided. The right of the town to four leagues is recognized in the second section of the Plan. ADDENDA, No. VII, page 11. If it be contended that the phrase "may be granted to the town in question four leagues," is only a permissive one, we reply that the phrase "podrá conceder" (literally "shall can be granted") has a force nearer to "must" than to "may," and that this is one of those cases where no discretionary power being vested in the officer, even the word "may" means "shall" and is imperative. Sedgwick on Statutory and Constitutional Law, 438, 439. The object being to found a town with reference to pre-existing and unrepealed laws. That this is the true interpretation appears from Section Six of the Plan, where the concession of the four leagues to the new town is taken for granted, and the right of commons in that tract of land is expressly declared: "the tract of four leagues granted to the new settlement being measured and marked out: demarcado y amonohado que sea el terreno concedido á la nueva poblacion." So also Section Eleventh of the Plan gives the same definition to *Ejidos* which is given in § 14 of this argument,—a place at the *exit* or immediate surroundings of the *Pueblo*, suitable for the settlers to amuse themselves, and where a few milch cows could be pastured, while sections twelve and thirteen again place the *ejidos* and *dehesas* in opposition, and fully define the latter term (*dehesas*): "§ 13. The laying out of the commons and of the common pasture grounds, or vast pasture of the herds being completed; evacuando et señalmiento de los *ejidos* y á la *dehesa* comun ó *Prado Boyal*." This last phrase is hardly translatable without a periphrasis. *Prado Boyal*, which is thus used as a definition of *dehesa*, is rendered in Latin by *Pratum bovillum*, and designates the great pasture grounds where the vast herds roamed distant from the *Pueblo*. The lands granted to the settlers were to be distributed by a commission in the name of the king, and alienation, hypothecation and mortmain were carefully guarded against, §§ 17, 18; and when the settlement counted thirty heads of families, it was to have *alcaldes*, councilmen and an *Ayuntamiento* or Common Council of its own, §§ 4, 5, 17, and the *Ayuntamientos* were to pass "municipal ordinances" for the economical and political management of the *Pueblo*. § 24.

A. D. 1791.

ANOTHER OFFICIAL CONSTRUCTION OF THE FOUR-LEAGUE LAW.
THE PRESIDIOS DECLARED TO BE PUEBLOS, AND EACH ENTITLED TO FOUR LEAGUES OF LAND.

§ 44. We have seen that a question arose in the year 1784,

whether *sitios*, or large tracts of grazing lands might not be granted to settlers within the four leagues belonging to the Pueblos, and that it was decided that such grants could not be made within those limits, because that would be prejudicial to the rights of the *Pueblos*. § 39 of this argument, and also ADDENDA, No. VI, page 9. Very singularly a contest of an opposite nature arose within the next seven years, and the point presented seems to have been announced in this form: Captains of Presidios cannot grant house-lots (solares) or cultivable lands (suertes) to soldiers and citizens; but granted that they have that power, then they are restricted in the exercise of it to the tract of four leagues belonging to the Presidial-Pueblos. For the government of New Spain, which included all the Hispano-American Provinces of Mexico and to the north of it, there were promulgated at Madrid, on December 4th, 1786, certain directions called familiarly the "Ordenanza de Intendentes," but whose full title was, "A Royal Ordinance for the empowering (establecimiento) and direction of the Intendentes (Vice-Governors) of the army and province of New Spain. (Real Ordenanza para et Establecimiento é Instruccion de Intendentes de Exército y Provincia en el Reino de la Nueva-España. De órden de su Magestad. Madrid, Año de 1786). By article 81 of this "Ordenanza de Intendentes," it is provided that the INTENDENTES shall be judges of the propriety of distribution of the "Royal lands," (Realengos) and shall decide upon all grants of them. The question then arose; "Can the Captains of the Presidios make grants of lands which shall be valid without the consent of the Intendentes; and if so, can they make valid grants of lands *outside* of the PUEBLO limits of four leagues?" The following is the decision of the then Comandante-General, Pedro de Nava, in which he decrees that the Captain of a Presidial-Pueblo had an unlimited power to grant lands within the four leagues belonging to the PUEBLO, but had no power to make grants outside of those four leagues:

"In conformity with the opinion of the *Asesor* of the Comandante General, I have determined in a decree of this date, that notwithstanding the provisions made in the 81st Article of the *Ordenanza of Intendentes*, the captains of Presidios are authorized to grant and distribute house-lots and lands to the soldiers and citizens who may solicit them to fix their residences on: (corresponde á los Capitanes de Presidio mercenar y repartir solares y tierras á los Soldados y vecinos que los pidieren para figar su residentia en ellos.) And considering the extent of four common leagues measured from the centre of the Presidio square, namely, two leagues in every direction, to be sufficient for the new Pueblos which are growing up under the protection of the said Presidios, I have likewise determined, in order to avoid doubts and disputes in future, that said captains restrict themselves henceforward to the house-lots and lands within the four leagues already mentioned, without exceeding in any manner the said limits, leaving free and open the exclusive jurisdiction belonging to the *Intendentes* of the royal hacienda, respecting the sale, composition and distribution of the remainder of the land in the respective

“districts :) considerandose suficiente para las nuevas poblaciones que
 “van formnandose, [literally ‘which are going on forming themselves’]
 “a su abrigo el termino de cuatro leguas communes medidas desde el
 “centro de la Plaza del Presidio, dos para cada viento. * * *
 “que los capitanes se limiten desde ahora en la consecion de mercedes
 “de solares y tierras á las que estuviesen comprehendidas en dichas
 “cuatro leguas sin excedese en manera alguna.) And that this order
 “may be punctually observed and carried into effect, you will circulate
 “it to the captains and comandantes of the Presidios of your province,
 “informing me of having done so. God preserve you many years.
 “Chihuahua, Oct. 22nd, 1791.

“PEDRO de NERVA. *Nava*

“To Señor Don JOSE ANTONIO ROMERO.” *Romeu*

This document is the Exhibit Z in this case. It is found also in 1 Rockwell, 451, not translated with entire precision, and misdated *March*, instead of *October*. The original is in the Archives, Vol. I of Missions and Colonization, page 850, and the approval of it dated Jan. 19, 1793, is found at page 814 of the same volume. It is printed in full in the ADDENDA, No. VIII, page 17.

From this valuable document it appears:

FIRST: That the “Intendentes” who had the right to decide upon the propriety of grants made out of the Royal lands, had no such right in regard to lands granted within the four leagues belonging to *Pueblos*, BECAUSE belonging to the *Pueblos*, the king had no ownership in them, although they were granted in his name under every system. Regulations of 1781, 1 Rockwell 447, § 5, Addenda No. IV, § 5, page 5; Plan of Pitic, § 18, ADDENDA, No. VII, page 15.

SECONDLY: That *é converso*, because the lands lying outside of the four leagues did not belong to the *Pueblo*, but did belong to the king; the captains of Presidios, who could grant only the lands belonging to PRESIDIAL-PUEBLOS, had no authority to grant those outside lands. Also that each Presidial-Pueblo was entitled to four leagues of land.

DEMOCRATIC FEATURES OF THE PLAN OF PITIC.

§ 45. In perfect consistency with my previous argument, we find that the Regulations of 1781, 1 Rockwell 450, § 18, ADDENDA, No. IV, page 7, provide for the election of the *Pueblo* officers after the first two years by the settlers themselves; which the PLAN OF PITIC, ADDENDA, No. VII, page 14, Exhibit zz, in sections 17, 20, 21, 22 and 23, speak of “the Ayuntamiento of the new settlement,” as an institution existing as a matter of course; while section 24 of the same PLAN expressly gives to such Ayuntamientos of the new *Pueblos* the power to make and enforce all the ordinances and municipal regulations necessary to the political government, management, economy, and police, of civilized towns. This section is a perfect paraphrase of those enumerations in Anglo-American city charters, which follow the declaratory clause: “The Mayor and Common Council shall have power,” etc., etc.

A. D. 1796.

IT IS DECIDED NOT TO ESTABLISH A "VILLA OF BRANCIFORTE"
AT SAN FRANCISCO.

§ 46. In the year 1796 it was proposed to build a villa in Upper California in honor of Don Miguel de Lagrua, Marquis de Branciforte, at that time Viceroy of New Spain. Alexander the Great was not the only chief who indulged the fancy of giving his name to a great city. Alvarado endeavored to give to San José the designation of the "Pueblo de Alvarado." 1 De Mofras, 415. And Vallejo gave to the Pueblo which he founded the title "Sonoma de Vallejo." 1 De Mofras, 446. Thus the Marquis de Branciforte had both illustrious examples and imitators in his laudable ambition. Among the localities enumerated by Don Pedro de Alberni, who was directed to examine the country and report upon several places indicated, was that of San Francisco, which he represented to be the very worst of all those mentioned for the foundation of such a villa, for the reason that there were but few cultivable or irrigable lands, and that there was a general deficiency of wood and water in and about the Presidio. See the Report in the ADDENDA, No. IX, page 18. The whole report shows that the intention was to build a rural villa depending upon agriculture and grazing for the subsistence of its inhabitants. This report has been sometimes referred to as justifying an inference that at the time it was made there was no civil settlement at the Presidio. But it expressly states that there was such a settlement there, although it was composed of only "a few families;" and a "PUEBLO of San Francisco," existing at the Presidio, would gladly have received an additional population and a higher grade of rank, with the title of "VILLA of Branciforte." This villa was afterwards founded in the same year, 1796, at the place now called Santa Cruz, (1 De Mofras, 409,) but does not seem to have figured largely in history.

A. D. 1812.

LAW OF THE CORTES OF SPAIN RESPECTING THE FORMATION OF
AYUNTAMIENTOS OF PUEBLOS.

§ 47. In the *Leyes Vigentes*, a collection of those decrees and orders of the Cortes of Spain, which survived the political revolution that severed the Republic from the mother country, published at Mexico in the year 1829, page 28, is found a "Decreto de 23 de Mayo de 1812," entitled "Formacion de los Ayuntamientos Constitucionales:"—"Decree of May 23d, 1812, concerning the *formation* of Constitutional Ayuntamientos, or Common Councils." This is printed in full in the ADDENDA, No. X. No repeal of this law appears to have been made; it is published as an existing law in 1853, by Rivera, in Vol. I, page 890, of his "Nueva Coleccion de Leyes y Decretos Mexicanos," and it is evident, from its continued promulgation from its enactment down to the era of the American Conquest of California in 1846, that it was a portion of the law of California long after the

Mexican Revolution of 1821, and, as will be seen hereafter in § 72 of this argument, down to and including the year 1835. This is enough for our present purpose. It related to the mode of forming Ayuntamientos, and although the *basis of population* was afterwards changed—see §§ 89, 90 of this argument—this law seems to have survived, in relation to the *modus operandi* of organizing those bodies.

§ 48. The preamble of this law respecting Ayuntamientos recites, generally, that, in the judgment of the Cortes, the PUEBLOS, or towns, ought to be governed by Ayuntamientos, or Common Councils: [which, it is to be remembered, are *Commune* Councils]. Article I provides that *towns* and *pueblos* which have no Ayuntamientos, but which are entitled to them, may apply for them; and Articles II, VIII, and IX enact that Pueblos which are not themselves entitled to Ayuntamientos shall be aggregated together under a common Ayuntamiento. *Leyes Vigentes*, page 28, etc. 1 White's *Recopilacion*, 416, etc. *ADDENDA*, No. X, pp. 18, 19. Article IV provides that, in all *Pueblos* not exceeding two hundred inhabitants, there shall be one Alcalde, two Regidores, (Common Councilmen,) and one Procurador Sindico; one Alcalde, four Regidores, and one Procurador Sindico in Pueblos having more than 200 and less than 500 inhabitants; one Alcalde, six Regidores, and one Procurador Sindico in those having between 500 and 1,000 inhabitants; two Alcaldes, eight Regidores, and two Procurador Sindicos in those having between 1,000 and 4,000 inhabitants; and twelve Regidores in PUEBLOS of more than 4,000 inhabitants. These Alcaldes, Regidores and Procuradores Sindicos composed the Ayuntamiento of the Pueblo.

THE COMPLEX SYSTEM OF A DOUBLE ELECTION FOR THE OFFICERS OF AYUNTAMIENTOS.

§ 49. The Ayuntamientos were not elected directly by the people, who chose only electors for that purpose; and the elections of these electors were to be held in local election districts at elections called *juntas de parroquia*, (parish or district elections). Article VIII. But no such junta de parroquia could be formed in a town having less than fifty inhabitants, (Article IX); and this was, therefore, probably the limit of population below which a *Pueblo* could not have its own Ayuntamiento. Compare *Leyes Vigentes*, page 28, Art. IV, VIII, and IX.—Translated in 1 White's *New Recopilacion*, 416, etc. *ADDENDA*, No. X, pp. 18, etc.

HOW A PUEBLO MIGHT LOSE ITS AYUNTAMIENTO.

§ 50. Article II recognizes the fact that a town which has once had an Ayuntamiento may lose it by a diminution of its population. "Aggregandose al [Ayuntamiento] mas inmediato en su provincia las [Pueblos] que se formarán nuevamente y los despoblados con jurisdiccion." And in that case the provision just cited directs that they

shall be united to the nearest Ayuntamiento in their province. There were therefore three kinds of Ayuntamientos :

1st. Ayuntamientos existing for a single Pueblo, which may therefore be styled AYUNTAMIENTOS SOLE.

2d. Ayuntamientos composed entirely of populations each of which was too small to have an Ayuntamiento of its own, and which may therefore be styled AYUNTAMIENTOS AGGREGATE.

3d. Ayuntamientos composed of the Ayuntamiento of a Pueblo, to which were joined other small populations, each too small to have an Ayuntamiento of its own, and which I shall term COMPOSITE AYUNTAMIENTOS, neither purely, sole nor aggregate.

ACTUAL DIVISION INTO DISTRICTS AND PARTIDOS.

§ 51. The Departments of Upper and Lower California were repeatedly divided into Districts, and Partidos, as it was required by law that they should be: § 8 of this argument. Governor Alvarado, on February 26th, 1839, divided this Department into Districts, and the northern District into two Partidos, and decreed that the "second Partido should comprehend from the Point de los Lajas (below the latitude of Santa Cruz) up to the Sonoma frontier of the North;" and that its cabecera, or official centre, to which official communications were to be addressed, should be the "Establishment of Dolores." California Archives, Vol. IV, Departmental State Papers, page 589. In 1845, California was again divided into Districts and Partidos, and Yerba Buena is indicated as the cabecera. *Ibid*, page 199. I cannot find that previous to 1839, as above mentioned, there was any formal division of the Californias into Districts and Partidos. But that division was necessary as a matter of administration: Law of the Cortes of Spain, of Oct. 9, 1812. *Leyes Vigentes*, 35. San Francisco* was recognized as cabecera of the frontier of the North on January 17th, 1839, by Governor Alvarado, previous to his division of Districts and Partidos made as above, in February of that year. See ADDENDA, No. XXXVIII, page 57, § 4; and even earlier, on November 4th, 1834, Governor Figueroa recognizes a Partido of San Francisco as already in existence, and as having theretofore been, and still being under the jurisdiction of the military commandante of San Francisco. See ADDENDA, No. XXI, page 35. From the absence of any evidence in the Archives showing that there was an actual, formal division into Partidos previous to February, 1839, Mr. R. C. Hopkins, the Keeper of the Archives, is of opinion that the jurisdiction of the Presidios, respectively, was regarded as a practical division of the Department into Partidos, and treated as such, and I fully concur in this opinion. The Presidio of San Francisco included San José, Santa Clara, Santa Cruz and the Villa of Branciforte in its jurisdiction, from A. D. 1800 to 1830. California Archives, Vol. III of Missions, p. 278; *Ib.*, Vol. V, p. 165; *Ib.*, Vol. V, p. 297. But in 1836, at least, the Partido of San Francisco did not include that portion of California lying west of the Bays of San Francisco and San Pablo, the Straits

of Carquinez, and the Sacramento River, and this explains the language then used by Governor Alvarado in defining the limits of the Partido: "The second Partido shall comprise from the Point de las Lajas up to (hasta) the Sonoma frontier of the North." For the tract west of the Bay of San Francisco and its tributaries, as above mentioned, belonged to the independent jurisdiction of the military commandante, and was known as the "Sonoma Frontier of the North," as decided by the Departmental Junta, on July 7th, 1836. See Exhibit 2 to testimony of R. C. Hopkins in the case. Also, California Archives, Legislative Proceedings, Vol. III, page 141.

A. D. 1813.

THE CORTES OF SPAIN ORDER ALL THE PROPERTY OF THE PUEBLOS, EXCEPT THE VACANT SUBURBS, (EJIDOS,) TO BE GRANTED IN PRIVATE OWNERSHIP.

§ 52. One of the desperate necessities resulting to the Spanish Government from the attempt of Napoleon to place his brother upon the throne of Spain, and from the civil war to which it gave rise, was an enactment made by the Cortes on the 4th of January, 1813, that all the property of the Pueblos, not only in Spain but in the provinces beyond the seas, should be sold or granted to private owners. This law is published in the *Leyes Vigentes*, at pages 56, etc., as one which survived the Mexican Revolution of 1821: it is printed in full in the *ADDENDA*, No. XI, at page 20, etc. The avowed object in the preamble is the welfare of the PUEBLOS and the improvement of agriculture and industry; the real object clearly appears, from Articles 6, 7, 8, 9 to 15, to have been to reward soldiers for services in the war against Napoleon, and to raise a fund wherewith to pay a portion of the National Debt. Article 3 provides that "in the transfer of the said lands the residents of the Pueblos within the limits of which said lands may be shall be preferred, and the commoners of said Pueblos in the enjoyment of said vacant lands." See *ADDENDA*, No. XI, page 21. These enactments will become very important in a subsequent part of this argument.

A. D. 1813.

THE CORTES OF SPAIN DECLARE THAT THE MISSIONS OUGHT TO BE SECULARIZED.

§ 53. In the same year, 1813, the Cortes of Spain, not by an absolute enactment, but by an authentic act, expressed their opinion that the Missionary establishments ought to be discontinued, and converted into curacies, in other words, that the Indian Missions ought to be secularized. But as this declaration went no farther, and never attained the form or force of a law, it is not deemed necessary to make any further reference to it, than to allude to it as one of the landmarks in the progress of opinion. See Jones' Report.

A. D. 1821.

THE MEXICAN REVOLUTION.

§ 54. Next in the order of time, among political events, is the Mexican Revolution of 1821. How far this Revolution affected the political powers of the military governors, it is not now necessary to inquire. It is a well established principle of law that a change in the sovereignty of a country changes the political law, but leaves all the laws respecting private property in full force. American Insurance Co. vs. Canter, 1 Peters, 542; Fleming vs. Page, 9 Howard U. S. S. C. R. Rep., 603; Cross vs. Harrison, 16 Howard U. S. S. C. Rep., 164. This is well stated in Governor Riley's Proclamation of June 5, 1849. ADDENDA, No. LXXV, 3d ¶. Thus, when Louisiana was acquired from France, it was understood that lands held by the former citizens or municipalities of that territory were to be held and enjoyed as before; but that the public lands were not to be granted by the Governors, as theretofore, under the laws of Spain and France, but were subject only to the laws regulating the public lands of the United States. So when California was acquired, it was generally and correctly understood that all municipal corporations retained their landed property, while the new Governors of California could not grant a foot of land, though their Mexican predecessors could grant it eleven leagues at a time. That the laws relating to the landed property of the Pueblos of California were not changed by the Mexican Revolution will appear from the whole course of this argument, and by consulting the ADDENDAS, Nos. X and XI, pages 18 to 23, which are taken from the *Leyes Vigentes*—that collection of the laws of Spain which *did* survive the Mexican Revolution. The same principles are admirably stated in the preface to the *Leyes Vigentes*, pages i to iv.

A. D. 1825.

PROGRESS OF THE PUEBLO OF SAN FRANCISCO.

§ 55. Meanwhile the PUEBLO of San Francisco had attained but a small growth, with a sluggish, indolent population. Captain Benjamin Morrell, who visited San Francisco in May, 1825, thus describes the town: "The town of San Francisco stands on a table land, elevated about three hundred and fifty feet above the sea on a peninsula five miles in width, on the south side of the entrance to the bay, about two miles to the east of the outer entrance, and one-fourth of a mile from the shore.* It is built in the same manner as Monterey, but

* NOTE.—It is hardly necessary to remark that this is a description of the PUEBLO as it then existed at the PRESIDIO. It seems to be inaccurate in the estimated elevation of three hundred and fifty feet above the sea; but very singularly in "CALIFORNIA," by Alexander Forbes, published in London, in 1839, facing page 127 is an engraving of the Golden Gate, in which the Presidio is represented at about the same height above tide water. Probably both Capt. Morrell and Forbes were deceived in their estimates, as most early Californians were, by the exceeding clearness of the atmosphere. Looking at the settlement from afar, knowing how many miles they were distant, and perceiving objects with great distinctness, they judged of heights as they would have done in an obscure atmosphere, and so both the nautical observer and the artist were deceived.

“much smaller, comprising only about one hundred and twenty houses and a church, with perhaps five hundred inhabitants. * * * The inhabitants of this place are generally Mexicans and Spaniards, who are very indolent, and consequently very filthy. They cultivate barely sufficient land to support nature; consequently, nothing can be obtained by way of refreshments for ships. * * * The table land before mentioned would produce abundantly with proper cultivation; but its surface is scarcely ever disturbed by plow or spade, and the garrison depends entirely upon the Mission for all its supplies.” Morrell’s Narratives of four voyages to the Pacific, etc., New York, 1853, page 211. This account I shall concede to be inexact as to the number of the population, houses, and other matters of mere estimate, because such statements almost always exaggerate the numbers involved in the calculation. But one thing remains as a conclusive result of Captain Morrell’s observation, namely: that there was an actual PUEBLO at San Francisco, so large that a disinterested observer estimated it at five hundred inhabitants and one hundred and twenty houses. The population probably never reached 400. See post § 73 and ADDENDA, No. LXXVI. Mr. Richard H. Dana, in his “Two Years before the Mast,” speaks of San Francisco “as a newly-begun settlement, mostly of Yankee-Californians, called Yerba Buena, which promises well.” Page 280. Mr. Dana arrived in San Francisco on December 4th, 1835. Compare the dates in his book at pages 66 and 280. It thus appears that the inhabitants of the town were already shifted or shifting from the Presidio to Yerba Buena, both localities being within the four leagues belonging to this Pueblo. See the map prefixed, and Langley’s map, in § 30.

MEXICAN COLONIZATION LAWS OF 1824 AND 1828.

§ 56. No sooner, however, had the Mexican Revolution become an accomplished fact, than the Sovereign General Constituent Congress, by a decree bearing date August 18th, 1824, enacted a general law of Colonization, commonly styled the “Colonization Law of 1824.” This will be found printed at large in the ADDENDA, No XII, page 23. This wise and liberal plan is worthy of the attention of the historian and of the political economist, but our present purpose leads us to cite only the 2d Article of the decree, which is in these words:

“2d. The object of this law are those national lands which are neither private property nor belonging to any corporation or PUEBLO, and can therefore be colonized—Son objeto de esta ley aquellos terrenos de la nacion, que no siendo de propiedad particular, ni pertenecientes á corporacion alguna ó PUEBLO, pueden ser colonizados.”

This decree of Colonization, therefore, embraces all lands which were neither of private ownership nor belonged to any corporation or Pueblo. This decree was soon followed by “General Rules and Regulations for the Colonization of the Territories of the Republic,” adopted at Mexico, November 21, 1828, and commonly styled the “Regulations of 1828.” These are to be found in the ADDENDA, No.

XIV, page 25. We need not pay any particular attention to these Regulations, any further than to observe: that all applications for grants of lands were to be made to the Governor; that *he* was to cause the necessary information to be obtained; and that, if satisfied, *he* was to make the grant, and that there is no provision authorizing him to *delegate* his power to any person or officer. Articles 1, 2, 3, and 4. If, therefore, on comparing this decree of 1824 with the Regulations of 1828, we find a class of lands granted by the public authorities, not of private ownership, nor belonging to the nation, we shall be tempted to adopt the only remaining alternative and ask: "To what corporation or Pueblo did these lands belong?" See § 2 of the Law of 1824, cited in this section.

A. D. 1828. NOVEMBER 6TH.

IT IS DECIDED THAT COMANDANTES OF PRESIDIOS HAVE NO POWER TO GRANT PUBLIC LANDS OUTSIDE OF THEIR PUEBLOS. WAS THE POWER TO GRANT PUBLIC LANDS IN ABEYANCE?

§ 57. After the enactment of the Mexican Colonization laws of 1824, and before the adoption of the Regulations of 1828, both of which are referred to in the preceding § 56 of this argument, an incident occurred which is curiously illustrative of the Colonization laws of California, and confirms the propositions I have heretofore maintained. A person named Willis, a resident of San José, some time in 1828, petitioned the Governor for a grant of public lands, lying outside of the lands of that PUEBLO. The Governor refused the petition, because there were sufficient lands upon which to maintain his flocks and herds, in the Pueblo of San José to which he belonged. Willis thereupon presented himself to the Comandante of the Presidio of San Francisco, and having persuaded him that he had the power to grant, obtained a concession of the lands. The Governor repudiated the grant as being beyond the powers of the Comandante, and directed the latter to summon Willis before him and fine him fifty dollars for his fraudulent conduct. See ADDENDA, No. XIII, page 24, Exhibit C in the case. This is strongly confirmatory of the position I have assumed to demonstrate in § 44 of this argument, namely, that captains (comandantes) of Presidios could not grant lands *outside* of their Presidial-Pueblos (see ADDENDA, No. VIII), while it decides nothing on the question whether the power remained to them to grant lands *within* such Pueblos. If the power to grant within Pueblos was a part of their *political* authority, it is very certain that they lost it by the happening of the Mexican Revolution of 1821. Leyes Vigentes, Preface; see also § 54 of this argument. That there was an *interregnum* between the LAWS of August 11th, 1824, *directing* colonization, ante § 56, ADDENDA, No. XII, page 23, and the REGULATIONS of November 21, 1828, which prescribed the *mode* of colonization, can easily be imagined. See § 56, also ADDENDA, No. XIV, page 25. Thus grants of lands were interdicted, unless made by certain authorities, and in a prescribed form, but at the same time the authorities were not named nor the form indicated, and so no grants

could be made for the time being. A singular confirmation of this view is furnished by Capt. Beechy, who visited the Presidio of San Francisco, in November, 1826: "A further grievance has arisen by the refusal of the Government to continue certain privileges which were enjoyed under *the old system*. At that time soldiers entered for a term of ten years, at the expiration of which they were allowed to retire to the Pueblos,—villages erected for this purpose, and attached to the Missions, where the men have a portion of ground allotted to them for the support of their families. This afforded a competence to many; and while it benefitted them, it was of service to the Government, as the country by that means became settled, and its security increased. But this privilege has been latterly withheld and the applicants have been allowed only to possess the land and feed *their cattle* upon it, until it should please the Government to turn them off." Narrative of a voyage to the Pacific Beering Straits, in the year 1825–1828, by Capt. F. W. Beechy, R. N., F. R. S.: London, Colburn & Bentley, 1831; Vol. II, pages 10, 11. This account is full of errors, such as a stranger would naturally fall into, but it contains enough of truth to confirm my proposition. Between the adoption of the Law of Colonization in 1824 (next preceding § 56) and the Regulation of Colonization, prescribing the *mode*, (see next § 56) it is not improbable that the power to grant lands outside of the Pueblos was wholly in abeyance. Certainly Comandantes of Presidios could not then grant such lands, nor could they have done so before that time. See ADDENDA, No. VIII, page 17. See § 44 of this argument.

A. D. 1833.

THE MEXICAN GOVERNMENT ORDERS THE MISSIONS OF CALIFORNIA TO BE SECULARIZED.

§ 58. I have shown ante §§ 26, 53, that the Missionary system was tended to be succeeded by a purely civil colonization; that the Missions were to be secularized; and that the Cortes of Spain, in 1813, had shown their impatience that secularization had not been already accomplished. But in August, 1828, the Congress of Mexico decreed that the secularization of the Missions should be "proceeded with." ADDENDA, No. XV, page 26. Pursuant to that decree, Governor Figueroa, in August 1833, enacted certain "Provisional Rules for the Secularization of the Missions," which were to go into effect in August, 1834, "commencing with ten Missions, and afterwards with the remainder." ADDENDA, No. XIX, page 31, Art. I, Id. No. XX, page 34. But the execution of the whole scheme was suspended by a decree of the President of Mexico, of November 7th, 1835. ADDENDA, No. XXVIII, page 43. There is not a shadow of pretence that up to January, 1835, the Mission of Dolores had been *secularized*, although nothing is more certain than the fact that the Majordomos mentioned in Article 8 of these "Provisional Rules" had taken possession of the property of the Missions.

THE SUCCESS OF THE MISSION SYSTEM.

§ 59. The results of the Mission scheme of Christianization and Colonization were such as to justify the plans of the wise statesmen who hitherto devised it, and to gladden the hearts of the pious men who devoted their lives to its execution. At the end of sixty years, (in 1834) the missionaries of Upper California found themselves in possession of twenty-one prosperous Missions, planted upon a line of about seven hundred miles, running from San Diego north to the latitude of Sonoma. More than thirty thousand Indian converts were lodged in the Mission buildings, receiving religious culture, assisting at divine worship, and cheerfully performing their easy tasks. Over four hundred thousand horned cattle pastured upon the plains, as well as sixty thousand horses, and more than three hundred thousand sheep, goats and swine. Seventy thousand bushels of wheat were raised annually, which, with maize, beans and the like, made up an annual crop of one hundred and twenty thousand bushels; while, according to the climate, the different Missions rivalled each other in the production of wine, brandy, soap, leather, hides, wool, oil, cotton, hemp, linen, tobacco, salt and soda. 1 De Mofras, 320, 321, 338, 348, 366, 486, 488. Of two hundred thousand horned cattle annually slaughtered, the Missions furnished about one half, whose hides and tallow were sold at a net result of about ten dollars each, making a million of dollars from that source alone. 1 De Mofras, 320, 480, 484. While the other articles, of which no definite statistics can be obtained, doubtless reached an equal value, making a total production by the Missions themselves, of two millions of dollars. Gardens, vineyards and orchards surrounded all the Missions, except the three northernmost, Dolores, San Rafael, and San Francisco Solano, the climate of the first being too inhospitable for that purpose; and the two latter, born near the advent of the Mexican Revolution, being stifled in their infancy. The other Missions, according to their latitude, were ornamented and enriched with plantations of palm trees, bananas, oranges, olives, and figs; with orchards of European fruits; and with vast and fertile vineyards, whose products were equally valuable for sale and exchange, and for the diet and comfort of the inhabitants of the Missions. 1 De Mofras, 350, 351, 366, 420, etc. Aside from these valuable properties, and from the Mission buildings, the self-moving or live stock of the Missions, valued at their current rates, amounted to three millions of dollars of the most active capital, bringing enormous annual returns upon its aggregate amount, and, owing to the great fertility of animals in California, more than repairing its annual waste by slaughter. 1 De Mofras, 320, 472, 476. Such was the great religious success of the Catholic Missions in Upper California; such their material prosperity in the year 1834, even after many depredations had been committed upon them by the first Governors of the regime of "Independence." See ADDENDA, No. LXVII.

THE "PIOUS FUND" OF THE MISSIONS OF CALIFORNIA.

§ 60. "What is remarkable in the establishment of these Missions,

they cost the government nothing. When the Missions of Lower California were first founded, the Viceroy's furnished some assistance. Philip V, gave them in the first years of his reign an annual pension of \$13,000; but in the year 1735, the Jesuits added to the capital of their funds by the purchase of productive real estate. In 1767, a lady of Guadalajara, Dona Josefa de Miranda, left by will to the College of the Society of Jesus, of that city, a legacy of more than \$100,000, which the Jesuits had the delicacy to refuse." 1 De Mofras, 266; Clavigero.

WHAT CONSTITUTED THE "PIOUS FUND."

§ 61. "The property belonging to the 'Pious Fund of California,' with its successive additions, comprised the following: The landed estates of San Pedro, Torreon, Rincon, and the Golondrinas, including several mines, manufactories, and immense flocks, with more than five hundred square leagues of land, all situated in the province of Tamaulipas. These properties were given voluntarily to the Society by the Marquis de Villa Puente, Grand-Chancellor of New Spain, and by his wife, the Marchioness de Las Torres, on June 8th, 1735. Other legacies enriched the Society of Jesus with considerable estates, situated near San Luis de Potosi, Guanajuato and Guadalajara. The property near the last named city is still rented annually for more than twenty thousand dollars. Another estate of the Society, the Hacienda of Chalco, belongs to the Pious fund, which possesses besides a very great number of houses and other real estate, situate in the cities, particularly in Mexico." 1 De Mofras, 267.

SPOILIATION OF THE "PIOUS FUND."

§ 62. "In 1827, the government forcibly seized \$78,000 in specie deposited at the mint in Mexico, and which was the produce of the sale of the Arroyo Zarco, an estate of the Society. The 'Pious Fund' was also despoiled of immense tracts of land by the Congress of Jalisco." 1 De Mofras, 268.

ANNUAL PRODUCE OF THE "PIOUS FUND."

§ 63. "Under the Spanish Government the revenues amounted to about \$50,000 a year, which paid the stipends of the monks, namely, fifteen Dominicans, at \$600 each; and forty Franciscans at \$400 each; and, this total of \$24,000 being deducted, the balance was used in the purchase of cloths, implements, tools, church utensils, and ornaments for the service of religion. The royal government reimbursed to the agent of the Missions at Mexico the value of all supplies furnished by the Missions to the Presidios; and the agent converted that money into merchandise, which he sent, at his own charge, to the port of San Blas,

whence, twice a year, frigates transported it gratuitously to the various ports of California." De Mofras, Vol. I, pp. 266 to 268.

THE STIPENDS FAIL; \$1,000,000 DUE THE MISSIONS.

§ 64. "From 1811 to 1818, and from 1828 to January, 1831, the Missionaries ceased to receive their stipends regularly, on account of the political troubles which, at those epochs, agitated Spain and Mexico. Thus, adding together the sums due to the Franciscans of Upper California only, amounting to \$192,000; the \$78,000 taken by force; the \$272,000 for which the Missions of Upper California were out of pocket for supplies furnished to the Presidios; and the revenues of the 'Pious Fund, for more than ten years, we obtain a total of *more than a million of dollars*, of which the Mexican Government had already despoiled the Missionary Association." De Mofras, Vol. I, pp. 269, 270. This, it will be observed, does not include the *capital* of the Pious Fund, except the \$78,000, which was, as above stated, the proceeds of the sale of an estate belonging to that fund.

THE "PIOUS FUND" DIVERTED INTO THE PUBLIC TREASURY.

§ 65. "On May 25th, 1832, the Mexican Congress passed a decree by which the executive power was directed to rent out for a gross sum for seven years the property of the 'Pious Fund,' and pay the proceeds into the national treasury." 1 De Mofras, 270. Arrillaga, *Collecion de Decretos*, 1832-1833, p. 114.

THE "PIOUS FUND" RESTORED TO THE BISHOP OF THE ROMAN CATHOLIC CHURCH FOR CALIFORNIA.

§ 66. A second decree of Congress, of the 19th September, 1836, directed that the "Pious Fund" should be placed at the disposal of the new Bishop of California* and his successors, to the end that these prelates, to whom its administration was thus confided, might employ it in the development of the Missions, or in similar enterprises, according to the wish of its founders. 1 De Mofras, 270. Arrilaga, *Collecion de Decretos*, July to December, 1836, p. 107.

*This is the first time that the designation "BISHOP OF CALIFORNIA" occurs. Previous to 1840, California was not a Diocese of any church, but the Popes had, by various Bulls, granted Episcopal powers to the Apostolical Prefect [President of the Missions] of California, for the time being. But in 1840 the then Pope, Gregory XVI, erected California into a Bishopric, and named to that See the Rev. GARCIA DIEGO, a Mexican Franciscan, who had been for some time a Missionary in California, designating San Diego as his residence. 1 De Mofras, 275. It is doubtful whether he designated himself, or was called by the Pope "Bishop of California," as according to custom he would take the title of "Bishop of San Diego," from the place assigned by the Pope as his residence. Subsequently Bishop Alemany, of the R. C. Church, succeeded Bishop Diego, with the title of Bishop of Monterey, and was afterwards translated to the Archbishopric of San Francisco, being succeeded by Bishop Amatt, in the Bishopric of Monterey. The "Bishopric of California" is a diocese of the Protestant Episcopal Church of the United States, and is filled by the Right Rev. William Ingraham Kip, D.D., L. D.

SANTA ANNA "ADMINISTERS" THE "PIOUS FUND."

§ 67. "On February 8th, 1842, General Santa Anna, Provisional President, by virtue of his discretionary power, deprived the Bishop of California, notwithstanding his protest, of the administration of the 'Pious Fund;' and, by a decree of the 21st of the same month, entrusted it to General Valencia, chief of the Army Staff. To any one who is acquainted with Mexico, the word 'administer' has an unmistakable sense. This was the last blow which the organization created by the Jesuits received before the final sale. Let us add, however, in justice, that hitherto the few Franciscans who remain in California have received an annual relief of \$400 in merchandise, marked at exorbitant prices." De Mofras, Vol. I, pages 270-271. This decree of Santa Anna is to be found in *El Observador Judicial y de Legislacion*, 1842, Vol. I, p. 351.

THE "PIOUS FUND" IS SOLD AND THE PROCEEDS ABSORBED.

§ 68. Finally, President Santa Anna sold the 'Pious Fund' in a mass, to the house of Barrio, and to Rubio brothers.

The final sale above alluded to, namely, "that President Santa Anna sold the 'Pious Fund' in a mass to the house of Barrio, and to Rubio brothers," De Mofras, Vol. I, page 268, is thus mentioned at pages 65-66 of the same volume: "Bold by the very excess of weakness, the Mexican Government recoils from no arbitrary measure to supply its financial deficits. Thus it has not hesitated to seize the property belonging to the Missions of California, whose value is not less than *two millions of dollars*, and sell it to the house of Barrio." The date is not given, but is stated at page 271 to have been after the fund was entrusted to Valencia, which was on Feb. 21, 1842, and the decree, the first section of which incorporates into the national treasury (*erario nacional*) the entire "Pious Fund," and the second section of which provides for the sale of the property, is dated Oct. 24, 1842, and may be presumed to have had a sufficiently rapid execution. See the original decree: *El Observador Judicial y de Legislacion*, 1842, Vol. 2, page 340.

A. D. 1834.

MEANWHILE THERE WAS NO AYUNTAMIENTO AT SAN FRANCISCO.
AYUNTAMIENTOS DIVIDED INTO THREE CLASSES.

§ 69. During all this period, and up to the autumn of 1834, there had been no Ayuntamiento, or Common Council, at San Francisco. This clearly appears from the *ADDENDA*, No. XVI, page 27, No. XVII, page 28, and No. XVIII, page 29, all of which belong to the documentary testimony in the case. The population of San Francisco was ruled by a Military Comandante of the Presidio, who was also a Judge of First Instance, while the Governor generously imposed license fees and taxes on a liberal scale. *Ibid.* It is necessary to recur here, for a moment, to three different classes into which we have divided Ayuntamientos, namely:

1st. AYUNTAMIENTOS SOLE, existing for a single Pueblo.

2d. AYUNTAMIENTOS AGGREGATE, composed of small populations, each too small to have an Ayuntamiento of its own.

3d. COMPOSITE AYUNTAMIENTOS, formed of the Ayuntamiento of a PUEBLO, to which were joined other small populations. See § 50 of this argument.

A. D. 1834.

AN AYUNTAMIENTO AGGREGATE ORDERED FOR THE PARTIDO OF SAN FRANCISCO.

§ 70. On the 14th day of November, 1834, Governor Figueroa communicated to the Military Comandante of San Francisco, that the Territorial Deputation, exercising the powers conferred upon it by the law of June 23d, 1813, had directed the election of a Constitutional Ayuntamiento for the *Partido* of San Francisco. See Exhibit No. 1, to Vallejo's deposition. ADDENDA, No. XXI, page 35. What these powers were which were conferred by the law of June 23d, 1813, appears from Chap. II, Art. I, as set forth in the *Leyes Vigentes*, page 91, where the Provincial Deputations are empowered to aggregate populations for the purpose of forming Ayuntamientos, in cases where the population of a Pueblo is insufficient for that purpose. The Ayuntamientos thus ordered to be formed, was, therefore, for the purpose of giving a municipal government to those small populations of the Partido which could not otherwise have an *Ayuntamiento*. It is evident that it did not include San José, and the reason for this exception was that San José had had immemorially an Ayuntamiento of its own. ADDENDA, No. XXIX. And yet San José was within the Partido of San Francisco. The Ayuntamiento of the Partido of San Francisco was an aggregated Ayuntamiento, constituted under the laws above cited from *Leyes Vigentes*, page 91, Chap. II, Art. I, *Id*, page 28, Arts. II, VIII and IX, 1 White's New Recapitulacion, 416, etc. ADDENDA, No. X. This order for the election of an Ayuntamiento, as will be seen by consulting it, ADDENDA, No. XXI, page 35, directed the election of an Ayuntamiento for the Partido, to reside at the Presidio of San Francisco, and to consist of an Alcalde, two Councilmen, and one Syndic Procurador.

THIS PARTIDO AYUNTAMIENTO WAS ORGANIZED.

§ 71. Was this Ayuntamiento of the Partido ever elected and constituted? Messrs. J. H. McKune and Horace Hawes, in their joint printed brief, entitled, "Documents, Depositions and Brief of Law" "Points raised thereon in behalf of the United States, in Case No. 280, "(this same case) before the U. S. Board of Land Commissioners," at page 10, after reciting that by Exhibit Nos. 1 and 2, annexed to the deposition of M. G. Vallejo, in this case, ADDENDA, No. XXI, pages 35 and 36, after stating that electors were chosen on Dec. 7th 1834, "who were to elect the municipal officers," add: "but whether the election of Ayuntamiento took place, does not appear from any docu-

“ment on file.” But we are prepared to prove that this Ayuntamiento of the Partido was elected, was duly installed, and entered upon its functions. For in the inventory of the Documents on file in the Juzgado of San Francisco de Asis, which appears twice in the documentary testimony, first as Exhibit Hopkins, No. 1, offered by the claimants, and as Exhibit Hopkins, M, offered by the United States, under date of January 1835, appears the record of an *oficio*,—an official communication,—from the government, approving the appointment of a Secretary of the Ayuntamiento, and of an Assistant Alcalde for Contra Costa—the Counter-Coast, *the other side of the Bay*. The importance of this latter *oficio* will be shown hereafter; we shall meanwhile bear in mind that this Ayuntamiento of the PARTIDO *had authority for appointing Alcaldes for the other side of the Bay*.

A. D. 1835. JANUARY.

A COMPOSITE AYUNTAMIENTO ORDERED TO BE ELECTED FOR THE PUEBLO OF SAN FRANCISCO.

§ 72. But it is equally evident that this *aggregate* Ayuntamiento for the PARTIDO of San Francisco, was immediately superseded by a *composite* Ayuntamiento for the Pueblo of San Francisco. For in the same document marked “Exhibit Hopkins, No. 1” and also M, under the date of November, 1834, is a synopsis of an *oficio* from the Governor directing a census of the population of San Francisco to be taken and returned to him. This *oficio* is lost, existing neither in the Archives of the Pueblo nor of those of the Department in any form. See testimony of Hopkins and Dwinelle. But the direction was executed, for the Governor, under date of January 31st, 1835, announces to the same Military Comandante that he had received the census of the PUEBLO OF SAN FRANCISCO, by which it appeared that it was entitled to an Ayuntamiento of its own, composed of one Alcalde, two Regidores, and one Sindico Procurador, and directing him to proceed to their election accordingly. See Exhibit No. 14 to R. C. Hopkins’s deposition, printed in the ADDENDA, No. XXIII, page 37. The census of San Francisco disclosed therefore between 50 and 200 inhabitants. Leyes Vigentes, page 29, Arts. IV and IX. ADDENDA, No. X, Arts. 4 and 9, pages 18, etc., because “one Alcalde, two Regidores, and one Procurador Syndic” were the officers prescribed for those PUEBLOS whose population was less than fifty and did not exceed two hundred inhabitants.

WHAT WAS THE ACTUAL POPULATION OF THE PUEBLO OF SAN FRANCISCO IN 1834–1835?

§ 73. We have seen in the preceding § 72, that the population of the PUEBLO of San Francisco in 1834–1835 could not have exceeded 200 inhabitants. This was established as matter of law, by the census returns and the act of the Governor founded on them, as detailed in that section. The same result would have been reached proximately

by statistical data, and calculations founded on them. From the data contained in the ADDENDA, No. LXXVI, we obtain the following data as to the

POPULATION OF THE PRESIDIAL-PUEBLO OF SAN FRANCISCO.

A. D.	Men.	Women.	Boys.	Girls.	Total.
1794	46	33	38	26	143
1800	79	49	46	49	223
1815	125	92	74	82	373
1830	59	46	13	13	131

See ADDENDA, No. XXLVI, page 110.

These returns in a perfect or aggregate form come no lower than 1830. In 1842, the aggregate white population of the *political* jurisdiction of San Francisco did not exceed 160. See ADDENDA, No. LV, page 78, etc. This strongly confirms the official data of the census and order of the Governor, and taking the two together, it shows that the population of the Pueblo was less than 200. Moreover, these same official returns in the Archives, show that at the same dates above mentioned there was the following

POPULATION (INDIAN) OF THE MISSION OF DOLORES.

A. D.	Men.	Women.	Boys.	Girls.	Total.
1794	355	369	110	79	913
1800	315	260	32	37	644
1815	542	391	90	92	1115
1830	140	53	13	13	219

From all of which we are compelled to infer:

FIRST: That the whole white population of the PUEBLO of San Francisco in 1834-1835 did not exceed 200 inhabitants. For, taking the whole population of the Pueblo and Mission at 350 in 1830, as above, and at 196 in 1842 (ADDENDA, No. LV), I know of no law of estimation which would not give the aggregate population of both Pueblo and Mission at more than 200 in 1836, especially as the population of the Pueblo did not begin to diminish until 1833. See §§ 90, 91 of this argument. But the PUEBLO proper must have had less than 200 inhabitants in 1834-5, or *four* Regidores would have been ordered to be elected instead of only *two*. Law of 1812, ADDENDA, No. X, page 19, § 4.

SECONDLY: That the population of the Indian neophytes of the Mission of Dolores, although within the political jurisdiction of the PUEBLO of San Francisco, yet being in a state of pupilage, and not exercising the rights of citizenship, were not counted in the electoral basis of a Pueblo. They were like a sandy, marshy, mountainous or rocky tract included in a survey of lands, embraced within its boundaries

but not counted in acres as a part of it. See Ordenanzas de Tierras y Aguas, ante § 30, ut supra. If any one is inclined to believe in the perfectness of these California Archives, let him try to reproduce the census of California from the materials there found. Each Presidio and Mission was bound to report every three months, and yet I have not been able to find any civil reports of the Presidios later than 1832, and that one incomplete (Vol. V Missions, page 344), and none for the Missions separately later than 1817 (Vol. IV Missions and Colonization, page 532.) I have searched myself, and employed the most competent assistance of gentlemen familiar with the Archives. Still such data may be in the Archives and not yet be discovered, such is the confusion which has been introduced there under the so-called "arrangement" made by a late special Attorney of the United States.

THIS NEW AYUNTAMIENTO WAS ELECTED AND ORGANIZED.

§ 74. That this Ayuntamiento for the PUEBLO of San Francisco was elected and organized, appears from the acts of election. ADDENDA, Nos. XXX, page 47, and XXXV, page 53, being Exhibits 3, 8, and 9, to the deposition of Vallejo, in the case. It was also recognized as the Ayuntamiento of the PUEBLO by the General and Departmental Junta or Legislature. ADDENDA, No. XXVI, page 42, etc.; No. XXIX, pages 44, etc., and in various other proceedings to which reference will be made in the course of the argument. It is never styled the Ayuntamiento of the PARTIDO, but always called the Ayuntamiento of the PUEBLO. It therefore superseded the Ayuntamiento of the Partido. Instead of being an *aggregated* Ayuntamiento composed of small populations in the PARTIDO, it was an Ayuntamiento of the PUEBLO, to which various small populations of the Partido were *aggregated*, or, as I have styled it, ante § 30, a *composite Ayuntamiento*.

§ 75. If it be asked, where is the official act, the *expediente* of the formation of this Ayuntamiento of the Pueblo of San Francisco, we ask in reply, where did we find the *expediente* of the formation of the Ayuntamiento of the Pueblo of Santa Barbara, which is in evidence in this cause? Was it found in the Archives, where it ought to have been found? It was found in private hands, and if the Archives alone had been relied upon, that document would never have been forthcoming. But we do find fragmentary records of the existence and continuance of this Ayuntamiento of the Pueblo of San Francisco in Exhibits Nos. 3 and 6, annexed to the deposition of M. G. Vallejo, ADDENDA, No. XXVI, page 42, No. XXX, page 47; and Exhibits 8 and 9, annexed to the same deposition, ADDENDA, No. XXXV, page 53, § 54 show the formation of the electoral college of the same Ayuntamiento of the Pueblo, on December 3d, 1837, and the election of the Ayuntamiento by that college, on January 8th, 1838. Are we asked to call Vallejo? The *expediente* could never have been properly in his custody, for it belonged to the Archives of the Government; he could therefore depose only orally to a disputed fact, and in so doing, must contradict his testimony

already given in the case. We know of no rule which compels us to call a witness whom our adversaries insist on discrediting, or to consume the time of the Court in demonstrations which must be utterly fruitless. The book of elections mentioned in Exhibit No. 1, to the testimony of R. C. Hopkins is unfortunately "lost." See testimony of R. C. Hopkins and J. W. Dwinelle.

THIS WAS AN AYUNTAMIENTO FOR THE PUEBLO.

§ 76. I have said that the only Ayuntamiento of whose actual formation and continued existence we have any record, was always spoken of as that of the PUEBLO of San Francisco. In Exhibit No. 3 to the deposition of Vallejo, ADDENDA, No. XXX, page 47, San Francisco is twice spoken of as a Pueblo; in Exhibit No. 6 to the deposition of Vallejo, ADDENDA, No. XXVI, page 42, on October 26, 1835, it is spoken of in a letter to the Alcalde of San Francisco, as the "Ayuntamiento of that PUEBLO"—"el Ayuntamiento de ese PUEBLO," and the Alcalde is directed to inform the "inhabitants of that PUEBLO" that the Ayuntamiento could grant solares at Yerba Buena, showing that the Ayuntamiento of the PARTIDO was not then in existence, but that the Ayuntamiento of the PUEBLO was. The acts of election of this Ayuntamiento again appear in 1835, 1837 and 1838, in Exhibits Nos. 3, 8 and 9 to Vallejo's depositions, ADDENDA, No. XXX, page 47, No. XXXV, page 53, always held in the PUEBLO of San Francisco. On the 30th of May, 1835, certain petitioners, describing themselves as residents of the Ranchos of the North, San Antonio, San Pablo and those adjoining, petition the Governor, representing that they are *attached* to the jurisdiction of the port of San Francisco, and asking to be *detached* therefrom, and *attached* to the jurisdiction of San José. Document C, P. L. in the case. ADDENDA, No. XXIX, page 44. The Governor directs *informes* (reports) to be made by the *Ayuntamientos* of the PUEBLOS of SAN JOSE and SAN FRANCISCO and the *expediente* is returned to those Ayuntamientos accordingly. *Id.* When completed, it was to be accompanied with a list of the inhabitants of the "PUEBLO of San Francisco." The Ayuntamiento of San José in their report state that the petitioners had formerly belonged to that jurisdiction. See the same document. From this one *expediente*, several facts are apparent:

FIRST: That the inhabitants of these ranchos were not a constituent or essential part of the Ayuntamiento of San Francisco, but were only *attached*, or *aggregated* to it under Article IX of the decree of May 23d, 1813, *Leyes Vigentes*, page 29, 1 White's Recopilacion, 418, §§ 2 and 9. ADDENDA, No. X, pages 19, 20, §§ 2, 9. See § 50 ante.

SECONDLY: That it was the *Ayuntamiento of the PUEBLO* of San Francisco, from which they wished to be *detached* and *annexed* to the Ayuntamiento of the PUEBLO of San José.

THIRDLY: That although the PUEBLO of San José and the Pueblo of San Francisco were both in the same PARTIDO, yet each PUEBLO had its own AYUNTAMIENTO.

FOURTHLY: That there was no longer any Ayuntamiento for the PARTIDO of which San Francisco was the *cabecera*, or capital.

A. D. 1835.

A COMPLETE PUEBLO EXISTED AT SAN FRANCISCO.

§ 77. We see, therefore, that there was a complete PUEBLO of San Francisco, with its own Ayuntamiento, and thus possessing the highest political organization known to the laws of Spain and Mexico. For, a Pueblo thus organized under Article IV of the Law of May 23, 1812, with one Alcalde, two Regidores, and one Sindico Procurator, *Leyes Vigentes*, page 28, ante §§ 47-51, ADDENDA, No. X, page 18, etc., had as high a political capacity as those Pueblos with two Alcaldes, and eight, twelve, or even sixteen Regidores, as provided in that and the succeeding article. In each and every case, the Ayuntamiento of a Pueblo possessed the general functions and powers usually belonging to Spanish, French and English Common Councils (Councils of the *Commune*) and which are defined at great length in the *Leyes Vigentes*, page 85, etc. Decretos de 23 de Junio de 1813, Instruccion para el gobierno economico politico de las *provincias*. Capitulo I, De las obligaciones de los Ayuntamientos; Decree of June 23d, 1813. Directions for the politico-economical government of the provinces (California was a *Department* after the Revolution of 1821); Chapter I, concerning the duties of Ayuntamientos, *Leyes Vigentes*, 50, ut supra. See also Decreto de 9 de Octubre de 1812; Reglamento de las audiencias y juzgados de primera instancia; Capitulo III. De los Alcaldes constitucionales de los Pueblos—Concerning the constitutional Alcaldes of the Pueblos; showing that these Alcaldes belonged to the same constitutional system as the Ayuntamientos of Pueblos, *Leyes Vigentes*, pp. 35, 50; 1 White's Recopilacion, 419, etc. See by comparison, Merlin, Repertoire de Jurisprudence, Vol. 5, p. 191, title Commune. The title of Villa, which some Pueblos had, was only one of dignity, as that of Ciudad, city, was of nobility; neither conferred any increase of political or municipal power or consideration.

A. D. 1835. JUNE.

THE AYUNTAMIENTO OF SAN FRANCISCO ASK FOR THEIR EJIDOS AND PROPIOS TO BE ASSIGNED.

§ 78. Among the papers mentioned in the list of PUEBLO Archives contained in the document Exhibit No. 1 to testimony of R. C. Hopkins, is the following: "1835, June. A reply to the petition made "by the Ayuntamiento in relation to the assigning of *ejidos* and lands "for *proprios*." This document is one of the lost documents; the original is not to be found in the Archives, nor is its duplicate among the PUEBLO papers. It seems, therefore, that the Ayuntamiento of San Francisco, in 1835, thought that that PUEBLO was entitled to *Ejidos*, and *Proprios*, respecting which see §§ 11 and 14 of this argument. The Departmental Junta was not in session from Nov. 3d,

1834, to August 5th, 1835. California Archives, Legislative Records, Vol. II, pages 247-250. September, 1835, Don Lorenzo Quijas, the missionary monk at the Mission of Dolores, petitioned to have *ejidos* assigned for that Mission; but this petition was rejected by the Departmental Junta. *Ibid*, pages 600, 282. It thus appears that the Pueblo of San Francisco and the Mission of Dolores were not at that date confounded with each other.

A. D. 1835.

THE POLITICAL AUTHORITIES PREPARE TO SECULARIZE THE MISSIONS. THE REAL OBJECT OF SECULARIZATION. IT IS ATTEMPTED AND SUSPENDED, BUT THE MISSIONS RUINED MEANWHILE.

§ 79. The theory of secularization was a plausible one. It was: that the country having been colonized, and the Indians converted, the Missionary system had thus become spent by accomplishing its object; that the system of Secular curacies—a normal one in the church—should now be substituted in their stead, and the population around them established in villages; that the Monks, who were mostly Spaniards, and, as such, nationally unpopular, and supposed to be hostile to the newly acquired “Independence,” should be got out of the country; leaving California fully colonized, with uniform and homogeneous institutions, united, prosperous and contented. Ante, §§ 26, etc. But, beneath these specious pretences, was undoubtedly a perfect understanding between the Government at Mexico and the leading men in California, that such a condition of things should be created that the Supreme Government might absorb the “Pious Fund” under the pretence that it was no longer needed for missionary purposes, and thus had reverted to the State as a *quasi* escheat; while the co-actors in California should appropriate the local wealth of the Missions, by the rapid and sure process of “administering” their temporalities. The history of the “Pious Fund” already given (ante, §§ 60 to 68 of this argument), and that of “Secularization,” hereafter sketched in this argument, leave no doubt of the truth of this proposition. Already on August 17th, 1833, the Mexican Congress had ordered the Missions to be secularized, the object being to convert the Missions into villages, the Indians into citizens, and the Mission chapels into parochial churches, under the charge of secular Priests. See ADDENDA, No. XV, page 26. This scheme was attempted to be carried into effect by Governor Figueroa, who adopted certain “Provisional Rules for the Secularization of the Missions,” bearing date August 9th, 1834, and which were to be put in force in August, 1835. See ADDENDA, No. XIX, page 31, Art. I. These regulations were approved by the California Legislature on Nov. 3d, 1834, and further steps taken by them to provide for the payment of the parochial priests. See ADDENDA, No. XX, page 34. It will be seen by examining the provisions of these three laws that they contemplated the gradual change of these *religious communities* into *civil municipalities*, that their property, (flocks,

etc.) should pass at once into civil administration, and that secular priests should take the place of the missionaries. That administrators did at once assume the charge of the temporalities of the Missions is very evident, for in September, 1835, we find Flores acting as Administrator of the Mission of Dolores. ADDENDA, No. XXV, page 39. But greedy and ready as the Administrators were, the parochial priests were not forthcoming, and consequently the President of Mexico, by decree of November 7th, 1835, suspended the execution of the law of secularization until the parochial curates should appear and take possession of the Missions; that is, suspended the law for the time being. See ADDENDA, No. XXVIII, page 43. Governor Alvarado, in his "Regulations respecting Missions," of January, 1839, states explicitly that the secularization of the Missions had not yet at that late date been effected, while they had been plundered by persons acting as administrators. ADDENDA, No. XXXVII, page 55, preamble and Art. I. We shall bear in mind, then, that during the period from 1833 to 1839, the secularization of the Missions of California had been decreed by law and regulated by "Provisions," all of which were suspended, and not carried into effect any further than to place the Missions in the charge of administrators who "administered" them much as Santa Anna administered the "Pious Fund of California," ante, §§ 67, 68. Meanwhile there was no Indian Pueblo at Dolores, but the Indians still lived in *community* there. See all the documents cited in this section.

A. D. 1835.

THE GOVERNOR OF CALIFORNIA BEGINS TO GRANT SITIOS, OR RANCHOS FROM THE PUEBLO LANDS.

§ 80. Meanwhile, it having been determined that the Missions should be plundered, private individuals began to petition for grants of grazing lands, which, when obtained, were for the most part stocked with the spoils of these religious establishments. 1 De Mofras, 301, 303, 390. Among such grants were many from the lands of various Pueblos, and in the number of these is that of San Francisco. It is necessary now to inquire by what right the Governor could make such grants of Pueblo lands?

AUTHORITY OF THE GOVERNOR TO MAKE GRANTS OF PUEBLO LANDS.

§ 81. There are several principles enunciated in the case of Brown against the City of San Francisco, 16 California Reports, 451, upon any of which the authority of the Governors of California to make grants of lands situate within the limits of Pueblos, may be sustained; and that they had such authority, that case decides expressly in point. Independently of any express authority being shown, such authority will be presumed. *United States vs. Perchman*, 7 Peter, 95. But the true source of that power seems to be in that enactment made by the Cortes of Spain on the 4th of January, A. D. 1813, to which I

have before referred, ante § 52, which is one of the laws that survived the Mexican Revolution, and is contained in the *Leyes Vigentes*, at page 56. It is printed in full in the *ADDENDA*, No. XI, at pages 20, etc. Section 1 of this decree provides that all the lands and property of the Pueblos, both in Spain and beyond the seas, except the *ejidos*, or commons, (vacant suburbs) should be reduced to private ownership; while Article 3d enacts that, in the distribution of the lands, preference should be given to the residents of the respective Pueblos—"Los vecinos de los Pueblos en cuyo termino existen." No other authority was needed.

A. D. 1835.

GALINDO'S ESPEDIENTE FOR THE LAGUNA DE LA MERCED.

§ 82. Several *espedientes* of grants of lands in the vicinity of San Francisco have been introduced in evidence, and they all illustrate the views which I have endeavored to enforce, and shed a strong light upon the progressive growth of the PUEBLO of San Francisco. The first in order of date is the "Espediente sobre el Parage nombrado 'Laguna de la Merced,' solicitado por José Antonio Galindo." "*Es-pediente* for the place called 'Laguna de la Merced,' (Lake of Mercy,) "petitioned for by José Antonio Galindo." This is the *espediente* No. 10, in Wm. Carey Jones' list, U. S. Senate Documents, 1850-1851, Vol. 3, Doc. 18, p. 95, etc., and set forth in Exhibit Hopkins, No. 12, duplicated in Exhibit Hopkins, R, and printed in the *ADDENDA*, No. XXV, at page 38. The *espediente* commences with a petition of Galindo to the Superior Political Chief (Governor) for the Rancho known as "La Laguna de Merced," dated at San Francisco, Aug. 15, 1835. The land is described in the petition as "vacant, lying near "San Francisco and Dolores." The Governor, in the marginal *informe*, dated Sept. 5, 1835, directs the "Ayuntamiento of San Francisco to report whether the interested party has the requisite qualifications. Whether the land * * * is the property of any "individual, Mission, corporation or Pueblo," (corporacion ó Pueblo,) and after they had made their report to "transmit the *espediente* to "the superintendent of the Mission, that he may report also:"—"al "Señor mayor domo de la misma Mission para que esponga lo que le "ocurra sobre el particular." The Ayuntamiento of San Francisco, by a report dated at *San Francisco*, Sept. 10th, 1835, (el Ayuntamiento de esta demarcacion,) state "that the land formerly belonged to the "Mission of San Francisco, from which it is one league distant, to the "west, that the land is almost worthless, which is all that *this corporacion* (esta corporacion) has to say in the matter." This report is signed by Francisco De Haro as President of the Ayuntamiento, and by Francisco Sanchez as Secretary. The *espediente* next contains the report of Guermecindo Flores, Superintendent of the Mission, dated at *Dolores*, Sept. 13th, 1835, which states "that the lands belong to this Community," (Comunidad,) [see ante § 17] that "it is at the "distance of a little more than a league from it and not occupied by "it, but, as the *ejidos* and *propios* which, it seems to me, will remain

“to this (place) when *it shall be* erected into a *Pueblo* are not yet designated. I do not know whether or not they will embrace this land, or whether or not they can be granted without injury to this *community*. (Pero con motivo que no estan aun señalados los ejidos ó propros que me parece quedaran á esta cuando se erija en Pueblo, etc).” The *espediente* was carried forward to its conclusion, and the land granted to the petitioner, being approximately the tracts marked “Merced” and De Haro on the accompanying map.

From this *espediente* several important facts appear :

FIRST: That although the term San Francisco was often applied to the Mission of Dolores, because it was the Mission “de los Dolores de San Francisco de Asis,” yet when official acts or proprietary rights were concerned, the two were kept perfectly distinct. Here, in the same petition, these two places are spoken of as “San Francisco and Dolores,” and while all documents relating to San Francisco are dated at that place, yet those relating to the Mission are dated at Dolores.

SECONDLY: That there was at that early date an “Ayuntamiento of San Francisco,” which had a President and Secretary, and which styled itself a “corporation.”

THIRDLY: That although there was at that early date a “PUEBLO of San Francisco,” (see §§ 72 to 77,) yet that this PUEBLO was not at the Mission of Dolores, for we find the mayor domo of that Mission expressing his hopes that the Mission would yet be erected into a PUEBLO: hopes which he may be pardoned for entertaining in the second year of the secularization of the Missions.

FOURTHLY: That the Mission is always spoken of as a *community*, (*comunidad*), the Missions and the Indian Pueblos always enjoying their property in that form. See ante § 17.

FIFTHLY; That the lands petitioned for being within or near the four leagues claimed for the PUEBLO of San Francisco the Ayuntamiento of that “corporation” were consulted on the subject. The Administrator of the Mission was consulted because that establishment had still an existing servitude in the lands: the Ayuntamiento of San Francisco was consulted because that PUEBLO might have the ultimate right to the lands themselves. The lands are spoken of by the Administrator of the Mission as “belonging to it,” a thing which was impossible. Ante, § 26. Doubtless they had formerly been in the possession of the Mission, though Flores reports that they were not now in its possession. The Ayuntamiento of San Francisco report that the lands are worthless, and so beneath their concern.

1835.

THE AYUNTAMIENTO OF THE PUEBLO OF SAN FRANCISCO HAD THE POWER TO GRANT SOLARES, OR BUILDING LOTS, AND SUERTES, OR LOTS FOR CULTIVATION.

§ 83. In 1835, after the establishment of the Ayuntamiento of the Pueblo of San Francisco, Don José Joaquin de Estudillo petitioned De Haro, the Judge of First Instance, at San Francisco, for a grant of

a building lot and of a suerte for cultivation. The Judge of First Instance referred the matter to Governor Figueroa, who, on August 6th, 1835, replied that the Ayuntamiento had not the power to grant such lands. See ADDENDA, No. XXIV, page 37. But this reply does not seem to have been either right or acceptable, for the matter was afterwards brought before the Territorial Deputation of Upper California, who, on the 22d of September, approved that the "Ayuntamiento of that PUEBLO" might make such grants, and Governor Castro in his order of October 27th, 1835, directs the Alcalde of San Francisco to make the decision of the Territorial Deputation known to "the inhabitants of that PUEBLO." See ADDENDA, No. XXVI, page 42. From this document last cited, three things are evident:

FIRST: That in September, 1835, the Territorial Legislature of Upper California were of opinion that there was a "PUEBLO of San Francisco," and an "AYUNTAMIENTO OF THAT PUEBLO," which, consequently, was not the Ayuntamiento originally established for the PARTIDO.

SECONDLY: That in October, 1835, Governor Castro was of the same opinion.

THIRDLY: That in 1835, the "AYUNTAMIENTO OF THE PUEBLO OF SAN FRANCISCO" HAD THE POWER TO GRANT LANDS FOR BUILDING LOTS.

THE LAST PROPOSITION ABOVE STATED IS DECISIVE OF THE QUESTION.

§ 84. For, if the Ayuntamiento of the Pueblo of San Francisco had the power to grant lands, IT COULD BE ONLY BECAUSE SUCH LANDS BELONGED TO THAT PUEBLO.

I have before shown that the law passed by the Cortes of Spain, on January 4th, 1813, directing all the lands and other property of the PUEBLOS to be sold or granted in private ownership, was held by the Mexican jurisconsults to have survived the Mexican Revolution of 1821. See § 52 of this argument. Also, *Leyes Vigentes*, Preface, pages i to iv. Also, ADDENDA, No. XI, page 20. But in the recent case of the United States *vs.* Vallejo, 1 Black, St. S. S. C. Reports, page 541, decided in 1862, the Supreme Court of the United States decided that this enactment by the Cortes of Spain, in 1813, so far forth as the Crown Lands [or *public* lands], was repealed by the Colonization Laws of Mexico, enacted in 1824 and 1828. See § 81 of this argument. See these laws of Colonization, ADDENDA, No. XII, page 23, Id. No. XIV, page 25. But as these laws of Colonization thus repealed all former laws relating to public lands; and as by their terms these public lands could be granted only by the Governor, who had no power to *delegate* this authority, Law of 1824, ADDENDA, No. XIV, page 25, §§ 1, 2, 3, 4; and as lands belonging to private persons, corporations or PUEBLOS were excepted from the provisions of these Colonization laws, Law of 1824, ADDENDA, No. XII, page 23, § 2; and as the Ayuntamiento of San Francisco had the power to grant these

lands, see preceding § 83; it therefore follows: that the Pueblo of San Francisco, not being a private person, but still owning lands not subject to the Colonization Laws, and which it had the power to grant, was either "a corporation or a PUEBLO," § 2 above: in other words, was an organized PUEBLO, and, as such, was a CORPORATION, or, at least, a *quasi* CORPORATION. The established fact that the Ayuntamiento of the Pueblo of San Francisco could thus grant lands, becomes decisive of the ownership of lands by that Pueblo. And this also shows that whereas the lands belonging to Pueblos were excepted from the operation of the Colonization Law of 1824, see ADDENDA, No. XII, page 23, § 2, that law survived as to the lands owned by such Pueblos, and consequently the source of the power of Ayuntamientos of Pueblos to grant such lands is to be found in that act of the Cortes of Jan. 4, 1813, which expressly gives it to them. See the act of the Cortes, ADDENDA, No. XI, page 22, §§ 15 to 17 inclusive. So that Governor Castro and the Departmental Legislature proved themselves better lawyers in this point than Governor Figueroa. See ante § 83.

§ 85. It thus appears that the Ayuntamiento of San Francisco had the power to grant *solares* to the *vecinos* of the *Pueblo*. By what right? Not from the colonization law, for this gave no such right to towns; nor was any power of granting lands under that law capable of being delegated by the Governor or Departmental Junta to an Ayuntamiento, and yet the power was by the Governor and Departmental Junta declared to exist in the Ayuntamientos of the Pueblos, and was exercised by them for years without question, in face of the colonization laws of 1828. The right, then, was superior to the colonization laws, and anterior to them; founded on the laws of Old Spain, and therefore expressly excepted from the operation of the colonization laws. In the decree of August 18, 1824, respecting colonization, 1 Rockwell, 451, ADDENDA, No. XII, page 23, Sec. 2, it is declared: "The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can, therefore, be colonized." The *Pueblos*, therefore, by their constituted agents, the Ayuntamientos, had an original power to make grants of these lands; and the validity of an execution of this power was not in any degree impaired by the fact that the Governor, representing the Sovereign as the supreme visitor of all corporations, could also make a beneficial disposition of such of these lands as had not been granted by the *Pueblo*, by conceding them to *vecinos* of the *Pueblo*.

1835-1836.

SURVEY OF THE BURI-BURI RANCHO.

§ 86. In 1835 a grant was made to Don José Sanchez, of the Rancho Buri-Buri, see Jones's list, No. 20, and juridical possession was to be given to him. See the accompanying map: "BURI-BURI." This matter was intrusted to De Haro, who was Judge of First Instance in San Francisco. The Pueblo of San Francisco was thus represented in the person of its first officer. He therefore gave notice

to the Mayordomo of the Mission of Dolores, to appoint his surveyor, and appear in court for the purpose of making the survey and finishing the proceeding. See ADDENDA, No. XXVII, page 43. The survey appears to have been had, and to have been wrong, as interfering with the private rights of certain Indians to whom tracts of land had been previously granted in private ownership; for which reason the then Governor, Gutierrez, ordered a new survey. See ADDENDA, No. XXXII. It has been attempted from these proceedings to draw the conclusion that the Mayordomo of the Mission of Dolores [de San Francisco] having been summoned to take part in these proceedings as the only coterminous neighbor (unico colindante) of the grantee of the Rancho of Buri-Buri, therefore the Pueblo of San Francisco could have no ownership or interest in the lands. But in reply it is to be remarked:

First. That by the previous laws the Catholic Missions in California, although not recognized as the owners of lands, were recognized as possessing an easement or servitude in the lands actually occupied by them, until that easement or servitude should be terminated by some legal official act. Ante § 26.

SECONDLY: That by § 17 of the Regulations of colonization of 1828, the lands occupied by the Missions could not be granted in colonization until some proceeding in the nature of an inquest of office had been had in regard to them. See the Law, ADDENDA, No. XIV, page 26, § 17. How, then, *could* lands adjoining a mission be granted without summoning the officer representing the Mission as the only coterminous neighbor in possession? In our Anglo-American law, when a railroad or other corporation wishes to condemn lands, is a tenant in possession of the lands to be regarded at all, or is he entitled to be summoned and heard? But in the case in hand we see that the Pueblo of San Francisco was represented by the very officer who was to superintend the proceedings, and that the Mayordomo of the Mission, representing only an easement or servitude, was duly summoned.

THIRDLY: That on consulting the maps it is doubtful whether any of the lands in question were within the four leagues of the PUEBLO, but its authorities were notified, as the lands *might* be within those four leagues.

A. D. 1836.

THE AYUNTAMIENTO OF THE PUEBLO OF SAN FRANCISCO GRANT
BUILDING LOTS TO RICHARDSON AND OTHERS.

§ 87. The Territorial Legislature having decided that the Ayuntamiento of the Pueblo of San Francisco had the power to make grants of building lots, (see ante, § 83, ADDENDA, No. XXVI, page 43,) that Ayuntamiento immediately began to exercise this right. Among other grants was one made to William Richardson, bearing date June 1st, 1836, which is printed in full in the ADDENDA, No. XXIV. Other grants of the same kind are in evidence in the case, but this will serve as a sufficient specimen of the whole. From this

one it appears not only that the Ayuntamiento exercised this right of granting lands, but that it considered and styled itself a "corporation."

DE HARO'S ESPEDIENTE FOR THE RANCHO SAN PEDRO.

§ 88. The next *espediente* in order of date, of a grant of sitios near the Pueblo lands, is that of Francisco De Haro for the Rancho San Pedro, (see "SAN PEDRO" on the accompanying map of the petition,) being dated at the port of San Francisco, Nov. 22d, 1835, and the grant made on March 14, 1836. Exhibit Hopkins, S. ADDENDA, No. XXXI, page 48. De Haro states that the land has formerly been occupied "by the Indians of the Pueblo of Dolores," but is not now occupied by them. Perhaps he thought that the secularization of the Mission had converted it at once into an Indian Pueblo. But the Governor did not think so, for in his informe dated Feb. 26, 1836, he directs "the Administrator of the Ex-Mission of San Francisco de Asis to report upon the petition," and Flores, the Administrator, reporting upon it on March 9th, 1836, styles it the Ex-Mission, (esta Ex-Mision,) and says that the lands are more than four leagues distant from it; but he states that, in his opinion, the tract "should remain to this 'COMMUNITY,' when it *shall be erected* into a Pueblo; " (Pero con motivo de no estar señalados les ejidos ó propios que me *parece deben quedar à este cuando se erije en Pueblo.*") In fact the Mexican Government, by a decree of November 7th, 1835, had suspended for the time being the further execution of the secularization laws, so that no Indian Pueblos could for the present be formed, and doubtless both the Governor and Administrator knew that fact. See the decree, 1 Rockwell, 462. Halleck's Report, Appendix, No. 16. Jones' Rep., 63. ADDENDA, No. XXVIII, page 48. From this last expediente also it is apparent:

FIRST: That although there was a PUEBLO OF SAN FRANCISCO, with an Ayuntamiento, Alcaldes and Rejidores, (§§ 72 to 77,) there was no PUEBLO at the Mission of Dolores, which still lived only in the expectation of being erected into an *Indian Pueblo* at some future time.

SECONDLY: That this Indian *Pueblo* HOPED to have *ejidos* assigned to it at a place called San Pedro, which was four leagues from the Mission of Dolores, and consequently nearly five leagues from the PUEBLO of San Francisco, and therefore far beyond the lands claimed by it.

THIRDLY: That the reason why the municipal authorities of the Pueblo of San Francisco were not consulted upon this *espediente* was, because the lands were far beyond the limits of its own property, that is to say, beyond the limits of the four square leagues belonging to the PUEBLO of San Francisco.

FOURTHLY. That this *espediente* fully justifies the definition I have given of the word PUEBLO in § 9 of this argument: that is, in a general sense, a hamlet, a village or any other settlement; but in an exalted and specific sense, an organized town,—a body politic and cor-

porate. Here, in this same *expediente* we find the petitioner styling the Mission of Dolores the PUEBLO of Dolores, and the administrator of the Mission declining to recommend the prayer of the petition, because the Indians who then lived in COMMUNITY, (see § 17 of this argument,) hoped thereafter to become a Pueblo, or as the Spanish has it "to be erected into a Pueblo." How, then, is this to be explained? Dolores a PUEBLO, and still expecting to be *erected into a PUEBLO*? The explanation is simple: the Mission of Dolores was a PUEBLO in the generic sense of hamlet, village or settlement: it hoped to be *erected into a PUEBLO* an *organized town*, or PUEBLO politic and corporate. See § 9 of this argument. That the Mission of Dolores had not been erected into an organized PUEBLO, politic and corporate as late as April 8th, 1844, will appear hereafter in § 114 of this argument; that it was *never* erected into such a PUEBLO will appear in § 118 of this argument.

A. D. 1838.

SUSPENSION OF THE AYUNTAMIENTO OF SAN FRANCISCO: JUSTICES OF THE PEACE SUCCEED THE AYUNTAMIENTO.

§ 89. How long did this Ayuntamiento continue? We find evidence of its existence down to the year 1838, as above referred to, in Exhibit No. 9, annexed to the deposition of M. G. Vallejo. We find in Exhibit No. 1, and duplicated M, annexed to the deposition of R. C. Hopkins, under date of December, 1835, and January, 1836, mention made of Joaquin Castro, who was then *Regidor*, and also, in January and July, 1836, of Gregorio Briones and José de la Cruz Sanchez, who were then *Regidores*; and in December, 1837, of the then *Sindico*, Blas Angelino. But it is probable that the Ayuntamiento elected in January, 1838, ut supra, was the last Ayuntamiento of the Pueblo. We have already adverted to the fact stated in the Decreto de 23 de Mayo de 1812—Leyes Vigentes, p. 28, Art. II, ante § 47, ADDENDA, No. X, page 19, Art. II—that Pueblos might lose their Ayuntamientos by diminution of their population. We find in the Message of the Governor to the Departmental Junta, delivered on February 16th, 1840, the following passage: "There is no Ayuntamiento whatever "in the Department, for there being no *competent number of inhabitants* in any of the towns, as provided by the Constitution, *those then existing had to be dissolved*; and only in the capital there ought to "be one of such bodies." Document D.P.L. in the case. See ADDENDA, No. L, page 70, title Ayuntamientos. It is thus evident that between the election of the Ayuntamiento of the Pueblo in January, 1838, and February, 1840, that body had ceased to exist, because its electoral basis of population required a numerical figure higher than that represented by the actual population.

WHY THE AYUNTAMIENTO CEASED TO EXIST.

§ 90. The reason of this failure of the requisite basis of population was two fold. For by the Mexican Constitution of 1836, the

population requisite to sustain an Ayuntamiento was raised to *four thousand* in sea ports, and to *eight thousand* in other Pueblos, and in those Pueblos not thus qualified in point of population, Justices of the Peace were to be appointed with the powers of Ayuntamientos. Sixth Constitutional Law of 1836. ADDENDA, No. LXIX, page 100, Art. 22. De Mofras states, Vol. 1, page 222, that official despatches were often a year in the passage between California and Mexico. Governor Alvarado in a proclamation dated January 17th, 1839, states that he has just received in the last mail a Law of Elections passed on November 30th, 1836 from the Supreme Government to be put in force in California. Exhibit No. 10, to testimony of Vallejo. ADDENDA, No. XXXVIII, page 57. Meanwhile the primary and secondary elections for the Ayuntamiento of 1838 had taken place. Exhibits 8 and 9 to Vallejo's deposition. ADDENDA, No. XXV, page 53. This was the last Ayuntamiento of the PUEBLO under the Mexican dominion.

SCATTERING OF THE POPULATION.

§ 91. It is easy to indicate the causes of an actual diminution of population in the Pueblos. The first law for the secularization of the Missions was passed in 1833. These laws, whose ostensible purpose was to covert the Missionary establishments into Indian Pueblos, their churches into parish churches, and to elevate the christianized Indians to the rank of citizens, were, after all, executed in such a manner that the so-called secularization of the Missions resulted only in their plunder and complete ruin, and in the demoralization and dispersion of the christianized Indians. So complete was this ruin that the number of Mission Indians which was 30,650 in 1834, had diminished to 4,450 in 1842; and the number of horses, mules, cattle and sheep which was 808,000 in 1834, had sunk to 63,020 in 1842. See the Statistical Tables, 1 De Mofras, 320; and ADDENDA, No. LXVII, page 97. Only a single grant of land was made under the colonization laws before the year 1833, but with that new era of secularization and plunder commenced the granting to private persons, under the colonization laws, of lands which were afterwards stocked with horses, cattle and sheep from the spoils of the Missions. During the period above indicated from 1833 to 1842, inclusive, more than three hundred grants were made in colonization, as appears from the *expedientes* preserved in the archives. See the list in Wm. Carey Jones's Report. The grantees of these lands became for the greater part rancheros upon the domains thus conceded to them, and this immense drain upon the population of the *Pueblos*, in a department whose whole white population did not exceed 5,000 as late as the year 1842 (1 De Mofras, 318, 319,) must have greatly weakened all the PUEBLOS, while it certainly nearly depopulated Branciforte, and perhaps others. The process of the "scattering of the inhabitants from the fact that each one has his "agricultural and stock interests at a great distance from this place," (San Francisco) is described in so many words by De Haro, Alcalde in 1839 in Exhibit Hopkins K, ADDENDA, No. XLI, page 61.

THE PUEBLO OF SAN FRANCISCO STILL EXISTED.

§ 92. But the Pueblo did not therefore cease to be a PUEBLO—did not lose its political or quasi-corporate character. The only result was that under a law of March 20, 1837, which is recited in the proclamation of Micheltorena of November 14th, 1843, Exhibit 11 to Vallejo's Deposition, ADDENDA, No. LVII, page 84, the government of the PUEBLO fell into the hands of the Justices of the Peace, who formed a Municipal Junta for that purpose. See ante § 90 and Constitutional Law of Mexico of 1836. ADDENDA, No. LXIX, page 100, Arts. 22, 29, etc. But the Ayuntamiento itself was not abolished. It was only suspended. The moment that the population should reach the requisite number of 4,000, the Pueblo would again be entitled to its Ayuntamiento. Const. 1836. ADDENDA, No. LXIX, Art. 22, page 100. Accordingly we shall find that when the Pueblo of San Francisco, after the American conquest of California, attained the requisite population, it again elected its Ayuntamiento, not under any provision of the laws of the conquerors, but under these very provisions in the Mexican Constitution of 1836, under which the Ayuntamiento of the Pueblo was suspended in 1839. See ADDENDA, No. LXXV, page 108, and No. LXXVII, page 111.

A. D. 1839. JANUARY AND MARCH.

ALVARADO'S REGULATIONS RESPECTING MISSIONS.

§ 93. In January, 1839, Governor Alvarado promulgated certain regulations respecting Missions. See ADDENDA, No. XXXVII, page 55. This document is of importance only because it shows that hitherto the secularization of the Missions had not taken effect, but had only been attempted, and that the Missions, including Dolores, had not yet been converted into Indian Pueblos, but that the Indians were still living in them in COMMUNITY. See ante § 17. These regulations were followed by others promulgated in March of the same year, which have the same, but no further importance in the case. See ADDENDA, No. XXXIX, page 57. It will be observed that all these regulations contemplate the secularization of the Missions as a thing still to be accomplished, whereas I have shown that the PUEBLO OF SAN FRANCISCO was already in existence. Ante §§ 74 to 78. The effect of these regulations was to complete the ruin of the Missions.

1839. FEBRUARY.

NO JAIL IN SAN FRANCISCO.

§ 94. The causes which had weakened the Pueblo of San Francisco, as before related, had been so effective that in February, 1839, José Antonio Galindo, who, in his expediente of 1835, for the Laguna de Merced, see ADDENDA, No. XXV, page 39, is described by Justice De Haro as "an honest man," seems now to have lapsed into the position of a criminal, and the same Justice De Haro reports to the Gov-

error that the population having become rancheros, there are few remaining at San Francisco to guard him, and as there is no jail, the justice asks that Galindo be sent to San José for security. See ADDENDA, No. XLI, page 61. This document is curious, but not important. It illustrates the primitive simplicity of the golden age in Upper California, in which the cause came always before the effect, and no necessity was found for jails, until criminals existed to be restrained of their liberty. Happy was San Francisco, to whom the "fact" criminal had not yet suggested the word "jail:" less happy, but more wise San José, whose experience had already advanced to the word and fact of "prison."

A. D. 1839.

CONSTITUTIONAL ELECTIONS FOR 1839-1840.

§ 95. By a law promulgated November 30th, 1836, under the Mexican Constitution of that year, definite rules were established for the election of deputies to the General Congress, and of members to the Juntas of the Departments, [or Departmental Legislatures.] The terms of this law are of no importance to the present discussion; the law provided for a Primary election of Electors, and a Secondary election, in which the Electors were to choose the Deputies to Congress and the members of the Departmental Junta. See the law at large: "Bases y Leyes Constitucionales de la Republica Mejicana, decretadas por el Congreso General de la Nacion en el año de 1836. Mejico, "imprensa del Aguila, dirigida por José Ximeno, 1837," page 106, etc. Elections were ordered under this law in California by Governor Alvarado, by a proclamation dated January 17, 1839. See this proclamation in the ADDENDA, No. XXXVIII, page 57.

From this document it appears:

FIRST: That this law, which had been in force more than two years, had been received by the Governor of California by the "last mail" only.

SECONDLY: That San Francisco is by it classed as a PUEBLO with San José, Los Angeles, the Villa of Branciforte etc., which were undeniably fully organized Pueblos, bodies politic and corporate.

THIRDLY: That the Port of San Francisco was recognized as the capital [cabecera] of the Northern Partido.

1839. MAY 20.

GUERRERO, JUSTICE OF THE PEACE, PROMULGATES CERTAIN ORDINANCES FOR THE GOVERNMENT OF THE PUEBLO OF SAN FRANCISCO.

§ 96. On May 20th, 1839, Francisco Guerrero, "Justice of the Peace of this section of San Francisco," publishes certain municipal regulations for the "Pueblo under his charge." See ADDENDA, No. XLIII, page 62. The "section" was doubtless the district comprised within the limits to which the jurisdiction of the Judge of the Pueblo extended, otherwise called the "termino Jurisdiccional," ante § 9,

ADDENDA, No. XXXIII, page 51. Guerrero promulgates these ordinances "in conformity with Article 29th of the law of November 30th, 1836." This is the law above cited, § 90, contained in the ADDENDA, No. LXIX, page 100, *adopted* Dec. 29th, 1836, and *published December* 30, 1836, wrongly cited by Guerrero as *November*, and the article cited by him is that which gave him as Justice of the Peace, the powers of an Ayuntamiento of the Pueblo in respect to police. The ordinances are declared to be for the "order and good management of the Pueblo." Preamble. The Pueblo had its demarcation. § 7th. The proclamation was given in "the Pueblo of San Francisco." And yet it is contended that there was no organized political or *quasi* corporate Pueblo of San Francisco!

A. D. 1839.

ESPEDIENTE OF LEESE FOR THE RANCHO LA VISITACION.

§ 97. The *espediente* of Jacob P. Leese for the Rancho La Visitacion, Exhibit V to deposition of R. C. Hopkins, began in November, 1839, and concluded in July, 1841, is of little value, except as showing how completely the Mission of San Francisco had passed out of existence as a living organization. It is mentioned only once in the *espediente*, and then only as a locality, while the Justice of the Peace of the Port of San Francisco is the officer who executes the *informe*. These lands are those marked in the lower right hand portion of the accompanying map as "LA VISITACION." See ADDENDA, No. XLVII, page 67.

1839. NOVEMBER 3.

BUILDING LOTS ARE GRANTED TO SETTLERS AT THE ESTABLISHMENT OF THE MISSION OF DOLORES.

§ 98. On April 20th, 1839, De Haro, Justice of the Peace, represents to the Governor that a house-lot [solar] had been petitioned for by one Gomez. See the document, ADDENDA, No. XLII, page 61. He dates from the Establishment of Dolores; while he calls it an Ex-Mission, he pleads that it has "a character of Pueblo" because it had been named the head of the Partido. From this document it is evident that the Indian village at Dolores was not *that* PUEBLO OF SAN FRANCISCO which we have seen had already been in existence for four years. Who ever heard of a PUEBLO, recognized and existing with its Ayuntamiento, pleading for a *character* of Pueblo? Who ever dreamed of a PUEBLO existing for four years in which not a single house-lot had ever been granted? That building lots were granted in Dolores, appears from the ADDENDA, No. LXXVIII, page 113.

§ 99. This communication seems, however, to have been without effect, for on July 15th, 1839, Guerrero, Justice of the Peace of San Francisco, writes to the Prefect, Castro, stating that some residents of the MUNICIPALITY of San Francisco, wished to settle themselves in the ESTABLISHMENT of Dolores, and asked to have house-lots granted to them. Guerrero was a native of Tepic, a laborer by occupation, and

in 1839, twenty-eight years of age. ADDENDA, No. LV, page 79. His official documents are unique, full of new idioms, newly conceived words, and replete with involved sentences and confused ideas. In the above cited communication to the Prefect, see ADDENDA, No. XLIV, page 63, Guerrero, discharging the office of Justice of the Peace at San Francisco, and going home at night to his house at Dolores, 1 De Mofrás, 426, 427, where he wrote his communication as it seems, knowing that he was writing in *behalf* of the PUEBLO of San Francisco, and still being conscious that he was *at* the Mission, apparently confounds "the MUNICIPALITY of San Francisco" with "the ESTABLISHMENT of Dolores." But the Prefect, Castro, forwarding this request to the Governor, under date of Nov. 25, 1839, while he adopts the plan of Guerrero's communication, carefully removes all confusion and obscurity. See the Prefect's letter, ADDENDA, No. XLVIII, page 68. "The residents of the MUNICIPALITY of San Francisco have made various verbal representations through the "Justice of the Peace, to the end that through this Prefectura, they "may receive the necessary license to establish themselves in the "ESTABLISHMENT of Dolores, where they wish to form a settlement." * * * "All are now dispersed." The Governor grants the Justice the power to concede building-lots at the Establishment of Dolores, under several conditions, one of which is that they shall not "disturb the Indians so long as the COMMUNITY exists." *Ib.*

From these documents it is evident :

FIRST: That the MUNICIPALITY of San Francisco was perfectly distinct from the Establishment of Dolores.

SECONDLY: That although house-lots had been granted for years in the PUEBLO of San Francisco, ante § 83, ADDENDA, No. XXVI, page 42; XXXIV, page 53; yet that down to November 3d, 1839, no building-lots had been granted at the ESTABLISHMENT of Dolores.

THIRDLY: That most of the neophytes of the Mission were dispersed, for the phrase "all are now dispersed," can be applied only to them, and not to the *residents* of San Francisco, who wished to establish themselves at the Ex-Mission.

FOURTHLY: That Dolores had not yet been converted into an INDIAN PUEBLO, for the few Indians there were living "in community," and it was intended to transfer them to San Mateo. See COMUNIDAD, ante § 17. ADDENDA, No. XLVIII, page 69, Governor's order, § 2.

A. D. 1839, Etc.

OTHER GRANTS OF PUEBLO LANDS.

§ 100. Various other grants of lands within the PUEBLO of San Francisco appear in the testimony, made by Justices of the Peace and others.* These grants I regard as of but little importance in the case. We have already established, ante § 83, that the lands in the imme-

* A list of these grants, supposed to be perfect, will be found in the ADDENDA, No. LXXVIII, pages 113 and 114, but whether complete or not matters little to the principle of our argument. There were also Alcaldes in San Francisco for a time under a law of March 20th, 1837, but our present purpose requires no further notice of them. Justices were generally *ex officio* Alcaldes. See the same law last cited.

diat vicinity of San Francisco were subject to be granted by the AYUNTAMIENTO OF THAT PUEBLO. Consequently they were exempted from the Colonization laws of 1824—1828; consequently they BELONGED TO THE PUEBLO OF SAN FRANCISCO. Ante §§ 83, 84. But we have also seen that when the AYUNTAMIENTO of San Francisco ceased to exist, the PUEBLO did not lose its corporate character, which still survived under JUSTICES OF THE PEACE who discharged the functions of the Ayuntamiento. Ante § 92. We also know, as matter of well adjudicated law, that the Legislature of a country has visitatorial and legislative power, which can always inspect, direct, control and dispose of the property of Municipal Corporations, so far as that property is derived from the sovereign and not bound by *private* contracts or conditions of dedication or endowment. City of New Orleans vs. The United States, 10 Peters, 662, 736, 737; 4 Wheat. 660; 20 Howard, S. C. Rep. U. S. 534; Hart vs. Burnett, 15 Cal. 612. Therefore, having shown these to be town lands, (Bienes Concejiles, ante § 13,) subject to grant by the Ayuntamiento of San Francisco, (ante § 83,) and the Justices of the Peace not *supplanting* the PUEBLO, but merely *succeeding* the Ayuntamiento as the TOWN COUNCIL, ante § 89; when we find Justices of the Peace, Governors, or other officers granting these PUEBLO lands, ante §§ 92, 100, we shall conclude that such grants are made by them either as officers of the PUEBLO or as acting under that superior authority which as inspector, visitor, or legislature can dispose of *all* the property of municipal corporations, with the exceptions above stated.

A. D. 1840. MAY 20.

LIST OF FOREIGNERS IN SAN FRANCISCO IN 1840.

§ 101. A curious document has been introduced in evidence in this case, being a List of Foreigners established in the "Sixth Section of San Francisco de Asis in 1840." See ADDENDA, No. LI, page 72. This "Sixth Section" was undoubtedly the Judicial District included within the Jurisdiction of the Judges of the Pueblo. Ante §§ 9, 16, ADDENDA, No. XXXIII, page 51. The value of this document consists in this, that it shows that San Francisquito creek at that time divided the judicial jurisdiction of the Pueblo of San Francisco from that of San José, (Pueblo of Alvarado,) 1 De Mofras, 415, and that Saucelito on the north-west of the straits and Bay was not within the jurisdiction of San Francisco. The fact that all the region north-west of the straits and Bay, and west of the Sacramento river, including the Pueblo of Sonoma, were without the jurisdiction of San Francisco, appears from a document produced in evidence in the case in connection with the testimony of R. C. Hopkins, and marked "Exhibit Hopkins No. 3." It appears from the first part of this *espediente*, dated January 1st, 1836, that the Ayuntamiento of San Francisco had appointed an auxiliary Alcalde "for the other side of the Bay of San Francisco, by which a dispute has arisen in relation to jurisdiction between the Alcalde of said Pueblo and the Military Commandante of the Frontier of the North," meaning that side lying west of the Bay

and of the Sacramento river. The matter was referred to the Departmental Junta [Legislature] who decided on July 7th, 1836, "that the Illustrious Ayuntamiento of San Francisco should not extend its authority as far as the FRONTIER, as was done by the appointment of an auxiliary Alcalde; * * * * the appointment of an auxiliary Alcalde of the FRONTIER, made by the Ayuntamiento of San Francisco, is rejected as being beyond the limits of its jurisdiction." This document is very long, and not of sufficient importance to be printed, but is of some value as defining the territorial limits of the judicial jurisdiction of the Pueblo of San Francisco,—its "termino jurisdiccional." See ADDENDA, No. XXXIII, page 51, ¶ 3d from the foot.

A. D. 1840.

BERNAL'S ESPEDIENTE FOR THE RANCHO LAS SALINAS.

§ 102. The *espediente* promoted by José Cornelio Bernal for the place called Las Salinas, commenced in 1835 and concluded in 1840, is the *espediente* numbered 2 and 177 in Jones's List, and duplicated in Exhibits No. 13 and T, to the testimony of R. C. Hopkins. ADDENDA, No. XLVI, page 64. See the place marked BERNAL RANCHO on the accompanying map. The first document in this *espediente*, whose papers are deranged in the order of date, is the decision of Governor Figueroa, misplaced from its order of date, but dated at Monterey, January 2d, 1835, which refers to *preceding reports, which are not contained in the ESPEDIENTE*, and which must themselves have been based upon a petition and *informé* which are also lost. The Governor decrees as follows: "As from *the preceding reports* it appears that the "tract of land petitioned for by José Cornelio Bernal is the property "of the PUEBLO of San Francisco de Asis, to which it serves as *ejidos*, "for the cattle of the *Public*, (es de la propiedad del pueblo de San "Francisco de Asis a quien sirve de ejidos para las ganados del comun,) "[not comunidad, as translated, see § 17, ante,] his application is not "admissible, as it cannot be granted in full property; but the party "may retain his cattle there in the same way as the other citizens do, "(lo mismo como los demas ciudadanos,) or apply for some other place "which is not appropriated."

Afterwards, on October 3d, 1839, as appears from the same *espediente*, Bernal again petitions for the same Rancho, and the matter is referred to the "Justice of the Peace of *San Francisco*," who is to transmit the *espediente* with his report to the "Administrator of the *Establishment of Dolores*." The Justice of the Peace, dating from the Justice Court of *San Francisco*, October 8, 1839," reports in favor of granting the concession, adding that "the said Bernal is recommendable for the "services which he has rendered and is rendering in this *municipality*," "(en esta municipalidad.)" The administrador of the Ex-Mission, dating from "*Dolores*" on the same day, reports that "this establishment is not in need of the tract of land petitioned for, because the "most of the cattle belonging to the ESTABLISHMENT are on the place "called the Pilarcitos on the coast." This place "*Las Pilarcitos*" on the coast, is the same place otherwise called "*San Pedro*," where the

Mission of Dolores always pastured its cattle. See § 88, of this argument. From this *expediente* the following facts appear:

FIRST: That there was a PUEBLO called San Francisco de Asis, which was composed of citizens who possessed cattle, and that for the cattle of the public of said PUEBLO the lands called "Las Salinas" were used and appropriated. We submit that there is no instance, before or after the total ruin of the Missions, where a Mission Indian was ever called citizen (*ciudadano*.) He was always called Indian, Native or Neophyte, (*Indio, Indigena, ó Neofito*.) Although his ultimate equality in the sight of the law was declared, he was always a pupil, and even the laws of secularization contemplated that he should ever remain such.

SECONDLY: That the cattle of the neophyte Indians did not occupy the same *ejidos* as those of the citizens of the Pueblo of San Francisco, either in 1835 or in 1839.

THIRDLY: That there was no confusion between the PUEBLO of San Francisco and the ESTABLISHMENT of Dolores; but each stands out distinctly in its own individuality whenever there is a question respecting the possible rights of either, the Superintendent of the Establishment of Dolores representing every existing interest of the neophytes, and the Municipal Authorities of San Francisco those of the PUEBLO.

A. D. 1840. FEBRUARY 16.

GOVERNOR'S MESSAGE RESPECTING AYUNTAMIENTOS, PROPIOS, EJIDOS, JUSTICES, ETC.

§ 103. On February 16th, 1840, the Governor of Upper California, at the opening of the Departmental Assembly, delivered his Annual Message, extracts from which will be found in the ADDENDA, No. L, page 70, etc. From this it appears that no PUEBLO, except Monterey, had ever had its *Propios* or *Ejidos* measured and set apart; that all the Pueblos had lost their Ayuntamientos because the basis of population had been so greatly increased by the Constitution, (see ante §§ 89, 90); and that Justices of the Peace had succeeded the Ayuntamientos in the politico-economical government of the Pueblos, also exercising the judicial functions of Judges of First Instance. These facts have all been stated before in this argument. The inexactness of some translator appears in this translation, where "propios y ejidos" is translated "common and landed property," English terms which would include the *dehesas*, or large pastures; and "fundo legal" is rendered simply "legal property," instead of "propios" and the like landed property from which municipal funds were raised by way of rent.

A. D. 1841. AUGUST 8.

MIRAMONTES, VICE-JUSTICE OF THE PEACE AT DOLORES, RESIGNS HIS OFFICE.

§ 104. On August 8th, 1841, Vicente Miramontes, Vice-Justice of the Peace "in the Pueblo of Dolores, in the jurisdiction of the

Port of San Francisco," addresses the Prefect, and pleads ignorance and poverty as reasons why he should not be reappointed. ADDENDA, No. LIII, page 74. This document is dated at the Pueblo of Dolores. This word *Pueblo* is here evidently used in the sense of "village or hamlet," as I have before shown. Ante, § 9. That there never was an organized politic or corporate Pueblo there is clearly apparent from all the documents in evidence. See §§ 88, 102, 114.

A. D. 1842. JANUARY.

THE PUEBLO OF SAN FRANCISCO HAD A COMPLETE FISCAL ORGANIZATION—FULLER, SYNDIC.

§ 105. On July 20th, 1839, Guerrero, Justice of the Peace, asked the Prefect to appoint a Sindico Procurador for San Francisco, and nominated Juan Fuller for the office. ADDENDA, No. XLV, page 63. It will be observed that although Sindico Procuradores were officers of Ayuntamientos, (ante, §§ 12, 47, ADDENDA, No. X, page 19, § 4,) yet the Constitution of 1836 did not supply such officers to the Pueblos which were not entitled to have Ayuntamientos. See ADDENDA, No. LXIX, page 100. Fuller seems, however, to have been appointed Syndic, for in the ADDENDA, No. LIV, page 75, etc., we find the "Account made out by Don Juan Fuller as Sindico of the Municipality of San Francisco," extending from August, 1839, to January 10th, 1842. This document is curious and important, showing the receipt of moneys from all the ordinary sources of municipal revenue, and from the sale of solares, in addition. The office of Syndic continued to exist down to the last year of the Mexican dominion, for on February 7th, 1846, we find Francisco Guerrero, Sub-Prefect, dating from Yerba Buena, invoking "the Judge of First Instance of the "PUEBLO of San Francisco to follow Don Pedro Sherreback, the "defaulting Syndic, to attach his property, imprison him, or send him "to the public works, in case he refuses to present his accounts, produce "his vouchers, and make payment." ADDENDA, No. LXV, page 95.

A. D. 1842. OCTOBER 31.

CENSUS OF SAN FRANCISCO IN 1842.

§ 106. We have in the ADDENDA, No. LV, page 78, etc., a full census of all the inhabitants in the *jurisdiction* of San Francisco, for the year 1842. This word "jurisdiction," of course, signifies the "judicial jurisdiction" extending far beyond the Pueblo, as before noticed, ante § 9, ¶ 2d. We here find that all the inhabitants, of both sexes, men, women and children, amounted to only 196. We can recognize at least 18 families of married persons with children. The whole number of Indians in the population was 37: all of these were *neophytes*, or Mission Indians, except one boy, Carlos, who seems to have been an unconverted Indian, from Sacramento; and all of these Indians, both neophyte and pagan, were domestic servants, except three, who are classed as "laborers." How well this justifies De Mofras, who estimated the number of neophytes at Dolores in 1842 at 50, (ADD-

ENDA, No. LXVII, page 97); and how completely fades away the phantasm of a political and *quasi*-corporate Indian Pueblo, composed of three Indian laborers and thirty-four Indian domestics! Where are the *Indian Alcaldes* and *Indian Councilmen* spoken of in § 17 of this argument?

CONDITION OF THE MISSIONS AT THAT TIME.

§ 107. But already, even as early as the year 1842, before the termination of De Mofras' visit to California, the pillage and ruin of the Missions was almost entirely completed. That accurate and intelligent observer has given the fullest details of the results to which eight years of civil "administration" had brought the Missions of California. As a general fact, the cattle had been given away, stolen and slaughtered; the Mission buildings appropriated or suffered to fall into ruin; the Indians dispersed; the vineyards and orchards suffered to grow wild; and in some cases the vines were uprooted and taken away. Of the twenty-one Missions, the following were in that year (1842) reported to be in a fair condition, having some valuable live stock remaining, Indians still under instruction and performing labor, and the Mission establishment in operation: Santa Barbara, 1 De Mofras, 371; San Gabriel, *Ib.*, 351; Santa Inez, *Ib.*, 377; San Antonio, *Ib.*, 387; Santa Clara, *Ib.*, 416; San José, *Ib.*, 418. Those nearly ruined were San Fernando, *Ib.*, 360; San Diego, *Ib.*, 338; San Luis Rey, *Ib.*, 342; San Buenaventura, *Ib.*, 365; La Purisima, *Ib.*, 376; San Luis Obispo, *Ib.*, 378; and San Miguel, *Ib.*, 383. Those that were entirely ruined, were San Juan Capistrano, *Ib.*, 348; La Soledad, *Ib.*, 390; El Carmelo, *Ib.*, 391; San Juan Bautista, *Ib.*, 407; Santa Cruz, *Ib.*, 410; DOLORES DE SAN FRANCISCO, *Ib.*, 424; San Rafael, *Ib.*, 444; San Francisco Solano, *Ib.*, 446. The results in comparative figures (round numbers,) is thus stated:

In 1834, when the Missions went into civil "administration," the Missions had *thirty thousand Indian neophytes* sustained and instructed by them, living at the Mission establishments: in 1842, *four thousand*.

In 1834, the Missions had *four hundred and twenty thousand* horned cattle; in 1842, *twenty-eight thousand*.

In 1834, *sixty thousand* horses; in 1842, *four thousand*.

In 1834, *three hundred and twenty thousand* sheep, goats and swine; in 1842, *thirty thousand*.

In 1834, they produced *one hundred and twenty thousand* bushels of wheat, maize, etc.; in 1842, *seven thousand*. In a tabular form the result is thus presented:

	Religious Administration. 1834.	Civil Administrations. 1842.
Indians.....	30,000.....	4,000.....
Horned Cattle.....	400,000.....	28,000.....
Horses and Mules.....	62,000.....	3,000.....
Sheep, etc.....	321,000.....	31,000.....
Grain.....	122,000.....	7,000.....

The table from De Mofras, Vol. I, p. 320, printed in the ADDENDA, No. LXVII, gives these data more specifically, except that the crops of grains for 1842 are not there given, but the amount 7,000 bushels

(4,000 hectares,) is given by him at page 421 of the same volume. The grain crops are measured by the Spanish *fanega*, which is rather $\frac{1}{2}$ more than the English bushel, but may be rendered by it for general purposes.

A. D. 1843. MARCH 29.

AN ATTEMPT MADE TO RESTORE THE MISSIONS.

§ 108. In ¹⁸⁴³1848 Micheltorena, who came from Mexico with an army as a counter revolutionary Governor, 1 De Mofras, 311, 312-17, and replaced Alvarado as Governor, among other reactionary measures conceived or accepted the scheme of restoring the Missionary system. In his proclamation of March 29th, 1843, he recites: "that the pious and charitable institutions of social order for the conversion of the savages to catholicism and to an agricultural and peaceful life, are reduced to the gardens and inclosures of the churches and buildings. * * That the Indians, who are naturally lazy, now, from additional labor and scarcity of nourishment, being in a state of nudity, having no fixed employment or appointed Mission, prefer to keep out of the way, and die impenitent in desert woods, in order to escape a life of slavery, filled with all privations, and destitute of social enjoyment. * * That there is no other method of *reanimating* the skeleton of a giant like the remains of the ancient Missions except to fall back upon experience, and to fortify it with the appliances of Civil and Ecclesiastical power." He then directs that twelve of the Missions, which he names, shall be restored to the Missionary Franciscan Monks, to be governed by them in the same manner as before, they taking charge of the natives. ADDENDA, No. LVI, page 83. The Mission of Dolores was not among the Missions thus restored; but the Government pledges itself in regard to the lands formerly appurtenant to the Missions "to make no new grants without the information of the respective authorities of the most Reverend Fathers, notorious non-occupation, non-cultivation, or necessity." See Micheltorena's Proclamation, 1 Rockwell, 469; Halleck's Report, App. No. 19; Jones's Report, page 71; ADDENDA, No. LVI, page 83. This therefore interrupted further grants being made from the lands adjacent to or occupied by the Missions, until it should be definitely ascertained by official acts of great formality, that such lands would not be needed by those establishments, either as Missions, or as possible future INDIAN PUEBLOS.

A. D. 1843. JUNE.

MEXICAN CONSTITUTION OF 1843.

§ 109. A new Constitution was adopted this year, on June 12th, and promulgated on June 13th. It does not seem to contain any provisions bearing upon the present discussion. The title of the Departmental Junta was changed to that of Asamblea—Assembly. See "Bases de organizacion politica de la Republica," published in the "Decretos del Gobierno provisional for 1842," July 1842 to June 1843, Title VII, § 131, at page 466.

A. D. 1843. NOVEMBER.

ALCALDES ORDERED TO BE ELECTED FOR THE PUEBLO OF SAN FRANCISCO.

§ 110. On November 14, 1843, Governor Micheltorena, by proclamation, directed Ayuntamientos to be elected in Monterey and Los Angeles. Exhibit 11, annexed to Vallejo's deposition, Addenda No. LVII, page 84, Art. 1st; directing, also, that in the *Pueblos* of San Diego, Santa Barbara, San Juan, Villa de Branciforte, San José, *San Francisco* and Sonoma, elections should be held to appoint two Alcaldes of first and second nomination, *Id.* Article 2; that said first Alcaldes should perform the duties of Judges of First Instance, and take charge of the prefectures of the respective districts, *Id.* Article 4; that the newly elected officers should go into office on the first day of January next ensuing, and "receive from those going out an exact inventory of "all the expedientes, books, and whatever there may be belonging to "the said *corporations*—un inventario exacto de todos los expedientes, "libros y cuanto halla pertineciente a dichas *Corporaciones*." *Id.* Article 5. Accordingly we find *oficios* addressed to the Alcalde of San Francisco by the government, dated July 7th, 1844, March 7th, 1844, January 20th, 1844, March 5th, 1845, and the Act of election of Padilla as First Alcalde on December 22d, 1844, Exhibits No. 12, 13, 14, 15, and 16, annexed to Vallejo's deposition. See ADDENDA, Nos. LVIII, LIX, LXI.

A. D. 1844.

SAN FRANCISCO, THE PORT OF SAN FRANCISCO, AND YERBA BUENA WERE ALL THE SAME.

§ 111. This appears from two documents in evidence in the case. See ADDENDA, Nos. LVIII and LIX, pages 85, 86, where the same officer is described as "First Alcalde of the Port of San Francisco," "Alcalde of San Francisco," and "Alcalde of first nomination of Yerba Buena." This, however, only confirms what appears so often elsewhere. See §§ 102, 120, etc.

A. D. 1844. APRIL.

DE HARO'S ESPEDIENTE FOR THE POTRERO NUEVO. GOVERNOR MICHELTORENA'S PARTIAL RESTORATION OF THE MISSIONS IN 1843.

§ 112. The expediente of Francisco De Haro for the Potrero of San Francisco, is found duplicate among the documentary testimony in this cause. See Exhibit Hopkins, No 11 and V; ADDENDA, No. LX, page 86. This *expediente* shows that this Potrero (cattle enclosure) was formerly used by the Ex-Mission of San Francisco de Asis. It included that portion represented on the accompanying map as lying between the Mission, the Mission Bay, and the "WALL," the wall designated being a part of the enclosure of the Potrero. Jimeno, the Secretary of the Government, over date of April 29th, 1844, reports,

that "the Mission of San Francisco has no longer any cattle, and consequently the Potrero petitioned for is lying unoccupied; * * and inasmuch as the common lands (ejidos) of the said *establishment* are to be assigned to it, (debe señalarsele sus ejidos)"—he recommends that the petitioner be allowed to occupy the lands provisionally. A provisional licence was accordingly issued, "subject to the measurement which may be made of the ejidos of the *Establishment* of San Francisco; (sugetandose a la medicion que se haya de los ejidos del Establiento de San Franco." There is little in this *expediente* which is pertinent to the present case, except the patent fact that the executive officers of the Departmental Government were exceedingly anxious not to prejudice against the possibility of an *Indian Pueblo* being erected out of the ruins of this Mission, which, indeed, they had no power to do, and therefore refused to grant away in absolute proprietorship the Potrero formerly enclosed and used by it, until the future fate of the Mission should have been decided by an inquest of office. It will be remembered that Micheltorena, the Governor who made this provisional grant, had early conceived the project of restoring the Missionary system, and placing the Missions again in the hands of the Franciscans. See ante § 108, ADDENDA, No. LVI, page 83. But, although this step did not revivify the Missions, nor even retard their final ruin, still it contained a pledge that from the lands occupied by the Missions, the Government would "make no new grants without the information of the respective authorities of the most Reverend Ministers, notorious non-occupation, non-cultivation, or necessity." ADDENDA, No. LVI, page 84, § 5. This Potrero, enclosed by the Mission, which might again need it if it recovered its prosperity, and would probably require it for its *ejidos* if it was erected into an INDIAN PUEBLO, could not therefore be granted by the Government until the ruin of the Mission was established officially, and therefore beyond all hope. These were the reasons assigned by the Governor for refusing the grant, and issuing only a provisional licence to occupy. ADDENDA, No. LX, pages, 86, 87.

MAPS OF YERBA BUENA APPROVED BY THE GOVERNOR.

§ 113. It appears by the testimony of Richardson and others that two or more maps were made of the settlement of Yerba Buena, and approved by the Governor. These maps are the nucleus upon which the existing plat or survey of the present city has been adjusted. They are of little or no value to the present argument. In any event they would tend to show only what is indisputable, that the Ayuntamiento of San Francisco had the power to make grants of lands, and that therefore there was a political *quasi*-corporate PUEBLO of San Francisco to which such lands belonged. See §§ 83, 84 of this argument. These maps show only that the Governor continued to recognize the PUEBLO of San Francisco, as having an organized political and corporate or *quasi*-corporate existence.

A. D. 1844. APRIL.

THE INHABITANTS OF THE MISSION OF DOLORES [OF SAN FRANCISCO] COMPLAIN THAT THEIR SETTLEMENT HAS NEVER BEEN RECOGNIZED AS A PUEBLO, AND ASK THE GOVERNOR TO EXTINGUISH THE NAME OF MISSION AND DECLARE IT A PUEBLO FOR THE FUTURE. THE GOVERNOR DECLINES TO ACT.

§ 114. The inhabitants of the Mission of Dolores of San Francisco, "resident in the jurisdiction of San Francisco de Asis and established in the *Ex-Mission* of that name," on the 8th day of April, 1844, petition the Governor, stating that that Mission had never yet been recognized as a PUEBLO; that it ought to have that title; and praying that it may be recognized as a PUEBLO in future. They recognize the fact that Indians are still living there in COMMUNITY, (see ante § 17,) with a mayordomo, or official administrator, and thus it appears that the Mission had not as yet been secularized. The Secretary of State reports that the request cannot be granted until the debts of the Mission are paid—it was, then, still a Mission—and the Governor defers all further action on the petition. See ADDENDA, No. LXXI, page 102. This one document effectually establishes the fact, that the Mission of Dolores was not *that* "PUEBLO of San Francisco," which was established in 1835, ante § 74, and which was so often recognized by the Governor and Departmental Legislature. See §§ 77, 78, 82, 83, 87, etc.

A. D. 1845. MAY AND OCTOBER.

THE GOVERNMENT OFFICIALLY EXTINGUISH THE MISSION OF DOLORES AND OFFER IT FOR SALE, BUT DO NOT ERECT IT INTO A PUEBLO.

§ 115. I have already presented my views of the objects contemplated in the foundation of the Mission, ante, § 26. The official maps of the United States show that the Mission of Dolores existed within the limits of the four leagues claimed by the City of San Francisco. See map prefixed, and Langley's map. But it is well established that this Mission had no rights in land. The so-called lands of all the Missions were all subject to colonization. See § 26 of this argument. They were exempted from colonization "for the present" by the regulations of colonization of Nov. 21, 1828, 1 Rockwell, 453; ADDENDA, No. XIV, page 26, § 17; but it is notorious that that restriction was almost immediately removed, for most of the Mission lands were soon afterwards granted to various persons. The Missions had no landed property. "The church edifices, cemeteries, and priests' houses, "with the curtilages and appurtenances at the several missions, and "the gardens and vineyards, at or near the same, planted and "reared by the care and labor of the priests and neophytes, belonged "to the Catholic church to which they were dedicated from the beginning." See Opinion of Commissioner Felch, in the case of Joseph Alemany, Bishop of California, vs. The United States, claiming the

Mission churches, cemeteries, orchards and vineyards. The lands commonly treated as belonging to the Mission of Dolores, but really belonging to the PUEBLO of San Francisco, were, therefore, at most only subject to an usufruct by the Indians of the Mission, and when that usufruct determined by the dissolution of the Mission establishment, the rights of the PUEBLO became emancipated and complete. Perhaps, as was contemplated by the Plan of Pitic, the Indians and pobladores were to enjoy these lands in common. See ADDENDA, No. VII, page 12, §§ 6, 7. But even conceding that the lands were subject to a servitude, there can be no doubt that when that servitude ceased, the lands became free. The evidence is conclusive that all hopes of converting the Mission of Dolores into an *Indian Pueblo* had been abandoned for many years before its final dissolution. The Mission had never been a prosperous one. It was founded in the midst of barren surroundings, in a climate which was severe to the Indians (1 De Mofras, 424, 444), and still more rigorous to the natives of Mexico and Spain. 1 De Mofras, 274. But it was necessary that a Mission should be founded within the protection of the Presidio of San Francisco, and so the Mission of Dolores was founded on the only unappropriated spot within many miles where there was a perennial stream of fresh water; the issue of Lobos Creek being within the curtilage of the Fort. See map of the Coast Survey; *Mitchell vs. The United States*, 15 Peters, 52; 9 do. 711. The north-west winds were always severe; the farming lands of the Mission small in extent and not propitious to cultivation; the sowings were made at San Pablo, on the other side of the Bay (1 De Mofras, 424, 425; and at San Mateo, De Haro's *espediente* for Rancho San Pedro, ADDENDA, No. XXXI, page 48), and they were compelled to use the Mission of San Rafael as a hospital for their Indians, who could not endure the climate of San Francisco. 1 De Mofras, 444. Their cattle, while they had any, were pastured at San Pedro beyond the mountains. Wm. Carey Jones' Report, 115; De Haro's *espediente* ut supra. In 1815 there was an Indian population of 1,115 at the Mission, and in 1830 a population of 219, (see ADDENDA, No. LXXVI, page 110, but in 1834, at the culminating period of the prosperity of the missions, the Mission of Dolores had not exceeding 500 Indians, while San Luis Rey had 3,500, San Gabriel 2,700, San José 2,300, Santa Clara 1,800, and even San Rafael, founded in 1817, had 1,250, and San Francisco Solano (Sonoma) founded in 1823, had 1,300. 1 De Mofras, 320; ADDENDA, No. LXVIII, page 97.

§ 116. The gradual, but complete extinction of this feeble existence of the Mission of Dolores is perfectly demonstrated by a few patent facts. The *padron* (return) of the Mission, made in 1830, the last that appears ever to have been made, shows only 219 neophytes. See ADDENDA, No. XXVI, page 110. The *padron* of San Francisco made by Guerrero, in 1842, in which the Indians are confounded with the mass of the population existing throughout the whole *termino* of San Francisco, including Yerba Buena, shows only 36 neophytes.

ADDENDA, No. LV, page 78. Deposition of H. F. Teschemacher in the case. The Ranchos of San Pablo and San Pedro, where the Indians sowed their crops, and pastured their cattle, were granted to the Castros and to De Haro respectively in 1835 and 1836. 1 De Mofras, 425. See the *Espedientes* in the Archives, Nos. 3 and 18. Also the same numbers in the list in Jones' Report, Senate Doc. Vol. 3, Doc. 18, p. 95, 1850-1851. De Mofras writes in 1842: "The inhabitants "have pillaged everything; at present there remain scarcely 60 cattle, "50 horses and 100 sheep. Some Indians inhabit a few ruined hovels " (quelques masures) around the Mission, or cultivate some small "patches of good soil sheltered from the wind. * * * The Mission "buildings are large, but dilapidated; there is no missionary." Vol. 1, page 424. The Exploring Expedition of Com. Wilkes visited the Mission of Dolores twice in 1841, but he gives it no further notice than to misname it the Mission of "*Nostra* Señora de Dolores," showing that it had ceased to attract notice as an existing establishment. Exploring Expedition, Vol. V, 249. JIMENO, Secretary of State, in his report on the Expediente of De Haro for the Protrero of San Francisco, ADDENDA, No. LX, page 86, April 29th, 1844, states that "the Mission of San Francisco has no longer any cattle." And it is not unimportant to note that it is the word "bienes, property," which is translated "cattle."

§ 117. These facts sufficiently show the *de facto* expiration of the Mission of Dolores; but happily we are furnished an authentic record of an inquest of office by which the extinction of the Mission was declared in all legal form. By a decree of May 28th, 1845, the the Departmental Junta enacted as follows:

"Article I. The Departmental Government shall call together the "neophytes* of the Missions of San Rafael, DOLORES, Solidad, San "Miguel, and La Purisima *which are abandoned by them*, by means of "a proclamation which it will publish, allowing them the term of one "month from the day of its publication in their respective missions, or "in those nearest to them, for them to re-unite for the purpose of culti- "vating them; and they are informed that if they fail to do so, they "will be declared to be without owners (mostrencas), and the Assem- "bly and Departmental Government will dispose of them as may best "suit the general good of the Department." 1 Rockwell, 471, Hal- "leck's Rep. Ap. 20; Jones' Rep. 72; ADDENDA, No. LXII, page 88. Here is a legislative declaration that the Mission of Dolores is abandoned by its neophytes; here is a law day given to them to come in and redeem a forfeiture; here is a forfeiture specifically and officially pronounced in case of non-redemption. The second article of this enactment decrees: "The Carmelo, San Juan Baptista, San Juan "Capistrana, and San Francisco Solano, shall be considered as PUEB- "LOS, which is the character they have at present." ADDENDA, No.

* "*Los neofitos*" in the original, and not Indian as generally translated, *neofito* being a christianized Indian belonging to the Mission.

LXII, page 89, Art. 2. This is a most pregnant declaration. Four Missions are excepted from the operations of the law which denounced a forfeiture against other Missions, because these four had become PUEBLOS. But there is not a hint that the other Missions had become, or could become PUEBLOS, but on the contrary a declaration they were abandoned by their neophytes, and a decree that if the neophytes did not return, the property of the Missions would be considered without owners. This is conclusive on the point that in May, 1845, there was no PUEBLO at the Mission of Dolores, as we have already seen (ante, § 114) that there was not in April of the preceding year. The Mission property of course consisted only of the buildings, orchards, cemeteries, and stock of the Establishment. Ante, § 26. The Proclamation required in the first article of the preceding law appears to have been made, from the following act of the Departmental Government of Oct. 28th, 1845: "Article I. There will be sold at this capital, to the highest bidder, the Missions of San Rafael, DOLORES, Soledad, San Miguel, and La Purisima, which are abandoned by their neophytes. Art. IV. * * * What belongs to San Rafael, DOLORES, San Juan Bautista, Carmelo, and San Miguel will be sold on the second, third, and fourth of January next." 1 Rockwell, 472; Halleck's Report, Ap. 21; Jones' Report, 75; ADDENDA, No. LXIII, page 90. The original is, "los dias 2, 3, y 4 del mes de Enero del año entrante," instead of "23d and 24th of January," as commonly translated. This then was an official determination by actual inquest of the fact that the Mission of Dolores had ceased to exist. A few months afterwards, Mr. Edwin Bryant, a very observant and intelligent traveler, who was afterwards First Alcalde of San Francisco, visiting the Mission of Dolores and passing there the night of Sept 20-21, 1846, could hardly find shelter there, and found the main buildings contiguous to the church occupied by Mormon families, and "the Indian quarters crumbling into shapeless heaps of mud." Bryant's California, 320, 321. These were not ruins made since the American conquest, for no rain had fallen since the preceding spring, and the conquest was made in July of that same year.

ATTEMPT TO REVIVE THE MISSION OF DOLORES FOR THE PURPOSES OF THIS SUIT.

§ 118. It is out of the grave of this extinct Mission which was thus blighted in its conception, almost abortive in its birth, dwarfed in its growth, finally dying of inanition, officially declared dead, and officially buried, that the United States now attempt to evoke the ghost of an *Indian Pueblo*, not for the purpose of galvanizing it into existence, but solely with the object of depriving the city of San Francisco of its patrimony. Between the chimera of a Partido on the one side, and of a non-existent *Indian Pueblo of Dolores* on the other, it is expected that the property of San Francisco shall be converted into public lands, while other Pueblos like Santa Barbara and Monterey shall enjoy their four leagues, which have been formally confirmed to them. Even

the *Indian Pueblos* of New Mexico have had their four square leagues allotted them—and some of them more than this. See ADDENDA, No. LXVIII, page 98. But to San Francisco, illustrious for her enterprise and her misfortunes, this common justice has been denied; and now in the twenty-eight year of her distinct political and corporate existence she stands, as she has stood for the last eleven years in Court, as a humble petitioner for the lands to which she became entitled in the year 1835, and her claim is denied by the law-executive of a powerful Government which bound itself to respect the rights of a conquered people. It seems that it is only valuable lands which are deemed worthy of the dignity of confiscation.

A. D. 1845. MAY.

ESPEDIENTE OF BENITO DIAZ FOR THE POINT OF LOBOS.

§ 119. This *espediente* was upon a petition for a tract of land including the ruined Fort at Fort Point, and the Presidio, at the place marked "Diaz" on the accompanying map. ¶ This *espediente* was not concluded before the conquest of California by the Americans, and so never became operative." *Palmer v. The United States*, 24 Howard Rep. S. C., U. States, 125. But the *espediente*, so far as above set forth, is undoubtedly genuine. See report of J. De la Cruz Sanchez, ADDENDA, No. LXIV, page 93. I cite it here to show the tenacity with which the tradition of a legal fact retains its place, even among an illiterate people who are destitute of law books. The *espediente*, ADDENDA, No. LXX, page 102, contains the report of José De la Cruz Sanchez, the judge to whom the petition was in the first instance referred, who certifies that he cannot give information respecting the place occupied by the military point, because he knows nothing of its commons, or *ejidos*. It thus appears that the rude, illiterate people of California knew that there were certain commons attached to the Fort; but Sanchez, the "respective Judge" to whom the matter was referred by the Governor, ADDENDA, No. LXX, page 101, who was also "Justice of San Francisco," which was the same as "2d Constitutional Justice of Yerba Buena," ADDENDA, No. LXIV, page 93, had no means of determining what were the commons or *ejidos* of a Hispano-Mexican Fort. Those commons were equal to a square of 3,000 Spanish varas, or yards; that is, 1,500 varas measured in the direction of each cardinal point from the center of the Fort, and squared upon this base. *Mitchell v. The United States*, 15 Peters, 52; *Same v. The Same*, 9 Peters, 711. This is, however, to be measured in the manner described in § 30 of this argument; namely: if there were obstacles interposed so that the measurement could not be made in the form of a square, the required quantity was to be made up by measurements in other directions. These commons or *ejidos* of this Fort constitute the "Government Reserve" as laid down on the current maps. In like manner the tradition of the "Four square leagues of a PUEBLO," of its *ejidos*, *proprios* and *arbitrios*, and of its being an "Illustrious Corporation" was firmly planted in the popular mind and popular faith.

notwithstanding that there were no law books to justify these notions or to render them exact.

A. D. 1845. DECEMBER.

NOE'S EXPEDIENTE FOR THE RANCHO SAN MIGUEL.

§ 120. The *expediente* of José Jesus Noé for a portion of land formerly appurtenant to the Ex-Mission of Dolores, Exhibit Hopkins W, ADDENDA, No. LXIV, page 92, designated "Noé Rancho" on the accompanying map, sheds no light on the subject, except that it shows that the Ex-Mission of Dolores had become completely extinct under the inquest of office made under the law of May 28th, 1845, ADDENDA, No. LXII, page 88, Art. 1, as set forth in §§ 115-117 of this brief. For the *informe* does not, as heretefore, §§ 82, 88, and 102, send the *expediente* to the administrator of the Establishment of Dolores, but only to the "Justice and Judge of San Francisco." The Judge, in his report, calls himself "Justice of the 2d Constitutional Court of YERBA BUENA," while the Governor in his *vista* styles the same Judge "2d Alcalde of SAN FRANCISCO," thus showing that Yerba Buena and San Francisco were designations indifferently used for the same PUEBLO. Noé, the petitioner, lived at Yerba Buena in 1842. See Teschmacher's deposition. He was Secretary of the Electoral College there in 1844. Exhibit 12 to Vallejo's deposition, ADDENDA, No. XLI, page 88. He was Judge of First Instance there in 1845. Exhibit 16 to Vallejo's deposition. Noé, in his deposition in the case of Bolton v. The United States, in this Court, testifies that he lived in San Francisco in 1845 and 1846; that he was Judge of First Instance there in 1846; and that during all that time he was a frequent visitor at the Mission Dolores. That Dolores was in his jurisdiction, but that he could not grant *solares* there, but only in San Francisco.* That his jurisdiction as Judge of First Instance extended over a large district, being the *jurisdiccion contenciosa* alluded to in Micheltorena's proclamation of Nov. 14, 1853, Art. 4, Document No. 11, Vallejo's deposition, ADDENDA, No. LVII, page 84. And yet it is gravely insisted that Yerba Buena was a mere hamlet near the anchorage, and that the ruined, deserted Indian hovels at the Mission Dolores constituted the PUEBLO of San Francisco!

A. D. 1846. MAY.

ANDRADE'S ESPEDIENTE FOR THE ORCHARD AND TANNERY OF THE MISSION DOLORES.

§ 121. The *expediente* of José Andradé is introduced in evidence by the United States. Exhibit Hopkins X. It purports to be an

* NOTE.—Building lots had already been granted at the Mission of Dolores, but in 1843 Governor Micheltorena interdicted further grants at that locality; see § 108 of this argument, and ADDENDA No. LVI: and after this only one lot appears to have been granted at Dolores during the existence of the Mission, namely on Aug. 20, 1843, by Sanchez, Justice of the Peace, to Domingo Felis. See ADDENDA, No. LXXVIII, page 113. This grant has been rejected by the U. S. Land Commission, and the rejection has become final. See 1 Hoffman's Reports, Appendix, page 2, No. 5, and page 7, No. 46.

espediente and grant of the orchard of the Mission of Dolores, bearing date May 6th, 1846. It contains no *informe*, map or report; the claim based upon it has been rejected by the Land Commission, and the United States are now resisting it in this Court on the ground that it is forged and antedated. The same United States now introduce it in this case as a genuine grant, evidently for the purpose of basing upon it an argument to the effect that if there had been a PUEBLO of San Francisco entitled to four leagues of land, this orchard would have been included within those four leagues, and so the Governor would not have granted it to Andradé. But besides the general answer to this position, (see §§ 80, 81, of this argument,) there is another, namely: that the orchard of the Mission did not belong to the PUEBLO of San Francisco, but belonged to the Catholic Bishop of California, as a sole corporation representing the Catholic Church in that behalf, and so was not grantable to any private person, and certainly the Pueblo of San Francisco had no interest in it. *Larkin vs. The United States*, 1 Hoffman's Reports, 313; *Den vs. Hill*, 1 McAllister's Rep. 485. See also Judge Felch's decision in the case of Alemany, Bishop of California *vs. The United States*, Claim for the Mission Churches, Cemeteries and Orchards, confirming to the Bishop, among other property, this very orchard. If the grant be genuine, then it shows only that the establishment of Dolores had fallen so completely into decay and non-existence that its very orchard was granted away, so far as the Governor had the power to grant it. If, on the other hand, the grant be a forgery, it has no possible bearing upon the present case.

A. D. 1846. MAY.

GUERRERO AND FITCH'S ESPEDIENTE FOR THE MOUNTAIN LAKE
AND LOBOS CREEK TRACT.

§ 122. The last *espediente* to which attention is called, is that numbered 578 in Jones's list, and which, although not concluded before the American conquest, is undoubtedly genuine, and is contained in Exhibit Hopkins, No. 8, ADDENDA, No. LXVI, page 95. It is that of Henry Fitch and Francisco Guerrero for a piece of land embracing an arroyo (water-course) suitable for a mill which they proposed to erect, and may be described generally as that tract of land west of the settlement at Yerba Buena, and lying along the sea-shore between the Laguna de Merced (see § 82,) and the Presidio, and embracing the Laguna called Mountain Lake and the stream of water now commonly called Lobos Creek. The petition is dated at Yerba Buena, May 13th, 1846. It is approved by "José de Jesus Noé, Justice of the Peace of the Jurisdiction of Yerba Buena" on the same day. The petitioners "solicit the favor they ask without prejudice to the *ejidos* of the settlement of Yerba Buena although they have not yet been designated: dejando en salvo hasta los ejidos de la poblacion de Yerba Buena aunque no estan nombrados." Guerrero, it has already been seen, had been Sub-Prefect and Justice of the Peace, ADDENDA, No. XLIII, page 62, No. LXV, page 95, and yet we find

him in the month of May, 1846, and within less than two months before the conquest by the United States, thus asserting, as against his own wishes, the rights of the PUEBLO of San Francisco to its *ejidos*, its commons or vacant suburbs. This closes the record on that point.

THE PRECEDING GRANTS OF FARMING LANDS EFFECTUALLY DEFINED THE LIMITS OF THE PUEBLO LANDS.

§ 123. I have now discussed all the *espedientes* of grants of farming lands actually made within or near the limits of the four square leagues of land belonging to the PUEBLO of San Francisco, namely: the grant of the Buri-Buri rancho to the Sanchez, § 86, of this argument; of the Laguna de la Merced to Galindo, § 82; of San Pedro to De Haro, § 88; of La Visitacion to Leese, § 97; of Las Salinas to Bernal, § 102; and of San Miguel to Noé, § 120. If we now look at the annexed map, bearing in mind that the peninsula of San Francisco is less than six miles in average breadth until we reach the Buri-Buri, and compare this map with any of the official maps of the United States, or more conveniently with Langley's sectionized map prefix'd to the San Francisco Directory, as stated in § 30 of this argument, it will be found that the lands belonging to the Pueblo of San Francisco and not included in those grants, all lie northward of those grants, and include a less area than four square leagues; but if we reject the vast sandy and other wastes which occupy so many square miles of this area, as the Spanish law rejects them from the computed measurement, while they are still included within the boundaries of the grant (see § 30 of this argument) and also reject the large tract included in the *ejidos* or Government Reservation of the Presidio (§119 of this argument; see Langley's map, ut supra), we shall find the patrimony of San Francisco dwindling down to about one square league of land. But taking this area at its actual superficial measurement, and we find all the Pueblo lands not granted to the Sanchez, Galindo, De Haro, Leese, Bernal and Noé, as just mentioned, lie north of those grants, and that the northern lines of those grants, extending from the Pacific to the Bay, together with the water-lines of the Ocean, the straits and the Bay, include a less area than four square leagues. I have before said (§§ 30 and 39 of this argument) that as San Francisco was situated on a peninsula, and the PUEBLO lying at the upper end of it, the measurement must necessarily be made between the tide-water limits and extending towards the south. Again, in § 39, I remarked that if the PUEBLO were situated on an island containing exactly four leagues or less, then there could be no necessity for any measurement at all, for the *whole of it must belong to the PUEBLO*. Now the late Mexican Government itself segregated the PUEBLO lands from the public domain, by granting so much of the adjoining public lands and of the Pueblo lands themselves, that less than the patrimonial four leagues were left to the Pueblo. The surrounding natural limits of the tide waters on the west, north and east have been united by a mathematical line defining land-grants of the Mexican Government, the whole con-

taining less than four leagues. And since then the American Government has traced its lines of survey over the whole tract, so that a child can see upon the map that there is less than four leagues left of the Pueblo lands, *Id certum est quod certum reddi potest*. When a fact is patent, what need of demonstration?

REVIEW OF THE GENERAL RESULTS OF THE MISSION SCHEME.

§ 124. Before dismissing this subject, and passing on to the great fact of the conquest of California by the Americans, it may not be inappropriate to a discussion which has assumed a synthetic, and therefore a popular form,—as it certainly will be refreshing by way of diversion,—to contemplate for a moment the results which the pious kings of Spain and the devoted missionaries had attained under their plans of missionary colonization. Looking from a merely philosophical stand-point, let us contemplate for a moment the actual results attained by the Catholic church militant. We have already seen the wonderful material success which crowned their efforts; § 59 of this argument. But it has been a popular theme among travellers and even foreign residents, to depreciate the results attained in point of civilization and of religious instruction; and of these critics Capt. Beechy of the Royal Navy, and Alexander Forbes, who published a work on California in 1839, are the most prominent. It was something, surely, that over 30,000 wild, barbarous and naked Indians had been brought in from their savage haunts, persuaded to wear clothes, accustomed to a regular life, inured to such light labor as they could endure, taught to read and write, instructed in music, accustomed to the service of the church, partaking of its sacraments, and indoctrinated in the Christian Religion. And this system had become self-sustaining under the mildest and gentlest of tutelage: for the Franciscan monks who superintended these establishments, most of whom were from Spain, and many of whom were highly cultivated men—soldiers, engineers, artists, lawyers and physicians, before they became Franciscans, always treated the neophyte Indians with the most paternal kindness, and did not scorn to labor with them in the field, the brickyard, the forge, and the mill. 1 De Mofras, 263, 273, 353. When we view the vast constructions of the Mission buildings, including the churches, the refectories, the dormitories, the workshops, the granaries, and the rancherias, sometimes constructed with huge timbers brought many miles on the shoulders of the Indians, and look at the beautiful stone sculptures and ribbed stone arches of the church of the Carmelo, we cannot deny that the Franciscan missionary monks had the wisdom, sagacity, and patience to bring their neophyte pupils far forward on the road from barbarism to civilization, and that these Indians were not destitute of taste and capacity. But it is said that the Indians did not “understand the mysteries of religion?” It is not denied that they received them as children receive them, with full and undoubting faith, and this mode of reception has been given by the author of that faith as the highest test of its purity and completeness. But who does comprehend the

“mysteries of religion?” Would they not cease to be mysteries the moment they were comprehended? Does not “the untutored mind” of the “poor Indian” comprehend them as well as the highest capacity of the most enlightened intellect? It is enough that the Franciscan monks succeeded in all that they undertook to accomplish. It matters not that the Spanish theory of the available capacity of the American-Indian races for final self-government and independent citizenship was a false one; after having shown that these people could be christianized and civilized by the attraction of kindness, and the imposition of systematic, regular, and easy tasks while in a state of pupilage, the destruction of the Missions of California seems to have demonstrated the converse proposition that these are the only conditions of the proximate christianization of these races.

EFFECT OF THE RUIN OF THE MISSIONS. GENERAL DEMORALIZATION AND RUIN. INDIAN DEPREDATIONS. MEXICO-CALIFORNIAN VIGILANCE COMMITTEES.

§ 125. But the result of the good effected by the Missions can also be determined by contemplating the effects produced by their downfall. The Franciscan Monks were generally driven out, but the parish Priests did not arrive, so that the neophytes were generally left without teachers or protectors, and the services of the church for the most part ceased. 1 De Mofras, 273. The Mayor-Domos, appointed to take charge of the Missions, were often brutal and illiterate persons,—sometimes those who had been menial servants, so that frequently the missionary was at the mercy of one of his former herdsmen. *Ib.* 342, 388. The few missionaries who remained were insulted, thwarted, stinted in their allowance, and, in some instances, died of starvation while ministering at the altar. *Ib.* 303, 380, 390, 421. Meanwhile, the blight of demoralization fell upon the authors of this ruin, if we can believe the account of judicious travellers and observers. “At the same time “with a change of rulers, the country was deprived of the religious “establishments upon which its society and good order were founded. “Anarchy and confusion began to reign, and the want of authority was “everywhere felt; some of the Missions were deserted, the property “which had been amassed in them was dissipated, and the Indians “turned out to seek their native wilds.” Wilkes’ Exploring Expedition, vol. V., page 162. “This act (Alvarado’s regulations of secularization), brought about the ruin of the Missions, and the property that “was still left became a prey to the rapacity of the Governor, the needy “officers, and the administrador, who have well nigh consumed all.”—*Ib.* 168. “The administradors have made themselves and those by “whom they were appointed, rich upon the spoils of these Missions.”—*Ib.* 173; Bryant’s California, p. 444. “Nothing can be in a worse “state than the lower offices, such as the alcaldes, etc. They are now “held by ignorant men, who have no ideas of justice, which is generally “administered according to the alcalde’s individual notions, as his feelings may be enlisted, or the standing of the parties. To recover a

“debt by legal means, is considered as beyond possibility, and creditors must wait until the debtor is disposed to pay. Until lately the word of a Californian was sufficient to insure the payment of claims upon him, but such has been the moral degradation which has fallen upon the people since the Missions have been robbed by the authorities, and the old priests driven out, that no reliance can now be placed upon their promises, and all those who have lately trusted them complain that engagements are not regarded, and that it is next to impossible for any one to obtain any returns for goods that have been delivered.”—Wilkes’ Exploring Expedition, V., page 161. “Unfortunately, a great number of circumstances have latterly contributed to corrupt the Californians; contact with strangers, introducing among them habits of luxury, has multiplied their necessities, and excited them to the pillage of the Missions; the disorganization of the Spanish military system has rendered them less brave, and their natural proclivity for gambling and drunkenness has increased to such a point, that hardly a Californian is to be found who has not a bottle of brandy in his saddle-bags, with his fire-arms. They have a proverb: ‘Weapons for your enemy, and a bottle for your friend.’—2 De Mofras, 22. ‘They are excessively indolent and learn no trades.’—Wilkes, Vol. V. 176. ‘Unfortunately, also, the inhabitants do not profit wisely by the spoils of the Missions. The most of them, instead of preserving the cattle, kill them in order to sell their hides and tallow to trading ships; the soil rests untilled, for hardly any one but the Indians cultivate it.’—1 De Mofras, 321. ‘Agriculture, and the rearing of cattle, form the principal wealth of California; but these sources of prosperity are diminishing every day, on account of the revolutionary condition of the country, and the dispersion of the Indians of the Missions.’—Ib. 469. ‘The Indians told me of the outrages they endured from the whites, who deprived them of the few cattle which had been given to them, and pastured their own flocks upon the small patches of ground which had been assigned to the neophytes for cultivation. ‘You see,’ said they, ‘how miserable we are; the Fathers can no longer protect us, and the civil authorities themselves pillage us. Is it not pitiable to see them tear from us those Missions which we have built, those immense herds gathered by our care, and to be ourselves and our families, exposed to the worst of treatment? Shall we then be guilty if we defend ourselves, and if, when we return to our tribes in the Tulares, we take all the cattle that follow us?’—Ib. 345. This plan of specific vengeance was soon put into execution. The neophytes, outraged in every form, generally returned to their native tribes among the Tulares, a vast valley at the head of the river San Joaquin.* Hardly a night passed in which a raid did not take place from these Indians, who, knowing the country intimately, speaking both Spanish

* NOTE.—The natives when first seen by Father Junipero were naked, and knew nothing of clothes. Vida de Junipero Serra, Chap. XLIV. When a neophyte deserted a Mission and went back to his native tribe, he signified his apostacy by taking off and throwing away his shirt, and so returned to his people in the same nude condition in which he left them.

and their own native dialect, and being expert horsemen, descended upon the Missions and settlements, sweeping off herds of horses and cattle, and sometimes carrying into captivity the wives and daughters of the whites. These latter often retaliated by excursions into the Indian country, in which whole villages were devoted to slaughter, rapine and burning, by the wild and indiscriminate fury of revenge.—1 De Mofras, 347, 414; Wilkes' Exploring Expedition, Vol. V., 173, 174. One of the last acts of the Departmental Assembly of California in 1846, was, on April 29th, to receive a memorial from the inhabitants of San José complaining that their lives and property were in jeopardy from the attacks of the savages, and to provide ways and means for a campaign against the Indians. California Archives, Legislative Records, Vol. IV p. 672. To crown these calamities, Governor Micheltorena, who had come up from Mexico as a counter-revolutionary governor, had brought with him an army of three hundred soldiers, which army was formed by taking that number of convicts from the prisons of Mexico. 1 De Mofras, 311, 312. See Santa Anna's order for this enlistment, *El Observador Judicial y de Legislacion*, A. D. 1842, Vol. I p. 372. A large number of these convict soldiers were left in California, from desertion and other causes, and began to commit acts of rape, rapine, robbery, mutilation and murder, upon the inhabitants, who often organized parties of horsemen, hunted these outlaws with lassos, and put them to death like wild beasts. Vigilance Committees in California are therefore a tradition of the Mexico-Californian *regime*—a scion grafted on a more vigorous stock. But even this did not avert the ruin of the Province, which resulted from the destruction of the Missions, and this was the deplorable condition of California on the eve of its conquest by the Americans. If we ask, where are now the 30,000 christianized Indians who once enjoyed the beneficence and created the wealth of the twenty-one Catholic Missions of California, and then contemplate the most wretched of all want of systems which has succeeded them under our own Government, we shall not withhold our admiration from those good and devoted men who with such wisdom, sagacity, and self-sacrifice, reared these wonderful institutions in the wilderness of California. *They*, at least, would have preserved these Indian races, if they had been left to pursue unmolested their work of pious beneficence.

A. D. 1846, 1849.

THE UNITED STATES CONQUER CALIFORNIA, BUT CONTINUE ITS CIVIL ORGANIZATION.

§ 126. The conquest of that portion of California which includes San Francisco took place on July 8th, 1846, and following the principle heretofore alluded to, ante § 54, that the civil institutions of a country are not overturned by the change of sovereign or political authority, Alcaldes were at once appointed for the PUEBLO of San Francisco,—those then in office having *retired*, it is presumed. See ADDENDA, No. LXXVII, page 111; Executive Doc. No. 17, House of Reps. 1st Sess. 31st Con. pp. 452, 494, 499. So a Prefect and Judges of First

Instance were appointed for the District; *Ibid.* 797, 832; and a Superior Tribunal of Justice appointed on the Mexico-Californian basis. *Ibid.* 807, 808, 820, 821, 827. Everything proceeded as if the civil institutions of California had not lapsed, but still existed complete in form and vigor.

A. D. 1847. MARCH.

GENERAL KEARNY, MILITARY GOVERNOR OF CALIFORNIA, RECOGNIZES THE CORPORATE TOWN OF SAN FRANCISCO, AND GRANTS IT BEACH AND WATER LOTS.

§ 127. California had not been a year in the possession of the Americans, when General Kearny, the Military Governor of the Department, on the tenth day of March, A. D. 1847, made a grant to the Town of San Francisco of all the Beach and Water Lots lying on the east front of the town, between the points known as the "Rincon" and "Fort Montgomery," being the "Rincon Point" and a Point opposite the dotted line running east from "the Presidio, as both are indicated on the accompanying map. Those who came to San Francisco as late as the Fall of 1849 will remember an open battery on a high terrace cut down in the face of the cliff at the latter point, which gave its name to "Battery Street" whose lines passed through it. "Beach and Water Lots,"—lands overflowed by the ordinary tides—belong to the Sovereign of a country. *Pollard v. Hagan*, 3 Howard, U. S. Rep. Formerly these lots in question belonged to Mexico; when they were conquered from Mexico, they belonged to the United States; when California was erected into a Sovereign State they belonged to her as appurtenant to her sovereignty, and she granted them to the City of San Francisco. California Statutes of 1851, page 307, Chap. 41. But on March 10th, 1847, these Beach and Water Lots in question undoubtedly belonged to the United States, and General Kearny, being the Governor of California, and either having the right, or supposing that he had the right to grant them, did assume to grant them to the "Town of San Francisco." See the grant, ADDENDA, No. LXXII, page 104. It is remarkable that Governor Kearny uses every form of description which could be conveniently employed to designate the grantees with the greatest certainty: "Do hereby grant, convey and release to the Town of San Francisco, the people or corporate authorities thereof all the right," etc., etc. Governor Kearny was no lawyer, but he may have been told that Mexican PUEBLOS were not full corporations but only quasi-corporations, as was probably true, and so may have feared that a grant to the "corporate authorities" would not have been effectual. But his own good sense doubtless suggested to him that the "people" of the town really constituted the corporation, [5 Abbott Pr. Rep. 325,] and that if he used every significant term of description some of them must work effectually to vest the lands granted to the "Town." Be this as it may, this grant or attempted grant shows conclusively that the then Governor of California recognized a Town or Pueblo of San Francisco, and that this town was not the miserable ruined Indian hamlet at the Mission of Dolores, but was the Mexico-

Californian PUEBLO theretofore known as San Francisco or Yerba Buena.

A. D. 1849. MARCH.

THE CITIZENS OF SAN FRANCISCO INSTITUTE A DISTRICT LEGISLATURE.

§ 128. Nearly two years had elapsed since the conquest of California by the Americans, the gold mines had been discovered, the Pueblo of San Francisco had attained a population of 10,000 to 15,000, and still had no Municipal government except that of Alcaldes. There was no Town-Council, no representative or deliberative local legislature, and meanwhile no modern city ever stood in greater need of a strong and efficient local government, based directly upon public opinion, responsible to it, and controlled by it. The inhabitants of San Francisco, with that executive instinct of self-government and self-preservation which first challenged the wonder of the civilized world and afterwards won its approbation, determined that they would have a responsible and representative government. Accordingly they organized a "District Legislature" or "Legislative Assembly," an elective body, with a Speaker and Clerk, proceeding according to the Anglo-Saxon Legislative and Parliamentary Law, assuming to supersede all other local officers. See ADDENDA, No. LXXIII, pages 104, 105, 106, 107. That the citizens of San Francisco who thus undertook to supersede the established local authorities, acted in good faith, cannot be doubted, for on the 10th March immediately ensuing, they reported all that they had done to Major General Persifer F. Smith, Commanding the Pacific Division U. S. Army. Executive Doc. 1st Sess. 31st Cong. House of Reps. No. 17, pages 732, etc. General Smith, (now long deceased,) who had been a lawyer before he entered the Military service of the United States, instead of assenting to the projects of the Legislative Assembly, mildly suggested to them that the municipal (or civil) laws of California had not been changed by the conquest, and that the "Legislative Assembly" was a body wholly unknown to the law. Executive Doc. No. 17, 1st Sess. 31st Congress, House, pages 735, etc. See § 54 of this argument.

GOVERNOR RILEY, MILITARY GOVERNOR, REPUDIATES THE "LEGISLATIVE ASSEMBLY OF SAN FRANCISCO."

§ 129. Governor Riley, the Military Governor of California, having higher powers than Major General Smith, who only remonstrated against the creation of the "District Legislature of San Francisco" as stated in the next preceding § 128 of this argument, and probably being fully advised on the points of law involved in the discussion, did not hesitate at once to repudiate the action of the citizens of San Francisco in constituting a "District Legislature." On June 4th, 1849, he issued his proclamation in that regard. See ADDENDA, No. LXXIV, page 107. I have entitled that ADDENDA as follows: "Governor Riley, Military Governor of California, DENOUNCES 'the Legislative

Assembly of San Francisco.” But here the “*facilitas utriusque lingue*” for a moment misled me. For the Spanish word *denunciar* has not the strong force of our English word “to denounce,” but rather the milder sense, “to indicate, to publish, to make known.” Thus Salvá, Diccionario Español, in verbo: “*Denunciar*: Noticiar; avisar alguna cosa; prognosticar algo; promulgar; publicar solemnemente alguna cosa. PROMULGARE.” So that when it was said that Governor Riley “DENOUNCED” the Legislative Assembly of San Francisco, it was simply meant that he DISAPPROVED of it; for, instead of threatening to hang or shoot the members of the Legislative Assembly as malefactors, he merely notified them that they had mistaken their remedy or means of relief. See ADDENDA, No. LXXIV, page 107, over date of June 4th, 1849.

GOVERNOR RILEY, UNITED STATES MILITARY GOVERNOR OF CALIFORNIA, RESTORES THE AYUNTAMIENTO OF THE PUEBLO OF SAN FRANCISCO.

§ 130. But on the very next day, June 5th, 1849, (and perhaps accompanying it in the same envelope, with that admirable consideration which is *la politesse des supérieurs*) the Governor transmitted to some of these same gentlemen of the Legislative Assembly together with others, an order for the election of an Ayuntamiento of the Pueblo or Town of San Francisco, indicating that that was the legal and perfectly adequate mode of relieving the existing pressure upon the inhabitants of that Pueblo. See ADDENDA, No. LXXV, page 108. This admirable document sets forth in the most condensed, and yet in the clearest manner, the rights of the PUEBLO to a representative and deliberative local legislature, (ADDENDA, No. LXXV, page 109, and §§ 47, 90, 92, of this argument,) and also: ¶ 1st, the police, administrative and fiscal powers of the Ayuntamiento; *Ibid*, ¶ 2: 2dly, the right of the Ayuntamiento to grant building lots; *Ibid*, ¶ 3: ante § 83 of this argument; 3dly, the inviolability and inalienability of the *ejidos*; *Ibid*, ¶ 3: ante § 14 of this argument, and 4thly, that all elections should be duly certified, transmitted to the Governor, and receive his approval. *Ibid*, ¶ 4. Thus the familiar principle of the law of nations, and of all Public Law, was formally and properly recognized, and well expressed, namely, that when a country is conquered, the laws regulating the rights and relations of citizens towards each other, and the rights of property, remain unchanged. See §§ 54, 84, of this argument. And here again we see that in June, 1849, the Military American Governor of California, was fully impressed with the notion that the PUEBLO of San Francisco existed, and that it had a proprietary right to grant lands, which it could not have had unless they belonged to it. How remarkable it is, that all the Mexico-Californian Governors and Legislatures, and after them the Americo-Californian Governors and Secretaries of State should have been mistaken in this respect,—IF IT WAS A MISTAKE! That this Ayuntamiento thus ordered by Governor Riley to be instituted was elected, organized, and went

into operation is very evident from public history, a condensed *résumé* of which is found in No. LXXVII, pages 111, 112, of the ADDENDA, prepared by the present very efficient City Clerk,* who anticipated me in compiling that list; and also from the more convincing fact, that the present citizens of San Francisco are now submitting to annual taxation for the purpose of paying the debts created by that same Ayuntamiento or Town Council, under the pressing necessity of providing instantly for the town halls, court rooms, jails, streets, and sewers required by a WHOLE NATION of civilized people, set down bodily and at once upon the sandy slopes of the old PUEBLO of San Francisco. The United States kindly concede that we may pay the debts of the ancient PUEBLO OF SAN FRANCISCO, but endeavor to confiscate the lands of that PUEBLO. Is this the definition of a paternal government? The old caducous government of Mexico would at least have let us alone. This Ayuntamiento thus ordered to be elected by Governor Riley, and thus elected and organized, was on January 11th succeeded by another Ayuntamiento, elected on the same Hispano-Californian basis, which held office from January 11th to May 8th, 1850. See ADDENDA, No. LXXVII, page 112.

I. These two Ayuntamientos or Town Councils at once recognized that they were the Council of a Pueblo, and that that Pueblo owned Municipal Lands, which were subject to their control and disposition by virtue of the Municipal laws of Spain and Mexico, which had survived not only the Mexican Revolution but also the American conquest. See ADDENDA, page 338, No. CLXVI. "LAS LEYES VIGENTES." Accordingly they first prohibited the Alcalde from granting any town lands without their direction. They then caused a survey to be made of the municipal lands and offered them for sale, and sold large portions of them at various times. See ADDENDA, No. CX, pages 209-210.

II. Meanwhile the Prefect, the Hon. Horace Hawes, who was not only an American lawyer of ability, but an eminent Hispano American jurist, representing to the Governor of the State that the Ayuntamiento was wasting the property of the city by disposing of its "MUNICIPAL LANDS," the Governor, on the 15th of February, 1850, issued a proclamation declaring that no further sales of the "MUNICIPAL LANDS" of the City of San Francisco should for the present take place. See the Proclamation, ADDENDA, No. CX, page 211. The Ayuntamiento still continuing refractory, the same Prefect, the Hon. Horace Hawes, on February 27th, 1850, informed the Governor of the fact that they still seemed disposed to proceed with the sale of the "MUNICIPAL LANDS—THE PUBLIC PROPERTY OF THE CITY;" see the official communication, ADDENDA, No. CX, page 211; and on March 15th, 1850, sent an official communication to the Ayuntamiento remonstrating with them against disposing of any of the "MUNICIPAL LANDS—THE MUNICIPAL PROPERTY—THE PUEBLO LANDS," and warned them that no member of the Council could lawfully purchase "ANY

* JAMES W. BINGHAM, ESQ.

PART OF THE LANDS OF THE PUEBLO." See ADDENDA, No. CX, page 212. The Governor and Prefect seemed also to know that they had a power of control over the disposition of Pueblo Lands by the municipal laws of Spain and Mexico, which had survived the Mexican Revolution, and the American conquest: See ADDENDA, page 338, No. CLXVI, "Las Leyes Vigentes," and page 314, No. CLIV, respecting powers of Governors and Prefects; otherwise their interference in this matter would have been most unwarranted and impertinent.

III. The Governor, however, on March 29th, 1850, was induced by reports sent to him by the Ayuntamiento accompanied by a "LIST OF MUNICIPAL LANDS SOLD" to revoke his former order suspending the sale of "MUNICIPAL LANDS." See his proclamation, ADDENDA, No. CX, page 213.

IV. The Prefect, probably not knowing of this proclamation of the Governor, on the next day, March 30th, 1850, issued a further proclamation suspending all sales of the "MUNICIPAL LANDS OF SAN FRANCISCO." See ADDENDA, No. CX, page 213. And thus that controversy ended; the Ayuntamiento carrying the day, by securing the aid of the Governor, and under these various sales so ordered by that body, a large portion of the most valuable property of the Pueblo was sold at auction to the highest bidder.

V. Meanwhile, the Prefect himself, under a constitutional law which authorized him to act executively in the distribution of PUEBLO LANDS, assumed that function, which he could not possibly have done in regard to public lands of the United States. See this law, ADDENDA, No. CLIV, page 314; and an example of such grants, ADDENDA, No. CLX, page 304.

A. D. 1850. APRIL.

THE LEGISLATURE OF CALIFORNIA RECOGNIZES THE PUEBLO OF SAN FRANCISCO.

§ 131. On the 15th of April, 1850, the legislature of California raised San Francisco to the dignity of a City. See An Act to incorporate the City of San Francisco, Laws 1850, chap. 98, page 223. If the inhabitants had therefore been only a politico-corporation, they then became a full corporation, with all the powers belonging to such institutions. By the same act, page 229, § 11, the Legislature declare that on the day when that City Charter should go into effect, "all the powers "and functions of PREFECT, Sub-Prefect, Alcaldes, Second Alcaldes, "the Ayuntamiento, and all other officers whatsoever, heretofore "exercising authority in the MUNICIPAL GOVERNMENT OF THE PUEBLO OF YERBA BUENA OR SAN FRANCISCO, or City of San "Francisco, shall cease and determine." This demonstrates the fact that in less than three years after the conquest by the Americans, the Legislature of California believed and declared that there was an organized PUEBLO of Yerba Buena or San Francisco. In § 1, page 223, of the same act, the Legislature fixed the corporate limits of the City, which, on consulting the map, we find did not include the whole of the Mis-

SION OF DOLORES; in the same section is a provision that the fixing of these boundaries shall not "be construed to divest or in any manner prejudice any right or "privilege to which the City of San Francisco may be entitled beyond the limits above described." These declarations establish two facts:

FIRST: That although the Legislature recognized the PUEBLO OF SAN FRANCISCO, they did not imagine that it was located at the MISSION OF DOLORES; for when they raised the PUEBLO to the rank of a City, they did not include all of the Mission of Dolores within its boundaries.

SECONDLY: That the Legislature "had heard" of some claim of the PUEBLO of San Francisco to lands situate beyond the limits prescribed for the new incorporation. It was only years afterwards that counsel were found bold enough to assert that "nobody had ever heard of such a claim."

THE AUTHORITIES, THE CITIZENS, AND THE LEGISLATURE HAVE
FAITH IN A PUEBLO OF SAN FRANCISCO.

§ 132. **I.** Meanwhile the Ayuntamiento of San Francisco, knowing that they had the ownership in trust of the Pueblo lands, proceeded to execute the Legislative enactment of the Cortes of Spain of January 4th, 1813, ordering the Pueblo lands to be sold, (see ante, § 52 of this argument, ADDENDA, No. XI, page 21) and at various dates in the years 1849 and 1850 a large portion of those lands was exposed for sale at public auction by the authorities of the Pueblo, and publicly sold, all parties admitting that these lands were MUNICIPAL LANDS—LANDS OF THE PUEBLO, as I have shown in § 130 of this argument, and the proceeds were paid into the treasury of the Municipality. See Wheeler's Land Titles, which are in evidence in the case by stipulation.

II. And afterwards, when the new city found itself in debt, and was struggling to regain its credit, its Common Council created a "Board of Commissioners of the Sinking Fund of the City of San Francisco," to which the most valuable of these lands were conveyed, in the hope that on the credit of their hypothecation a fund might be created upon which the debt of the city might be funded for a period of years, and thus delayed until it could be gradually liquidated from the resources created by these lands and the annual revenue of the city. See the history of this plan, *Smith v. Morse*, 2 California Reports, 524, and the plan itself, ADDENDA, No. CIII, pages 189-192, and the conveyance of the city property, including its Municipal lands, to the Commissioners of the Sinking Fund, ADDENDA, No. CIV, page 192.

III. When this plan proved ineffectual, another device was successfully adopted, namely: to fund the existing city debt on a credit of twenty years, pledging for the payment of its annual interest, and of \$50,000 annually to its Sinking Fund, a first lien on all the revenues of the city derived from taxation, and also all those Pueblo lands therefore conveyed to the Commissioners of the Sinking Fund, who were

required to convey, and did convey them to the "Commissioners of the Funded Debt," created for that purpose. See Laws of California for 1851, Chap. 88, page 387, and page 390, § 12 of "An Act to authorize the Funding of the Floating Debt of the City of San Francisco, and to provide for the payment of the same," passed May 1st, 1851. See ADDENDA, No. CVI, page 129; §§ 1, 10, 12; and the conveyance made by the "Commissioners of the Sinking Fund" to "the Commissioners of the Funded Debt," ADDENDA, Nos. CVII, page 199; and CV, page 195. It is a matter of history that under that act the Commissioners of the Funded Debt sold a vast quantity of real estate, constituting a large portion of the current titles to land, to which there is no title at all in the hands of these grantees, immediate and derivative, except that derived from the CITY OF SAN FRANCISCO. See Wheeler's Land Titles, in evidence *ut supra*. And even as late as the year 1862 the Legislature of California, by "An Act to authorize the Commissioners of the Funded Debt of the City of San Francisco to compromise and settle certain claims to real estate, and to convey such real estate pursuant thereto," passed April 14th, 1862, Laws 1862, chap. CCIII, page 217, and held to be constitutional in *Babcock v. Middleton*, 20 California Reports, 643, referred to and adopted these conveyances of Pueblo lands to the Commissioners of the Funded Debt as a source of title, and the powers of the Commissioners of the Funded Debt have been renewed and enlarged successively, in various years. See ADDENDA, Nos. CXLV, pages 282-285; CXLI, page 277, and page 322, No. CLXI.

IV. The Consolidation Act of 1856, which united in one corporation the City and the County of San Francisco, grants a special power to the Board of Supervisors. (Laws 1856, chap. 125, page 167, § 74, Subdivision 23); "To provide ways and means for the prosecution of "the claims, in the name of the city to the PUEBLO LANDS now pending for the same."

V. The United States came meanwhile to the City of San Francisco to obtain a conveyance of a portion of its Pueblo lands at Rincon Point for a Hospital Lot; a portion of the very lands which it had reserved, but which reservation was void if the lands were Pueblo lands; ADDENDA, Nos. CXLVIII, page 299, and CXXXI, page 228; and an act of the Legislature was obtained authorizing the city to convey to the United States a parcel of land at Point Lobos for the site of a lighthouse—a most singular proceeding if that was public land of the United States; ADDENDA, No. CXL, page 277.

VI. And the State was only too glad to receive a conveyance from the city of a portion of its Pueblo lands on which to erect an Asylum for the Deaf, Dumb, and Blind; Laws 1863-4, page 270.

Can it be possible that all the constituted authorities of Spain, Mexico, and California, for a period of more than two hundred and sixty years, have been afflicted with a persistent, pestilent, and noxious ignorance on the subject of PUEBLO LANDS?

§ 133. In the years 1851-52 the creditors of the city, who had

obtained judgment on their claims, issued executions upon their judgments, and levied upon these same PUEBLO lands, as if they were the property of the city, and exposed them for sale by the Sheriff. Such sales were restrained by injunctions from the District Court, upon the very ground assumed by the authorities of California under the Mexican régime, that the lands were held in trust for the citizens of the Pueblo. See *City of San Francisco vs. Le Roy*, case No. 597, 4th District Court; *City of San Francisco vs. Dunbar*, case No. 598, in the same Court;* §§ 80, 81, of this argument, and these propositions were ten years afterward sustained by the Supreme Court of California, in the case of *Hart vs. Burnett*, 15 California Reports,

RECAPITULATION OF THE ARGUMENT. — PROPOSITIONS OF THE CLAIMANTS.

§ 134. From the preceding argument we infer :

1. That each Hispano-American Pueblo consisting of ten or more heads of families, was entitled to four leagues of land as a part of the patrimony of the Pueblo. See §§ 28, 29, of this argument.

2. That such four leagues of land were to be measured in a square or prolonged form, taking the center of the Plaza or Public Square of the PUEBLO as a starting point, but that if the sea, mountains, marshes, or other wastes intervened, the measurement was to be taken in some other convenient direction; and if waste or other useless lands were still found to be within the boundaries, they were to be included within the lines of the survey, but not to be computed in the calculation of the area. See §§ 28, 30, of this argument.

3. That the conformation of the peninsula of San Francisco is such that there could be only one possible parallel of latitude, which, with

* It is very commonly said that the city has always been unsuccessful in its litigations. The litigation of a municipal corporation is always of a special and troublesome, and generally of a difficult character. With some considerable experience in that respect, I may be permitted to say that the City of San Francisco has been faithfully served by its official servants in the conduct of its law business. Col. Holt, the first City Attorney under the charter, was eminently successful in the management of the vast litigation which the city inherited as a portion of its birthright; and there is probably not one of his successors who can be justly accused of remissness in the discharge of his duties. If I may be permitted to make a grateful suggestion for the benefit of a city to whose kindness I owe so much, it is that the law business of the city can never be perfectly and systematically managed until the office of City Attorney and Counsel is elevated into a DEPARTMENT, with its Bureau in the City Hall, and its records as complete and in as permanent a form as those of any other public office. Then an era of confusion would not attend every change in the *personnel* of the office, and the actual incumbent would always have at his command, properly arranged, digested, and indexed, all the information belonging to his Department, and a reliable history of every law suit in which the city had ever been engaged. Yet those litigating against the city are evidently interested in having the municipality inadequately defended in its litigation, and the clamor of economy raised by them will probably always prevent the proper means being adopted for the completest vindication of the rights of the city in the Courts.

the tide water line surrounding the peninsula, would include the four leagues belonging to the PUEBLO, and therefore it was not necessary that that line should be actually surveyed. *Id certum est quod certum reddi potest.* But that afterwards the Mexican Government made such grants of adjoining lands that there is left for the PUEBLO less than the four leagues to which she is entitled, and the superior authorities have thus segregated what is left as belonging to the Pueblo, and so reduced that area to certainty. See §§ 30, 39, 123, of this argument.

4. That said four leagues of land were capable of being divided into *solares* or building lots, *suertes* or sowing lots, *proprios* or lands to be rented for Municipal Revenue, *ejidos* or suburbs, and *dehesas* or the large cattle pasture; but that such division was decided by convenience only, and that the right of PUEBLOS to these four leagues of land did not depend upon the division being actually made. See §§ 10, 11, 14, 15, 16, of this argument, and ADDENDA, No. L, page 71, title, "Municipal Funds and Revenue."

5. That the PRESIDIOS were recognized as PUEBLOS, and that such PRESIDIAL-PUEBLOS, equally with other PUEBLOS, were entitled to their four leagues of land, to be measured in the same manner. See § 44, of this argument, and ADDENDA, No. VIII, page 17.

6. That San Francisco was founded, in 1776, as a Hispano-American PRESIDIAL-PUEBLO, with eighteen married male soldiers and seven married male colonists, and so as such PUEBLO was entitled to four square leagues of land. See §§ 34 and 44 of this argument. [The words, "siete pobladores tambien casados y con familias, seven settlers also married and with families," are not translated in section 34.] That its population in 1825 approached the number of 500 inhabitants, ante § 55, and was never reduced below the "ten male married heads of families," which entitled it to four leagues of land; even if it were conceded that such a reduction would work a forfeiture of the vested rights of the Pueblo to its lands, which I do not concede. See §§ 28, 34, 73, and ADDENDA, No. LXXVI, page 110.

7. That it was an organic feature in the Hispano-American system of administration that populations existing in settlements should be governed by representative and deliberative municipal bodies called AYUNTAMIENTOS or Common Councils; that towns of a certain population were entitled to have Ayuntamientos of their own, as a matter of course; but that if the populations were too small to be each entitled to an Ayuntamiento of its own, they were either joined together to form an AGGREGATED AYUNTAMIENTO, or were attached to some PUEBLO which had an Ayuntamiento of its own. See § 47 of this argument.

8. That in the autumn of the year 1834, an Ayuntamiento was organized at San Francisco for the PARTIDO OF SAN FRANCISCO, including small neighboring populations, that is to say, an Ayuntamiento aggregate, and that this AYUNTAMIENTO AGGREGATE was elected, organized, and entered upon the discharge of its functions. See §§ 47, 70, 71, of this argument.

9. That immediately afterwards it was discovered that the PUEBLO

of San Francisco had a population sufficient to entitle it to an Ayuntamiento of its own, and thereupon an Ayuntamiento of the PUEBLO was organized, to which the population of Contra Costa was for a while attached; namely, a COMPOSITE AYUNTAMIENTO, which superseded the Ayuntamiento of the PARTIDO. See §§ 47, 72, 74, 76, 77, of this argument.

10. That the PUEBLO of San Francisco was a fully organized body politic and CORPORATE; and that it and its Ayuntamiento not only claimed to be such, but were repeatedly recognized as such by the Governor, the Departmental Legislature, and by the citizens of California. See §§ 77, 82, 83, 84, 87, 88, 96, 100, 110, 112, 120, 122, of this argument.

11. That this Ayuntamiento of the Pueblo of San Francisco possessed the power to grant, and did grant land for building lots, which it could NOT do unless the PUEBLO OF SAN FRANCISCO was a body politic and corporate, and the owner of such lands. See §§ 83, 84, 87, 98, 100, and ADDENDA, No. LXXVIII, pages 113, 114, of this argument. That no measurement of those four leagues of land was actually necessary, but that by the survey of the adjoining lands the PUEBLO lands have been effectually segregated from the public domain. See §§ 30, 39, and 123, of this argument.

12. That meanwhile the Governor and Departmental Assembly, assuming to be the superior visitors, inspectors, and directors of said trust, did lawfully grant a large portion of said four leagues of land to citizens of said PUEBLO, in fee simple, for purposes of grazing and farming. See §§ 80, 81, 82, 97, 102, 120, of this argument.

13. That in the year 1835 a settlement was begun within the limits of the PUEBLO of San Francisco, on its northeastern frontage upon the Bay, which was then called YERBA BUENA,* and which is the present site of the most thickly settled portion of the present City of San Francisco. That the population of the PUEBLO OF SAN FRANCISCO gradually shifted itself to YERBA BUENA, a site within the Pueblo of San Francisco, and the PUEBLO was thereafter known indifferently by the name of PUEBLO of San Francisco, PORT of San Francisco, YERBA BUENA, and PUEBLO of Yerba Buena. See §§ 120, 111, 42, 55, and 110 of this argument, and ADDENDA, No. XXVI.

14. That in the year 1838 the Ayuntamiento of the PUEBLO of San Francisco was suspended, because the requisite basis of population for an Ayuntamiento had been raised to 4,000 inhabitants; but that the

* So named from the fact that that locality abounded in "Yerba Buena—the good herb," a species of aromatic mint, reputed to be efficacious as a febrifuge. I believe that the designation of "Yerba Buena," euphonious in itself and replete with historical associations, is now attached to only a disused cemetery, which is about to be appropriated to other uses, and to "Yerba Buena Lodge, No. 15," of the Independent Order of Odd Fellows. The island opposite the city, between its water front and Contra Costa, was formerly called "La Isla de Yerba Buena—Yerba Buena Island," but several years ago some experimental Yankee planted there a colony of goats, and since then it has generally been called "GOAT ISLAND." It is to be regretted that the designation "Yerba Buena" has not been more generally perpetuated.

PUEBLO still retained its character of body politic and corporate, and was administered by Alcaldes and Justices of the Peace with the powers of Ayuntamientos. See §§ 89, 90, 92, of this argument, and No. LXIX, page 100, of the ADDENDA.

15. That these Justices of the Peace, thus having the powers of an Ayuntamiento, made and promulgated Municipal Ordinances for the government of the PUEBLO OF SAN FRANCISCO, which were published in that Pueblo. See § 96 of this argument, and ADDENDA, No. XLIII, page 62.

16. That the Alcaldes and Justices of the Peace of the PUEBLO OF SAN FRANCISCO continued to grant the lands of the PUEBLO of San Francisco down to the year 1846, and within twenty days of the conquest of California by the Americans, which they could not lawfully do unless the PUEBLO of San Francisco continued to exist as a body politic and corporate, and was the owner of said lands. See §§ 100, 83, 84, of this argument, and also ADDENDA, No. LXXVIII, page 113.

17. That this Pueblo of San Francisco had a complete fiscal organization, with Syndics regularly elected during the existence of the Ayuntamiento, and appointed by the Governor after that time. See ADDENDA, Nos. XXX, page 47; XXXV, page 54; XLV, page 63; LIV, page 95.

18. That when California came into the possession of the United States, the constituted authorities of the new Government recognized the PUEBLO of San Francisco, its corporate existence, its right to its lands, and restored its Ayuntamiento; and that the Legislature of California made the same recognition when it raised that PUEBLO to the rank of City. See §§ 126, 127, 129, 130, 131, of this argument.

19. That there was near the Pueblo of San Francisco a Catholic Mission of converted or neophyte Indians, generally called the Mission of DOLORES de San Francisco, founded also in the year 1776; see § 34 of this argument. That this Mission was never very prosperous, and from the year 1815 declined rapidly in population. ADDENDA, No. LXXVI, page 110, ante, § 115. That the neophyte Indians lived there in a state of COMMUNITY from which they never emerged; §§ 17, 78, 79, 82, 88, 93, 89, 102, 107, 112, 114. That the Mission and Community died of inanition between the years 1814 and 1844, and were lawfully declared extinguished by a formal inquest of office in the year 1845; §§ 115, 116, 117, 120. That it was originally intended that this Mission should become secularized, and be erected into an *Indian Pueblo*, like all other such Missions, § 17, but that, as above shown, this was never accomplished; and that although it was sometimes called the *Pueblo of Dolores*, the word *Pueblo* was thus employed only in the sense of "settlement;" §§ 9, 88, 98, 114, 117, and that the Mission of Dolores was never a PUEBLO in the sense of an organized town or body politic or corporate; but, on the contrary, as late as the year 1844, its inhabitants, including Prefects, sub-Prefects, Alcaldes, Justices, and Regidores, past and present, petitioned the Governor setting forth that the Mission of Dolores had never had the title of PUEBLO, and praying that it might be granted to it in future, which application was not

granted; § 114, and ADDENDA, No. LXXI, page 102; and that in the next year, 1845, the said MISSION OF DOLORES, by a formal inquest of law, was forever extinguished, and never reached or could reach the condition of an organized PUEBLO; § 115, and ADDENDA, No. LXII, page 88, Articles 1 and 2; and LXXIII, page 90, Art. 1.

20. That the PUEBLO OF SAN FRANCISCO, and this MISSION OF DOLORES, (subsequently called the ESTABLISHMENT of Dolores) were perfectly distinct, and never confounded with each other; nor has an attempt ever been made to confound them, until long since the conquest of California by the Americans. See §§ 77, 88, 93, 102, 104, 126, 127, 130, 131, 132.

21. That on the seventh day of July, A.D. 1846, [the date of the conquest of California by the Americans] there was a PUEBLO existing at San Francisco.

22. That the first military Governor after the conquest of California by the Americans, recognized the corporate existence of the Town or Pueblo of San Francisco, and made a grant of lands to it in the name of the United States. § 27; ADDENDA, No. LXXII, page 104.

23. That Governor Riley, the last military Governor under the conquest of California by the Americans, not only recognized the PUEBLO OF SAN FRANCISCO, but also restored its Ayuntamiento or City Council, and gave the most full and explicit directions in relation to the management of its MUNICIPAL LANDS. Ante, § 130; ADDENDA, No. LXXV, page 108.

24. That the People of San Francisco, without a single exception, recognized the existence of the Pueblo, elected its Ayuntamiento and Alcaldes, submitted to their authority, and bought the Pueblo lands when sold by them—the Ayuntamiento assuming the sole CONTROL of the lands, and putting them up for sale at various times. Ante, § 130, Subdivisions I and IV; § 132.

25. That the Prefect of San Francisco, an officer who was learned in the law of America and in that of Spain, and perfectly qualified for his position, not only repeatedly recognized the Pueblo and the Pueblo lands, but interfered himself with all the power and authority of his office, and induced the Governor of the State to interfere, to restrain the further sale of the Municipal Lands of the Pueblo for the sole reason that they belonged to the city. Ante, § 130, Subdivisions II and IV.

26. That the Governor of California recognized the existence of the Pueblo, the lawful authority of its Ayuntamiento, the ownership by it of its Pueblo Lands, and issued two proclamations relative to them, the first restraining their further sale, and the latter allowing the Ayuntamiento to proceed with the sales which they had announced to take place. Ante, § 130, Subdivisions II and IV.

27. That the same Prefect himself assumed to dispose of Pueblo Lands under a valid municipal law of Mexico, which had survived the conquest of the country by the Americans, an act which he could assume to perform only because the lands were PUEBLO LANDS, and

not part of the public lands of the United States. Ante, § 130, Subdivision V.

28. That in April, 1850, the Legislature of California raised San Francisco to the dignity of a city, and in the act passed for that purpose recognized the PUEBLO OF SAN FRANCISCO as the politico-corporate municipality which the city was to succeed. Ante, § 131.

29. That the citizens of San Francisco evinced the strongest possible confidence in the Pueblo, by purchasing the municipal lands put up for sale by the Ayuntamiento, with the most implicit pecuniary faith in the validity of the title thus acquired. Ante, § 132, Subdivision I.

30. That the city and the legislature in the years 1850 and 1851 used the municipal lands as one great resource for the payment of the floating debt of the city; and finally, having caused the debt to be funded, applied them to that purpose. Ante, § 131, Subdivisions II and III.

31. That by the Consolidation Act of 1856 the legislature made another and solemn recognition of the PUEBLO LANDS of the City of San Francisco. Ante, § 131, Subdivision IV.

32. That the United States came, meanwhile, to the City of San Francisco, with the permission of the legislature, to obtain grants of lands, which if they were not PUEBLO LANDS, already belonged to the United States. Ante, § 131, Subdivision V. And the State itself, it may be here stated as a matter of fact standing upon its statute book, came to the same source to obtain a conveyance of a site for its Deaf, Dumb, and Blind Asylum. Laws 1863-4, page 260.

§ 135. It did not need so long and minute a narrative to sustain the inferences above made, for the law would have presumed all the substantial facts which that narrative has incontestably established. The fact that a town has *de facto* an organization of the usual officers who were elected and served as such, is *prima facie* evidence of the legal organization of such town. *Town of Londonderry vs. Town of Andover*, 28 Vermont Rep., 416. And also that it is a corporation capable of holding and transmitting real estate, and of being by prescription the owner of such real estate. *Robie vs. Sedgwick*, 35 Barbour S. C. R., 319. 2 Kent, 277. *Angell & Ames on Corp.*, 57. *Dillingham vs. Snow*, 7 Mass., 547. *Stockbridge vs. West Stockbridge*, 12 Mass., 400. When the City of San Francisco was incorporated, and the functions of the Pueblo organization suspended, the City became the lawful successor of the Pueblo, and continued its identity. *Overseers of the Poor of Boston vs. Sears*, 22 Pick., 122. In order to dedicate property for public use in cities and towns, and other places, it is not essential that the property should be vested in a corporate body. It may exist in the public alone; and the sovereign is bound by the dedication, even if there is no actual grant. *New Orleans vs. The United States*, 10 Peters, 662. It was therefore wholly unnecessary for the claimants to show that the PUEBLO of San Francisco was an actual, legal, and fully organized body politic and corporate, the owner

of lands which it could grant to its citizens, and which had been completely segregated from the public domain. But those facts were true, and the PUEBLO of San Francisco has shown them by incontestable proofs. Ante, §§ 82, 84.

A.D. 1851.

THE UNITED STATES CREATE A COMMISSION TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN CALIFORNIA.

§ 136. On March 3d, 1851, the Congress of the United States passed "An Act to ascertain and settle Private Land Claims in the State of California" (United States Statutes at Large, Vol. 9, page 631) which contains the following enactments:

"SECTION 1. That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby constituted, which shall consist of three Commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this Act, unless sooner discontinued by the President of the United States."

"SEC. 8. That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government, shall present the same to the said Commissioners when sitting as a Board, together with such documentary evidence and testimony of such witnesses as the said claimant relies upon in support such claims; and it shall be the duty of the Commissioners, when of the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the District Attorney of the United States, in and for the district in which such decision shall be rendered."

"SEC. 14. *And be it further enacted*, [1] That the provisions of this Act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual; [2] and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six, being duly proved, shall be *prima facie* evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; [3] and where any city, town, or village shall be in existence at the time of passing this Act, the claim for the land em-

“braced within the limits of the same may be made by the corporate authority of the said city, town, or village.”

ANALYSIS OF § 14 OF THAT ACT.

§ 137. The above § 14 contains the provisions under which the present claim is presented.

1. The FIRST CLAUSE [1] provides that the presentation of a claim to PUEBLO lands by any PUEBLO existing on July 7th, A.D. 1846, whether known as city, town, or village, and its confirmation, shall inure to the benefit of all persons holding lands by grants from the PUEBLO; a most beneficial enactment, preventing a multiplicity of suits, making one proceeding effectual for a large number of claimants, which in the case of the Pueblo of San Francisco would probably have amounted to thousands.

2. The SECOND CLAUSE [2] provides that when the existence on the 7th of July, A.D. 1846, of a town established by the Spanish or Mexican authorities is proved, that fact shall be *prima facie* evidence of a grant to such town. This enactment seems to have been made for two purposes: *First*, to satisfy those who it was foreseen would clamor for a paper or parchment grant, duly engrossed, signed, sealed, and delivered; see ante, § 29, of this argument. And such persons are comforted with the assurance that such a grant is held *by law* to have been made, although it cannot now be found. *Secondly*, to relieve all doubts as to the question of survey, and to answer the objections of those who might contend that there having been no actual grant, but only a remote equitable right to a grant which was never carried into execution, this right has now been lost. To such persons this enactment replies: “There is presumed to have been a grant; the PUEBLO is entitled to the lands; it is now necessary only to fix their boundaries and issue a patent for the tract included within them.”

3. The Third provision [3] seems to be a general enactment made for the purpose of providing for such contingencies as might exist without the knowledge of Congress. Thus a PUEBLO might at the date of the passage of the Act of Congress exist as a new corporation created by Act of the Legislature, with a name different from its PUEBLO name, and in this case the claim might be presented by the new corporation. There might be a possible case where a PUEBLO existed before July 7th, 1846, and granted land to its citizens, and yet fell into decadence and did not exist on July 7th, 1846, but afterwards, under the Anglo-American dominion, revived, and became incorporated, and had a corporate existence at the time of the passage of the Act of Congress; and in this case also, the claim could be presented by the new corporation. The phrase “the claim for the land embraced within the limits of the same,” must of course be construed to mean the proprietary limits. No other construction would carry into effect the purpose of the law, which is, to comply with the duty of the United States resulting from public law and guaranteed by the Treaty of Guadalupe-Hidalgo, to confirm to the citizens of California the rights and property possessed by them at the time of the conquest.

THE WHOLE QUESTION DECIDED BY THE SUPREME COURT OF CALIFORNIA, AND THE COURTS OF THE UNITED STATES WILL FOLLOW THAT DECISION.

§ 138. The Supreme Court of California, in the case of *Hart vs. Burnett*, 15 California Reports, 530, has expressly decided the whole question, namely: that San Francisco was a fully organized PUEBLO, and as such entitled to four square leagues of land; and that decision is not only followed by the Courts of the State, but also has been recognized by this Court. We think this decision is binding upon this Court. In the complex adjustment of sovereignty under our Federal system, the State Courts of California are the complement of the Federal Courts; that is to say, the State Courts represent that other portion of the judiciary which is necessary to make up a complete judiciary of the whole sovereign power. The Federal Courts represent in that respect one-half of the judicial power of a complete sovereignty, and the State Courts represent the other half. The comity of nations, which compels Courts representing equal sovereignties to accord a certain deference to each other's decrees, applies in the case at bar not with an equal, but with a constraining force, and while this Court is bound to give only an effect of equality to the decrees of its co-ordinate State Jurisdictions of equal rank, it is bound to give a greater effect to the decrees of that State Court of California which is not its co-ordinate but its superior in rank. The District Courts of the State of California are the co-ordinates of the Circuit Courts of the United States. To their decrees, as to those of its co-ordinates, a Circuit Court of the United States for California may, or may not, accord a binding force. But the Supreme Court of the State of California is not the co-ordinate of the Courts of the United States for the State of California, but is the co-ordinate of the Supreme Court of the United States. When, therefore, the Supreme Court of the State of California has decided a case, and the Supreme Court of the United States has not decided to the contrary, we submit that all the Courts of the United States for California are bound to follow that decision just as fully as if the Supreme Court of the United States had made it, and that it does not belong to a Court of inferior rank, but only to the judiciary of equal, co-ordinate, and complementary rank, to pronounce a dissenting decree. We advance these propositions in all boldness, but with all due respect. Again. When the course of events has called the Supreme Court of Appeals of the State of California to pronounce *first* in affirming a class of titles to lands under a Mexican grant, upon points resting upon *municipal* law, for a Court of the United States in California to pronounce any different decision, would be productive of such disastrous results that the right to do so must be denied upon considerations of convenience alone. In such cases common prudence requires that if an accepted rule of property is to be disturbed, it shall be done only by that Superior Tribunal whose decisions are final.

The propositions above advanced in this section have been enforced in the most emphatic manner by the Supreme Court of the United States, in the case of *League vs. Egery*, 24 Howard's Reports of Sup.

Court of the U. S., 264, where Mr. Justice Campbell, delivering the decision of the Court to the effect that by the colonization laws of Mexico, passed in 1824 and 1828, the consent of the federal Executive of Mexico was essential to the validity of a grant of lands within ten leagues of the coast, uses the following language :

“The location is within the littoral or coast leagues described in “the fourth sections of the colonization laws of Mexico, of 1824 and “1828. The litigation between the grantees and their assigns and the “defendants for this land has been protracted in the Courts of Texas, “and the opinion of the Supreme Court of that State has been very “definitely expressed upon the validity of their titles on two several “occasions. *Smith vs. Power*, 14 Tex. R., 146; *Smith vs. Power*, 23 “Tex. R., 29. In the latter case the Supreme Court said : ‘No ques- “tion is more authoritatively settled by the repeated decisions of this “Court, than that the consent of the federal Executive of Mexico was “essential to the validity of a grant of lands of the character of the “present within the border and coast leagues. *Edwards vs. Davis*, 3 “Tex. R., 321; 10 Id., 316; *Republic vs. Thorn*, 3 Id., 499; 5 Id., “410; 9 Id., 410, 556. In the case of *Smith vs. Power*, (14 Texas “R.) the parties to this appeal, it was held, that the grant here in “question, under which the defendant claims, could not be distinguished “from those which had been passed upon in former cases; and upon “the authority of those cases, it was decided that the grant wanting “such consent was void. That question, therefore, cannot be con- “sidered as now an open one. A series of decisions continued almost “from the organization of this Court down to the present time, thus “settling the construction of the old local law, upon which the titles to “real property in the oldest and most densely peopled portions of the “State so largely depend, must be regarded as emphatically the law of “the State.’ In accordance with well established principles of this “Court, we accept this uniform and stable body of judicial decisions of “the Court of last resort of the State in which the property is situated, “and in which the transactions that form the subject of this litigation “took place, as conclusive testimony of the rule of action prescribed “by the authorities of the State, as applicable to their interpretation “and adjustment. We do not inquire whether a more suitable rule “might not have been adopted, nor whether the arguments which led “to its adoption were forcible or just. We receive the decisions having “the character that are mentioned in the extract we have made from “the opinion of the Supreme Court of Texas, as having a binding force “almost equivalent to positive law. Such being our conclusion in “respect to this grant, we must sanction the judgment of the District “Court that denies its validity. Judgment affirmed.”

On these principles it would seem that the decision of the Supreme Court of California in the case of *Hart vs. Burnett*, 15 Cal. Rep., 530, that there was a PUEBLO OF SAN FRANCISCO entitled to four leagues of PUEBLO LANDS, and that the City of San Francisco, as the successor of that Pueblo, holds those Pueblo Lands in trust for the inhabitants of the city, is decisive of the question.

RÉSUMÉ.

§ 139. We have shown, then, the ancient, immemorial, unrepealed laws of Spain and Mexico, never doubted, but always acknowledged, which entitled the PUEBLO of San Francisco to Four Square Leagues of land. We have shown this PUEBLO in existence in the form of a complete and fully organized Municipality, recognized by the Governor, the city Legislature, and by the citizens universally, and afterwards by the United States and the State of California. We have shown this PUEBLO in possession of a portion of these lands, and dealing with them as with its own property; and the possession of a part under color of title is a constructive possession of the whole. We have shown that the Governments of Mexico and of the United States have defined the limits of these lands by surveys of adjacent lands granted by the former Government, although from the conformation of the peninsula within which they are situated, no survey was necessary in order to define the limits of the Pueblo lands. We have shown the United States coming to the rescue against the most Quixotic assaults, and expressly declaring by law that a grant of lands to the Pueblo shall be presumed. We have shown that the highest Court in the State of California, in the administration of its municipal laws, and compelled to take judicial knowledge not only of the laws but also of the history of the country, has acknowledged all the law and the facts, and conceded and confirmed all the rights for which we contend.

THE QUESTION OF THE FINAL DISPOSITION OF THE PUEBLO LANDS
IS NOT TO BE CONSIDERED IN THIS CASE.

§ 140. The consideration of the legislative direction or control which the Legislature of California in virtue of its right of sovereignty has heretofore asserted, or may hereafter assert over the execution of the trust to which these four leagues of PUEBLO lands are subject, for the benefit of the inhabitants of the city, is a mere speculative one, and is not to be regarded in the decision of the case. We have shown that these lands were always held in trust for the benefit of the citizens of the PUEBLO, and that this feature was stamped upon all the colonization laws; see the four league laws, ADDENDA, Nos. I and II; De-Nevé's Regulations of 1781, ADDENDA, No. IV; Plan of Pitic, ADDENDA, No. VII; that the Cortes of Spain, as well as the Governors and Departmental Assembly of California, exercised the right to modify, direct, and control the execution of this trust, §§ 52, 80, 81, of this argument; and that the State of California has succeeded to this sovereign right of inspection and control; *New Orleans vs. The United States*, 10 Peters, 736, 737; *Dartmouth College vs. Woodward*, 4 Wheaton, 518; *Hart vs. Burnett*, 14 Cal., 530; *People vs. Morris*, 13 Wend., 325; *East Hartford vs. Hartford Bridge Co.*, 10 Wheaton, 511. But what is to be the ultimate disposition of these PUEBLO lands does not concern this Court. When it shall have confirmed to the City of San Francisco the same title and interest which its predecessor had in four leagues of Pueblo lands, it will have done all that the law requires of it, and all that we claim at its hands.

EJIDOS-PRESIDIOS.

EJIDOS AS A GENERIC TERM.—I have in the course of the argument several times called attention to the fact that many translators have confounded the terms *ejidos* and *dehesas* when those terms were used as *specific* terms contradistinguished from each other; namely, the *ejidos* as designating the vacant suburbs or commons immediately next to the settled portion of the *Pueblo*, and the *dehesas* indicating the great herd pasture lying beyond. See §§ 14, 15, 103 of this argument. But I have inadvertently omitted to state that *ejidos* was also used as a generic term to designate the whole body of lands to which the *Pueblo* was entitled, which was capable of being divided into—1st. *Propios*, § 10; 2d. *Ejidos*, specific, vacant suburbs or commons, § 14; and 3d. *Dehesas*, the great outside cattle pasture, § 15. *Ejidos*, in a general sense, meaning all the lands of the *Pueblo*, before they were subdivided, was frequently used by the Governors and Secretaries of State in California before the conquest by the Anglo-Americans. Thus in the case of Doña Martina Castro *vs.* The United States, No. 343 in this Court, (No. 593 of the Land Commission) it appears from the *Espediente* (No. 31) that the Ayuntamiento of the Villa of Branciforte objected to the grant of the lands solicited by Doña Martina, because they might fall within the *ejidos* of that Villa, which had not yet been marked out. Jimeno, the Secretary of State, over date of February 8th, 1844, in a report which the Governor approved, states that the grant had been drawn subject to a tax, in case the lands proved to be within the *ejidos*, and adds: "I understand that the town of Branciforte is to have (sé le debe señalar) for *ejidos* of its population four square leagues in conformity to the existing law of the Recopilacion of the Indies, in Volume II, folios 88 to 149," being the four league law cited in § 28 of this argument. This furnishes an example of the use of *ejidos* in a generic sense; and also shows that the Secretary of State and the Governor of California, in the year 1844, considered that each *PUEBLO* was entitled to four square leagues of land. So when the Governor, in 1840, ADDENDA, No. L, p. 70, title COMMONS, reports that none of the towns have their *ejidos* and *propios* marked out, the word *ejidos* is used generically to designate the whole four leagues; and the complaint of the Governor is to the effect that the towns have not yet had their *propios* assigned, and so do not know what municipal revenues can be derived from that source, because the great body of the lands of the town—the *ejidos*—out of which the *propios* are to be assigned, are not yet marked out. I have shown in § 15, that "common lands" present an equivocal translation of the term *ejidos*, for that phrase includes not only the specific *ejidos* which were a portion of the inalienable patrimony of the *PUEBLO*, but also the *dehesas*, in which the *PUEBLO* had only a qualified property, subject to the superior legislative control.

THE PRESIDIO OF SAN FRANCISCO did not survive the removal of the population from that point to Yerba Buena as stated in §§ 55, 111, 120, and ADDENDA, No. XXVI. Lieutenant Wilkes, who visited San Francisco with his Exploring Expedition in 1841, says: "After passing through the entrance of the Bay, we were scarcely able to distinguish the Presidio; and had it not been for its solitary flag staff, we could not have ascertained its situation. From this flag staff no flag floated; the building was deserted, the walls had fallen to decay, the guns were dismounted, and everything around it lay quiet. I afterwards learned that the Presidio was still a garrison in name, and that it had not been wholly abandoned; but the remnant of the troops stationed there consisted of no more than an officer and one soldier." Wilkes' Exploring Expedition, Vol. V, p. 152; Bryant's California, 429. De Mofras, writing in 1842—although his first and probably his only visit to the Presidio was in 1840—writes: "The Presidio of San Francisco is in ruins, and completely disarmed; it is inhabited only by a sub-lieutenant and five farmer soldiers and their families." De Mofras, Vol. I, p. 427. From this condition of ruin and abandonment the Presidio never recovered until after the Anglo-American conquest. It does not seem to be generally known that there was formerly a chapel at the Presidio, which, with the Governor's house, enjoyed the distinction of being whitewashed. Beechy, Vol. II, p. 9. Farnham's California and Oregon, (1844) p. 353. "Historical Introduction" prefixed to the argument.

ADDENDA.

No. I.

[Recopilacion de Leyes de los Reynos de las Indias. Libro IV, Titulo V, Ley VI Ordenanza del Rey Don Felipe II.]

LEY VI.—*Que la capitulacion para Villa de Alcaldes ordinarios, y Regidores, se haga conforme à esta ley.*

Si la disposicion de la tierra diere lugar para poblar alguna Villa de Españoles, con Concejo de Alcaldes ordinarios, y Regidores, y huviere persona que tome asiento para poblarla, se haga la capitulacion con estas calidades: Que dentro del termino, que le fuere señalado, por lo menos tenga treinta vecinos, y cada uno de ellos una casa, diez bacas de vientre, quatro bueyes, ò dos bueyes, y dos novillos, una yegua de vientre, una puerca de vientre, veinte ovejas de vientre de Castilla, y seis gallinas, y un gallo: assimismo nombrará un Clerigo, que administre los Santos Sacramentos, que la primera vez será á su eleccion, y las demás conforme á nuestro Real Patronazgo; y proveerá la Iglesia de ornamentos, y cosas necessarias al culto Divino, y dará fianzas, que lo cumplirá dentro del dicho tiempo; y si no lo cumpliere, pierda la que huviere edificado, labrado y grangeado, que aplicamos à nuestro Real Patrimonio, y mas incurra en pena de mil pesos de oro para nuestra Cámara; y si cumpliere su obligacion, se le den quatro leguas de termino y territorio en quadro, ò prolongado, segun la calidad de la tierra, de forma que si se deslindare, sean las quatro leguas en quadro, con calidad de que por lo menos disten los limites del dicho territorio cinco leguas de qualquiera Ciudad, Villa, ò Lugar de Españoles, que antes estuviere poblado, y no haga perjuicio à ningun Pueblo de Indios, ni de persona particular.

[TRANSLATION.]

LAW VI.—*The conditions for a town of Alcaldes with the ordinary jurisdiction and Councilmen (Regidores) shall be agreeably to this law.*

If the nature of the tract of land allow of the settlement of some town (villa) of Spaniards with a Council of Alcaldes of the ordinary jurisdiction and Councilmen (regidores), and there be some person who undertake by contract to settle it, let the agreement be made under these conditions: That within the period of time which may be assigned to him he must have at least thirty settlers, each one provided with a house, ten breeding cows, four oxen, or two oxen and two steers, one brood mare, one breeding sow, twenty breeding ewes of the Castilian breed, and six hens and one cock; he shall also appoint a priest to administer the Holy Sacraments; the first time he shall select him, but afterwards the appointment shall be subject to our Royal

Patronage; and he shall provide the Church with ornaments and the things necessary for Divine Worship; and shall give bonds for the performance of all this within the time agreed upon; and if he should not comply with his obligation he will lose whatever he may have constructed, wrought, or garnered, to be applied to our Royal Patrimony, and will furthermore incur the penalty of one thousand pounds of gold for our treasury; and if he should comply with his obligation, there shall be given to him four leagues of extent and territory in a square or prolonged form according to the character of the land, in such manner that if surveyed, there shall be the four leagues in a square, with the condition that the limits of said territory shall be distant at least five leagues from any city, town, or village of Spaniards previously founded, and that there shall be no prejudice to any Indian town or private person.

No. II.

[Recopilacion de leyes de los Reynos de las Indias, Libro IV, Titulo V, Ley X.]

LEY X.—*Que no habiendo poblador particular, sino vecinos casados, se les conceda el poblar, como no sean menos de diez.*

Quando algunas personas particulares se concordaren en hacer nueva poblacion, y huviere numero de hombres casados para el efecto, se les dè licencia, con que no sean menos de diez casados, y deseles termino y territorio al respeto de lo que està dicho, y les concedemos facultad para elegir entre sí mismos Alcaldes ordinarios, y Oficiales del Concejo annales.

[TRANSLATION.]

LAW X.—*If there should be no private contractor for a settlement, but only individual citizens who are married men, let them have leave to found a settlement, provided they are not less than ten.*

When private individuals shall agree to form a new settlement, and for that purpose there shall be a number of married men, let leave be granted to them, provided they be not fewer than ten married men; let there be given them extent of land and territory according to what has been heretofore provided (al respeto á lo que està dicho), and we grant them power to elect among themselves Alcaldes with the usual jurisdiction and annual officers of the Council.

No. III.

[See California Archives, Vol. I, Missions and Colonization, page 812; 1 Rockwell, 444, Halleck; Rep. Ex. Doc. No. 17, 1st Sess. 31st Cong., II. of R., page 133.]

Extracts from "the instructions to be observed by the Commandant appointed to the new establishments of San Diego and Monterey," given by El. Bailie Friar Don Antonio Bucareli y Urusu, dated Mexico, 17th August, 1773.

ARTICLE 2. The confusion which has reigned in the accounts, and the want of order which I have observed in everything else, have compelled me to establish this new method, and to appoint Captain Don Fernando Rivèra y Moncada commandant of San Diego and Monterey, because I am well informed of his good conduct or manner of proceeding, and of his knowledge of the new estab-

lishments, acquired in the employments and offices which he has therein obtained and in the presidios of California for many years.

ARTICLE 12. With the desire to establish population more speedily in the new establishments, I for the present grant the commandant the power to designate common lands, and also even to distribute lands in private to such Indians as may most dedicate themselves to agriculture and the breeding of cattle, for having property of their own, the love of it will cause them to radicate themselves more firmly; but the commandant must bear in mind that it is very desirable not to allow them to live dispersed—each one on the lands given to them—but that they must necessarily have their house and habitation in the town or mission where they have been established or settled.

ARTICLE 13. I grant the same faculty to the commandant with respect to distributing lands to the other founders (pobladores) according to their merit and means of labor—they also living in the town (pueblo) and not dispersed, declaring that in the practice of what is prescribed in this article and the preceding 12th, he must act in every respect in conformity with the provisions made in the collection of the laws respecting newly-acquired countries and towns, (*reducciones y poblaciones*.) granting them legal titles for the owner's protection without exacting any remuneration for it or for the act of possession.

ARTICLE 14. The commandant must be carefully attentive that the founders who go to the new establishments have the requisite arms for their defense, and for assisting the garrisons of the presidios or missions in case of necessity, binding them to this obligation as a thing necessary for their own safety and that of all their neighbors.

ARTICLE 15. When it becomes expedient to change any mission into a pueblo, the commandant will proceed to reduce it to the civil and economical government which, according to the laws, is observed in the other pueblos of this kingdom, giving it a name, and declaring for its patron the saint under whose auspices and venerable protection the mission was founded.

No. IV.

[See California Archives, Vol. I, Missions and Colonization, pages 732, 762, (also 746); 1 Rockwell, 445; Halleck's Report, Ex. Doc. No. 17, 1st Sess. 31st Cong. H. of Rep., pages 134-139.]

Extract from the regulations for the government of the province of California, by Don Felipe De Neve, Governor of the same, dated in the royal presidio of San Carlos de Monterey, 1st June, 1779, and approved by his Majesty in a royal order of the 24th October, 1781.

TITLE THE FOURTEENTH.—POLITICAL GOVERNMENT, AND INSTRUCTIONS RESPECTING COLONIZATION.

§ 1st. The object of greatest importance towards the fulfillment of the pious intentions of the King, our master, and towards securing to his Majesty the dominion of the extensive country which occupies a space of more than two hundred leagues, comprehending the new establishment of the presidios, and the respective ports of San Diego, Monterey, and San Francisco, being to forward the reduction of, and as far as possible to make this vast country (which, with the exception of seventeen hundred and forty-nine Christians of both sexes in the eight missions on the road which leads from the first to the last named presidio, is inhabited by innumerable heathens) useful to the State, by erecting pueblos of white people, (*pueblos de gente de razon*) who, being united, may encourage agriculture, planting, the breeding of cattle, and successively the

other branches of industry ; so that some years hence their produce may be sufficient to provide garrisons of the presidios with provisions and horses, thereby obviating the distance of transportation and the risks and losses which the royal government suffers thereby. With this just idea, the pueblo of San José has been founded and peopled ; and the erection of another is determined upon, in which the colonists (pobladores) and their families, from the provinces of Sonora and Sinaloa, will establish themselves, the progressive augmentation of which, and of the families of the troops, will provide for the establishment of other towns, and furnish recruits for the presidio companies, thus freeing the royal revenue from the indispensable expenses at present required for these purposes ; and it being necessary to establish rules for carrying all this into effect, the following instructions will be observed :

§ 2d. As an equivalent for the \$120 and rations, which hitherto have been assigned yearly to each poblador (founder or colonist) for the first two years, and the rations alone for the following one, calculated at a real and a half per diem, free, for the three following ones, they will hereafter receive for each of the first two years \$116 and $3\frac{1}{2}$ reals, the rations to be understood as comprehended in this amount : and in lieu of rations for the next three years, they will receive \$60 yearly, by which arrangement they will be placed on more favorable terms than formerly, taking into consideration the advance that was charged on what they were paid with, and the discount on the rations furnished, which article they will in future receive at cost from the moment that these regulations be approved and declared to be in force, it being understood that the forementioned term of five years, as regards this emolument, is to be reckoned from the day on which the possession of the house-lots and pieces of [cultivable] land, (*solares y suertes de tierras*.) which are to be distributed to each poblador in the manner hereafter mentioned, to be given ; and the previous time, from the period of their enrolment, must be regulated according to the terms of their respective contracts, and, in order to avoid this expense, measures will be taken to have the new pobladores collocated, and put into possession immediately on their arrival.

§ 3d. To each poblador, and to the community (comun) of the pueblo, there shall be given, under condition of repayment in horses and mules fit to be given and received, and in the payment of the other large and small cattle, at the just prices which are to be fixed by tariff, and of the tools and implements at cost as it is ordained, two mares, two cows and one calf, two sheep and two goats, all breeding animals, and one yoke of oxen or steers, one plow-share or point, one hoe, one *coa*, (a kind of wooden spade with a steel point,) one axe and one sickle, one wood-knife, one musket and one leather-shield, two horses and one cargo mule. To the community (comun) there shall likewise be given the males corresponding to the total number of cattle of different kinds distributed amongst all the inhabitants, one seed jackass, another common one, and three she asses, one boar and three sows, one forge, with its corresponding anvil and other necessary tools, six crowbars, six iron spades or shovels, and the necessary tools for carpenter and cast work.

§ 4th. The house-lots to be granted to the new pobladores are to be designated by government in the situations, and of the extent, corresponding to the locality on which the new pueblos are to be established, so that a square and streets be formed agreeable to the provisions of the laws of the kingdom ; (conforme á lo prevenido por los Leyes del Reyno, y con su arreglo se señalará exido competente para el Pueblo, y Dehasas con les tierras de labor que conenga para propios) ; and conformable to the same, competent common lands (egidos) shall be designated for the pueblo, and pasture grounds, with the sowing lands that may be necessary for municipal purposes (propios).

§ 5th. Each suerte of land, whether capable of irrigation or dependent on the seasons, (de riego de temporale,) shall consist of two hundred varas in

length and two hundred in breadth, this being the area generally occupied in the sowing of one fanega of Indian corn. The distribution which is to be made in the name of the King, our master, by the government, with equality, and a proportion to the ground which admits the benefit of being watered, so that after making the necessary demarcation and reserving vacant [baldios] the fourth part of the number which may result, counting with the number of pobladores, should there be sufficient, each one shall have two suertes of irrigable land, and other two of dry ground, delivered to him, and of the royal lands (*realengas*) as many as may be considered necessary [convenientes] shall be separated for the propios of the pueblo, (and of those lots of land reserved for the King, [realengas] as many as shall be considered necessary, etc. See note at end of § 18, page 8). And the remainder of these, as well as of the house-lots, shall be granted in the name of his Majesty, by the governor, to those who may hereafter come to colonize, and particularly to those soldiers who, having fulfilled the term of their engagement, or on account of advanced age may have retired from service, and likewise to the families of those who may die; but these persons must work at their own expense, out of the funds which each of them ought to possess, and will not be entitled to receive from the royal revenue either salary, rations, or cattle, this privilege being limited to those who leave their own country for the purpose of settling this country.

§ 6th. The houses built on the lots granted and designated to the new pobladores, and the parcels of land comprehended in their respective gifts, shall be perpetually hereditary to their sons and descendants, or to their daughters who marry useful colonists who have received no grants of land for themselves, provided the whole of them comply with the obligations to be expressed in these instructions; and in order that the sons of the possessors of these gifts observe the obedience and respect which they owe to their parents, these shall be freely authorized, in case of having two or more sons, to choose which of them they please, being a layman, to succeed to the house and suertes of the town; and they may likewise dispose of them amongst their children, but not so as to divide a single suerte, because each and all of these are to remain indivisible and inalienable forever.

§ 7th. Neither can the pobladores, nor their heirs, impose on the house or parcel of land granted to them, either tax, entail, reversion, mortgage, (*cento, vinculo, fianza, hipoteca,*) or any other burden, although [even if] it be for pious purposes; and should any one do so in violation of this just prohibition, he shall irremediably be deprived of his property, and his grant shall *ipso facto* be given to another colonist who may be useful and obedient.

§ 8th. The new colonists shall enjoy, for the purpose of maintaining their cattle, the common privilege of the water and pasturage, fire-wood and timber, of the common forest and pasture lands, to be designated according to law to each new pueblo; (aprovechamiento comun de aguas y pastos, leña y madera del exido y Dehesa que ha de señalarse con arreglo á las Leyes á cada nuevo pueblo) and besides, each one shall privately enjoy the pasture of his own land, but with the condition that as they have to possess and breed all kinds of large and small cattle, and it not being possible that each one can dedicate himself to the taking care of the small stock consigned to them—as by so doing they would be unable to attend to agriculture and the public works—for the present, the small cattle, and the sheep and goats of the community, must feed together, and the shepherd must be paid by such community; and with respect to collecting together the large cattle, and bringing them to the corral, such as mares and asses, as may be required, this must be done by two of the pobladores, whom they must appoint amongst themselves, or as they may see fit, to look after this business, and thus the cattle of different kinds will be taken care of, and freed from the risk of running wild, at the same time that agricultural and other works of the community will be attended to; and each individual must

take care to mark their respective small cattle and brand the large, for which purpose the records of the necessary branding irons will be made without any charge; but it is ordained that henceforth no colonist is to possess more than fifty head of the same kind of cattle, so that the utility produced by cattle be distributed amongst the whole of them, and that the true riches of the pueblo be not monopolized by a few inhabitants.

§ 9th. The new colonists shall be free and exempt from paying tithes, or any other tax, on the fruits and produce of the lands and cattle given to them, provided that within a year from the day on which the house-lots and parcels of land be designated to them, they build a house in the best way they can, and live therein, upon the necessary trenches for watering their lands, placing at their boundaries, instead of landmarks, some fruit trees, or wild ones of some utility, at the rate of ten to each suerte; and likewise open the principal drain or trench, form a dam, and the other necessary public works, for the benefit of cultivation, which the community is bound particularly to attend to; and said community will see that the government buildings (*casas reales*) be completed within the fourth year, and during the third a storehouse sufficiently capacious for a public granary, in which must be kept the produce of the public sowing, which at the rate of one almud (the twelfth of a fanega) of Indian corn per inhabitant, must be made from said third year to the fifth, inclusive, in the lands designated for municipal purposes, (*propios*) all the labor of which, until harvesting the crop and putting it in the granary, must be done by the community, (*comun*) for whose benefit alone it must serve; and for the management and augmentation thereof, the necessary laws to be observed will, in due time be made.

§ 10th. After the expiration of the five years they will pay the tithes to his Majesty, for him to dispose of agreeably to his royal pleasure, as belonging solely to him, not only on account of the absolute royal patronage which he possesses in these dominions, but also because they are the produce of uncultivated and abandoned lands which are about to become fruitful at the cost of the large outlays and expenses of the royal treasury. At the expiration of the said term of five years, the new pobladores and their descendants will pay, in acknowledgment of the direct and supreme dominion which belongs to the sovereign, one-half of a fanega of Indian corn for each irrigable suerte of land, and for their own benefit they shall be collectively under the direct obligation of attending to the repair of the principal trench, dam, auxiliary drains, and other public works of their pueblos, including that of the church.

§ 11th. When the hogs and asses shall have multiplied, and the sufficient number of seed asses for covering the mares become adopted, and it be found practicable to distribute these two kinds of animals amongst the pobladores, it must be done with all possible equality, so that of the first kind each one may receive one boar and one sow, and of the second one ass, which the owner will mark and brand.

§ 12th. Within the five years stipulated, the new pobladores shall be obliged to possess two yoke of oxen, two plows, two points or plow-shares for tilling the ground, two hoes, and the other necessary implements for agriculture; and by the end of the first three years their houses must be entirely finished, and furnished each with six hens and one cock; and it is expressly forbidden that any one shall, during the forementioned period of five years, alienate by means of exchange, sale, or other pretext, to kill any of the cattle granted to them, or the respective increase thereof, excepting sheep and goats, which, at the end of four years, it is necessary to dispose of, or else they would die; and therefore they may, at their discretion, dispose of as many of these animals as arrive at that age, but not of any younger ones, under the penalty that whoever shall violate this order, made for his own benefit and for the increase of his prosperity, shall forfeit *ipso facto* the amount of the rations granted to him for one

year ; and whoever shall receive one more head of such cattle during the same time, in whatever state or condition they may be, shall be obliged to return them.

§ 13th. At the expiration of said five years, the female breeding animals of every kind, excepting swine and asses, of which each poblador is only obliged to possess one sow and one ass, male or female, being preserved; the yokes of oxen or steers designated for their agricultural purposes being provided, and they being furnished with a cargo-mule, and necessary horses, they shall be at liberty to sell their bulls, steers, foals or horses, asses, sheep, castrated goats, and pigs and sows ; it being forbidden to kill cows, (except old or barren, and consequently unproductive ones,) sheep or she-goats, which are not above three years old, and to sell mares or useful breeding females, until each poblador be possessed of fifteen mares and one stallion, fifteen cows and one bull, twelve sheep and one ram, and ten she-goats with one buck.

§ 14th. No poblador or resident shall sell a foal horse or mule, or exchange them, except amongst each other, after they are provided with the necessary number, for the remainder must be dedicated solely to the purpose of remounting cavalry of the presidio troops, and will be paid for at the just prices to be established, excepting all particularly fine horses or mules of said pueblos, under the penalty of twenty dollars, to be forfeited by whomsoever may violate this order. For every animal disposed of in any other manner than what is here stipulated, the half to be given to the informer, and the other half to be applied to municipal expenses, (gastos de republica).

§ 15th. The Indian corn, beans, chick-peas, and lentils, produced by the pueblo, (que produzcan las cosechas de los pueblos) after the residents have separated what may be necessary for their own subsistence and for seed, must be bought and paid for in ready money at the prices established, or which may hereafter be established for provisioning the presidio, and from the amount of the same there must be deducted from the amount of each poblador such provident sums as may be considered proper towards refunding the royal revenue the advances made in money, horses, cattle, implements, seeds, and other articles, so that within the first five years the total amount must be paid.

§ 16th. Each poblador and resident head of a family (vecino) to whom house-lots or parcels of land may have been, or in future shall be granted, and their successors, shall be obliged to hold themselves equipped with two horses, a saddle complete, a musket, and the other arms already mentioned, which are to be furnished them at first cost, for the defense of their respective districts, and in order that they may (without abandoning this first obligation) repair to where the governor may, in cases of urgency, order them.

§ 17th. The corresponding titles to house-lots, lands and waters, granted to the new pobladors, or which may hereafter be granted to other residents, (vecinos) shall be made out by the governor, or commissary whom he may appoint for this purpose, records of which, and of the respective branding irons, must be kept in the general book of colonization, to be made and kept in the government archives, as a heading to which a copy of these instructions shall be placed.

§ 18th. And whereas it is expedient for the good government and police of the pueblos, the administration of justice, the direction of public works, the distribution of water privileges, and the carrying into effect the orders given in these instructions, they should be furnished with ordinary alcaldes and other municipal officers, in proportion to the number of inhabitants, the governor shall appoint such for the first two years, and for the following ones, they shall appoint some one from amongst themselves to the municipal offices (los oficios de republica) which may have been established, which elections are to be forwarded to the governor for his approbation, who, if he sees fit, may continue said appointment for the three following years.

NOTE TO § 5.—A defective translation in sec. 5 has produced some confusion. The word "realengas—lands belonging to the King," is translated so obscurely that it seems to include all the lands adjacent to the pueblo and not specifically granted. This is not the case. The provision is that one-fourth of the house-lots and sowing lots (solares y suertes) shall be reserved to the King, and the lots so reserved to the King, (realengas) shall be assigned as *propios* or granted to new settlers. The original Spanish reads as follows: "reservando valdías la quarta parte del numero que resulte, contando con el numero de Pobladores, si alcanzasen, se repartirán á dos suertes á cada uno de regadio, y otros dos de secadal, y de las realengas se separarán las que parecieren convenientes para propios del Pueblo, y de las restantes se hara merced," etc. There is no colon between "secadal" and "y de las realengas," as there is in the translation from Rockwell. Precisely the same language, with the same punctuation, occurs in the Instructions for the foundation of the "Pueblo de nuestra Señora de los Angeles," dated August 26th, 1778, and found in the Archives, vol. I, Missions and Colonization, page 418. *Realengas*, therefore, refers to the solares and suertes so reserved, and to no other lands.

That this is so, clearly appears from the official plan of the pueblo of San José, adopted at its settlement, where three lots are marked Realengo.—*California Archives, Vol. I, Missions and Colonization, page 684.*

No. V.

EXHIBIT "A" IN THE CASE.

[From California Archives, Vol. I, Provincial Records, pages 10, etc.]

APRIL 15TH, 1778.

ESTABLISHMENT OF THE PUEBLOS OF SAN JOSE AND LOS ANGELES.

Governor to Viceroy.

Most Excellent Señor:—Desiring to give due fulfillment to the Superior orders of Your Excellency, notwithstanding the proposition I made in my communication of the——of June of the last year, in relation to the steps that could be taken for the improvements of these establishments, founding two Pueblos on the rivers Guadalupe and Porcircular, they being the best localities on account of the fertility of the soil and the abundance of water for irrigation, in consideration of the delay that must occur in the arrival of the settlers with their families, that I have asked Your Excellency to furnish to perform the duties of laborers, and the importance of losing no time in an enterprise so important, which, if carried out, will in a short time avoid the necessity of transporting grain from San Blas, and in the meantime will cause the arrival or non-arrival of a vessel not to be a matter of life and death: for these reasons I resolved to withdraw nine soldiers (skillful laborers) from the Company of this Presidio and that of San Francisco, to which I added two recruits as settlers, which with the three already on hand, completed the number of fourteen residents (vecinos), which with their families comprise the number of sixty-six individuals, with which I founded the Pueblo of San José de Galvez on the 29th day of November last, near the head of the River Guadalupe, distant 26 leagues from this Presidio, 16 from that of San Francisco, and three-quarters of a league from the Mission of Santa Clara.

To each settler, besides the solares on which they have constructed their houses, lands have been distributed for cultivation, with horses, flocks of all kinds, and utensils, as set forth in the accompanying list.

(No. VI.

[California Archives, volume I, Missions and Colonizations, page 809; Land Commission Exhibits in Limantour's Cases, Exhibit O, page 59.]

EXHIBIT "V" IN THE CASE.

Honble. Commandant General. In the instructions which treat of the Political Government and Population of California, and are found inserted in Title 14 of the Regulation of that Peninsula, approved by His Majesty in a royal order of the 24th Oct. 1781, it is directed by Art. 8 that the new settlers shall enjoy, for the maintenance of their stock, the common advantage of waters and pastures, wood and timber of the commons, [exido] forests, and pasture grounds, [dehasas] which in compliance with the laws are to be marked out for every "Pueblo," and that besides each individual shall privately enjoy the pastures of his own lands, with the warning that each settler hereafter, will not exceed fifty head of cattle of each kind in his possession, so that in this manner the usefulness resulting from the stock may be distributed among all, and the true wealth of the Pueblos not confined in a few residents.

By the 5th law and the consecutive ones of tit. 17, lib. 4, of the "Recopilacion" for these territories, it is commanded that the use of the grazing lands [pastos], woods and waters of the Provinces of the Indies be common to all the residents thereof, that they may enjoy them freely with their cattle, revoking when necessary whatsoever ordinances there might exist, this provision to apply not only to the woods, pastures, and water of the "Seignories," (Lugares de Senorios) conceded in these territories, but also to lands and cultivated property, sold and granted, whereon, after the harvest, the pastures remain for common benefit.

The allotting of tracts of land (sitios) for cattle, which some settlers in California claim, and the Governor proposes in his official communication of the 20th November, 1784, cannot, nor ought not to be made to them within the boundaries assigned to each Pueblo, which in conformity with the law 6, tit. 5, lib. 4, of the "Recopilacion," must [deben ser] be four leagues of land in a square or oblong body, according to the nature of the ground, because the petition of the new settlers would tend to make them private owners of the forests, pastures, water, timber, wood and other advantages of the lands which may be assigned, granted, and distributed to them, and to deprive their neighbors of these benefits, it is seen at once that their claim is entirely contrary to the directions of the aforementioned laws, and the express provision in art. 8, of the Instructions for Settlements (Poblaciones) in the Californias, according to which all the waters, pastures, wood, and timber, within the limits which in conformity to law may be allotted to each Pueblo, must be for the common advantage, so that all the new settlers may enjoy and partake of them, maintaining thereon their cattle and participating of the other benefits that might be produced.

By the law 1st, and consecutive ones to the 13th, tit. 12, of the same book 4, the distribution and allotting of Peonias, Cavalerias and Sitios, for tracts "de Ganados Mayores y Menores," is permitted, provided they be given far from the Indian villages and their cultivated fields, obliging the owners to keep as many shepherds and cattle keepers as shall be sufficient to prevent such damages as the cattle might commit, and to satisfy for that which they might cause them, and the concession of the said lands being very useful for the protection of the population in California, where owing to the extent of land and the abundance of its pastures there are means of carrying it into effect without prejudice to the Indians, nor to a third party, and where, through the want of active commerce and of consumption and export of the other produce, the greater wealth of the Pueblos must necessarily consist in the rearing and the

increase of cattle ; for these reasons it seems to me your honor can, if you please, decree and command that an order be issued to the Governor of the Californias, Don Pedro Fages, to the effect that allotting at once to each new " Poblacion " the extent of the four leagues belonging thereto, he may measure and mark them out in a square or prolonged body, as the nature of the ground will admit, and that he do not concede within it, nor grant nor distribute any portion whatsoever for farms or for the rearing of cattle to any resident or settler ; the woods, pastures, waters, and other benefits and advantages to be left in common for all the residents and settlers, without any of them exercising dominion, nor own private property thereon. And that in the other lands, outside of the said limits and of the district assigned to each Pueblo, and at such a distance that there cannot result any injury to the Missions, Pueblos, Rancherías (Indian villages) nor to their fields, he do grant and distribute " sitios " for farms, and tracts for rearing cattle, with the express condition that the residents and settlers to whom he may grant them, shall obligate themselves to put as many shepherds and cattle keepers as will be sufficient to prevent damages, and to satisfy the amount which in any event might happen, and (with the condition) that no resident or settler shall have more than three " sitios " tracts, and be obliged to build in each one a stone house, to have thereon two thousand head of cattle at least, and that notwithstanding his grant and concession, the pastures shall remain for the common advantage, and that where there are no (herds of) cattle, " sitios " may be given for sugar plantations and other hereditaments, according as is directed by the laws 12, tit. 12, as in reference to Hispaniola Island. And in law 5, tit. 17, lib. 4, of the " Recopilacion " for these territories, which conditions and laws will be inserted in an express clause in the deeds of grants that may be made ; that as evidence for the residents and settlers who may obtain the same, they may comprehend their obligations, to the fulfilment of which they shall be obliged, and that they may not have any just motive, nor pretext, to allege any right against it hereafter, or else your honor will resolve what may suit your pleasure notwithstanding.

CHIHUAHUA, 27th Oct. 1785.

GALINDO NAVARRO.

A copy according to the original, which I certify.

CHIHUAHUA, 21st June, 1786.

(Signed)

PEDRO GARRIDO Y DURAN.

I transmit to you the inclosed opinion of the attorney of this Comandancy of the 27th October last year, upon the subject of marking out the lands which some individuals of that province asked, as you reported in your representation No. 204, of the 20th Nov. '84, that you may proceed to grant them agreeably to the requirements of said officer (ministro).

The Lord preserve you many years.

CHIHUAHUA, 21st June, 1786.

(Signed)

JACOBO UGARTE y LOYOLA.)

Sor DON PEDRO FAGES.

(No. VII.

[California Archives, Volume I, Missions and Colonization, pages 853, etc. Land Commission Exhibits in Limantour's Cases, Exhibit O, pages 66, etc.]

PLAN OF PITIC.

TRANSLATION.—EXHIBIT Z Z IN THE CASE.

No. 313.

Instructions approved by His Majesty, and made for the establishing of the new town of Pitic, in the Province of Sonora, ordered to be adopted by the other new projected settlements (Poblaciones) and by those that may be established in the district of this General "Comandancia."

1st. Although by the law 6th, title 8th, book 4th, the Viceroy, Supreme Courts (Audiencias) and Governors, are prohibited from granting titles for cities or towns, or from exempting from their principal capitals the settlements (pueblos) of Spaniards or Indians, this decree is limited to those that may have already been established; therefore, as to the new towns and settlements, it is provided that they observe what is decreed in reference to the other laws on the subject, and as the law 2d, title 7th of the same book decrees: that the land, province, and place in which a new settlement (poblacion) shall be made, being chosen, and the convenience and advantages resulting therefrom being inquired into, the Governor, whose district it may be or to which it may be confined, shall determine whether it shall be a city, town, or village, and that in conformity with that which he shall decide, shall be formed the council, the government, and its officers, in using of this power, bearing in mind the extent of the place selected and the advantages offered by its lands, fertilizing through the benefit of irrigation by means of the large canal constructed for that purpose, your honor may declare the new settlement to be a town, designating to it the name it is to have and use for its distinction and recognition.

2d. In conformity with the decree of the law 6th, title 5th, of the same book 4th, relative to the towns of Spaniards that may be founded by agreement or contract, and first in relation to those which for want of contractors shall be erected by private settlers (Pobladores) who may establish themselves and agree to found them, there may be granted to the town in question four leagues of bounds or territory in a square or in length, (que se fundaren y concordaren enformarlas se podrá conceder á la de que se exara quatro leguas determino ó territorio en quadro ó prolongado) as shall be adapted to the better location of the land that shall be selected or marked out so that its true boundaries shall be known, wherein there can be no inconvenience, and inasmuch as it is distant more than five leagues from any other town, city, or village of Spaniards, there shall not result injury to any private individual, nor to any "pueblo" of Indians, on account of that (the village) "de los Seris" remaining within the demarcation as part or suburb of the new settlement, subject to its jurisdiction, and with the advantage of enjoying as neighbors the same benefits public and common that the settlers may have, and of which at present those same natives are wanting, owing to their indolence, their default of application, and of intelligence, reserving to them the faculty of choosing their "Alcaldes and Regidores," with the jurisdiction, economy, and other circumstances prescribed by the laws 15 and 16, title 5, book 6:

3d. The Presidio of San Miguel de Orcavitas having been removed to the locality of Pitic, so that under its protection and guard may be founded the new settlement, conformably to the decree in the articles 1 and 2, title 11, of the new regulation of Presidios of the 10th of September, 1772, and in the 50th article of the old Regulation of the Sör Viceroy Marquis de Casafuerte

of the 20th of April, 1729, which by Royal order of 15th of May, 1779, is ordered to be observed, the Political Government and the Royal jurisdiction, ordinary, civil, and criminal in first instance of the new settlement, belonged to its captain or commandant, who were to exercise the same in the interim of the Presidio being established in that place, with the appeals to the Royal Supreme Court (Audiencia) of the District, but your honor having resolved that the company be considered as detached in the new settlement, and consequently that the use and exercise of the Royal jurisdiction remaineth in charge of the Political Governor of the province of the Alcalde, Mayor, or Lieutenant that you may name, it is necessary that the selection for this office should fall upon one of sufficient instruction and knowledge to promote the advancement of the new settlement, to make the distributions of houses, building lots (solares) and water privileges, and to observe with precision the articles of these instructions and the other orders that may successively be communicated to you.

4th. For your better rule of conduct and government, in conformity with the decree in the laws 10, tit. 15; 2 and 19, titles 7th, 1st, 2d and 3d; tit. 10, book 4, de la Recopilacion, immediately after the number of settlers, shall count thirty residents, there shall be established a council (cabildo) or ayuntamiento, composed of two ordinary alcaldes, six "regidores," one prosecuting (syndico) attorney of the community, and one "mayordomo de propios," to whose charge shall devolve the economical management, the care of provisioning (abastos) and of the cleanliness and police of the new settlement, the mentioned electors being elected the first time by all the residents, and thereafter by the members (vocales) of the Ayuntamiento, in conformity with the decree of the laws on that subject, and the elections shall be returned annually to the Political Governor of the Province, so that in virtue of his approbation the officers elected may take possession and enter upon the discharge of their respective offices.

5th. The two ordinary alcaldes shall also, by way of precaution, and jointly with the first alcalde or commissioner, exercise the royal jurisdiction, ordinary, civil, and criminal in the first instance, subject to the appeals to the Royal Supreme Court, to the Governor, or to the Ayuntamiento, in the cases wherein they correspond to each and every one, by the laws of the kingdom, as prescribed in the first and following title 3d, book 5th.

6th. The tract of four leagues granted to the new settlement being measured and marked out (demarcado y amojonado que sea el terreno de cuatro leguas concedido á la nueva poblacion) its pastures, woods, water privileges, hunting, fishery, stone quarries, fruit trees, and other privileges, shall be for the common benefit of the Spaniards and Indians residing therein, and in its suburb or village, "de los Seris," (y en su razzia ó Aldea de los Seris) as shall also be the pastures of the lands and estates (heredades), the grain sowed therein being harvested, as directed by the laws 5th and following title 17th, book 4th, de la Recopilacion.

7th. The residents and natives shall enjoy equally the woods, pastures, water privileges, and other advantages of the royal and vacant lands that may be outside of the land assigned to the new settlement, in common with the residents and natives of the adjoining and neighboring pueblos, which bounty and privilege shall continue as long as they are not changed or altered by His Majesty, in which case they shall conform to that which has been provided in the Royal orders that may be issued in favor of the new possessors or owners (propietarios).

8th. The place which has been considered more appropriate to locate the new settlement, having been selected and marked out, the commissioner shall superintend its establishment; all the houses and other buildings thereof, which shall successively be constructed, shall conform to the sketch or plan made by the extraordinary engineer, Don Manuel Mascaro, which, in order that it be taken in consideration, shall be annexed and made a guide to these instructions

and municipal ordinance, according to which plan the streets shall run in a straight line most suitable to facilitate the traffic and communication of the citizens and settlers, and their regularity and symmetry contributing to embellish the settlement, its cleanliness and health to the benefit of those that they may fix themselves therein.

9th. The space of ground that every block shall comprise being marked out in the plan or sketch, and as it is not easy to determine the building lot (solar) that will be sufficient for every resident settler, on account of the inequality that may exist between the families, and the means of those who may conclude to become so, to the prudent arbitration of the commissioner is left the power of granting to them the building varas, which according to their families, wealth, and other just considerations, he shall deem each one might need, cultivate, and build upon; for which purpose, and so that all may possess that which may be corresponding to their means, there can be distributed to them a block, half of a fourth, or eighth portion, which are the divisions most suitable to carry out the object of making uniform, as far as possible, the buildings of the settlement.

10th. So as to avoid difficulties which the voluntary marking out of lots might occasion, owing to the preference or ameliorations of the one over the other, the distribution shall be made between the first settlers casting lots as prescribed in the law 11, title 7th, book 4th, de la Recopilacion.

11th. The extraordinary engineer, Don Manuel de Mascaro, having marked out the place in which the new settlement shall be located, there shall be left for the four fronts of its circumference commons (ejidos) suitable for the settlers to amuse themselves, drive out their cattle without doing injury, and so that as they increase hereafter there may be land to grant them, so that they might build their houses and habitations as provided by the laws 7th, 13th and 14th of the forementioned title 7th, book 4th, of the Recopilacion.

12th. The same shall also proceed to mark out and lay out the pasture grounds, which shall be made sufficient so that the work-oxen and the cattle for the provisioning of the new settlement may pasture abundantly and with ease, endeavoring to choose for that purpose the lands abounding in pastures, and that may not be of the best quality to produce wheat or other grains and vegetables useful to the consumption and subsistence of the settlers and their families, as provided in the forementioned laws 7th and 14th, title 7th, book 4th, of the Recopilacion.

13th. The laying out of the commons (ejidos) and of the common pasture grounds being completed (evacuado el señalmiento de los ejidos y a la dehesa comun ó Prado Boyal) the commissioner shall make a careful calculation of all the useful and productive land, which by means of the ditch can be irrigated, and of the balance, which, without possessing this advantage, he may consider adaptable to cultivatable lands and crops depending on the seasons (de temporal) and dividing the other into equal (suertes) of four hundred varas in length and two hundred in breadth, which is that which is generally contained in land sown with a fanega of corn; he shall ascertain the number of suertes of both kinds there may be to distribute to the new settlers and to those that may join them and increase their numbers hereafter.

14th. The "suertes" having thus been divided from those most useful and adjoining the Pueblo, and that have the advantage of irrigation, there shall be marked out and laid out eight "suertes" that shall remain applied to the funds, (de propios) the proceeds of which shall be administered by the "mayordomo" whom the ayuntamiento may appoint, whose duty it shall be to render accounts annually that will be examined and approved, referring them previously to the prosecuting Syndic, or agent of the community, so that in his defense he may make the notes or investigations he may deem justifiable and corresponding; and admitting that their proceeds should be used for the public benefit of all

the inhabitants under the rules which are established for the security of his faithful management and legitimate disbursing, and that actually there is no public fund with which to defray the expenses of their first plowing, sowing, and crops, the settlers and residents will be under the obligation to aid in performing them personally, or by means of their (peons) laboring men, yokes of oxen and cattle, in the equitable manner that the commissioner may direct, and who shall distribute the work in such manner that all may participate in it equally, without excepting any settler or resident, with the understanding that this arrangement shall be limited to the first plowing, sowing and crops, with the proceeds of which shall be defrayed the costs of the next, bearing the net balance to the benefit of the common fund (*fondo propios*) to convert it to the object of the public good, notwithstanding that by the laws of the kingdom these species of property are appropriated.

15th. The making out and adjudging of the eight "suertes" of irrigable land for the benefit of the common fund (*propios*) of the new settlement being ascertained, the remaining "suertes" that may be useful in its district, be they irrigable or arable, shall remain to the benefit of the settlers to whom they shall be distributed and granted as they establish themselves therein, and as it is not possible to establish a fixed rule on the number of "suertes" that can be distributed and granted to every settler, to the wise judgment of the commissioner is left the power of regulating and granting to them those which he may consider sufficient for the maintenance of the family of every one, taking in consideration the number of persons composing it, those existing among them fit for labor and cultivation, the whole of the agricultural implements and other utensils which each one might own to undertake it, and finally their respective industry, as it is just that he who possesses the same should obtain in recompense thereof a larger number of "suertes" than those who by indifference and inapplication shall leave without cultivation those "suertes" which shall have been marked out to them. Under these considerations the first distribution among the actual settlers shall be completed, not exceeding three "suertes" which can be granted to every one, leaving the remaining others so as to distribute them to those who hereafter shall have joined the settlement—to the sons of families who having actually settled belong to the class of residents, or to the same settlers who by the industry and application with which they have devoted themselves to the cultivation of the first distributed "suertes" deserve an augmentation of other "suertes," which never can exceed the same number which in the first distribution shall have been marked out to them.

16th. As it is very inconvenient for the settlers that the number of "suertes" that may be distributed to them should be united and contiguous to each other, so that in this way they may better attend to their cultivation without the diversity of attention occasioned by the distance of lands one from another, the commissioner shall make it his duty to bear in mind this consideration, so as to adapt to the settlers, as much as possible, the advantage of the assemblage of "suertes," or at least the less distance that can be made to exist between those which may be distributed to them, and so as to avoid the differences that may from the improvements of some lands with regard to others, after they shall have been divided in the manner hereafter provided, he (the commissioner) shall proceed to make the first distribution, casting lots for the same among the settlers, as is provided with regard to the (*solares*) town lots in the article 10 of these instructions.

17th. The commissioner in whose charge shall be the new settlement and the distribution of lands and town lots (*solares*), shall make a book or register (*quaderno*) in which shall appear the original steps of distribution that were taken, which book shall be kept in the archives of the *Ayuntamiento* of the new settlement; and with regard to those steps, he shall give to each settler an attestation or certificate, explaining with brevity, distinctness, and clearness the

extent and boundaries of the (solar) town and "suertes" which he may have respectively assigned to them, which instrument shall serve them as a title in fee for themselves, their children and descendants, warning them that for this purpose they shall keep it, and that if they were to lose it by some unintentional accident, they may have recourse to the commissioner or to the Ayuntamiento to give them a true copy of the proceedings, which for this purpose shall remain in the archives.

18th. Thus in the original proceedings of distribution, as in the certificates or titles in fee which shall have been given to the settlers, the commissioner shall also make known that the (solares) town lots and lands shall be distributed and granted in the name of His Majesty perpetually—forever and ever—and by right of inheritance, for themselves, their children and descendants, with the positive conditions that they shall keep arms and horses and be ready to defend the country from the insults of the enemies that might commence hostilities against it, and to march against them whenever they shall be ordered; that they shall build and occupy their houses and reside with their families in the new settlement at least for the space of four years; that during this time they cannot alienate, hypothecate, nor subject to any incumbrance whatsoever the lands and town lots (solares) which shall have been granted to them, even should it be for a pious purpose; that within the precise space of two years they shall work and cultivate the lands which shall have been donated to them, and they shall at least commence building the houses upon the town lots which shall have been marked out to them, under the penalty that whosoever shall abandon them over this length of time shall lose both, and they can be given to another more diligent; that having fulfilled these conditions, and resided for four years with house and family in the new settlement, they shall acquire the real ownership of the lands and town lots which shall have been distributed to them, and of the houses and edifices in which they shall have worked, and they shall be empowered hereafter with the authority to sell them, and to dispose of them at their own free will, as they would of a thing of their own, as provided by the law 1, title 12, book 4 of the Recopilacion, but under the condition that they never can sell or alienate them to a church, monastery, ecclesiastic community, nor to any of those called mortmain, as provided in the law 1st of the same title and book, under the penalty that he who shall contravene the same shall lose the lands and edifices, which in this case can be distributed to others; and finally, that within the three months that the grant and distribution shall have been made to them, they shall be under the obligation to take possession of the building lots and lands which shall have been marked out to them, and to plant all the bounds and limits thereof with fruit trees or other which may be useful to the supplying of the settlement with provisions, by which means its district shall enjoy a good and peaceable management, and they shall avail themselves of the fruit, wood and timber which shall be produced for their domestic uses and for the farming utensils which they need indispensably, as provided in the law 11th of said title and book.

19th. The advantage of irrigation being the principal means of fertilizing the lands, and the most conducive to the increase of the settlement, the Commissioner shall take particular care to distribute the waters so that all the land that may be irrigable might partake of them, especially at the season of spring and summer, when they are most necessary to the cultivated land in order to insure the crops, for which purpose, availing himself of skillful or intelligent persons, he shall divide the territory into districts (partidos) or hereditaments, marking out to each one a trench or ditch starting from the main source, with the quantity of water which might be regulated as sufficient for its irrigation, at the said periods and at the other seasons of the year that they may need them, by which means each settler shall know the trench or ditch by which his hereditament shall be irrigated, and that he cannot and shall not have the power to

take the water of another, nor in a greater quantity than that which may fall to his share, for which purpose and that it may not increase in injury to the owners situated on the land beyond or still lower, it shall be proper for the trenches or partitions to be constructed in the main ditch made of lime and stone at the cost of the settlers themselves.

20th. In order that these (the settlers) might enjoy with equity and justice the benefit of the waters in proportion to the need of their respective crops, there shall be named annually by the Ayuntamiento one Alcalde (or Mandador) for each trench, to whose charge shall fall the care of distributing them in the estates (heredades) comprised in the "partido" or hereditament, which shall be irrigated by them in proportion to their need for this benefit, designating by a list which he shall make out the hours of day and night at which each owner (heredado) shall irrigate his lands sown with grain; and in order that by the carelessness or indolence of the owners (dueños) those (the lands) that may need them shall not remain without irrigation, nor the crops be lost, whereby independent of the private injury may also result that of the public and community, produced by the want of provisions and supplies, it shall also come within the duty of the Alcalde, or Mandador, for each trench to have a servant (peon) or day-laborer knowing the hour of the day or night designated for the irrigation of each tract of land or corn-field, who, in default of its owner, shall take care to irrigate it; the just price of his labor, which shall be caused to be paid to him by the owner of the land or estate (heredad) irrigated, to be thereafter regulated by the Commissioner or by the Justice.

21st. The repairs and cleansing out which the main ditch may need for its conservation, shall be done at the expense of the whole neighborhood at the periods which the Commissioner and Ayuntamiento shall designate, every resident aiding therein by his assistance and personal labor, or in default thereof by the quantity which by partition and an equitable distribution shall be designated to him to pay and satisfy the servants (peons); and with regard to the repairs and cleansing out of the distributing dams and ditches destined to the irrigation of the "partidos" or hereditaments in which the land is to be divided, it shall be the duty of the "hacenderas," or owners, whose lands (suertes) and possessions shall be irrigated by them (the dams and ditches), amongst whom shall be divided the expenses which they may occasion *pro rata* to the number of "suertes" which each one shall possess in said "partido," or hereditament, belonging to the (cavildo) Council or Ayuntamiento, in common with the Commissioner, to determine upon those in which, without injury to the cultivated lands, the above mentioned cleansing out and repairs shall be made.

22d. So as to avoid the damages and injuries which through the negligence of their owners the large cattle and the sheep do on the cultivated lands, there shall be appointed annually by the Ayuntamiento two Alcaldes (Guardias de Campo), that the one shall exercise his functions by day, and the other by night; and like public officers, who shall swear before the Ayuntamiento to well and faithfully perform their duty, their depositions shall be credited unless a proof is proffered against the same sufficient to justify the contrary, and both shall be under the obligation to watch by day and by night that the cattle do not occasion damages in the cultivated lands of the neighborhood, and to apprehend those that they may encounter so doing, which they will drive to a "corral" which shall be made for the purpose, and to be called "Corral del Consejo," reporting and denouncing them immediately to justice, so that under their sworn authority they proceed summarily and effectively, and make known and value the damage they may have occasioned, and to oblige the owner of the apprehended cattle to pay the same and to satisfy him (the Alcalde) for the cultivated land which may have suffered the same.

23d. As it is not sufficient to prevent and avoid the damages which the cattle frequently occasion on the cultivated lands, to compel its owners to the pay-

ment of the value at which they (the damages) shall be estimated, it becomes necessary to recover it to impose upon them some other moderate pecuniary fine, which, exacted irremissibly in all cases of contravention, obliges them to heed them and not to reiterate them; and to regulate the above mentioned pecuniary fine a thorough knowledge of the country, of the condition of its inhabitants, and of the value of the cattle being indispensable, this subject shall be reserved to the Ayuntamiento, so that in common with the Commissioner they fix and determine upon the fine to be imposed and exacted in cases of contravention, taking care that the fine be greater for those who shall occasion damage by night, on account of the greater difficulty of their being apprehended and punished.

24th. And lastly, as it is peculiarly the province of the (Cavildos) Councils, or Ayuntamientos, as being the best informed of that which becomes the community and public which they represent, to determine and resolve upon the subjects and measures which they may consider most useful and conducive to their better management and economical and political government, and which being approved by the highest authority appertain to the class of municipal ordinances which are to be observed as the particular laws of every settlement, so far as they are not in opposition to the general laws established by the sovereign, this Ayuntamiento of the new settlement shall be vested with this same power, and in using of this power and acting in common with the Commissioner of its establishment, they shall fix and promulgate the articles, or municipal ordinances, which they may consider most useful and necessary, and which they shall report to this Superior Government, so that in virtue of its approval they be valid and observed.

CHIHUAHUA, 14th of November, 1789.

JUAN GASLOT,
Y. MIRALLES.

No. VIII.

[California Archives, Vol. 1, Missions and Colonization, page 850; 1 Rockwell, 451; Halleck's Report, Ex. Doc. No. 17, 1st Sess. 31st Cong., H. of Rep., page 451.]

In conformity with the opinion of the assessor of the *comandancia general*, I have determined in a decree of this date that, notwithstanding the provisions made in the 81st article of the ordinance of *intendentes*, the captains of presidios are authorized to grant and distribute house-lots and lands to the soldiers and citizens (*soldados y vecinos*) who may solicit them to fix their residences on.

And considering the extent of four common leagues measured from the centre of the presidio square, viz: two leagues in every direction, to be sufficient for the new pueblos to be formed under the protection of said presidios, (que van formando á su abrigo) I have likewise determined, in order to avoid doubts and disputes in future, that said captains restrict themselves henceforward to the quantity of house-lots and lands within the four leagues already mentioned, without exceeding in any manner said limits, leaving free and open the exclusive jurisdiction belonging to the *intendentes* of the royal hacienda, respecting the sale, composition, and distribution of the remainder of the land in the respective districts.

And that this order may be punctually observed and carried into effect, you will circulate it to the captains and commandants of the presidios of your province, informing me of having done so.

God preserve you many years.

CHIHUAHUA, October 22, 1791.

PEDRO DE NAVA.

SEÑOR DON JOSEPH ANTONIO ROMEN.

No. IX.

EXHIBIT B IN THE CASE.

[California Archives, Vol. I, Missions and Colonization, page 874.]

JULY 1ST, 1796.

Report of Don Pedro de Alborni, who had been ordered by Governor to make a careful examination of the country, and report the most suitable location for the Villa of Branciforte, ordered to be established by the Viceroy.

Having examined the points set forth in the foregoing Superior Official Communication, as well as those requiring me to set forth all that I might think necessary, I reply as follows: The principal object and view of the whole matter may be reduced to the project formed by Don José M^a Beltram, and forwarded by the Royal Tribunal de Cuentas to the Most Excellent Viceroy, in relation to the establishment of a Villa or Poblacion; and its being necessary to remember that, in order to attain the desired end, an eye must be had to such favorable circumstances as are required to give to the inhabitants of the same the necessary advantages, such as a plentiful supply of water, wood, irrigable and arable lands, forests, pastures, stone, lime, or earth for adobés; and having been commissioned to this end for the examination, which I made with the Señor Governor Don Diego de Borica, of the country from the Mission of Santa Cruz, Arroyo del Pajaro, and the Mission of Santa Clara, to the place of the Alameda, and the country around the Presidio and Fort of San Francisco, and the Mission of the same name. After a careful and scrupulous examination of these places with the Engineer Extraordinary, Don Alberto de Cordoba, I found that the place of the Alameda, although it contains a creek, still that it affords but little water, and that the channel is so deep [low?] that it is difficult to obtain water therefrom for irrigating the extensive plains of what appears to be good lands; but as the place is without fuel, timber, and pasturage, which cannot be obtained save at the distance of many leagues, it is clear that it is unsuitable for the project under consideration.

In the District of the Presidio of San Francisco, as also in that of the Fort or Battery, and in those of the Mission, at the distance of a league, there is not only wanting irrigable lands, but there is a very small extent of such as are *de temporal* (suitable for grain). The water is so scarce that it is scarcely sufficient for the few families that reside at the Presidio, and from a few holes (positos) from which at intervals they obtain water with much labor, they have to supply themselves. Groves or timber is found at a distance of twelve or fourteen leagues, and pasturage for the little stock of the garrison is only found at a distance of five or six leagues. The wood used in cooking is some *matorrales*, or chiamisos, as it is there called, which grows upon the sand hills. And therefore I am convinced that the worst place or situation in California is that of San Francisco for the establishment of such a villa as is proposed by the Señor Contador, Don José M^a Beltram.

No. X.

[Leyes Vigentes, page 28; 1 White's Recopilacion, 416; 1 Rivera Nueva Coleccion de Leyes y Decretos Mexicanos, 890.]

Decree of the Spanish Cortes of May 23d, 1812.

FORMATION OF THE CONSTITUTIONAL AYUNTAMIENTOS.

The general and extraordinary Cortes, convinced that it is equally important

to the welfare and tranquility of families, and the prosperity of the nation, that Common Councils (Ayuntamientos) be established as soon as practicable in such towns (pueblos) where it is proper that they should be instituted and which have not hitherto enjoyed the benefit thereof, as well as to avoid the doubts which might arise in the execution of what has been prescribed on this subject in the Constitution, and to establish a uniform rule for the appointment, form of election, and the number of its members, decree as follows :

1. Every town (pueblo) which has no Common Council, (Ayuntamiento) and the population of which does not amount to one thousand souls, and which, on account of the peculiar condition of its agriculture, industry, or population, requires a Common Council, (Ayuntamiento) will make the same known to the Deputation of the Province, in order that by virtue of this information they may apply to the Government for the requisite permission.

2. Towns (pueblos) which do not find themselves in this situation shall be united to the Councils (Ayuntamientos) to which they have hitherto belonged, as long as the improvement of their political condition shall not require other measures, uniting those newly formed to those nearest them in their Province, or to those which have lost their jurisdiction for want of population.

3. By virtue of the provision of the 312th article of the Constitution, the functions of the regidores and other perpetual officers of the Common Councils (Ayuntamientos) cease as soon as the Constitution and this decree shall have been received in each town, and they shall be elected according to an absolute plurality of votes as prescribed in the 313th and 314th articles of the Constitution, as well in those towns (pueblos) where all have the quality of being perpetual, as in those where some only enjoy this privilege ; for the information of those towns wherein the election may be carried into effect four months before the expiration of the year, it is ordered that said election be renewed at the end of the month of December of the same year, as to one-half, those to go out who were last elected ; but in those towns wherein the elections take place when less than four months are required to terminate the year, those elected will continue in their employment until the end of the next year, when one-half of them will cease to hold their offices.

4. As it cannot fail to be proper that there should exist between the government of the towns and its inhabitants, (el gobierno del pueblo y su vecindario) such proportion as is compatible with good order and its better administration, there shall be one Alcalde, two Regidores, and one Procurator Syndic, in all towns which do not have more than two hundred inhabitants ; one Alcalde, four Regidores, and one Procurator, in those the population of which exceeds two hundred but does not exceed five hundred inhabitants ; one Alcalde, six Regidores, and one Procurator, in those which possess five hundred but the population of which does not amount to one thousand inhabitants ; two Alcaldes, eight Regidores, and two Procurator Syndics, in towns having from one thousand to four thousand inhabitants, and the number of Regidores will be augmented to twelve in those towns which have more than four thousand inhabitants.

5. In the capitals of the Provinces there must be at least twelve Regidores, and should they possess more than ten thousand inhabitants their number will be sixteen.

6. In following out these principles in making the elections to fill these offices, it is ordered that the election take place on some day of festival *in the month of December*, by the inhabitants who are in the exercise of the rights of citizenship, of nine electors in the towns which have less than one thousand inhabitants, of sixteen in those having more than one thousand and less than five thousand inhabitants, and of twenty-five electors in those towns having a greater number of inhabitants.

7. This election being completed, there shall be formed on another day of

festival *in the month of December* the Board of Electors, presided by the political chief, if there be any, and if not by the oldest of the Alcaldes, and in the absence of the Alcalde by the oldest Regidor, in order to deliberate on the persons most suitable for the government of the town, (pueblo) and they cannot adjourn without having completed the election, which must be transcribed in a book kept for this purpose, and signed by the President and the Secretary, who shall be likewise Secretary of the Council, (Ayuntamiento) and said election shall be immediately published.

8. In order to facilitate the appointment of the electors, especially where the population is numerous, or where the divisions or distances of the towns or parishes, (los pueblos ó parroquias) which must unite in order to form their Council, might create difficulties or delays, Boards are to be formed in each parish composed of all the inhabitants domiciliated therein, which must be previously convoked, and must be presided by the political chief, Alcalde or Regidor, and each one of them must elect the number of electors to which it is entitled, in the proportion which its population bears to the total population, and the act of the election must be transcribed in a book kept for this purpose, and be signed by the President and the Secretary, which the Board may appoint.

9. A parish Board (Junta de parroquia) cannot be held in towns not having fifty inhabitants, and those being in this predicament must unite among themselves, or with such as are nearest; but all such towns as have hitherto enjoyed the privilege of nominating electors for the appointment of Justices, Councils, or deputies in common, shall retain this privilege.

10. If, notwithstanding what has been provided in the preceding article, there should still be a greater number of parishes than there are electors, still an elector is to be nominated by each parish.

11. If the number of parishes should be less than the number of electors, each parish will elect one, two, or more, until it has completed the requisite number; but if an elector were yet wanting, he must be appointed by the parish having the largest population; and if another be still wanting, he must be elected by the parish having the next largest population, and so successively.

12. Inasmuch as it may happen that there exist in the ultramarine provinces some towns (en las provincias de ultramar algunos pueblos) which, owing to peculiar circumstances, ought to have Common Councils for their better government, but whose inhabitants are not in the enjoyment of the rights of citizens, they have nevertheless the right to elect among themselves the officers of their Councils, in conformity to the rules herein prescribed for other towns.

13. The Common Councils will not in future have any permanent Assessors with fixed salaries.

(No. XI.

[Leyes Vigentes, pages 56. etc.]

Decree of the Cortes of Spain of the fourth of January, 1813.

ON REDUCING THE VACANT LAND (BALDIOS) AND OTHER COMMON LANDS TO PRIVATE PROPERTY, CULTIVABLE LOTS TO BE GRANTED TO THE DEFENDERS OF THE COUNTRY, AND TO CITIZENS WHO ARE NOT PROPRIETORS. (SOBRE REDUCIR LOS BALDIOS Y OTROS TERRENOS COMUNES A DOMINIO PARTICULAR: SUERTES CONCEDIDAS A LOS DEFENSORES DE LA PATRIA Y A LOS CIUDADANOS NO PROPRIETARIOS.)

The Cortes general and extraordinary, considering that the reduction of common lands (terrenos communes) to private property is one of the measures

most imperiously demanded for the welfare of the PUEBLOS, and the improvement of agriculture and industry, and wishing, at the same time, to derive from this class of lands aid to relieve the public necessities, a reward to the worthy defenders of the country, and relief to the citizens not proprietors, decree :

1. All vacant land (*baldios*) or lands belonging to the Royal patrimony (*realengos*) and lands the revenue whereof goes to the use of the pueblo governments, (*propios y arbitrios*) wooded or otherwise, as well in the Peninsula and adjacent islands *as in the provinces beyond the sea*, except the necessary suburbs (*egidos*) of the PUEBLOS, shall be reduced to private property, providing however that in disposing of lands the revenue whereof goes to the use of the pueblo governments, (*propios y arbitrios*) the yearly revenue derived therefrom shall be supplied by the most appropriate means, to be proposed by the respective provincial deputations, and approved by the Cortes.

2. In whatever manner these lands may be distributed it shall be in fee simple absolute and by metes and bounds, (*acotados*) so that their owners may inclose the same, without prejudice to the ravines, cross roads, watering places for cattle, (*abrevaderos*) and easements, (*servidumbres*) and enjoy them freely and exclusively, and dedicate them to any use and cultivation they may think best ; but they shall never entail them, nor transfer them at any time, nor under any title to be held in mortmain (*manos muertas*).

3. In the transfer of said lands, the residents of the pueblos within the limits whereof said lands may be shall be preferred, and the commoners of said pueblos in the enjoyment of said vacant land (*baldios*).

4. The Territorial Deputations shall propose to the Cortes, through the Regency, the best time and means to carry out these dispositions in their respective provinces, in accordance with the circumstances of the district, and also the lands which may be indispensable to reserve for the pueblos, that the Cortes may decide what would be suitable for each district.

5. This business is recommended to the zealous attention of the Regency of the kingdom, and of the two Secretaries of State, that they may present it and explain it before the Cortes whenever proposals may be made by the Territorial Deputations.

6. Without prejudice to the foregoing provisions, one-half of the vacant land (*baldios*) and lands belonging to the Royal patrimony (*realengos*) of the monarchy, except the suburbs of the pueblos, (*egidos*) is hereby reserved, to be in whole or in part, as may be deemed necessary, hypothecated for the payment of the national debt, preferring the payment of the claims against the nation which may be held by the citizens (*vecinos*) of the pueblos to which the lands may belong ; and in the latter class, preferring such claims as proceed from any supplies furnished to the national armies, or war loans made by said residents since the first day of May, 1808.

7. In selling on account of the public debt said one-half of the vacant land (*baldios*) and lands belonging to the Royal patrimony, (*realengos*) or the part which may be deemed necessary to hypothecate, the citizens (*vecinos*) of the respective pueblos shall be preferred in the purchase thereof, and the commoners in the enjoyment of the aforesaid lands ; and both shall be allowed to pay the full price of said lands with claims duly liquidated held by them on account of said supplies and loans, and in default thereof with any other legitimate national claim they may hold.

8. There shall be comprised within said half of vacant land (*baldios*) and lands belonging to the Royal patrimony (*realengos*) the portion already justly and legally sold in some of the provinces for the expenses of the present war.

9. Out of the remainder of the vacant land (*baldios*) or lands belonging to the Royal patrimony, (*realengos*) or lands the revenue whereof goes to the use of the pueblo governments, (*propios y arbitrios*) there shall be given gratis one lot of the best land for cultivation to each Captain, First or Second Lieutenant,

who on account of old age, or having become an invalid in the military service, shall have been honorably discharged from the service, be they either citizens or foreigners, provided that in the districts of their residence there should be any of this class of lands.

10. The lots to be granted in each PUEBLO to the officers or soldiers shall be equal in value, proportionate to the extent and quality of the same, and larger in some districts and smaller in others, according to the circumstances of the same, and the greater or less extension of the lands; providing, however, if possible, that each lot may be such that if reasonably cultivated it shall suffice to the support of an individual.

11. These lots shall be designated by the constitutional Common Councils (Ayuntamientos) of the respective pueblos to which the lands may belong, as soon as the interested parties present before them the documents proving their good performance in and honorable discharge from the service, and above all the statements of District Attorneys (Procuradores Sindicos) shall be heard summarily and officially without exacting fees or reward of any kind. The proceedings (expediente) shall immediately be sent to the Territorial Deputation that it may approve it and correct any error.

12. The granting of these lots, (suertes) which shall be denominated patriotic rewards, shall not at present be extended to any other individuals, except those now serving or who may have served in the present war, or in the pacification of the actual revolts in some of the provinces beyond the sea. But it comprises the Captains, First and Second Lieutenants, and rank and file, who having served in either may have been honorably discharged, having a genuine discharge, for having been disabled on the battle-field, and not otherwise.

13. It also comprises individuals not military, who having served as guerrillas, or contributed in any other manner to the national defense in this war, or in the American revolts, have been or may become mutilated or disabled in consequence of any conflict in war.

14. These favors (gracias) shall be granted to the aforementioned parties, though they may on account of their services and brilliant exploits enjoy other privileges.

15. Out of the remainder of the vacant land (baldios) and lands belonging to the Royal patrimony (realengos) there shall be segregated those most fit for cultivation, and one lot (suerte) only, proportionate to the extent thereof, shall be given gratis and by lottery to every resident of the respective PUEBLOS, owning no other land, and who may apply for the same, provided the whole amount of lands so segregated and distributed shall not exceed one-fourth of said vacant land (baldios) and lands belonging to the Royal patrimony (realengos); and if these should not be sufficient, the lot shall be given in the lands the revenue whereof goes to the use of the pueblo governments, (propios y arbitrios) imposing upon the same a redeemable tax (cañon) equivalent to the revenue derived from the same for the five years next preceding the end of the year 1817, so that the municipal funds may not decrease.

16. If any of those favored by the preceding articles should fail to pay said tax (cañon) for two consecutive years, if the lands belong to the class the revenue whereof goes to the use of the PUEBLO governments, (propios) or if he had it for his own benefit, it shall be given to a more industrious resident having no land of his own.

17. All the proceedings for these grants shall be made by the Common Councils (Ayuntamientos) without any costs, and shall in like manner be approved by the Provincial Deputations.

18. All lots granted in accordance with articles 9, 10, 11, 12, 15, shall be in fee simple absolute (plena propiedad) to the grantees and their successors upon the terms and conditions expressed in article the second; but the owners of these lots cannot dispose of them before four years have elapsed from the date

of the grant, nor entail them, nor transfer them at any time under any title to be held in mortmain (manos muertas).

19. Any of the aforementioned grantees or their successors establishing upon the land granted his permanent habitation, shall be for the period of eight years exempted from the payment of any tax or impost upon said land and the product thereof.

20. This decree shall be circulated, not only throughout all the pueblos of the monarchy, but also throughout the national armies, it being everywhere published, so that it may come to the notice of all individuals composing the same.)

No. XII.

[Coleccion de Ordenes y Decretos de la Soberana Junta Provisional Gubernativa y Soberanos Congresos Generales de la Nacion Mexicana, Vol. III, page 64, etc.; 1 Rockwell, 451; Halleck's Report, ut supra, Appendix 4.]

Decree of the 18th August, 1824, respecting Colonization.

The sovereign general constituent Congress of the United Mexican States has been pleased to decree—

1st. The Mexican nation promises to those foreigners who may come to establish themselves in its territory, security in their persons and property, provided they subject themselves to the laws of the country.

2d. The objects of this law are those national lands which are neither private property nor belonging to any corporation or pueblo, and can therefore be colonized. (Son objeto de esta ley aquellos terrenos de la nacion, que no siendo de propiedad particular, ni pretenecientes á corporacion alguna ó PUEBLO, pueden ser colonizados.)

3d. To this end the Congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarcation, with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

4th. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, cannot be colonized without the previous approval of the supreme general executive power.

5th. If, for the defense or security of the nation the federal government should find it expedient to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the general Congress, or during its recess with that of the government council.

6th. Before the expiration of four years after the publication of this law, no tax or duty (derecho) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

7th. Previous to the year 1840, the general Congress cannot prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

8th. The government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation, with respect to the foreigners who may come to colonize. In the distribution of lands, Mexican citizens are to be attended to in preference; and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country, or inequality of circumstances, residence in the place to which the lands distributed belong.

10th. Military persons who are entitled to lands by the promise made on the

27th of March, 1821, shall be attended to in the States, on producing the diplomas granted to them to that effect by the supreme executive power.

11th. If by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

12th. No person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5,000) of irrigable land (*de regadio*), four superficial ones of land dependent on the seasons (*de temporal*), and six superficial ones for the purpose of rearing cattle (*de abreradiso*).

13th. The new colonist cannot transfer their possessions in mortmain (*manos muertas*.)

14th. This law guaranties the contracts which the grantees (*empresarios*) may make with the families which they may bring out at their expense; provided they be not contrary to the laws.

15th. No one who, by virtue of this law, shall acquire the ownership of lands, shall retain them if he shall reside out of the territory of the republic.

16th. The government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the republic.

No. XIII.

EXHIBIT C IN THE CASE.

[California Archives, Vol. IV, San José Dep. S., page 278.]

NOVEMBER 6TH, 1828.

Governor Echandia says Comandantes of Presidios cannot grant lands.

“Under this date, I say to Lieutenant Don Ygnacio Martinez, Com^{te} of the Presidio of San Francisco, that which follows :

“The Englishman, William Willis, resident for many years in the pueblo of San José Guadalupe, presented himself before this Government, asking the concession of a place named Laguna de los Bolbones, and in consequence of the Bando, lately published, and other considerations influencing this Superior Government in favor of its ancient and new inhabitants, the following decree was made on his petition : ‘Port of San Diego, June 7th, 1828.—Inasmuch ‘as there are in the pueblo of San José Guadalupe lands sufficient on which the ‘petitioner can maintain his flocks and herds, in accordance with the late Bando ‘published in relation to the matter, the place petitioned for cannot be granted.’ On this refusal, this individual, maliciously disregarding the authority of the Government, presented himself to the Comandante of San Francisco, setting forth that the said place pertained to his jurisdiction, and asking him to concede to him *ad interim* that which he was unable to obtain from the proper source, who was weak enough to accede to his petition, and grant to him the land (a thing that no Comandante of this Territory has any authority to do) by decree on his petition, dated the twenty-fifth of August last past, not even in the character of a loan for one year. Wherefore, as soon as you receive this you will cause to appear before you the said William Willis, and will exact from him a fine of fifty dollars,” etc.

No. XIV.

[California Archives, Vol. II, Missions and Colonization, page 1, etc.; 1 Rockwell, 453; Halleck's Report, ut supra, Appendix 5.]

General rules and regulations for the colonization of territories of the republic.
Mexico, November 21, 1828.

It being stipulated in the 11th article of the general law of colonization of the 18th of August, 1824, that the government, in conformity with the principles established in said law, shall proceed to the colonization of the territories of the republic; and it being very desirable, in order to give to said article the most punctual and exact fulfilment, to dictate some general rules for facilitating its execution in such cases as may occur, his excellency has seen fit to determine on the following articles:

1st. The governors (*gefes politicos*) of the territories are authorized (in compliance with the law of the general Congress of the 18th of August, 1824, and under the conditions hereafter specified) to grant *vacant lands* (*terrenos valdios*) in their respective territories to such contractors (*empresarios*), families, or private persons, whether Mexicans or foreigners, who may ask for them, for the purpose of cultivating and inhabiting them.

2d. Every person soliciting lands, whether he be an *empresario*, head of a family, or private person, shall address to the governor of the respective territory a petition, expressing his name, country, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing as distinctly as possible, by means of a map, the land asked for.

3d. The governor shall proceed immediately to obtain the necessary information whether the petition embraces the requisite conditions required by said law of the 18th of August, both as regards the land and the candidate, in order that the petitioner may at once be attended to; or if it be preferred, the respective municipal authority may be consulted, whether there be any objection to making the grant or not.

4th. This being done, the governor will accede or not to such petition, in exact conformity to the laws on the subject, and especially to the before-mentioned one of the 18th of August, 1824.

5th. The grants made to families or private persons shall not be held to be definitely valid without the previous consent of the territorial deputation, to which end the respective documents (*espedientes*) shall be forwarded to it.

6th. When the governor shall not obtain the approbation of the territorial deputation, he shall report to the supreme government, forwarding the necessary documents for its decision.

7th. The grants made to *empresarios* for them to colonize with many families shall not be held to be definitely valid until the approval of the supreme government be obtained; to which the necessary documents must be forwarded, along with the report of the territorial deputation.

8th. The definitive grant asked for being made, a document signed by the governor shall be given, to serve as a title to the party interested, wherein it must be stated that said grant is made in exact conformity with the provisions of the laws in virtue whereof possession shall be given.

9th. The necessary record shall be kept in a book destined for the purpose, of all the petitions presented, and grants made, with the maps of the lands granted, and the circumstantial report shall be forwarded quarterly to the supreme government.

10th. No *capitulization* shall be admitted for a new town, except the *capitulizator* bind himself to present, as colonists, twelve families at least.

11th. The governor shall designate to the *new colonist* (nuevo poblador) a proportionate time within which he shall be bound to cultivate or occupy the land on the terms and with the number of persons or families which he may have *capitulized* for, it being understood that if he does not comply, the grant of the land shall remain void; nevertheless, the governor may revalidate it in proportion to the part which the party may have fulfilled.

12th. Every new colonist, after having cultivated or occupied the land agreeable to his *capitulation*, will take care to prove the same before the municipal authority, in order that, the necessary record being made, he may consolidate and secure his right of ownership, so that he may dispose freely thereof.

13. The reunion of many families into one *town* (poblacion) shall follow, in its formation, interior government and policy, the rules established by the existing laws for the other towns of the republic, special care being taken that the new ones are built with all possible regularity.

14th. The *minimum* of irrigable land to be given to one person for colonization shall be 200 varas square, the *minimum* of land called *de temporal* shall be 800 varas square, and the *minimum* for breeding cattle (*de abrevadero*) shall be 1,200 varas square.

15th. The land given for a house-lot shall be 100 varas.

16th. The spaces which may remain between the colonized lands may be distributed among the adjoining proprietors who shall have cultivated theirs with the most application, and have not received the whole extent of land allowed by the law, or to the children of said proprietors, who may ask for them to combine the possessions of their families; but on this subject particular attention must be paid to the morality and industry of the parties.

17th. In those territories where there are missions, the lands occupied by them cannot be colonized at present, nor until it be determined whether they are to be considered as the property of the establishments of the neophytes, catechumens, and Mexican colonists.

No. XV.

[See the same: Halleck's Report, Appendix, No. 13; 1 Rockwell, 455; Jones' Report, page 59.]

Decree of the Mexican Congress relating to the Secularization of the Missions of California.

ARTICLE 1. The Government will proceed to secularize the Missions of Upper and Lower California.

ART. 2. In each of said Missions shall be established a parish, served by a secular clergyman, with a stipend of from two thousand to two thousand five hundred dollars a year, as the Government shall decide.

ART. 3. These Parochial Curates shall not recover or receive any fees for marriages, baptisms, or under any other name. As regards fees for processions, they shall be entitled to receive such as may be specifically named in the list made out for that object, as concisely as possible, by the Reverend Bishop of the Diocese, and approved by the Supreme Government.

ART. 4. The churches which have served in each Mission shall serve as parish churches, with the sacred vases, ornaments, and other articles, which each possesses at present, and such additional furniture belonging to said church as the Government may deem necessary for the more decent use of said parish.

ART. 5. The Government shall cause to be laid out a *campo santo* [cemetery] for each parish out of the way of the population.

ART. 6. Five hundred dollars a year are appropriated for the service and worship in each parish church.

ART. 7. Of the houses belonging to each Mission, the most suitable shall be selected as the residence of the Curate, the land appropriated to him not to exceed two hundred yards square, and the rest shall be specially devoted to a town house, primary school, and public establishments and offices.

ART. 8. In order to provide promptly and effectively for the spiritual wants of both the Californias, there is established in the capital of the Upper a vicarship, which shall have jurisdiction over the two Territories, and the Reverend Diocesan shall endow it with the most ample powers.

ART. 9. Three thousand dollars are appropriated as an endowment to this vicarship, the Vicar being required to discharge his duties free of charge under any pretext or name, not even for paper.

ART. 10. If for any other cause whatever the Parochial Curate of the capital, or any other parish in the district, shall act as Vicar, there shall be paid to him one thousand five hundred dollars, besides the stipend of his curacy.

ART. 11. There shall not be introduced any custom which shall require the inhabitants of California to make offerings, however pious they may be, although they may be termed *necessary*; and neither time nor the will of the said inhabitants shall give them any force or weight whatever.

ART. 12. The Government shall take effectual care that the Reverend Diocesan shall contribute, so far as he is concerned, to fulfill the objects of this law.

ART. 13. The Supreme Government shall provide for the gratuitous transportation, by sea, of the new Curates that may be appointed and their families, and besides may give to each one, for his traveling by land, from four to eight hundred dollars, according to the distance and the number of his family which he brings.

ART. 14. Government shall pay the traveling expenses of the religious [regulars] (religiosos) Missionaries who move; and that they may be accommodated on land as far as their colleges or convents, may give to each from two to three hundred dollars, and, at discretion, so much as may be necessary to such as have not sworn to support the independence, that they may leave the Republic.

ART. 15. The Supreme Government shall pay the expenses arising under this law out of the products of the securities, capitals, and rents, which are regarded as the pious fund in the Missions of California.

August 17th, 1833.

No. XVI.

EXHIBIT No. 5 TO DEPOSITION OF R. C. HOPKINS IN THE CASE.

[California Archives, Vol. III, Departmental State Papers, page 558.]

MAY 18TH, 1834.

Governor Figueroa to Com^{te} Vallejo.

The Military Comandante of that place (San Francisco) has been considered as one encharged with the administration of justice, which functions were, in

the time of the Spanish Government, attributed to that officer on account of there being no constitutional Alcalde, on whom the law of the ninth of October, 1812, conferred the jurisdiction *contenciosa*.

Thus it is that the Military Comandantes have continued exercising these functions until Ayuntamientos should be established at the points where none existed. Under this view of the matter, it is for you, in the character of Judge of First Instance, to carry out the provisions of the law of the twenty-second of July, 1833, in that Presidio and its *comprehension* (jurisdiction).

It belongs also to the Military Comandante of that Presidio to exercise the political government of the same, for the want of local authorities. It is his duty to make out a list of the inhabitants, in the manner prescribed by law, which I will expect you to forward to me without delay, informing me at the same time if, in your opinion, an Ayuntamiento may be established, that I may take such steps as may be necessary in order to carry out the matter.

Signed with Rubrica of Figueroa.

No. XVII.

EXHIBIT No. 6 TO DEPOSITION OF R. C. HOPKINS IN THE CASE.

[California Archives, Vol. XIV, Angeles Official Correspondence.]

Governor Figueroa's Decree of August 6th, 1834, respecting Constitutional Ayuntamientos.

FIGUEROA'S REGULATIONS.

The Most Excellent Territorial Deputation, under date of the second instant, was pleased to resolve as follows:

1st. There shall be a Constitutional Ayuntamiento in the "vecindario" of San Diego, composed of one Alcalde, two Regidores, and one Sindico Procurador.

2d. There shall be a Constitutional Ayuntamiento in the "vecindario" of Santa Barbara, composed of one Alcalde, four Regidores, and one Sindico Procurador.

3d. The Constitutional Ayuntamiento of the pueblo of Los Angeles shall be increased by one Alcalde of the second nomination and two Regidores.

4th. The Constitutional Ayuntamiento of this capital by one Alcalde of the second nomination and two Regidores.

5th. The officers referred to in the foregoing articles shall be elected on the days designated in the law of the twelfth of June, 1830, and shall enter upon the duties of office on the first of January, 1835, excepting those for Santa Barbara, who from the present date (such as are elected) shall exercise all the functions awarded to them by decree of the twenty-third of June, 1813.

All of which I forward to you for your information and further ends, requiring you to see that the same be fulfilled.

God and Liberty!

MONTEREY, August 6th, 1834.

JOSE FIGUEROA.

To the Constitutional Alcalde of Los Angeles.

No. XVIII.

DOCUMENT "A P L" IN THE CASE.

[California Archives, Vol. II, Missions and Colonization, page 538. This is very badly translated as will be seen where the mistranslations are italicised and the Spanish terms inserted in parentheses.]

AUGUST 6TH, 1834.

DECREE OF GOVERNOR FIGUEROA, RESPECTING TOWN PROPERTY, MUNICIPAL TAXES, ETC.

José Figueroa, Brigadier General of the Mexican Republic, Commander-in-Chief, Inspector and Superior Political Chief of the Territory of the Upper California.

The Right Honorable Territorial Deputation being desirous to provide the *Towns and Cities* (los Pueblos) with necessary funds for their expenses and works of public benefit, has been pleased to resolve the following :

A plan of ways and means to raise municipal funds (*propios y arbitrios*) for the AYUNTAMIENTOS OF THE TERRITORY OF THE UPPER CALIFORNIA.

Art. 1st. The Ayuntamientos will proceed by ordinary channels to solicit, that, to each *Town and City*, lands for common and for Town and City property be *assigned*. (Se señalen á cada pueblo terrenos para ejidos y para *propios*—that lands for *ejidos* and *propios* be designated to each *pueblo*.)

2d. Town and City landed property (los terrenos de *propios*) so to be assigned to each Town and City, will be subdivided into middling and small sized lots ; and the same may be rented or leased to the highest bidder or bidders. Actual possessor or possessors of town or city property (*propios*) will pay such annual ground rent as at the discretion of the Ayuntamientos after an investigation of three intelligent and honest men having been had, may be imposed upon them.

3d. Upon the concession of a building-lot for the erection of houses or places of abode, the party and parties interested will pay six dollars and a quarter for each building-lot of one hundred varas square ; and so on ; progressively or diminutively he or they will pay at the rate of one quarter of a dollar for each front vara.

4th. The Constitutional Ayuntamientos within their respective demarcation may for the time being allow to be used such branding irons as at the instance of the parties, may be filed for registration ; and collect at the time of allowing the same for each of such branding irons the sum of one dollar and a half to be applied to municipal funds.

5th. The Political Chief (Governor) will please to order so as to be publicly known that a party now using a branding-iron which is not so registered, shall produce the same in the town or city house of the proper jurisdiction, for the purpose of obtaining a proper license upon being so registered ; for which an equal sum as assigned in the 4th Article is likewise to be paid.

6th. For slaughtering each head of cattle, being for the public supply or market, the owner or owners will pay half a real, and the like sum for slaughtering each sheep ; and two reals each hog or pig.

7th. For each clothing store the owner or owners will pay one dollar monthly ; and for each of the groceries of liquor stores, or stores for any other trade, half a dollar.

8th. For each of the weighing or measuring prices, when sealed by the inspector, he or they will pay one real.

9th. From the manager or managers of rope-dances, comedy, and puppet plays, two dollars will be collected for each performance.

10th. For billiard places, they will pay one dollar monthly.

11th. In the ports of Monterey, San Francisco, Santa Barbara, San Pedro and San Diego, every national vessel, not being a vessel of war, will pay as municipal duty, half a real for each package landed for commercial purposes; and foreign vessels of the like class will pay one real for a package landed in said ports.

12th. It will be solicited from the Supreme Government that the two reals tannage-duty on foreign vessels, which, according to the 4th Article of the Custom House regulations of 16th of November, 1827, were allowed to the States, be granted to this Territory for municipal funds, which are to supply the treasury of the Deputation.

13th. Enterprisers of fishing and shooting of otters, will pay for each skin of the size of a vara, and so on, four reals, and the like sum for each of the beaver's skins.

14th. All fines or pecuniary penalties which may hereafter be imposed for light offenses by the Constitutional Alcaldes, and even by the Political Chief, will be applied to municipal funds.

15th. The municipal duty heretofore paid on national liquors, will be from the time of the passing hereof, reduced to three dollars on a barrel of brandy, two dollars on each of the "*angelica*," and one dollar and a half on each of wine, which duty will be paid at the port where the same may be introduced by the importer or importers.

16th. On foreign brandy hereafter introduced for commercial purposes into this Territory, one dollar will be paid for a gallon as municipal duty; at the like rate it will be paid on gin; and on wine and beer it will be at the rate of four reals a gallon.

17th. A voluntary contribution is established to every vessel, national and foreign, anchoring in the bay of Monterey, for the exclusive purpose of building a wharf; each captain, supercargo, or owner of vessel will give what he may spontaneously please; the produce of this contribution will be collected and kept by the harbor-master under his charge; and the same will be employed on the construction of such a wharf, and on this work being finished, said contribution to cease.

18th. For each public sale wherein commercial goods are sold to the highest bidders, the auctioneer or auctioneers will pay three dollars as municipal duty.

19th. Taking into consideration the want of funds for ordinary expenses and principal works of the town, according to the power 4th, article 335 of the constitution in force, and after the assent of the Political Chief is given thereto, the taxes, customs and excise determined in Articles 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, and 18, will be enforced, which the said Political Chief will have published on the usual places for observance.

20th. Account will be given to the Supreme Government of this designation, to solicit from the General Congress the approval thereto.

21st. The Political Chief will notify the controller of the Marine Custom House to report to the "*Ayuntamiento*" of the Capital, the quantity and kind of liquors that he may hereafter guage from each vessel, in order the same may in view of said report take such measures as may be deemed most proper to avoid fraud.

And for the purpose that it may be publicly known, this will be published, and due observance given thereto, by posting the same on the public places, and in a circular to those who are to watch the observance thereof.

Given at Monterey, on the 6th day of August, 1834.

JOSE FIGUEROA.

AGUSTIN V. ZAMORANO, Secretary.

No. XIX.

[Halleck's Rep., Appendix No. 14; 1 Rockwell, 456; and from the end of Art. 23d, Jones' Rep., page 65.]

Governor Figueroa's Provisional Rules for the Secularization of the Missions.

ARTICLE 1. The Governor, agreeable to the spirit of the law of the seventeenth August, 1833, and to the instructions which he has received from the Supreme Government, will, with the coöperation of the Prelates of the Missionary Priests, partially convert into pueblos the Missions of this Territory, beginning in the next month of August, and commencing at first with ten Missions, and afterwards with the remainder.

ART. 2. The Missionary Priests will be exonerated from the administration of temporalities, and will only exercise the functions of their ministry in matters appertaining to the spiritual administration until the formal division of parishes be made, and the Supreme Government and Diocesan provide Curates.

ART. 3. The Territorial Government will reassume the administration of temporalities in the directive part, according to the following bases.

ART. 4. The Supreme Government will, by the quickest route, be requested to approve of these Provisional Regulations.

DISTRIBUTION OF PROPERTY AND LANDS.

ART. 5. To every individual head of a family, and to all those above twenty-one years of age, although they have no family, a lot of land, whether irrigable or otherwise, of not exceeding four hundred varas square, nor less than one hundred, shall be given out of the common lands of the Missions; and in community a sufficient quantity of land shall be allotted them for watering their cattle. Common lands shall be assigned to each pueblo, and, when convenient, municipal lands also.

ART. 6. One-half of the self-moving property (cattle) shall be distributed among the said individuals, in a proportionable and equitable manner, at the discretion of the Governor, taking as a basis the last accounts of all kinds of cattle presented by the Missionaries.

ART. 7. One-half or less of the chattels, instruments, and seeds, on hand and indispensable for the cultivation of the ground, shall be divided proportionably among them.

ART. 8. The remainder of all the lands, landed property, cattle, and all other property on hand, will remain under the care and responsibility of the Mayordomos, or other officers whom the Governor may name, at the disposal of the Supreme Federal Government.

ART. 9. From the common mass of this property the subsistence of the Missionary Padres, the pay of the Mayordomos, and other servants, and the expenses of religious worship, schools, and other objects of policy and ornament, shall be provided.

ART. 10. The Governor, having under his charge the direction of temporal affairs, will determine and regulate, according to circumstances, all the expenses necessary to be laid out, as well for the execution of this plan as for the conservation and augmentation of this property.

ART. 11. The Missionary Minister will select the locality in the Mission which may best suit him for his own habitation and that of his servants and attendants; and he shall be furnished with the necessary furniture and implements.

ART. 12. The library, sacred dresses, ornaments, and furniture, of the church, shall be put in charge of the Missionary Padre, under the responsibility

of the person who acts as subscriber, and whom the Priest himself shall elect, and a reasonable salary be given for his troubles.

ART. 13. General inventories shall be made of all property on hand in each Mission, with due separation and explanation of the different branches ; of the books, debit and credit, and all kinds of papers ; of the amount owing by and to the Missions ; which document and account shall be forwarded to the Supreme Government.

POLITICAL GOVERNMENT OF THE PUEBLOS.

ART. 14. The political government of the pueblos shall be organized in perfect conformity with the existing laws ; the Governor will give the necessary instructions to have Ayuntamientos established and elections made.

ART. 15. The economical government of the pueblos shall be under the charge of the Ayuntamientos ; but as far as regards the administration of justice in contentious affairs, they will be subject to the primary Judges of the nearest towns constitutionally established.

ART. 16. The emancipated Indians will be obliged to assist at the indispensable common labor which, in the opinion of the Governor, may be judged necessary for the cultivation of the vineyards, orchards, and corn-fields, which for the present remain undisposed of, until the resolution of the Supreme Government.

ART. 17. Said emancipated Indians will render to the Missionary Priest the necessary personal service for the attention of his person.

RESTRICTIONS.

ART. 18. They cannot sell, burden, or alienate, under any pretext, the lands which may be given them ; neither can they sell their cattle. Whatever contracts may be made against these orders shall be of no value ; the Government will reclaim the property as belonging to the nation, and the purchasers shall lose their money.

ART. 19. The lands whose owners shall die without heirs shall revert to the possession of the nation.

GENERAL ORDERS.

ART. 20. The Governor will name such Commissioners as he may see fit to carry this plan and its incidents into effect.

ART. 21. The Governor is authorized to resolve any doubt or matter which may arise relative to the execution of these regulations.

ART. 22. Until these regulations be put in force the Reverend Missionary Padres are prohibited from slaughtering cattle in large quantities, except the common and ordinary number accustomed to be killed for the subsistence of the neophytes, without allowing any waste.

ART. 23. The debts of the Mission shall be paid in preference, out of the common mass of the property, at the time and in the manner that the Governor shall determine.

That the fulfillment of this law may be perfect the following rules will be observed :

1st. The Commissioners, so soon as they shall receive their appointments and orders, shall present themselves at the respective Missions, and commence the execution of the plan, being governed in all things by its tenor and these regulations. They shall present their credentials respectively to the Priests under whose care the Mission is, with whom they shall agree, preserving harmony and proper respect.

2d. The Priests shall immediately hand over and the Commissioners receive the books of accounts and other documents relating to property claims, liquidated and unliquidated ; afterwards, general inventories shall be made out, in

accordance with the 13th Article of this regulation, of all property—such as houses, churches, workshops, and other local things—stating what belongs to each shop—that is to say, utensils, furniture, and implements; then, what belongs to the homestead; after which shall follow those of the field, that is to say, property that grows, such as vines and vegetables, with an enumeration of the shrubs, if possible, mills, etc.; after that, the cattle, and whatever appertains to them; but as it will be difficult to count them, as well on account of their number as for the want of horses, they shall be estimated by two persons of intelligence and probity, who shall calculate, as nearly as may be, the number of each species, to be inserted in the inventory. Everything shall be in regular form in making the inventory, which shall be kept from the knowledge of the Priests, and under the charge of the Commissioner or Steward; but there shall be no change of the order of the work and services, until experience shall show that it is necessary, except in such matters as are commonly changed whenever it suits.

3d. The Commissioner, with the Steward, shall dispense with all superfluous expense, establishing rigid economy in all things that require reform.

4th. Before he takes an inventory of articles belonging to the field, the Commissioner will inform the natives—explaining to them with mildness and patience that the Missions are to be changed into villages, which will only be under the government of the Priests so far as relates to spiritual matters; that the lands and property for which each one labors are to belong to himself, and to be maintained and controlled by himself without depending on any one else; that the houses in which they live are to be their own, for which end they are to submit to what is ordered in these regulations, which are to be explained to them in the best possible manner. The lots will be given to them immediately, to be worked by them as the 5th Article of the regulations provides. The Commissioner, the Priest, and the Steward, shall choose the location, selecting the best and most convenient to the population; and shall give to each the quantity of ground which he can cultivate, according to his fitness and the size of his family, without exceeding the *maximum* established. Each one shall mark his land in such manner as may be most agreeable to him.

5th. The claims that are liquidated shall be paid from the mass of property; but neither the Commissioner nor the Steward shall settle them without the express order of the Government, which will inform itself on the matter, and, according to its judgment, determine the number of cattle to assign to the neophytes, that it may be done, as heretofore, in conformity with what is provided in the 6th Article.

6th. The necessary effects and implements for labor shall be assigned in the quantities expressed by the 7th Article, either individually or in common, as the Commissioner and Priest may agree upon. The seeds will remain undivided, and shall be given to the neophytes in the usual quantities.

7th. What is called the priesthood shall immediately cease; the female children whom they have in charge being handed over to their fathers, explaining to them the care they should take of them, and pointing out their obligations as parents. The same shall be done with the male children.

8th. The Commissioner, according to the knowledge and information which he shall acquire, shall name to the Government, as soon as possible, one or several individuals, who may appear to him suitable and honorable, as Stewards, according to the provisions of the 8th Article, either from among those who now serve in the Missions or others; he shall also fix the pay which should be assigned them, according to the labor of each Mission.

9th. The settlements which are at a distance from the Mission, and consist of more than twenty-five families, and which would desire to form a separate community, shall be gratified; and the appropriation of lands and other property shall be made to them as to the rest. The settlements which do not con-

tain twenty-five families, provided they be permanently settled where they now live, shall form a suburb, and shall be attached to the nearest village.

10th. The Commissioner shall state the number of souls which each village contains, in order to designate the number of municipal officers, and cause the elections to be held, in which they will proceed conformably, as far as possible, to the law of June 12, 1830.

11th. The Commissioners shall adopt all executive measures which the condition of things demands, giving an account to the Government, and shall consult upon grave and doubtful matters.

12th. In everything that remains, the Commissioners, the Priests, Stewards, and natives, will proceed according to the provisions of the regulation.

JOSE FIGUEROA.

AUGUSTIN V. ZAMORANO, Secretary.

Monterey, August 9, 1834.

No. XX.

REGULATIONS OF THE MISSIONS WHICH HAD BEEN SECULARIZED, NOV. 3D, 1834.

[Halleck's Rep. App. 15 ; Jones's Report, page 60, No 10 ; 1 Rockwell, 461.]

In the extraordinary session of the most excellent California deputation held in Monterey on the 3D OF NOVEMBER, 1834, the following regulations were made respecting the missions which had been secularized, agreeably to the supreme order of the 17th August, 1833, and the provisional regulations of Governor Figueroa of the 9th August, 1834 :

ARTICLE 1. In accordance with the 2d article of the law of the 17th August, 1833, the amount of \$1,500 per annum is assigned to the priests who exercise the functions of parish priests in the curacies of the first class, and \$1,000 to those of the second class.

ART. 2. As curacies of the first class shall be reputed San Diego, San Dieguito, San Luis Rey, Las Flores, and ranches annexed ; San Gabriel and Los Angeles ; Santa Barbara, the mission and presidio annexed ; San Carlos, united to Monterey ; Santa Clara, joined to San José de Guadalupe, and San José, San Francisco Solano, San Rafael, and the colony. And the following shall be reputed of the second class : San Juan Capistrano, San Fernando, San Buenaventura, San Ynes and la Purisima, San Luis Obispo, San Miguel, San Antonio and La Solidar, San Juan Bautista, Santa Cruz, *San Francisco de Assis*, and the presidio.

ART. 3. Agreeably to the 8th and 9th articles of said law, the reverend father commissary prefect, Father Francisco Garcia Diego, shall establish his residence in the capital, and the governor (gefe politico) shall request the reverend diocesan to confer upon said prelate the faculties appertaining to a foraneous vicar. He shall enjoy the salary of \$3,000 assigned to him by said law.

ART. 4. The foraneous vicar and the curates shall be judged, in all other respects, by said law of the 17th August, 1833.

ART. 5. Until the Government can furnish permanent parish priests, the respective prelates of the missionaries (religions) shall do so provisionally, with the approbation of the governor.

ART. 6. With respect to article 6th of said law, the \$500 per annum shall be paid for public worship and for servants in each parish.

ART. 7. From the common stock of the property of the *extinguished* [suppressed] mission, the salaries of the foraneous vicar, the curates, and for religious worship, shall be paid either in cash (should there be any) or in produce or other articles at current prices. The governor will give the necessary orders to have this carried into effect.

ART. 8. The 17th article of the provisional regulations of secularization, which imposed upon Indians the duty of giving personal service to the priests, is annulled.

ART. 9. With respect to the 7th article of said law, the governor will order localities to be appointed for the habitation of curates; for the court-house, schools, public establishments, and workshops.

ART. 10. The other matters to which the observations of the reverend padre, Fr. Narcisco Daran, extend, as they are of easy resolution, will be settled by the governor, who is authorized to do so by the provisional regulations.

ART. 11. This law, together with the opinion of the committee appointed to examine the above rations of Padre Daran on the provisional regulations, shall be communicated to the prelates for them to make it known to their subordinates.

ART. 2, (addition to). The curacies which embrace two or more inhabited places will recognise the first one mentioned as the principal, and there the parish priest will reside, and in San Diego and Santa Barbara the missions will be the places of residence.

No. XXI.

EXHIBITS NOS. 1 AND 2 TO THE DEPOSITION OF M. G. VALLEJO.

DECEMBER, 1834.

Order for election of an Ayuntamiento for the Partido of San Francisco, and election of the same.

No. 1. { Seal of the Political Government }
 { of Upper California. }

The most excellent Territorial Deputation, using the powers conferred on it by the law of the 23d of June, 1813, on yesterday passed the following instructions:

“1st. The Political Chief will direct that the partido of San Francisco proceed to the election of an Ayuntamiento constitutional, which shall reside in the Presidio of that name, composed of an Alcalde, two Councilmen, and a Sindic Procurer, regulating itself in all respects, so as to be able to verify it, by the existing Constitution and the law of June 12, 1830.*

“2d. That account be given by the proper way to the Supreme Government for the due approbation.”

And I transcribe it to you for your information and compliance, recommending that the election be carried into effect on the day appointed by the said law of the 12th of June.

I also notify you that the Ayuntamiento, when installed, will exercise the political functions with which you have been charged, and the Alcalde the judicial functions which the laws, for want of a *Judge of Letters*, confer on

* This should be July 12, 1830. See the Original Coleccion de Decretos por 1829-1830, pages 113, etc.

him ; you remaining restricted to the military command alone, and receiving in anticipation the thanks due for the prudence and exactness with which you have carried on the political government of that demarcation.

God and Liberty !

MONTEREY, November 4, 1834.

JOSE FIGUEROA.

To the Military Comandante of San Francisco.

No. 2.

In the Presidio of San Francisco, the 7th day of December, 1834, the Municipality of the Demarcation assembled in the house of the *Comandancia*. The corresponding order of convocation being previously given for the purpose of holding the primary *Junta* for voting for the electors who are to meet in secondary (*junta*) on the first following Sunday, for the purpose of electing the individuals who are to compose the new *Ayuntamiento* for this *Comprehension*, and who are to hold office for the coming year of 1835, in compliance with what is ordered by the Political Chief, on the 4th of November of this year, in virtue of the resolution on the matter by the most excellent Territorial Deputation, after the election of four secretaries, proceeded to the election of twelve electors, which number according to the assembled Municipality was found to correspond to it, and having counted the votes from which there resulted by majority. Citizens : Ygnacio Peralta with 27 votes; Francisco Sanchez with 23 ; Francisco Soto with 20 ; Joaquin Castro with 19 ; José de la Cruz Sanchez with 17 ; Francisco de Haro with 16 ; Manuel Sanchez with 15 ; Juan Miranda with 15 ; Antonio Castro with 12 ; Manos Briones with 9, and Apolonario Miranda with 9 ; from which it resulted that the said gentlemen were elected ; and they were notified of it, and the act being concluded, the President and Secretaries signed the present act.

FRANCISCO DE HARO,
FRANCISCO SANCHEZ,
JOAQUIN CASTRO,
JUAN MIRANDA.

No. XXII.

EXHIBIT No. 5 TO DEPOSITION OF M. G. VALLEJO.

Approval of choice of Alcalde for Contra Costa, by Governor Figueroa.

{ Seal of the Political Government }
{ of Upper California. }

The appointment you have made in favor of the citizen Gregorio Briones, as auxiliary Alcalde in the Contra Costa, seems to me very well, and consequently has my approval. I say this to you in answer to your official note on the matter of the 22d ultimo.

God and Liberty !

MONTEREY, January 31st, 1835.

JOSE FIGUEROA.

Señor Constitutional Alcalde of San Francisco de Asis.

No. XXIII.

EXHIBIT No. 14 TO DEPOSITION OF R. C. HOPKINS.

Order of Governor Figueroa for the election of an Ayuntamiento for the PUEBLO of San Francisco, January 31st, 1835.

Con el ofo de V. de 23 del que acaba es en mi poder el Padron general de los habitantes que tiene esa poblacion de San Francisco de Asis.

[SEAL.]

Como esta prevenido por la ley de 23 de Mayo de 1812, que se reputa vigente que cada pueblo tenga su Ayuntamiento y correpondiendole á ese por su senso un Alcalde, dos Regidores, y un Sindico Procurador, dispondra V. que desde luego se verifiquen las elecciones para la formacion del Ayuntamiento con total arreglo á la ley de 12 de Junio de 1830.

Dios y Libertad!

MONTEREY, Erno 31 de 1835.

JOSE FIGUEROA.

SR DN JOAQUIN ESTUDILLO, Comandante de S^a Francisco de Asis.

[TRANSLATION.]

With your official note of the 23d of the ending month, is in my possession the general list of the inhabitants of the population of San Francisco de Asis.

[SEAL.]

By the law of 23d of May, 1812, which is considered in force, it is provided that each pueblo shall have its Ayuntamiento, and according to the census of that town there shall be elected one Alcalde, two (Regidores) Directors, (y un Sindico Procurador) and one Attorney-General, therefore you will dispose hereafter the election to verify the formation of the Ayuntamiento with all the rule of the law of 12th June, 1830.

God and Liberty!

MONTEREY, January 31st, 1835.

JOSE FIGUEROA.

SR DON JOAQUIN ESTUDILLO, C^{te} de San Francisco de Asis.

No. XXIV.

EXHIBIT F TO DEPOSITION OF R. C. HOPKINS IN THE CASE

[California Archives, Vol. VI, Prefecturas and Juzgados, Benicia, 122.]

Governor Figueroa decides, August 6, 1835, that the distribution of house-lots and sowing-lots at Yerba Buena does not belong to the Ayuntamiento.

JULY 15TH, 1835—F.

Justice Haro to Governor Figueroa.

COURT OF FIRST INSTANCE }
OF SAN FRANCISCO DE ASIS. }

Don José Joaquin de Estudillo has presented himself to me, asking permission to build his house on the beach (playa) of Yerba Buena, the anchorage of vessels, and that there be also conceded to him sowing lands. Your Señoria

will inform me if this Ayuntamiento has authority to permit him to do so, and also to concede him lands for cultivation in that vicinity.

God and Liberty!

SAN FRANCISCO DE ASIS, July 15th, 1835.

FRANCISCO DE HARO.

Reply of Governor Figueroa.

MONTEREY, August 6th, 1835.

Let him be answered that the distribution of lands for house-lots and for purposes of cultivation, in the place of Yerba Buena, does not belong to the Ayuntamiento.

No. XXV.

EXHIBIT No. 12 TO THE TESTIMONY OF R. C. HOPKINS.

Espediente relative to the place called Laguna de la Merced, solicited by José Antonio Galindo.

August to Sept., 1835.

STAMP THIRD. TWO REALS.

Provisionally authorized by the Administration of the Maritime Custom House of Monterey, of Upper California, for the years eighteen hundred and thirty-four and eighteen hundred and thirty-five.

A. RAMIREZ,
FIGUEROA.

Señor Political Chief:

The citizen, José Anto. Galindo, before your Lordship in due form of law appears, and exposes that, finding himself with a numerous family, which consists of his mother, three brothers, and two sisters, he is in need, for their subsistence, of a tract of land, which is vacant, lying near San Francisco AND Dolores (que se aya valdia en las imdidaciones de S. Francisco y de Dolores), which tract of land is one league in width, and a half league, more or less, in length. The corresponding sketch he herewith presents, according to the law of the eighteenth of August, 1824; wherefore, he prays your Lordship that due action be taken on this petition, by which he shall receive a favor. I swear it is not in malice, etc.

SAN FRANCISCO, August 15, 1835.

(Signed)

JOSE ANTO. GALINDO.

MONTEREY, September 5, 1835.

In conformity with the laws and regulations on the matter, let the Ayuntamiento of San Francisco report whether the interested party in this petition has the requisite qualifications to be attended to in his petition (informe el Ayuntamiento de San Francisco si el interasado obtiene los requisitos); whether the land he solicits is within the twenty border leagues, or ten littoral ones, mentioned in the law of the eighteenth of August, 1824; whether it is the property of any individual, Mission, corporation, or pueblo, and whatever else may be conducive to elucidate the matter; which being done, let the espediente

(record) of proceedings pass to the Superintendent of the same, in order that he may state what he may see proper in the matter.

D. José Castro, first member of the most excellent Territorial Deputation and Political Chief *ad interim* of the Territory of Upper California: thus ordered, decreed, and signed, of which I certify.

(Signed)

JOSE CASTRO. [Rubric.]

In accordance with the superior decree of the fifth of September of the present year, which appears on the margin of the petition made by the citizen José Antonio Galindo, in solicitation of the tract of land La Laguna de la Merced, the municipal authorities (Ayuntamiento) of this demarcation reply as follows: That the petitioner possesses the qualifications of being a Mexican citizen by birth, and of having served the nation in the capacity of a soldier, and of being an honest man, and that he supports his mother, an aged widow, with other children, contributing by his aid to the support of all, and in the preservation of the property which they possess. The land which he solicits is not comprehended within the twenty bordering leagues, but it is within the ten littoral ones; but it has belonged to the Mission of San Francisco, from which it is distant, to the west, a little more than one league in a straight line. It is not farming land, not irrigable, nor is it irrigable farming land, but it is pasture land, for it can only be used to raise a small number of cattle at the said Laguna, for all the land is sandy, and produces pasture only fit for horses and cattle. For the purpose of cultivation it is altogether useless and barren.

This is all that this corporation can say in relation to the matter to which the said superior order refers.

SAN FRANCISCO, September 10, 1835.

(Signed)

FRANCISCO DE HARO.

F. SANCHEZ, Secretary.

Señor Political Chief, ad interim:

In obedience to the superior decree of your Lordship, which provides that this record of proceedings (espediente) be transmitted to the Superintendent of this Mission, in order that he may state what he may see proper, I will say that the petitioner possesses the necessary qualifications to be attended to; that he is a Mexican citizen by birth, and has served in the military career. The land which he solicits belongs to this community; it is grazing land; it is not within the twenty bordering leagues, but it is within the ten littoral leagues.

It is at the distance of a little more than a league from said Mission, and is not in the occupation of the same; but as the commons (ejidos) which shall belong to this place when it shall be constituted into a town (pueblo) are not yet designated (pero con motivo no estan aun señalados los ejidos ó propios que me parecen quedaran á esta cuando se erije en pueblo), I do not know whether the said commons will embrace the said tract of land, and for this reason I cannot say with certainty whether the said place may be granted without prejudice to this community.

DOLORES, September 13, 1835.

(Signed)

GUMDO. FLORES.

STAMP THIRD. TWO REALS.

Provisionally authorized by the Administration of the Maritime Custom House of Monterey, of Upper California, for the year eighteen hundred and thirty-four and eighteen hundred and thirty-five.

ANGELO RAMIREZ,
CASTRO.

MONTEREY, September 22, 1835.

Let this be transmitted to the Alcalde of this capital, before whom the interested party, Don José Antonio Galindo, will produce an information of three competent witnesses, who shall be examined upon the following points :

1st. Whether the petitioner is a Mexican citizen by birth ; if he is a married man ; has any children ; and if he is of good conduct.

2d. Whether the land he solicits is the property of any individual, Mission, corporation, or *pueblo* ; if it is farming, irrigable land, or not irrigable grazing land, and what may be its extent.

3d. Whether he has personal property to occupy it, or can acquire it.

These proceedings being concluded, the *espediente* shall be returned for final action to Don José Castro, first member of the most excellent Territorial Deputation and Superior Political Chief, *ad interim*, of Upper California : thus ordered, decreed, and signed, which I attest.

(Signed)

JOSE CASTRO.

F. DEL CASTILLO NEGRETE, Secretary.

MONTEREY, September 22, 1835.

Fees \$4.00. Let the interested party be notified to produce the witnesses to be examined on the points comprised in the preceding superior decree ; let the required information be taken, and let the record of proceedings be returned to the Señor Superior Political Chief, that it may have the due effect.

In assistance : JOSE M. MALDONADO,
J. J. ESTADILLO.

E. D. SPENCE.

On the same date, the citizen José Antonio Galindo being present, the foregoing order was communicated to him ; and apprised of it, he said that he hears it, and that he presents as witnesses Messrs. Francisco Sanchez, José Fernandez, and Guadalupe Barcenos ; and he did not sign this, because, as he said, he did not know how ; and I did it with those of my assistance according to law.

E. D. SPENCE.

In assistance : JOSE M. MALDONADO,
J. J. ESTADILLO.

Immediately after, the citizen Francisco Sanchez being present, I administered to him the legal oath, which he made according to law, under which he offered to say the truth to the extent of his knowledge to the questions that should be put to him ; and being asked for his name, state, age, country, and religion, he said that his name is as above said, that he is a married man, twenty-nine years of age, a native of San Francisco in Upper California, and Roman Apostolic Catholic.

Being interrogated upon the points prescribed by the superior decree of the twenty-second instant, he answered to the first, that he is a Mexican by birth, that he has no children, and is not married, and that he is of good conduct ; and he answers to the second, that he knows that the lands which the party solicits belongs to the Mission of San Francisco de Asis, that it is pasture land, and that its extent may be in length one league, and the greatest width half a league ; and he replies to the third, that he has farming stock, and possesses property ; that all he has said is the truth, under the oath which he has taken, which he confirmed and ratified after this deposition was read to him, and he signed it with me, and those of my assistance.

(Signed)

DAVID SPENCE,
FRANCISCO SANCHEZ.

In assistance :

(Signed) J. M. MALDONADO,
J. J. ESTADILLO.

On the same date, Don José Fernandez being present, I administered to him the legal oath, under which he promised to answer the truth, to the extent of his knowledge, to the question that might be put to him; and being asked as to his name, state, age, country, and religion, he answered, that his name is the same before mentioned, that he is a married man, of the age of thirty-six, a native of Cadiz, and an Apostolic Roman Catholic.

Being interrogated to the same points as the preceding witness, he said to the first, that the party is a Mexican citizen by birth, that he is not married, nor has he any children, and that he is of good conduct; and he answers to the second, that he knows that the tract of land which he solicits belonged formerly to the Mission of San Francisco, that he does not know whether at present it belongs to the Mission or not, that it is pasture land, and that its extent may be three-quarters of a league in length and one-quarter of a league in width; and he replies to the third, that he has personal property to occupy it; and that what he has said is the truth, under the oath he has taken, which he confirmed and ratified after this deposition was read to him, and he signed it with me, and those of my assistance.

(Signed)

D. E. SPENCE.

In assistance :

(Signed) J. M. MALDONADO,
JOSE J. CARRILLO.

Immediately after, I administered the legal oath to the citizen Guadalupe Barcenos, under which he promised to speak the truth, to the extent of his knowledge, in answer to the questions that might be put to him; and being interrogated as to his name, age, country, and religion, he said, that his name is the same before mentioned, that he is a married man, and twenty-three years of age, native of San Francisco, and Apostolic Roman Catholic.

Being interrogated to the same points as the two former witnesses, he said to the first, that the petitioner was a Mexican citizen by birth, that he is not married, and is of good conduct; and he answers to the second, that he knows that the land which he solicits belongs to the Mission of San Francisco, but is not occupied by the same, that it is only pasturing land, and that its extent may be one league in length, and in breadth in some places half a league; and replies to the third, that he has sufficient personal property to occupy it; and that what he has said is the truth, under the oath which he has taken, which he confirmed and ratified after this deposition was read to him; and he did not sign because he said he knew not how, and I did it, with those of my assistance.

(Signed)

E. SPENCE.

In assistance :

(Signed) J. W. MALUVUNDE,
J. J. ESTUDELLO.

On the same date, the information required being ended, this record of proceedings is returned to the same Supreme Political Chief, in compliance with what has been prescribed by the preceding decree; in witness whereof, I note it down and affix my rubric.

R. [L. s.]

MONTEREY, September 23, 1835.

In view of the petition with which this (espediente) record of proceedings begins the report of the municipal authority of this capital, the testimony of witnesses, together with whatever else was thought to the purpose, in conformity with the provisions of the laws and regulations on the matter, José Antonio

Galindo is declared owner in full property of the land known by the name of La Laguna de la Merced.

Subject to the conditions that may be stipulated, let the corresponding dispatch be issued, and note of it be taken in the respective book, and the expediente to be submitted to the most excellent Territorial Deputation for approval.

Señor Don José Castro, first member of the excellent Territorial Deputation and Political Chief, *ad interim*, of Upper California: thus ordered, decreed, and signed, which I attest.

(Signed)

JOSE CASTRO.

MONTEREY, September 25, 1835.

In session of this day, this expediente was referred to the Committee on Vacant Lands.

(Signed)

CASTRO.

Due note has been taken upon page 74.

No. XXVI.

EXHIBIT No. 6 TO DEPOSITION OF M. G. VALLEJO IN THE CASE.

OCTOBER, 1835.

The Ayuntamiento of San Francisco authorized to grant building lots.

{ Seal of the Political Government }
 { of Upper California. }

The most excellent Territorial Deputation, in session of the twenty-second of September, approved that the AYUNTAMIENTO OF THAT PUEBLO may grant lots which do not exceed one hundred varas, for the building of houses in the place named Yerba Buena, at the distance of two hundred varas from the shore of the sea, paying to the Ayuntamiento the fees which may be designated to him [it? que se la señale] as pertaining to the propios and arbitrios, and being subject to observe the order for forming the town in lines, [en linea de major policia] in accordance with the ordinance regulating the Pólice, which I communicate to you that you may make it known to the inhabitants of that PUEBLO, in order that they may not apply with their memorials to this Political Government, as it is one of the favors which the Ayuntamiento can grant.

God and Liberty!

MONTEREY, October 27, 1835.

JOSE CASTRO.

Señor Alcalde de San Francisco de Asis.

No. XXVII.

EXHIBIT DOC. 9, FILED JANUARY 2d, 1857.

Summons to the Mayordomo of the Mission of Dolores to settle the boundaries of the Buri Buri Rancho, November 2d, 1835.

NOV. 2D, 1835—SANCHEZ RANCHO.

TRIBUNAL OF FIRST INSTANCE }
OF THE PORT OF SAN FRANCISCO DE ASIS. }

Having to give possession to Don José Sanchez of the Rancho Buri Buri and the lands which pertain to it, according to the title of concession, which he has presented, and the plat (diseño) accompanying it, and he (esta parte) having already appointed his surveyor, according to previous arrangement, it remains for you, as the party in charge of that pueblo (ese pueblo) and community, and the only co-terminous neighbor (unico colindante) of Don José Sanchez, to proceed to appoint also your surveyor, who must appear before this Tribunal (Juzgado) to-morrow morning at eight o'clock, in order that he and the other surveyor appointed by said Señor Sanchez may accept the appointment, and take an oath to execute this commission faithfully, according to custom; consequently it will remain for me to appoint the day and hour when, with the assistance of all, I shall cause the said admeasurement and possession of the said Don José Sanchez to be perfected.

God and Liberty!

SAN FRANCISCO, November 2d, 1835.

FRANCISCO HARO.

To the Mayordomo of the Pueblo of Dolores,
DON GUERMECINDO FLORES.

No. XXVIII.

SUSPENSION OF SECULARIZATION OF THE MISSIONS.

Mexican decree of the 7th November, 1835.

[Halleck's Rep. App. 16; Jones's Report, page 63, No. 14; 1 Rockwell, 462.]

The President *ad interim* of the Mexican republic to the inhabitants thereof. Know ye that the General Congress has decreed the following:

"Until the curates mentioned in the 2d article of the law of August, 1833, shall take possession, the government will suspend the execution of the other articles of said law, and maintain things in the state they were in before said law was enacted."

No. XXIX.

TRANSLATION OF DOCUMENT "C P L," IN THE CASE.

May to December, 1835.

RECORD OF PROCEEDINGS HAD BY THE RESIDENTS IN THE VICINITY OF SAN FRANCISCO, PRAYING THAT THEY MIGHT BE ALLOWED TO BELONG TO THE JURISDICTION OF SAN JOSE GUADALUPE.

[*An eminent specimen of the "circumlocution," or official style of translation as practiced by strangers to both languages.*]

To H. E. the Governor:

The residents in the adjoining Ranchos of the North, now belonging to the jurisdiction of the port of San Francisco, (el vecindario de los Ranchos del Norte, perteneciente á la jurisdiccion del puerto de San Francisco,) with due respect to Y. E. : That being so great detriment and on seeing the evils resulting from belonging to this jurisdiction, whereby they are obliged to represent to Y. E. that it causes an entire abandoning of their families for a year to those who attend the Judiciary functions and others who are called and are obliged to cross the Bay, properly speaking, for to go to such a port by land, we are sure there are more than 40 leagues on going and coming back, and to go by sea we are exposed to be wrecked ; and as to abandoning our families, as above stated, it is evident that they will remain [without] protection from the malevolent persons, the detention and loss of labors and properties, being exposed to injury by animals ; although there is no lodging to be had in that port, where for a year an Ayuntamiento should be, with their families, after making a heavy transportation of necessary provisions for the term of their employment : wherefore, in view of the above statement, they pray Y. E. to be pleased to allow them to belong to the authority of this Town (pueblo) of S. Jose, recognizing a Commission of Justice, that this may correspond to that of the said San Jose as Capital, regarding the inhabiting, in these Ranchos the majority of the Vicinity and families.

Wherefore we humbly pray Y. E. to accede in favor of the parties interested a favor that we hope to receive.

RANCHOS OF THE NORTH, SAN ANTONIO, SAN PABLO, AND THE ADJACENT, May 30, 1835.

ANTONIO Mⁿ. PERALTA,
JOAQN. YSIDRO CASTRO,
BLAS NARBOES,†
Z. BLAS ANGELENO,
SANUAGO MESA,†
JUAN JOSE CASTRO,
GABRIEL CASTRO,
ANTONIO CASTRO,
CANDELARCO BALENCEN,
JOSE PERALTA,
FERNANDO FELES,
ANTONIO AMEJAR,†
JUAN BERNAL,†
BISENTE PERALTA,
MARCANO CASTRO,†

ANTONIO YGERCE,†
YGNACIO PERALTA,
DOMINGO PERALTA,†
BUNO VALENCEA,†
JOAQN. MORAGO,†
RAMON FORERO,†
JOSE DUARTE,†
FRAN^{co}. PACHECO,†
BARTOLO PACHECO,†
MEREANO CASTRO,†
FELEPE BRIONES,†
JULIAN VELES,†
RAFAEL FELES,†
FRANCO SOTO,†
FRANCO AMIGO.†

SUBSTANCE (EXTRACTO : SYLLABUS).

The residents of the adjoining Ranchos of the North, petition that they be exempted from belonging to the jurisdiction of San Francisco on account of

the long distance, where they live, and great detriment resulting from causes as stated. They pray that they may be allowed to belong to the jurisdiction of the Town (pueblo) of San Jose Guadalupe, it being near [nearer] their places, (mas inmediato).

MONTEREY, Augt. 12th, 1835.

Let it be kept to be reported to the Deputation.

SEPT. 1st, 1835.

On this day the same was reported and referred to the Committee on Government.

CASTRO.

Most Excellent Sir :

The Committee on Government being required to report upon the memorial which the parties subscribed thereto made to the Political Chief on the 30th day of May last, finds that the said memorial is grounded upon good reasons and public convenience, but as the subject should be considered upon proper reports for a due determination, the Committee is of opinion that the reports of the Ayuntamientos of the Towns of San Jose and San Francisco (los Ayuntamientos de los PUEBLOS de San José y San Francisco) are required for that purpose. Therefore the Committee offers for the deliberation of the most Excl. Deputation the following propositions :

1st. That this Expediente be referred to the Ayuntamientos of the Towns of San Jose and San Francisco, (los Ayuntamientos de los PUEBLOS de San José y San Francisco) in order that they report upon said memorial.

2d. That after which the same be returned for determination.

MONTEREY, Sept. 5, 1835.

MAN^L. JIMENO.

SALVEO PACHECO.

MONTEREY, Sept. 10th, 1825.

At the Session of this day the Most Excellent Deputation has approved the two propositions made in the report of the Committee on Government.

MANUEL JIMENO.

MONTEREY, Sept. 28th, 1835.

Let this Expediente be forwarded to the Ayuntamiento of the Town (pueblo) of San José Guadalupe for a report upon the prayer of the foregoing memorial and to that of San Francisco, (AL de San Francisco) for the like purpose.

The Ayuntamiento of the latter Town will moreover give a list of the residents of the vicinity of the same, (un padron de los vecinos de ese Pueblo).

Don Jose Castro, senior member of the M^t. Excellent Territorial Deputation and Superior Political Chief of the Upper California, thus commended, decreed and signed this which I attest.

JOSE CASTRO.

FRAN^{CO}. DEL CASTELLO NEGRETE, Sec'y.

In pursuance of the foregoing Supr. Order of Y. E., this Ayuntamiento begs to state the following : That with regard to the residents on the Northern Vicinity, now under the jurisdiction of San Francisco, and who in their memorial prayed to be exempted from belonging to that jurisdiction owing to most notable detriment occasioned to them now and then from having indispensably to cross the Bay or to travel upwards of 40 leagues, while on half their way they can come to this Town, (pueblo) under the jurisdiction of which they for-

merly were, which was most suitable and less inconvenient to them—this Ayuntamiento thinks that their prayer should be granted—if it is so found right.

TOWN (PUEBLO) OF SAN JOSE GUADALUPE, NOV. 4th, 1835.

ANTONIO M^A. PICO,
IGNACIO MARTINEZ, Sec'y.
JOSE BERREYESA.

In pursuance of the direction in the Superior decree of the Political Chief *ad interim*, dated the 28th day of September of the present year, and issued on that day upon the memorial made by the residents and the adjoining Ranchos of San Pablo and San Antonio, the Ayuntamiento of San Francisco (el Ayuntamiento de San Francisco) begs to state the following :

That in the opinion of the said Ayuntamiento the reasons assigned by the memorialists from being exempted from belonging to this jurisdiction are frivolous ; for what evils and detriments can result to them ? Which are the evils and detriments they have actually suffered ? And again, when then they will voluntarily make at least a little sacrifice for the good of their country ? What excitement can move them for the aggrandizement of the same ? How are they sure that only those of those Ranchos will be called to function in the Ayuntamiento for a year, and even taking it for granted that it is so, are they the first who, to fulfil the duty of good citizens, leave their home, and family, and interest ? And yet, can they compare a service to be done by traveling 40 leagues, as they state, and leaving their private business for some days, months, or even the whole year, with that of others, who, for the like purpose of serving their country, have traveled of leagues in the interior of the Republic to go where they are called by law ? there have been several others of this very Territory, who, as electors, have left their homes, family, and interest, have traveled from San Francisco to San Diego, and other deputies to the General Congress have done the same from the Upper California to Mexico ; and how many are expected to make equal sacrifices for such a permanent interest of the public good and aggrandizement of the nation, of those who are to be terrified with most evident dangers of the sea, and traveling by land to the place where they are required by law to be.

The memorialists believe that only their private interest and family deserve their particular attention and appreciation, and that the constitutional laws have dispensed with or exonerated them from suffering as other wives and sons by the same laws willingly, as when their husbands, fathers, and brothers, or rather their benefactors, engage themselves in service of the country—but surely another kind of patriotism and public spirit move and excite this kind of servants or citizens.

The memorialists further say that they are exposed to be wrecked, for the place of their residence is beyond the sea, from where they have to come over in case they are appointed to aid in the Ayuntamiento : which are those Peraltas and Castros that have been wrecked on attending to their business affairs every time that any vessel comes to anchor in the Bay of Yerba Buena [?] Or how are they sure that wreck will only wait them when they are called to attend the service of their country ? (Llamados por la ley hacer alguno servicio á su pueblo.) The fact is, that up to this time no such event has ever been heard or known of having occurred said gentlemen or others, on going on board of vessel in the Bay, or coming over to the Presidio.

They further say that there is no lodging to be had in the Presidio, where they could live for a year ; if they are required to attend the Ayuntamiento, which is untrue, (although allowing them to say so) for they depart from truth and purity, which they ought to have before an authority (as likewise to put in their memorial the names of other persons who did not know it, which can be referred

to them,) for it is evident that the commandant of the Presidio found residences to the officers of the present Ayuntamiento, as soon as the same was installed. In conclusion, Sir, the land or coast where the memorialists live, had belonged to the jurisdiction of the Presidio since the former time, as besides the Bay of San Francisco is the one forming that of the same port, the Ranchos of Castros, which lies in the front of the same Presidio, (a little to the north) is only distance by sea scarcely two leagues, and that of Peraltas on the west, a little more than two leagues, which was undoubtedly the fact and principles upon which the Honorable Deputation grounded its resolution of the latter part of 1834, (depending upon that vicinity to proceed to the formation of the Ayuntamiento (reporting to the Supreme Government and the Commanding General and Political Chief, being then the late Don Jose Figueroa, supported by the same reasons to as the corporation (la corporacion) proceeded to the complying of the resolution)—thus ordering the commandant only of San Francisco by as besides the said late Jose Figueroa had to cause the limits of the jurisdiction of San Francisco to be marked out (although for the time being) as proved by his official note now in this archive, that portion of land and vicinity was also incorporated. All this is brought to the superior knowledge of your Excellency in order that, notwithstanding the above statement, Y. E. may direct what may be deemed proper on the subject.

PORT OF SAN FRANCISCO, Dec. 20, 1835.

FRANCISCO DE HARO.

FRAN^{co}. SANCHEZ, Sec'y.

No. XXX.

EXHIBIT No. 3 TO DEPOSITION OF M. G. VALLEJO IN THE CASE.

Election of Electors of the Ayuntamiento in the Pueblo of San Francisco, IN DECEMBER, 1835 FOR 1836.

In the PUEBLO of San Francisco de Asis, on the 13th day of the month of December, 1835, the Municipality of this Demarcation in the Plaza of said PUEBLO. The corresponding call being previously made by billets by its constitutional Alcalde, for the purpose of holding the primary *Junta* to elect nine electors, which correspond according to the number of inhabitants of this section, and the said constitutional Alcalde having begun the matter as President, the said election took place by means of billets, which were successively presented, all the citizens concurring; which being made public by the Secretary, who was also the Secretary of the Ayuntamiento, they in continuation took notes, from which there resulted by majority for electors. Citizens Bartolo Bajorques with 16 votes; José de la Cruz Sanchez, 14; Felipe Briones, 14; Gabriel Castro, 13; Manuel Sanchez, 11; Francisco Sanchez, 11; Ygnacio Peralta, 11; Joaquin Estudillo, 11; Candalario Valencia, 10; who were officially notified, and understood their appointments, and were to meet on Sunday, the 27th of the present month, in order to hold the electoral Junta, for the election of Alcalde, second Regidor, and Sindic Procurador, for the following year of 1836; and the act being concluded, the Junta dissolved, and the President and Secretary signed.

FRANCISCO DE HARO, President.

FRANCISCO SANCHEZ, Secretary.

No. XXXI.

EXHIBIT S TO DEPOSITION OF R. C. HOPKINS.

Espediente of De Haro for the Rancho San Pedro.

MARCH 7TH, 1836.

Seal of the Third Class. Two Reales.

Provisionally authorised by the Maritime Custom House of Monterey of Upper California, for the years 1834 and 1835.

To the Superior Political Chief:

Francisco de Haro, appears in due form before your worship, and represents, that in consideration of having, more than a year since, presented himself to the Superior Power of the Territory, soliciting the grant of the tract of land of San Mateo, or San Pedro, or El Corral de tierra on the coast, (either one or the other); having in view the fact that the first is occupied by the Indians of the Pueblo of Dolores for the purpose of cultivation, and the third also occupied by the cattle of the same Pueblo, and being well satisfied, as has been well known for many years, that the tract of San Pedro is vacant and unoccupied, he therefore presents himself to the kindly consideration of your worship, soliciting that by virtue of your power you will grant to him the aforesaid tract of San Pedro, its extent being two leagues from North to South (according to the map which accompanies this), so that he may place thereupon the stock that he possesses, this being sufficient for the place.

Wherefore he solicits of your Excellency the said favor, which is just, not sought through malice, is necessary, etc.

Port of San Francisco, 22d of November, 1835.

FRANCISCO DE HARO.

In conformity with the superior decree of your worship, commanding the Administrator of this Mission to report with regard to this expediente, I have to say, that the petitioner possesses the requisite qualifications, being a Mexican citizen by birth. The land that he solicits belongs to this community, is pasture land, suitable for crops, and irrigable; it is not included in the twenty leagues (limitrofes) but in the ten litorally; it is a little more than four leagues distant from this place and is now occupied by horses, being the most convenient spot for this place, and the coast, it serves as a middle point for the use of both; moreover the common lands (ejidos y propios) which I think will belong to this place, after it shall have become a Pueblo, have not yet been designated.

It is certain that the said community has always occupied the land, and everything is as I have stated it.

San Francisco de Asis, March 7, 1836.

GUEN^{DO}. FLORES.

MONTEREY, March 14, 1836.

In view of the preceding report, the petitioner's request cannot be granted. Let him be notified to that effect, and the expediente recorded in the archives. Señor Don Nicolas Gutierrez, Political Chief (ad interim) of the Territory, thus orders, decrees, signs and duly attests.

NICOLAS GUTIERREZ,
FRANCISCO DEL CASTILLO,
Secretary.

NEGRETE.

At the same date the party interested was duly notified by means of a dispatch.

CASTILLO.

No. XXXII.

Order for the Resurvey of the Buri-Buri Rancho.

MARCH 15TH, 1836.

EXHIBIT NO. 1 TO DEPOSITION OF R. C. HOPKINS, IN-
THE CASE.

[SEAL.] *Under this date I have written as follows to the constitutional Alcalde of the Port of San Francisco, [al Alcalde Constitucional del Puerto de San Francisco.]*

“By the proceedings heretofore had in regard to the possession held by the Indians who occupy the tract of land lying between the first willow-grove (el primer sausal) and San Mateo, contiguous to the Rancho of Buri-Buri which belongs to Don José Sanchez, it appears that these Indians are in lawful possession of this tract of land, according to the distribution which was made conformably to the Regulation of Secularization. But having proceeded to the survey of four leagues of land granted by the Government to Don José Sanchez in the place called Buri-Buri without prejudice to the co-terminous neighbors (los colindantes), the result is that in order to complete the said four leagues of land they have measured as far as ‘Laguna de las Salinas,’ including within these boundaries the lands occupied by these Indians. For this reason the survey is wrongly made, because it has intruded into the lands of strangers and, consequently, another survey should be had, completing the four leagues of land in some other direction (por otro rumbo) as may be most suitable, leaving free the lands which the Indians now occupy, and without causing damage to any other co-terminous neighbor.”

This I transcribe for your information, at the same time notifying the person who occupies the land in question that there shall be marked out to him the portion of land which belongs to him, in order to prevent controversies, and that every one may know what his boundaries are.

Dios y Libertad!

Monterey, March 15, 1836.

NICOLAS GUTIERREZ.

Señor Administrator de San Francisco de Assis.

NO. XXXIII.

EXPEDIENTE OF THE PRESIDIAL PUEBLO OF MONTEREY
RESPECTING ITS EJIDOS, OR SUBURBS.

March 1836.

[EXHIBIT “H” TO DEPOSITION OF R. C. HOPKINS.]

Constitutional Ayuntamiento of Monterey.

On the 5th of December last, the Ayuntamiento of this port stated to your Antecessor (predecessor) as follows :

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"In session of the 5th of this month, the Ayuntamiento approved of the proposition made by the Committee on Vacant Lands, in the report made by them in the expediente containing the petition of Gabriel Espinosa for a (solar) town lot, for building and laboring purposes, in a spot that belongs to the (ejidos) common lands, which proposition says "let inquiry be made (by means of an oficio) of the Superior Political Chief, whether it is his duty to grant the lands referred to, or whether it solely belongs to the Ayuntamiento to dispose of their common lands." In accordance with this decree, I call upon your worship's attention to the matter, renewing the assurances of my respect:"

And as up to date, no answer has been received, and as the expediente, containing the petition of the said Espinosa, which gave rise to this consultation, has been impeded, together with other proceedings of the same nature, the Ayuntamiento decided to transmit this to your worship, that you might advise them as to the matter; wherefore I now do so, renewing the assurances of their consideration.

JOSE R. ESTRADA.

JOSE MARIA MALDONADO, Secretary.

*To the Superior Political }
Chief of the Territory : }*

MONTEREY, Jan. 19, 1836.

[MARGINAL DECREE.]

Let this be transmitted to the Assessor Attorney General of the Territory, for his report.

GUTIERREZ.

To the Ayuntamiento:

It appears that Ramon Estrada, in soliciting the place called del toro, made his application to the Government, and the same course was taken by Juan Antonio Muños with respect to the land called "La puerta del rey i Nacional," both of which are included in the limits of this Port.

If Senor Espinosa solicits a town lot, for building a house, and land for cultivation, under a lease for a limited time, the Corporation may grant it to him; but if he desires the absolute ownership of the same, he must take the same course as the others above mentioned. Notwithstanding, the vote of the Ayuntamiento has passed to the Assessor's office, and I am waiting to inform you of the reply.

God and Liberty.

MONTEREY, Jan. 19, 1836.

NICOLAS GUTIERREZ.

The Ayuntamiento of this Port:

MONTEREY, Jan. 23, 1836.

In session of to-day the Ayuntamiento decided to suspend the discussion relative to common lands (ejidos) until the arrival of the "Consulta" and the report thereupon.

ESTRADA.

JOSE MARIA MALDONADO, Secretary.

Senor Political Chief:

The power inherent in the Territorial Political Chiefs, with respect to granting lands, should only apply to such lands as can be granted for the purpose of colonization, and which do not belong to any private individual or corporation; and, as the (ejidos) common lands, as well as all lands belonging to the "fundo legal," are the absolute property of the Ayuntamiento, it is clear that, when

such lands are in question, there should be no intervention whatever on the part of the Political Chiefs. The law, 4 title 16, lib 7, of the *Novisima Recopilacion*, confers upon the *Ayuntamientos* of Municipalities the management of the lands of their *fundos*, and consequently authorizes them to lease them, putting them up at public auction, and advertising them by the public crier for nine days, afterwards appointing the day for their auction, and adjudging them to the best and highest bidders, provided that they shall not be persons prohibited by law 7, tit. 9, of the books aforesaid (who are "all the members of the *Ayuntamiento*, including its Secretary") which lease shall endure for five years, in accordance with the Royal Resolution, published in Council on the 27th of May, 1763, which revoked in this respect the instructions given by Charles the Third, for the Administrative Government of the property belonging to the "*propios* and *arbitrios*" of the *Ayuntamientos*, in which it was only permitted to lease for one year.

By virtue of which the Assessor General of the Courts of 1st Instance of the Territory, gives, as his opinion, that your Excellency may return the present consultation to the noble *Ayuntamiento*, whence it proceeded, in order that, if it meets with your approbation, that body may submit itself to the aforesaid Supreme Resolutions.

MONTEREY, Jan. 20, 1836.

Cosme COSURE PEÑA.

In my former official note I promised to return you an "*oficio*," with the opinion of the *Senor* "*Asesor*," into whose hands it passed. This being ready. I transmit it to you, in company with the following *declaracion* relative to the subject.

The *Pueblos* that have their *Jurisdictional*, but not their *Municipal Boundary* defined, should (by means of the Political Government) send their petition to the Deputation (which petition will be granted by that body; for this purpose an exact map of the tract petitioned for must be enclosed, as was done in the last year, by this illustrious corporation, when it solicited that its municipal boundaries might be defined. The municipal termino having been defined, and the expenses of the *Ayuntamiento* being high, it may solicit, through the same channel, that within the boundary assigned, certain lands may be assigned to it as "*propios*," and the *Ayuntamiento* may propose, in their petition, those which appear to be the most appropriate. To this effect it will annex to its petition a general account, including both its petty and extraordinary expense, graduated for the term of five years, so that the Deputation and Political Chief, being satisfied with them, may grant the petition. The "*termino municipal*" and the "*terrenos propios*" having been defined, the *Ayuntamiento* may define or assign that which it requires for "*ejidos*." It results that there is a great difference in the significations of "*Termino Jurisdiccional*," "*Jurisdiccion*," "*Termino Municipal*," "*Terrenos de propios*," and "*Ejidos*."

For your better comprehension I will make a brief explanation:

By "*termino Jurisdiccional*," "*Jurisdiccion*," "*Partido*," or "*Distrito*," is understood all that is comprised within the limits, to which the jurisdiction of the *Alcalde* or *Judge* of the *Pueblo* extends.

By "*termino Municipal*," that land, which has been assigned to the *Pueblos* for the relief of their herds, within which neither the cattle nor inhabitants of neighboring *pueblos* can enter, for the purpose of grazing or cutting wood, without being denounced, unless they have some letter of commonalty.

The "*terrenos de propios*" are lands assigned to the *Ayuntamiento*, so that, by leasing them to the best bidders, for a term not exceeding five years, they may defray their expenses by the proceeds; and the *Ayuntamiento* may propose the amount of rent, mentioning it in the petition which is presented. The lands that remain, after the assignment of the "*propios*," and that are not granted

to any person, remain as vacant lands, at the disposal of the government; and as to those granted and confined within the "termino Municipal," a "censo" may be imposed upon them by assigning them as "de Propios," care being taken that all be conformable to the "reglamento of propios."

And by "Ejidos," are understood lands that are immediate to, and in the circumference of the Pueblo, which serve both for the relief and the convenience of the inhabitants, (poblacion) who may keep therein a few milch cows and horses for their use, and to form walks or alleys which may adorn the entrance of the place, so that the ejidos may have a quarter or a half league around the town, which is sufficient for its ventilation, and the Ayuntamiento may dispose of these lands for building lots.

If any further doubt should occur you may consult me upon the matter, so that everything may be duly explained. God and Liberty!

MONTEREY, Jan. 25, 1836.

NICOLAS GUTIERREZ.

To the Illustrious Ayuntamiento of this Port.

MONTEREY, Jan. 30, 1836.

In session of to-day, this was referred to the Committee on Lands.

JOSE MARIA MALDONADO, Secretary.

Illustrious Ayuntamiento:

The committee on vacant lands (valdios) have duly considered the "consultar" that the illustrious Ayuntamiento submitted to the Political Chief, and the report as to how this corporation should act with regard to its propios and ejidos, and the committee cannot, beyond a doubt, approve of any other course than that minutely set forth in the report of the Political Governor, of January 25 last.

The Committee, therefore, submits to this illustrious body the following proposition:

That the expediente pass to the proper committee, that it may proceed to the formation of a general account of the expenses of the Municipality, in the forms prescribed by the Political Governor in his report of the 25th of January last.

MONTEREY, March 11, 1836.

SANTIAGO WATSON.

Bonifaciode }
Madariaya }

MONTEREY, March 21, 1836.

In session of to-day, the Illustrious Ayuntamiento approved of the following proposition:

1st. It approves of the proposition which concludes the foregoing report of the committee.

2d. Therefore, let the expediente pass to the Committee of Finance " (de contaduria)" in connection with those of "Arbitrios" and "Valdios," (vacant lands) in order that the first and second may set forth the expenses of this municipality, and that the third may prepare the maps of the lands to be solicited as "propios" of this pueblo and frame the petition to be presented to the Excellent Territorial Deputation. And by virtue of and in compliance with this decree, let the expediente pass to the aforesaid committees, who are requested to give the matter their prompt attention and report thereon as speedily as possible.

ESTRADA.

JOSE MARIA MALDONADO, Secretary.

No. XXXIV.

GRANT OF LAND BY THE AYUNTAMIENTO OF SAN FRANCISCO TO WILLIAM RICHARDSON IN 1836.

[Exhibit Y Z in the case.]

Most Illustrious Ayuntamiento :

William Richardson, a citizen and resident of this Port, in due form represents that he is resolved to establish himself in Yerba Buena, and for that effect requires to build a house, for which he applies to your Superiority, by using your faculties to deign to grant him a lot of one hundred varas square, in Yerba Buena, in front of the Plaza and anchorage of the ships.

For which effect I request that you will deign to grant this my petition, which is on common paper, there being no stamp as corresponds.

SAN FRANCISCO, June 1, 1836.

(Signed,)

WM. RICHARDSON.

This Corporation being satisfied of the good services that the party requesting has rendered to this jurisdiction since his arrival in this country, with his different trades as bricklayer, surgeon and carpenter, and having married one of the first in the country, and that the said party has resolved to follow his good conduct, this Corporation has concluded to grant to Mr. William Richardson the lot of one hundred varas square, which he requests in Yerba Buena, so that he may establish himself there with his family.

Date as above.

JOSE JOAQUIN CARRILLO,
Alcalde Constitucional.

No. XXXV.

EXHIBITS No. 8 AND 9 TO DEPOSITION OF M. G. VALLEJO.

ELECTION FOR THE AYUNTAMIENTO OF 1838.

December 3d, 1837.

In the Pueblo of San Francisco de Asis, on the third day of the month of December, one thousand eight hundred and thirty-seven, the municipality of this comprehension being assembled in the *plaza* of said Pueblo, for the purpose of celebrating the "Junta primaria," according to custom and the laws on the matter; the act of voting having first taken place for president, secretaries, and the corresponding inspectors, and consequently the first in continuation (proceeded) to take the votes, according to the order of the tickets previously distributed by the committee appointed for this purpose, and in conclusion of every act. The regulation of suffrages being made, it resulted in favor of each one of the citizens present; from it then resulted electors by the majority of votes given, citizen Francisco Guerrero with 29 votes, Francisco de Haro with 26, Vicente Miramontes with 21, Antonio Maria Peralta with 20, Jose Antonio Alviso with 17, Juan Bernal with 16, Leander Galindo with 15, Juan Cornelio Bernal with 14, Domingo Sais with 13, which was made known to them for their information, by means of an official letter which will serve them for credentials, and this act being concluded, the Junta was dissolved, and there

was recorded officially all that had been done, which was signed by the president, secretaries and inspectors, this day of its date.

President,
FRANCISCO DE HARO.
Secretaries,
FRANCISCO G. PALOMARES,
FRANCISCO SANCHEZ.
Inspectors,
ANTONIO MARIA PERALTA,
J. DE LA C. SANCHEZ.

JANUARY 8TH, 1838.

In the Pueblo of San Francisco de Asis, on the eighth day of the month of January, one thousand eight hundred and thirty-eight the electors of this municipality, citizens Francisco de Haro, Francisco Guerrero, Antonio Maria Peralta, José Cornelio Bernal, José Antonio Alviso, Juan Bernal, Leandro Galendo, Domingro Sais and Vincente Miramontes, being assembled in the Constitutional Hall of said Pueblo to celebrate the secondary Electoral Junta, the reading of the Act of the previous Sunday the 3d (inst.), was proceeded to, and having been approved in continuation (they proceeded) to the appointment of the committee to examine the credentials of said Señores, which were also approved; in continuation the voting for Alcalde was commenced by means of tickets, and the computation of votes being made, citizen Francisco de Haro resulted (elected) by a majority of four votes; for which reason, and because no objection was presented against the person elected, he remained in effect elected Alcalde for the present year of 1838. In continuation they proceeded to vote for 2d Regidor, and being performed in the same terms as the preceding, and the computation of votes made, citizen Domingo Sais received the majority of four votes, wherefore he was elected 2nd Regidor; in continuation the voting was continued for "Sindico Procurador," in the same form as those before appointed, and from it resulted citizen José Rodriguez, uniting the majority of five votes, and in effect he was elected "Sindico." Lastly, having asked if there was any objection against any of those elected, and none having been presented, they were approved, and the whole act was considered as concluded, and it was recorded officially, which the President and Secretary signed this day of its date.

IGNACIO MARTINEZ,
FRANCISCO SANCHEZ.

No. XXXVI.

GRANT OF LAND BY FRANCISCO SANCHEZ, MILITARY COMMANDANT, TO APOLONARIO MIRANDA, NOVEMBER 16, 1838.

PREFECT'S GRANT OF 100-VARAS, OJO DE AGUA DE FIGUEROA.

[Exhibit W in the Case.]

To the Military Commandant:

Apolinario Miranda, a Corporal of Squadron of the Company of San Francisco, comes before your Excellency and presents himself by means of this writing, and states that he is about leaving the service and he is desirous of es-

tablishing himself and family in the Presidio, and finding that you have the power to grant lots, he requests that you will grant to him the lot known as the "Ojo de Figueroa," where he has provisionally built a house.

To which effect he humbly begs that you will attend to his request, by which he will receive a favor and justice.

Presidio of San Francisco.

APOLONARIO MIRANDA.

SAN FRANCISCO, November 16, 1838.

I hereby grant unto the party interested the lot he requests, as regulated by laws, and it comprises one hundred varas square.

SANCHEZ.

No. XXXVII.

GOVERNOR ALVARADO'S REGULATIONS RESPECTING MISSIONS, JANUARY 1839.

[Halleck's Rep. App. 17; 1 Rockwell 462; Jones' Report, page 66; App. 17.]

The fact of there not having been published in due season a set of regulations, to which the management of the administrators of the missions ought to have been subject from the moment the so-called secularization was attempted, having caused evils of great transcendancy to this Upper California, as these officers, authorized to dispose without limit of the property under their charge do not know how to act in regard to their dependence upon the political government and that of the most excellent department junta, not being at present in session to consult with respecting the necessary steps to be taken under such circumstances, since the regulations of said secularization neither could nor can take effect on account of the positive evils attending the fulfilment thereof, as experience itself has demonstrated, has induced this government, in consideration of the pitiful state in which said establishments at present are, to dictate these provisional regulations, which shall be observed by said administrators, who will subject themselves to the following articles :

ARTICLE 1. All persons who have acted as administrators of missions will, as soon as possible, present to the government the accounts corresponding to their administration for due inspection, excepting those persons who may have already done so.

ART. 2. The present administrators who, at the delivery of their predecessors, may have received said documents as belonging to the archives, will return them to the parties interested, who, in virtue of the foregoing article, will themselves forward them to government, they being solely responsible.

ART. 3. Said officers will likewise remit those belonging to their administration up to the end of December of last year, however long they may have been in office.

ART. 4. Said officers will remit, as soon as possible, an exact account of the debts owing by and to the missions which at different times have been contracted.

ART. 5. Under no title or pretext whatsoever shall they contract debts, whatever may be the object of their inversion, nor make sales of any kind either to foreign merchants or to private persons of the country, without the previous knowledge of government, for whatever may be done to the contrary shall be null and without effect.

ART. 6. The amounts owed by the establishments to merchants and private persons cannot be paid without an express order from government, to which must likewise be sent an account of all such property of each mission as it has been customary to make such payments with.

ART. 7. Without previous permission from said government, no kind of slaughtering of cattle shall take place, except what is necessary for the maintenance of the Indians, and the ordinary consumption of the house; and even with respect to this, the persons in charge will take care that, as far as possible, no female animals be killed.

ART. 8. The traffic of mules and horses for woolen manufactures, which has hitherto been carried on in the establishments, is hereby absolutely prohibited; and in lieu thereof, the persons in charge will see that the looms are got into operation, so that the wants of Indians may thus be supplied.

ART. 9. At the end of each month, they will send to government a statement of the ingress and egress of all kinds of produce that may have been warehoused or distributed, it being understood that the Indians at all times are to be provided for in the customary manner with such productions; to which end the administrators are empowered to furnish them with those which are manufactured in the establishment.

ART. 10. The administrators will in this year proceed to construct a building, on account of the establishment, to serve them for habitation, and they may choose the locality which they may deem most convenient, in order that they may vacate the premises which they now occupy.

ART. 11. They shall not permit any individual of those called *de rason* (white people) to settle themselves in the establishments while the Indians remain in community.

ART. 12. They will at an early period present a census of all the inhabitants, distinguishing their classes and ages, in order to form general statistics; and they will likewise mention those who are emancipated and established on the lands of said establishments.

ART. 13. The establishments of San Carlos, San Juan Bautista, and Sonoma are not comprehended in the orders of this regulation. The government will regulate them in a different manner; but the administrators, who at different times may have had the management of their property, will be subject to the orders contained in articles 1 and 2.

ART. 14. They will likewise remit an account of all persons employed under them, designating their monthly pay, according to the orders which may have been given, including that of the reverend padres, with the object of regulating them according to the means of each establishment; and these salaries shall not be paid now nor hereafter with self-moving property; (cattle).

ART. 15. The administrators will, under the strictest responsibility, fulfil these orders, with the understanding that, in the term of one month, they shall send the information required of them.

ART. 16. Government will continue making regulations respecting everything tending to establish the police to be observed in the establishments, and the manner to be observed in making out the accounts.

ART. 17. For the examination of these accounts, and everything thereto relating, the government will appoint a person with the character of inspector, with a competent salary, to be paid out of the funds of said establishments; and this person will establish his office where the government shall appoint, and have regulations given therefor in due time.

No. XXXVIII.

EXHIBIT No. 10 TO DEPOSITION OF M. G. VALLEJO.

ORDER FOR CONSTITUTIONAL ELECTIONS JANUARY 17TH,
1839.*Juan Baptiste Alvarado, Governor ad interim, of the Department of the California:*

Whereas, it has become necessary to give due fulfilment to the law of November 30th, 1836, sent in the last mail by the Supreme Government for its observance in the Department, directing its proper fulfilment, and that the elections be commenced for the organization of the Constitutional system, and desirous that in conformity to it there be established the authorities who are to act, I have ordered that for that object there be observed, in this Alta California, the following articles :

1st. The Constitutional Elections will be proceeded with conformably to the law of November 30th, 1836.

2d. These elections will commence the first Sunday of next March, and will terminate the third of the same month.

3d. According to the order which the Towns hold, there will be named an elector for each one of the following : San Francisco, San José, Villa of Branceforte, Monterey and Santa Barbara, Los Angeles, and San Diego.

4th. In accordance with the foregoing article, the Port of San Diego will recognize the city of Los Angeles as the head (cabecera) of Partido ; the Villa of Branceforte, Monterey ; and the frontier of the north of San Francisco, the Port of that name.

5th. This government will place itself in agreement with the Political Chief *ad interim*, of Baja California, in order that directing the corresponding elections in these towns (pueblos) full compliance may be made with what is directed by the laws.

And that it may come to the notice of all, I order that it be published by proclamation, and be posted in the usual public places.

SANTA BARBARA, January 17, 1839.

JUAN B. ALVARADO.

[The following endorsement is on the outside of the within document :]

I transmit to you this proclamation to which official communication of the 17th of January, 1839, refers, and to which I annex it ; in order that being advised of its contents you may return it to me to record it.

HARO.

To the person in charge (Sor Encargado) of Contra Costa, Citizen Yg^o Peralta.

No. XXXIX.

GOVERNOR ALVARADO'S REGULATIONS RESPECTING MISSIONS, MARCH, 1839.

Regulations of Governor Alvarado respecting the missions of California, obligations of the mayordomos, inspectors, &c., dated March 1, 1840.

[Halleck's Rep. App. 18 ; 1 Rockwell, 466 ; Jones' Report, page 68 ; Appendix, 18.]

Experience having proved in an undoubted manner that the missions of Upper California, for want of regulations organizing the management of the

persons in charge of them, have in a short time suffered reverses and losses of great moment, the many abuses which were found to exist in the administration of the property of said missions obliged this government to issue the regulation of 17th January last year; but as it has been found that those have not been sufficient to root out the evils which are experienced, particularly on account of the high salaries with which the establishments are burdened, and which they cannot support, and being desirous to establish economy and a regular administration until the supreme government determine what it may deem proper, I publish the present regulations which are to be strictly observed:

ARTICLE 1. The situations of administrators in the missions of Upper California are abolished, and in their stead mayordomos are established.

ART. 2. These mayordomos will receive the following salaries: Those of San Diego and San Juan Capistrana, \$180; those of Santa Barbara, San Luis Obispo, San Francisco de Asis, and San Rafael, \$240; those of San Buenaventura, La Purissima, San Miguel, and San Antonio, \$300; those of San Fernando and Santa Fe, \$400; those of San Luis Rey and San Gabriel, 420; the one of Santa Clara, 480; and the one of San Jose \$600.

ART. 3. The former administrators may occupy said situations, provided, that they be proposed in the manner pointed out by these regulations.

ART. 4. The situation of inspectors and the office established agreeable to the 17th article of the regulations of the 17th of January last year, shall continue, with a salary of \$3,000 per annum, and his powers will be hereafter designated.

OBLIGATIONS OF THE MAYORDOMOS.

ART. 5. To take care of everything relative to the advancement of the property under their charge, acting in concert with the reverend padres in the difficult cases which may occur.

ART. 6. To compel the Indians to assist in the labors of the community, chastising them moderately for the faults they may commit.

ART. 7. To see that said Indians observe the best morality in their manners, and oblige them to frequent the church at the days and hours that have been customary, in which matter the reverend padres will intervene in the manner and form determined in the instructions given by the inspector to the administrators.

ART. 8. To remit to the inspector's office a monthly account of the produce they may collect into the storehouses, and an annual one of the crops of grain, liquors, &c., and of the branding of all kinds of cattle.

ART. 9. Said account must be authorized by the reverend padres.

ART. 10. To take care that the reverend padres do not want for their necessary aliment, and furnish them with everything necessary for their personal subsistence, as likewise to vaqueros and servants, which they may request for their domestic service.

ART. 11. To provide the ecclesiastical prelates all the assistance which they may stand in need of when they make their accustomed visits to the missions through which they pass; and they are obliged under the strictest responsibility to receive them in the manner due to their dignity.

ART. 12. In the missions where the said prelates have fixed residence, they will have the right to call upon the mayordomos at any hour when they may require them, and said mayordomos are required to present themselves to them every day at a certain hour, to know what they may require in their ministerial functions.

ART. 13. To furnish the priest of their respective missions all necessary assistance for religious worship; but in order to invest any considerable amount in this object, they will solicit the permission to do so from government through the medium of the inspector.

ART. 14. To take care that in the distribution of goods received from the respective office to the Indians, the due proportion be observed amongst the different classes and description of persons, to which end the reverend padres shall be called to be present, and they will approve of the corresponding list of distribution.

ART. 15. To observe all the orders which they receive from the inspector's office emanating from the government, and to pay religiously all drafts addressed to them by said conduct and authorized by said government.

ART. 16. They will every three months send to the respective office a list of the goods and necessities they may stand in greatest need of, as well for covering the nakedness of the Indians and carrying on the labor of the establishment, so as to provide for the necessities of the priests and religious worship, so that comparing these requisitions with the stock on hand, the best possible remedy may be applied. They will take care to furnish the necessary means of transport and provisions to the military or private persons who may be traveling on the public service, and they will provide said necessities as well for the before mentioned persons, as for the commanders of stations who may ask for assistance for the troops; and send in a monthly account to the inspector, that he may recover the amount from the commissariat.

ART. 18. They will likewise render assistance to all other private individuals who may pass through the establishments, charging them for food and horses an amount proportioned to their means.

ART. 19. They will take care that the servants under them observe the best conduct and morality, as well as others who pass through or remain in the establishments; and in urgent cases they are authorized to take such steps, as they may consider best adapted to preserve good order.

ART. 20. They may without any charge make use of the provisions produced by the establishments for their own subsistence and that of their families.

ART. 21. They may employ as many servants as they consider necessary for carrying on the work of the community, but their situations must be filled entirely by natives of the establishments themselves.

ART. 22. Said mayordomos are merely allowed to request the appointment of a clerk to carry on their correspondence with the inspector's office.

ART. 23. After the mayordomos have for one year given proofs of their activity, honesty, and good conduct in the fulfilment of their obligations, they shall be entitled (in times of little occupation) to have the government allow the Indians to render them some personal services in their private labors; but the consent of the Indians themselves must be previously obtained.

ART. 24. The mayordomos cannot make any purchase of goods from merchants, nor make any sale of the produce or manufactures of the establishments, without previous authority from government. (Second.) Dispose of the Indians in any case for the service of private persons without a positive superior order. (Third.) Make any slaughtering of cattle, except what shall be ordered by the inspectors, to take place weekly, extraordinarily, or annually.

OBLIGATIONS OF THE INSPECTORS.

ART. 25. To make all kinds of mercantile contracts with foreign vessels and private persons of the country for the benefit of the missions.

ART. 26. To provide said establishments with the requisite goods and necessities mentioned in the lists of the mayordomos, taking into consideration the stock of each establishment.

ART. 27. To draw the bills for the payment of the debts contracted by his office and those already due by the establishments.

ART. 28. He shall be the ordinary conductor of communication between the government and the subaltern officers of said missions, as well as between

all other persons who may have to apply to government respecting any business relative to said establishments.

ART. 29. He will pay the salaries of the mayordomos and other servants, take care that they fulfil their obligations, and propose to government, in conjunction with the reverend padres, the individuals whom they may consider best qualified to take charge of the missions.

ART. 30. He will determine the number of cattle to be killed weekly, annually, or on extraordinary occasions.

ART. 31. He will form the interior regulations of his office, and propose to government the subalterns which he may judge necessary for the proper management thereof.

GENERAL ORDERS.

ART. 32. All merchants and private persons who have any claims on said missions, will in due time present to the inspector an account of the amounts due to them, with the respective vouchers, in order that the government may determine the best manner of settling them, as the circumstances of said mission may permit.

ART. 33. With respect to the missions of San Carlos, San Bautista, Santa Cruz, La Solidad, and San Francisco Solano, the general government will continue regulating them as circumstances may permit.

ART. 34. Officers and magistrates of all kinds are at liberty to manifest to government the abuses they may observe in those charged with fulfilling these regulations, so that a quick remedy may be applied.

ART. 35. The government, after previously hearing the opinions of the reverend padres, will arrange matters respecting the expenses of religious worship and the subsistence of said padres, either by fixing a stated amount for both objects, or in some other manner which may be more convenient towards attending to their wants.

ART. 36. All prior regulations and orders conflicting with the present are annulled; and if any doubt occur respecting their observance, the government will be consulted through the established channel.

ART. 37. During the defect or temporary absence of the mayordomos, the reverend padres will in the mean time take charge of the establishments.

No. XL.

JUSTICE DE HARO TO THE GOVERNOR.

PETITION FOR LOTS IN YERBA BUENA, REFERRED TO GOVERNOR, FEBRUARY 27TH, 1839.

[California Archives, Vol. I, Juzgados, p. 282. Exhibit J to deposition of R. C. Hopkins in the Case.]

Juzgado of San Francisco.

I submit for the consideration of your Excellency the petitions of the citizens Valencio and Jose Rodriguez for solars at the point of Yerba Buena, where, as they represent to me, they desire to settle. Your Excellency will resolve in relation to said petition, what may be judged proper. God and Liberty.

SAN FRANCISCO, February 27th, 1839.

FRANCISCO DE HARO.

No. XLI.

NO JAIL AT SAN FRANCISCO IN FEBRUARY, 1839.

[Exhibit K to Deposition of R. C. Hopkins in the Case. California Archives, Vol. I, of Juzgados, page 283.]

JUSTICE DE HARO TO GOV. ALVARADO. NO MEANS OF SECURING A CRIMINAL IN SAN FRANCISCO.

Juzgado of San Francisco.

From the scattered condition of the inhabitants of the place, from the fact that each one has his agricultural and stock interests at a great distance, (from this place) it results, that there are very few remaining to guard the criminal José Anto. Galindo, and these cannot spare the time from their personal business. These facts induce me to consult your Excellency in relation to the removal of the said Galindo to the Pueblo of San José, since at that place there is a "pueblo unido," (united people) possessing the means of obtaining assistance and other circumstances wanting at this place, such as a jail and means of subsistence; for these reasons I think it advisable to remove said Galindo to San José. Your Excellency will be pleased, however, to resolve in relation to the matter, and determine what is necessary to be done in the premises.

God and Liberty.

SAN FRANCISCO, February 27th, 1839.

FRANCISCO DE HARO.

No. XLII.

ALCALDE DE HARO TO GOV. ALVARADO. REPORT OF PETITION OF FELIPE GOMEZ FOR LOT IN DOLORES, APRIL 20TH, 1839.

[Exhibit L to Deposition of R. C. Hopkins. California Archives, Unbound Documents.]

In compliance with the Superior Decree of the 20th of March, ulto. of this year, which is found upon the margin of the petition of Felipe Gomez for a house lot in the ex-mission of San Francisco de Asiz, I have to say: That in view of its being named as the *cabecera* of the Partido, with the title of Establishment of Dolores, and that this circumstance gives it a character of Pueblo, and believing for this reason that the inhabitants who petition (for lots) may establish themselves in the same, there may be conceded to the petitioner the lot for which he asks, notwithstanding he does not designate a fixed place, or the number of varas. In case your Excellency shall see proper to concede the same, you will be pleased to dictate the necessary measures for the survey of the same, and the order to be observed with this and successive petitioners.

ESTABLISHMENT OF DOLORES, April 20, 1839.

FRANCISCO DE HARO.

No. XLIII.

GUERRERO, JUSTICE OF THE PEACE OF SAN FRANCISCO,
 PROCLAIMS CERTAIN MUNICIPAL LAWS FOR THE GOV-
 ERNMENT OF THE PUEBLO OF SAN FRANCISCO, MAY
 26, 1839.

[Exhibit No. 15 to Deposition of R. C. Hopkins, California Archives, Vol. V, Monterey,
 page 413.]

Francisco Guerrero, Justice of the Peace of this Section of San Francisco, of the Department of Alta California, desiring to promote the order and good management of the PUEBLO under his charge, in conformity with Article 29th of the Sixth Law of the 30th of November, 1836, makes known :

ART. 1st. That any one intending to open a public store shall apply to this Juzgado for a license, in order that he may know the Municipal taxes, according to the bando heretofore published by the Most Excellent Deputation, and the restrictions to be observed in his mercantile business, since without the said license nothing can be sold. Neither can any one who does not own property sell cattle, without acquainting this Juzgado of the fact.

2d. That no hides shall be delivered unless they have the mark established by the Illustrious Ayuntamiento; and persons making payments of hides shall give a memorandum that they have a right to do so, and if they do not they cannot remain in the Juzgado until they have justified themselves.

3d. No transactions shall be had with the children of a family, nor servants or domestics, without the knowledge of their parents, since otherwise they will be responsible under the law; and the same rules are applicable to anything stolen or taken without the knowledge of the owner.

4th. That all persons who may own stock in this community must have their brands and marks, which shall be registered, so that their property shall be known, which must not be without a mark; inasmuch as it is necessary, when stock belonging to any one beyond this section is placed in the same, to make known when they are entered and when withdrawn, otherwise they cannot be claimed, nor can the charges be made unless notice is given as to their admission.

5th. No person who may have stock in this community shall mark their stock in the fields (campo,) nor brand beyond the time for branding, without informing this Juzgado, or the Admr. of the Establishment of Dolores, the stock of the inhabitants (vecindario) being in his charge, nor sell any unmarked stock without proof that the same is his property.

6th. That all the inhabitants owning stock shall meet at the Rodees which are given, at the appointed times, or shall send some one in their place, in case they shall not be able to attend, otherwise they shall pay one dollar to one who shall be appointed; whereupon, on the meeting of the vecindario [inhabitants,] persons shall be appointed to take charge, who will be accompanied by the persons designated for the punctual discharge of their duties.

7th. The wood-cutters shall pay fifty cents for each wagon going beyond the demarcation of the PUEBLO.

And in order that this may reach the notice of all, for its due fulfillment, it shall be posted in the public places. Given in the PUEBLO of San Francisco on the 26th of May, 1839.

FRANCISCO GUERRERO.

V. Monterey, 413.

No. XLIV.

GUERRERO, JUSTICE ~~TO~~ THE PEACE OF SAN FRANCISCO
TO PREFECT CASTRO, ABOUT SOLARES AT THE MISSION,
JULY 15, 1839.

[Exhibit ~~N~~ to Deposition of R. C. Hopkins, California Archives, Vol. V, Monterey,
p. 408.]

Juzgado de Paz of San Francisco:

The residents [vecinos] of this municipality have made various verbal representations to me, to the end, that through me they might receive the necessary license to establish themselves in this Establishment, where they are desirous of uniting themselves to form a settlement. This project is of public utility, which will result beneficially to the inhabitants, and the Government can be better administered in all its branches. All are now dispersed, [todos se hayan dispersos.] and this condition of society is not the best for the present age, in which civilization is an object that particularly attracts the attention of the Departmental Government. I submit this proposition to your *Señoría* [worship,] in order that on placing the matter before his Excellency, the Governor, he may be pleased to provide in favor of the inhabitants that make this representation through me, conceding to them the solares which they need in the said Establishment on which to build their houses, if the same should be within your authority; or operate, if it should be necessary, and his Excellency should think it proper, in concert with the Most Excellent Departmental Junta.

On saying this to your Señoría [worship,] I have the honor to protest the assurances of my esteem and regard.

God and Liberty.

SAN FRANCISCO, July 15, 1839.

FRANCISCO GUERRERO.

No. XLV.

GUERRERO, JUSTICE OF THE PEACE, NOMINATES TO THE
PREFECT. JUAN FULLER, AS SYNDIC OF SAN FRAN-
CISCO, JULY 20, 1839.

[Exhibit No. 17 to Deposition of R. C. Hopkins, California Archives, Vol. V, Monterey,
page 422.]

JUZGADO OF SAN FRANCISCO. [JUZGADO DE PAZ DE S. F.]

It is necessary to appoint a Sindico Procurador for this place [punto,] for the better management of the Municipal rents; wherefore, I hope your Excellency, in the exercise of your authority, will be pleased to make the appointment.

I would propose to your Excellency, the appointment of Don Juan Fuller, as a suitable person to fill said office.

God and Liberty.

SAN FRANCISCO, July 20, 1839.

FRANCISCO GUERRERO.

To the Sor Prefect of the 1st District.

No. XLVI.

EXPEDIENTE HAD BY CITIZEN CORNELIO BERNAL, ON APPLICATION FOR THE PLACE CALLED LAS SALINAS. (177.)

[Exhibit No. 13 to Deposition of R. C. Hopkins.]

1835-1840.

STAMP THIRD, TWO REALS.

Provided provisionally by the Marine Custom House of Monterey, for the years 1839 and 1840. Anto. Ma. Asio.

Alvarado, Marine Custom House of }
Monterey. [Place of Eagle.] }

José Cornelio Bernal, a resident of San Francisco, before your worship appears and says: That having made an application for the rancho called Las Salinas to the late Governor Don José Figueroa, and the said Don José Figueroa having given me a document therefore, by way of a loan, I have resided in the said ranch up to the present time; and I have consulted with the visitor and the superintendent of the said mission, they say that it does not need the said tract: and annexing hereto the document and sketch, as necessary, I pray your worship will be pleased to grant this my prayer, a favor which I hope to receive through the well known kindness of your worship. I swear as required, &c.

MONTEREY, October 3, 1839.

At the request of the petitioner, I signed.

JORGE ALLEN.

[The following order was written on the margin of the above petition.]

SAN JUAN DE CASTRO, October 4, 1839.

Let the Justice of the Peace of San Francisco report on the subject-matter of this petition, and next let it be transmitted to the Superintendent of the Establishment of Dolores, in order to state what may occur to him. In the absence of the Prefect.

JUAN ANZAR.

JUSTICE COURT OF SAN FRANCISCO, }
October 8, 1839. }

In accordance with the foregoing order regarding the application, I have to say, that it is sometime ago that citizen José Cornelio Bernal has possessed, with his cattle, the tract of land called the Rincon de las Salinas, and there are on the same private stock. It is dependent on the seasons; it is not comprehended within the twenty border leagues, but in the littoral ones; and the said Bernal is recommendable for the services that he has rendered and is rendering in this municipality.

F. GUERRERO.

SUPERINTENDENCY OF THE ESTABLISHMENT OF DOLORES, }
October 8, 1839. }

In conformity with the preceding order of 4th of October of the present year, the undersigned states, with regard to the application made by citizen José Cornelio Bernal, that this establishment is not in need of the tract of land petitioned by the said party, for the greater number of cattle belonging to the establishment is on the place called Los Pilarcitos, on the coast.

Stamp third, two reals.

Provisionally provided by the Marine Custom House of Monterey, for the years 1839 and 1840.

ALVARADO, ANTONIO MARIA ASIO.

JOSE DE LA C. SANCHEZ.

MONTEREY, October 10, 1839.

Upon viewing the petition wherewith this expediente begins, the report of the Justice of the Peace of San Francisco, and that of the Superintendent of the Mission of San Francisco, and other proceedings which were had, and ought to have been viewed in conformity with the law and regulation, I do declare Don José Cornelio Bernal owner in full property of the place called Las Salinas, with the Potrero Viejo, bounded by the Mission of San Francisco, the sea, and the lands of the Visitacion. And its extent is one league, a little more or less, as explained in the sketch which is annexed to this expediente, to be subject to the conditions which shall be set out in the title.

Don Manuel Jimeno Casarin, Chief Member of the Honorable Junta of the Department of California, in exercise of the government of the same, thus did command it, decree and sign.

MANUEL JIMENO.

FRANCISO C. ARCE, Chief Officer.

OFFICE OF THE SEC'Y OF THE DEPART. JUNTA OF CAL. }
MONTEREY, May 19, 1840. }

Account having been given of the (Espediente) to the Honorable Departmental Junta, the same resolved, at the session of this day, that it should be referred to the Committee on Agriculture.

JOSE Z. FERNANDEZ, Sec'y.

On the 22d instant the Committee returned it with the accompanying opinion.

FERNANDEZ.

MONTEREY, January 2, 1835.

[Place of a Stamp.]

As from the foregoing reports it appears that the tract of land petitioned by José Cornelio Bernal is the property of the Pueblo of San Francisco De Asis, to which it serves as ejidos for the cattle of the community, (es de la propiedad del pueblo de San Francisco de Asis á quien sirve de ejidos para los ganados del comun,) his application is not admissible, as it cannot be granted in full property : but the party may retain his cattle there in the same way as the other citizens do, (que los demas ciudadanos,) or apply for another place not appropriated, in which case it will be granted. Let this determination be made known to the party, and the expediente be filed. Don José Figueroa, Brigadier-General, Commanding-General, and Governor of the Territory of Upper California, thus commanded it, decreed, and signed, which I attest.

JOSE FIGUEROA.

AGUSTIN V. ZAMARANO, Secretary.

It agrees literally with the original, from which I caused the present copy to be made, at the request of the party, at Monterey, the 3d day of January, 1835. Citizens Brinfario Madacarga and José Ma. Castro, of this place, being witnesses thereto, which I attest.

JOSE FIGUEROA.

Excellent Sir :—The Committee on Agriculture, instructed with reporting upon the application of Don Cornelio Bernal, upon viewing the proceedings had thereon, presents for the determination of your Excellency the following articles :

Viejo
 ART. 1st. The grant made by the Governor, for the time being, Don Manuel Jimeno, of the tract of land called Las Salinas and Potrero ~~Viejo~~ to the person of Don Cornelio Bernal, is approved.

ART. 2d. Let this Expediente be returned to the Departmental Government for expedient purposes.

JOSE RAFAEL GONZALES,
 S. ARGUELLO.

MONTEREY, May 20, 1840.

MONTEREY, May 22, 1840.

At the session this day, the Honorable Departmental Junta approved the two articles, wherewith the foregoing report concluded.

M. JIMENO, President.

JOSE Z. FERNANDEZ, Secretary.

On the 30th of the same month, an authenticated copy of the preceding was given to the party.

Manuel Jimeno Casarin, Chief Member of the Most Honorable Junta of the Department of California, in exercise of the government of the same :

Whereas, Citizen Cornelio Bernal has petitioned, for his personal benefit and that of his family, the place known by the name of Las Salinas, with the Potrero Viejo, bounded by the Mission of San Francisco, the sea, and the lands of La Visitacion, all the steps and investigations concerning thereto having been had according to the requirements of the law and regulation, exercising the powers which were conferred upon me by the Mexican nation, I have granted to him the above mentioned tract of land, declaring to him the ownership thereof by these presents, to be subject to the approval of the Most Honorable Dept. Junta, and to the following conditions :

1st. He may enclose it, without detriment to the passages, roads, and easements, enjoy it freely and exclusively, applying it to such use or cultivation as may best suit him ; but within one year he shall build a house, and the same shall be inhabited.

2d. He shall apply to the proper officer to give him juridical possession, by virtue of this title, by whom the bounds shall be marked out, at the limits of which he shall place, besides the landmarks, some fruit or useful forest trees.

3d. The tract of land, of which mention is hereby made, consists of one sitio de Granada Mayor, a little more or less, as explained in the sketch attached to the Expediente. The officer who may give this possession may cause the same to be measured according to ordinance, the surplus thereof to remain to the nation for convenient purposes.

4th. If he shall contravene these conditions, he shall forfeit his right to the lands, and they shall be liable to be denounced by another.

Therefore, I do command that this title, being held as good and valid, record thereof be made in the book to which it corresponds, and it be delivered to the party interested, for his safety and other purposes.

Given at Monterey, on the 10th day of October, 1839.

No. XLVII.

[EXHIBIT V TO DEPOSITION OF R. C. HOPKINS.]

ESPEDIENTE OF LEESE FOR THE RANCHO LA VISITATION.

NOVEMBER, 1839.

Seal of the Fourth Class. ¼ Real.

Provisionally authorized by the Maritime Custom House of Monterey for the years 1838 and 1840.

ALVARADO.

ANTONIO M^A. OSIO.*Most Excellent Señor:*

The citizen Jacob Luis de Leese, with due respect, and in due form of law, represents to your Excellency, as follows: That being desirous of possessing a place suitable for raising cattle and horses, he solicits the tract known as "La Cañada de Guadalupe and Visitacion, situated in the corner (rinconada) formed by the hill of San Bruno, being about one league from the Mission of San Francisco, in accordance with the accompanying map, excepting the "Rincon de las Salinas," which appears upon it; defining as boundaries, the said rincon on the North, on the West, the royal road as far as the "Portesuelo," on the South the ranchos of Don Francisco Haro and Don José Sanchez, and on the East the sea.

Wherefore, I beg that your Excellency will grant this my petition, thereby conferring upon me a distinguished favor, I swearing that it is not made through malice, and whatever is necessary.

MONTEREY, Nov. 14, 1839.

JACOB P. LEESE.

To the Governor of this Department.

[Marginal decree.]

SAN JUAN DE CASTRO, Nov. 16, 1839.

Let the Justice of the Peace of San Francisco report as to the contents of this petition.

Señor Prefect:

In compliance with the marginal decree of your worship, I have the honor to report, that the petitioner possesses the legal qualifications required, that the land that he solicits may be granted to him, by virtue of his having formerly received permission from the Government of the Department to occupy it provisionally.

SAN FRANCISCO, Nov. 17, 1839.

FRANCISCO GUERRERO.

SAN JUAN DE CASTRO, Nov. 19, 1839.

Let the above be transmitted to the most Excellent Governor of the Department in order that his Excellency may decide upon it, as he may deem fit.

JOSE CASTRO.

MONTEREY, July 31st, 1841.

In view of the petition which commences this espediente, the report of the Justice of the Peace of the Port of San Francisco and that of the Prefect of

the First District, with all other matters appearing, it seeming to be in conformity with the laws and regulations concerning the matter, I declare Don Jacob P. Leese to be the owner of that tract of land known as the "Cañada de Guadalupe, la Visitacion and Rodeo Viejo," it being bounded on the East by the sea, on the West by the royal road (camino real) and the Portesuelo, on the North by the rancho of Don Cornelio Bernal, and on the South by that of Don José Sanchez. Let the corresponding dispatch issue, and be copied in the proper book and let this Expediente be transmitted to the most Excellent Junta Departmental, for its approval.

Señor Don Juan B. Alvarado, Constitutional Governor of the Department of the Californias, thus order, decree, and sign, and which I attest.

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas, Don Jacob Luis de Leese has solicited, for his personal benefit and that of his family, the tract of land known by the names of "Cañada de Guadalupe," "la Visitacion," and "Rodeo Viejo," bounded, on the East by the sea, on the West by the royal road (camino real) and Portesuelo, on the North by the rancho of Don Cornelio Bernal, and on the South by that of Don José Sanchez, the necessary steps having been taken and investigations made, in accordance with the laws and regulations; by virtue of the power conferred upon me in the name of the Mexican Nation, I hereby grant to the petitioner the aforesaid tract of land, declaring him the owner thereof, by these presents, subject to the approval of the most Excellent Junta Departmental and to the following conditions:

1st. The petitioner may enclose the land without prejudice to the crossings, roads and public conveniences (servitudes), he may enjoy it freely and exclusively, devoting it to such use or cultivation as he may see fit, but within one year, he must build a house which shall be inhabited.

2d. He shall apply to the proper judge who will give him legal possession in accordance with this decree, and will define the boundaries, at the limits of which, the petitioner, besides the usual landmarks, shall plant some fruit trees, or forest trees of some utility.

3d. The said land is two square leagues, more or less, according to the map which accompanies the expediente. The judge who gives possession, shall have the land surveyed, in conformity with the ordinance, and the surplus shall belong to the nation for such purposes as may be convenient.

4th. If the petitioner violates these conditions, he shall forfeit his title to the land, and be liable to prosecution.

Wherefore, I order that this title be considered firm and valid, a copy of it shall be made in the proper book, and it shall then be delivered to the party interested, for his protection and other purposes.

Given in Monterey, July 31st, 1841.

No. XLVIII.

CASTRO, PREFECT, TO THE GOVERNOR, CONCERNING LOTS
AT THE MISSION, NOV. 25, 1839.

[Exhibit O to deposition of R. C. Hopkins, California Archives, Vol. III, Prefecturas y Juzgados, Benicia, p. 28.]

Most Excellent Sir:

The residents of the Municipality of San Francisco, have made various *verbal* representations through the Justice of the Peace, to the end that through this

Prefectura, they may receive the necessary license to establish themselves in the Establishment of Dolores, where they desire to form a settlement. This project is of public utility, which will result in a benefit to the inhabitants, and the government can be administered in all its branches with better results. All are now dispersed, and this condition of society is not the most desirable for the present age, in which civilization is one of the objects which particularly attracts the attention of the Departmental Government. I submit this proposition to your Excellency, praying you to make provisions for the inhabitants whom I represent, conceding to them the solares which they need in the said Establishment on which to build their houses.

In saying this to your Excellency, I have the honor to protest the assurances of my esteem and regard.

God and Liberty!

PUEBLO OF SAN JUAN DE CASTRO, November 25, 1839.

JOSE CASTRO.

[Marginal order of Governor on foregoing representation of *Prefect.*]

NOVEMBER 3d, 1839.

1st. That the Justice of the Peace of San Francisco may concede solares for house lots in the Establishment of Dolores, of the extent of 50 varas or less according to the means of the petitioners.

2d. That the inhabitants may place their stock on the lands surrounding said Establishment and may maintain them there in community as settlers, (pobladores) leaving free the lands of San Mateo, and the coast, the first place, that Indians may establish themselves there at the proper time, and the second place because the little stock that remains subsists there.

3d. That they shall not embarrass in any respect the functions of the administrator nor disturb the Indians so long as the community exists.

No. XLIX.

CERTIFICATE AND GRANT OF 50 VARAS AT THE CAÑUTAL BY GUERRERO, JUSTICE OF THE PEACE.

FRANCISCO GUERRERO, }
TO
JOHN VIOGET. }

[Exhibit XX in the Case.]

SAN FRANCISCO, January 16, 1840.

There is no stamped paper.

The Departmental Government having expedited an order to my court on the 1st day of the month of November, of the last year, in order that a lot of one hundred varas square should be granted in Yerba Buena in accordance with the plan, and by virtue of having granted and given possession of fifty varas wide and one hundred varas long to the citizen Juan Vioget, the number of varas that he lacks are in the place called the Cañutal, to the west of the road to the Mission of San Francisco, being vacant land.

Wherefore I, Francisco Guerrero, Justice of the Peace of the Jurisdiction of San Francisco, by virtue of the power vested in me, do hereby give him the present, which will serve him as a lawful document under the same terms expressed in the articles comprised in the title expedited to said Vioget on the 15th day of the present month, of the same year. For which I give faith. Dated as above.

FRANCISCO GUERRERO.

No. L.

DOCUMENT D, P, L IN THE CASE.

[California Archives, Legislative Records, Vol. III, page 338.]

EXTRACTS FROM THE MESSAGE OF THE GOVERNOR, FEB. 16TH, 1840, RESPECTING THE PROPIOS AND EJIDOS OF THE PUEBLOS.

At the port of Monterey on the 16th day of the month of February in the year 1840, having Messrs. Manuel Jimeno Cassarin, José Castro, Santiago Arguello, and Rafael Gonzales, met in the Government Hall by summons of the Most Excellent Governor for the purpose of duly taking their oath as members of the Departmental Board, the same was solemnly done; and H. E. the Governor declared the Corporation to have been legally installed, whom H. E. subsequently informed that Messrs. Anastacio Carillo and Manuel Requena, had reported sickness as the cause of their not appearing to fulfil their duty, and that only from the member Mr. Pio Pico no answer had been received at all, and that the Board should qualify their procedure.

After which H. E. brought into the knowledge of the Board through a statement of the actual condition of the Public Administration of the Department as follows :

* * * * *

COMMONS (EJIDOS).

None of the said towns, with the exception of Monterey, has its common and landed property (señalados los ejidos y terrenos de propios) marked out, which to each of the Municipality should be fixed, in order to know its legal property (fundo legal), for which reason the Government on making concession of land in the vicinity thereof, granted the same temporarily, waiting for such a regulation; and regarding the same subject proper reports have been repeatedly asked. Your H. Junta, however, in view of all this—exercising the power conferred upon you in part 1st of the article 45 of the above mentioned law, and in concert with the Government will arrange what may be deemed proper.

JUSTICES OF PEACE [PAZ].

There was a division of the Department into districts and counties, the jurisdiction of Prefect was established respectively at the principal towns over both the former and the latter; and under the circumstances that Your Hon'ble Junta was not established, and the Ayuntamientos having to take some courses, the Government appointed for the time being a number of Justices of Peace to substitute that of the "Alcaldes" then established; hoping that your H. Junta by power conferred by the said Law will determine such numbers as there ought to be, for which purpose the necessary reports have been received from the Prefect.

AYUNTAMIENTOS.

There is no Ayuntamiento whatever in the Department, for there being no competent number of inhabitants in any of the towns (pueblos) as provided by the Constitution, those then existing had to be dissolved; and only in the Capital there ought to be one of such bodies. So Your Hon'ble Junta exercising the powers of the law will propose it, and let the Supreme Government approve a place where the same should be established. Nothing can the Government say with regard to the third district, which embraces the greatest portion of the lower California, for owing to the want of couriers undoubtedly from the great distance where the principal town lies, the correspondence of this Government with the Prefect Dn Luis del Castillo Negrete, was obstructed; but the Govern-

ment is making arrangements to have a courier to run to that place; and leading reports will be received in time.

* * * * *

ADMINISTRATION OF JUSTICE.

The Justices of the Peace having been appointed in the towns of the Departm^t, those of the principal towns of the District began to exercise the judicial functions in First Instance. It has been of much pain to the Departm^t Governm^t. to see the irregularity and faults, with which the same are managed, both from there being no able persons therein to direct them, and from the great distance, where the Supreme Court of Justice lies, which prevents displaying that desired activity and justice. The want of a Superior Court, which should have been established, has occasioned delay in the decision of criminal cases; prisoners of every class for this reason not only cannot be tried in (Court of) Third Instance, but that being long imprisoned they attract the mercy of the judges through the sufferings endured before they were adjudged; and this is a new evil, which a fair administration suffers. In the midst of such difficulties the Government did not, however cease to co-operate in the punishment of crimes for the sake of public vengeance; but that only in matters of little importance, the judicial branch being exclusively the concern of the proper court; and for which reason multitude of cases is lying paralyzed, which, being impossible to be transmitted to the Capital of the Republic for want of couriers, have to undergo an incalculable delay. The act of the 15th of July of 1839, confers upon Y. H. Junta power to appoint judges and [an] attorney general, who should exercise the judicial functions in the interior, and I do not doubt that upon a good election of such a body depends the organization of a court which in exercise of the power annexed thereto may in a short time contribute to a good so long desired—that is a fair and complete administration of justice, which up to the present time is needed in this Departm^t.

MUNICIPAL FUNDS AND REVENUE (PROPIOS Y ARBITRIOS).

Proper reports have been required of the Prefect in order to ascertain the actual state of said funds—specifying the several purposes for which the same are laid out so as to bring the whole to the knowledge of your H. Junta, in order that the Junta may please to give your advice to the consultation, that upon the subject the Government may direct for the purpose of organizing such a branch; that up to the present time there has been no fixed rules to establish an inspection and economy capable of doing in fact any good, for which they are intended. (I have stated above how necessary it was to have a regulation of the common lands of the towns and cities; and from hence a new resource will arise for the benefit of the funds if it is considered that the lands which may hereafter be assigned as legal property [señalados para el *fundo legal*] (of towns and cities) [de los *pueblos*] is a foundation, which periodically as it may be established, should produce a municipal ground rent, whether required of the holders thereof annually or by establishing productive landed property. This resource, I do not doubt, will in part contribute to aid the necessities existing in the towns (pueblos,) where for want of means they cannot sometimes support the prisoners in jail; and much less build proper municipal buildings, nor attend to other works of public benefit, convenience or ornament.) And I entertain no doubt that Y. H. Junta, with your lights will co-operate to this object, in the persuasion that the Government will use all the means of resort for the purpose of increasing the funds in question.

I have made a statement, although substantial, of the actual estate of the principal branches of the public administration, and will now omit being extensive with other details; as every particular individual, of those composing this respective body, is aware of the palpable necessities. A new epoch of happiness has sprung to the inhabitants of the Department; and Y. H. J. with the legislative

character and amidst this stormy weather of difficulties will be able to steer the vessel to a safe port ; the Supreme Government is constantly recommending these sacred duties, and affording all protection dependent upon its power ; and I as the near agent of the same will not spare any means whatever that is in my power to co-operate to so esteemable an object. So be Y. H. J. the first body to scatter the most abundant benefits over the country, which you represent, and receive as fruit of your tasks an eternal gratitude of its dearest sons.

I congratulate Y. H. Junta for this installation, wishing earnestly that your acts may produce the desired good results.

Which being concluded, His Excellency directed that the minutes should be drawn by the Government Secretary, there being no Secretary to the Junta, wherewith the Junta adjourned (*sine die*) H. E. the Governor and the four members first above mentioned subscribed their names hereto.

MAN^L JIMENO.

S. ARGUELLO.

No. LI.

LIST OF FOREIGNERS IN SAN FRANCISCO, MAY 20, 1840.

[Exhibit No. 10 to deposition of R. C. Hopkins ; California Archives, Vol. I of Juzgados, page 305.]

List of the foreigners established in sixth section of San Francisco de Asis, who have presented their letters of security, as required by his Excellency the Governor of the Department on the 2d of the present of 1840 :

Don Jacob P. Leese, 39 years of age, married with a Mexican, a native of the United States of America, merchant, resident of the Department since the 9th of July, 1834, he came by land, presented his letters of naturalization dated Sept. 20th, 1863, by Don Nicolas Gutierrez, and letters of security by Gov. Figueroa, dated July 9th, 1834.

Don Juan C. Fuller, 43 years of age, married with a Mexican woman, a native of London, a seaman by profession, came to the country in the year 1827, he has a document certifying his matriculation given by the Señor Alcalde Don Manuel Jimeno in the year 1834, and his baptism in the Roman Catholic church, in San Blas, by Father José Antonio Espinosa.

Don Juan Calvert Davis, 31 years of age, bachelor, native of England, a carpenter by trade, came to the country by sea in the year 1834, and remained in this jurisdiction till the 14th of September, 1839, as appears by a certificate of the Captain Don José Francisco Snook, has letters of naturalization dated the 24 of September of the last year given by his Excellency the Governor Don Manuel Jimeno, and a passport given by the Señor Prefect.

Don Gregorio Escalante, 30 years of age, bachelor, native of Manilla, a mariner by profession, engaged in mercantile pursuits, came to the country in 1833 by sea, he has no document whatever, says he was admitted by the Comandante Don Man. G. Vallejo, and that he has been a dependent of the late Pedro del Castillo, and that he has petitioned for letters of naturalization.

Don Nathan Spear, 38 years of age, married in the Islands, native of the United States, engaged in mercantile pursuits, came to the country in 1832 by sea, has a letter of security given by his Excellency the President in 1836, for one year, to reside in and travel through the republic.

Don Guillermo H. Davis, 18 years of age, bachelor, a native of Oahu, merchant and clerk of Señor Spear, came by sea to the country in the year 1838 (23d of June), has no documents save a pass from his consul.

Don Daniel Sill, 41 years of age, a native of the United States of America, carpenter, came to the country by land on the 12th of February, 1835, has a passport given him by the late Gov. Figueroa and by the Señor Prefect on the 4th of April, 1840.

Don Juan Frink, 30 years of age, bachelor, a native of England, has been in the country since 1839, came by sea, has a certificate of Señor Wilson that he bears a good character, and a letter of security given by the Prefect on the 4th of April, 1840.

Henry Kirby, 31 years of age, bachelor, native of England, has been in the country since 4th of December, 1839, came by sea with Hinckley.

José Antonio Nief, 26 years of age, bachelor, native of Germany, sailor, was taken prisoner by Don Juan Cooper on the 1st of November, 1839 and liberated by General Vallejo, and is at present a servant of Leese.

Juan Benson, 19 years of age, bachelor, American, sailor, came to this country, (this jurisdiction) on the 27th of February of this year, deserter from schooner Morse, and is retained until the arrival of the Quixote, when he will be given up, as directed by Capt. Paly.

Louis Melurem, 42 years of age, a native of France, sailor, servant, came to the country in 1833, has no documents, save a certificate of the Alcalde David Spence, Dan Manuel Jimeno and Don José R. Estrada.

Juan Vioget, 41 years of age, a native of Switzerland, merchant, came to the country in the month of October, 1839, was on the coast two years as Captain of the schooner Delmira, and has petitioned for his letters of naturalization, he obtained from the Government a solar in Yerba Buena, and has no document.

Don Juan Bausford *alias* Solis, 36 years of age, a native of Ireland, a sawyer by trade, came to the country by sea in 1829, has letters of naturalization in the Sixth House of Kinlock, presented a certificate of Señor Jimeno given at the time he was Alcalde, of his being a seaman of the third class, and by Don J. B. Cooper.

Cornelio Adam Johnson, 63 years of age, a native of Germany, married in that country, a servant of Leese, came to the country in 1826, came as a soldier from Mexico, has a certificate of the Sergeant José Maria Medrano, a functionary of the Military Comdte. of Monterey, and given on the 31st of July, 1811.

Victor Prudon, 31 years of age, bachelor, a native of France, a teacher by profession, engaged in mercantile pursuits, resident of the capital of Mexico from the year 1827 to the year 1834, when he came to the Département with the colony (of Higar) by order of the Supreme Government as a teacher, as is shown by a document which he exhibited, and a letter of security dated in the year 1828.

SAN FRANCISCO, May 20, 1840.

FRANCISCO GUERRERO.

Note. The name of Don Guillermo Richardson is not entered here, he having for some time been at Saucilito on the other side of the bay. The same remark is made in relation to the foreigners who are in the Sierra, in the neighborhood of the arroyo of San Francisquito, they pertaining to the Pueblo of Alvarado.

The name which is entered here as José Antonio Nief, is understood as applying to Henriques Richer, since he is known by both names.

No. LII.

CASTRO, PREFECT, TO SECRETARY OF STATE ABOUT LOTS
AT THE MISSION OF DOLORES, APRIL 6, 1841.

[Exhibit P to deposition of R. C. Hopkins ; California Archives, Vol. IV, Prefecturas y Juzgados, page 230.]

Prefectura of the First District :

The Justice of the Peace of San Francisco in an official communication of the 22d of March last, said to me as follows :

“ When the Señor Prefect Don José Castro, came up to these points of the North, an order of the Departmental Government was published conceding to this vecindario (inhabitants) solares in the Establishment of Dolores, on account of many representations made to the said Government by said inhabitants (vecindario), and as after it was published, it remained to forward a copy of said order, which perhaps on account of the pressing business of your Señoría has been forgotten. I pray that you be pleased to order a copy of the same to be forwarded to me as a guide, since already several lots have been granted.”

Which I have the honor to transmit to your Señoría, stating that there does not exist in the archives of this Prefectura, the order referred to by the Justice of the Peace of San Francisco, and praying that a duplicate of the same may be furnished from the office under your charge.

I reiterate the assurances of my respect.

God and Liberty!

SAN JUAN DE CASTRO, April 6th, 1841.

No. LIII.

MIRAMONTES, JUSTICE OF THE PEACE AT THE MISSION OF
DOLORES, ASKS TO BE RELEASED FROM HIS OFFICE.

[Exhibit Q to deposition of R. C. Hopkins.]

Vicente Miramontes to Prefect of First District.

AUGUST 18TH, 1841.

To the Prefect of the First District :

Vicente Miramontes, Justice of the Peace, suplente, in the Pueblo of Dolores, Jurisdiction of the Port of San Francisco, before your Señoría, with all due respect represents : That in the year 1839, he was appointed to said office, and in consideration of his having fulfilled the term of his appointment, he prays your Honor through this petition to have the goodness to grant him his discharge, since the holding of this office for the last two years has been of much detriment to himself and family. He also represents to your Honor, that it is impossible for him properly to discharge the duties of said office for the want of the necessary intelligence for the same, and when it has happened that in the absence of Francisco Guerrero, he has been compelled to exercise his functions, he has been much embarrassed, and as there is no secretary in the Juzgado, who might assist him in difficult points, he has been compelled to employ one and pay him out of his pocket.

Wherefore he prays your Honor to be pleased to accede to his petition, etc.
Pueblo of Dolores, August 19th, 1841.

VINCENTE MIRAMONTES.

		\$ rls.
Aug.	J. P. Leese, barrel country wine,.....	3 00
	Gegino Escalante, solar of '50 vs.,.....	12 4
Sept.	Nathan Spear, license for store,.....	1 00
	David Cooper, 2 barrels aguardiente,.....	6 00
Oct.	“ license, 2 mos.,.....	1 00
	Do. of Don Nathan, 1 month,.....	1 00
	Do. of Juanito, “	4
Nov.	Nathan Spear, license,.....	1 00
	Don Juanito,.....	4
Dec.	Nathan Spear, license,.....	1 00
	Geraldo Bijorquez, 1 barrel,.....	3 00
	Juan Finich, or Davis, for license 3 months and 3 barrels aguardiente,	10 4
	David Cooper, 1 barrel,.....	3 00
	License,.....	4
	Gregino Escalante, 1 barrel and license,.....	3 4
<i>Gregorio</i> 1841.	Jan'y. Jesus Noe, for 2 barrels muscat,.....	6 00
	Tiburcio Vasquez, 1 barrel,.....	3 00
Feb'y.	For 2 month's license, Nathan Spear,.....	2 00
	Juan Davis, do.,.....	4
	Escalante, do.,.....	4
March.	License, Nathan Spear,.....	1 00
	Davis and Escalante, at 4 rls.,.....	1 00
	J. P. Leese,.....	1 00
Oct.	From the 1st of March to the 10th of Oct. paid for Municipal duties on Aguardiente and other liquors by Juan Vioget,.....	44 7
	Don Nathan, paid up to 23d of June, from 1st of April, for license,.....	3 00
	For 1 barrel of aguardiente,.....	3 00
	Juan Vioget, paid for license, 1 barrel aguardiente, Novem- ber and December,.....	8 00
	Collected by Judge, in absence of Sindico Juan Fuller— Nathan Spear, paid for license of store,.....	5 00
	Capt. Hinckley and Spear, for 5 barrels of aguardiente, sold to individuals in this place and to others, as appears by account rendered on last of December, 1841,..	15 00
	Juan Davis, for license 5 months and 2 barrels of aguar- diente,	8 4
	Gregorio Escalante, paid for 1 barrel,.....	3 00
Dec.	Mr. Fil, for license 5 months.....	5 00
	Mr. Rae, for license 4 months,.....	6 00
	Jesus Noe, 2 barrels muscat,.....	3 00
	Nathan Spear, for 1 solar, petitioned for by Perry,.....	12 4
	Ten dollars paid by Hinckley on goods, under law of 1834, Mr. Rae paid on 1st of January on 92 packages of goods, and one real for three dollars given to Francisco Sanchez,	10 00
		11 4
	Sum total,.....	\$379 1

SAN FRANCISCO, January 10th, 1842.

Correct.

JUAN FULLER.

Paid from Municipal Fund.

	\$ ris.
Expenses of opening road,	9 00
November 2d, 1839, for 1 ream of paper for Juzgado,	8 00
For ink, \$2; for wax, &c., \$2,	4 00
January 15th, 1840, paid Francisco Sanchez, by order of Alcalde, ..	25 00
January 15, 1840, paid to Don Juan Davis twenty-six dollars, for 1 sopero and masita for the archives,	26 00
For expenses stationery and clerk for Sindicaturo,	6 00
In February, 1840, by order of Alcalde, Don Francisco Sanchez,	10 00
For 1 ream of paper, re-cut for letters on 20th February, 1840,	7 00
On the 15th of March, 1840, returned to Don Jose de la Cruz San- chez, 15, he having paid \$18 for one barrel of aguardiente,	15 00
On same day returned to Jacinto Malarin,	15 00
On the 18th of April, paid to the Juan Neophyte thirteen dollars for two saddles, which were lost when the foreigners were taken prisoners,	13 00
Paid to the same, by order of Alcalde, seven dollars, for a horse which was lost,	7 00
For one bullock, killed for the use of the prisoners by order of the Judge,	8 00
On the 9th May, 1850, returned to Juan Vioget \$12 4, he having paid twenty-five for a solar of 100 vs., which was only 50 vs. wide and 100 vs. long,	12 4
On the 10th of May, by order of the Judge, to Victor Prudon, for services in Juzgado,	14 00
For the two pair of fetters used on prisoners,	8 00
For sundry articles furnished to prisoners,	5 00
On 5th of November paid to Soletto for carrying express,	6 00
Nov. 18, for ink, &c. for Juzgado,	4 00
Aug. 29, by order of Francisco Sanchez,	10 00
For candles for prisoners,	2 00
September, paid on order for table cover for Juzgado,	8 00
September 18, paid for inkstand and two candlesticks for Juzgado, ..	3 00
For payment made to Catalina for two gross of large wax candles (gruesas de toches) and for the solemnization of the 16th of September, according to order of the year 1839,	30 00
Paid for gunpowder and licenses for the solemnization of the 16th of the present month, according to order of to-day, 24, 1840, ..	26 00
For one ream of paper and wax for Juzgado,	9 00
Paid to persons who went in search of the carpenter of the Leonidas <i>clan</i> and brought him to Juan Maturin ,	
March, 1840, the Diezmo, as a reward to the sailors who carried the express for the Señor General,	8 00
On the 3d of the present month paid for a candado for use of the jail, Sept. 29, to Daniel Sill, for two chains with handcuffs,	2 00
March 11th, 1841, paid to Don Francisco Sanchez,	10 00
Three dollars given to Alcalde Francisco Sanchez,	3 00
Paid to conductors of the ropero,	1 00
Sum total,	\$349 1

Due to the Municipal Fund.

Mr. Bari,	18 00
The Sindico Blas Angelin, since his term,	21 1
The Sindico Jose Rodriguez, since his term,	16 00

All the individuals, according to the accounts, who have not paid the fines imposed upon them by the Judge, paid to the citizen Cayetano Juarez, and remitted by him,..... \$ ris. 55 4

Señor Prefects, herewith are presented the docs which show the credits (Esgresos) numbered from 1 to 32, including an account forwarded by Señor Hinkley for 4 pipes, (of liquor) which was introduced and the most of it sold outside of the Demarcation. And Mr. Rac has not paid any duty on aquardiente, which he has introduced, it not having been sold; and Don Jose Limantour has not paid anything, and he established his store on the 24th of December of the last year.

SAN FRANCISCO, Jan'y. 1st, 1842.

Correct.

JUAN FULLER.

Comparison.

Amount of Ingresos,.....	\$379 1
“ of Exgresos,.....	149 1
	\$ 30
Amount on hand in cash,	

Because the Sindico Procurador of the Municipal Fund of this Demarcation has gone to the Points de Reyes and Baulines, without giving notice of the same, he loses his right to the five per cent. which belonged to him. Thus I, the Justice of the Peace, ordered and determined.

SAN FRANCISCO, Jan'y. 2d, 1842.

FRANCISCO GUERRERO.

Received the amount on hand above set forth.

FRANCISCO SANCHEZ.

No. LV.

CENSUS OF SAN FRANCISCO IN 1842.

[Exhibit No. 9 to Deposition of R. C. Hopkins.]

“Padron,” Containing the Inhabitants of Both Sexes, in the Jurisdiction of San Francisco, for the Present Year.

Name.	Birthplace.	Occupation.	Age.
Tiburcio Vasquez.....	Sn José Gpl.....	Laborer.....	49
Alvira Hernandez.....	Monterey.....	“.....	37
Juan José Vasquez.....	Sn José Gpl.....	“.....	17
Barbara Vasquez.....	“.....	“.....	15
Josefa Vasquez.....	“.....	“.....	13
Siviaca Vasquez.....	“.....	“.....	11
José Ma. Vasquez.....	“.....	“.....	10
Purificacion Vasquez.....	San Francisco.....	“.....	9
Luciano Vasquez.....	“.....	“.....	8
Francisco Vasquez.....	“.....	“.....	6
Francisco Vasquez.....	“.....	“.....	4
Pablo Vasquez.....	“.....	“.....	2
José Corn. Bernal.....	“.....	“.....	46
Carmen Sibirian.....	San Juan.....	“.....	38

Name.	Birthplace.	Occupation.	Age.
José de Jesus Bernal.	San Francisco.	Laborer	13
Fran. Llagas, Neofito*.	Pulgas.	Domestic	57
Concordio, Neofito.	San Pablo.	"	54
Ma. Fedá, Neofita.	"	"	46
Gertrudis, Neofito.	"	"	13
José Antonio, Neofito.	San Francisco.	"	16
Teresa, Neofita.	Sonoma.	"	20
Francisco Guerrero.	Tepic.	Laborer	31
Josefa de Haro.	San Francisco.	"	17
Spot. Ay. de Guerr'o.	"	"	—
Anto. Abad, Neofita.	Costa	Domestic	37
Lorenza, Neofita.	Sonoma.	"	23
Alejo, Neofita.	San Francisco.	"	35
Vicente Miramontes.	Mission de San José.	Laborer	32
Jesus Hernandez.	San Francisco.	"	27
J. Ma. Miramontes.	"	"	4
Benita Miramontes.	"	"	2
Mariana Miramontes	"	"	—
Pablo, Neofito.	"	Domestic	18
Francisco, Neofito.	Sn Mig'l.	"	20
Cadido Valencia.	Sn Clara.	Laborer	38
Paula Sanchez.	San José Gpl.	"	32
Eustag. Valencia.	"	"	14
José Ramon Valencia.	San Francisco.	"	13
Ma. de los Aug. Valencia.	"	"	10
Lucia Valencia.	"	"	9
Tomaso Valencia.	"	"	5
Ma. Josefa Valencia.	"	"	1
Jesus Valencia.	Sta. Clara.	"	35
Julia Sanchez.	"	"	30
Catarina Valencia.	San Francisco.	"	7
Riso Valencia	"	"	5
Francisco Valencia	"	"	—
Francisco de Haro.	Composta.	"	50
Francisco de Haro.	San Francisco.	"	15
Ramon de Haro.	"	"	15
Rosalía de Haro.	"	"	14
Natividad de Haro.	"	"	13
Prud. de Haro.	"	"	11
Cat. de Haro.	"	"	9
Carlota de Haro.	"	"	9
Dolorez de Haro.	"	"	6
Jesus Felipe de Haro	"	"	2
Alonzo de Haro.	"	"	—
Anast. Ramirez.	San Juan.	"	11
Junipero, Neofito	San Francisco.	"	43
José Ysidro Sanchez.	"	"	24
Teodora Alviso.	Sta. Clara.	"	23
Dolorez Sanchez.	San Francisco.	"	5
Ysabel Sanchez.	"	"	2
Narsisa Sanchez.	"	"	—

* The words Neofito and Neofita denote Indian catechumens, male and female, respectively. It will be observed that these neophytes have no surnames, and that they all seem to have been named from the Saints in the calendar of the Roman Catholic Church.

Name.	Birthplace.	Occupation.	Age.
José de los Santos, Neofito.	Tulares	Laborer	10
Leander Galindo.	San Francisco	"	55
Domingo Allaman.	Sta. Clara	"	34
Seferino Galindo.	"	"	12
Maria Galindo.	"	"	9
Ant. Galindo.	Santa Clara	"	7
Francisco Galindo.	San Francisco	"	4
Gregoria Galindo.	"	"	3
Genaro Galindo.	"	"	2
Mariano Galindo.	"	"	—
Jesús Noe.	Puebla.	"	37
Guadalupe Gardaño.	"	"	30
Miguel Noe.	Mexico	"	9
Dolorez Noe.	Sta. Clara	"	6
Esperidion Noe.	San Francisco	"	4
Ma. Concep. Noe.	Sta. Clara	"	2
Candelaria, Neofita.	Sonoma	Domestic	17
Francisco, Neofita.	Sta. Cruz.	"	28
Concep., Neofita.	"	"	21
Lorenzo, Neofito.	"	"	26
Juan Fuller	England	Merchant	40
Concepcion Arila.	Mont'y	"	26
Ma. Concep. Fuller.	Monterey	"	6
Santiago Fuller	San Rafael	"	4
Nicolasa, Neofita.	Sacramento	Domestic	13
Carlos, Neofito.	"	"	10
Pedro Serbia.	Denmark	Merchant	26
Juan, Neofito.	Sacramento	Domestic	11
Natan Spear.	America	Merchant	42
Juana Miss Spear.	Ys. Sanduic	"	27
Tomas, Canaca.	"	Domestic	9
Carlos, Indiga (Indian)	Sacramento	"	18
Isabel, " " "	"	"	11
Daniel Sill.	America	"Depend."	46
Fran. Grño Ynkly.	"	Merchant	35
Susana Suart.	San Francisco	"	16
Juan Canaca.	Y Sanduic	Domestic	20
Yspecanoe Canaca.	"	"	23
Manaria, Neofita.	Sacramento	"	12
Guillermo Reed	New Orleans	Merchant	32
Señora Reed.	"	"	24
Juan Reed.	"	"	3
Maria Reed.	"	"	2
Eloisa Reed.	San Francisco	"	—
Knittes	"	Domestic	—
Pedro, Canaca.	Ys. Sanduic, (Sand. Isl.)	"	50
Mijalda, Canaca.	" " "	"	22
Opunul, Canaca.	" " "	"	20
José, Canaca.	" " "	"	21
Tomas ———	France	"	30
Juan C. Davis.	America	Carpenter	32
Juan Fricher.	"	Blacksmith	36
Antonio	Peru	Domestic	19
Fredrico, Neofito.	Sonoma	"	11
Gregorio Escalante.	Manila	Merchant	34

Name.	Birthplace.	Occupation.	Age.
Mr. F. Andrews.....	America.....	Carpenter.....	26
Apolino Miranda.....	San Francisco.....	Laborer.....	47
Juana Briones.....	Sta. Cruz.....	.....	39
Presentacion Miranda.....	San Francisco.....	.....	20
Gomes Miranda.....	".....	.....	13
Narsisa Miranda.....	".....	.....	12
Refugio Miranda.....	".....	.....	10
José de Jesus Miranda.....	".....	.....	7
Manuel Miranda.....	".....	.....	5
Paulina, Neofito.....	Sacramento.....	Domestic.....	16
Candel. Mirantes.....	Guadalajara.....	Laborer.....	53
Guadalupe Briones.....	Sta. Cruz.....	.....	49
Miguel Miramontes.....	San Francisco.....	Laborer.....	23
Rodolfo Miramontes.....	".....	".....	22
José Arciano Miramontes..	".....	".....	18
Ma. Dolores Miramontes...	".....	.....	19
José de los Stos. Miramontes	".....	Laborer.....	16
Raymundo Miramontes....	".....	".....	13
Juan Je. Miramontes.....	".....	".....	12
Guadalupe Miramontes....	".....	".....	11
Carmen Miramontes.....	".....	".....	10
Luz Briones.....	Sta. Cruz.....	".....	43
José Ramon, Neofito.....	San Francisco.....	.....	16
Marcario, Neofito.....	Sonoma.....	Domestic.....	16
José Rodriguez.....	Monterey.....	Laborer.....	35
Romana Miramontes.....	Sta. Cruz.....	".....	30
Francisco Rodriguez.....	San Francisco.....	".....	5
Ma. Rodriguez.....	".....	".....	4
Ma. Rodriguez.....	".....	".....	2
José Rodriguez.....	".....	".....	—
José Antonio Sanchez.....	Sonora.....	"Harcendo".....	67
Ysidro Je. Sanchez.....	San Francisco.....	Laborer.....	23
José Feliz.....	".....	".....	15
Felipe, Neofito.....	Tulares.....	Domestic.....	12
Raymundo, Neofito.....	Sonoma.....	".....	16
Manuel Sanchez.....	San Francisco.....	Laborer.....	30
Francisco Sotelo.....	P. de los Angeles....	".....	24
Manuel Sanchez.....	San Francisco.....	.....	11
Rosario Sanchez.....	".....	.....	5
Dolores Sanchez.....	".....	.....	4
Juan Fran. Sanchez.....	".....	.....	1
Je. de la Ce. Sanchez.....	".....	Laborer.....	40
Ma. Josefa Merido.....	San Diego.....	".....	32
Solidad Sanchez.....	San Francisco.....	".....	19
Concepcion Sanchez.....	".....	".....	12
José Ma. Sanchez.....	".....	".....	8
Ricardo Sanchez.....	".....	".....	5
Francisco Sanchez.....	".....	".....	—
Josefa, Neofita.....	".....	Domestic.....	14
Eduardo, Neofita.....	Santa Cruz.....	".....	40
Francisco Sanchez.....	San José.....	Laborer.....	35
Teodora Higuera.....	San Francisco.....	".....	26
Luisa Sanchez.....	".....	".....	8
Luis Don Sanchez.....	".....	".....	6
Dolores Sanchez.....	".....	".....	4

Name.	Birthplace.	Occupation.	Age.
Pedro Sanchez.....	San Francisco	Laborer.....	—
Consolacion, Neofita.....	"	Domestic.....	12
Ygnacio, Neofita.....	"	"	53
Dunas, Neofita.....	"	"	49
Forcuata, Neofita.....	"	"	40
José (a) Segnio, Neofita..	"	"	16
Domingo Felis.....	"	Laborer.....	22
Anto, Felis.....	"	"	19
Angela Rusa.....	"	"	19
Luis Felis.....	"	"	16
Juan Coopinger.....	Dublin.....	Sawyer.....	30
Luis Soto.....	San José.....	"	23
José, Neofito.....	Tulares.....	Domestic.....	10
Santiago Henysy.....	Scotland.....	Sawyer.....	91
Roberto McCalister.....	Cork.....	"	29
Tomas Gerbert.....	London.....	"	33
Juan Mereno.....	Holland.....	"	40
Guillermo Handes.....	Boston.....	"	42
George Williams.....	England.....	"	39
Recardo Maltok.....	"	"	23
Jqs. Mirantes.....	Sta. Clara.....	Laborer.....	31
Mr. Ignacio Martinez.....	San Francisco.....	"	23
Ma. Miramontes.....	Sonoma.....	"	—
Maria, Neofita.....	"	Domestic.....	9
Francisco Miramontes.....	San Francisco.....		9
Maria, Neofita.....	San Rafael.....	Domestic.....	33
José D., Neofito.....	San Francisco.....		3

WI. San José, 155.

RESUMEN.

	Men.	Women.	Boys.	Girls.	Totals.
1a. Columna.....	15	11	8	6	40
2d. ".....	11	7	11	16	45
3d. ".....	24	11	8	5	48
4a. ".....	18	11	11	8	48
5a. ".....	8	2	4	1	15
	—	—	—	—	—
	76	42	42	36	196

Establecimiento de Dolores, 31 de Obre, de 1842.

FRANCISCO SANCHEZ.

No. LVI.

GOVERNOR MICHELTORENA'S PROCLAMATION RESPECTING
THE MISSIONS, MARCH 29, 1843.

[See the same, *without the preamble*: Halleck's Report, Appendix, No. 19; 1 Rockwell, 469; Jones' Report, page 71.]

Manuel Micheltorena, General of Brigade of the Republic, Adjutant General of the Plana Mayor, Governor of the same, Commanding-General and Inspector of both Californias:

It being one of the ample or complete instructions or orders, with which is invested the undersigned General and Governor, viz.: to examine into the situation of all the Missions in his government at the present moment, their prospects and resources, in order to regulate them, and the Supreme National Government having transmitted all its powers, [delegated to him all its powers,] according to the supreme order made February 11, 1842.

On deliberation, and with the assent of the most Reverend Fathers, Fray José Joaquin Jimeno, Fray José Ma. de Jesus Gonzales Rubico, who have been made personally to appear before the government, as Presidents of other Missions, as well as in the name of, and to represent the most Rev. Father, Presidential Vicar, the absent Fray Narciso Duran, being fully impressed with, and having well reflected upon all things requisite.

That the vast and immense landed property formerly belonging* to the Missions had been scattered or partitioned out to individuals, which at the epoch it was done was caused by the exigencies of the country.

That the pious and charitable institutions of social order, for the conversion of the savages to Catholicism and to an agricultural and peaceful life, are reduced to the huertas and inclosures of the churches and buildings.

That the most Most Rev. Ecclesiastics have no support but charity, and that the divine religion not prospering, barely sustains itself.

That the Indians, naturally lazy, from additional labor, scarcity of nourishment, and in a state of nudity, having no fixed employment or appointed Mission, prefer to keep out of the way and die impenitent in desert woods, to escape a life of slavery, filled with all privations and without social joys.

That this continued emigration of the natives from the service of individuals to that of Missions, and from that of the Missions to that of individuals, or to the woods, retards more and more agriculture, and frightens off, instead of drawing together the Gentiles from without the pale of our Holy Religion.

That in the administration of the Missions, there have been committed some frauds and notorious extravagance, which every inhabitant of California laments.

That as there is no other method of reanimating the skeleton of a giant like the remains of the ancient Missions, without falling back upon experience and fortifying it with the levers of Civil and Ecclesiastical power.

Now, everything well considered and naturally reflected upon, I have determined to decree the following articles:

No. 1. The Government Department decrees to be "delivered up or restored" to the Most Rev. Fathers (who shall name the Ecclesiastic to be placed respectively in charge) the Missions of San Diego, San Luis Rey, San Fernando, Santa Barbara, San Antonio, San José, San Juan Capistrano, San Gabriel, San Buenaventura, Santa Cruz, La Purisima, Santa Clara; which shall con-

[* *Appurtenant* is a better translation of *pertenecientes*—the word "belonging" is equivocal. The word "Fray," which is not translated, signifies "Brother" of a regular order, a "religious," as the *secular* priests were called "Padres"—Fathers.]

tinue for the future to be governed by the Most Rev. Fathers (they taking charge of the natives) in the same manner as they were before.

No. 2. The government considers what has been done to this date as irrevocable: the Missions can reclaim none of the lands granted prior to this date; and in reclaiming the cattle, chattels, and instruments of agriculture loaned by the Rev. Fathers, Curators, or Superintendents, they shall grant sufficient time and arrange with the debtors or holders, amicably.

No. 3. They shall likewise take care to collect the scattered neophytes or converts. First, those lawfully exempted by the Supreme Departmental Government. Second, those who at the date of this decree are provided for by individuals, it being, however, understood, that if any of both classes wish and prefer to return to their respective Missions, they shall be admitted and received, with cognizance of the masters and the Most Rev. Missionaries.

No. 4. The Departmental Government, in whose possession up to this day have been the Missions, in virtue of the most ample powers with which it is invested, and referring to the aforesaid considerations, authorizes the Most Rev. Fathers to apply the products of the Missions to the necessary expenditures of the reduction, food, clothing, and other temporal wants of the Indians; and they shall likewise take from the same fund their own support, for the salary of the Mayordomo, and for the support of the divine religion, under the condition that they shall remain obligated by their word of honor and conscience, to deliver to the Treasury, upon notice to the Rev. Fathers, of this government, and the express order, in writing, of the undersigned Governor, Commanding-General, and Inspector of relief, sustenance, and clothing of the troops and observances of the civil employees, the *eighth part* of the whole annual produce of every kind; keeping for the guidance of its Ecclesiastics a true and exact account at the end of the year, of the number of their converts, possessions real and personal, and of every description of produce or its corresponding value, which may belong to such Mission.

No. 5. The Departmental Government, which glories in religion, as well as the whole of California, and in the same manner being interested as well as all and every one of the inhabitants of both Californias in the advancement of the Holy Catholic Faith and in the prosperity of the country, "dedicates itself," (or places at the disposition of "all its power,") in aid of the Missions, and in quality of General commanding, the power of its arms to protect, and defend, and sustain them, and in the possession and preservation of all the lands they may hold from this day, they shall be the same as the possessions and guarantees enjoyed by private persons, *binding itself to make no new grants without the information of the respective authorities of the Most Rev. Ministers, notorious non-occupation, non-cultivation, or necessity.*

Dated 29th day of March, 1843.
FRANCISCO ARCE, Secretary.

MANUEL MICHELT^{NA}.

No. LVII.

EXHIBIT No. 11 TO DEPOSITION OF M. G. VALLEJO.

Order for election of Ayuntamientos and Alcaldes, Nov. 14, 1843.

Citizen Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant-General of the Staff of the same, Governor, Comandante-General, and Inspector of the Department of the Californias.

{ Govt. Seal. } Although Justices of the Peace have been established in the towns of this Department in conformity with the law

of March 20, 1837, which gives them the powers and obligations which the Ayuntamientos have, yet it is observed that in the Courts of the chief towns of the Districts matters of various kinds are daily brought which prevent the Justices from dedicating themselves to the duties which correspond to them, for want of Ayuntamientos, and moreover the Prefectures of this Department having to be discontinued for the coming year, and as the most excellent Junta has passed resolutions on the matter, by the powers conferred on it by the Organic Bases, I have decided the last law for elections of Ayuntamientos of April 27, 1837, be put in force under the following rules :

1st. They will proceed to verify in Monterey and the city of Los Angeles, as chief towns of the Districts, the elections of Ayuntamientos, composed each one of First and Second Alcalde, four Regidores, and one Sindico.

2d. In the Pueblos of San Diego, Santa Barbara, San Juan, Villa de Branceforte, Pueblo de San José, San Francisco, and Sonoma, elections will be held to appoint two Alcaldes, of first and second nomination.

3d. In consequence, on the second Sunday of the coming December, the residents of their respective towns will appoint in one session seven Arbitrators (compromisarios) who will meet on the Friday preceding the third Sunday in December, presided over by the civil authority of the District, for the purpose of electing the Ayuntamiento and Alcaldes, as the foregoing Articles direct, observing in the necessary part the provisions of the law of Elections, of January 19th of the present year, under the rubric (rubro) of secondary elections, and the other articles of the same which may tend to the purpose.

4th. The first Alcaldes of which these dispositions speak, will perform the duties which correspond to the Judges of First Instance in conformity with the decree of July 15th, 1839, and they will also take charge of the Prefecture of their respective Districts.

5th. On the first day of January of the coming year, the persons newly appointed will enter upon the duties of their office, receiving from those going out an exact inventory of all the expedientes, books, and whatever there may be pertaining to said corporations, transmitting a copy of it to the Government in order to pass it to the Departmental Assembly.

And that it may come to the notice of all, I order that it be published by proclamation in the pueblos of the Department, and it be fixed in the accustomed places.

MONTEREY, November 14, 1843.

MICHELTORENA.

MANUEL JIMENO, Secretary.

No. LVIII.

EXHIBIT No. 15 TO DEPOSITION OF M. G. VALLEJO.

Secretary of State to Alcalde of the Port of San Francisco, January 20, 1844.

OFFICE OF THE SECRETARY
OF THE GOVERNMENT OF THE CALIFORNIAS. }

Your note dated the 9th inst. has been received, in which you transmit the inventory of the things pertaining to your Court, and His Excellency having examined it, orders me to answer it, as I now do.

God and Liberty!

MONTEREY, January 20, 1844.

MANUEL JIMENO.

Señor First Alcalde of the Port of San Francisco, }
Citizen GULLERMO HINCKLEY.

No. LIX.

EXHIBIT No. 14 TO DEPOSITION OF M. G. VALLEJO.

[The Governor addresses the same officer as Alcalde of Yerba Buena and Alcalde of San Francisco, March 3d, 1844.]

{ Seal of Departmental }
 { Government. }

I this day say to the Ensign Don Juan Prado Mesa, the following :

“So soon as you receive this order you will march with twelve or fifteen men of the company of your command, and present yourself to the Alcalde of first nomination of Yerba Buena, placing yourself at his disposition for the purpose of restraining a disturbance which has happened with some countrymen, causing the authority of said Alcalde to be respected, acting yourself with the greatest judgment and prudence, and under your own responsibility.”

And I transcribe [this] to you for your information, recommending that you bear yourself with prudence and judgment, acting in everything under your own responsibility, forming the corresponding summary upon the fact referred to in your official communication of the 3d inst., which I answer, reporting to this Government.

God and Liberty!

MONTEREY, March 11, 1844.

MANUEL MICHELTORENA.

Señor Alcalde of San Francisco.

No. LX.

ESPEDIENTE OF THE DE HAROS FOR THE POTRERO NUEVO.

EXHIBIT No. 11 TO TESTIMONY OF R. C. HOPKINS IN THE CASE.

Espediente instigated by the citizens Francisco and Ramon De Haro, in claiming the tract called “Potrero de San Francisco.”

Most Excellent Señor Governor of the Californias :

Francisco De Haro, Ramon De Haro, in the name of our family, Mexicans by birth, and living in the Ex-Mission of San Francisco de Asis, before your Ex. with greatest submission appear and represent, that being compelled to remove from the ranch of the deceased José Antonio Sanchez, the portion of cattle belonging to our deceased mother, and as we wish to tame the same, we beg your Excellency, in the exercise of your authority (or powers) to grant us a small piece of land called Potrero de San Francisco, in extent from North to South 2,288 varas, and from East to West 2,508 varas, measuring up to the “Lomerias,” (or Range of Highlands), “because there is no competent person to do it, according to the annexed diseño,” which we submit to your Ex., and as said parcel of land can be enclosed, we intend to place in it the tame cattle, because the range of our father’s cattle is insufficient and all occupied, and he has given us due permission to make a petition, as we are under parental power and control.

Therefore we entreat Y. E. to grant us this benefit, whereby we shall receive

favor and grace, making oath that we are not instigated either by malice or bad motives.

There being no sealed paper here we could not use it.

SAN FRANCISCO, April 12, 1844.

RAMON DE HARO,
FRANCISCO DE HARO.

MONTEREY, April 29, 1844.

Let the Official Secretary make the necessary report.

MICHELTORENA.

Señor Governor :

The Mission of San Francisco now has no property (bienes) whatever, and therefore the Potrero petitioned for is vacant, as the petitioners have shown by the report of the respective justice, and as the ejidos of said establishment are to be designated, I think that in the meanwhile, the interested parties may occupy the land by a provisional license which your Excellency may be pleased to give them, it being no prejudice to the community, nor to any individual whatever. The determination of your Excellency will be most proper.

MONTEREY, April 29th, 1844.

[Signed]

MANUEL JIMENO.

MONTEREY, April 30th, 1844.

Agreed.

[Signed]

MICHELTORENA.

MONTEREY, April 30th, 1844.

"In view of the petition with which this Expediente commences, the foregoing reports, with all matters presenting themselves, and necessary to be considered, in conformity with the laws and regulations governing the matter, I declare Francisco and Ramon De Haro favored in that they may occupy provisionally, the land named Potrero of San Francisco, of the extent of one half of a square league; its boundaries being the Esteros of the entrance (boca) of the Potrero, and the hills that surround the same. Let the corresponding dispatch issue, and registry be made of the same, and let a communication be directed to the person in charge of said establishment. His Excellency the Sr. Governor thus ordered, decreed and signed, which I attest."

Fourth Seal Two Reales.

"Provisionally authorized by the Maritime Custom House of the Port of Monterey, in the Department of the Californias, for the years 1844 and 1845."

MICHELTORENA.

PABLO DE LA GUERRA.

[L. s.]

"The citizen Manuel Micheltorena, General of Brigade of the Mexican Army, Adjutant General of the Staff of the same, Governor Com^{te}, General and Inspector of the Department of Californias.

Whereas, the citizens Francisco and Ramon De Haro have petitioned for the concession of the Portrero which is named San Francisco, from the mouth of the Esteros to the Lomaria which surrounds the same, and the proceedings having been taken, and the investigations concerning the same having been made, as required by the laws and regulations in relation to the matter, I have determined in use of the authority conferred upon me, in the name of the Mexican Nation, to permit them the occupation of the said Potrero, subject to the measurement which may be made of the Ejidos of the Establishment of

San Francisco, (sujetandose á la medicion que se haya de los ejidos del Establecimiento de San Francisco,) and to the following conditions :

First. They cannot by any title sell it, nor alienate it without prejudice to some property (bienes) which the Establishment of San Francisco should have.

Second. They shall not obstruct the crossings, roads and servitudes, devoting it to cultivation, and to the property (bienes) which they design to introduce, but within one year it shall be occupied.

The land of which mention is made, is one half a square league, and if they violate these conditions, they will lose their right to this provisional concession, which is delivered to the interested parties for their security and further ends.

Given in MONTEREY, on the first of May, 1844.

MANUEL MICHELTORENA.

MANUEL JIMENO, Secretary.

NO. LXI.

EXHIBIT NO. 12 TO DEPOSITION OF M. G. VALLEJO.

Election of First Alcalde in 1844.

DIVISION OF SAN FRANCISCO.

In the Secondary elections of this day the citizen Electors being assembled in the Court room, you resulted elected for Alcalde of first nomination, that you may appear the first day of the year 1845, for the purpose of taking the customary oath in order to take charge of the Administration of Justice, in conformity with the laws.

All which I have the honor to communicate to you for the purposes mentioned, offering you the sincere considerations of our esteem.

God and Liberty.

SAN FRANCISCO, December 22, 1844.

President,
FRANCISCO GUERRERO.
Vice President,
FRANCISCO SANCHEZ.
1st Secretary,
JESUS NOE.
2d Secretary,
JUAN N. PADILLA.

Citizen JUAN N. PADILLA,
Alcalde Elect of 1st nomination.

No. LXII.

[TRANSLATION.]

DECREE OF THE DEPARTMENTAL ASSEMBLY OF MAY 28TH, 1845, RESPECTING THE RENTING OF SOME OF THE MISSIONS, AND CONVERTING OTHERS INTO PUEBLOS, ETC.

[See the same, Halleck's Rep. App. 20; 1 Rockwell, 471; Jones's Rep. 72.]

ARTICLE 1. The Departmental Government shall call together the Indians (*los Neofitos*) of the Missions of San Rafael, DOLORES, Soledad, San Miguel and La

Purísima, which are abandoned by them, by means of a proclamation, which it will publish, allowing them the term of one month from the day of its publication in their respective Missions, or in those nearest to them, for them to reunite for the purpose of occupying and cultivating them; and they are informed that if they fail to do so, said Missions will be declared to be without owners (*mostrencas*)* and the Assembly and Departmental Government will dispose of them as may best suit the general good of the department.

ART. 2. The Carmelo, San Juan Bautista, San Juan Capistrano, and San Francisco Solano shall be considered as pueblos, which is the character they have at present; and the government, after separating a sufficient locality for the Curate's house, for churches, and appurtenances, and court-house, will proceed to sell the remaining premises at public auction in order to pay their respective debts; and the overplus, should there be any, shall remain for the benefit and preservation of divine worship.

ART. 3. The remainder of the Missions, as far as San Diego, inclusive, may be rented out at the option of the government, which will establish the manner and form of carrying this into execution, taking care in so doing that the establishments move prosperously onward. These respective Indians will consequently remain in absolute liberty to occupy themselves as they may see fit, either in the employment of the renter himself, or in the cultivation of their own lands which the government will necessarily designate for them, or in the employ of any other private person.

ART. 4. The principal edifice of the Mission of Santa Barbara is excepted from the renting mentioned in the foregoing article; and the government will arrange in the most suitable manner, which part thereof shall be destined for the habitation and other conveniences of his Grace the Bishop and his suite, and which for the Reverend Missionary Padres who at present inhabit said principal edifice. And likewise one-half of its total rent of the other property of the Mission shall be invested for the benefit of the church, and for the maintenance of its minister, and the other half for the benefit of its respective Indians.

ART. 5. The products of the rents, mentioned in Article 3, shall be divided into three equal parts, and the government shall destine one of them for the maintenance of the Reverend Padre Minister and the conservation of divine worship; another for the Indians; and the last shall necessarily be dedicated by government towards education and public beneficence, as soon as the legal debts of each Mission be paid.

ART. 6. The third part mentioned in the 5th Article as destined for the maintenance of the priests and help towards divine worship, shall be placed at the disposal of the Reverend Prelates, for them to form a general fund, to be distributed equitably in the before-mentioned objects.

ART. 7. The authorities or ecclesiastical ministers, should there be any in the Missions referred to in Article 1, or those in the nearest Missions, or persons who may merit the confidence of government, will be requested by said government to see that the proclamation above mentioned be published, and to give information immediately whether the said neophytes have presented themselves or not, within the period fixed, in order that, in view of such documents, the necessary measures may be taken.

ART. 8. Government will, in the strictest manner, exact the amount owing by various persons to all the Missions in general, as already ordered by the Most Excellent Assembly in its decree of the 24th August, 1844, and dispose of the same for the object mentioned in the last part of the 5th Article.

* [*Mostrencas*, means more properly, public property. Salva defines it: "property which has no known owner, and therefore belongs to the sovereign or community."]]

No. LXIII.

PROCLAMATION FOR THE SALE OF THE MISSIONS.

OCTOBER 28, 1845.

[See the same, Halleck's Rep. App. 21; 1 Rockwell, 472; Jones' Rep. p. 75. This was not an "Act of the Departmental Assembly," as it has sometimes been styled, but a proclamation of Governor Pico in execution of the Act of May 28, 1845, as will seen on consulting the original.]

PIO PICO, GOVERNOR AD INTERIM OF THE DEPARTMENT OF THE CALIFORNIAS,
TO THE INHABITANTS THEREOF, KNOW YE :

That, in order to give due fulfilment to the resolution of the Excellent Departmental Assembly of the 28th of May last, relative to the leasing and alienating of the Missions, and being authorized by the aforesaid Excellent Body, I have thought proper to issue the following

REGULATION FOR THE SALE AND LEASING OF THE MISSIONS.

OF ALIENATION.

ARTICLE 1. There will be sold in this Capital, to the highest bidder, the Missions of San Rafael, Dolores, Soledad, San Miguel, and La Purisima, which are abandoned by their neophytes, (que se hallan abandonados de sus neofitos.)

ART. 2. Of the existing premises of [in, en] the pueblos of San Luis Obispo, Carmelo, San Juan Bautista, and San Juan Capistrano, and which formerly belonged to the Missions, there shall be separated the churches and appurtenances; one part for the Curate's house, another for a court-house, and a place for a school, and the remainder of said edifice shall be sold at public auction, where an account of them will be given.

ART. 3. In the same manner will be sold the property on hand belonging to the Missions—such as grain, produce, or mercantile goods—giving the preference for the same amount to the renters, and deducting previously that part of said property destined for the food and clothing of the Reverend Padre Minister and the neophytes until the harvest of next year.

ART. 4. The public sale of the Missions of San Luis Obispo, Purisima, and San Juan Capistrano shall take place on the first four days of the month of December next, notice being previously posted up in the towns of the department inviting bidders, and three publications being made in the Capital at intervals of eight days one from the other before the sale. In the same manner will be sold what belongs to San Rafael, Dolores, San Juan Bautista, Carmelo, and San Miguel on the 23d* and 24th of January, next year.

ART. 5. From the date of the publication of these regulations, proposals will be admitted in this Capital to be made to government, which will take them into consideration.

ART. 6. The total proceeds of these sales shall be paid into the departmental treasury, to pay therewith the debts of said Missions; and should anything remain, it will be placed at the disposal of the respective Prelate for the maintenance of religious worship, agreeably to Article 2 of the decree of the Departmental Assembly.

OF RENTING.

ART. 7. The Missions of San Fernando, San Buenaventura, Santa Barbara,

* [This is a mistake, first made in Halleck's report, and copied by Jones and Rockwell. It is "2d, 3d, and 4th." See official original.]

and Santa Ynez, shall be rented out to the highest bidder for the term of nine years.

ART. 8. To this end bidders shall be convoked in all the departments, by fixing advertisements in the town, in order that by the 5th December next they may appear in this Capital, either personally or by their legal agents.

ART. 9. Three publications shall be made in this Capital at intervals of eight days each, before the day appointed for the renting, and proposals will be admitted on the terms expressed in Article 5.

ART. 10. There shall be included in said renting all the lands, out-door property, implements of agriculture, vineyards, orchards, workshops, and whatever according to the inventories made, belongs to the respective Missions, with the mere exceptions of those small portions of land which have always been occupied by some of the Indians of the Missions.

ART. 11. The buildings are likewise included, excepting the churches and their appurtenances, the part destined for the Curate's house, the court-house, and place for a school. In the Mission of Santa Barbara no part of the principal edifice shall be included which is destined for the inhabitants of his Grace the Bishop and suite, and the Reverend Padres who inhabit it; and there shall be merely placed at the disposal of the rentor, the cellars, movables and workshops, which are not applied to the service of said Prelates.

ART. 12. As the proceeds of the rent are to be divided into three parts to be distributed according to Article 5, of said decree, the rentor may himself deliver to the respective Padre, Prefect, or to the person whom he may appoint, the third part destined for the maintenance of the Minister and the religious worship; and only in the Mission of Santa Barbara, the half of said rent money shall be paid for the same object, in conformity with the 4th Article of the decree of the Departmental Assembly.

ART. 13. The government reserves to itself the right of taking care that the establishments prosper; in virtue of which it will prevent their destruction, ruin or decline, should it be necessary during the period of renting.

ART. 14. The renting of the Missions of San Diego, San Luis Rey, San Gabriel, San Antonio, Santa Clara, and San José, shall take place when the difficulties shall be got over which at present exist with respect to the debts of those establishments, and then the government will inform the public; and all shall be done agreeably to these regulations.

ADVANTAGES AND OBLIGATIONS OF THE RENTORS.

ART. 15. The rentors shall have the benefit of the usufruct of everything delivered to them on rent according to these regulations.

ART. 16. The obligations of the rentors are: 1st. To pay promptly and quarterly when due the amount of rent. 2d. To deliver back, with improvements, at the expiration of the nine years, whatever they may receive on rent, with the exception of the stills, movables and implements of agriculture, which must be returned in a serviceable state. 3d. They shall return at the same time the number of cattle which they receive, and of the same description, and of such an age as not to embarrass the procreation of the following year. 4th. They shall give bonds to the satisfaction of government before they receive the establishments, conditioned for the fulfilment of the obligations of the rentors—one of which is the payment of the damages which the government may be obliged to find against them, agreeably to Article 13.

OF THE INDIANS.

ART. 17. The Indians are free from their neophytism, and may establish themselves in their Missions or wherever they choose. They are not obliged to serve the rentors, but they may engage themselves to them, on being paid for their labor, and they will be subject to the authorities and to the local police.

ART. 18. The Indians radicated in each Mission shall appoint from among themselves, on the first of January in each year, four overseers, who will watch and take care of the preservation of public order, and be subject to the Justice of the Peace to be named by government in each Mission, agreeably to the decree of 4th July last. If the overseers do not perform their duty well, they shall be replaced by others, to be appointed by the Justice of the Peace, with previous permission from government, who will remain in office for the remainder of the year in which they were appointed.

ART. 19. The overseers shall appoint, every month, from among the best of the Indians, a sacristan, a cook, a tortilla-maker, a vaquero, and two washer-women, for the service of the Padre Minister, and no one shall be hindered from remaining in this service as long as he choose. In the Mission of Santa Barbara, the overseers will appoint an Indian to the satisfaction of the priest, to take care daily of the reservoir and water conduits that lead to the principal edifice, and he shall receive a compensation of four dollars per month, out of the rent belonging to the Indians.

ART. 20. The Indians who possess portions of land, in which they have their gardens and houses, will apply to this government for the respective title, in order that the ownership thereof may be adjudicated to them, it being understood that they cannot alienate said lands, but they shall be hereditary among their relatives, according to the order established by law.

ART. 21. From the said Indian population, three boys shall be chosen as pages for the Priest, and to assist in the ceremonies of the church.

ART. 22. The musicians and singers who may establish themselves in the Missions shall be exempt from the burdens mentioned in Article 18, but they shall lend their services in the churches, at the masses, and the *funciones* which may occur.

OF THE JUSTICES OF THE PEACE.

ART. 23. The Justices of the Peace shall put in execution the orders communicated to them by the nearest superior authority; they will take care that veneration and respect be paid to matter appertaining to our religion and its Ministers, and that the 18th and 20th articles, inclusive of these regulations, be punctually fulfilled; they will see that no one be hindered in the free use of his property; they will quiet the little disturbances that may occur, and, if necessary impose light and moderate correction; and if the occurrence should be of such a nature as to belong to the cognizance of other authorities, they will remit to such authorities the criminals and antecedents.

And in order that it may come to the notice of all, I command that this be published by public edict in this capital and the other towns of the Department, and that it be posted up at the customary public places, and that it may be sent to whomsoever it may concern.

Given at the City of Los Angeles, on the 28th day of October, 1845.

PIO PICO.

JOSE MARIA COVARRUBIAS, Secretary.

No. LXIV.

ESPEDIENTE OF NOE FOR THE RANCHO SAN MIGUEL.

EXHIBIT W TO DEPOSITION OF R. C. HOPKINS.

His Excellency the Governor ad interim of the Department of California:

José de Jesus Noé, a Mexican by birth and a resident of San Francisco de Asis represents to your Excellency that being the owner of a number of cattle

and horses, which stock is increasing, and not having a suitable place upon which to put them, he begs that your Excellency, by virtue of your powers, will grant him a square league of land, on the tract, now vacant, to the West and Northwest of the Establishment of Dolores, bounded by the ranches of the citizens Francisco de Haro, Robert Riddle, and José Cornelio Bernal and bordering on the sea, on the West, according to the map accompanying this petition.

The petitioner respectfully solicits that your Excellency will grant this petition, as he has a large family; this not being on stamped paper on account of having none, swearing what is necessary, etc.

SAN FRANCISCO, May 28th, 1845.

J. DE JESUS NOE.

[Marginal decree.]

AUG., June 14th, 1844.

Let this be transmitted to the Justice of San Francisco for his report, let the said Judge notify the owners of the adjoining estates of this petition, that their property may receive no prejudice, also ascertain whether any other petition is pending, respecting the tract of land in question, and having done this, return this document to the Government.

PICO.

2d Constitutional Justice's Court of Yerba Buena.

In view of the preceding Superior decree and in compliance with its dictates, I have to report: That having given notice to the owners of the estates adjoining the land petitioned for, and having compared their respective maps, it appears that no injury will result to them. The said land is recognized as the property of the Ex-Mission of San Francisco (es de los que se reconoce por de su propiedad la Ex-Mission de S. Francisco,) and is now unoccupied; it is near that solicited by Don Benito Diaz, whose petition is now pending, and which having been compared with this petition, does not conflict with it.

The petitioner possesses the qualifications required by law. All which is submitted to the superior understanding of your Excellency, in compliance with the preceding decree and for the necessary purposes.

YERBA BUENA, Aug. 28th, 1845.

J. DE LA C. SANCHEZ.

ANGELES, Dec. 23d, 1845.

In view of the petition commencing this Expediente, the report of the 2d Alcalde of San Francisco and other things referring to the matter: In conformity with the law of August 18th, 1824 and the regulations of the 21st of November, 1828, I declare Don José Jesus Noé the owner of a square league of land in the immediate neighborhood of the Mission Dolores, being adjoining the lands of Don Francisco Haro, Robert Riddle and José Cornelio Bernal. Let the necessary title issue and the expediente be retained to be submitted to the Most Excellent Departmental Assembly, for its approbation. Pio Pico, provisional Governor of the Californias has thus ordered, decreed, signed and duly attests.

PIO PICO.

JOSE MARIA COVARRUBIAS, Secretary.

Pio Pico Senior Vocal of the Departmental Assembly and Provisional Governor of California:

Whereas, Don José Jesus Noé has solicited, for his individual benefit and

that of his family, a piece of land in the immediate neighborhood of the Ex-Mission of Dolores, one square league in extent: the customary investigations having been made, by virtue of the powers conferred upon me, in the name of the Mexican Nation, I do by this decree, grant the aforesaid land to the petitioner, declaring him, by these presents, the owner thereof, in conformity with the law of August, 18th, 1824, and the regulation of Nov. 21st, 1828, subject to the approval of the most Excellent Departmental Assembly and to the following conditions:

1st. The petitioner may enclose the land, without interfering with the crossings, roads and public conveniences, and he may enjoy it freely and exclusively, devoting it to such purposes as he may see fit.

2d. He shall apply to the proper Judge to place him in lawful possession, in accordance with this decree, and the said Judge will define the boundaries and the necessary landmarks.

3d. The land granted, is one square league in extent, according to the map which accompanies the Espediente, and borders on the lands of Don Francisco Haro, Robert Riddle, and José Cornelio Bernal. The Judge who gives possession will have the land measured in conformity with the ordinance.

I therefore order that the present title, being considered firm and valid, shall be registered in the proper book, and shall be delivered to the petitioner for his protection and other purposes.

Given at the city of Los Angeles, on ordinary paper, for want of stamped paper, this 23d day of December, 1845.

PIO PICO.

JOSE MARIA COVARRUBIAS, Secretary.

This title has been duly registered in the proper book.

ANGELES, May 8, 1846.

This Espediente having been submitted in session of to-day to the Departmental Assembly, it was referred to the Committee on Vacant Lands.

PIO PICO,
President.

AGUSTIN OLVERA, Deputy Secretary.

The Committee on Vacant Lands has carefully examined the Espediente relative to the land in the immediate neighborhood of the Ex-Mission of Dolores solicited by José de Jesus Noé, which was granted by the Superior Departmental Government, in accordance with the laws concerning the matter, and it now has the honor of submitting the following report to your Excellency's consideration.

It approves of the grant made to José de Jesus Noé of the tract of land in the immediate neighborhood of the Ex-Mission of Dolores, one square league in extent, according to the title issued on the 23d day of December of the past year, this being entirely in conformity with the law of August 18th, 1824, the article of October 5th, and the regulation of Nov. 21st, 1828.

Given in the Hall of Commissions, in the City of Los Angeles, May 22d, 1846.

S. AGUELLO.

ANGELES, June 3d, 1846.

In session of to-day the most Excellent Departmental Assembly approves of the contents of the preceding decree.

No. LXV.

SUB-PREFECT GUERRERO INSTRUCTS THE JUDGE OF FIRST INSTANCE OF THE PORT OF SAN FRANCISCO RESPECTING THE DEFALCATION OF SYNDIC SHERREBACK, FEB. 7, 1846.

[Exhibit 16 to deposition of R. C. Hopkins.]

Sub-Prefectura of the }
2d District. }

In view of your note of the 3d of the present month, in relation to the accounts of the Sindicatura of Don Pedro Sherreback, and of the refusal of this (that) gentleman to reply to two official communications from your predecessor, asking a rendition of accounts. Wherefore, I require you to cause him to be summoned to appear before the Juzgado under your charge, and that he present the accounts, you first examining the same, and if they are not made out as they should be, showing corresponding vouchers, with the necessary entries of amounts received, so as to detect any bad faith, if any has been practiced; and if they are not so found, you shall attach his property, if he have any, and if he have none, you shall imprison him till he make payment, or be sent to the public works.

Which I have the honor to say to you in reply,
God and liberty. YERBA BUENA, Feb. 7th, 1846.

FRANCISCO GUERRERO.

To the Judge of 1st Instance, }
of the Pueblo of San Francisco. }

No. LXVI.

PETITION OF FITCH AND GUERRERO FOR LANDS AT THE PRESIDIO.

MAY 13, 1846.

[Exhibit No. 8 to Deposition of R. C. Hopkins.]

To the Most Excellent Governor of the Department of the Californias:

Henry Fitch, naturalized in the Mexican Republic, and Francisco Guerrero, a Mexican by birth, residing in the Department, before your Excellency with due respect, represent: That finding a place in the point of the Presidio of San Francisco, which up to the present time, has not been occupied by any person; that an arroyo which is found almost in the centre of said place, being suitable for the establishment of machinery for a mill, and other pieces for sowing purposes and the greater part Chimesal and Monte, as your Excellency will see by examining the accompanying diseño; the said land being two and a half sitios a little more or less; bounding in the South with the Ranchos of the citizens Francisco De Haro and José de Jesus Noé, on the S.S.E. with the Mission of San Francisco; on the East with Yerba Buena, and on the North and West with the sea shore; the petitioners making known to your Excellency that they do not desire to prejudice the interests of any person whatever, who may be seeking to obtain, or who may already have obtained a title; in that case they will only receive the favor (of a grant) for three thousand varas,

which may be on said arroyo, for the purpose of establishing said machinery, and then they can make an agreement with whoever may be the owner, and if your Excellency should be pleased to grant to the petitioners the favor they ask, subject to the ejidos of the poblacion of Yerba Buena, although they have not yet been designated (dejando en salvo hasta los ejidos de la poblacion de Yerba Buena aun que no estan nombrados) since in the concession of the land, some persons will be benefited, and the petitioners not being prejudiced by another who may obtain in property, some part of the said lands, of small extent, in pieces of desirable land, or of much monte or sand hills (arenales).

Wherefore they earnestly pray your Excellency to be pleased to concede to them that which they ask, if it be may be convenient to do so, remaining satisfied with the determination of your Excellency, swearing to what is necessary; writing this upon common paper, for want of that which is sealed.

YERBA BUENA, May 13th, 1846.

FRANCO. GUERRERO,
H. D. FITCH.

(Certificate of the Justice of the Peace.)

José de Jesus Noé, Justice of the Peace of the Jurisdiction of Yerba Buena.

I certify, in relation to the petition of the citizens Francisco Guerrero and Henry D, Fitch, that the part of land asked for is vacant at this time, although there are other petitioners for the same, whose petitions are pending. The object of the last petitioners being to establish a mill which will be useful to the community, and besides the petitioners limit themselves to a certain number of varas, it will not be prejudicial to other parties, if the Government should think proper to grant to one or another the lands indicated. And for the necessary ends I give this in Yerba Buena, on the 13th of May, 1846.

J. DE JESUS NOE.

No. LXVII.

[From 1 DeMofras' California, etc., page 320.]

COMPARATIVE TABLE OF THE MISSIONS OF UPPER CALIFORNIA,

UNDER THE RELIGIOUS ADMINISTRATIONS IN 1834, AND UNDER THE CIVIL ADMINISTRATION IN 1842.

Names of the Missions; Going North From the South.	Epoch of their Foundation.	Distance from the Preceding.	Number of Indians.		Number of Horned Cattle.		Number of Horses, Mules, etc.		Number of Sheep, Goats and Hogs.		Crops of Wheat, Maize, &c. 1834.
			1834.	1842.	1834.	1842.	1834.	1842.	1834.	1842.	
San Diego.....	16 June.....1769	Leagues. 17	2,500	500	12,000	20	1,800	100	17,000	200	Bushels. 13,000
San Luis Rey.....	13 June.....1798	14	3,500	650	80,000	2,000	10,000	400	100,000	4,000	14,000
San Juan Capistrano....	1 November..1776	13	1,700	100	70,000	500	1,900	150	10,000	200	10,000
San Gabriel.....	8 September..1771	18	2,700	500	105,000	700	20,000	500	40,000	3,500	20,000
San Fernando.....	8 September..1797	9	1,500	400	14,000	1,500	5,000	400	7,000	2,000	8,000
San Buenaventura.....	31 March.....1782	18	1,100	300	4,000	200	1,000	40	6,000	400	2,500
Santa Barbara.....	4 December..1786	12	1,200	400	5,000	1,800	1,200	160	5,000	400	3,000
Santa Inés.....	17 September..1804	12	1,300	250	14,000	10,000	1,200	500	12,000	4,000	3,500
La Purísima Concepcion	8 December..1787	8	900	60	15,000	800	2,000	300	14,000	3,500	6,000
San Luis Obispo.....	1 September..1771	18	1,250	80	9,000	300	4,000	200	7,000	800	4,000
San Miguel.....	25 July.....1797	13	1,200	30	4,000	40	2,500	50	10,000	400	2,500
San Antonio.....	14 July.....1771	13	1,400	150	12,000	800	2,000	500	14,000	2,000	3,000
N. S. de la Soledad.	9 October....1791	11	700	20	6,000	“	1,200	“	7,000	“	2,500
Mission del Carmelo....	3 June.....1770	15	500	40	3,000	“	700	“	7,000	“	1,500
San Juan Bautista.....	24 June.....1799	14	1,450	80	9,000	“	1,200	“	9,000	“	3,500
Santa Cruz.....	28 August....1791	17	600	50	8,000	“	800	“	10,000	“	2,500
Santa Clara.....	18 January....1777	11	1,800	300	13,000	1,500	1,200	250	15,000	3,000	6,000
San José.....	18 June.....1797	7	2,300	400	24,000	8,000	1,100	200	19,000	7,000	10,000
Dolores de S. Francisco.	9 October....1776	18	500	50	5,000	60	1,600	50	4,000	200	2,500
San Rafael.....	18 December..1817	8	1,250	20	3,000	“	500	“	4,500	“	1,500
San Francisco Solano...	25 August....1823	13	1,300	70	8,000	“	700	“	4,000	“	3,000
21 Missions on a line of.....		262 lega.	30,650	4,450	424,000	28,220	62,500	3,800	321,500	31,600	122,500

See Errata

No. LXVIII.

Statement showing respectively the names of all the Indian pueblos in New Mexico, with their localities, populations, wealth, etc., and the time when their land claims were confirmed by Congress, and when surveyed, and the areas thereof.

[From Executive Doc. No. 1, U. S. Senate, 2d Session 37th Congress, (Dec. 1861); President's Message, etc., Vol. 1, pp. 581, 582; Report of Sec. of Interior.]

No.	Name of Pueblo.	Designation in this office.	Locality—County.	Population—census of 1860.	Personal estate owned in Pueblo.	Claim when confirmed.	Claim when surveyed.	Area of Claim.	Remarks.
1	Jemez.....	A.....	Santa Ana.....	650	\$159,652	Dec. 23, 1858,	1859,	17,510.45	On Jemez River.
2	Acoma.....	B.....	Valencia.....	523	42,752	do	August.....	.....	On a rock 500 feet high, 15 miles south-west of Laguna; nearest water, 1 mile.
3	San Juan.....	C.....	Rio Arriba.....	341	14,850	do	July.....	17,544.77	On Rio Grande.
4	Picuris.....	D.....	Taos.....	360	8,385	do	July.....	17,460.69	On Rio Picuris.
5	San Felipe.....	E.....	Santa Ana.....	360	27,200	do	Nov. & Dec.	34,766.86	On Rio Grande.
6	Pecos.....	F.....	San Miguel.....	.....	.....	do	July & Aug.	18,763.33	Pueblo deserted; remnant of people now living at Zuni and Jemez.
7	Cochiti.....	G.....	Santa Ana.....	172	114,538	do	Aug. & Sept.	24,256.50	On Rio Grande.
8	Santo Domingo.....	H.....	do.....	261	18,580	do	November.....	74,743.11	On Rio Grande.
9	Taos.....	I.....	Taos.....	363	.....	do	July.....	17,360.55	Value of personal property included with that of Picuris.
10	Santa Clara.....	K.....	Rio Arriba.....	179	.....	do	July.....	17,368.52	Value of personal property included with that of San Juan.
11	Tesuque.....	L.....	Santa Fé.....	97	2,500	do	June.....	17,471.12	On Tesuque Creek, 6 miles north of Santa Fé.
12	San Ildefonso.....	M.....	do.....	154	2,610	do	June & July.	17,292.64	On Rio Grande.
13	Pojoaque.....	N.....	do.....	37	820	do	June.....	13,520.38	On Pojoaque Creek, 15 miles north of Santa Fé.
14	Zia.....	O.....	Santa Ana.....	117	2,035	do	August.....	17,514.63	Near the Pueblo of Jemez.
15	Sandia.....	P.....	Bernalillo.....	217	30,956	do	November.....	24,187.29	On Rio Grande.
16	Siletá.....	Q.....	do.....	440	7,080	do	October.....	110,080.31	On Rio Grande.
17	Nambé.....	R.....	Santa Fé.....	103	5,510	do	June.....	13,586.33	On Nambé Creek, 3 miles east of Pojoaque.
18	Laguna.....	S.....	Valencia.....	927	44,972	June 21, 1860	.....	.....	West of Albuquerque 45 miles, on San José River.
19	Zuni.....	T.....	do.....	1,300	13,106	.....	.....	.....	On Zuni River; no claim filed.
20	Santa Ana.....	.....	Santa Ana.....	316	15,665	.....	.....	.....	Lands on Rio Grande; pueblo 5 miles west; no claim filed.

No. LXIX.

A.D. 1836.

EXTRACTS RESPECTING PREFECTS, SUB-PREFECTS, AYUNTAMIENTOS, ALCALDES, AND JUSTICES OF THE PEACE, FROM THE SIXTH CONSTITUTIONAL LAW OF MEXICO. ADOPTED DECEMBER 29TH, 1836.

[Bases y Leyes Constitucionales de la Republica Mexicana, decretados por el Congreso general de la nacion en el año de 1836. Mexico: Imprenta del aguilá, José Jimeno, 1837.]

ART. 1. The Republic shall be divided into Departments, in conformity with the eighth organic (constitutional) base. The Departments shall be divided into Districts, and the Districts into Partidos.

* * * * *

ART. 16. In each chief town (capital, cabecera) of a District there shall be a Prefect, nominated by the Governor and confirmed by the General Government, who shall hold office for four years, and may be re-elected.

* * * * *

ART. 18. It belongs to the Prefects: 1st. To maintain order and public tranquility in their Districts, with entire subjection to the Governor. 2d. To execute and cause to be executed the orders of the respective government of the Department. 3d. To watch over the fulfillment of their duties by the Ayuntamientos, and in general over everything pertaining to police (al ramo de policia).

ART. 19. In each capital (cabecera) of a Partido there shall be a sub-Prefect, nominated by the Prefect and approved by the Governor, who shall hold his office four years, and may be re-elected.

* * * * *

ART. 31. The functions of Sub-Prefect in the Partido are the same as those of the Prefect in the Districts, subject to the Prefect, and through him to the Governor.

ART. 22. There shall be Ayuntamientos in the capitals of Departments; in those places (lugares) where there were such in 1808; in sea ports with a population of four thousand souls; and in those pueblos which have a population of eight thousand. In those which do not possess the above population (que no haya esa poblacion) there shall be Justices of the Peace (Jueces de Paz), also entrusted with police (policia), in such number as may be designated by the respective Departmental Juntas, in concert with the Governor.

ART. 23. The Ayuntamientos shall be elected by the people in districts (terminos), to be fixed by a law. The number of Alcaldes, Councilmen (Regidores) and Syndics shall be determined by the respective Departmental Juntas, in concert with the Governor, except that there cannot be more than six Alcaldes, twelve Regidores, or two Syndics in the same Ayuntamiento.

* * * * *

ART. 25. The Ayuntamientos shall be charged with the care of public health and accommodation. (literally, *convenience*, policia de salubridad y comodidad,) to watch over prisons, hospitals, and benevolent institutions which are not of private foundation, primary schools sustained by public funds, the construction and repair of bridges, highways, and roads, the raising and expenditure of public moneys from taxes, licenses, and the rents of municipal property, (la recaudacion é inversion de los propios y arbitrios,) to promote the advancement of agriculture, industry, and commerce, and to assist the Alcaldes in the preservation of peace and public order among their inhabitants (vecindario), under absolute subjection to the laws and regulations.

ART. 26. It shall be the duty of the Alcaldes to exercise in their pueblos the

office of conciliators, to decide oral litigations, to take the necessary proceedings in urgent lawsuits in which recourse cannot be had to Judges of the First Instance; and, in the same case, to take the preliminary proceedings in criminal cases; to conduct such proceedings as are entrusted to them by the respective tribunals or judges; and to watch over public tranquility and order, subject, in this respect, to the Sub-Prefects, and, through them, to the respective superior authorities.

ART. 27. Those Justices of the Peace who are also charged with police powers [see ante, Art. 22], shall be proposed by the Sub-Prefect, nominated by the Prefect, and approved by the Governor; hold office one year, and be re-eligible.

* * * * *

ART. 29. Such Justices shall exercise in their respective pueblos the same powers which are designated for Alcaldes and Ayuntamientos, subject, in respect to these powers, to the Sub-Prefects, and, through them, to the respective superior authorities. In those towns (lugares) where there are not a thousand inhabitants, the functions of Justices of the Peace shall be restricted to watching over the public peace, and to the administration of police, and to exercising judicial functions, both civil and criminal, in cases whose urgency does not permit a resort to the nearest respective authorities.

ART. 30. The official trusts (cargos) of Sub-Prefects, Alcaldes, Justices of the Peace charged with police administration, Regidores, and Syndics, pertain to the Pueblo,* and cannot be resigned without a legal excuse, approved by the Governor, or, in case of a re-election.

ART. 31. A secondary (supplemental) law shall detail everything relating to the exercise of the duties of Prefects, Sub-Prefects, Justices of the Peace, Alcaldes, Regidores, and Syndics, etc., etc.

No. LXX.

A.D. 1845.

ESPEDIENTE OF BENITO DIAZ, FOR THE POINT OF LOBOS.

[California Archives, Irregular Espediente, No. 255.]

ANGELES, }
May 24th, 1845. }

Let it be transmitted to the respective Judge, and await the Military Commandant, to say what he may deem convenient, so that, in view of all, when it shall be returned to the Government, the same may resolve what may be convenient to the party who petitions.

Pico.

Most Excellent Senor Governor :—Benito Diaz, a native of the Californias, and a resident of San Francisco, before your Excellency as may be most acceptable, and with due respect represents: That having some head of large cattle, and not having a place whereon to put them for the increase thereof, and as there is a vacant place in the jurisdiction of San Francisco, known by the name of Punta de Lobos, bounded on the north by the sea running toward the port of San Francisco, on the south by the high land lying back of the Mission of San Francisco, known by the name of the Serro de la Laguna Honda, on the east by the high hill, and on the west by the Point of Lobos, which may be comprehended, a little more or less, two square leagues (sitios de ganado mayor), adverting that the ruins of the Presidio

* NOTE.—“ Los cargos de Sub-Prefectos, Alcaldes, Jueces de Paz encargados de policia, Regidores y Sindicos son *concejiles*.” CONCEJIL, adj. Lo perteneciente al concejo, ó lo que es comun á los vecinos de un pueblo. SALVA Dic. Esp. in verbo. See Argument, § 13.

of San ranci sco and castle (fort) which lie within the place, are not included in this petition, unless the Government should wish to grant me said ruins, obligating myself, if it be effected, to build a house at the port of San Francisco, for the Military Commandant, to be twenty-five varas long and six wide. Wherefore, I request your Excellency to take into consideration my petition and grant me the land I ask, which I hope, from the well-known goodness of your Excellency, by which I will receive a favor, swearing that which is necessary, etc.

BENITO DIAZ.

YERBA BUENA, April 3d, 1845.

In view of the preceding Decree relating to information of the land which the petitioner asks, I will say that it is vacant, and that said petitioner possesses the necessary requisites, according to the law in the matter; but as to the place occupied by the military point, I cannot give information, because I know nothing of its commons (ejidos).

PUEBLO OF SAN FRANCISCO, August 16th, 1845.

J^e. DE LA C. SANCHEZ.

OFFICE OF MILITARY COMMANDANT OF SAN FRANCISCO, }
October 18th, 1845. }

In conformity with the preceding superior Decree, issued by the Most Excellent Señor, Governor *ad interim* of this Department, on the 24th of May of the present year, I have to say, that the land which the interested party asks, being vacant, I believe can be granted to him without including in the concession the two military points of the Presidio and castle (fort) which are comprehended in his petition.

FRAN^{co}. SANCHEZ.

No. LXXI.

A.D. 1844. APRIL.

THE INHABITANTS OF THE MISSION OF (DOLORES OF) SAN FRANCISCO COMPLAIN THAT THEIR SETTLEMENT HAS NEVER BEEN RECOGNIZED AS A PUEBLO, AND ASK THE GOVERNOR TO EXTINGUISH THE NAME OF MISSION AND DECLARE IT A PUEBLO FOR THE FUTURE. THE GOVERNOR DECLINES TO ACT.

[California Archives ; Unbound Documents.]

[TRANSLATION.]

Let the Secretary of State report, first giving the matter due consideration.

MICHELTA.

MOST EXCELLENT SIR : The undersigned, all residents (vecinos) of the jurisdiction of San Francisco de Asis, and established in the ex-Mission of this name, before your Excellency, respectfully and in due form, represent, that all of us being desirous to do all that we can for the increase and advancement of this settlement (poblacion); also, to promote the branches of industry, agriculture, and commerce, as far as it is in our power. Up to the present time, in spite of the data which proved the contrary, this place is still hitherto commonly recognized as a Mission (se reconoce aun y corre por Mision), and notwithstanding the data to which we refer, which show that it ought to be held and recognized as a PUEBLO, such as the Bando issued by his Excellency the Governor D. Juan

B. Alborado, on the 27th of February, 1839, in which this establishment was named as a "cabecera de partido," (seat of the partido government) that the one issued by your Excellency on the 25th April, 1843, in which this was excepted in the order to return the Missions to the Fathers; and lastly, according to that of the 28th of September, of the same year, issued also by your Excellency, the 2d article of which required 1st and 2d Alcaldes to be appointed for the place, among the others which your Excellency thought proper to distinguish with this honorable designation. Wherefore, in consideration of said data, for the extinction of such title of Mission, as well as that the same be recognized in future as a PUEBLO, and in order to avoid controversies, that the office of mayordomo which exists, although with a small number of Indians of both sexes in COMMUNITY (en comunidad); also, that by the authorities a proper impulse may be given, and a due observance of the decrees and regulations of police (policia) and good government; and, finally, in order that the public may be undeceived in relation to the title that it now has, and that the difficulties and obstacles that have embarrassed the settlement and prosperity of the said settlement (poblacion), may in the future be avoided. Wherefore, we apply to the ample powers of you Excellency, in order that in the use of the same, and in consideration of what has been set forth, you may be pleased to declare in due form the same to be a PUEBLO, and in consequence of its being such, by your superior approbation, permit us to ratify the same, which act will be duly solemnized in accordance with our authorities, making due acknowledgments to your Excellency for this favor. Wherefore, we earnestly pray you to look propitiously upon our petition (solicitud) and to admit this on common paper, there being no sealed paper in this place.

S. FRANCISCO DE ASIS, April 8, 1844.

FRANCISCO DE HARO, T. DE LA C. SANCHEZ, FRAN'CO GUERRERO, FRAN'CO SANCHEZ, F. DE JESUS NOE, MANUEL SANCHEZ, CAND'LLO VALENCIA, RAMON DE HARO, BISENTE MIRAMONTES, JOSE JESUS, FRAN'CO M. HARO, YSDRO T. SANCHEZ, FELIPE SOTO, DOMINGO FELIS, JOSE BERNAL—[something obscure here.]

NOTE.—This is in the handwriting of Francisco Arce, the then Secretary of State, but not signed by him.

The preceding paper, subscribed by some citizens (algunos vecinos) of San Francisco: I understand that it is not of such urgency as to require you to determine the matter until you have the condition in which the Mission is, which is indebted to some merchants, and these have asked that the same be satisfied with some of the property of the Mission. Therefore, your Excellency can determine what is proper as soon as you make the visit that you have resolved upon.

MONTEREY, 29th April, 1844.

MONTEREY, April 30, 1844.

In accordance with the opinion of the Secretary of State, and as the Governor has determined, let it be known to the gentlemen who subscribe, assuring them that the Government can never desire anything but their welfare, consistently with the general good (publico general), which it is his duty to promote.

MICHELTO^{RA}.

NO. LXXII.

A.D. 1847. MARCH.

GENERAL KEARNY, MILITARY GOVERNOR OF CALIFORNIA,
RECOGNIZES THE CORPORATE TOWN OF SAN FRANCISCO,
AND GRANTS IT BEACH AND WATER LOTS.

[Executive Document No. 17, House of Rep., 1st Sess. 31st Cong., page 146.]

I, Brigadier-General S. W. Kearny, Governor of California, by virtue of authority in me vested by the President of the United States of America, do hereby grant, convey, and release unto the town of San Francisco, the people, or corporate authorities thereof, all the right, title, and interest of the Government of the United States and of the Territory of California, in and to the beach and water-lots on the east front of said town of San Francisco, included between the points known as the "Rincon" and "Fort Montgomery," excepting such lots as may be selected for the use of the Government by the senior officers now there: Provided the said grant hereby ceded shall be divided into lots, and sold at public auction, to the highest bidder, after three months' notice previously given; the proceeds of said sale to be for the benefit of the town of San Francisco.

Given at Monterey, capital of California, this 10th day of March, 1847, in the 71st year of the independence of the United States.

S. W. KEARNY,
Brig.-Gen. and Governor of California.

No. LXXIII.

A.D. 1849. MARCH.

THE CITIZENS OF SAN FRANCISCO INSTITUTE A "DISTRICT
LEGISLATURE."

[Executive Document No. 17, House of Rep., 1st Session 31st Cong. (1849-50) pages 728, etc.]

No. I.

A public meeting of the citizens of the town and district of San Francisco was held in the public square on Monday afternoon, the 12th instant, in accordance with previous notice.

The meeting was organized by calling Mr. Norton to preside, and S. W. Perkins to act as secretary.

The chairman, after reading the call of the meeting, opened it more fully by briefly but succinctly stating its object; when Mr. Hyde, on being invited, after some preliminary remarks, submitted the following plan of organization or government for the district of San Francisco:

Whereas, we, the people of the district of San Francisco, perceiving the necessity of having some better defined and more permanent civil regulations for our general security than the vague, unlimited, and irresponsible authority that now exists, do, in general convention assembled, hereby establish and ordain:

ARTICLE I.

Section 1. That there shall be elected by ballot a Legislative Assembly for the district of San Francisco, consisting of fifteen members, citizens of the district, eight of whom shall constitute a quorum for the transaction of business; and whose power, duty, and office shall be to make such laws as they in their wisdom may deem essential to promote the happiness of the people, provided they shall not conflict with the Constitution of the United States, nor be repugnant to the common law.

Sec. 2. Every bill which shall have passed the Legislative Assembly shall, before it becomes a law, be signed by the speaker and the recording clerk.

Sec. 3. It shall keep a journal of its proceedings, and determine its own rules.

Sec. 4. The members of the Legislative Assembly shall enter upon the duties of their office on the first Monday of March.

ARTICLE II.

Section 1. That for the purpose of securing to the people a more efficient administration of law and justice, there shall be elected by ballot three justices of the peace, of equal though separate jurisdiction, who shall be empowered by their commission of office to hear and adjudicate all civil and criminal issues in this district, according to the common law, as recognized by the Constitution of the United States, under which we live.

Sec. 2. That there shall be an election held, and the same is hereby ordered, at the Public Institute, in the town of San Francisco, on Wednesday, the 21st of February, 1849, between the hours of eight A. M. and five P. M., for fifteen members of the Legislative Assembly for the district of San Francisco, and three justices of the peace, as hereinbefore prescribed.

Sec. 3. That the members of the said Legislative Assembly, and the three justices of the peace elected as hereinbefore prescribed, shall hold their office for the term of one year from the date of their commissions, unless sooner superseded by the competent authorities from the United States Government, or by the action of a provisional government now invoked by the people of this Territory, or by the action of the people of this district.

Sec. 4. Members of the legislature and justices of the peace shall, before they enter upon the duties of their respective offices, take and subscribe the following oath:

I do solemnly swear that I will support the Constitution of the United States and government of this district, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability.

Mr. Harris moved the adoption of the plan entire, which was seconded; when Mr. Buckalew moved to supersede the plan of government presented by submitting the subject to a committee to be appointed by the meeting, and whose duty it should be to report to an adjourned meeting. Thereupon an animated discussion ensued. Mr. Buckalew's motion having been seconded, was lost by vote; when the question recurred on the original motion of Mr. Harris, which was carried almost unanimously.

On motion of Mr. Hyde, it was

Resolved, That the judges of the election to be held on the 24th instant shall meet at the Public Institute, in the town of San Francisco, on the 22d instant, at 10 o'clock A. M., to present to the justices of the peace their commissions, and administer to them their oath of office.

On motion of Mr. Per Lee, it was determined that every male resident of the age of twenty-one years or upwards shall be entitled to vote at the said election.

On motion of Mr. Roach, it was

Resolved, That the persons who were elected on the 27th of December last to

serve as a town council for the year 1849, and those who were elected for the same purpose on the 15th of January, 1849, be, and are hereby, requested to tender their resignations to a committee selected by this meeting to receive the same.

Messrs. Ellis, Swasey, Long, Buckalew, and Hyde were elected such committee.

On motion, it was

Resolved, That these proceedings be published in the "Alta California."

On motion, the meeting then adjourned.

T. W. PERKINS,
Secretary.

MYRON NORTON,
President.

No. II.

SAN FRANCISCO, March 23, 1849.

I do hereby certify, that at an election held for justices of the peace and for members of the district legislature, on the 21st day of February, 1849, Myron Norton, Heron R. Per Lee, and William M. Stewart, were elected justices of the peace; Stephen A. Wright, Alfred J. Ellis, Henry A. Harrison, George C. Hubbard, George Hyde, Isaac Montgomery, William M. Smith, Andrew J. Grayson, James Creighton, Robert A. Parker, Thomas J. Roach, William F. Swasey, Talbot H. Green, Francis J. Lippitt, and George Hawk Lemon were elected to the district legislature.

C. V. W. GILLESPIE,

One of the Judges, and Inspector of Election.

No. III.

I hereby certify that I administered the oath of office to the members of the legislature of the district of San Francisco, on the 5th of March, 1849.

H. R. PER LEE,
Justice of the Peace.

SAN FRANCISCO, March 20, 1849.

No. IV.

MONDAY EVENING, March 5, 1849.

The Legislative Assembly of the district of San Francisco met the first time at the Public Institute. Present: Messrs. Creighton, Ellis, Grayson, Green, Harrison, Hubbard, Hyde, Lemon, Lippitt, Montgomery, Parker, Roach, Smith, Swasey, and Wright.

The oath of office was administered to the aforesaid members elect by his Honor Judge H. R. Per Lee.

Mr. Hyde was then appointed chairman *pro tempore*.

The members then proceeded to elect, by ballot, their officers, Messrs. Roach and Smith having been appointed tellers, who, after counting the votes, declared Francis J. Lippitt duly elected as speaker of the house, and J. Howard Ackerman clerk. Accordingly, Mr. Lippitt took the chair.

On motion, a committee of three were appointed to draw up rules of proceeding, to report at a special meeting to be held on Tuesday evening, at 7 o'clock. Messrs. Harrison, Hyde, and Roach, committee.

Mr. J. Cade was appointed sergeant-at-arms, and Mr. E. Gilbert printer for the house.

On motion, a special committee of three were appointed to act in connection with the judges of the district, to report a code of laws as soon as practicable.

On motion, Mr. Lippitt was added to the committee. Messrs. Hyde, Harrison, and Creighton, committee.

The following resolution was presented by Mr. Hyde, which, after some discussion, was carried unanimously :

Resolved, That Mr. Frank Ward be appointed the treasurer of the district of San Francisco, to act temporarily until properly superseded by law, and who shall be empowered to receive all bonds, mortgages, notes, and money or moneys now in the hands of any officers existing under the late authority, and report the amount to this house.

Moved by Mr. Smith, and seconded, that a suitable place be provided in which the magistrates elect may hold a court.

On motion, a committee of three were appointed to confer with the judges on the subject. Messrs. Parker, Wright, and Ellis, committee.

On motion, the meeting adjourned until Friday evening, at 7 o'clock.

FRANCIS J. LIPPITT,
Speaker.

True copy from the minutes :

J. HOWARD ACKERMAN, Clerk.

No. LXXIV.

A.D. 1849. JUNE 4.

GENERAL RILEY, MILITARY GOVERNOR OF CALIFORNIA,
DENOUNCES THE "LEGISLATIVE ASSEMBLY OF SAN
FRANCISCO."

[Executive Document No. 17, House of Rep., 1st Session, 31st Congress, page 773.]

PROCLAMATION.

To the People of the District of San Francisco.

Whereas, proof has been laid before me that a body of men styling themselves "the Legislative Assembly of the District of San Francisco," have usurped powers which are vested only in the Congress of the United States, by making laws, creating and filling offices, imposing and collecting taxes, without the authority of law, and in violation of the Constitution of the United States, and of the late treaty with Mexico : Now, therefore, all persons are warned not to countenance said illegal and unauthorized body, either by paying taxes or by supporting or abetting their officers.

And, whereas, due proof has been received that a person assuming the title of sheriff, under the authority of one claiming to be a justice of the peace in the town of San Francisco, did, on the 31st of May last, with an armed party, violently enter the office of the 1st Alcalde of the District of San Francisco, and there forcibly take and carry away the public records of said district from the legal custody and keeping of said 1st Alcalde : Now, therefore, all good citizens are called upon to assist in restoring said records to their lawful keeper, and in sustaining the legally-constituted authorities of the land.

The office of justice of the peace in California, even where regularly constituted and legally filled, is subordinate to that of Alcalde ; and for one holding

such office to assume the control of, and authority over, a superior tribunal, argues an utter ignorance of the laws, or a willful desire to violate them, and to disturb the public tranquility. It is believed, however, that such persons have been led into the commission of this rash act through the impulse of the moment, rather than any willful and settled design to transgress the law; and it is hoped that on due reflection they will be convinced of their error, and unite with all good citizens in repairing the violence they have done to the laws. It can hardly be possible that intelligent and thinking men should be so blinded by passion, and so unmindful of their own interests and the security of their property, after the salutary and disinterested advice and warnings which have been given them by the President of the United States, by the Secretaries of State and of War, and by men of high integrity and disinterested motives, as to countenance and support any illegally constituted body in their open violation of the laws, and assumption of authority which in no possible event could ever belong to them.

The office of alcalde is one established by law, and all officers of the United States have been ordered by the President to recognize and support the legal authority of the person holding such office; and whatever feelings of prejudice or personal dislike may exist against the individual holding such office, the office itself should be sacred. For any incompetency or mal-administration, the law affords abundant means of remedy and punishment—means which the Executive will always be found ready and willing to employ, to the full extent of the powers in him vested.

Given at Monterey, California, this 4th day of June, in the year of our Lord 1849.

B. RILEY,
Brevet Brig.-Gen. U. S. A., and Governor of California.

Official:

H. W. HALLECK,
Brevet Captain, and Secretary of State.

No. LXXV.

A.D. 1849. JUNE 5TH.

GOVERNOR RILEY, UNITED STATES MILITARY GOVERNOR
OF CALIFORNIA, RESTORES THE AYUNTAMIENTO OF THE
PUEBLO OF SAN FRANCISCO.

[Executive Document No. 18, House of Rep. 1st Sess. 31st Congress, page 774.]

STATE DEPARTMENT OF THE TERRITORY OF CALIFORNIA, }
Monterey, June 5, 1849. }

GENTLEMEN: I am directed to send you the enclosed appointment as judges and inspectors, to give notice and hold a special election for filling certain vacancies in the district and town of San Francisco.

left The growing importance of your town, and the immense amount of business transacted there, render it important for the security of property and of the rights of citizens, that it should not be kept without regular and legally-constituted officers for the administration of justice, and the management of the affairs of your Municipality. It is therefore hoped that an election will be held, with no more delay than may be necessary in order to have the notice generally known in the town and district.

It is the opinion of all eminent legal authorities which have been consulted, that all laws of California which existed at the time this country was annexed to the United States, and which are not inconsistent with the Constitution, laws, and treaties of the United States, are still in force, and must continue in force till changed by competent authority. The powers and duties of all civil officers in California, except so far as they may have been modified by the act of annexation, are therefore the same as they were previous to the conquest of the country. As the laws touching the subject of Town Councils (*Ayuntamientos*) may not be of convenient reference, I am directed to subjoin a few of their provisions. The number of members for each town cannot exceed 6 *alcaldes*, 12 councilmen (*regidores*), 1 collector, and 2 treasurers, (or 2 *syndicos*;) to change, however, from their number previously established, requires the assent of the Governor. For the town of San Francisco, such assent is hereby given for any number not exceeding the provisions of the law.

The council is charged with the police and good order of the town, the construction of roads, the laying out, lighting, and paving of streets, the construction and repair of bridges, the removal of nuisances, the establishment of public burying grounds, the building of jails, the support of town paupers, the granting of town licenses, the examination of weights and measures, the levying of municipal taxes, and the management and disposition of all municipal property. The council appoints its own secretary, who, as well as the members, before entering upon their respective duties, must take the usual oath of office. Each member of the Council is bound to assist the *alcaldes* in executing the laws, and is individually liable for any mal-administration of the municipal funds, provided he voted for such mal-administration. A full account of the receipts and expenditures of the council must be kept, and at the end of each year submitted to the prefect or sub-prefect of the district, who, after his examination, will transmit them to the Governor, for file in the government archives. In case of the death or removal of any member of the council, the vacancy may be supplied by a special election; but if such vacancy occur within three months of the close of the year, it will not be filled till the regular annual election. In case of the suspension of the members of the council, those of the preceding year may be reinstated, with their full powers.

As questions are frequently asked respecting town lots, I am directed to say that the most recent law on the subject, that can be found in the government archives, gives to the council (*ayuntamiento*) power to sell out in building lots (*solares*) the municipal lands (*propios*) which have been regularly granted to the town; but the common lands (*egidos*) so granted cannot be sold without special authority. All public lands without the limits of the town form a part of the public domain, and can be disposed of only by authority of Congress.

The laws require that the results of elections be transmitted to the Governor for his approval and placed on file in this office. This is not always a useless form, for in some cases it is necessary to accompany legal papers with certificates of the Governor or Secretary of State that certain officers have been duly elected and qualified—which certificates cannot be given unless the requisite evidence of election is deposited in the government archives.

By order of Governor Riley :

H. W. HALLECK,
Brevet Captain, and Secretary of State.

Messrs. R. A. Parker, Frederick Billings, John Servine, W. S. Clark, Stephen Harris, B. R. Buckalew, William H. Tillinghurst, A. J. Grayson, J. P. Haven, San Francisco.

No. LXXVI.

Comparative Table of the Population of the Pueblo of San Francisco and of the Mission of Dolores.

PRESIDIAL PUEBLO OF SAN FRANCISCO. INDIAN NEOPHITES AT DOLORES.

A. D.	Men.	Wom.	Boys.	Girls.	Total.	Men.	Wom.	Boys.	Girls.	Total.
* 1794	46	33	38	26	143	* 355	369	110	79	913
† 1800	79	49	46	49	223	† 315	260	32	37	644
‡ 1815	125	92	74	82	373	‡ 542	391	90	92	1115
§ 1830	59	46	13	13	131	§ 140	53	13	13	219
¶ 1842	...	...	...	...	160	** ...	...	...	...	50
|| 1842	...	...	...	to	100	†† ...	...	...	to	37

SOURCES OF INFORMATION.

* California Archives, State Papers, Vol. II Missions, page 35.

† " " " III " " 278.

‡ " " " IV " " 372.

§ " " " V " " 297.

¶ Census of San Francisco, A. D. 1842, ADDENDA, No. LV, page 78.

|| 1 DeMofras, page 318.

** 1 DeMofras, page 320. ADDENDA, No. LXVII, page 97.

†† ADDENDA, No. LV, page 78. There were only 37 Neophytes.

No. LXXVII.

EARLY OFFICERS OF SAN FRANCISCO.

It will be convenient to have in a complete form a list of the early officers of San Francisco, with the dates of their terms of service. The following list is one prepared by James W. Bingham, Esq. the present City Clerk.

On the third of November, 1834, the Departmental Legislature of California passed an act authorizing the election of an Ayuntamiento in San Francisco; in pursuance of which, Francisco De Haro was elected First Alcalde.

The second election took place November 27th, 1835, when José Joaquin Estudillo was elected First Alcalde. The succeeding Alcaldes under Mexican authority (but who, in many instances, were Justices of the Peace exercising the functions of Alcaldes) were:

Francisco Guerrero.....	1836.
Y. Martinez.....	1837.
Francisco De Haro.....	1838.
* Francisco De Haro.....	1839.
Francisco Guerrero.....	1840.
Francisco Guerrero.....	1841.
Francisco Guerrero.....	} 1842.
Jesus Noe.....	
Francisco Sanches.....	1843.
Guillermo Hinkley.....	1844.
Juan N. Padilla.....	} 1845.
Jesus De la Cruz Sanchez.....	
José De Jesus Noe.....	1846.

On the eighth day of July, 1846, San Francisco was formally taken possession of by Captain John B. Montgomery, commanding the United States sloop of war "Portsmouth," by whom Lieut. Washington A. Bartlett was appointed Chief Magistrate, or Alcalde, which appointment was subsequently ratified by a formal election by citizens. Mr. Bartlett held the office, with a brief interval, until February, 1847. His successors were:

Edwin Bryant.....	February 22d to June, 1847.
George Hyde.....	June, 1847, to April, 1848.
J. Townsend.....	April to September, 1848.
T. M. Leavenworth.....	September, 1848, to August, 1849.
John W. Geary.....	August, 1840, to May, 1850,

The two Ayuntamientos immediately preceding the incorporation of the city were composed as follows:

*NOTE.—The first official survey of the vicinity of the landing, or water front, appears to have been made in 1836, by Capt. John Voigt, by direction of the then Alcalde, and included that portion of the present city lying between Montgomery, Pacific, Dupont and Sacramento streets; Montgomery Street being the then water front.

Voigt

AUGUST 6TH, 1849, TO JANUARY 10th, 1850.

Horace Hawes, Prefect.
 Joseph R. Curtis, } Sub-Prefects.
 Francisco Guerrero, }
 John W. Geary, First Alcalde.
 Frank Turk, Second Alcalde.

COUNCILMEN.

Thos. B. Winston,
 Samuel Brannan,
 Alfred J. Ellis,
 Wm. H. Davis,

Wm. M. Stewart,
 Henry A. Harrison,
 Bezer Simmons,
 Gabriel B. Post.

Rodman M. Price,
 Stephen R. Harris,
 John Townsend,
 Talbot H. Green.

Frank Turk }
 Henry L. Dodge, } Secretaries.

JANUARY 11TH TO MAY 8TH, 1850.

John W. Geary, First Alcalde.
 Frank Turk, Second Alcalde.

COUNCILMEN.

Samuel Brannan,
 Alfred J. Ellis,
 Hugh C. Murray,
 Jas. S. Graham,

Wm. H. Davis,
 Wm. M. Stewart,
 F. C. Gray,
 Jas. Hagan,

Mathew Crooks,
 A. M. Van Nostrand,
 Frank Tilford,
 Talbot H. Green.
 Henry L. Dodge, Secretary.

Jonathan Cade, Sergeant-at-Arms.

No. LXXVIII.

SCHEDULE OF GRANTS BY MUNICIPAL AUTHORITIES OF SAN FRANCISCO, BETWEEN THE YEAR 1835 AND JULY 7TH, 1846.

Date of Grant.	By whom signed.	Grantee.	Quantity.	Description, etc.
1836.				
June 2	Estudillo, Alcalde..	W. A. Richardson..	100	No. In Yerba Buena
July 8	“ “ ..	J. P. Leese.....	100	No. 56 “
1837.				
Mar. 14	Martinez, Alcalde..	J. Fuller.....	100	No. 24 “
Nov. 8	“ “ ..	F. Sanchez.....	100	No. 76 “
Dec. 7	“ “ ..	J. Feil.....	200 x 50	No. ? “
1838.				
Mar. 30	De Haro, Alcalde..	F. Casares.....	100	No. 49 “
Dec. 1	“ “ ..	W. Gulnac.....	200 x 50	No. 49 “
1839.				
Jan. 18	“ “ ..	S. Vallejo.....		No. ? “
April 18	“ “ ..	J. Pena.....		No. ? “
Dec. 1	Guerrero, J. de P... ..	W. Hinckley	100 x 50	No. 19 “
9	“ “ ..	J. C. Davis.....	100	No. 18 “
1840.				
Jan. 15	“ “ ..	J. P. Leese.....	100	No. 7 “
15	“ “ ..	J. A. Vallejo.....	50	No. 3 “
15	“ “ ..	J. B. Cooper.....	100	No. 50 “
15	“ “ ..	J. Vioget.....	100 x 50	No. 23 “
16	“ “ ..	J. Vioget....	100 x 50	Back Leese house “
Aug. 4	“ “ ..	G. Escolante....		In Yerba Buena
Nov. 18	“ “ ..	L. Galindo.....	50	At Dolores
18	“ “ ..	C. Valencia.....	50	“
18	“ “ ..	F. Gomez.....	50	“
1842.				
Mar. 8	Sanchez, J. de P... ..	W. Hinckley.....	50	“
8	“ “ ..	G. Allen.....	50	No. 21 Yerba Buena
May 1	“ “ ..	P. Sherback.....	50	No. 20 “
Oct. 12	“ “ ..	C. Moreno.....	50	M. Dolores
1843.				
April	“ “ ..	V. Miramontes....	50	No. 55 In Yerba Buena
April	“ “ ..	F. DeHaro.....	50	No. 31 “
14	“ “ ..	J. Noe.....	50	No. 51 “
15	“ “ ..	D. Felis.....	50	No. 32 “
15	“ “ ..	J. Bautista.....	50	No. 33 “
July 3	“ “ ..	W. A. Leisdesdorff.	100 x 50	Nos. 49, 30 “
Aug. 15	“ “ ..	B. Valencia.....	50	No. 16 “
20	“ “ ..	D. Felis.....	200	In Dolores
Oct. 15	“ “ ..	G. Escolante.....	50	No. 15 In Yerba Buena
Nov. 15	“ “ ..	F. Guerrero.....	50	No. 4 “
Dec. 15	“ “ ..	T. Malla.....	50	No. 154 “
Dec. 15	Sanchez, J. de P... ..	H. Bee.....	50	No. In Yerba Buena
15	“ “ ..	J. Castaneda.....	50	No. 53 “
15	“ “ ..	T. Maya.....	50	No. 54 “
27	“ “ ..	J. Martin.....	50	No. 35 “
1844.				
Mar. 10	Hinckley, Alcalde..	C. W. Fluge.....	100	No. 26 “
April 1	“ “ ..	J. Briones.....	50	“
July 12	“ “ ..	R. Ridley.....	50	No. 139 “

Date of Grant.	By whom signed.	Grantee.	Quantity.	Description, etc.
1844				
July 12	Hinckley, Alcalde..	J. R. Berry.....	50	No. 138 Yerba Buena
19	" "	B. Dias & J. P. Mesa	50	No. 17 "
Nov. 13	" "	C. Glien.....	50	No. 7 "
Dec. 1	" "	E. T. Bale.....	50	No. 136 "
15	" "	J. Rose.....	50	No. 83 "
15	" "	A. A. Andrews...	50	No. 104 "
17	" "	G. Reynolds.....	50	No. 84 "
17	" "	E. S. Bernal.....	50	No. 37 "
21	" "	J. P. Dedmund....	50	No. 58 "
24	" "	W. Johnson.....	50	No. 134 "
24	" "	W. Richardson....	50	No. 59 "
1845.				
April 9	Padilla, Alcalde...	R. Haro.....	50	No. 174 "
18	" "	T. Smith.....	50	No. 66 "
May 3	" "	J. Pena.....	50	No. 161 "
10	" "	E. Sota.....	50	No. 44 "
10	" "	L. Pena.....	50	No. 86 "
Aug. 10	C. Sanchez, Alcalde.	F. Sanchez.....	50	No. 25 "
22	" "	F. Le Page.....	50	No. "
Oct. 20	" "	W. Fisher.....	50	No. 61 "
Nov. 25	" "	P. Estrada.....	50	No. "
30	" "	M. Pedorena.....	50	No. 74 "
Dec. 4	" "	S. Smith.....	100 x 50	No. "
7	" "	G. Briones.....	50	No. 5 "
1846.				
April 2	" "	R. T. Ridley.....	100	In San Francisco
22	Noe, J. de P.....	W. Leidesdorff....	50	No. In Yerba Buena
22	Sanchez, J. de P...	J. A. Forbes.....	50	Nos. 183, 184 "
May 14	Noe, J. de P.....	H. Fitch.....	50	No. 22 "
15	" "	F. Haen & G. Doplmg	50	No. 189 "
20	" "	W. Hinckley.....	50	No. 27 "
22	" "	E. Grimes.....	50	No. 140 "
22	" "	M. Fernandez.....	50	No. 195 "
25	" "	Hensley.....	50	No. 191 "
28	" "	Reading.....	50	No. 8 "
29	" "	W. Hinckley.....	100 x 50	No. "
30	" "	L. Galindo.....	50	No. 190 "
June 3	" "	S. Smith.....	50	No. 52 "
6	" "	J. M. S. Maria.....	50	No. 6 "
18	" "	M. E. McIntosh....		No. 196 "
19	" "	D. Garcia.....		No. 273 "
19	" "	F. Hoen.....		No. 62 "
19	" "	J. Allig.....		No. 63 "
20	" "	J. Yuvain.....		No. 60 "

No. LXXIX.

COLONIAL GOVERNORS OF CALIFORNIA.

From the First Spanish Governor on Record to 1849.

1. SPANISH GOVERNORS.—1767—1822.

1. Gasper de Portala	from	———	1767	to	———	1771
2. Felipe Barri.....	from	———	1771	to	Dec.	1774
3. Felipe de Neve.....	from	Dec.	1774	to	Sept.	1782
4. Pedro Fajes	from	Sept.	1782	to	Sept.	1790
5. José Antonio Romeu.....	from	Sept.	1790	to	April,	1792
6. José Joaquin de Arrillaga.....	from	April,	1792	to	May,	1794
7. Diego de Borica.....	from	May,	1794	to	———	1800
8. José Joaquin de Arrillaga.....	from	———	1800	to	———	1814
9. José Arguello.....	from	———	1814	to	———	1815
10. Pablo Vincente de Sola.....	from	———	1815	to	Nov.	1822

2. MEXICAN GOVERNORS.—1822—1846.

1. Pablo Vincente de Sola	from	Nov.	1822	to	———	1823
2. Luis Arguello.....	from	———	1823	to	June,	1825
3. José Maria de Echeandia.....	from	June,	1825	to	Jan'y,	1831
4. Manuel Victoria	from	Jan'y,	1831	to	Jan'y,	1832
5. Pio Pico	from	Jan'y,	1832	to	Jan'y,	1833
6. José Figueroa.....	from	Jan'y,	1833	to	Aug.	1835
7. José Castro.....	from	Aug.	1835	to	Jan'y,	1836
8. Nicolas Gutierrez.....	from	Jan'y,	1836	to	May,	1836
9. Mariano Chico.....	from	May,	1836	to	———	1836
10. Nicolas Gutierrez.....	from	———	1836	to	———	1836
11. Juan B. Alvarado.....	from	———	1836	to	Dec.	1842
12. Manuel Micheltoarena.....	from	Dec.	1842	to	Feb.	1845
13. Pio Pico.....	from	Feb.	1845	to	July,	1846

3. AMERICAN MILITARY GOVERNORS.—1846—1849.

1. COMMODORE JOHN D. SLOAT hoisted the American flag at Monterey, July 7th, 1846, and, by proclamation, took formal possession of California in the name of the United States Government.

2. COMMODORE ROBERT F. STOCKTON.—Proclamation dated at Los Angeles, August 17th, 1846.

3. COLONEL JOHN C. FREMONT.—Appointed by Commodore Stockton January, 1847.

4. GENERAL STEPHEN W. KEARNEY.—Proclamation dated at Monterey, March 1st, 1847.

5. COLONEL RICHARD B. MASON.—Proclamation dated at Monterey, May 31st, 1847.

6. GENERAL BENNET RILEY.—Became Military Governor April 13th, 1849.

The Treaty ceding California and New Mexico to the United States was dated at the City of Guadalupe Hidalgo, February 2d, 1848; exchanged at Queretaro, May 30th, 1848; ratified by the President, March 16th, 1848; and proclaimed by the President, July 4th, 1848. The State Constitution adopted November, 1849; went into effect December 15th, 1849.

No. LXXX.

TRANSLATION OF EXHIBIT X P L, TO DEPOSITION OF M. G. VALLEJO, IN THE CASE.

THE "ZAMORANO DOCUMENT," PURPORTING TO ESTABLISH THE BOUNDARIES OF THE PUEBLO OF SAN FRANCISCO, NOVEMBER 4TH, 1834.

Political Government of Upper California — General Comandancia of Upper California.

This government, satisfied of the zeal and activity which characterize you, as well as the patriotism which animates you, sees in your note of the 24th of October ultimo, a new proof of your desire for progress, and of your untiring efforts for the enlightenment of your country and of your fellow-citizens.

In consideration of this, it takes pleasure in making known to you that, with the consent of the Most Excellent Territorial Deputation, it has adopted entire the plan you have presented in your note referred to, with respect to the pueblo of San Francisco, declaring its boundary to be the same which you describe in said note; that is, commencing from the little cove (*calita*) to the east of the fort, following the line drawn by you to the beach, leaving to the north the *casamata* and fortress; thence following the shore of said beach to Point Lobos on its southern part; thence following a right line to the summit of "*El Divisidero*," continuing said line towards the east to "*La Punta del Rincon*," including the "*Canutales*" and "*El Gentil*;" said line will terminate in the Bay of the Mission of Dolores, the estuary (*estero*) of which will form a natural boundary between the municipal jurisdiction of that pueblo and the said Mission of Dolores.

This government, as proof of the confidence with which your services inspire it, has directed that you should be the person to have the honor of installing the first ayuntamiento in that pueblo of San Francisco, for which you have already done so much.

In consequence, you will proceed, in the time and manner prescribed by law, to the election of the municipal authorities, in order that they may be installed the first day of January of the coming year, 1835, designating for town houses the buildings which you deem most fit. God and Liberty.

JOSE FIGUEROA.

MONTEREY, November 4th, 1834.

DON MARIANO G. VALLEJO,

Military Comandante of San Francisco.

ZAMORANO.

The above-described line, commonly called the "Vallejo Line," was adopted by the United States Board of Land Commissioners for California as the southern boundary of the *Pueblo* of San Francisco, upon the testimony as it then stood in the case. It was called the Vallejo Line, because it was sustained principally by the testimony of General MARIANO G. VALLEJO, who testified that while he was Comandante of the Presidio of San Francisco he caused this line to be defined by order of the Governor, and that after the line was marked out by him it was confirmed by the above *oficio* of the Governor, which was produced in evidence, attested by ZAMORANO, the Secretary of State, and thence called the "Zamorano Document." This line may be sufficiently indicated for general purposes as being a straight line drawn from Rincon Point, in the Bay of San Francisco, to Point Lobos, on the Pacific; but, more accurately, as a right line drawn from Steamboat Point, on the south side of Rin-

con Point, to the Devisidero, the high hill almost due south of the Presidio, and just above the *ojo de agua* or spring at the head of the valley there, and thence running in a right line at an exceedingly obtuse angle to the south side of Point Lobos.

That this document is spurious, is well established and conceded by both the claimant and the United States. The statement of the Governor, in his message of February 16th, 1840, that "none of the *Pueblos* except Monterey had "had its common and landed property marked out," is alone decisive of the question. (See Addenda, L, page 70.) Also many of the other official documents introduced in evidence in the case, show conclusively that the lands of the *Pueblo* had never been assigned or marked out. Thus Guerrero, who had been Justice of the Peace of San Francisco, and was at the time Sub-Prefect, in petitioning for lands on May 13th, 1846, states distinctly that the *Pueblo* lands had not yet been designated: "dejando en salvo hasta los ejidos de la "poblacion de Yerba Buena *avun que no estan nombrados*," Addenda, LXVI. This declaration made not two months before the Anglo-American conquest, by an expert, who declares against his own interest that the *Pueblo* lands have never been assigned, and asks for a grant without prejudice to the *Pueblo*, seems to leave no room for further argument. Even the testimony of Flores, to the effect that subsequent to November, 1834, he repeatedly proposed a *Pueblo* line on the south, far enough to include four square leagues,—and which so far forth is sustained by genuine and authentic *espedientes*,—shows that at those times the Vallejo Line did not exist as the *proprietary* line of the *Pueblo*; while Flores's testimony that his proposed line was accepted, must be frankly conceded is not supported by any official document, and is to be regarded as the misrecollection of an impaired memory. But that the Vallejo Line existed and was established for some purpose, seems hardly to admit of a doubt. This same Francisco Guerrero, who was not called as a witness because he died at an early stage in the case, declared to J. K. Rose and F. P. Tracy, Esquires, who were called as witnesses to that fact, that he was present assisting Gen. Vallejo when the line was marked out; and, making reasonable allowances for inaccuracy of recollection, and some confusion or ignorance of localities on the part of the witnesses, Guerrero's account of the line established may be taken as identical with that of Gen. Vallejo. For what purpose, then, was the line established? Doubtless as a division line to keep the grazing grounds used by the cattle of the *Mission* of Dolores separate from those used by the *Pueblo* of San Francisco. In 1834 that *Mission* had an aggregate of 10,000 horses, mules, horned cattle, sheep, goats, and hogs. (See Addenda, No. LXVII, p. 97.) Although its main pastures were at San Pedro,—see § 115 of the argument,—yet for their convenience and necessities the Missionaries desired to appropriate all the available pasturage in the immediate vicinity of the *Mission*, of which there was considerable, as well as to secure the exclusive enjoyment of the stream of fresh water issuing from the mountains near that point. Such demands were by no means new or extraordinary on the part of the Missionary Priests. When the *Pueblo* of San José was founded, Father Junipero Serra insisted that the boundary of the *Pueblo* approached too nearly the *Mission* of Santa Clara. The Governor would not listen to his complaint, nor even record his protest, which he demanded as a right. But Father Junipero, with the perseverance and policy of his order, carried the matter to the Vice Roy, where his claim was supported by the Franciscan College of San Fernando, at Mexico, and it seems to have succeeded, for the boundary was changed. So one Mariano Castro received a grant of a place called La Brea,—or at least a permission to occupy it,—which the Priests of the *Mission* of San Juan Bautista objected to as being too near their *Mission*, and the result was, that although his grant or license came from the Vice Roy himself, Castro was ousted, and compelled to content himself with another place.

Assuming, then, that this division was made for the purpose of separating the flocks of the Mission from those of the *Pueblo*, it must be conceded to have been a fair one. While the Missionaries gained all they needed in the plateau about the Mission, and the broad lands of the Salinas and Visitacion at the south, the *Pueblo* was assigned the Valley of the Cañutales, the vales and hills between them and the Presidio; the broad northern slope of pasturage between Yerba Buena and the Presidio; the springs near the Presidio; and the basin of Mountain Lake, as well as the perpetual stream of Lobos Creek.

Yet, admitting this line was marked out for this purpose only, how can this be reconciled with the testimony of Gen. Vallejo, to the effect that it was made as a permanent proprietary boundary of the *Pueblo* lands? To answer this, it will be necessary to examine Gen. Vallejo's testimony carefully. He testifies, in effect, that he remembers marking out this line by order of the Governor; that he received an *oficio* confirming it; that just before the American conquest his papers became scattered; that he was applied to for this *oficio*, and instead of searching for it himself, permitted others to do so, who produced this Zamorano Document from his papers; and that he recognizes it as the original document which he received on that occasion. This leaves open an ample opportunity for the substitution of a spurious document instead of the original, and for the perpetration of a fraud upon Gen. Vallejo as well as upon the Court. Suppose the original had been found by those searching for it, and had proved to fix a merely temporary line, dividing the flocks of the *Mission* from those of the *Pueblo*. Starting with this fact, and also with the other historical facts: that on January 1st, 1835, Gen. Vallejo did actually institute an Ayuntamiento at San Francisco, and was at that time relieved of his civil functions, how easy for an accomplished and ingenious forger to substitute a spurious for the authentic document, giving it such an appearance of truth as to confuse the memory and deceive the judgment of Gen. Vallejo himself? This I conceive to be the true solution. Compare the "Zamorano Document," above cited, with ADDENDA Nos. XVI and XXI, the dates and contents respectively.

I embrace this occasion to protest in the most emphatic manner against a canon introduced into our Courts in California in the investigation of land cases, by which the value of parol testimony has not unfrequently been tested. The phrase "professional witnesses" is sufficiently suggestive, thoroughly descriptive, and amply warranted by the existence of a class of miscreants who have brought the appliances of subornation, perjury and forgery into frequent contact with the administration of justice,—and yet more frequently, I am persuaded, to defeat just titles than to sustain fraudulent ones. But it will probably be heard with astonishment, outside of California, that native Californians who held offices of trust at or near the close of the Hispano-Mexican dominion, have been classed as "professional witnesses," merely from the fact that they had been examined repeatedly in California land cases. In "Land Commission Exhibit M," in the Limantour cases, is a tabular list of cases in the Land Commission in which certain persons have given their testimony; and in the summary prefixed to it, it is stated that William A. Richardson has testified in 48 cases; Manuel Castro in 43, and Mariano G. Vallejo in 35. Richardson was for a long time captain of the port of San Francisco; had married into a Californian family of numerous ramifications; owned a large ranch at Saucelito; and, as a skipper, coasted for years around the Bay of San Francisco and its adjoining waters, and the whole coast from the Golden Gate to San Diego. Castro was a long time in office; was extensively related with the native *Californios*, and had travelled over the whole region from San Francisco to Los Angeles. Vallejo was one of the most prominent, intelligent, and best educated men in the country; had visited every part of California; was military *Comandante* of the Presidio of San Francisco for a long time, and still longer of the Frontier of the North; was for many years the military chief, civil magis-

trate, and highest judicial functionary of more than one-fourth of the Department. These persons, therefore, had larger opportunities of knowledge in relation to grants and occupation of lands in and about San Francisco than almost any or all other persons, and thus *volentes volentes* were necessary witnesses in a large number of cases; and yet it is gravely asserted, in effect, that when they had respectively testified a certain number of times in land cases, they became *ipso facto* professional witnesses, and unworthy of belief. I do not propose to assume the vindication of either or all these gentlemen, but I do not hesitate to pronounce the above asserted test of the credit of witnesses to be as absurd as it is unjust.

No. LXXXI.

A PETITION OF THE CITY OF SAN FRANCISCO FILED IN THE UNITED STATES LAND COMMISSION FOR CALIFORNIA, FOR THE CONFIRMATION TO IT OF FOUR LEAGUES OF PUEBLO LAND. FILED JULY 2d, 1852.

To the Honorable the Board of Commissioners to ascertain and settle Private Land Claims in the State of California :

The petition of the City of San Francisco, a municipal corporation of the said State of California respectfully shows :

That the said city claims a tract or parcel of land situate in the County of San Francisco and State aforesaid, and being so much of the peninsula wherein the said city is located as will contain an area equal to four leagues square, said parcel or tract being bounded on the north and east by the waters of the Bay of San Francisco, on the west by the Pacific Ocean, and on the south by a due east and west line, including the area aforesaid.

In pursuance of the laws, usages, and customs of the Government of Mexico, and an Act of the Departmental Legislature of California, of November 9th, 1833, and proceedings in pursuance thereof, the Pueblo of San Francisco was erected and constituted a municipal corporation, with a municipal government, and with all the rights, properties, and privileges of Pueblos under the then existing laws during the said year 1833, and there was then and there by the Supreme Government of Mexico in the manner by law prescribed, ceded, and granted to the said Pueblo for town land and for common land all and singular the premises herein first described. The said Pueblo continued and was the proprietor of all and singular the said premises (except so much thereof as has been granted by the authorities of said Pueblo in pursuance of law), and the said Pueblo continued its existence as such municipality and proprietor until after the accession of the Government of the United States, July 7th, 1846, and until by an Act of the Legislature of the State of California, entitled "An Act to Incorporate the City of San Francisco," the inhabitants and property of said Pueblo are incorporated into a city which city is now here exhibiting her claim, to the premises aforesaid. The said Act of the Legislature of the State of California is prayed to be taken and read as a part of this petition. The same act was modified and changed by an Act of the same Legislature passed A.D. 1851, which is also asked to be taken and read as a part of this petition.

On the seventh of July, 1846, the then Pueblo, now City of San Francisco, was a town of the population of about one thousand inhabitants; and on the third of March, A.D. 1851, the population thereof amounted to about thirty thousand persons; and that on said seventh of July and on said third of March the said Pueblo and city under and by virtue of the grant aforesaid, and under and by virtue of the laws, usages, and customs of the Government of Mexico and California, all and singular the premises aforesaid (except as aforesaid) were part and parcel of the lands and premises of said Pueblo and city.

There are several adverse claims to the one herein set forth.

One Don de Jesus Noé, claims one square league, part of said premises, as particularly appears in his petition therefor now before your Board, numbered 17 on the docket of claims. That Carman Sibirian de Bernal and José Cornelio Bernal claim one square league, part of said premises, which claim is more particularly exhibited in their petition therefor before your Board, numbered 30 on the docket of claims. That Jacob S. Leese and Salvador Vallejo claim two hundred varas square, part of said premises, which claim is particularly exhibited in their petition therefor before your Board, numbered 74 on the docket of claims.

That James R. Bolton claims three square leagues (with exceptions), part of said premises, which claim particularly appears in his petition before your honorable Board, and numbered 81 according to the docket of claims. That Josefa de Haro and others claim the "Potrero de San Francisco," being one-half square league part of said premises, the particulars whereof appear in their claim before your Board, numbering 101 in the docket of claims.

That John F. Schulthess and others claim thirty-seven fifty-vara lots, part of said premises, particularly described in his petition on file with your Board, and numbered 171 according to docket of claims. That the said John F. Schulthess also claims forty-seven other fifty-vara lots, part of said premises, particularly described in his petition before your Board and numbered 182 of claims.

That Josefa de Haro and others claim premises known as the "Laguna de la Merced," one league long and one-half league wide, and particularly described in their petition before your Board, numbering 102 of claims, and which is also part of premises herein first described.

That one Thomas O. Larkin claims a tract of land, parcel of said premises, and including a portion of the incorporated limits of the city of San Francisco to the west and running thence westerly along the waters of the Bay to the Pacific Ocean, including the site of the Presidio; the quantity or particular description of his claim this claimant is unable to state. That Charles V. Stuart and Isaac N. Thorn, claim a portion of said premises known as Ridley's Ranch under a grant to Jacob P. Leese, of one league and one-half situate contiguous to and north of the Sanchez Ranch, but a particular description thereof cannot be given by claimant.

The claimant represents to your Honorable Board that all and singular the foregoing adverse claims are insufficient and void. That all of them were made subsequent to the establishment of the Pueblo of San Francisco, and that the grants therefor were in derogation of the lawful claim and right of the said Pueblo.

That some of them were made after the authority of the Government of Mexico in the Department of California had been superseded by the authority of the Government of the United States, that such is the fact particularly in the case of the land claimed by James R. Bolton, as aforesaid, and in the case of the lands claimed

by Thomas O. Larkin, as aforesaid, and also in the case of the land claimed as aforesaid by John F. Schulthess and others, and by John F. Schulthess.

That all of said claims are based upon grants made without authority of law and in direct violation of the laws and regulations of the Government of Mexico in force in California.

The said City of San Francisco now insists that by the treaty of Guadalupe Hidalgo, the laws of Nations, and the laws, usage and custom of the Government of Mexico in force in California, as also by force of the Act of the Legislature of said State incorporating the said city, and the Act of Congress of the United States, entitled "An Act to settle the Private Land Claims in the State of California," approved March 3d, 1851, the said city has good and lawful claim to all and singular of the premises aforesaid, and said city relies upon the said laws, usages, and customs, and proceedings in pursuance thereof, upon the order made for the establishment of the Pueblo of San Francisco, the record and other evidences of its existence, continuance and extent, the grant to said Pueblo as aforesaid, and upon such other evidence as may be adduced touching the premises, upon a full exhibition and consideration of all which premises it is prayed that such claim be confirmed.

J. A. McDougall,
For the City of San Francisco.

No. LXXXII.

UNITED STATES LAND COMMISSION FOR CALIFORNIA.

CLAIM FOR FOUR LEAGUES OF PUEBLO LANDS.

Opinion of the Majority of the Board Confirming the Claim to Pueblo Lands.

THE CITY OF SAN FRANCISCO }
VERSUS } No. 280.
THE UNITED STATES. }

This claim is presented by the municipal corporation known as the City of San Francisco, for the tract or parcel of land situate in the County of San Francisco, State of California, embracing so much of the peninsula whereon the said city is situated as will contain an area equal to four leagues square, as described in the petition.

The petitioner alleges that in pursuance of the laws, usages, and customs of the Government of Mexico, and an Act of the Departmental Legislature of California of the ninth of November, 1833, (1834) and proceedings in pursuance thereof, the Pueblo of San Francisco was duly created and constituted a municipal corporation, with a municipal Government, and with all the rights, properties, and privileges of Pueblos under the then existing laws, during the said year 1833, (1834;) and that there was then and there, by the Supreme Government of Mexico in the manner by law prescribed, ceded and granted to the said Pueblo for town lands and for common lands, all and singular the premises described in their said petition.

That the said Pueblo was the proprietor of all said lands, except so much as

had been granted by the authorities thereof in pursuance of law—and the said Pueblo continued its existence as such municipality and proprietor until and after the accession of the United States Government, July 7, 1846, and until by an Act of the Legislature of the State of California, entitled an Act to Incorporate the City of San Francisco, the inhabitants and property of said Pueblo were incorporated into a city, which city now exhibits her claim to the premises aforesaid. The said Act of Incorporation, and the Act amendatory of the same being made part of said petition.

The petition then goes on to enumerate certain adverse claims within the limits of the premises petitioned for, which said claims are alleged to be illegal and void, and concludes with an averment, that by the treaty of Guadalupe Hidalgo—the law of nations—the laws, usages, and customs of the Mexican Government in California—as also by the said Act of Incorporation, and the Act of the Congress of the United States entitled “An Act to Settle Private Land Claims in California,” approved March 3d, 1851, the said city has a good and lawful claim to all and singular the premises aforesaid. Wherefore she prays a confirmation of the same, etc.

As a preliminary inquiry to the examination of the merits of this claim, it may be proper to consider, in the first place, the true construction of the Act of the third of March, 1851, in reference to the presentation of claims of this character.

The authority of the Commission to take cognizance of claims to lands in California is derived from the eighth and fourteenth sections of the Act. The eighth section provides that each and every person claiming lands in California, by virtue of any right or title derived from the Mexican or Spanish Government, shall present the same to the Commissioners when sitting as a Board, etc. This section, if it stood alone and without qualification, would embrace all persons, whether natural or artificial, including bodies politic or corporations as well as individuals. But the fourteenth section was clearly intended to exclude from the general provisions of the eighth section, lots and lands held under grants from any corporation or town to which lands had been granted for the establishment of a town by the Mexican or Spanish Government, as well as the lots and lands held or claimed by any city, town, or village, which was in existence on the seventh day of July, 1846; and provides that the claims for the same shall be presented by the corporate authorities of such city, town, or village. This enactment was evidently predicated upon the action of Congress in reference to the rights of the towns in the Territory of Louisiana to the lands within their limits, as exemplified in the Act of the thirteenth of June, 1812. In that case, Congress by one general Act released and confirmed to the inhabitants of the towns enumerated, all the lands which had been held and cultivated by them according to their several rights or rights in common, thereby clearly intending that where the right of the town had been transferred to an individual, such confirmation should inure to his benefit, and where the land was still held in community, it should remain for the common benefit of all the inhabitants of the town. Reasoning from the analogy presented by this case, it is a legitimate inference, fully sustained by the language of the section itself, to assume that it was the intention of Congress in the fourteenth section, to provide a mode by which the claims to lots and lands held in severalty by individuals under grants from the town, as well as those claimed as the common property of the inhabitants, might be presented in one general claim for the benefit of each and all, thus avoiding the necessity of encumbering the

docket of the Commission with a multiplicity of individual claims, all held under one common right or title.

The fourteenth section, so far as it is applicable to the point under consideration, reads as follows: "Be it further enacted, That the provisions of this Act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town, to which lands may have been granted for the establishment of a town, by the Spanish or Mexican Government, or the lawful authorities thereof: nor to any city, town, or village lot, which city, town, or village existed on the seventh day of July, 1846; but the claim for the same shall be presented by the corporate authorities of the said town," etc.

The declaration with which the section commences, to wit: that the provisions of the Act shall not extend, etc., was clearly intended to apply only to the eighth section, and to prescribe a mode of presenting the claim described in the fourteenth section, different from that provided for the claims generally in the eighth. It should, therefore, read, that the provisions of the eighth section of this Act shall not extend, etc. To adopt any other construction, would either exclude this class of claims altogether from the jurisdiction of the Commission, or involve the absurdity of making Congress declare that the provision of the Act should not extend to them, thus taking them out of the cognizance of the Board, and in the same section prescribing a mode by which they shall be presented for its consideration and decision. This incongruity, according to every rule of construction laid down in the books, should be avoided, and such an interpretation given to the whole law, if it can be fairly done, as will reconcile its inconsistencies, and carry out its true intent and meaning. (2 Cranch, 358; 14 Peters, 178; 3 Howard, 1.) This can only be done by adopting the construction given above, and we therefore think that the Commission derives its jurisdiction over this class of cases from the fourteenth section alone, and that the claim is properly presented under its provisions by the corporate authorities of the City of San Francisco.

In the examination of the merits of this claim, three leading points or propositions present themselves for our consideration:

First—Was there an organized municipal corporation or town existing on the present site of the City of San Francisco on the seventh day of July, 1846?

Second—What was the character and extent of the rights of Pueblos or towns in lands assigned for their use and benefit, under the laws of Spain and Mexico?

Third—What is the effect and extent of the presumption in favor of the rights of such Pueblos or towns to lands, created by the fourteenth section of the Act of the third of March, 1861, for the settlement of land claims in California?

In discussing the first proposition, we shall consider it principally with reference to the acts of the public authorities, as shown in the official documents which have been filed in the case, and their legal effect, as explained by the laws on which they are founded, rather than the vague recollections of witnesses as to what was or was not done some fifteen or twenty years ago.

Before proceeding to the examination of the nature and effect of those acts and documents, it may be proper to recur very briefly to the character of the political and civil organization as originally established in Upper California.

The first settlements in the country were made by a small body of Franciscan Friars, accompanied by a few soldiers and settlers, in the years 1769 and 1770; the first, under the command of Fernando de Rivera, at San Diego; and the

second at Monterey, under Gaspar de Portala, who was constituted the Governor of the newly-formed province. Missions were established by the Friars in the vicinity of these ports, and in less than ten years these establishments had been increased to the number of eight, extending from San Francisco on the North to San Diego on the South. The Missionary establishments were situated in the neighborhood of the best harbors on the coast, but some distance inland, and were under the direction and control of the Franciscan Friars, who devoted themselves to the Christianizing and civilization of the Indians, and their instruction in the various arts of civilized life. The Presidios, or military posts, were located immediately contiguous to the harbors or ports, and were intended to afford protection to the Missionary establishments from the attacks of the savage Indians. All the civil functions of government were exercised by the commanding officers of the Presidios, in subordination to the Comandante of Monterey, who usually filled the office of Governor of the Province.

The purpose intended to be effected by this system was the ultimate erection of the several Missionary establishments into Pueblos or communities, to be composed of the Christianized Indians, as soon as they should become sufficiently civilized and instructed in the arts of social life, at which time it was proposed to substitute a regular municipal organization for the ecclesiastical system to which they were subjected during their period of pupilage. (See Figueroa's Manifests, p. 41.) In the meantime, it was supposed that the Presidios would form the *nuclei* of other communities, from the settlements around them of the retired soldiers and their families, and accessions from the immigration of other settlers of the white race; and from their location at the principal seaports of the country, that they would in process of time become important commercial towns and cities.

In accordance with this idea, we find the earliest instructions relating to the settlement of California, issued by Don Antonio Bucareli y Urusu, August 17, 1773, conferring upon the Commandants the power to designate common lands, and to distribute lands in private property to such Indians as by their industry and devotion to agriculture and the breeding of cattle might merit the same. They were likewise empowered to distribute lands in the same manner to other settlers, clearly meaning those of the white race as contradistinguished from the Indians, but in both cases the grantees were required to live in the towns and not dispersed.

This condition of residence in the towns evidently has reference to the municipal system which seems to have prevailed in Spain from the earliest period of her history, and which constituted the basis of all her laws and regulations for the formation of settlements in her American possessions. This system was in full operation in Mexico when her separation from the mother country occurred; and although there appears to have been a strong tendency on the part of the inhabitants of California to depart from it, and to live dispersed on their ranchos, still all the laws, orders, and decrees of the Government, having any bearing on the subject, appear to be made with reference to that peculiar organization, and even as late as the organic law of 1837, we find a provision requiring the inhabitants to live in the towns. This idea should be kept prominently in view in order to understand the true meaning and effect of the laws and regulations, and the acts of the authorities performed in conformity therewith, which will come under our consideration in the course of this examination, as it will tend to remove much of the obscurity and apparent inconsistency which they present to us, accustomed as we are to a system so entirely different.

According to this view of the subject, it would seem that the Missions and Presidios constituted from their first inception quasi Pueblos, the former under the charge and superintendence of the Missionary Priests, and the latter under that of their respective Commandants, who, in addition to the military authority, exercised all the functions of civil magistrates in the Presidios and the adjoining districts. This state of things continued in the Missions and in all the Presidios, except that of Monterey, which had been previously erected into a Pueblo, with a municipal Government, until the year 1834, when Governor Figueroa, conjointly with the territorial deputation, adopted and promulgated a plan of "*Propios and Arbitrios*" for the Ayuntamientos in Upper California. About the same time steps were taken for the secularization of the Missions, and their erection into Pueblos, under the law of the Mexican Congress of the seventeenth of August, 1833; and the Presidios of Santa Barbara, San Diego, and San Francisco were relieved from the civil jurisdiction of the Military Commandants, and a municipal organization, consisting of an Alcalde, Regidores, and Procurador Sindico, constituting the Ayuntamiento or Council, substituted in its stead.

The question here arises, whether this organization constituted the former Presidio of San Francisco a town or village within the meaning of the fourteenth section of the Act of Congress of the third of March, 1851.

The Spanish word "Pueblo" means, in its original signification, the people or population generally; it also means the inhabitants of a particular place, but in its more restricted signification it means a town or village, or any collection of persons residing in the same place, and corresponds to our general term "town," as applied to similar collections of houses and people, whether of greater or less extent. This last is the sense in which the word is used in the various laws and official documents to which reference will be made in the course of this examination.

Owing to the state of confusion and disorder consequent upon the conquest of the country by the Americans, much of the official documentary evidence in relation to the civil organization which superseded that of the military commandants of the Presidio, has been lost or destroyed, and the authenticity of a portion of that introduced has been called in question by the counsel representing the Government. The following documents, however, whose authenticity is unquestioned, have been introduced in evidence:

First.—A traced copy of a portion of the official records of the Territorial Deputation, duly certified from the archives of the Mexican Government in California, now in custody of the United States Surveyor General, from which it appears, that at an extraordinary session of that body, held on the third day of November, 1833, the following propositions were adopted: "1st. That the Political Chief direct the District (Partido) of San Francisco to proceed to the election of a Constitutional Ayuntamiento, to be established in the Presidio of that name, to be composed of one Alcalde, two Aldermen (Regidores), and one Town Attorney (Syndico Procurador), conforming for that purpose in all respects to the constitution and the laws of the eighteenth (twelfth) of July, 1830. 2d. That report be made through the proper channel to the Supreme Government for an approval."

Second.—A communication from the political chief José Figueroa, addressed to the Commandant of the Presidio of San Francisco, of which the following is a translation:

“SEAL OF THE POLITICAL GOVERNMENT OF UPPER CALIFORNIA.

“The most Excellent Territorial Deputation, using the powers conferred on it by the law of the twenty-third June, 1813, on yesterday passed the following instruction:”

[Here follow the resolutions of the Deputation as copied above.]

“And I transcribe it to you for your information and compliance, recommending that the election be carried into effect on the day appointed by said law of the twelfth of June. I also notify you that the Ayuntamiento, when installed, will exercise the political functions with which you have been charged, and the Alcalde the judicial functions, which the laws, for want of a Judge of Letters, confer upon him, you remaining restricted to the military command alone, and receiving in anticipation the thanks due for the prudence and exactness with which you have carried on the political government of that demarcation. God and Liberty, November 4th, 1834.”

“JOSE FIGUEROA.”

“To the Military Commandant of San Francisco.”

Third.—A document marked No. 2, and annexed to the deposition of M. G. Vallejo, of which the following is a translation :

“In the Presidio of San Francisco the seventh day of December, 1834, the municipality of this demarcation assembled in the house of the Comandancia, the corresponding order of convocation being previously given, for the purpose of holding the Primary Junta for voting for the electors, who are to meet in Secondary Junta on the first following Sunday, for the purpose of electing the individuals who are to compose the Ayuntamiento for this comprehension, and who are to hold office for the coming year of 1835, in compliance with what is ordered by the Political Chief on the fourth of November of this year, in virtue of the resolution on the matter by the most Excellent Territorial Deputation, after the election of four Secretaries proceeded to the election of twelve electors, which number according to the assembled municipality was found to correspond to it, and having counted the votes from which these resulted by majority, citizen Ignacio Peralta with twenty-seven votes, Francisco Sanchez with twenty-three, Francisco Soto with twenty, Joaquin Castro with nineteen, José de la Cruz Sanchez with seven, Francisco de Haro with sixteen, Manuel Sanchez with fifteen, Antonio Castro with twelve, Marcos Briones with nine, and Apolinario Miranda with nine, from which it resulted that the said gentlemen were elected, and they were notified of it, and the act being concluded, the President and Secretaries signed the present act.”

“Signed :

FRANCISCO DE HARO,
FRANCISCO SANCHEZ,
JOAQUIN CASTRO,
JUAN MIRANDA.”

Fourth.—A similar document, marked No. 3, and annexed to the same deposition, certifying the election of nine electors on the thirteenth of December, 1835, for the purpose of selecting an Alcalde, two Rejidores and a Sindico Procurador, for the year 1836. This document differs in no essential particular from the one above quoted, except that it is dated in the Pueblo of San Francisco, and certifies the election to have been held in the Plaza of said Pueblo, upon the call of the

Constitutional Alcalde for the preceding year, and was presided over by that officer. The certificate of the election for 1836 is not produced, but that for 1837 is introduced and proven as Exhibit No. 8 to the deposition of Vallejo, and is to the same effect with the one last mentioned. The proceedings of the Secondary Junta in the choice of the Ayuntamiento for the year 1838, are also filed as Exhibit No. 9 to said deposition, from which it appears that Francisco de Haro was duly elected Alcalde; Domingo Saens, Second Rejidor, and José Rodríguez, Síndico. It appears from the evidence of M. G. Vallejo and Francisco Sanchez, that the Ayuntamiento was for the first time duly organized and installed on the first day of January, 1835, in the Presidio, and elections regularly held for their successors in the months of December thereafter until the year 1838, after which they were superseded by the new organization established by the Constitution of 1836 and the Organic Law of March, 1837, by which the functions of that body devolved on the Justices of the Peace, appointed by the Governor. It appears also from the same testimony, that the elections were all held at the Presidio, and the Ayuntamiento resided at, and held its sessions at the same place until sometime in the year 1838, when the Governor, for the greater convenience of the members, authorized them to remove to the Mission of San Francisco, or, as it was more commonly called, Dolores. It is worthy of note that the certificate of the first election held in December, 1834, and prior to the organization of the Ayuntamiento, is dated at the Presidio of San Francisco, while each subsequent one is dated in the Pueblo of the same name, or San Francisco de Asis; and all the earlier communications from the Governor to the Alcaldes were addressed in the same way, or to the Alcalde of Yerba Buena, but evidently having reference to the same officer and the same civil organization. Some stress is laid by the Agents of the Government on this difference in the names which seem to have been indifferently applied to the organization we are considering, and an attempt is made in the evidence to show that San Francisco and San Francisco de Asis were different places, the former term being used to designate the Presidio, and the latter the Mission; and hence it is argued that the establishment of the Pueblo, if one was established at all, was at the Mission. This view of the subject, however, cannot, in our opinion, be sustained. It is evident from the whole testimony in the case, that both the Mission and Presidio were named after the same saint, Francisco, and that the additional words "de Asis" were equally applicable to both, being nothing more than the place in Italy in which the saint was born or resided, and were simply added to distinguish him from other saints of the same name—as, for instance, San Francisco Solano, after whom was called the Mission on the opposite side of the Bay, in the District of Sonoma. A number of official communications from the several Governors, from Governor Figueroa in 1835 to Governor Pico in 1846, all of which are addressed to the Alcalde of San Francisco, San Francisco de Asis, or Yerba Buena, have been introduced and proved in the case. These, according to the testimony of Mr. Halleck, constitute all that can now be found of the voluminous archives and records, which, according to the same testimony and the inventory delivered over by the retiring Alcalde in 1846, were contained in the Alcalde's office a short time previous to, and for some time after, the conquest of the country. The others have either been lost or were destroyed in the numerous fires with which the city was visited during its brief career as an American town. In many of the communications above referred to, the existence of a Pueblo under the name of San Francisco and San Francisco de

Asis is fully recognized otherwise than by the simple address to the Alcalde of the Pueblo of that name. The first of these, to which we shall refer, is an order from General Castro, dated Monterey, October 26th, 1835, and addressed to the Alcalde of San Francisco de Asis, setting out, "that the most excellent Territorial Deputation, in their session of the twenty-second of September, approved that the Ayuntamiento of that Pueblo should grant town lots, (*solares*) which do not exceed one hundred varas, for the building of houses in the place named Yerba Buena, at the distance of two hundred varas from the sea-shore, paying to that Ayuntamiento the fees which may be designated to it as belonging to the *propios* and *arbitrios*, and being subject to observe the order for the formation of a town in lines for its better police, which I communicate to you, that you may make it known to the inhabitants of that Pueblo, in order that they may not apply with their memorials to this political government, as it is one of the favors which the Ayuntamiento may grant."

By reference to the proceedings of the Territorial Deputation of the twenty-third of September, 1835, referred to in the foregoing, we find that the action of that body was predicated upon the petition of José Joaquin Estudillo to the Governor, praying for the privilege of erecting a house in the place called Yerba Buena, and also a grant of two hundred varas for cultivation. This petition was referred by the Governor to the Territorial Deputation, by whom it was referred to the Commission on Government, who reported as follows:

"The Commission on Government ordered to give an opinion on the petition of the citizen José Joaquin Estudillo, a resident of the Town (Pueblo) of San Francisco, wherein he solicits the privilege of building a house in Yerba Buena, and also requests two hundred varas square of land to cultivate. The Commission thinks that no obstacle would be in the way of making this grant, notwithstanding its topographical position, being immediate to the beach, on equal terms with other residents (*vecinos*) who are occupying lands, because they have not met with any reasons to prevent them the use of lands near the beach—and moreover, although it may be granted, it belongs to the *propios* of the Ayuntamiento of San Francisco, and it should be subject to the tax (*cañon*) to which other lands of the *propios*, which have been granted, are subject. Wherefore, the Commission concludes with the following proposition:

"There can be granted to the citizen José Joaquin Estudillo the lot for a house, without going beyond the quantity of varas set forth in Article 15 of the regulation of Colonization, and also the two hundred varas he solicits."

On the twenty-second of September, 1835, the report and resolution of the Committee was taken up for consideration, and the foregoing proposition was discussed and approved. Mr. Alvarado then moved that a general provision be made through an additional article, that the Ayuntamiento of San Francisco may grant building lots at a distance of two hundred varas from the sea shore, in order to encourage in this way the residents to form a village. The Committee then moved it, and proposed the following article, which was approved:

"Additional Article.—That the Ayuntamiento of San Francisco may grant such building lots at a distance of two hundred varas from the sea shore, and allow other residents to settle there under the same restrictions, observing the regular order of a town in a line for its better police." This last resolution is clearly the authority under which the order of Governor Castro, of the twenty-sixth of October, 1835, was issued, and is in fact substantially embodied in the order itself,

and taken in connection with the whole proceedings on the subject, has a most material bearing on the point under consideration. We remark first, that both the petition of Estudillo and the report of the Committee describe the petitioner as a *vecino*—translated “resident”—of the Pueblo (Town) of San Francisco. By reference to Escriche, we find the legal definition of the term *vecino* to be, “he who has established his residence in any Town (pueblo), with intention to remain therein. This intention is reputed as proved by the course of ten years, or by other facts that show it; as if one settle his property at a place and buys other at such place to which he removes his abode.”—Law 2d, Tit. 24, Part 4; Law 6th, Tit. 4, Lib. 7, N. R. * * “The *vecinos* of each Town (pueblo) are subjected to the taxes and contributions of the same, chargeable upon them; they enjoy the right of pasture and common, and other rights pertaining to them as such, to the exclusion of foreigners and non-residents.”

The same report, after deciding in favor of the particular grant, goes on to declare that the land belongs to the *propios* of the Ayuntamiento of San Francisco, and it should be subject to the same tax (*cañon*) which is fixed as to others to whom lands of the *propios* are granted. By reference to “the plan of *propios* and *arbitrios* for the municipal lands of the Ayuntamientos of Upper California,” adopted by the Territorial Deputation, and promulgated by Governor Figueroa August 6, 1834, we find the following provisions:

“*Article First.*—The Ayuntamientos will proceed by the ordinary channels to solicit that to each Town (pueblo) be assigned land for *egidos* and *propios*.

“*Second.*—The lands of the *propios* which may be assigned to each Town (pueblo) will be subdivided into middling and small sized lots, and may be leased, or given with the reservation of an annual tax, at public auction. The actual possessor or possessors of the lands of the *propios* will pay such annual ground rent as may be imposed upon them by the Ayuntamientos—the report of three honest and intelligent men being previously had.

“*Third.*—For the concession of a building lot for the erection of a house, the interested party shall pay six dollars and two reals for each lot of one hundred varas square, and thus progressively or diminutively they shall pay two reals for each front vara.”

The tax or fee of six dollars and two reals, provided for in the Third Article of the above plan, is clearly that referred to in the order of Governor Castro and the report of the Committee as the *cañon* or tax to which the individual was subject, to whom lands of the *propios* were granted for building lots. This is shown by the deposition of Leese and other testimony in the case, from which it appears that the above sum was required for the grant of a one hundred vara lot in Yerba Buena, and a reduction or addition of two reals for each front vara in diminution or excess of that quantity.

In addition to these documents, a number of others have been filed in the case, all recognizing the existence of a Pueblo called San Francisco, embracing the present site of the City of the same name. For instance: 1st. The order of Governor Alvarado for the organization of the new “Exhibit No. 10, to the deposition of M. G. Vallejo,” in which San Francisco is classed as a town with San José, Villa de Branciforte, North; 2d. The order of Governor Micheltoarena, of the fourteenth of November, 1843, marked “Exhibit No. 11” to said deposition, in which the classification occurs; 3d. A communication from the same Governor, of March 4th, 1844, marked “Exhibit No. 14,” addressed to the Alcalde of San Francisco,

containing an order to the Ensign, Don Juan Prado Mesa, directing him to report, with certain men under his command, to the Alcalde, to whom the communication was addressed, was styled indifferently the Alcalde of Yerba Buena and of San Francisco, that the political organization over which he presided was known and styled officially by both names, and that the place called Yerba Buena was within his jurisdiction, and was in fact the seat of his Juzgado or Court.

Fourth.—An inventory of the archives, and articles contained in the Alcalde's office, delivered over by the retiring Alcalde to his successor in office, dated at Yerba Buena, January 15th, 1846, from which it appears that at that date, being the last year of the Mexican dominion in California, the civil authority of the Pueblo was located at Yerba Buena, and not at the Mission Dolores.

Fifth.—A traced copy of a document from the archives containing the petition of a number of the inhabitants residing on the north side of the bay, but within the jurisdiction of the Port of San Francisco, praying to be attached to the "authority of the Pueblo of San José, being under the jurisdiction of the judicial officer who may be appointed by the Alcalde of the said San José, as the capital of the district," together with the proceedings of the Government, and the report of the Ayuntamientos of the various Pueblos on the subject.

This document shows that at the time the memorial bears date, there were two separate adjoining jurisdictions, having for their respective capitals the Pueblos of San José and San Francisco, each of said towns being the seat of an Ayuntamiento—that of the latter being located as Pueblos or Towns exercising civil jurisdiction over their adjoining demarcations or districts. San José was the first Pueblo in California, and was founded by express authority from the King of Spain. No doubt has ever existed as to the character of its organization, or that it was a Town with a municipal government. These proceedings recognize the organization of San Francisco as of precisely the same character, with the same power and faculties. If, therefore, San José was a Pueblo or Town, San Francisco must have been one also.

There are other documents filed in the case to the same effect, but we do not think it necessary to refer to them more particularly, as those already cited are sufficient to present fairly the evidence relied on by the claimant to sustain this branch of the case.

To this evidence it is objected on the part of the agents of the Government :

First.—That it is not sufficient to show the establishment of a Pueblo or municipal corporation for the Government of a Town under the laws of Spain and Mexico ; and

Second.—That if such a corporation was established, it was at the Mission of San Francisco or Dolores, and did not embrace the site of the present city.

We will first consider the objections with reference to the constitution and laws bearing on the question, and the effect of the action of the territorial authorities as disclosed in the official documents filed in the case.

The word "Ayuntamiento" is defined in the dictionary to mean, "A corporation or body of magistrates of Cities and Towns, composed in Spain of a Coregidor, Alcalde, and Regidores—the first corresponding to Mayors, and the latter to Aldermen, in England."

Escrive defines it to be "An Assembly or Junta, composed of the Justices or Alcalde, Regidores, and others charged with the administration, or the economicopolitical government of each Pueblo. It is sometimes called Cabildo, rejimiento,

municipality, and municipal body." These definitions show, and it is in fact admitted in the argument, that the term *Ayuntamiento*, in its general and usual signification, meant a town council, or municipal body for the government of a town. It is, however, contended that the character of this organization was changed by the Spanish Constitution of 1812, and laws of the Cortes passed in pursuance thereof, by reason of which the *Ayuntamiento* was constituted a political body, as contra-distinguished from a municipal council, with a jurisdiction extending over the surrounding district or *Partido*.

To sustain this proposition, the following proofs and authorities are mainly relied on :

First.—The resolution of the Territorial Deputation, and the order of the Governor Figueroa, communicating the same to the military commandant of the *Presidio*, directing the election of an *Ayuntamiento* by the *Partido* of San Francisco, together with the fact (as appears from the testimony of Sanchez) that the electors who chose the *Ayuntamiento* were voted for by the inhabitants of the country on both sides of the bay, embracing a large extent of territory.

Second.—That the law under which this organization was had, contemplated the constitution of a political government for a district, and not a municipal government for a Town.

Third.—That the sessions of the *Ayuntamiento* were subsequently removed from the *Presidio* to the *Mission Dolores*, from which it is argued that the organization of the *Ayuntamiento* did not necessarily imply the establishment of a *Pueblo* ; and

Fourth.—The testimony of Sanchez, Castro, Alvarado, and others, tending to show that no *Pueblo* ever existed on the present site of the City of San Francisco.

We have given the constitution and laws, referred to as the basis of the action of the Territorial authorities in the establishment of *Ayuntamientos*, a most careful examination, and we are free to admit that there is much obscurity as to the nature and extent of the jurisdiction exercised by those bodies ; but we have been able to discover nothing in them which changed their original character as municipal corporations charged with the economico-political government of Cities and Towns. On the contrary, all the provisions of the Constitution of 1812, and laws of the Cortes relating to them, and their duties and functions as prescribed in those laws, are of a strictly municipal character, and most of them could only have reference to regularly organized Towns. In Article 309 of the Constitution, it is provided that *Ayuntamientos* shall be established for the interior government of the Towns (*Pueblos*), composed of an *Alcalde* or *Alcaldes*, *Regidores*, and the *Procurador Sindico*.

Article 310—Provides that *Ayuntamientos* shall be placed in Towns (*Pueblos*) where there are none.

Art. 312—That the *Alcaldes*, *Regidores*, and *Procurador Sindico* shall be by election in the *Pueblos*.

Art. 313—That in the month of December of every year, the citizens of every *Pueblo* shall assemble and elect a certain number of electors, who shall reside in the same *Pueblo*.

Art. 314—Provides for the election of the *Alcalde* or *Alcaldes*, *Regidores*, and *Procurador Sindico*, by said electors.

Art. 319—Provides, as a qualification of those officers, that they shall be citizens, twenty-five years of age, with at least five of vicinage and residence in the *Pueblo*, (*con cinco a lo menos de vecinidad y residencia en el Pueblo*).

Art. 321—Prescribes the duties and functions of the Ayuntamiento, all of which are strictly municipal in their character, such as the administration of the *proprios o arbitrios*; the framing of municipal ordinances of the Pueblo, etc.

The decree of the Spanish Cortes, of the twenty-third of June, 1813, in which the duties and powers of the Ayuntamiento are enumerated more in detail, is to the same effect,—all its provisions having reference to the economico-political government of the Towns (Pueblos), and many of them are applicable only to Towns with houses, streets, public squares, etc., as the term is usually received and understood in English.

Chapter 2 of the decree last above cited, entitled, “Of the obligations and duties of the Territorial Deputations,” provides as follows: “Article 1. It being the duty of the Provisional Deputations to see to the establishment of Ayuntamientos in the Towns where there be none, in the manner prescribed by the three hundred and thirty-fifth Article of the Constitution, they shall take an exact account of the inhabitants in each Pueblo where an Ayuntamiento is to be established—so that if of itself, or with its *comarca* (district), it shall have a population of one thousand souls, one shall be established immediately; or if the population do not amount to that number, but for other reasons of public utility, it should be necessary to establish it, let the instructive *espediente* be formed, which makes them apparent. These proceedings and those which the Deputations may form, having previously obtained the necessary information from the coterminous Towns relative to the designation of limits (*terminos*), to the Town where the new Ayuntamiento is to be formed, will be remitted by the Political Chief, with the consent of the Deputation, to the Government.

The decree of the Cortes of the twenty-third of May, 1812, entitled, “Of the formation of Constitutional Ayuntamientos,” provides:

Article 1—That any Town which may have no Ayuntamiento, and where population may not amount to one thousand souls, but which, owing to its peculiar circumstances, such as the state of agriculture, industry, or the nature of the population itself, may consider that they ought to have an Ayuntamiento, may make a representation to the Deputation of the Province, that in virtue of the report the Government may provide as it may think fit.

Art. 2—The Towns in which these circumstances may not occur, will remain annexed to the Ayuntamiento to which they may have belonged up to this date, until their political condition may require change; those which have been lately formed, and those which may have been so formed formerly, but which are now without the requisite population, attaching themselves to the nearest Ayuntamiento of their Province.

Art. 3—Provides for the abolition of the perpetual offices of Regidores and other officers of the Ayuntamiento, and prescribes the manner of choosing their successors and their term of office.

Arts. 4, 5—Prescribe the number of these officers which shall be assigned to each Pueblo in proportion to its population.

Art. 6—Provides for the election of electors to choose the officers to compose the Ayuntamiento.

Art. 7—For the election of the Ayuntamiento by the electors so chosen.

Art. 8—Provides that, “To facilitate the appointment of electors, especially where the large population, and the division or distance of the Towns or Pueblos which must be joined to establish their Ayuntamiento may render it troublesome,

there shall be held meetings of the Parishes," etc., etc. The remainder of the Article, and Articles 9, 10, and 11, go on to prescribe the number of electors for each Parish, and the mode of proceeding in their election, etc.

These laws prove very clearly that the Ayuntamiento exercised jurisdiction over a considerable extent of territory, in addition to its special authority as the municipal government of the Town proper in which it was established; and that such jurisdiction might even embrace other Towns (Pueblos), which had no Ayuntamiento of their own. But this fact does not by any means change their character as a municipal organization or Town council.

An examination of the laws of Spain on this subject shows that such was common to those bodies from their first institution under the *Fuero de Leon*, promulgated by Alonzo the Vth, in the year 1050, and has in effect been continued to the present day. In elucidation of this subject, we quote from the elaborate brief of Mr. Hawes, filed in this case on the part of the Government, the following extract from a work entitled "*Leyes Fundamentales de la Monarquia Española*," by the R. P. Fr. Maguin Ferrer: "As a result of the invasion of the Moors, the dominions of the King of Spain had been reduced to the mountains of Asturias. It was proposed to reconquer the country, and the chiefs of the people who had united with D. Pelayo continued in the meantime acquiring lands, and the King gave them the government and the property in the lands of certain Pueblos, while he himself remained owner of the lands of other districts (comarcas). By degrees, as this system, created by circumstance, acquired consistence—so that no one perceived that it had acquired the character of a system—the principle became firmly established that the King was to be considered in two characters,—the one as particular lord of the Pueblos and lands conquered, which continued as his own private patrimony, and in this respect he was on a footing of equality with the other lords in regard to their respective estates; the other as universal lord (Señor) of the Kingdom, or that which is the same thing, as the sovereign, and in his character he commanded the subordinate lords and governed the kingdom." "When the King gave lands to the lords (Señores), it was considered that he gave them not only the dominion and property in the fields (*campos*), the vineyards, the woods, the houses, etc., but that he gave them, likewise, the right of *government and jurisdiction* over the persons who inhabited the lands,—so that the particular lords were the proprietary governors and judges of their respective dominions, administering them conformably to the general laws of the kingdom." "Thus passed three centuries, the King governing the monarchy as universal lord, and customarily administering the affairs of the *Pueblos* of his own patrimony as their particular lord. But in the year 1050, or 1012 perhaps, Alonzo V, desiring to give more regularity and solemnity to the political and judicial administration, called together the Council of *Cortes*, and promulgated the special laws called the *Fuero de Leon* among others of a general nature promulgated for the whole kingdom. This is the most ancient *Fuero* (charter or franchise) which can properly be so called, and in it are comprehended some thirty laws reputed as municipal, inasmuch as their observance was restricted to the City of *Leon* and its *Termino* or *Alfoz*—the district over which the municipal government extended its jurisdiction."

The term "*Alfoz*," according to Escriche, is formed from "*Al*" and "*Fopoz*," two Arabic words, meaning a meadow or flat land, and was anciently used to denote the place comprehended in the jurisdiction of a Town or Lordship, or even the jurisdiction itself; and the word "*termino*" as used here, and in other places

where it occurs in the Spanish Law, in a similar sense, means the district of a Town.

The system in Spanish, as shown in the foregoing extract, which grew up after the expulsion of the Moors, differed but little from the feudal system as it existed in most of the other countries of Europe, and the first blow which was given to the power of the *grandees* and nobles owing to the influence exercised by the Cities and Towns which grew up under the charters that either through necessity or policy had been given to them by their respective sovereigns or lords. In Spain, the example of Leon was soon followed in respect to other places, until at length the municipal system was adopted generally in all the principal Cities and Towns throughout the dominion of the monarchy, both in Europe and America, and laws were passed for the establishment and building up of new Towns, on the same system in her vast unsettled possessions on this continent.

According to this system the Cities and Towns to which "*fueros*" or charters were granted, were created into quasi Seignories, exercising, in addition their municipal functions within their respective Towns, where the *Ayuntamientos* were established, a general political and judicial authority over the *termino* or district which was assigned to them on their creation. This district was generally called the *termino* or *comarca* of the Town—the former word being also used in its general sense, to denote the limits or boundaries of the district. This is exemplified in Article 310 of the Spanish Constitution of 1812, already quoted, which makes it obligatory to establish *Ayuntamientos* in those Towns in themselves, or *with their comarca* (district) shall contain a thousand souls; "and likewise there shall be designated to them their corresponding *termino*," meaning district with defined limits or boundaries; and in Article 1 of Chapter II of the law of twenty-third June, 1813, for carrying out this provision of the Constitution, the designation of *termino* or limits and boundaries to the district was to be made upon the *informe* of the co-terminous *Pueblos*. This whole subject is so clearly illustrated in the royal decree of King Ferdinand the Seventh, for the establishment of the municipal authorities of the Town of Manzanillo, contained in Mr. Hawes' brief, page sixteen, that I cannot forbear quoting such parts of it as bear upon the point under consideration:

"Don Fernando VII, by the grace of God, King, etc. In a letter of the fourteenth of May of the year 1830, my Governor, Captain-General of the Island of Cuba, reported to me the Expediente formed at the instance of D. Sebastian Ramagoza, D. Pedro Olive, and D. Joaquin Clavelle, citizens of the new town called Port Royal of the Manzanillo in the said Island, with the intent that there should be granted to it the title of city or *villa*, independent of that of Bayamo (formed in 1815), with the right to have the local Government Sub-Delegate of the Royal *Hacienda*, *Ayuntamiento*, and Public Notary—it was ordered on the twenty-first of October, of the aforesaid year 1830, that my Governor, Captain-General, should appoint a person in his confidence, to proceed to the *apeo* (judicial survey) and demarcation of the lands of said *Pueblo* of Manzanillo, designating those necessary for *proprios*, *ejidos*, *dehesa de labor* (pasture land for working oxen and horses) and pasturage of cattle; that he should mark out with possible exactitude the jurisdictional limits (*terreno jurisdictional*) which were to be assigned to it, and the *partidos* which it should embrace—that he should take proof of the exact number of souls in Manzanillo and of the neighboring *partidos*, which it might be proper to include in its jurisdiction. In pursuance whereof, my Governor, Captain-General, committed the execution of the aforesaid proceeding to

the Lieutenant-Colonel J. Fulgencio de Salas, who, as the result of his first investigation, manifested that the discharge of his commission was the work of a long time, and would occasion a delay much to be regretted, in the indispensable separation of Manzanillo from the jurisdiction of Bayamo, which, without suspending the other measures, might be effected immediately, designating for the division line of the *termino* and jurisdiction of Manzanillo that marked by the *Estero Cienega del Buey*, river Gicotea, river Tarquino, as natural limits, closing the distance between the sources of the two rivers by two right lines, one extending from the Gicotea to the Buey, and the other from Tarquino; by which demarcation there remained in the new jurisdiction the *partidos* of Yara, Gua, and Vicana, leaving still in the jurisdiction of Bayamo a territory much more extensive. The subject having been examined with all that mature deliberation which its importance exacted in my council of the Indies, they acquainted me with their opinion in a *consulta* of the fifth of June last, and conformably therewith I have determined to concede the title of Villa to the *Pueblo* of Port Royal of Manzanillo, in the Island of Cuba, with the said jurisdictional territory designated by the Commissioner, D. Fulgencio de Salas, and the establishment of an *Ayuntamiento*, composed of two ordinary *Alcaldes*, which my Governor Captain-General will appoint for the first time, and six *regidores*."

The proceedings of the Territorial Deputation of California, authorizing the Governor to establish a new town to be formed, with an *Ayuntamiento*, by the colonists, under the direction of Tonans Hajar and Padres, which took place on the same day with those authorizing the *Ayuntamiento* at San Francisco, are in entire conformity with this view of the subject. The second article of the decree of the deputation declares that the new town shall be the capital of the district for the towns of San Rafael and San Francisco; and in the third article the distinction is made between the jurisdictional limits of the municipality and the limits of the town proper.

This review of the municipal system, as it has existed in Spain from time immemorial, and as illustrated in the documents above cited, removes much of the difficulty and obscurity, which, at a first glance, appears to be presented in the proceedings relative to the establishment of the *Ayuntamiento* of San Francisco and other towns in California, and in the laws on which they are founded. From it we gather that in Spain and Mexico the municipal corporations or *Ayuntamientos* of towns, in addition to their immediate function as a town council, exercised also political jurisdiction over an adjoining *comarca* or district, the limits of which were fixed at the time of its organization. This assignment of *termino* or jurisdictional limits, was entirely distinct from the designation of lands for *egidos*, *propios*, and *dehesas de labor*: these last were intended for the exclusive use and benefit of the corporate authorities and the *vecinos* of the town, and were under the special charge and administration of the *Ayuntamiento*. What were the rights of the towns in these lands we shall consider hereafter. This *comarca* or district might in fact embrace other *pueblos*, settlements, or villages; the inhabitants of the district were designated by the term *vecinos* of the *pueblo*, and were entitled to all the right of common and other privileges of the town, and were subjected to the same taxes and contributions for municipal purposes. Indeed, according to the theory of the system, they were regarded as residents of the town itself, as at its origin they were in fact. We have already referred to the prominent feature of the Spanish law requiring the inhabitants to dwell in the towns and not disperse.

This policy was doubtless adopted for the mutual protection and security of the inhabitants; but as the country became more settled, and the protection afforded by the laws more certain and efficient, the inhabitants would gradually obtain portions of land in the adjoining districts, for purposes of pasturage or cultivation, on which they erected houses for their temporary residence; and many preferring the independence of a country life, would in process of time make them their permanent places of abode. This seems to have been the case very generally among the Mexicans in California prior to the American occupation of the country, and is still so throughout the territory of the Mexican Republic. But this residence beyond the limits of the town proper, but within its jurisdictional *termino*, did not deprive them of any of the privileges of a *vecino* of the pueblo, or relieve them of any of the obligations or burdens to which they were subjected as such. For instance, they were entitled to ask for and receive grants of house lots in the town for building, *suertes*, and lots for cultivation in the common lands of the pueblo; and a preference was given them in granting the public lands within its jurisdictional limits. The town lands which were granted them, were generally coupled with a condition that they should be subject to the *cañon*, or tax, which might be imposed upon them for municipal purposes. On the other hand, being subjected to the burden imposed by the municipality, and to the jurisdiction of its judicial officers, they were permitted to participate in the choice of those officers.

The application of these principles, which are, in our opinion, fully established by the laws, usages, and customs of Spain and Mexico in reference to the subject, to the case now under consideration, will remove all difficulty as to the character of the organization authorized by the decree of the Deputation and the order of Governor Figueroa of the fourth of November, 1834. They establish clearly to my mind that the effect of that organization was to erect the former Presidio of San Francisco into a pueblo, with a regular municipal government; that, as such, it became the cabeza or capital of the neighboring comarea or district over which the Ayuntamiento, as in the case of other towns, exercised civil jurisdiction, and the inhabitants of which, as *vecinos* of the new pueblo, were authorized to participate in the election of the officers who composed that body. It will be observed that the district over which the Ayuntamiento exercised jurisdiction, is here called the Partido of San Francisco. This is easily explained. A partido was, under the laws in force, a judicial district, and designated the jurisdiction of a Judge of Letters.—[See Article 273 of the Spanish Constitution of 1812.] But there was no Judge of Letters in California, and the functions of that officer were consequently devolved on the Alcalde within the jurisdictional limits of the Ayuntamiento. The district embraced by those limits, designated both the civil jurisdiction of the town authorities and that exercised by the Alcalde in his judicial capacity as Judge of Letters, and was therefore properly termed the Partido of San Francisco.—[See Order of Governor Figueroa, November 4th, 1834.] In the latter part of the year 1838, the sessions of the Ayuntamiento were, with the sanction of the Governor, removed to the Mission Dolores, in the immediate vicinity of San Francisco. This seems to have been done for the convenience of its members, and on account of the better accommodation afforded by the Mission buildings. This was the last Ayuntamiento which ever existed in San Francisco under the Mexican Government, and was, like all its predecessors, elected and installed at the Presidio. By the new Constitution of 1836, and the Organic Law of March 20th, 1837, the Ayuntamiento was abolished, and its functions devolved on Jus-

tices of the Peace, appointed by the Governor on the recommendation of the Prefect of the District.

The new system was formally inaugurated by Governor Alvarado in January, 1839; and in his order for that purpose (Exhibit No. 10 to the deposition of M. G. Vallejo), San Francisco is recognized as the head of the partido for the frontier of the north. The Justices of the Peace appear to have continued in the exercise of the civil and judicial functions until the year 1843, when by an order of Governor Micheltorena (Exhibit No. 11 to same deposition), these officers were again superseded by first and second Alcaldes, who appear to have administered the government of the pueblo and district up to the change of government in 1846. During the whole of the period the Pueblo of San Francisco seems to have been recognized in the official correspondence and public documents, upon the same footing and in the same class with Monterey, Los Angeles, San Diego, San José, and other towns of the Department. The fact that the Ayuntamiento for a short time held its sessions at the Mission, and that the Justices and Alcaldes sometimes resided and held their courts at that place, or the vague recollections of witnesses, who held official stations under the former government, as to what was done, or their opinions as to the legal effect of their acts, cannot in our opinion counterbalance the overwhelming weight of testimony in favor of the establishment of a pueblo or town by the Mexican authorities in California, embracing the present site of the City of San Francisco, and its continued existence down to the period of the American occupation on the seventh of July, 1846.

It is not proposed, nor is it considered necessary to go into a detailed examination of the testimony of the witnesses above referred to. By reference to their depositions it will be seen that while they evince a strong desire to disprove the existence of a pueblo, the facts which they disclose tend to establish the opposite, and go very far to sustain the conclusion to which we have arrived from the documentary evidence and the laws applicable to the subject. Indeed, their whole testimony exhibits, when compared with their official acts, either an extraordinary obliquity of memory or gross ignorance of the character and effect of the laws under which they acted.

It is probable, from the testimony, that when the pueblo was first organized the site of the village or town proper was intended to be at the Presidio; but subsequently, from the superior advantages of the anchorage at the place called Yerba Buena, that point was selected as the most eligible for that purpose. It appears from the deposition of Wm. A. Richardson, and the communication of Governor Castro annexed thereto [as Exhibit No. 1], that in the autumn of 1835 Richardson was employed to lay off and make a plan of a town at that point, which plan was communicated to the Governor and approved by him: about the same time the resolution of the Deputation was passed, authorizing the Ayuntamiento to grant building lots at that place, which was communicated to the municipal authorities in the order of Governor Castro of the twenty-sixth of October, 1835 [marked Exhibit No. 5 to the deposition of Vallejo], and dated just six days after the communication to Richardson approving the plan of the town as submitted by him. There is an evident attempt in the testimony of Richardson to make it appear that the municipal organization here referred to was for a pueblo at the Mission Dolores or San Francisco de Asis, as it was indifferently called. But this is so palpably contradicted by the other evidence in the case, both documentary

and oral, and so inconsistent with the other parts of his own testimony, as to entitle it to no weight whatever.

It is objected further, that even admitting these proceedings to be sufficient for the establishment of a pueblo so far as the territorial authorities were concerned, that in order to give them effect and validity, under the law which authorized them, the approval of the Supreme Government was necessary.

This is unquestionably true, and we accordingly find that the resolutions of the Territorial Deputation directed that they should be communicated to the government at Mexico for that purpose. There is no evidence in the case that such approval ever was had, but the resolutions to that effect were doubtless sent to the Government by Governor Figueroa, as we can scarcely imagine that one who was so punctual and exact in the discharge of all his official duties, would have neglected it in this instance. The existence of the pueblo appears to have been uniformly recognized by the public authorities from that time, and its civil officers continued in the exercise of their functions without any question as to their authority or the legality of their acts up to the change of government, a period of near twelve years. Such approval, therefore, according to well recognized legal principles, would be presumed.

After a careful examination of the whole testimony on this point, and the law applicable to the subject, we are brought to the conclusion that the effect of the proceedings of the territorial authorities in 1834, as shown by the official records and documents, for the establishment of the Ayuntamiento at the Presidio of San Francisco, and the subsequent organization of that body in conformity therewith, was to erect the Presidio into a pueblo or town, with all the civil and territorial rights which attached to such corporations under the laws of Mexico then in force.

The existence of the town being thus established, we are brought to the consideration of the second proposition presented in the case: What were the character and extent of the rights of pueblos or towns in lands assigned for their use and benefit under the laws of Mexico?

There can be no doubt that, under these laws, the pueblos or towns, and their vecinos or residents, were entitled to the use and enjoyment of certain lands within prescribed limits, immediately contiguous to and adjoining the town proper. This right appears to have been common to the cities and towns in Spain from their first organization, and to have been incorporated by her colonies into their municipal system on this continent. It is fully recognized in all the laws and ordinances in relation to the settlement and government of her colonies during her supremacy over them; and the same system seems to have continued in Mexico, with but little variation, since her separation from the mother country. The orders and decrees of the Government, and the acts of the public authorities of Mexico on the subject, all refer to the laws and ordinances of the former government as still in force, and prescribing the rule of proceeding in relation to the establishment and regulation of the pueblos. In order, therefore, to ascertain the precise character and extent of their rights, we must refer to these laws and the practice under them, as evidenced by the orders, instructions, and regulations which have, at various times, been promulgated to carry them into effect. We have shown in the former part of this opinion, that it was a fundamental principle of Spanish policy to collect the inhabitants of the countries, subject to her jurisdiction, in cities, towns, and villages; hence we find all her laws and regulations for the settlement and colonization of her American possessions have reference to this policy, and

contemplate the establishment of a town with a municipal government as the first step in the formation of such settlements. The earliest of these laws were the celebrated *Ordenanzas de Poblaciones*, first promulgated by Philip II, in the year 1563, and afterwards incorporated in *Recopilacion de Leyes Indias*, where they constitute Laws 6, 7, and 10, Title 5, Lib. 4. These laws appear to have remained in force in the Spanish possessions, with little variation, down to the present time; and, in their general features, have been always recognized in Mexico as the basis of the rights of the pueblos or towns to the lands held and occupied by them. Laws 6 and 10 of the *Recopilacion* provide for the establishment of new towns, either by contract with individuals, or by the voluntary association of a number of families, not less than ten, and direct lands to be assigned for the use of the new settlers. In the former case, at least thirty *vecinos* were required, and the quantity of four square leagues (*cuatro leguas en cuadro*) were to be laid off as the *termino y territorio*, the limits and territory, of the town. Some controversy has arisen as to the true meaning of the words "*cuatro leguas en cuadro*"—whether they should be translated four square leagues, or four leagues square. White, in his Collection of the Laws, etc., has adopted the former rendering; on the other hand, it is contended by the counsel in this case, that the latter is the more correct translation, and this idea is favored by the language of the order of Pedro de Nerva of March 22d, 1791 [Rockwell, p. 451], prescribing the quantity of land to be assigned to new pueblos to be formed under the protection of the presidios, which declares that it shall consist of four common leagues, to be measured from the center of the presidio square—namely, two leagues in every direction. This is supposed to mean two leagues in every direction from the center of the square, which, according to the ancient Spanish mode of surveying by forming a square upon the extremities of these lines, would give four leagues square, or a superficies of sixteen square leagues. But a comparison of this order with others on the same subject, satisfies us that the two leagues in every direction had reference to the whole extent of the line in both directions, and not its length from the center of the presidio square. The words "*cuatro leguas en cuadro*" are used in both senses; literally, they mean four leagues in a square; and so far as we have been able to gather their meaning as used in the law above referred to, from the interpretation put upon them in other orders and documents relating to the subject, we are of the opinion that the translation of Mr. White is correct, and that the quantity of land intended to be assigned to the new towns was four square leagues, and not four leagues square.

We have already had occasion to refer to the first settlement of California, and the establishment of the Missions and presidios as the sites of future towns and villages. The earlier orders and instructions for the government and regulation of the new settlements all have reference to this ulterior object. They authorize the Commandants of the Presidios to designate common lands, and to make grants to Indians and other settlers, meaning those of the white race, in conformity with the provisions of laws above referred to with respect to new settlements and towns, and requiring the inhabitants to live in the towns and not dispersed. See instructions, etc., of Don Antonio Bucareli y Urusu, dated Mexico, August 7th, 1773.—Rockwell, pp. 144, 145.

The regulations of Don Felipe de Nevé, approved by the King in October, 1781 (Rock. p. 445), prescribe rules for the organization and government of the new Pueblos, and the manner in which lots and lands (*solares y suertes*) shall be

distributed among the inhabitants. It also provides for the designation of lands for the *propios* of the Pueblo, and recognizes the right of the inhabitants to the common privilege of water and pasturage, firewood and timber of the common forest, and pasture lands to be designated according to law to each Pueblo. The decree of Don Pedro de Nerva, dated Chihuahua, March 22d, 1791, and the opinion of the Assessor or legal adviser of that Comandancia to which it refers, are still more explicit on this subject. The first named document declares that: "the extent of four common leagues measured from the center of the Presidio square, namely, two leagues in every direction, to be sufficient for the new Pueblos to be formed under the protection of said Presidio;" and the latter referring expressly to Law 6, Tit. 5, Lib. 4, of the *Recopilacion*, says that the boundaries assigned to each Pueblo for common lands must be four leagues in a square or oblong body. But the instruction made for the establishment of the new Town of Pitic, in the adjoining Province of Sonora, dated Chihuahua, November 14, 1789, a certified copy of which is found in the archives, approved by the King, and ordered to be adopted by the other new projected settlements, and those that may be established in the district of that Comandancia, is conclusive on this point.

This document gives minute and particular directions for the establishment and government of the new Pueblos, and declares the quantity of land to be assigned to them under the law above cited, as four leagues in a square or oblong form, out of which, after distributing to the settlers and *vecinos* the building and farming lots, *solares* and *suertes*, according to the provisions of the order, there were to be laid off certain portions as *dehesas* or pasture lands for the working oxen belonging to the Town, and land for the *propios*, the profits of which were to be applied to the support of the civil authorities and other municipal purposes—the residue to constitute the *egidos* or common lands for the use of the *vecinos* of the Pueblo generally. This document furnishes a complete illustration of the practice under the Spanish Government in the formation of new Towns, and is directly in point in the present case, inasmuch as the town of Pitic was at the time of its establishment the site of a Presidio, and like those in California, was under the civil jurisdiction of the Military Commandant, whose authority was superseded by the new municipal organization.

That the general provisions of the laws of the Indies upon which these several orders and instructions were founded, continued in force in Mexico after her separation from the mother country, except so far as modified by subsequent legislation, or were inconsistent with the principles of the new Government, can scarcely admit of a doubt. Indeed, they are expressly referred to and recognized as such in the 13th Article of the Regulation of November 21st, 1828, and the Regulation adopted by the Territorial Deputation to provide the Towns and Cities with necessary funds for their expenses and public works, promulgated by Governor Figueroa on the 6th of August, 1834. The first Article of this Regulation requires the Ayuntamientos to proceed by the proper channels to solicit the assignment to each Pueblo of lands for commons and for *propios* (*Terrenos para Ejidos y para propios.*)

Article second directs the manner in which the lands for *propios* shall be subdivided and a revenue raised from them, either by leasing or giving them *en censo enfiteutico* to the highest bidder. But if any doubt remained as to whether those laws were still recognized in Mexico, it would be entirely removed by a report of Manuel Jimeno, for many years Secretary of the Government of California, and one of the best informed of the public officers of the Department whose

acts have come under our observation. This report is found in the Expediente filed in the claim of Martina Castro for the place named "Shoquel," numbered 593 on the docket of the Commission, and is as follows :

"MOST EXCELLENT GOVERNOR :—The title given to Doña Castro is drawn, subject to the conditions that were inserted in many other titles during the time of General Figueroa, in which they subjected the parties to pay *censos* (tax) if the land proved to belong to the *egidos* of the Town.

I understand that the Town of Branciforte is to have for *egidos* of its population, four square leagues, in conformity to the existing law of the Recopilacion of the Indies, in volume the second, folios 88 to 149, in which it mentions that to the new Towns, that extent may be marked, to which effect it should be convenient that your Excellency should commission two persons deserving your confidence, in order that, accompanied by the Judge of the Town, the measurement indicated may be made, and it may be declared for *egidos* of the Town the four square leagues, leaving to the deliberation of your Excellency to free some of the grantees of the conditions to which they are subject. The supreme judgment of your Excellency will resolve as it may deem it convenient.

MANUEL JIMENO.

MONTEREY, February 8th, 1844."

This document is important, not only as showing that the laws of the Recopilacion de Indies in relation to the formation of towns were considered in force in California, but also the construction of those laws by the authorities as to the quantity of land to be assigned to them as *egidos*. In another report of Jimeno, contained in the same Expediente, the same lands are referred to as consisting of *cuatro sitios*. This construction of the law fixes the quantity of land to which a town was entitled to use for *propios* and *egidos* at four square leagues, and not four leagues square, as contended for by the counsel in the case, and fully sustains the views we have expressed above.

The most material alteration made in the Ordinances de Poblaciones were effected by the decrees of the Spanish Cortes, already referred to in relation to the organization of the municipal authorities of the towns ; and that of the fourth of January, 1813, for reducing the vacant and other common lands to private property—which last will be considered in connection with another branch of the subject. But these changes did not affect the rights of the towns or their inhabitants, to the use and occupation of the lands assigned to them for *egidos* and for *propios*, or the extent of the lands which might be so assigned, except that by the provisions of the last-mentioned decree, these lands might be alienated and reduced to private property, like other portions of the public domain, whereas prior to that time they were inalienable, except in the quantities and under the restrictions provided by the law and instructions on the subject, authorizing the concession of small parcels for building and farm lots. After being reduced to private property, the rights of the town of course would cease, except so far as the lands might be subject to taxation for the support of the municipal government.

If we are correct in our deductions from these authorities, there can be no doubt that at the time the organization of the Pueblo of San Francisco took place, newly established towns in California were entitled to have assigned to their use certain lands known as lands for *egidos* and *propios*.

Under the Spanish Government, the quantity of land assigned to a *presidio* in

anticipation of its being erected into a pueblo at some future time, was limited, as we have shown above, to the quantity of four square leagues; but there is nothing in the law which would restrict the new pueblo on its organization to that precise quantity; and it is presumed that the proper authority might assign a greater or less quantity, according to the necessities of the town, its population, contiguity to other pueblos, or other circumstances.

Applying then these principles to the facts of this case as disclosed in the testimony, we are satisfied that, at the time of the establishment of the Pueblo of San Francisco, such an assignment of lands was made to the new town, and their boundaries established by the Comandante of the Presidio, on whom the duty of inaugurating the municipal authorities devolved. M. G. Vallejo, who then filled the office of Comandante, testifies, that he marked out boundaries for the Pueblo of San Francisco, and sent an Expediente of the act down to the Government at Monterey; that subsequently he received from Governor Figueroa a communication notifying him of the approval by the Territorial Deputation of the plan presented by him, and reciting the boundaries as described in his note, and that within two weeks after the receipt of that communication, he, in company with Francisco de Haro, José Sanchez, Francisco Cazares, Juan Miranda, and others, established the boundaries of the pueblo as described in said document.

Two copies of the communication from Figueroa, marked respectively Exhibits Nos. 4 and 18 to the deposition of Vallejo, are filed in the case, and are proved by him to be true copies of the original, which he states was deposited by him in the archives of the new pueblo. Exhibit No. 18 purports to be certified as a true copy by Augustin Zamorano, then Secretary to the Territorial Government, and is translated as follows:

“POLITICAL GOVERNMENT OF UPPER CALIFORNIA.

“*General Comandancia of Upper California*:—This Government, satisfied of the zeal and activity which characterizes you, as well as the patriotism which animates you, sees in your official note of the 24th of October, ultimo, a new proof of your desire for progress, and of your untiring efforts for the enlightenment and greatness of your country and of your fellow-citizens.

“In consideration of this, he takes pleasure in making known to you that, with the consent of the Most Excellent Territorial Deputation, it has adopted entire the Plan, which you have presented in your note referred to, with respect to the Pueblo of San Francisco, declaring its boundaries to be the same which you describe in said note: that is, commencing from the little cove (*caleta*) to the east of the Fort, following the line drawn by you, to the beach, leaving to the north the Casa Mata and Fortress; thence following the shore of said beach to Point Lobos, on its southern part; thence following a right line to the summit of El Devisidero; continuing said line towards the east to La Punta del Rincon, including the Canutales and El Gentil; said line will terminate in the Bay of the Mission Dolores, the estuary of which will form a natural boundary between the municipal jurisdiction of that Pueblo and of said Mission Dolores.

“This Government, as proof of the confidence with which your services inspire it, has directed that you should be the person to have the honor of installing the first Ayuntamiento in that Pueblo of San Francisco, for which you have already done so much.

“In consequence, you will proceed, in the time and manner prescribed by law,

to the election of the municipal authorities, in order that they may be installed the first day of January of the coming year, 1835, designating for town houses the buildings which you may deem most fit. God and Liberty.

“ [Signed]

JOSE FIGUEROA.

“ MONTEREY, Nov. 4th, 1834.

“ To the Military Comandante of San Francisco,

“ Don MARIANO G. VALLEJO.

“ A true copy :

[Signed]

ZAMORANO.”

Much controversy has arisen, and much conflicting testimony taken in the case, as to the authenticity of this document as an official copy, and the genuineness of the signature of Zamorano to the certificate which appears upon it. In the view which we have taken of the case, we do not consider the decision of this question material to the issue. The only questions presented for our decision under the law, are : First—The existence of the pueblo or town on the seventh of July, 1846. Second—Whether such town was possessed of lands, and if so, what were their extent and limits. And Third—The two first propositions being established affirmatively, whether the present City of San Francisco is entitled to a decree of confirmation for such lands under the Act of the third of March, 1851 ? The establishment of the town, and its continued existence down to the period of the American occupation, is, as we have already shown, fully sustained. We have, also, shown by the laws in force at the time the pueblo was established, newly formed towns in Mexico were entitled to the use and occupation of certain lands contiguous thereto. It does not appear from those laws that any formal grant or title to those lands was ever made to a town ; but they were simply laid off, and their boundaries fixed by the officer appointed for that purpose. This act was as necessary to the establishment of the new town as any other part of the proceedings for that purpose. It was necessary, in order to fix the municipal jurisdiction of the town authorities, and the limits within which the “ *vecinos* ” were entitled to the enjoyment of the rights of common conferred by law. It is true, that some evidence, or official recognition of this act ought to be found in the archives of the pueblo, and we accordingly find, from the testimony of Vallejo, that the original of the communication from Governor Figueroa, recognizing and approving the boundaries as fixed by him, was deposited there ; that it cannot now be found is not a matter of surprise, in view of the fact that of the great mass of documents constituting the archives of the former Presidio and subsequent Pueblo of San Francisco, the few papers filed in this case are all that can now remain relating to the subject. The document in question is not presented as a title paper, but in corroboration of the testimony of Vallejo, showing that the lands were laid out and the boundaries established by him. General Vallejo was the Military Comandante of the Presidio, exercising the functions of Civil Magistrate within its jurisdiction, and as such was the proper officer to carry out the decree of the the Assembly for organizing the new Pueblo. It appears from the documentary evidence that he did so, and we learn from his deposition that among the acts performed by him was the assignment of lands and the establishment of the boundaries of the town ; this document is filed to show that this, together with his other proceeding in the premises, were approved by the Governor. His evidence in this respect is strongly corroborated by the second deposition of Richardson, and that

of Charles Brown, taken in the case, both of whom swear that the division line between the Mission and the Presidio or Pueblo of San Francisco, ran up Mission Creek to a high hill known as the "Devisidero," and thence in a straight line to the Pacific Ocean or Point Lobos. This line is almost identical with that established by Vallejo and described in Exhibit No. 18. Other witnesses refer to it when they speak of frequent disputes between the authorities of the Mission and those of the Presidio, in relation to the trespassing of the cattle north or south of it. It is further corroborated by the testimony of Ford and Rose, both of whom testify to a line described and pointed out to them by Guerrero and Hinckley, now deceased, who formerly held official positions in the pueblo. Their descriptions of this line approximate as nearly to that laid down in Exhibit No. 18, to the deposition of Vallejo, as could be expected from persons who were at the time but little acquainted with the topography of the surrounding country. The line referred to by Richardson and Brown, was doubtless the dividing line between the two establishments, and was adopted and established by Vallejo as the line of the pueblo. This evidence is, in our opinion, sufficient to establish the fact that the land was laid off, and its boundaries fixed, by competent authority, independent of that derived from the document in question. This assignment and fixing of boundaries was in our opinion sufficient to invest the pueblo with all the right to the lands embraced by them, which it was capable of acquiring under the Mexican law. Whether Exhibit No. 18 be an official copy or not, we think it is sufficiently proved, to identify and furnish a description of the boundaries which Vallejo swears he established as the limits of the pueblo near the time it bears date; and the fact of the continued existence of the pueblo, with the limits so assigned, down to the period of the American occupation, is sufficient to raise a presumption that the act establishing those limits was, in common with other proceedings for its organization, duly approved by the proper authorities. But whether this be so or not, we are clearly of the opinion that there is sufficient proof of the loss or destruction of the original to authorize the introduction of secondary evidence of its contents, in which case the paper in question would be admissible in evidence as a sworn copy.

It is exceedingly difficult, with our imperfect knowledge of the Spanish and Mexican laws on the subject, to determine what was the precise character of the rights which the pueblos held in the lands assigned to them. The lands for *propios* seemed to be under the control of the municipal authorities, for the purpose of raising funds for their support and other municipal purposes. The regulations generally prescribe the manner in which this should be done. In the plan of Pitic, the mode proposed seems to have been by cultivation at the expense of the town—the profits being appropriated to the municipal expenses. In other cases, they were authorized to lease or dispose of them *en censo enfiteutico*, as in the California Regulations of August, 1834. The *egidos*, or common lands, stood on an entirely different footing; they were not regarded in any sense as the property of the corporation, but were set apart and assigned for the common use of the *vecinos* of the pueblo.

But whatever may have been the interest which the towns had in those lands, or the tenure by which they held them, it is certain that they never had such a right of property in them as would enable them to alienate or dispose of them in any manner. Both the right to grant house lots, or farm lots, and to dispose of *propios* by lease or enfiteutic rent, was under authority specially delegated by the Gov-

ernment for that purpose, and revocable at its pleasure. This is proved by all the laws, regulations, and instructions to which we have had access—all of which go to show that the right of property remained in the Government, subject to the use of the towns for the purposes and under the restrictions imposed by the laws and regulations. Authorities might be multiplied almost indefinitely to sustain this position; indeed, we find the principle pervading all the laws of Spain and Mexico on the subject, and uniformly recognized in their application by the authorities whose duty it was to carry them out. Elizondo, in his *Practica Universal Forense*, volume 3, page 109, lays it down distinctly in the following passage: "For," says he, "the Kings, the fountains of jurisdictions, are the owners of all the *terminos* situated in their kingdoms, and as such can donate them, divide or restrict them, or give any new form to the enjoyment thereof, and hence it is that the *pueblos* cannot alienate their *terminos* and *pastos* without precedent royal license and authority." Again, volume 5, page 226, he says: "There is nothing whatever designated by law as belonging to towns, other than that which by royal privilege, custom, or contract between man and man, is granted to them, so that although there be assigned to the towns at the time of their constitution a *territorio* and *pertinencias*, which may be common to all the residents, without each one having the right to use them separately, it is a prerogative reserved to the princes to divide the *terminos* of the provinces and towns, assigning to these the use and enjoyment, but the dominion remaining in the Sovereigns themselves."

The decree of the Spanish Cortes of the fourth of January, 1813, is, in itself, a recognition of this principle. The object and intent of the law was the distribution and reduction to private property of all the lands previously occupied and used by the towns, and it prescribes minutely the manner in which this shall be done, and treats them throughout the whole act as public or royal lands. If these lands had been the private property of the *pueblos*, the Cortes would have had no more right to decree their sale and distribution than they would have had to alienate or dispose of the private property of individuals. But it is evident, from the whole tenor of the decree that they were regarded as public lands, and subject to be disposed of at the pleasure of the sovereign power. This law was probably never carried into effect in Spain; but there can be no doubt that, in common with other decrees of the Cortes, which were revived by the Spanish revolution of 1819, it was in full force in Mexico at the time her independence was established. These decrees have since been repeatedly recognized by Mexico as part of her civil code; and that of the fourth of January, 1813, unquestionably constituted the foundation for the power which was uniformly exercised by the Mexican authorities in California in the distribution and granting the common and other lands of the towns, in the same manner as other portions of the public domain, except that in the former ones the lands were granted subject to the *cañon* or tax which might be imposed for municipal purposes. The method usually adopted when a petition for lands supposed to be included in the *egidos* (commons) of a town was presented to the Governor was, for that officer to enter an order referring it to the *Ayuntamiento*, who reported whether the lands belonged to the town, and if so, whether they might be granted without detriment to the corporation. If the report was favorable to the grant, it was made in the customary form of a colonization grant with the condition above mentioned, and in some cases with the additional one, of subjecting the lands granted to the enjoyment by the *vecinos* of the *pueblo* of the common right of wood, water, and pasturage. Among the numerous cases of this

description which have been presented to the Commission, we refer particularly to the Expedientes in cases no 353, Jacob P. Leese, for "Panta de Pinos;" No 535, Rafael Estrada, for the "Rincon de las Salinas;" No. 593, Martina Castro, for "Shoquel," in which the grants were made by Governor Figueroa in 1833; No. 191, Charles Walters, for "El Toro," grant made by Governor Castro in 1835; No. 456, Antonio Igo. Abila, for "Sausal Redondo," grant by Governor Alvarado in 1837; and No. 427, Thomas Sanchez, for "La Cienega," grant by Governor Micheltorena in 1848. All of these are grants of land supposed to be within the *ejidos*, or common lands, of the respective towns near which they were situated. These grants were made at different times, extending through a period of ten years, and by nearly all the persons who filled the office of Governor during that time, and no question seemed to have been raised as to the authority of the Governor to grant them as portions of the public domain; but being situate within the corporate limits of towns, they were made liable to be taxed for municipal purposes. By Article 77 of the Organic Law of the twentieth of March, 1837, the distribution of the common lands of the towns was committed to the Prefects of the respective districts. The powers of those officers over the subject was considered by the Board, in their opinion in the case of Manuel Larios, No. 279, for lands near San Juan Bautista, in which their authority to grant those lands as belonging to the Government was fully recognized.

The proceedings of the Territorial Government in relation to the distribution of lots in the Pueblo of San Francisco, are in entire conformity with this view of the question. The first application of which we find any record, for a grant of a house lot or farm lot (*suerte*) in the new Pueblo was that of José Joaquin Estudillo, referred to in the former part of this opinion, where the action of the Governor and Territorial Deputation on the subject is fully set out. From these proceedings it is clear that the lands were regarded as the property of the nation, and as such subject to the disposition of the territorial authorities according to the law regulating the subject, and this, two, notwithstanding the fact that they are expressly recognized as belonging to the jurisdiction of the Ayuntamiento of San Francisco. The deputation accordingly reported in favor of the expediency of making the grant limiting the quantity to that specified in the fifteenth article of the regulation of November 21st, 1828. This reference to the regulation shows that the deputation considered that they were acting upon its authority, from which alone they derived their power to dispose of the public lands, and, as a necessary consequence, that they regarded the lands referred to as comprehended in that description. To avoid, however, the numerous applications, which they supposed would be made for building lots in the new Pueblo, they passed a resolution authorizing the Ayuntamiento to make such grants within certain limits specified in the resolution. The order of Governor Castro, of the 26th October, 1835, communicating this resolution of the deputation to the Ayuntamiento, and directing future applications for such grants to be made to that body, has already been quoted, and was unquestionably the authority under which all subsequent grants of lots of one hundred varas square were made by that body, or the Justices or Alcalde who succeeded it in the government of the Pueblo.

A careful examination of the authorities on this point, in connection with the uniform practice under Spanish and Mexican Governments, as shown in the numerous orders, decrees, and regulations, and the acts of the public functionaries in relation to the subject establish clearly, in our opinion, the following propositions :

1st. That under the laws of Spain and Mexico no right of property in lands assigned to Pueblos or Towns was ever vested in those corporations by which they could alienate or dispose of them in any manner; but such assignment only conferred a right to use and occupy them in the manner prescribed by the laws under the direction of the superior authorities.

2d. That the right to alienate or dispose of such lands, whenever exercised by the municipal authorities, was by virtue of powers specially delegated to them for that purpose by the King or Nation, in the same manner as the authority to dispose of other portions of the public domain was conferred on other functionaries specially charged with the subject.

In view of these conclusions, the question is presented whether an assignment of municipal lands to Towns under the laws of Mexico conferred on those corporations such a right or title to the premises so assigned, as would under the general provisions of the Act of the 3d of March, 1851, entitle them to confirmation of the same, independent of the presumption created in their favor by the fourteenth Section of that Act. So far as the action of this commission is concerned, we do not think it necessary to decide this point. In the former part of this opinion we have examined the true meaning and intent of the fourteenth section of the above law referred to, and from that examination we entertain no doubt that it was the intention of Congress, where a Town was proven to be in existence on the 7th of July, 1846, that a grant should be presumed for all the lands at that time held and occupied by such Town or its lawful authorities. That in accordance with that presumption, the lands should be confirmed to the corporate authorities of the Town, which confirmation should inure to the benefit of the lot holders under grants from the Town, and should operate as a release of the rights of the United States to the remainder of the land in favor of the corporation for the common use and benefit of all the inhabitants without prejudice to the rights of third parties. From our examination of the evidence in this case and the laws applicable to the subject, as shown in the preceding part of this opinion, we are brought to the following conclusions :

1st. That a Pueblo or Town was established under the authority of the Mexican Government in California, on the site of the present City of San Francisco, and embracing the greater portion of the present corporate limits of said City.

2d. That the Town so established continued and was in existence as a municipal corporation on the 7th day of July, 1846.

3d. That at or about the time of its establishment, certain lands were assigned and laid off in accordance with the laws, usages, and customs of the Mexican nation, for the use of the Town and its inhabitants, and the boundaries of said lands determined and fixed by the proper officers appointed for that purpose by the Territorial Government.

4th. That the boundaries so established are those described in the communication from Governor Figueroa to M. G. Vallejo, dated November 4, 1834, a copy of which is filed in the case, marked Ex. No. 18, to the deposition of said Vallejo.

These conclusions bring the case, in our opinion, clearly within the operation of the presumption raised in favor of a grant to the Town by the 14th Section of the Act of the 3d of March, 1851, and entitle the petitioner to a confirmation of the land contained within the boundaries described in the document above mentioned.

R. AUG. THOMPSON,
S. B. FARWELL,

Commissioners.

No. LXXXIII.

UNITED STATES LAND COMMISSION FOR CALIFORNIA.

CLAIM FOR FOUR LEAGUES PUEBLO LANDS.

Dissenting Opinion of Commissioner Alpheus Felch.

THE CITY OF SAN FRANCISCO }
 VERSUS } No. 280.
 THE UNITED STATES. }

I fully concur with my associates in the Commission, in the opinion that the City of San Francisco is entitled to a decree of confirmation in this case, but in my judgment the premises which should be confirmed, comprise only the land which, plotted into lots, streets and squares, was embraced within the city limits under its act of incorporation passed in 1850. The decree which is entered in the case covers a much larger tract. It is bounded on the North and on the East by the waters of the Bay of San Francisco, on the West by the Pacific Ocean, and on the South by a line drawn from the Bay to the Ocean. This last mentioned line is designated the Vallejo line. The City of San Francisco is situated on and extends along the East side of the area embraced within these limits, while the tract outside of the city boundaries and lying between it and the ocean constitutes much the larger portion of the area. The Presidio, to which reference is often made in the case, is within the area but without the city limits, and at a considerable distance from the city lines. The ancient Mission of San Francisco de Asis or Dolores is not within the area described in the decree of confirmation.

We all agree that the authority to adjudicate in this case is found in the fourteenth section of the Act of March 3d, 1851. The chief clause in that section upon which the decree of confirmation must rest, is that which declares that the previous provisions shall not apply to any city, town or village lot, which city, town or village existed on the seventh day of July, 1846, but the claim for the same shall be presented by the corporate authorities of said town, and the existence of such city, town or village on the day above mentioned shall be *prima facie* evidence of a grant to such corporation. But to what lands does this right to a confirmation extend? Within what limits or boundaries is the City under this enactment entitled to a patent for the land?

The decree is based upon the proposition that the lands confirmed were assigned to the use of the town under Mexican authority in 1834, with clearly defined limits, such as are described in the decree. The result of the investigation of the proof in the case, as stated in the opinion of the majority of the Commission, is as follows:

First.—That a Pueblo or Town was established on the site of the present City of San Francisco under the Mexican authorities.

Second.—That the Town so established continued and was in existence as a municipal corporation on the seventh of July, 1846.

Third.—That about the time of its establishment the lands confirmed were duly assigned and laid off in accordance with the laws, usages and customs of the Mexican nation, for the use of the Town and its inhabitants, and its boundaries determined and fixed by the proper officers appointed for that purpose by the Territorial Government.

Fourth.—That these boundaries are the same which are described in document marked Exhibit No. 18, Gen. Vallejo's deposition, having the Vallejo line for its limits on the South.

If in my judgment these several propositions were established by the proof, I should find no necessity to object to the decree entered in the case, but in my opinion, the testimony fails to establish the propositions.

The establishment of the Pueblo is based on the action of the Territorial Deputation had at their session of the third November, 1834. At that time the ultimate power of establishing Pueblos or Towns as municipal organizations was with the Supreme Government. The Territorial Deputation was to take the initiative; their recommendation and action was to be transmitted through the Political Chief to the Supreme Government for the disposition of the latter. It is not alleged that any action of the Supreme power was had in the case under consideration, but the proceedings of the Territorial Deputation are claimed to have had the effect of creating such organization. I shall not stop to inquire whether without the approbation of the Supreme Government, any action of that body could have that effect, but conceding that it could, these proceedings were not such as in my opinion to prove the establishment of an organized Pueblo, within the limits defined in the decree of confirmation.

The proof of the establishment of the Pueblo consists chiefly, if not exclusively, of the record of the proceedings of the Territorial Deputation on the third November, 1834; the dispatch of Governor Figueroa of the next day, designated as Exhibit No. 1, annexed to the deposition of M. G. Vallejo, and the document marked Exhibit No. 18, known as the Zamorano document. All these are recited in the opinion of the majority of the Commission filed in the case.

From the examination of these documents I am of the opinion that the organization, which took place at the Presidio in the fall of 1834, under the action of the Territorial Deputation of November 3d, was a temporary organization for the government of the entire northern portion of the Territory, and not the establishment of a municipal organization of a Town within the limits described in the decree of confirmation. I do not esteem it necessary here to go into a protracted argument on this subject, but the following, among other considerations tending to corroborate this view, may be stated:

First.—The record of the proceedings of the Territorial Deputation, which is the basis of the organization whatever was its character, does not establish or direct the establishment of a Pueblo or Town, but simply directs that the Partido (district) of San Francisco proceed to the election of a constitutional Ayuntamiento, to be established in the Presidio of that name, etc.

Second.—The Ayuntamiento so to be established, was by the order of the Governor, Figueroa, transmitting a copy of these proceedings, with direction to proceed to the election of the proper officers, directly stated to be not the exercise of merely municipal jurisdiction, but of political functions; and that not merely within the area now claimed to have been embraced in the Pueblo, but over the whole northern portion of California where Gen. Vallejo, the comandante of the Presidio, had previously exercised his authority.

Third.—The testimony of the witnesses shows that in fact the Ayuntamiento did exercise its authority, not merely over this limited space, but over a tract of country extending many miles South of the present city of San Francisco, and embrac-

ing a large tract of country on the opposite side of the Bay and almost an indefinite extent to the north of it.

It is argued that the existence of an Ayuntamiento necessarily implies the municipal organization of a town over which it presides. In the original use of the word in ancient Spain, it is probably true that Ayuntamientos existed only in such Pueblos or Towns. But the Constitution of 1812 was the commencement of important changes in the internal economy of Spain and her provinces, and under this and the subsequent laws of 1812 and 1813, and more especially under the Mexican law of 1830, the character of these organizations in Mexico was greatly modified. However it might have been before, the powers and jurisdiction of an Ayuntamiento might certainly under these embrace larger extents of country, and include within their limits many parishes and Pueblos. Their defined duties and powers were such as pertained, at least many of them, to the supervision of rural districts as well as to towns or cities. We know, moreover, that the northern portions of California, with its sparse population, was generally governed by officers or tribunals whose duties and powers were anomalous in their character, or enlarged to meet the exigencies of the country. Thus, down to the time of the organization of the Ayuntamiento, Gen. Vallejo, the military commandant of the Presidio, exercised full civil authority over that immense region of country. And thus Gen. Sutter, at a subsequent period, acted as judge of the entire Sacramento District, with powers understood to be ample, but which were both extraordinary and undefined. We should not be surprised, therefore, if it should appear that this new organization, made to provide for an emergency, should be found to impose on the newly established tribunal a different or more enlarged jurisdiction than usually appertained to tribunals elsewhere bearing the same name.

Fourth.—The evidence shows, that at the time the Ayuntamiento was established, there was no considerable settlement or Town within the limits specified to require a municipal organization, and with the exception of the military forces stationed at the Presidio, there were very few inhabitants established there. The first house was not built at Yerba Buena until after this period. Nor is it shown that any effort was made subsequently to build up a Town, having for its center the Plaza of the Presidio, with its streets radiating therefrom in the usual manner of constructing Spanish or Mexican Towns.

Fifth.—But it is claimed, that notwithstanding the Ayuntamiento was, in the proceedings by which it was established, ordered to be elected by the Partido, (District) and its jurisdiction was, by the dispatch of the Political Chief, declared to be political and to extend over this extensive district of country, it still had a special municipal jurisdiction confined to the small extent of country embraced within the decree, and limited on the South by the Vallejo line, this small area constituting a Pueblo. This proposition rests chiefly, if not entirely, on the document marked Exhibit No. 18, above mentioned, and the testimony of M. G. Vallejo. The importance of this part of the proofs in its bearing on the case, makes it necessary to refer to it more at length. The document is copied *in extenso* in the opinion of the majority of the Commission filed in the case. This document purports to be an official copy of a dispatch from Governor Figueroa to Gen. Vallejo, certified as a true copy of the original by Zamorano, who was Secretary of the Government. The original is not presented. Vallejo testifies that he received from Governor Figueroa in 1834 a document designating the boundaries of the Pueblo of San Francisco, and that he deposited it in the Pueblo Archives; he also swears that

the copy here presented has been in his possession (with the interval of a short time) ever since near the time of its date, November 4th, 1834. As an official copy, it derives its force for the purposes of evidence from the authenticity and genuineness of the signature of Zamorano, the certifying officer. Gen. Vallejo, who was acquainted with Zamorano's handwriting, attests to its genuineness; but the witnesses, Alvarado, Hartnell, Richardson and Castro, who also well knew it, are fully of opinion that the signature was not made by him. Vallejo does not claim to have seen Zamorano sign his name to the certificate; like the other witnesses, he judges it to be genuine only from his knowledge of his handwriting. Every other witness who is questioned on the subject believes it not to be Zamorano's signature. The weight of evidence is decidedly against the genuineness of it, and I am compelled therefore to regard the document as not entitled to credit as a certified copy.

But it is claimed that, whether this certificate of Zamorano's be genuine or a forgery, the testimony of Gen. Vallejo proves that he received an original communication, and that this is a true copy thereof. If such a document was received by the witness as is lost, so that its production cannot be obtained, recourse should be had to the archives where it is presumed a copy may be procured. The proof of this as a copy is most unsatisfactory in its character. On the first examination of the witness, a paper similar in its contents to Exhibit No. 18 was exhibited by the claimant's counsel to him, and he was asked whether to the best of his knowledge and belief it was a true copy of the original received by him, and he replied that according to his best recollection it was a copy.

This method of making proof of the contents of a lost document by presenting a paper already prepared by the parties taking the testimony, and requiring his simple affirmative answer to the question whether it is a copy, is sustained by no authority of law, and if it had been objected to by the counsel for the Government, would for this reason be rejected.

The memory of the witness should have been taxed for his recollection of its contents, and they should have been stated by him instead of being prepared and presented for his simple yes or no by an interested party; no objection, however, was made.

The witness produced, on a subsequent examination, the document marked Exhibit No. 18, and testified that he believed it to be a true copy of the original received by him, and which he delivered to the Alcalde of the Pueblo. When this paper, known as the Zamorano document, was obtained by the witness originally, or by whom it was prepared, or for what purpose it was placed in his hands, does not appear. It is scarcely probable that he procured it while the original was still in his possession. He states that the original was delivered up by him to the Alcalde with the other archives of the Pueblo, and as his connection with it ceased immediately after the organization of the Ayuntamiento, we may reasonably conclude that this must have been early in 1835. He does not state that he ever compared this alleged copy with the original, or that he examined or read it while the recollection of the original was fresh in his mind, and that he now was able to remember that he then recognized it as a copy. He regarded this as an authentic copy under the genuine signature of Zamorano, the Secretary.

The testimony, in my opinion, shows that it is not so; and if any of his impressions of the contents of the original were derived from an examination of this document under the belief that it was genuine, they were derived from a source not

legitimate and calculated to mislead. The rule of law is well settled, that a witness testifying to the contents of a lost document, must state the fact from his recollection of what the original contained. Memoranda made by him contemporaneously with his examination of the original may be used with propriety to refresh his memory; but even then, after examining them he must testify only from his recollection of the original. In this case neither one of these alleged copies was made by the witness, neither compared by him with the original, neither obtained from a source entitling to any special authenticity or authority. The evidence that they are copies of the paper received by him from Figueroa rests then entirely on the memory of General Vallejo of the contents of the original; more than eighteen years must have elapsed after it left his hands before his testimony was given, a length of time sufficient to tax the most retentive memory as to the contents of a paper, and to invite the most careful scrutiny into its correctness.

We shall here test the accuracy of this testimony by first stating what is the purport of this document, if it be a true copy of an original sent to Gen. Vallejo; and secondly, by inquiring whether, in the light of the other testimony in the case, such a document could have been transmitted by the Governor for the purpose indicated. The dispatch is presented as evidence of two facts: first, that the organization of the Ayuntamiento was the establishment of a municipal corporation or Pueblo; and secondly, that the lines designated therein and previously recommended by Gen. Vallejo were adopted by the Deputation as the boundary lines of the Pueblo. Gov. Figueroa had not the power to establish a Pueblo, or to fix the powers thereof, or to make an assignment of land for its public uses. His decree to that effect would be of no authority. The Deputation alone had the power to take the initiative on this subject. The document does not declare that the Political Chief thus decrees, but merely certifies on this subject that the Deputation had adopted the plan recommended by Vallejo, and had fixed the boundaries of the Pueblo as described therein, making the Vallejo line the southern limit. If this line was thus established, it was by action of the Deputation, and the communication of Figueroa was valuable only as evidence of the action of that body. If the original, signed by Figueroa was produced, it might be *prima facie* proof that such proceedings were had; but as it is lost the party must proceed with the proof of the facts as the rules of law require. The rule is that the best evidence of which the nature of the case admits shall be adduced. Here the nature of the case points out at once better evidence than the recollection of the witness as to the facts alleged to have been stated in the document. A copy of the communication of the Governor from the Archives, if it could be found there, might be produced; if not found, the records of the Territorial Deputation, which must constitute the best evidence of these proceedings if they were to be had, should be produced by the claimant. But there is evidence given in the case upon the part of the Government which will enable us more certainly to solve the question whether the Territorial Deputation did in fact take action establishing the lines indicated as and for the boundaries of a Pueblo. The recorded journal of the proceedings of the Deputation, during the session when this action is alleged to have been had, is given in evidence, and shows no such action by that body. José Castro swears, that he was the presiding officer of the Deputation during the session of 1834, and on examining Exhibit No. 18 says, that no such plan as this was ever presented to the Deputation, nor acted upon by that body. The witness, Governor Alvarado, who was a member of the same Deputation, knows nothing of the establishing of

such boundaries. At the Surveyor-General's office an examination has been made for a record or memorandum of such a dispatch from Figueroa, but nothing of the kind is found; a copy of the letter from the Governor to Gen. Vallejo, dated May 36th, 1834, is there, but none of a later date in that year appears. Francisco Sanchez, who was Secretary of the Ayuntamiento for nearly three years, and as such in connection with the Alcalde had charge of the archives in which Vallejo testifies the original communication received from Figueroa was deposited, swears that he saw among them no papers defining or assigning such boundaries.

As to the existence of such a line and the knowledge of it by the inhabitants, one witness, Julius K. Rose, swears that Guerrero, the Alcalde, pointed out to him this line in 1850, as the line of the Pueblo; and another, Ford, states that in 1844 a line nearly identical with it was described to him by Alcalde Hinckley as marking such limits. Another witness, Pickett, testifies, that in 1846 Guerrero concurred with the other old inhabitants in declaring that there was no Pueblo in existence here; and another, Davis, says that Hinckley, he thinks, with others, designated very different boundaries. These hearsay statements, coming from two witnesses who are not shown to have had any special knowledge on the subject even, if not weakened by their own contradictory statements, would not avail to establish such a line. The general scope of the evidence in the case is not such as to indicate that any such line was known or recognized among those most likely to be cognizant of it. If it was officially established as a demarcation of such boundary, that general notoriety which would seem to be an unavoidable necessity, if such a demarcation was made for so public a purpose, is not shown to have existed. It has been truly said, that independent of anything contained in this document, General Vallejo swears that he marked out and established the Vallejo line as one of the boundaries of the Pueblo, and that he sent an *expediente* thereof to Monterey. This marking of the line was before the alleged action of the deputation by which it was said to be established. But the act of General Vallejo could not establish a Pueblo or mark its boundaries, or assign to it lands within any limits or for any purpose. These must depend on the action of the Territorial Deputation for even the initiative. Whatever may have been his action or the design of his acts, without the sanction of the Deputation no rights could devolve upon the municipal authorities or others by virtue of them.

It is not the question whether Vallejo ran and established a line which he designated as the limits of a future Town, or whether he recommended the establishment of a municipal organization within the limits of his demarcation. All this might be, and yet without proof of the official action to the same effect of the public authorities, the Deputation taking the initiative, no town could be alleged to have been established. It will not escape observation that the document No. 18 is dated on the same day as that marked No. 1. Both are addressed to the same person: both relate to the establishment of an Ayuntamiento by the Territorial Deputation, to be organized at San Francisco, and if both be genuine, were undoubtedly transmitted together. The first is admitted to be genuine, and the proceedings of the Deputation, recited in it, are found in the records of that body. If the action of the Deputation which is stated in the latter actually took place, it must have been at the same session which was being held at the time of its date. This action is so different in its character from that referred to in the first document and found in the recorded proceedings, that it cannot be the same. Were two resolutions passed by the Deputation at the same time? Were two Ayunta-

mientos to be established by General Vallejo, one with a jurisdiction broad as the limits of the partido, and the other confined to the small limits indicated by the Vallejo line and the waters of the bay and ocean? Or was a smaller jurisdiction carved out of the larger, with special powers or rights limited to the boundaries of the latter, though presided over by the same Ayuntamiento? Did Governor Figueroa send two such documents, of the same date, to General Vallejo? It would require direct and unequivocal evidence to convince my mind against the record of the Deputation, and the other evidence in the case, that such was the fact. In my opinion, these considerations, and the fact that no such boundaries were subsequently recognized for any particular purpose, to which I shall again refer in this opinion, brings my mind irresistibly to the conclusion that the Territorial Deputation passed no resolutions establishing the Vallejo line or organizing a municipality limited by it on the south; that their only action on the subject is that found in the resolutions of November 3d, 1834, a copy of which was transmitted in Exhibit No. 1, and that the document marked 18 cannot be considered as establishing the contrary. There are many circumstances in the case which tend to show how the mind of the witness may have been led to the belief that the Zamorano document was a true copy of an original received by him. We need impute no improper motive or attempt to misrepresent on his part, in coming to the conclusion that these proofs to the contrary far outweigh the testimony, which is based on the mere recollection of the most respectable witness as to the contents of a document which he has not seen for eighteen years. "My experience has taught me," said Lord Tenterden, "the extreme danger of relying upon the recollection of witnesses, however honest, as to the contents of written instruments; they may be so easily mistaken that I think the purposes of justice require the strict enforcement of the rule."

Sixth.—The boundaries described are represented in the document No. 18 as the boundaries of the Pueblo, and both by the description therein given and by the testimony of Vallejo, they are represented as the jurisdictional limits of the authorities thereof. The witness declares that the jurisdiction of the Ayuntamiento extended only to these limits. But it seems to me that the accumulated evidence in the case shows beyond controversy that these lines were not the limits of the authority of the Ayuntamiento. The history of the organization and proceedings of that body shows that it could not have been so. The voters of the first election, according to the testimony of Sanchez, came from Contra Costa, Sanoma, San Rafael, and other places, embraced in a large extent of country, and extending far outside these limits. In May, 1835, the inhabitants of the ranchos of the east side of San Francisco Bay, applied to the Governor to be set off to the jurisdiction of San José, representing that they were compelled, in order to go to San Francisco, to expose themselves to danger in crossing the bay, or to travel some forty leagues by land in order to avoid it; that they were liable to be called to exercise the judicial functions, or to serve as members of the Ayuntamiento at the latter place, when they must take up their residence there for a year. The application was signed by some residents of Contra Costa. The petition was referred to the deputation, and reports were made by the Ayuntamientos of San José and San Francisco. The latter resisted the application, and no final action appears to have been taken on the subject. Persons living outside of these limits not only voted at the several primary elections, but also served as electors, and were elected and officiated as officers, constituting the

Ayuntamiento. There was no time during its existence that some of its members were not residents of the Mission, which was south of the line said to have limited the jurisdiction. By the Constitution of 1812, the Spanish decrees made under it, and the Mexican law of July 12, 1830, which are referred to in express terms in the decree of the deputation directing the election of the Ayuntamiento, residents within the Pueblo alone were entitled to vote at such elections or to hold any of these offices. In 1838 the Ayuntamiento ceased to hold its sessions within the limits of the jurisdictional lines, and was established at Mission Dolores. If, while it continued within the limits, the municipal elections were held and offices filled by persons living without them, the more singular fact was subsequently presented of a municipal government organized without its jurisdictional limits and governing it like a foreign territory. This could not be so under the Mexican law, and whatever jurisdiction that might be, it was surely commensurate in its territorial extent with that wide district within which both its electors and elected resided. Nor is there evidence to show that there was any difference in the character of the jurisdiction of the Ayuntamiento depending on the alleged lines of demarcation, or that it was more perfect or extensive on the north side of the Vallejo line than on the south. Nor when other officers succeeded to the Ayuntamiento was any such distinction recognized. Nor in the granting of lots for settlement by the local authorities under the sanction of the Governor, does any distinction appear to have obtained between the land on the north and the south side of said line, the same Justices make concessions indiscriminately on both sides.

But if these lines were established as the jurisdictional lines of a Pueblo admitted to exist within their limits, it would not in my judgment entitle the city to a confirmation of the land as defined by them. No authority of Spanish or Mexican law concedes to a Town or Pueblo all the land within its jurisdiction. It was contemplated under the old Spanish regime, that each should possess certain rights in the lands where they were located, but these lands were confined to four square leagues, in a specified form and location. Where no special assignment was made and this was procured, other defined and established limits were placed to the premises which they might enjoy. But the lines described in the decree entered in this case are not those defined by law as the four square leagues, and as jurisdictional lines merely they could give no right to the Town to the enjoyment of the lands within them, and should not be adopted in a decree of confirmation.

Seventh.—But it has been claimed, and such seems to be the opinion of my associates, that the lines described by Vallejo were not merely the limits of a jurisdiction, but that they designated lands for the use of the municipality, and that the premises within them were thus assigned to the Pueblo for its public uses. There certainly is no evidence in the papers, or in the testimony, tending to show that any assignment of common lands was made by Vallejo or any one else. This is not the character which that witness gives to the act of marking the lines of which he speaks. If any doubt on this subject could exist, it must be put at rest by reference to the official action of the Territorial Government which is proved in the case, on the subject of assigning such lands to the several Towns in California had subsequent to these proceedings. At the opening of the session of the Departmental Assembly on the sixteenth day of February, 1840, the following explicit language is used in the message of the Governor to that body on the condition of the department, while speaking in reference to the towns therein :

"None of said Towns, with the exception of Monterey, has its commons and landed property (*ejidos y propios*) marked out, which to each of the municipalities should be fixed in order to know its legal property (*fundo legal*), for which reason the Government in making concessions of land in the vicinity thereof, granted the same temporarily, waiting for such a regulation, and regarding the same subjects proper reports have been repeatedly asked. Your Honorable Board, however, in view of all this, exercising the power conferred upon you in Part 1 of the Article 45 of the above mentioned law, (that of March 20, 1837) and in concert with the Government, will arrange what may be deemed proper." Here is an explicit and official statement that in 1840 none of the Pueblos or Towns of California, excepting the Capital City, had had any lands assigned to them for their public uses. Six years before, a plan had been promulgated by Governor Figueroa in which the municipal authorities were enjoined to proceed and obtain such assignment, but evidence is scattered every where throughout the records of the department which shows that up to the time of the conquest no such assignment was in fact made to any of the Towns. That the locality of the present city of San Francisco formed no exception to this statement, is also directly established in my opinion by the proofs in the case. The lands within the alleged limits continued to be treated as other portions of the national domain. The Governor continued to make grants within its boundaries down almost to the raising of the American flag, in larger parcels as well as in small lots. It is true, the local authorities made small grants, or rather gave possession of small lots to individuals in the vicinity of the Mission and also at Yerba Buena, but the authority under which they were made and the conditions attached to them are such as to indicate not a claim of ownership, or a right of use, or disposition in any Town or corporation, but the land was still unembarrassed by any such assignment or concession. We have before us the evidence of the authority under which the local authority disposed of lots. We have also evidence of specific grants issued by the Ayuntamiento during its existence, and a certified copy from the Recorder's office of a book purporting to be a record of all the grants issued for such lots after that body ceased to exist in 1838. Two grants only are proved to be made by the Ayuntamiento; one for Jacob P. Leese and the other to Wm. A. Richardson, and both of these are proved by the testimony of said Leese to have been granted by an express decree of the Governor, whose order to that effect was brought by him to the Ayuntamiento. The record of subsequent grants above mentioned shows only two concessions of lots in 1839. In 1840, seven—three declared to be under the decree of the Governor, and the others by the Justices of the Peace. In 1841, two grants were made by the Justice, one of which recites that the grantee had the Governor's decree for a fifty-vara lot, and the Justice concedes another lot adjoining it. In 1842, two entries only are made, one of which is stated to be under a grant from the Prefect, the other under the superior decree of the Governor. In 1843, seven grants were made; in 1844, thirteen, and in 1846, seventeen. Two of these are by Governor Pico, the others in the usual form of Justices' grants. Most of these grants are of lots in Yerba Buena, but some are at the Mission Dolores.

A dispatch from San José Castro, acting Governor, is presented, certifying that the Territorial Deputation in session of twenty-second of September, 1835, approved that the Ayuntamiento grant lots (*solares*) not exceeding one hundred varas, in the place named Yerba Buena, "paying to the Ayuntamiento the fees

(cañon) which may be designated to him as pertaining to the propios," etc. In the book of record above mentioned is found authority under which the grants were made after the establishment of the office of Prefect and Justices of the Peace under the law of March 20, 1837. It is there shown that after his installation, the Prefect received a note from the Departmental Government wherein the Government concedes that building lots in the Establishment of Dolores may be granted to severals. Information of this order appears to have been received by Francisco Guerrero, the Justice at that place, as early as the first of June, 1839, and on that day the draught of a form for putting individuals in possession of lots was prepared by him, entered of record and forwarded to the Prefect. The written decree of the Government, authorizing it, seems not to have been in possession of Guerrero at that time, and the record shows that he subsequently applied for and obtained a copy of it; and in making a concession under it on the eighteenth of November, 1840, a new form was adopted by the Justice, making express reference to this authority of the Departmental Government under which the grants were made. The first subjected the grantee to all police regulations which might be established. The second contained the additional condition that the grantee should "be subject to pay such tax as he may be liable to according to the edict on the subject in case it may be so determined by the Government—the same having been already consulted." All the grants made by the Justices, with perhaps a single exception, were made in the manner above specified and under the express condition that they should thereafter be subject to the proper tax if the lands should subsequently be assigned for municipal uses. The authority to the Ayuntamiento and that to the Justices of the Peace, certainly imply that the lands had not at their respective dates been dedicated or assigned to the particular use of any community or corporation, and it does not purport to make such an assignment. It purports nothing more than to authorize the local officers for certain purposes and on specified conditions to grant small lots on behalf and in the name of the Government, not to concede ownership or even usufruct to any officer or community. It was a power which might at any moment have been reversed, and whether existing or revoked, the ownership and power of disposing of this land as of other portions of the national domains, was with the Government. These documents, which are the source of the authority under which all the grants (so far as the testimony in this case exhibits them) which have ever been made in this locality by the local officers, all explicitly show that they were made subject to a tax (*cañon*) for the municipal authorities, if in future such authorities should be here established and the land be assigned by the Government for common lands or *propios*, and showing clearly that no such disposition of them had as yet been made. It is perhaps scarcely necessary to add more on this subject. But if it were admitted that the Ayuntamiento constituted the municipal government of a Pueblo here established, and nothing more, and even that the lands north of the Vallejo line were assigned for the use of the municipality in 1834, it would still admit of great doubt, to use no stronger term, whether all rights to it had not ceased long before the conquest and cession of the country to the United States. The law of August 20, 1837, changed materially the internal organization, both political and municipal, of the department. This law abolished all the Ayuntamientos throughout the country, except in the Capital of the department, ports with a population of 4,000 inhabitants, Towns with 8,000 inhabitants, and those which had Ayunta-

mientos previous to 1808. Under this law the Ayuntamiento which was organized at the Presidio in the beginning of 1835, and which subsequently held its sessions at the Mission, ceased to exist, and no other was ever established under Mexican authority in its place. Prefects, Sub-Prefects and Justices of the Peace were appointed under this law in the districts, the ancient Spanish official, the Alcalde, being elected only where the law retained the Ayuntamiento. In Towns containing 1,000 inhabitants or more, the Justices of the Peace, subject to the supervision of their superior, succeeded to the faculties and obligations of the Ayuntamientos which were abolished, except that as to the management of municipal funds—they were subject to the direction of the departmental Junta. But this locality, including as well the Mission and Yerba Buena as all the land on the north side of the Vallejo line, had not that number of inhabitants. The law purposely provided for no successor where Ayuntamientos had existed in Towns with so few inhabitants—virtually abolished the municipal organization, and placed them under the ordinary authorities of the District and Partido where they were situated. Whereas, as in this case, no Town *de facto* existed, and the municipal authorities were abolished by law, it would seem that lands assigned previously for their use and held by them by no other tenure, would again fall within the full control of the nation. And after the interval of some eight years from the time of the abolishing of the municipal authority under this law and the conquest of the country without municipal successors, it is difficult to see how the ownership of this land could be elsewhere at the time of that conquest than in the Mexican nation. I have thus adverted to some of the considerations growing out of the proofs in the case, which bring my mind to a conclusion different from the opinion of my associates. Such a difference never occurs without the most profound regret on my part, and a sincere distrust of the correctness of my own judgment.

I do not attempt to discuss the subject in its whole extent, but I deem it my duty to advert to some of the reasons upon which my own opinion is founded. As a result of the examination, I am of the opinion that no right or title to the property embraced within the limits of the Vallejo line on the south and the waters of the ocean and bay on the other sides, is proved to have existed in any municipal authority, or to have been segregated, assessed, or dedicated for any public purpose, to which the present city succeeds under Mexican law, at the time of the conquest. There is nothing in the case, therefore, to entitle the claimants to the specific portion of land embraced within these limits. The city is, nevertheless, entitled to the presumption of a grant in her favor under the fourteenth section of the Act of March 3, 1851.

In its character this section was intended to be highly beneficial to the cities, towns, and villages of California, and must be understood as having reference to the particular class of claims for which it provides, and to the state of things in reference to its beneficiaries which existed at the time it was passed. Lessee of Pollard's Heirs *v.* Kibbe, 14 Pet. R. 353. It is well known that towns in California which were of little consequence while the Mexican rule continued, had, under American domination after the conquest, greatly increased in importance, and that San Francisco especially had become a large and populous commercial city; it had received a charter from the Legislature of the newly organized State of California in 1850, and its limits were well defined by law, and the area within its boundaries was laid out and represented on maps and plans as divided

lots with convenient streets and lanes. Such was its condition when the law of March 3d, 1851, was passed, and it was, in my opinion, the object of the statute, in view of the condition of things at the time of its date, to confirm to the city authorities all the lots within its boundaries. Proof is given of the existence of a small town known as Yerba Buena, on the site of the present city, on the seventh of July, 1846; this was requisite under the law to entitle the present corporation to a presumption of a grant, but this being proved, the presumption extends to the lots as they existed at the time of the passage of the Act, and was not confined to the limits of the original Mexican town. It was the American city as it existed in 1851, which Congress had in its eye, and not the little germ from which it sprung, when it provided for making its corporation the depository of the titles to these lands, and this design of quieting the titles by the presumption of a grant to the city would fail to be secured, and the manifest object of the law be defeated, if all the lots within its chartered limits at the time the Act was passed were not embraced in the decree of confirmation. Beyond these limits the petitioners have established no rights. The decree, therefore, should, in my judgment, be entered in favor of the city for the lots within the corporation limits as described and established in the charter of 1850, and no more.

ALPHEUS FELCH.

No. LXXXIV.

UNITED STATES LAND COMMISSION FOR CALIFORNIA.

DECREE OF CONFIRMATION.—FILED DECEMBER 21st, 1854.

THE CITY OF SAN FRANCISCO	} No. 280.
VERSUS	
THE UNITED STATES.	

In this case, on hearing the proofs and allegations, it is adjudged by the Commission, that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made, is that known by the name of the Pueblo Lands of San Francisco, and is bounded as follows: Beginning at the little cove to the east of the Fort, and running across to the Beach so as to leave the Fort and Casamata to the north; thence running along the Beach to Point Lobos on its southern part; thence a straight line to the summit of the Devisidero, continuing said line to the East as far as the Punta del Rincon, including the canuales and El Gentil, the said line will terminate within the Bay of the Mission of Dolores—the Estuary of which will form a natural boundary between the municipal jurisdiction of that Pueblo and the said Mission of Dolores; thence along the shore of the Bay of San Francisco, as it existed in the year 1834, to the point of beginning. For a more particular description, reference to be had to the copy of the order from Governor José Figueroa to General Mariana G. Vallejo, dated Monterey, November 4th, 1834, marked Exhibit No. 18 to the Deposition of M. G. Vallejo, taken in No. 280 H. I. T. and now on file among the papers in the case.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL.

No. LXXXV.

EXPEDIENTE OF THE FIRST PRIVATE LAND GRANT IN UPPER CALIFORNIA.—1775.

Senor Comandante Don Fernando Rivera :—

I, Manuel Butron, a soldier of the Army, at your feet earnestly supplicate that you may be pleased to grant me my discharge, and permit me to remain in this Mission, giving me that which His Majesty allows to every settler.

I would also represent that the Reverend Fathers, Missionaries, in the name of the Indians (I being married to Margarita, a daughter of the Mission), have assigned to me, and to all my descendants, a piece of land pertaining to said Mission, of the length and breadth of one hundred and forty varas, in the form of a perfect square, where at present I have corn planted, commencing the measurement at the first corner, and following the sides until the square is completed, under the condition of not being able to alienate it from the possession of my said descendants, or the children of the Mission, to which it must revert, in default of heirs, to me or my wife, jointly, or separately, by reason of the death of one of the two.

The Missionary Fathers, in the name of said Indians, likewise agree, that you, in the name of the King, our Sovereign, may give me the possession that is requisite and necessary. I also hope that you will be pleased to *assign me the land of the Royal Domain*, which, by the order of His Majesty, I am ENTITLED to.

In all of which I hope to receive from you favor and honor, and that God may preserve your life many years. Mission of San Carlos, Monterey, November 12th, 1775.

At the feet of your Honor.

MANUEL BUTRON.

Monterey, November 21st, 1775 :—Don Fernando Rivera y Moncada, Captain, Commandant of this Presidio and that of San Diego, by the authority of His Majesty (whom God preserve), and by virtue of the superior orders in my possession, for the exercise of my authority, and also for the establishment of a Fort and Mission in the Port of San Francisco—

To whom the foregoing was presented, orders that an official communication in relation to the matter, be required from the Reverend Father Junipero Serra, President of the Missions. Thus I provided, ordered, and signed, with two witnesses, with whom I act, to which I attest.

FERNANDO DE RIVERA Y MONCADA.

HERMENEGUILDO SAL.

ANTONIO JOSEPH PATRON.

OFFICIAL COMMUNICATION TO SAID FATHER.

Most Reverend Father, Friar Junipero Serra :

My Dear Sir :—I transmit to your Reverence a notice, that Manuel Butron has presented me a petition, in which he asks his discharge as a soldier, and the possession of one hundred and forty varas square of land, which he says your Reverence assigned to him, in the name of the Indians of that Mission, on account of his being married to one of the daughters of said Mission ; and I hope your Reverence will have the kindness to advise me if such is the fact, so that the necessary proceedings may be had.

I will rejoice to hear of the good health of your Reverence, and placing myself at your disposition, I pray that the Lord may preserve your Reverence many years.

Monterey, November 21st, 1775.

FERNANDO DE RIVERA Y MONCADA.

In said Presidio, on the 22d of November, of the year aforesaid, I, the said Comandante, having forwarded the foregoing official communication to the Father President, he replied to the same in the following tenor :—

Senor Captain Comandante, Don Fernando Rivera y Moncada :

My Dear Sir :—In reply to yours of the date of yesterday, the 21st inst., in relation to the matter of Manuel Butron, I have to say, that it is true, as he has informed you in his petition, that we, the Ministers of this Mission of San Carlos, in the name of the natives composing the same, assigned to said Butron, in virtue of the right of his wife, Margarita, who is one of the natives of said Mission, one hundred and forty varas square of land, on the place at which he has corn planted at this time, in order that said family and the descendants thereof may possess the same, in accordance with the Royal Orders ; that they shall not be able to sell, donate, or alienate the same to others beyond the children or descendants of said Mission. Wherefore, so far as we are concerned in the matter, you can, in the name of Royal Justice, give the desired possession ; this not to be reckoned or included in the allotment of the Royal Domain that the Supreme Authority may determine to make to similar families of settlers, among which, to you, and to the other Ministers of the King, our Sovereign, we recommend this family, as being the first in all these new establishments, which has chosen to become a permanent settler of the same ; a circumstance which has also influenced us in assigning him a place so commodious and conveniently situated as that which we have allotted to him.

I trust that you may continue in the enjoyment of perfect health, and that you will command me in whatever I can serve you. Pray, in the meantime, that God may extend to me the blessings of His Divine Grace.

Mission of San Carlos, November 22d, 1775.

FRIAR JUNIPERO SERRA.

And the free consent of the Reverend Fathers Missionaries having been shown, I order that the proceedings continue ; thus I provided, ordered, and signed, with those of my assistance.

FERNANDO DE RIVERA Y MONCADA.

HERMENEGILDO SAL.

ANTONIO JOSEPH PATRON.

Monterey, November 27, one thousand seven hundred and seventy-five.—For the conclusion of these proceedings, I went to-day to the Mission of Carmelo, and with the assistance of the Reverend Father Friar Junipero Serra, President of the Missions, and of the interested party, Manuel Butron, the Corporal Hermenegildo Sal, and my own, there were measured the one hundred and forty varas square of land, running the lines from north to south, and from east to west, and placing a stake at each corner, and the interested party being informed as to the manner of establishing his boundaries, I retired; leaving the said Manuel Butron and his wife, Margarita Maria, and their descendants, in Royal and legitimate possession of the said one hundred and forty varas square of land, *in which act I have proceeded by virtue of the authority conferred on me on the 17th of August, one thousand seven hundred and seventy-three, by His Excellency, Senor Don Antonio Bucareli y Ursula, Viceroy, Governor and Captain-General of this Kingdom.* IT BEING UNDERSTOOD AS APPLICABLE, NOT ALONE TO THIS CLASS OF PERSONS, BUT ALSO TO THE NATIVES OF THE COUNTRY. *And not being in possession of a copy of the "Recopilacion," I have solicited the Reverend Fathers for the same, to serve me as a guide in these matters, but have failed to obtain it.* Wherefore I supplicate the Señores Justices of His Majesty that may succeed me, that they may hold and esteem, in all time, this possession as legitimate and valid, and that they may consider as expressed all the formalities and requisites that the laws provide.

And, in order that it may now and forever hereafter have its due validity, rigor, and force, I sign it with two witnesses, with whom I act, for want of "Escribano Real y Publico," and on this common paper, for want of that which is sealed.

Which I attest :

FERNANDO DE RIVERA Y MONCADA.

HERMENEGUILDO SAL.

1 *Provincial State Papers*, 433.

No. LXXXVI.

COPY OF ORIGINAL SPANISH RECORDS OF LAND GRANTS CONTAINED IN A BOOK ENTITLED "BLOTTER OF FRANCISCO GUERRERO WHILE ALCALDE AT VARIOUS TIMES, 1839-1843," OF RECORD IN THE RECORDER'S OFFICE OF THE COUNTY OF SAN FRANCISCO.

MAY 1ST, 1839.

Book containing the possessions of the building lots of the place "Yerba Buena," as directed by the *Departmental Government*.

JANUARY 1ST, 1840.

It contains those granted in the establishment of Dolores at the instance of the Prefect of the District to the Government of the Department, as appears from the official note, which is on page second.

JANUARY 1ST, 1841.

It contains the forms on the terms as possession was given to several, as directed

by this Justice Court for its safety, in accordance with the laws. I, Francisco Guerrero, Justice of the Peace, ordered it decreed and signed, which I attest.

FRANCISCO GUERRERO.

Form in the way that possession of the building lots for erecting places of abode, has been given to the residents in the jurisdiction of San Francisco de Asis, and which is as follows :

SAN FRANCISCO, &c., de &c., de &c.

In view of the foregoing petition and superior decree of the Departmental Government, I, Francisco Guerrero, Justice of the Peace of this Jurisdiction, do hereby give to so and so perpetual jurisdiction and lawful possession of a building lot of so many varas, under the following conditions :

1st. That he shall, within the precise term of one year from this date, have the said lot fenced and build a house thereon.

2d. That he shall conform absolutely with the Police regulations established and to be established.

3d. That the non-observance of the 1st Art^{le} shall make the party interested forfeit his right to the lot; and by contravening the second Art^{le} he shall incur the penalties that may be inflicted to him according to law.

And I grant him these presents to answer to him as the regular title of possession. Dated as above, the same having been recorded in the proper book of registry, which I attest—and reported to the Prefect of the 1st June, 1839.

FRAN^{co} GUERRERO.

LOT 18.

In the same form as above, possession was given to citizen Juan C. David of one building lot of a hundred varas on each side, N. S. E. W., according to the superior decree of the Departmental Government, bearing date the 12th day of November, 1839.

LOT No. 7.

San Francisco, Dec'r 9, 1839.—Fran^{co} Guerrero do. do. do., to citizen Jacob P. Leese, by a superior decree of the Departm^t Government attached to this petition a lot of a hundred varas on each side, N. S. E. W.

San Francisco, Jan'y 15th, 1840.

He did not pay the fees.

FRAN^{co} GUERRERO.

LOT 3.

As represented and admitted in the form as above, and with the foregoing requisites, a lot of fifty varas on each side, N. S. E. W., was given to citizen Juan Antonio Vallejo.

San Francisco, June 15, 1840.

FRAN^{co} GUERRERO.

LOT 50.

San Francisco, January 15th, 1840.—On this date possession was given to citizen Juan R. Cooper of a building lot of a hundred varas on each of the four sides, as by a decree of the Department^l Government, preceding to his petition.

FRAN^{co} GUERRERO.

LOT 23.

San Francisco, January 15th, 1840.—On this date possession was given to citizen Juan Vioget of a building lot for a hundred varas from N. to S. and fifty varas from E. to W. by the formation of street as per the plan; he having an order, as per the decree of the Departmental Government, preceding to his application for a hundred varas square.

FRAN^{co} GUERRERO.

OFFICE OF THE PREFECT OF THE 1ST DISTRICT.

Receipt Acknowledged.

The Secretary to the government of this department under date of the 16th inst. stated to me the following :

When Mr. José Castro, the Prefect, made a visit to the northern places, he carried instruction from the government for several matters; and by those instructions he was ordered, that building lots might as well be granted to private individuals in the establishment of Dolores; but that they should not exceed fifty varas; and such was the direction, and now the same is given again, for which purpose H. E. has seen the note addressed by this Prefecture to this Secretary on the 6th inst.; and H. E. directed me to state that your Honor may as well warn the Justice of the Peace of San Francisco that on making the concession of building lots it should be in a passable, orderly manner, and as required by the locality of the place, so that the streets and squares to be formed may under a footing have proper order.”

I hereby communicate the same to you for your knowledge and compliance, and as the consequence of his communication bearing on this subject.

God and Liberty. San Juan de Castro, April 23d, 1841.

JOSE Y. CASTRO.

To the Justice of the Peace of San Francisco.

LOT 36.

SAN FRANCISCO, August 4th, 1840.

On this date possession was given to citizen Gregonio Escalante of a building lot of fifty varas according to the plan thereof in the same form.

FRAN^{co} GUERRERO.

LOT 19 AND 19½.

SAN FRANCISCO, December 1st, 1839.

Mr. Guillermo Hinckley was granted a building lot of a hundred varas from N. to S., and fifty from E. to W., by the formation of street for a mill and saw-pit, by a superior decree of the Departmental Government preceding to his petition, and it is as follows: Monterey, November 21st, 1839. While the machine, that the party interested in this petition seeks to establish, shall remain thereon, he shall be allowed to occupy a hundred vara lot in the place Yerba Buena, and for this purpose he shall apply to the Justice of the Peace of San Francisco to make the proper measurement; under the understanding that the moment the said lot be not occupied with the said machine it shall remain for the benefit of the nation for other useful purposes. Don Manuel Jimeno Casarin, first constitutional member

of the Honorable Departmental Board of the Californias, in trust of the Government of the same thus ordered and signed it, which I attest.

FRAN^{co} C. ARCE, First Clerk.

MANUEL JIMENO.

Mr. Guillermo Hinckley having appeared in this Justice Court, his application was returned to him, after it had been recorded.

Dated as above.

FRAN^{co} GUERRERO.

SAN FRANCISCO, November 18th, 1840.

As presented and admitted a building lot as solicited for fifty varas is granted to the party interested ad perpetuum, under the following conditions :

1st. That he shall within the precise time of one year from this date, have the said lot fenced, and build a house thereon.

2d. That he shall conform absolutely with the police regulations established and to be established ; be subject to pay such tax as he may be liable to according to edict on the subject in case it be so determined by the Government. The same having been already consulted.

3d. The non-observance of the first article will cause the party interested to forfeit his right to the lot ; and by his contravening the second article he shall incur the penalties that may be inflicted according to law.

And for the purpose of these presents may answer him as the regular title of possession as directed by the Departmental Government I grant him the same date as above. It having been registered in the proper book of registry.

Which I attest.

By virtue of Mr. José Castro, the Prefect, having communicated, when he went up to the Northern places, to this vicinity, a note from the Departmental Government, wherein the Government concedes that building lots in the establishment of Dolores may be granted to several, I solicited a copy of said order from the Prefect *ad interim*, Mr. José J. Castro, it being the foregoing, and by virtue thereof and in the way and form as above stated, possession of a building lot of fifty varas was given to citizen Candelario Valencia.

FRAN^{co} GUERRERO.

SAN FRANCISCO, November 18th, 1840.

On the same terms of the above form, possession of fifty varas was given to citizen Leandro Galindo in the establishment of Dolores, by a superior order as preceding.

Date as above.

FRAN^{co} GUERRERO.

SAN FRANCISCO, November 18th, 1840.

I, Francisco Guerrero, Justice of the Peace, by virtue of what has been already ordered, and in accordance with what has been already established, gave possession of a building lot of fifty varas to citizen Filipe Gomez, in the establishment of Dolores. The Major-domo and witnesses being present.

Dated as above.

FRAN^{co} GUERRERO.

SAN FRANCISCO, June 28th, 1841.

I, Francisco Guerrero, Justice of the Peace of the jurisdiction of San Francisco, by virtue of the direction of the Superior authority, gave possession of a building lot of fifty varas to the citizen Francisco de Haro, and as since the time of the late Figueroa, Political Chief and Commanding General of the Department, Mr. Ignacio de Valle, being a commissary of the establishment of Dolores, had an order to the effect that fifty varas might be granted to him; and he having verified in this Justice's Court the fact of its having been so granted to him, I gave him possession of fifty varas more, which from the irregularity of the position of the land, could not be a hundred square varas, and it forms a multilateral figure of the base of seventy varas and a hundred on the S. N. and W. sides, and the thirty varas short were given on the W. side, forming a triangle with the base of one of the hundred-vara sides and the perpendicular of thirty varas being closed by the hypotenuse; thus it embraces a hundred-vara building lot, and it having been measured, the party agreed thereto. Witness—Jesus Noe and Mr. Augustine David, the Measurers, the Steward of the establishment, Mr. Tiburcio Vasquez.

Which I attest.

FRAN^{co} GUERRERO.

SAN FRANCISCO, February 28th, 1841.

Mr. Juan Vioget having appeared in this Justice's Court under my charge, applying for a licence to open a billiard house and hotel in the place Yerba Buena, the same was granted to him; the party being subject to the payment of the taxes established by the edict on the subject.

Dated as above.

FRAN^{co} GUERRERO.

ESTABLISHMENT OF DOLORES, March 8th, 1842.

In accordance with the superior Decree of the Prefect of the District of the 2d March, 1842, which goes with the petition presented to that authority under date of the same month, by Mr. F. M. F'co. Guillermo Hinckley, I put in possession of a building lot petitioned by the said party this day of the date, giving him for his safety a corresponding title of possession.

Date ut supra.

LOT 21.

ESTABLISHMENT OF DOLORES, March 8th, 1842.

Mr. George Gullen having petitioned the Prefect of the District in his petition of the present year for a building lot of fifty varas in the place Y Bun (Yerba Buena) by a decree of that authority of of the said year, the same was granted to him; and according to the direction he was put in possession. Record thereof being entered in this book of said grant.

LOT 20.

ESTABLISHMENT OF DOLORES, May 1st, 1842.

Pedro Sherreback, a native of Denmark and Mexican citizen, having petitioned the Supr. Government of the Department for the concession of a 50-vara building lot, in the place Yerba Buena.

In pursuance of the Supr. Decree of the 3d of April of the present year, which is attached to his petition, the same was granted to him, and he was put in possession thereof, which is recorded this day's date.

IN THE YEAR 1843.

LOT 55.

On of April of the present year, Mr. Vicente Miramontes, was granted a building lot 50 varas square in the place Yerba Buena, and he was put in possession of the same, exhibiting (giving) to him the correspondent title.

LOT 31.

On of April of the present year, Mr. Francisco de Haro, was granted a building lot of 50 varas square in the place Yerba Buena; and he having been put in possession, he was exhibited (given) the correspondent title.

LOT 32.

On the 15th of December of the present year, Mr. Domingo Felis, was granted a building lot of 50 varas square in the place Yerba Buena; and having been put in possession of the same, he was exhibited (given) the correspondent title.

LOT 51.

On the 14th of December of the present year, Mr. Jesus Noe, was granted a building lot of fifty varas square in the place Yerba Buena; and having been put in possession of the same, he was given the correspondent title. No. as stated in the margin.

LOT 33.

On the 15th of April of the present year, Juan Bautista was granted a building lot of fifty varas square in the place of Yerba Buena; and having been put in possession of the same, the correspondent title was exhibited (given) to him.

LOT 4.

On the 15th of November, Francisco Guerrero was granted a building lot of fifty varas square in the place Yerba Buena; and having been put in possession, the correspondent title was issued to him, it being No. 4, in the plan of Yerba Buena.

IN THE YEAR 1844.

No. 26.

On the 4th day of March, Mr. Carlos W. Hugge was granted a building lot, No. 26, in Yerba Buena, of fifty varas square; and at the same time possession was given him, and the correspondent title issued.

No. 139.

On the 12th day of July, Mr. Roberto Ridley was granted a building lot, No. 139, on the plan of Yerba Buena, of fifty varas square; and at the same time possession was given him, and the correspondent title issued to him.

No. 138.

On the 12th day of July, James R. Berry was granted a building lot, No. 138 in

the plan of Yerba Buena, of fifty varas square; and at the same time possession was given to his agent, and the correspondent title issued to him.

No. 17.

On the 19th day of July, Benito Dias and Juan Prado were granted a building lot, No. 17 in the plan of Yerba Buena, of fifty varas square; and at the same time possession was given and the correspondent title issued to him (them).

No. 7.

On the 13th day of November, Carlos Glien was granted a building lot, No. 7 in the plan of Yerba Buena, of fifty varas square; and at the same time possession was given him, and the correspondent title issued.

No. 136.

On the 1st day of December, Edward J. Bale was granted a building lot, No. 136, of fifty varas square; and at the same time possession was given him, and the correspondent title issued.

No. 83.

On the 15th day of December, Juan Rose was granted a building lot, No. 83, of fifty varas square; and at the same time possession was given him, and a correspondent title issued.

No. 84.

On the 17th day of December, Guillermo Reynolds was granted a building lot, No. 84, of fifty varas square; and at the same time possession was given him, and a correspondent title issued.

No. 37.

On the 17th day of December, Mrs. Encarnacion Soto de Bernal was granted a building lot, No. 37, of fifty varas square; and at the same time possession given her, and a correspondent title issued.

No. 58.

On the 21st day of December, Joel P. Dedmund was granted a building lot. No. 58, of fifty varas square; and at the same time possession given him, and a correspondent title issued.

No. 59.

On the 27th day of December, Guillermo Richardson was granted a building lot, No. 59 in the plan of Yerba Buena, of fifty varas square; and at the same time possession was given him, and a correspondent title issued.

No. 104.

On the 15th day of December, Augustin H. Andrews was given a building lot, No. 104 in the plan of Yerba Buena, of fifty varas square; and at the same time possession was given him, and a correspondent title issued.

No. 134.

On the 24th day of December, Guillermo Johnson was granted a building lot, No. 134 in the plan of Yerba Buena, of fifty varas square; and at the same time possession was given him, and a correspondent title issued.

IN THE YEAR 1846.

No. 27.

On the 20th day of May, Mr. Guillermo Yncley was granted a building lot, No. 27 on the plan of Yerba Buena, of fifty varas square; and at the same time possession was given him, and a correspondent title thereto issued.

No. 190.

On the 30th day of May, Leandro Galindo was granted a building lot, which is numbered 190 in the plan; and it lies in front of the house of Charles Clie, of fifty varas square; and at the same time correspondent title issued.

No. 140.

On the 22d of May, 1849, A. Green was granted a building lot of fifty varas square; and the correspondent title of adjudication having been given him, the said grant was recorded in this book, this day's date; the lot being No. put on the Margin.

No. 191.

On the 25th of May, of the present year of 1846, ——— Hensley was granted a building lot of fifty varas square; and a correspondent title of adjudication having been issued to him, said concession was entered in this book, this day's date; the number of the lot being noted on the margin.

No. 8.

On the 28th of May, 1846, ——— Reading was granted a building lot of fifty varas square, No. 8; and the correspondent title having been issued to him, this concession was entered in this book, this day's date.

No. 54.

On the 15th day of December, 1843, Citizen Trinidad Mayo was granted a building lot, No. 54, of fifty varas square; and a corresponding title being issued to him, this grant was recorded in this book, this day's date, in Yerba Buena, given by Francisco Sanchez.

No. 22.

On the 14th of May, a lot of fifty square varas was granted to Don Enrique Ficho, with the number expressed in the margin of the corresponding title.

No. 573.

On the 19th of June, 1846, a lot of fifty square varas (varas cuadradas), in front of the house of Mr. Ridley, was granted to Don Dionisio Garcia; the corresponding title having been issued, record of the said grant is made in the book for a proof in all time.

No. 62.

On the 19th of June, 1846, a lot of fifty square varas (varas cuadradas) at the place of Yerba Buena, was granted to Francisco Hoen, with the number expressed in the margin of the corresponding title.

No. 196.

On the 18th of June, 1856, a lot of fifty square varas (varas cuadradas) was granted to Don Mancientos with the No. 196, as is expressed in the margin, with its corresponding title.

NOÉ.

No. 60.

On the 2d of June, 1846, a lot of fifty square varas (varas cuadradas) was granted to Don Juan Ivain with the *number* expressed in the margin of the corresponding title. Possession given at Yerba Buena.

NOÉ.

No. 63.

On the 19th of June, 1846, a lot of fifty square varas (varas cuadradas) was granted to Don Juan Alias, with the No. 63, with its corresponding title.

NOÉ.

YERBA BUENA, Jan. 16, 1846.

Señores Juan Finch and Juan Johnson, having appeared in this Magistracy, soliciting a license for a Bowling-Alley, it was granted to them, they being subject to pay that which is established by the Proclamation upon the matter.—date—

LOT No. 52.

Stephen Smith.

On the 3d of June, 1846, a lot of fifty square varas (varas cuadradas) was granted to Don Esteban Smith, with the number expressed in the margin with the corresponding title and possession.

MAY, 1846.

On the 22d of April, of the present year, Don Pio Pico, Most Excellent Governor of the Department, by an express title of this date, granted Don Guillermo Leidesdorff the ownership of the lot to which he refers in his petition of the 28th March, of the present year, which he asked of the sub-Prefecture of the District, whose despatch is recorded on the 13th of May, 1846, and I, the first proper Justice of the Peace of the jurisdiction signed it.

J. DE JESUS NOÉ.

LOTS NOS. 183 AND 184 ON THE BEACH.

On the aforesaid same date, the Most Excellent Governor of the Department, by a title (despacho) of this date, granted to Diego Alejandro Forbes the ownership of fifty square varas (varas cuadradas) on the Beach of the settlement of Yerba Buena, and a record thereof is made in this office on the 13th of May, 1846.

JOSÉ DE JESUS NOÉ.

LOT 189 — HOEN & DOHLING.

On the 15th of May, 1856, the title of concession of the 10th of September, 1845, in favor of Francisco Hoen and George Dohling, was returned, the latter remaining of no value, and that of the date aforesaid in force embracing the same lot; and a document (title) was delivered to each of the parties newly favored for their security and safety, and being recorded, I signed it this day of the date.

J. DE JESUS NOÉ.

LOT 195.

On the 22d of May, 1846, a lot of fifty varas square (varas en cuadro) (No. 105) was granted to Don Mariano Fernandez, and the corresponding title of grant having been extended to him, record thereof is made in the present book the day of the date.

No. 6.

On the 6th of June, 1846, a lot of fifty square varas (varas cuadradas) (No. 6) at the place of Yerba Buena, was granted to Don José Maria Santa Maria, and the corresponding title having been issued, the said grant is recorded in the present book the day of the date.

No. LXXXVII.

APPEAL OF THE CITY OF SAN FRANCISCO FROM THE DECREE OF THE U. S. LAND COMMISSION CONFIRMING CERTAIN PUEBLO LANDS TO SAID CITY. FILED AUGUST 29, 1851.

No. 427.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE CITY OF SAN FRANCISCO, Appellant, }
 vs. } Transcript, No. 280.
 THE UNITED STATES, Appellees. }

The City of San Francisco, by its duly constituted authorities, claiming the lands called "Pueblo Lands," or Municipal Lands, lying and situate in the former County of San Francisco, and the present counties of San Francisco and San Mateo, hereby gives notice of its intention to prosecute an appeal from the Board of Commissioners in the above entitled cause.

HALLECK, PEACHY & BILLINGS,
 Atty's for Appellant.

No. LXXXVIII.

APPEAL OF THE UNITED STATES FROM THE DECREE OF THE UNITED STATES LAND COMMISSION CONFIRMING CERTAIN PUEBLO LANDS IN SAID CITY. FILED JUNE 2, 1856.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES, }
 Washington, 15th April, 1856. }

[280.]

"PUEBLO LANDS."

CITY OF SAN FRANCISCO, CLAIMANT.

You will please take notice that in the above case, decided by the Commissioners

to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 29th day of March, 1856; the appeal in the District Court of the United States for the Northern District of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

JOHN A. MONROE, Esq., Clerk U. S. D. C.

No. LXXXIX.

DISMISSAL BY THE UNITED STATES OF THEIR APPEAL FROM
THE DECREE OF THE UNITED STATES LAND COMMISSION
WHICH CONFIRMED CERTAIN PUEBLO LANDS TO SAID
CITY. FILED MARCH 30, 1857.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the Court Room, in the City of San Francisco, on Monday, the thirtieth day of March, in the year of our Lord one thousand, eight hundred and fifty-seven:

Present—The Honorable Ogden Hoffman, District Judge.

THE UNITED STATES	}	D. C. 427.
<i>vs.</i>		
MAYOR AND COMMON COUNCIL OF THE	}	L. C. 280.
CITY OF SAN FRANCISCO.		

The Attorney General of the United States having given notice that an appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the U. S. Attorney:

On motion of the District Attorney, it is ordered, adjudged, and decreed, that the appeal taken by the United States from the decision of the U. S. Land Commissioners in this case be dismissed, and that claimants have leave to proceed under the decree of said Commission heretofore rendered in their favor, as under final decree.

OGDEN HOFFMAN,
U. S. District Judge.

No. XC.

DOCUMENT PURPORTING TO BE A GRANT OF LANDS IN SAN FRANCISCO, TO JOSÉ Y LIMANTOUR, BY GOVERNOR MICHELTORENA, DATED FEB. 27, A.D. 1843. REJECTED BY U. S. DISTRICT COURT, AND NO APPEAL TAKEN. (See 1 Hoffman's Reports, 389.)

GRANT.

Seal First, Eight Dollars.

Legalized temporarily by the Maritime Custom House of the Port of Monterey, in the Department of the Californias, for the year one thousand eight hundred and forty-three.

MANUEL MICHELTORENA.

MANUEL CASTANARES.

{ Ad^a. Marit^a. }
 { de Mont^y. }

The citizen Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor and Commandant General of the Department of the Californias.

APRIL 18th, 1853.

The Supreme Provisional Government of the Mexican Republic in the exercise of the extraordinary powers with which it is invested, and taking into consideration the good services rendered by the French citizen, Dn. J. Y. Limantour, ratifies and approves the grant made based upon the preëxisting lawful provisions, and granted to the local authority of California, and by which it confirms the property granted of the vacant lands, of which this document makes mention, which is returned to the party interested.

BOCANEGRA.

Whereas, Don José Y. Limantour, Captain of the French Navy, and a denizen of the Department, has negotiated, in consideration of loans, in merchandise and ready money, which he has made to this Government at different times, to obtain the grant of the land contained from the line of the Pueblo de la Yerba Buena, distance four hundred varas from the settlement house (casa fundadera) of Don William Richardson, the south-east, beginning on the beach at the north-east, and following it along its whole edge (margin), turning round the Point of Rincon to the south-east, and following the bay as far as the mouth of the estuary of the Mission, including the deposits of salt water, and following the valley (cañada) to the south-west, where the fresh water runs, passing to the north-west side about two hundred varas from the Mission, to where it completes two leagues, north-east and south-west to the Rincon, as represented by the plat (diseño) No. 1, which accompanies the Expediente.

2. Two leagues of land, more or less, beginning on the beach of the "estacado," at the ancient anchorage of the Port of San Francisco, below the castle (castillo), following to the south-east, passing the Presidio (military post), following the road of the Mission, on the line to the south-west as far as the beach, which runs to the south from the port, taking said beach to the north-west, turning round the Point Lobos, and following to the north-east along the whole beach of the castle (castillo) two hundred varas, and following the beach as far as the "estacado," where begins the plat No. 2. Having previously instituted the suitable proceedings and investigations, and it resulting from them that the two before-mentioned tracts of land are vacant, exercising the authority with which I am invested, in the name of the Mexican Nation, I have resolved to make him a complete and absolute grant

of the said two tracts of land, that he may enjoy them in the manner, and when it may suit him, delaring them by these letters, his legal property. In consequence whereof, he may occupy the two mentioned tracts of land when it may most suit him, destining them to such use and culture as may best accommodate him. In consequence whereof, I command that the present title, being held for firm and valid, a record of the same be made in the office of the Secretary of the Dispatch, and that it be delivered to the party interested for his security.

Given in the town of Los Angeles, the twenty-seventh day of February, one thousand eight hundred and forty-three.

MANUEL MICHELTORENA.

No. 548. Land Commission.

No. XCI.

DOCUMENT PURPORTING TO BE A GRANT OF THE ISLANDS FARALLONES, ALCATRAZ, YERBA BUENA, AND OTHER LANDS ADJACENT TO THE CITY OF SAN FRANCISCO, TO JOSÉ Y. LIMANTOUR, BY GOVERNOR MICHELTORENA, DATED DEC. 16, 1843. REJECTED BY U. S. DISTRICT COURT, AND NO APPEAL TAKEN. (See 1 Hoffman's Reports, 389.)

GRANT.

First Stamp, Eight Dollars.

Legalized temporarily, by the Collector of the Maritime Custom House of the Port of Monterey, in the Department of the Californias, for the year one thousand eight hundred and forty-three.

MICHELTORENA.

MANUEL CASTANARES.

{ Ada Marita. }
 { de Montv. }

Citizen Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor and Commandant General of the Department of the Californias.

MEXICO, }
 March 1, 1844. }
 The Supreme Provisional Government of the Mexican Republic, in the exercise of the extraordinary powers with which it is invested, and taking into consideration the good services rendered by the French citizen, Don José Yves Limantour, ratifies and approves the grant made in accordance with previous lawful provisions by the local authority of California, granting the ownership of the vacant lands spoken of in this document.

Whereas, Don José Yves Limantour, Captain of the French Navy, and a denizen of the Department, after having paid to the Custom House of Monterey considerable sums of money for duties on merchandise, which he carried on board the brig Ayachucho, having lost the greater part of the cargo by shipwreck, on the point called "Del Rey," besides the loss of the merchandise and the brig, the advanced payment of the duties, caused by his cargo, has so complicated this unfortunate occurrence, that this Government has thought it expedient to admit the proposals which he made in his petition, in considera-

BOCANEGRA.

tion of the services which he has rendered on divers occasions to the Department, and being also convinced of the correctness of the facts set forth in the Expediente—

In consequence whereof, in the exercise of the authority vested in me, in the name of the Mexican Nation, I grant him, by way of indemnity for the duties which he has paid to the Custom House of Monterey, the following tracts of land :

1. The islands of Farallones, to the south-west of the entrance of the port of San Francisco, and distant eighteen miles from the said port.

2. The island of Alcatraz (Pelican), to the south of the island of Los Angeles.

3. The island of Yerba Buena, in front of the anchorage of the same name.

4. The land which is a surplus at the Point Tiburon, which forms the strait of the Island of Los Angeles, as represented on the plat which is annexed to the Expediente, to the extent of one league, a little more or less.

He may occupy the said lands, in such manner and at such time as may most suit him, and make such use of them as may most accommodate him, they being his entire and real property.

In consequence whereof, I command that the present title, being held for firm and valid, a record thereof be made in the office of the Secretary of the Dispatch, and that it be delivered to the party interested, for his security.

Given at Monterey, on the sixteenth day of December, one thousand eight hundred and forty-three.

MANUEL MICHELTORENA.

No. XCII.

DOCUMENT PURPORTING TO BE A GRANT OF THREE SQUARE LEAGUES OF LAND, IN AND ABOUT THE MISSION DOLORES, TO PRUDENCIO SANTILLAN, BY GOVERNOR PICO, FEB. 10, 1846. REJECTED BY THE SUPREME COURT OF THE UNITED STATES. (See 23 Howard, 321.)

GOVERNMENT OF THE DEPARTMENT OF THE CALIFORNIAS.

Pio Pico, 1st Member of the Assembly of the Department of the Californias, and commissioned by law for the administration of the Government of the same :

Whereas, the priest Don Prudencio Santillan has solicited, for his personal benefit, all the vacant lands acknowledged as belonging to the Mission of Dolores, as well as all the houses pertaining to the settlements of said Mission, which are abandoned, by virtue of the powers conferred on me in the name of the Mexican nation, I have thought proper to grant, and by these presents I do grant, to the aforesaid priest, Don Prudencio Santillan, the ownership of all the houses pertaining to the settlements which have been and are at present acknowledged as belonging to the Mission Dolores, and all the vacant lands which have been and are at present acknowledged as belonging to the Mission of Dolores, and under the following conditions :

1st. The grantee shall enjoy freely and exclusively the houses and lands granted

to him, but he shall pay, as a compensation for the said grant, all the debts which may appear up to the present time against the Mission of Dolores.

2d. He shall petition the respective judge for the juridical possession, in virtue of this despatch, of all the lands and houses granted to him; and, in the meantime, the possession may serve as legal which he has of said houses and lands in his capacity of administrator, appointed as such by the prelate of the Missions of the College of our Lady of Guadalupe of Zacatecas, for the temporal matters of the said Mission of Dolores.

3d. The land, of which donation is made, consists of three square leagues (tres sitios de Ganado Mayor) more or less. The judge, who shall give the possession, shall have it measured and fix the boundaries, with the customary landmarks; it being understood that said land is bounded on the north by Yerba Buena, on the north-west by the Presidio of San Francisco, on the west by lands of Don Francisco Haro, and on the south by a portion of the Rancho of the Sanchez, and on the east by the Bay of San Francisco.

4th. The grantee, and in his default his heirs and successors, shall respect the property which some persons possess in virtue of good titles, as well of the lands as of the houses of the settlements comprised within the limits of the Mission of Dolores, and which are hereby acknowledged.

5th. In this grant there are expressly excepted the houses of the priests (casas cural) and the church of Dolores, as belonging to the bishopric of this diocese; consequently, I command that the present title, being held as firm and valid, be entered in the respective book and be delivered to the party concerned for his security and other ends.

Given in the City of Los Angeles, capital of California, on this common paper, there not being any stamped, on the 10th of February, 1846.

(Signed)

PIO PICO.

JOSE MARIA COVARRUBIAS,
Secretary.

No. XCIII.

DOCUMENT PURPORTING TO BE A GRANT OF A TRACT OF LAND SIX HUNDRED VARAS SQUARE, AT THE MISSION DOLORES, TO JOSÉ ANDRADE, BY GOVERNOR PICO, MAY 6, 1846. REJECTED BY U.S. DISTRICT COURT, A.D. 1864., AND PENDING ON APPEAL TO SUPREME COURT OF THE U. S.

[L. s.] *Pio Pico, Constitutional Governor of the Department of the Californias:*

Whereas, Don José Andrade, a Mexican, has petitioned, for his personal benefit, a tract of land six hundred varas square, in front of the Mission of San Francisco de Asis, which embraces from the *Huerta* to beyond the *curtiduria*; the necessary proceedings having been had, in the exercise of the powers with which I am vested by the Supreme Government, in the name of the Mexican nation, I have concluded by a decree of this day to grant him the aforesaid tract of land, hereby declaring

unto him the ownership thereof, in conformity with the law of the 18th of August, 1824, and the regulation of November 21, 1828, subject to the approval of the most excellent Departmental Assembly, and under the following conditions :

1st. He may inclose it without prejudice to the crossings, roads, and servitudes ; he shall enjoy it freely and exclusively, appropriating it to the use and cultivation he may deem proper.

2d. He shall solicit of the respective Judge the juridical possession in virtue of this title, by which the boundaries shall be marked out with the proper landmarks.

3d. The land hereby granted is six hundred varas square, and is that which the Mission of San Francisco occupied with an orchard and tannery.

The Judge who shall give him the possession shall cause it to be measured according to ordinance, and with reference to the *diseño* which the grantee shall furnish.

Therefore, the present title being held as firm and valid, I order it to be entered in the proper book, and that this be delivered to the grantee for his security and other purposes.

Given in the City of Los Angeles, on common paper for the want of stamped, on the sixth day of May, one thousand eight hundred and forty-six.

(Signed)

PIO PICO.

(Signed) JOSE MATIAS MORENO,

Secretary.

Entry is made of this superior *despacho*, in the proper book.

MORENO.

No. XCIV.

REAL INSTRUCCION DE 15 OCTUBRE, DE 1754,—ROYAL INSTRUCTION OF OCTOBER 15, 1754.

EL REY—BY THE KING.

I. Que desde la fecha de esta mi Real resolucion en adelante quede privativamente al cargo de los Virreyes y Presidentes de mis Reales Audiencias de aquellos Reinos [de los Indios] la facultad de nombrar los Ministros Sebdelegados que deben exercer y practicar la venta y composicion da las Tierras y Valdios que me pertencen en dichos Dominios, expediéndoles el Nombramiento ó Título respectivo, con copia auténtica de esta Instruccion. * * * * *

II. Que los Jueces y Ministros en quienes se subdelegue la jurisdiccion para la venta y composicion de los Realengos, procederán con suavidad, templanza y moderacion, con Procesos verbales y nó judiciales en las que poseyeren los Indios y en las demás que hubieren menester, en particular para sus labores, labranza y crianza de ganados ; pues por lo tocante á las de Comunidad y las que les están concedidas á sus Pueblos para pastos y Exidos no se ha de hacer novedad, manteniéndolos en la posesion de ellas, y reintegrándolos en las que se les hubieren userpado, concediéndoles mayor extension en ellas segun la exigencia de la poblacion, no usando

tampoco de rigor con las que ya poseyeren los Españoles y gente de otras castras, teniendo presente para con únos y ótros lo dispuesto por las Leyes 14, 15, 17, 18, y 19, Tit. 12 Lib. 4 de la Recopilacion de Indias. Tomo II, page 104, etc.

[TRANSLATION.]

I. From the date of this, my Royal determination, it shall belong to the exclusive jurisdiction of the Vice Roys and Presidents of the Audiencias of the said Kingdoms of the Indies to appoint sub-delegated Ministers for the purpose of selling and settling the distribution of the lands and vacant tracts which belong to me in those dominions; issuing to them the nomination or title in the respective case, accompanied with an authentic copy of these Instructions. * * * * *

II. The Judges and Ministers to whom is sub-delegated the jurisdiction to sell the public or Crown Lands, and to compromise claims to the same, shall proceed with suavity, kindness and moderation; preserving written documentary records of their transactions, and yet not proceeding judicially in relation to those lands possessed by the Indians, and as to those of the remainder of said lands which they may need, in particular for their plowed and cultivated lands, and the raising of stock; and then, as regards the lands held by the Indians in community, and those which are granted to their Pueblos for pastures and suburbs (pastos y egidos), there shall be no innovation; maintaining them in their possession, and restoring them in the possession of those which have been usurped from them, and granting them a larger extent of such lands according to the exigency of their population; and yet using no rigor withal in regard to those possessed by the Spaniards and other classes, and observing what is provided for each class by Laws 14, 15, 17, 18, and 19 of Title 12, Book 4 of the Recopilacion of the Indies.

No. XCV.

EXPEDIENTE OF PEDRO SHERREBECK FOR EIGHT HUNDRED
VARAS SQUARE, ON RINCON HILL, IN SAN FRANCISCO,
NOVEMBER, 1845.

SEÑOR PREFECT OF THE SECOND DISTRICT:

I, Peter Sherrebeck, a native of Denmark, a citizen of Mexico, and a resident of this place, appear before your Honor, and respectfully represent:

That desiring to devote myself to agricultural pursuits, and also to establish a dairy, for which purpose I am in need of a suitable piece of land.

Praying your Honor, in the exercise of your power, to be pleased to grant me the place called "Rincon," which is situated one-fourth of a league southerly from this place, containing one-half a league, bounded by the beach and the woods (Monte), as explained in the accompanying sketch.

Wherefore I beseech you to accede to, whereby I shall receive favor, etc.

YERBA BUENA, November 24, 1845.

(Signed)

PEDRO SHERREBECK.

YERBA BUENA, November 25, 1845.

The chief local Authority of this place will report whatever he may deem proper upon the contents of this petition.

(Signed)

CASTRO.

Señor Prefect of the Second District :

In obedience to the superior decree of your Honor, I should report that the land which the party in this representation solicited is vacant—that the petitioner possesses the necessary qualifications to be favorably considered. Notwithstanding this *Juzgado* is of the opinion that only land upon which to build a house, corral, and to plant, can be granted to him, upon which particular your Honor will determine whatever you may deem most proper.

YERBA BUENA, November 26, 1845.

(Signed)

J. DE LA C. SANCHEZ.

In view of the present petition, the report of the Municipal Authority of Yerba Buena, and other proceedings had, by virtue of the powers vested in me by the law of the twentieth of March, 1857, I grant to Don Pedro Sherrebeck, the ownership of the place called "Rincon," embraced within the demarcation of Yerba Buena, to the extent of eight hundred varas square—he being subject to pay the sum that may be assessed to him by the most Excellent Departmental Assembly.

Let this Expediente be returned to the party interested—that, serving him as a title, he may take possession of the said land.

(Signed)

MANUEL CASTRO.

NOTE.—This claim is still pending in the District Court. It may be described, in general terms, as embracing eight hundred varas square, lying upon the south-western slope of Rincon Hill.

No. XCVI.

DOCUMENT PURPORTING TO BE A GRANT OF ONE SQUARE LEAGUE OF LAND IN THE VICINITY OF SAN FRANCISCO, MADE BY GOVERNOR MICHELTORENA, AND BEARING DATE, AUGUST 14TH, 1844.

Government of the Department of the Californias.
--

Manuel Micheltorena, Brigadier-General of the Mexican Army, Adjutant-General of the Staff of the same Commandant, Governor and Inspector of the Department of the Californias :

Whereas, the citizen Fernando Marchena, having rendered particular services to

the military body under my command, and he being desirous of establishing himself in the neighborhood, vacant lands of the Port of San Francisco, and I using the faculties on me vested, in the name of the Mexican Nation, I hereby grant to him, in compensation of said meritorious services, one league of land, with the privilege of choosing as he may best find convenient, in the neighborhood of the Port of San Francisco, on the vacant lands, and without molestation to the occupants of lands already granted in the town of Yerba Buena, pronouncing it, from the moment that he may occupy it, as his legitimate property.

Let these presents be his compensatory title, and be it firm and of value, and for his safeguard and other ends.

Given at Monterey, in August 14th, 1844.

MANUEL MICHELTORENA.

I hereby certify that the within is a true and correct translation of a document containing the same in the Spanish language.

FELIX A. MATHEWS,

County Interpreter, Contra Costa County, Cal.

NOTE.—The archives do not contain any trace of this grant, or of any expediente in the matter.

No. XCVII.

EXPEDIENTE INSTITUTED BY CITIZEN JOAQUIN PIÑA, SOLICITING THE PLACE NAMED PUNTA DE LOS LOBOS, IN THE JURISDICTION OF SAN FRANCISCO, YEAR 1845.

Señor Alcalde of San Francisco de Asis:

Joaquin Piña, Corporal of Artillery of the Line, and stationed in the Port of San Francisco for the last twenty-seven years, with due respect and subordination, appears and declares: That about the middle of the year of one thousand eight hundred and forty-four, he presented to the Superior Government of this Department a Petition for the purpose of granting to him the place named De los Lobos—a place which, for many years, has been vacant; but as the occurrences which have taken place in the Department have not permitted these matters to be examined, I see myself compelled to appear, by means of this Petition, for the purpose that you may be pleased to make the proper report, whether this land is cultivated or is vacant.

The said land which I solicit has not in its extent, as is manifest, a tillable place. All the extent is chamisal (brush); but it is added that the whole of my small stock of cattle, which I have on it, is used to it for many years; but there are others, as I understand, who solicit the same land against me. I am in the honorable career of service in the army, which disables me, in case this land should be occupied by another, to have a place where to put my cattle.

The land which I solicit runs from west to south, from near Del Castillo (*the Table-land of the Fort*), to Punta de los Lobos (*Point Lobos*), and from west to

east, from the beach of the mouth of the Harbor of San Francisco to the Mountain Devisadero, in a straight line to the summit (crest) of the hills and dales to the Presidio.

The Petition addressed, as I have stated, was to the Superior Government, through the medium of my Commander, Don Mariano Silva, who assured me that it was in the possession of the Secretary of this Government; therefore I respectfully pray you will be pleased to decree in my favor, should you deem it just and expedient, for which favor I shall be grateful. Please admit this Petition on common, for want of the proper stamped paper.

SAN FRANCISCO, March 15, 1845.

(Signed)

JOAQUIN.

To His Excellency, the Governor:

Joaquin Piña, a Corporal of Artillery of the Line, and stationed in the Port of San Francisco for the last twenty-seven years, who voluntarily comes to aid this Department, before Your Excellency, with due subordination, and in the amplest form of law, appears, and declares that in the middle part of the year one thousand eight hundred and forty-four, through the medium of his Commander, Don Mariano Silva, he presented to his Excellency, the Commandant General, Don Manuel Micheltoarena, a Petition, addressed for the purpose of soliciting the place named De los Lobos—a vacant place at the point of San Francisco, but, for the occurrences which took place, I know not whether my documents have been estrayed; but seeing that we now enjoy peace, I consider myself compelled to present this Petition to your Excellency, with the view that, should you deem my request proper, would grant it—alleging in my favor, should it be of any merit, that ever since the first of November, one thousand eight hundred and eight, I am serving in the honorable career of Arms, and this prompted me not to apply in time for some land whereon to place my small stock of cattle, which I have.

Excellent Sir, the place which I solicit will contain a tract of one sitio de ganada mayor (*one league of land*), a little more or less. Its boundaries run from north to south, from the Mesa del Castillo (*the Table-land of the Fort*), to the Punta de Lobos (*Point Lobos*), and from west to east, from the beach of the mouth of the Harbor to the Mountain Devisadero, the line running to the crest of the hills which are at the dales of the Presidio de San Francisco. The small stock of cattle which I have is for many years used to it; but as I know that now after I have petitioned for this place, there are others who are solicitous for it, I feel myself under the necessity of making this new claim, because I consider myself that if another shall take possession of it I shall be absolutely unfortunate with my family, for I find no resources where to take and place my property, and much less because I am serving in the career of Arms.

Therefore, I most honorably pray your Excellency to be pleased, as a benign act of your heart, to grant my petition, for which mercy and favor I shall be grateful.

SAN FRANCISCO, twenty-second August, 1845.

(Signed)

JOAQUIN PIÑA.

For want of stamped, this Petition is on common paper.

ANGELES, October 14th, 1845.

Let it be referred to the Señor Prefect of the District of Monterey, for the pur-

pose of making such report as he may deem necessary after taking information, whether the land which is solicited can be granted without prejudice to the boundaries or commons (*egidos*), which will have to be assigned to the *Pueblo of Yerba Buena*, and upon all that may contribute to enlighten the matter.

Thereupon, and with the *diseño (plat)* of the land which is solicited, let it be returned to this Government for the proper resolution.

(Signed)

PICO.

To the Señor Prefect of the Second District of the Alta California :

Joaquin Piña, a Mexican by birth, Corporal of Artillery of the Line, and a resident in this Department for twenty-six years, before you, in the most ample form of law, declares, that one year and five months ago, through the medium of Señor Commandant of this branch of the Army, Don Mariano Silva, I presented to his Excellency, Señor Comandante General, Don Manuel Micheltoarena, a Petition wherein I solicit that there may be granted to me the place known by the name of Chamisal de los Lobos, in the Port of San Francisco. In the month of August last past, I made a new petition, and transmitted it to his Excellency by Captain Andres Pico, and up to this date I can obtain no decrees on any of my my two Petitions—for which reason I newly appear before you, by means of this Petition, for the purpose that, should it depend upon your authority, you may deign grant me said land, because I have had for many years a small stock of cattle upon it, which is used to it—because, in consequence of being in the military service, I cannot petition for other lands ; besides being advanced in years prevents me also from so doing.

To all which statements the Captains which I have mentioned can testify that they are true—that I made this Petition a long time ago. The tract of land which I solicit, has no tillable land, has some water—a lake and a spring of permanent water. Its bounds are, from north to south, the Mesa del Castillo (*the Tableland of the Fort*), to the Punta de Lobos, and from west to east, from the beach of the mouth of the Harbor to the Mountain Devisadero—land which is vacant.

Therefore I pray Your Honor, that, prompted by a benign heart, you may deign to accord my prayer, for which favor and mercy I will be grateful. Be pleased to receive this Petition on common, for want of the proper stamped paper in this place

SONOMA, November 13, 1845.

(Signed)

JOAQUIN PIÑA.

YERBA BUENA, November 20, 1845.

Let the Señor Sub-Prefect of this District report on the contents of this Petition all he may deem expedient.

(Signed)

CASTRO.

To His Excellency, the Governor :

The place named Punta de Lobos, which Don Joaquin Piña solicits in this Expediente, to the extent of one sitio de ganada mayor (*one square league of land*), in the jurisdiction of San Francisco, is distant more than one league from the Point of Yerba Buena, and if the Superior Government of the Department should grant the said sitio to the petitioner, in the opinion of this Prefecture, the settlement of

Yerba Buena would not be prejudiced (*endamaged*), not even in the case should the convenient commons (*ejidos*) be assigned to it.

For this reason, and because the said Señor Piña occupied this same land, the Prefecture under my charge believes that it is but justice that Your Excellency ought to grant said land of Punta de Lobos to him in preference to any other individual, for the petitioner is in possession of it, and for the services which he has rendered to the nation, sustaining always a good deportment, he is entitled that Your Excellency should grant him the small favor which he solicits, that he may maintain himself and support his family.

All of which I have the honor to report to Your Excellency, enclosing at the same time the *diseño* (*plat*) presented by the party interested, according to the decree of Your Excellency of the 14th instant, annexed to this Expediente—that in view of the whole, Your Excellency may deign to resolve as it may appear just.

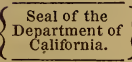
YERBA BUENA, November 22, 1845.

YERBA BUENA, November 26, 1845.

By virtue of the foregoing decree on the preceding Petition, let the Señor Alcalde of this place report the circumstances of the land which the party interested solicits upon previous information of all the proceedings he may think proper to institute and to state in conformity with the requirements provided by law.

(Signed)

FRANCISCO GUERRERO.


 Having seen this Petition, the reports made, with all that has been presented, I grant in ownership to citizen Joaquin Piña the place named Punta de los Lobos, to the extent of one sitio de ganada mayor (*one square league of land*), as expressed in this Expediente. Thus I, Pio Pico, Governor of the Department of California, have decreed, ordered, and signed it in Los Angeles, on the twenty-eighth December of 1845.

(Signed)

PICO.

NOTE.—This Expediente is regularly archived up to the final grant, which does not appear in the Archives. The claim was never presented for confirmation to any tribunal of the United States. It appears to include Mountain Lake and the stream called Lobos Creek.

No. XCVIII.

ESPEDIENTE OF JACOB P. LEESE AND SALVADOR VALLEJO
FOR A TRACT OF LAND 200 x 400 VARAS, AT THE LANDING
PLACE IN YERBA BUENA. DATED MAY 21st, 1839. FINALLY
CONFIRMED AND PATENTED.

To His Excellency the Governor of Upper California, Don Juan B. Alvarado :

The undersigned, Jacob P. Leese and Salvador Vallejo, appear before your Excellency in due form and represent, that as the scarcity of money in the coun-

try may cause your Excellency to be unable to pay the expenses which by your order we have incurred in launches, transportation of troops and mules, and other services, even personal, that we have rendered in this place, in Santa Clara, San José, Sonoma, and San Rafael, in promoting the public tranquility — we having thought fit to make a contract with the commandant of Russ, Don Pedro Kosshomettingoff to construct at this place some store-houses and a wharf for his commercial purposes, and needing two lots for the said houses, we ask your Excellency to grant to us two lots of one hundred varas each, one at the point known as the landing-place of Yerba Buena — these lots to commence precisely at the point of the landing-place on the sea shore, thence in a north course to the little beach, which is the front of two hundred varas, and a depth a west course towards the hill, of one hundred varas; we also ask for twenty-five varas in the sea by the said point of the landing-place for the construction of the wharf to which we make reference. For the reasons expressed, we pray your Excellency to grant to us the benefit we ask, which will be to us a favor. Excusing us for using common, as there is not any scaled paper.

SAN FRANCISCO, May 12th, 1839.

JACOB P. LEESE,
SALVADOR VALLEJO.

[L.S.]

MONTEREY, 21st May, 1839.

The two lots of one hundred varas each, one, in the place and terms manifested by them, are granted to the interested parties, Don Jacob Luis Leese and Don Salvador Vallejo, for them to build their store-houses, upon the conditions which will be explained. But, by this cession the commandant of the Presidio de Ros cannot have any right to the land that is ceded, which must be considered as the property of Mexicans, as the aforesaid interested parties are.

1ST. In no time, nor any pretext whatever, shall the commandant of Ros, believe himself to be the proprietor of the store-houses, but all the buildings that shall be erected must be considered as the property of a Mexican citizen.

2D. This license does not annul, nor has it any manner of effect repugnant to, the laws or the decrees of the National Government, or of this department, with respect to the trade or privilege which the Russians may or may not enjoy in future on their arrival at the port of San Francisco with commercial views, since the particular contract does not authorize any duty of any kind whatever, either to the person interested in it, or in the aforesaid trade.

3D. The wharf which it is proper to build shall not be exclusively for the benefit of individuals, but shall be regarded as property of the Government, for the use of commerce in general. The Government itself shall impose such wharf duties as it shall see fit.

4TH. If the grantees shall contravene these provisions, they shall lose their rights, as well in the buildings as in the lots which have been adjudged to them, and they shall remain for the benefit of the native citizens, for such use as it shall be fit to make of them.

His Excellency, Don Juan B. Alvarado, Governor of the Department of California, ordered that this decree should be delivered to the persons interested, to serve them as a title, and that notice of the same be taken in the proper book.

JUAN B. ALVARADO.

MAN'L JIMENO, Sec'y.

A notice of the same has been taken in the office in my charge, at page 7, of the proper book.

MONTEREY, 21st May, 1839.

JIMENO.

NOTE.—This land is described in the petition to the Honorable Board of Commissioners, on behalf of the United States, by Jacob P. Leese and Salvador Vallejo, who claim a lot of land in the City and County of San Francisco, State of California, in form of a parallelogram, one hundred varas wide, and two hundred varas long; boundaries as follows:

“Commencing at a point on the north side of the street known as Broadway, one hundred and sixty-two feet and seven inches easterly from the north-eastern corner of Broadway and Battery streets; running thence in a northerly and westerly direction two hundred varas, to a point formerly the shore of the Bay of San Francisco; thence, at a right angle, westwardly and southwardly one hundred varas; thence, at a right angle, southwardly and eastwardly, two hundred varas; and thence, at a right angle, eastwardly and northwardly one hundred varas, to the point of beginning,” and has been patented with that description. As pertaining to the history of this grant, see *Leese vs. Clark*, 20 California Reports, 387; the *Same vs. The Same*, 18 California Reports, 535; also 1 *Hoffman's Reports*, Appendix, No. 74.

No. XCIX.

RECORD OF THE PROCEEDINGS INSTITUTED BY THE CITIZEN
 JOSÉ DE JESUS NOÉ, CLAIMING A SMALL TRACT OF LAND
 CALLED “LAS CAMARITAS,” SITUATE IN SAN FRANCISCO.

A.D. 1840.

To the Prefect of the First District:

SAN JUAN DE CASTRO, }
 Nov. 23, 1839. }

The Justice of the Peace of San Francisco will report upon the matter referred to in this Petition.

CASTRO.

SIR—José de Jesus Noé, a Mexican by birth, and a citizen of the Sixth District of San Francisco, before Your Honor, with all due submission, appears, and says: That, being obliged to remove from the Ranch of “Las Pulgas,” where he and his family now reside, a place very retired in itself, and where they may be exposed to some mishap, as it is quite isolated, he solicits from Your Honor the grant of the “Camaritas,” which is near to the Creek and Landing of the ex-Mission of San Francisco. This place lies in the Willow Grove, and is three hundred yards in length from north to south—a little more or less—and two hundred yards wide. This he asks for, that he may erect a house thereon, and cultivate some vegetable gardens for the support of his family.

Wherefore, the undersigned respectfully begs Your Honor, and accompanies herewith a Plan (Sketch) of the same for your information; and in which he hopes for favor and mercy—making oath that in it there is no malice, and to all the necessary forms of law, etc. This petition is not made upon stamped paper, because none can be obtained.

SAN FRANCISCO, October 3d, 1839.

J. DE JESUS NOÉ.

To His Honor, the Prefect:

In compliance with the marginal decree of Your Honor, I have the honor to state that the party making this Petition possesses all the legal requisites to be favorably received: that the small piece of land which is solicited by him can be granted to him, inasmuch as the same is vacant, and that the confirming of this favor will be the means of bettering the condition of a poor, numerous family.

SAN FRANCISCO, November 24th, 1839.

FRANCISCO GUERRERO.

SAN JUAN DE CASTRO, December 7th, 1839.

Let this Petition, with the information relative to the same, be referred to His Excellency, the Governor of the Department.

CASTRO.

To His Excellency, the Governor:

SIR—The land solicited by the party interested is situated within the Settlement of "Dolores," and the said estate does not need it; neither is it of any use whatever to it. The petitioner is an honest man, having a large family, and is now in the most indigent circumstances; and, in consideration thereof, this Prefecture requests Your Excellency to be pleased to give the most favorable hearing to this Petition.

SAN JUAN, December 8th, 1839.

JOSÉ CASTRO.

MONTEREY, December 22d, 1839.

Let this Petition be transferred to the Justice of the Peace of San Francisco, in order that he may adjudicate to the interested party the number of varas of land in the terms and manner provided for on the twenty-eighth of November last past, after which he may enjoy such advantages as he shall be entitled to by his rights of residence.

ALVARADO.

Furthermore: Let another Petition be presented to the Superintendent of the Settlement of "Dolores," who, if he has no objection to it, can permit Don de Jesus Noé to occupy the land as specified in the Sketch which accompanies his Petition, and to make such improvements therein as he wishes.

ALVARADO.

In compliance with the foregoing Decree, the Superintendent of the ex-Mission of San Francisco states: that there is no impediment to prevent Don José de Jesus Noé from occupying the land which he has solicited, and which is adjacent to this settlement.

Ex-Mission of San Francisco de Asis, this eighth day of January, 1840.

JOSÉ DE LA C. SANCHEZ.

Juan Bautista Alvarado, Constitutional Governor of the Department of the Californias :

{ Civil Government
Seal of
Upper California. } In view of the favorable report made relative to the legal proceedings instituted by Don José de Jesus Noé, in his Petition for the land known by the name of "Las Camaritas," situated within the limits of the Settlement of "Dolores," and in view of the purpose of cultivation, for which he solicits the same and for erecting a house, I have come, by decree of this date, to permit to him in the said place, which lies within the Willow Groves of the creek of said settlement, three hundred varas square, for the purpose indicated, subject to such police regulations as may be established. He shall furthermore present himself, with this warrant, to the Superintendent of the aforementioned settlement, who will give him possession of the land.

Given at Monterey, this twenty-first day of January, A.D. 1840.

ALVARADO.

MANUEL JIMENO,
Secretary.

NOTE.—The claim under the preceding grant has been finally confirmed, but not surveyed. The case is numbered 629 in the Land Commission; 387 in the District Court of the United States, in the Northern District of California, and 190 in Jimeno's Index. The land is situated in the south-eastern portion of the city of San Francisco, as defined by the chartered limits of the charters of 1850 and 1851, and may be described to a general intent as by being bounded by Mission and Center streets, and by the salt marsh of Mission Creek. See 1 Hoffman's Reports, Appendix, No. 629.

No. C.

ESPEDIENTE INSTITUTED BY DON JUAN CASTRO FOR THE ISLAND OF YERBA BUENA, SITUATE IN THE BAY OF SAN FRANCISCO, NOVEMBER 8TH, 1838.

[Filed by Client in Land Commission. No Espediente in archives.]

GRANTS OF ISLANDS AGREEABLY TO DECREE OF JULY, 1838.—YERBA BUENA ISLAND.

Government of the Department of the Californias, Juan B. Alvarado Constitutional Governor of the Department of California :

Whereas, the Supreme National Government has given me the faculty, by a Supreme Order, to grant possession to national individuals, who might solicit, all the surrounding islands in the ports of the coasts of both Californias, and Don Juan Castro, a Mexican citizen, having petitioned for (in conformity with said superior order) the Island named Yerba Buena, situated in the Bay of San Francisco, in front of the town of the same name, I have concluded, in conformity with my powers, to grant the petitioner the said Island, with all its extensions. The grantee, it is understood, is to present himself with this dispatch to the authorities immediate to said Island, in order that they may consider the same as his property.

This, I, the expressed Governor, do sign and decree, as reference will show, in Santa Barbara, on the eighth day of November, eighteen hundred and thirty-eight.

JUAN B. ALVARADO.

NOTE.—There is no Expediente of this grant in the archives. The claim has been finally rejected. See 1 Hoffman's Reports, Appendix, No. 11.

No. CI.

ESPEDIENTE INSTITUTED BY DON ANTONIO MARIA OSIO FOR THE ISLAND LOS ANGELES, SITUATE IN THE BAY OF SAN FRANCISCO, FEBRUARY 19. 1838.

RECORD OF PROCEEDINGS HAD AT THE INSTANCE OF ANTONIO MARIA OSIO, IN SOLICITATION OF THE "ISLA DE LOS ANGELES," AT THE PORT OF SAN FRANCISCO.

Señor Superior Political Chief:

Antonio Maria Osio, with the greatest respect appears before your Excellency, and states that ever since the year 1830 he has a petition presented, praying that the Island of "Los Angeles," at San Francisco, may be granted to him to build a house thereon, and breed horses and mules. He now renews it, hoping that your Excellency will condescend to grant it to him, at the same time asking you to admit this on common paper, for want of that of the corresponding stamp, etc.

MONTEREY, October 7th, 1837.

(Signed)

ANTONIO MA. OSIO.

The following appears in the original on the margin :

MONTEREY, February 1st, 1838.

The military commandant of the frontier north of San Francisco will report.

(Signed)

ALVARADO.

Señor Superior Political Chief:

The Island of Los Angeles, to which the present petition refers, may be granted to Don Antonio Ma. Osio, since I can testify that he has petitioned for it ever since the year 1830; but it may be well to make the exception, that when the government may desire to build a fort on the top or principal height thereof it may not be hindered from so doing.

MONTEREY, February 7, 1838.

(Signed)

MNO. G. VALLEJO.

[L.s.] In view of the foregoing petition, the report of the military commandant of the frontier to the north of San Francisco, with everything also had in consideration for facilitating by all possible means of the impulse that the mercantile branch of our ports deserves, as is recommended by the existing laws, I have con-

cluded by this decree to grant to Don Antonio Ma. Osio the occupation of the lands which the Island called the Angels embraces, situated within the Port of San Francisco, to the end that he may make that use of it which he may deem most suitable, to build a house, raise stock, and do everything that may concern the advancement of the mercantile and agricultural branches, upon the condition that whenever it may be convenient, the government may establish a fort thereon.

The interested party will present himself with this decree to the proper military commanding, in which there will be made an entry thereof, for the due verification of the same.

Given at Monterey, in the Department of the Californias, on the 19th day of February, 1838.

(Signed)

JUAN B. ALVARADO.

NOTE.—This grant has been finally rejected. See 23 Howard, United States Reports, 273, 1 Hoffman, Appendix, No. 18.

No. CII.

CLAIM OF LANDS PURPORTING TO HAVE BEEN GRANTED BY
JUAN B. ALVARADO, GOVERNOR OF THE DEPARTMENT OF
UPPER CALIFORNIA, TO ROBERT ELWELL, IN 1842 OR 1843.

Four hundred varas square, commencing at the south-east corner of Broadway and Sansome streets, thence running southerly, on the east line of Sansome Street, four hundred varas; thence easterly, at right angles, four hundred varas; thence northerly, at right angles, four hundred varas; thence westerly, at right angles, four hundred varas, to the place of beginning, embracing an area of four hundred varas square.

NOTE.—This grant is not archived.

No. CIII.

ORDINANCES OF THE COMMON COUNCIL OF THE CITY OF SAN
FRANCISCO, PASSED IN 1850, COMMONLY CALLED THE
SINKING FUND ORDINANCES. (See printed City Ordinances.)

ORDINANCE No. 49, FOR THE CREATION OF CITY STOCK.

The People of the City of San Francisco do ordain as follows:

SECTION 1. That the Comptroller be authorized to issue proposals for the purchase of a stock, to be created by the authorities of this city, to be entitled a "Sinking Fund Stock," for the erection and promotion of city improvements.

SEC. 2. That the amount of bonds to be issued for the creation of the above

fund shall not exceed five hundred thousand dollars; one third in twelve months, one third in eighteen months, and one third in two years from the date of issue.

SEC. 3. That all the City Lots or Real Estate in the possession of San Francisco shall be held inviolate, and is hereby solemnly pledged and set apart as security for the redemption of said stock and interest at their maturity.

SEC. 4. That said stock shall bear an interest of two per cent. per month, and payable quarterly, and be paid in the acknowledged currency of the United States.

SEC. 5. That there shall be appointed five persons, who shall constitute a board entitled "The Commissioners of the Sinking Fund;" two members thereof shall be the Mayor and the Comptroller of the City, and three members thereof selected from the citizens generally, to be nominated by the Mayor and approved by the Common Council; and they shall give bonds for the faithful performance of their trust, to the amount of one hundred thousand dollars each.

SEC. 6. That it shall be the duty of said Commissioners to have the charge of all real estate belonging to the city; and they may lease or sell said property, as in their judgment may be most advisable for its benefit, and as shall be required to provide funds for the redemption of the public debt.

SEC. 7. That whenever it shall be deemed requisite to dispose of the city property, it shall be advertised in at least two of the daily papers, published not less than two weeks, and to be sold at public auction to the highest *bona fide* bidder.

SEC. 8. That the Comptroller shall, from and after the passage of this Act, advertise in two of the daily papers for bids upon the aforesaid loan, proposals to be opened in the presence of the Commissioners of the Sinking Fund, and the loan to be awarded to the highest bidder.

SEC. 9. That the Comptroller shall open an account in the books of the Department, to be styled "The Sinking Fund Account," and which shall faithfully represent the debit and credit of every transaction relating to the aforesaid stock.

SEC. 10. That the certificates of stock issued under the said loan shall not be considered transferable, unless the parties make it known to the Comptroller that they desire such transfer, in order that the books in the hands of the Commissioners shall clearly record the names of all persons holding such stock.

SEC. 11. That from and after the first day of January, 1851, all receipts for licenses of taverns, draymen, or cartmen, boatmen, theaters, or other places of public amusements, and from all games of hazard or chance, shall be placed in the hands of the Commissioners of the Sinking Fund, to be applied to the liquidation of said loan and interest as far as they may avail.

WM. GREENE,

President Board Aldermen.

A. BARTOL,

President Board Asst. Aldermen.

Approved August 23d, A.D. 1850.

JNO. W. GEARY,

Mayor.

ORDINANCE NO. 67, TO AMEND AN ORDINANCE FOR THE CREATION OF CITY STOCK.

The People of the City of San Francisco do ordain as follows, viz.:

SECTION 1. That the Commissioners be authorized to issue proposals for the

purchase of a stock to be created by the authorities of this city, to be entitled a "Sinking Fund Stock," for the creation and promotion of city improvement.

SEC. 2. That the amount of bonds to be issued for the creation of the above fund shall not exceed eight hundred thousand dollars, said stock to be redeemable as follows, viz.: one-third in one year, one-third in two years, and one-third in three years from the date of issue.

SEC. 3. That all the City Lots or Real Estate in the possession of San Francisco, shall be held inviolate, and is hereby solemnly pledged and set apart as security for the redemption of said bonds and interest at their maturity.

SEC. 4. That said stock shall bear an interest of two per cent. per month, interest payable quarterly, and be paid in the acknowledged currency of the United States.

SEC. 5. That there shall be appointed five persons, who shall constitute a board entitled "The Commissioners of the Sinking Fund;" two members thereof shall be the Mayor and the Comptroller of the City, and three members thereof selected from the citizens generally, to be nominated by the Mayor and approved by the Common Council, and they shall give a joint bond of one thousand dollars for the faithful performance of their trust.

SEC. 6. That it shall be the duty of said Commissioners to have charge of all real estate belonging to the city; and they may lease or sell said property as in their judgment may be most advisable for its benefit, and as shall be required to provide funds for the redemption of the public debt.

SEC. 7. That whenever it shall be deemed requisite to dispose of the city property, it shall be advertised in at least two of the daily papers, published not less than two weeks, and to be sold at auction to the highest *bona fide* bidder.

SEC. 8. That the said Commissioners shall, from and after the passage of this Act, advertise in two of the daily papers for bids upon the aforesaid loan; proposals to be opened in the presence of the aforesaid Commissioners, and the loan to be awarded to the highest bidder, or rejected at the discretion of the Commissioners.

SEC. 9. That the Commissioners shall cause to be opened an account in the books of the department, to be styled "The Sinking Fund Account," and which shall faithfully represent the debit and credit of every transaction relating to the aforesaid stock.

SEC. 10. That the certificates of stock issued under the said loan shall not be considered transferable unless the parties make it known to the Comptroller that they desire such transfer, in order that his books and the books of the Commissioners shall clearly record the names of all persons holding such stock.

SEC. 11. That from and after the first day of January, 1851, all receipts from wharves and piers, for licenses of taverns, draymen, cartmen, boatmen, theaters, and other places of public amusement, and from all games of hazard or chance, shall be placed in the hands of the Commissioners of the "Sinking Fund," to be applied to the liquidation of said loan and interest as far as they may avail.

SEC. 12. That it shall be the duty of the said Commissioners to report quarterly to the Common Council a true and faithful statement of its receipts and disbursements, arising from the sale of said bonds and other sources of revenue, and make all such other reports, from time to time, in relation to the aforesaid loan, or disposition of property, as the Common Council may direct; and all moneys so created by this ordinance shall at any time be held subject to the order of said Common Council.

SEC. 13. That the aforesaid Commissioners shall be entitled to receive five

per cent. on the money received from sale of said bonds, as a contingent fund in the hands of said Commissioners, to pay the expenses of the department during the term that the said Commission shall be in existence.

WM. GREENE,

President Board Aldermen.

A. BARTOL,

President Board Asst. Aldermen.

Approved October 1st, 1850.

JOHN W. GEARY,

Mayor.

ORDINANCE No. 113, AUTHORIZING COMMISSIONERS TO ISSUE BONDS PAYABLE TO BEARER, ETC.

The People of San Francisco do ordain as follows:

That Section 10, of Ordinance No. 67, to Amend an Ordinance for the Creation of City Stock, approved October 1, 1850, be and the same is hereby repealed. And that the following be substituted in lieu thereof:

That the Bonds issued under said loan shall be made payable to bearer, in such sums as the Commissioners may deem advisable.

WM. GREENE,

President Board of Aldermen.

A. BARTOL,

President Board of Asst. Aldermen.

Approved December 23, 1850.

JNO. W. GEARY,

Mayor.

NOTE—These ordinances have been decided to be void for want of power in the Common Council to enact them. See *Smith vs. Morse*, 2 Cal. 538; *Heydenfeldt vs. Hitchcock*, 15 Cal. 514.

No. CIV.

CONVEYANCE BY THE CITY OF SAN FRANCISCO OF CERTAIN OF ITS PROPERTY AND REAL ESTATE TO THE "COMMISSIONERS OF THE SINKING FUND," PURSUANT TO THE SINKING FUND ORDINANCES OF 1850, WHICH ARE SET OUT IN THE ADDENDA, No. CIII. DATED DECEMBER 25, 1850.

STATE OF CALIFORNIA, }
County of San Francisco. }

Know all men by these presents, that the City of San Francisco, for and in consideration that the grantees hereinafter named have accepted the appointment of Commissioners of the Sinking Fund of the City of San Francisco, and given bond and security for the faithful performance of the duties thereof, under and by

virtue of an ordinance of said city, entitled "An Ordinance for the creation of a City Stock," passed and approved the twenty-third day August, in the year eighteen hundred and fifty, and under and by virtue of a certain other ordinance of said city, entitled "An Ordinance to Amend an Ordinance for the creation of City Stock," passed and approved on the first day of October, in the year last aforesaid; and for divers other and good considerations, the said City of San Francisco thereunto moving, have bargained, sold, and conveyed, and by these presents do bargain, sell, and convey unto John W. Geary, William Hooper, James King of William, Benjamin L. Berry, and Talbot H. Greene, of the said city, as the Commissioners of the Sinking Fund of the City of San Francisco, and their successors in office and assigns, all that beach and water property lying and situated on the northern beach of the said city, and bounded as follows: commencing at the intersection of western boundary line of said city with the line of high water mark, thence northerly along the said western line of said city to ships' channel, thence easterly along the line of ships' channel to the west line Kearny Street produced to said channel, thence southerly along said west line of Kearny Street to Bay Street, thence westerly along the line of Bay Street to Dupont Street, thence northerly along the line of Dupont Street to North Point Street, thence westerly along North Point Street to Stockton Street, thence southerly along Stockton Street to Bay Street, thence westerly along the line of Bay Street to fifty-vara lot number seven hundred and sixty-four, (764), thence along the eastern and northern bound of said fifty-vara lot seven hundred and sixty-four, (764) to Leavenworth Street, thence northerly along Leavenworth Street to Beach Street, thence westerly along Beach Street and the high water line to the place of beginning.

Also, all those beach and water lots lying between Broadway and Pacific streets in said city, and known and marked upon the official map of said city, now at the City Surveyor's Office therein, as numbers nineteen (19), 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39; also those other beach and water lots lying between Jackson and Washington streets, known and marked upon the official map of said city, now at the City Surveyor's Office therein, as numbers 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and 111. The above-named lots, namely, numbers 19 to 39, inclusive, and 64 to 111 inclusive, being further marked and known on the aforesaid map as Government Reserves. Also, that property marked on said map as Government Reserve, and bounded on the north by Jackson Street, on the south by Washington Street, on the east by Drumm Street, and on the west by Front Street.

Also, that property known on said map as the Government Reserve, at Rincon Point, and bounded on the west by Beale Street, on the north by Folsom Street, and on the east and south by the high water line.

Also, those beach and water lots known and marked upon said map as numbers 273, 290, 291, 292, 301, 302, 309, 311, 312, 313, 315, 316, 319, 320, 321, 322, 326, 352, 371, 372, 420, 421, 422, 424, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 459, 460, 463, 465, 466, 505, 506, 507, 508, 509, 510, 511, 514, 515, 516, 517, 534, 580, 588, 606, 611, 618, 652, 653, 654, 655, 678, 679, 680, 682, 687, 688, 689, 690, 691, 719, 721, 724, 726, 731, 767, 770, and 772; also, all that beach and water property lying between Folsom Street on the north, ships' channel, on the east, the city limits on the south, and Price Street on the west, and known on the said map as blocks numbers one (1) to thirty-two (32), inclusive. Also, all

those one hundred-vara lots known and marked on said map as numbers 97, 103, 112, 128, 129, 130, 131, 135, 136, 139, 140, 141, 142, 145, 148, 149, 150, 151, 155, 156, 157, 158, 159, 160, 161, 162, 163, 167, 168, 169, 170, 174, 175, 176, 191, 201, 203, 258, 306, 307, 308, 309, 310, 311, 312, 313, 317, 318, 319, 321, 322, 323, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 337, 336, 338, 339, 340, and 341; also, all these fifty-vara (50) lots, known and marked on said map as lots, numbers three hundred and one (301), 345, 346, 352, 357, 358, 409, 410, 427, 462, 464, 506, 568, 588, 589, 590, 591, 592, 597, 598, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 663, 729, 732, 733, 736, 740, 749, 781, 782, 783, 784, 785, 787, 788, 789, 790, 791, 792, 793, 816, 817, 818, 819, 820, 831, 832, 833, 834, 835, 856, 857, 858, 859, 860, 861, 878, 879, 880, 881, 890, 891, 892, 893, 894, 895, 896, 897, 925, 929, 934, 936, 938, 946, 947, 952, 953, 970, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1081, 1103, 1104, 1105, 1132, 1133, 1158, 1159, 1174, 1179, 1182, 1185, 1188, 1301, 1311, 1315, 1339, 1343, 1348, 1377, 1400, 1403, 1441, 180, 463, 528, 775, 764, 786, 1235, 1257, 1275, 1277, 1279, 1290, 1306, 1329, 1330, 1349, 1440, 1455, 1456, 1461, 1462, 1469, 1470, 1476, 1477, 1379, 1437, 849, 843, 842, 848, 808, and 741.

Also, all that piece or parcel of land known as the City Hall property and lot, and described as follows, to wit: Commencing at a point on the north side of Pacific Street, in said city, distant from the north-west corner of Pacific and Kearny streets ninety-nine feet (99) and eight (8) inches, running thence northwardly, at a right angle to Pacific Street, one hundred and thirty-seven feet (137) six (6) inches; thence eastwardly, ninety-nine feet (99) eight (8) inches, to the west side of Kearny Street; thence southwardly, and along the west line of Kearny Street, one hundred and thirty-seven (137) feet and six inches; and thence westwardly, and along the north line of Pacific Street, ninety-nine (99) feet and eight inches to the place of beginning, being a portion of original lot, as numbered on the plan of the City of San Francisco, forty-four (44); also, the wharf known as Taylor Street Wharf, in said city, on Taylor Street, commencing at Francisco Street and running along Taylor Street towards the ships' channel; also, the wharf known as Broadway Wharf, in said city, commencing one hundred and forty feet east of the eastern line of Battery Street, and running towards the ships' channel.

Also, the wharf, in said city, known as Pacific Street Wharf, commencing at the intersection of Sansome and Pacific Streets, and running towards the ships' channel; also, the wharf, in said city, known as California Street Wharf, commencing at Sansome Street, and running towards the ships' channel; and, also, the wharf, in said city, known as Market Street Wharf, commencing at First Street, and running towards the ships' channel, with all the sums of money, dues, and rates of wharfage which may hereafter be levied or collected out of the same, according to law; and also the fifty-vara lot known and marked on said map as lot numbered thirteen hundred and four (1304).

To have and to hold the said parcels or lots of lands and wharves, and the appurtenances and hereditaments thereunto belonging or appertaining, to the said the Commissioners of the Sinking Fund of the City of San Francisco, their successors in office, and assigns forever.

In trust, nevertheless, to and for the following uses, interests, and purposes, and for no other use, interest, or purpose whatsoever, that is to say: In trust, that the said, the Commissioners of the Sinking Fund of the City of San Francisco, shall

have charge of all the said lots, or pieces or parcels of lands and wharves, as a security for the redemption of the bonds and interest already created, and which may be hereafter created under and by virtue of the ordinances of the said city hereinbefore referred to, and to lease or sell the said lots or wharves, or any one or more of them, as in their judgment may be for the benefit of the said city, and as shall be requisite to provide funds for the redemption of the said bonds and interest.

In testimony whereof, the said City of San Francisco has, by ordinance passed to that effect, caused William Greene, President of the Board of Aldermen of said city, and Abraham Bartol, President of the Board of Assistant Aldermen of said city, on this twenty-fifth day of December, in the year of our Lord one thousand eight hundred and fifty, to affix the private seal of John W. Geary, Mayor of the said city, which has been heretofore adopted as the common seal of the said city, for the time being, by an ordinance of the Mayor and Common Council thereof, and also to set their hands hereto.

In presence of

WILLIAM GREENE, [L.S.]
 ABRAHAM BARTOL, [L.S.]

STATE OF CALIFORNIA, }
 County of San Francisco. }

On this twenty-sixth day of December, in the year one thousand eight hundred and fifty, personally appeared before me, a Notary Public in and for the said county, William Greene and Abraham Bartol, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me, each for himself, they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

[SEAL.]

WILLIAM RABE,
 Notary Public.

A true copy of the original recorded 6 Jan. 1851, at 10 o'clock & $\frac{1}{4}$ A.M.

JOHN A. MCGLYNN,
 County Recorder.

Recorded in the Recorder's Office of San Francisco County, in Book 1, Deed of Trust, p. 109, January 6th, 1851.

No. CV.

POWER OF ATTORNEY EXECUTED BY TALBOT H. GREEN, ONE OF THE COMMISSIONERS OF THE SINKING FUND, TO JOHN W. GEARY, AUTHORIZING SAID GEARY TO CONVEY TO SUCH USES AS THE LEGISLATURE SHOULD APPOINT, ALL THE RIGHT, TITLE, INTEREST, AND ESTATE HELD BY SAID GREEN, AS ONE OF THE COMMISSIONERS OF THE SINKING FUND. DATED APRIL 16, 1851.

TALBOT H. GREEN }
 to }
 JOHN W. GEARY. }

I, Talbot H. Green, of San Francisco, California, do hereby appoint and

constitute John W. Geary, of the same place, my true and lawful attorney, for me and in my behalf, to convey the right, title, and interest, which I have as one of the Commissioners of the Sinking Fund, under two certain Deeds of Trust heretofore executed to me in connection with John W. Geary, James King of Wm., William H. Hooper, and Benjamin L. Berry, of the City of San Francisco, as Commissioners of the Sinking Fund of the City of San Francisco, on certain property described in said deeds to such person or persons as shall be legally appointed for that purpose by the Legislature, by the said City, or by any Court of competent jurisdiction.

Witness my hand and seal, this 15th day of April, A.D. 1851. The words by the City of San Francisco, having been interlined before the signing hereof.

TALBOT H. GREEN. [SEAL.]

In presence of

JOHN W. DWINELLE,
E. V. JOICE.

STATE OF CALIFORNIA, }
County of San Francisco. }

On this 16th day of April, A.D. 1851, before me, personally, came John W. Dwinelle, Esq., one of the subscribing witnesses to the foregoing power of attorney, to me known, who being duly sworn, did depose and say, that he resides in the City of San Francisco, in said County, that he knows Talbot H. Green, the individual described in, and who executed the said power of attorney, that he was present and saw the said Talbot H. Green sign, seal, and deliver the same, as and for his act and deed, and that the said Talbot H. Green, then acknowledged the execution thereof, whereupon the said John W. Dwinelle, Esq., became one of the subscribing witnesses thereto.

[SEAL.]

JAMES BOWMAN,
Notary Public.

A true copy of the original, recorded May 17th, 1851, at ten o'clock, A. M.

JOHN A. MCGLYNN,
County Recorder.

Recorded in the Recorder's Office of San Francisco County, at page 344, of Book 1, Powers of Attorney, May 17th, 1851, at 10 o'clock, A.M.

No. CVI.

EXTRACTS FROM LAWS OF THE STATE OF CALIFORNIA, DEVOTING THE LANDS OF THE CITY OF SAN FRANCISCO TO THE PAYMENT OF ITS PUBLIC DEBTS.

CHAP. 84.—AN ACT TO REINCORPORATE THE CITY OF SAN FRANCISCO.

Passed April 15th, 1851, page 357.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

CHARTER OF THE CITY OF SAN FRANCISCO.

ARTICLE I.—*General Powers, Boundaries, and Wards.*

§ 1. The People of the City of San Francisco shall continue to be a body politic and corporate, under the style of the "City of San Francisco," and by that name they shall have perpetual succession, may complain and defend in all Courts and in all actions and proceedings, and may purchase, receive, and hold property, real and personal, and sell or otherwise dispose of the same for their common benefit; *provided*, that they shall purchase without the city only such property as may be necessary for the purposes of burial, or for the erection of prisons, hospitals, asylums, and water works for supplying the city with water.

[Pages 361, 362.]

ART. III. § 14. All money to be received from the following sources, shall continue to constitute a sinking fund for the payment of the existing city indebtedness with the interest accruing thereon, until the same shall be canceled:

1st. The net proceeds of all sales of real estate belonging, or that may hereafter belong to the city.

2d. The net proceeds of all bonds and mortgages payable to the city.

3d. For occupation of private wharves, basins, and piers.

4th. For wharfage, rents, and tolls. Said fund, or any part thereof, shall not be loaned to any other fund, or expended for any other purposes whatever.

§ 15. The Common Council shall at an early day take steps to fund by ordinance the existing debts of the city. The funded debt shall consist of:

1st. The liabilities for the payment of which the city revenue is already pledged.

2d. The creditors of the city may fund the debts respectively due them at the passage of this act, on such terms as the Common Council may prescribe, at a rate of interest not to exceed ten per cent. a year, and payable within ten years; but no bond shall issue of a less denomination than one hundred dollars.

[Repealed by Laws of 1851, chap. 88, page 390, § 13, as next hereinafter cited.]

§ 17. The Commissioners of the Sinking Fund, created by ordinance of the Common Council, are hereby prohibited from permanently disposing of any property belonging to the city by sale, lease, or otherwise, and also required to reconvey and deliver to the city, before the tenth day of May next, all property, titles, rights, and interests belonging to the city, and which are or may be in their possession.

[Repealed by Laws of 1851, chap. 88, page 390, § 13, as next hereinafter cited.]

Laws of 1851, p. 387.]

CHAP. 88.—AN ACT TO AUTHORIZE THE FUNDING OF THE FLOATING DEBT OF THE CITY OF SAN FRANCISCO, AND TO PROVIDE FOR THE PAYMENT OF THE SAME. Passed May 1, 1851.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The City of San Francisco is hereby authorized to fund its floating debt as hereinafter provided; and for this purpose, P. A. Morse, D. J. Tallant, William Hooper, John W. Geary, and James King of William, of the City of San Francisco, are hereby constituted and shall be known as "The Commissioners of the Funded Debt of the City of San Francisco," and as such they and their successors appointed as hereinafter prescribed, shall have the powers hereinafter enumerated. They shall organize their commission by the appointment of a President and Secretary from their own body; they shall hold their offices during good behavior. Any vacancy occurring shall be filled by appointment by the Mayor of said city of some respectable citizen of said city to such office, and confirmed by the Common Council. The said Funding Commissioners, before entering upon the duties of their office, shall file a joint and several bond with the Mayor of the city, in the penal sum of one hundred thousand dollars for the prompt and faithful discharge of all the duties of their office.

[Page 390.]

§ 10. The seventeenth section of the third article of the "Act to reincorporate the City of San Francisco, which reads as follows: "The Commissioners of the Sinking Fund, created by ordinance of the Common Council, are hereby required to recover and deliver to the Common Council before the tenth day of May next all property, titles, rights, and interests, belonging to the city, and now in their possession, be and the same is hereby repealed.

[Page 390.]

§ 12. The Commissioners of the Sinking Fund created by ordinance of the Common Council are hereby required to convey to the Commissioners of the Funded Debt of the City of San Francisco created by this Act, on their application therefor, all the property and all the rights, titles, and interests in property belonging to said city; and to pay over into the hands of said Commissioners any funds, notes, securities, or other assets belonging to said city which they may have received, or may hereafter receive, by virtue of article third of an Act entitled "An Act to incorporate the City of San Francisco," approved the fourteenth day of April, eighteen hundred and fifty-one; said Commissioners shall have the right, at such time and place as in their discretion the interests of the city may require, at expose at public sale or to lease the property to be conveyed, as provided in this section, and they shall apply the proceeds of such sale or lease to the liquidation of the floating debt of said city.

[Page 390.]

§ 13. The fifteenth section of the third article of the "Act to reincorporate the City of San Francisco," which reads as follows: "The Common Council shall at an early day take steps to fund by ordinance the existing debt of the city. The funded debt shall consist of:

"1st. The liabilities for the payment of which the city revenue is already pledged.

"2d. The creditors of the city may fund the debts respectively due them at the passage of this act, on such terms as the Common Council may prescribe, at a rate of interest not to exceed ten per cent. per annum, and payable in ten years; but no bond shall issue for a less denomination than one hundred dollars," be and the same is hereby repealed.

No. CVII.

CONVEYANCE BY THE COMMISSIONERS OF THE SINKING FUND
TO THE COMMISSIONERS OF THE FUNDED DEBT OF THE
CITY OF SAN FRANCISCO, OF CERTAIN PROPERTY OF SAID
CITY, PURSUANT TO THE FUNDING ACT OF MAY 1ST.
DATED MAY 17TH, 1851.

THE STATE OF CALIFORNIA, }
County of San Francisco. }

Know all men by these presents, that we, John W. Geary, Benjamin L. Berry, Talbot H. Greene, William Hooper, and James King of William, "Commissioners of the Sinking Fund of the City of San Francisco," for and in consideration that the grantees herein-after named have accepted the appointment of "Commissioners of the Funded Debt of the City of San Francisco," and given a joint and several bond (filed with the Mayor of the City), in the penal sum of one hundred thousand dollars, conditioned "for the prompt and faithful discharge of all the duties of their office, under and by virtue of an Act of the Legislature of the State of California, entitled "An Act to authorize the funding of the Floating Debt of the City of San Francisco, and to provide for the payment of the same," passed and approved the first day of May, in the year eighteen hundred and fifty-one; and for divers other and good considerations the said "Commissioners of the Sinking Fund," thereunto moving, and for the sum of one dollar to the said "Commissioners of the Sinking Fund" in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto P. A. Morse, D. J. Tallant, William Hooper, John W. Geary, and James King of William, of the said city, as "Commissioners of the Funded Debt of the City of San Francisco," and their successors in office and assigns forever, all that beach and water property lying and situated in the northern beach of the said city, and bounded as follows: Commencing at the intersection of the western boundary line of said city with the line of high-water mark, thence northerly, along the said western line of said city, to ships' channel; thence easterly, along the line of ships' channel, to the west line of Kearny Street, produced to said channel; thence southerly, along said west line of Kearny Street, to Bay Street; thence westerly, along the line of Bay Street, to Dupont Street; thence northerly, along the line of Dupont Street, to North Point Street; thence westerly, along North Point Street, to Stockton Street; thence southerly, along Stockton Street, to Bay Street; thence westerly, along the line of Bay Street, to fifty-vara lot, number seven hundred and sixty-four (764); thence along

the eastern and northern boundary of said fifty-vara lot, seven hundred and sixty-four (764), to Leavenworth Street; thence northerly, along Leavenworth Street, to Beach Street; thence westerly, along Beach Street, and the high-water line, to the place of beginning; also, all those beach and water lots lying between Broadway and Pacific streets, in said city, and known and marked upon the official map of said city, now at the City Surveyor's Office therein, as numbers 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39; also, those other beach and water lots lying between Jackson and Washington streets, known and marked upon the official map of said city, now in the City Surveyor's Office therein, as numbers 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 87, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and 111. The above-named lots, namely, numbers nineteen (19) to thirty-nine (39) inclusive, and sixty-four (64) to one hundred and eleven (111) inclusive, being further marked and known on the aforesaid map as Government Reserves; also, that property marked on said map as Government Reserves, and bounded on the north by Jackson Street, on the south by Washington Street, on the east by Drumm Street, and on the west by Front Street; also, that property known on said map as the Government Reserve at Rincon Point, and bounded on the west by Beale Street, on the north by Folsom Street, and on the east and south by the high-water line; also, all the beach and water-lots known and marked upon said map as numbers 273, 290, 291, 292, 301, 302, 309, 311, 312, 313, 315, 316, 319, 320, 321, 322, 326, 352, 371, 372, 421, 422, 424, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 459, 460, 463, 465, 466, 505, 507, 508, 509, 510, 511, 514, 515, 516, 517, 534, 580, 606, 611, 618, 652, 653, 654, 655, 678, 679, 680, 682, 687, 688, 689, 690, 691, 719, 721, 724, 726, 731, 767, 770, and 772; also, all that beach and water property lying between Folsom Street, on the north, ships' channel on the east, the city limits on the south, and Price Street on the west, and known on the said map as blocks numbers one (1) to thirty-two (32) inclusive; also, all those one hundred-vara lots known and marked on said map as numbers 97, 103, 112, 128, 129, 130, 131, 135, 136, 139, 140, 141, 142, 145, 148, 149, 150, 151, 155, 156, 157, 158, 159, 160, 161, 162, 163, 167, 168, 169, 170, 174, 175, 176, 191, 201, 203, 258, 306, 307, 308, 309, 313, 317, 318, 319, 321, 322, 323, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 337, 336, 338, 340, and 341; also all those fifty (50) vara lots known and marked on said map as lots numbers three hundred and one (301), 345, 346, 352, 357, 409, 410, 427, 462, 464, 506, 568, 588, 589, 590, 591, 592, 597, 598, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 663, 729, 732, 733, 736, 740, 749, 781, 784, 785, 787, 788, 789, 790, 791, 792, 793, 816, 817, 818, 831, 832, 834, 856, 857, 858, 859, 860, 861, 878, 879, 880, 881, 890, 891, 892, 893, 894, 895, 896, 897, 925, 929, 934, 936, 938, 946, 947, 952, 953, 970, 1,021, 1,022, 1,023, 1,024, 1,025, 1,026, 1,027, 1,028, 1,029, 1,030, 1,031, 1,032, 1,033, 1,034, 1,035, 1,036, 1,069, 1,070, 1,071, 1,072, 1,073, 1,074, 1,075, 1,076, 1,081, 1,103, 1,105, 1,132, 1,133, 1,159, 1,174, 1,179, 1,182, 1,185, 1,188, 1,301, 1,311, 1,315, 1,343, 1,348, 1,377, 1,400, 1,403, 1,441, 180, 463, 528, 575, 764, 786, 1,235, 1,257, 1,275, 1,277, 1,279, 1,290, 1,306, 1,329, 1,330, 1,349, 1,440, 1,455, 1,456, 1,461, 1,462, 1,469, 1,470, 1,476, 1,477, 1,379, 1,437, 849, 843, 842, 848, 808, and 741; also, all that piece or parcel of land known as the City Hall property and lot, and described as follows, to wit: Commencing at a point on the north side of Pacific Street, in said city, distant from the north-west corner of Pacific and Kearny streets ninety-nine (99) feet and eight (8) inches, running thence northwardly, at right an-

gles to Pacific Street, one hundred and thirty-seven (137) feet six (6) inches; thence eastwardly, ninety-nine (99) feet eight (8) inches, to the west side of Kearny Street; thence southwardly, and along the west line of Kearny Street, one hundred and thirty-seven (137) feet six (6) inches; and thence westwardly, and along the north line of Pacific Street, ninety-nine (99) feet and eight (8) inches, to the place of beginning, being a portion of original lot as numbered on the plan of the City of San Francisco, forty-four (44); also all the wharf known as Taylor Street Wharf, in said city, on Taylor Street, commencing at Francisco Street, and running along Taylor Street, towards the ships' channel; also the wharf known as Broadway Wharf, in said city, commencing one hundred and forty feet east of the eastern line of Battery Street, and running towards the ships' channel; also, the wharf known as the Pacific Street Wharf, in the said city, commencing at the intersection of Sansome and Pacific streets and running towards the ships' channel; also, the wharf in said city, known as California Street Wharf, commencing at Sansome Street and running towards the ships' channel; and also, the wharf in said city known as Market Street Wharf, commencing at First Street, and running towards the ships' channel, with all the sums of money, dues, and rates of wharfage, which may hereafter be levied or collected out of the same according to law; and also, the fifty-vara lot known and marked on said map as lot number thirteen hundred and four (1,304); also, the following subdivisions of one hundred-vara lots, viz.: 1, 2, and 3, of original number 310; also, one (1), 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, of Lot, No. 311; also, 18, 19, and 20, of Lot, No. 312; also, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, of Lot, No. 399; also, the following subdivisions of fifty-vara lots, 5 of original Lot, No. 568; also, No. 5, of Lot, No. 820; also, Nos. 1, 2, and 3, of Lot, No. 833; and also, Lots, Nos. 1 and 2, of original Lot, No. 835. To have and to hold the said parcels or lots of lands, wharves, and appurtenances and hereditaments thereunto belonging, or in any wise appertaining to the said "The Commissioners of the Funded Debt of the City of San Francisco," their successors in office and assigns forever. In trust nevertheless to and for the following uses, and for no other use, intent, or purpose whatsoever, that is to say, in trust that the said "The Commissioners of the Funded Debt of the City of San Francisco," shall have charge of all the said lots, pieces, or parcels of lands and wharves, and they shall have power to sell or lease the said lots or wharves, or any one or more of them, as in their judgment may be for the benefit of the said city, and they shall apply the proceeds of such sale or lease, according to the provisions of the said Act of the Legislature, passed and approved May 1st, A.D. 1851, hereinbefore referred to.

The said Talbot H. Green, by his power of attorney duly executed, and bearing date of the fifteenth day of April, A.D. 1851, did make, constitute, and appoint the said John W. Geary, his true and lawful attorney, for the uses and purposes therein set forth, which power of attorney is recorded in the County Recorder's Office of San Francisco, in Book No. 1, page 344 of Powers of Attorney; reference being had thereunto, will more fully and at large appear.

The foregoing described premises being a part of the same property which the City of San Francisco conveyed to the Commissioners of the Sinking Fund by their deed of conveyance, dated the twenty-fifth day of December, A.D. 1851, duly executed and recorded in Liber No. 1, of Deeds of Trust, page 109, in the County Recorder's Office of San Francisco; reference being thereunto had, will at large appear.

In testimony whereof the said John W. Geary, Benjamin L. Berry, William

Hooper, Talbot H. Green, by his attorney, John W. Geary, and James King of William, have hereunto set their hands and seals this twenty-fourth day of May, A.D. 1851.

JOHN W. GEARY,	[L.S.]
BENJ. L. BERRY,	[L.S.]
WM. HOOPER,	[L.S.]
TALBOT H. GREEN,	[L.S.]
By his Att'y, Jno. W. Geary,	[L.S.]
JAS. KING OF WILLIAM,	[L.S.]

Signed, sealed, and delivered in presence of —, the words and figures, "five hundred and six (506)," in the fifth and sixth lines from the bottom and the fourth page and the words and figures, "five hundred and eighty-eight (588)," in the 2d & 3d lines from the top of 5th page, interlined before signing.

JAMES BOWMAN.

STATE OF CALIFORNIA, }
County of San Francisco, } ss.

On this thirty-first day of May, A.D. one thousand eight hundred and fifty-one, personally appeared before me, a Notary Public, in and for the said county, John W. Geary, Benjamin L. Berry, William Hooper, and James King of William, known to me to be the persons described in, and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and also, at the same time personally appeared before me, a Notary Public, in and for said county, the said John W. Geary, known to me to be one of the persons described in, and executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, as the act and deed of Talbot H. Green, therein described, by virtue of a power of attorney duly executed by said Talbot H. Green, bearing date the fifteenth day of April A.D. 1851, and recorded in the office of the County Recorder of San Francisco, in Lib. 1 of Powers of Attorney, page 344, on the 17th day of May, 1851.

In witness whereof, I have hereunto set my hand and affixed my official seal.

[L.S.]

JAMES BOWMAN,

Notary Public.

The preceding is a true copy of the original, recorded at the request of the Commissioners of the Funded Debt, June 19, 1851, at twenty minutes to 5 o'clock, P.M.

[In Liber 1 of Deeds of Trusts,* p. 203.]

JOHN A. MCGLYNN,

County Recorder.

NOTE.—Section 12 of "the Article to authorize the finding of the Floating Debt of the City of San Francisco, and to provide for the payment of the same," passed May 1st, 1851. Laws, 1851, 387 [Addenda, No. CVI], requires the Commissioners of the Sinking Fund to convey to the Commissioners of the Funded Debt, upon their application therefor, "all the property, and all the rights, titles, and interest in property belonging to said city." The above deed does not purport to convey all the property of the city, but only certain property therein specified. It has been judicially decided that it does not convey any other property than that described in it. Board of Education vs. Fowler, 19 Cal., 11.

*There are two books of this name and number which purport to be duplicates, but they are not so. This copy is taken from that which is the original and contains the largest description of property, and which has an index at the end, the other having none, in Lib. 1 of Deeds of Trust, page 203.

No. CVIII.

AN ACT TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA, PASSED MARCH 3, 1851.

AN ACT TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA. Approved March 3, 1851.

[United States Statutes at Large, Vol. 9, Page 631, etc., Chap. XLI.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three Commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

SEC. 2. *And be it further enacted,* That a Secretary, skilled in the Spanish and English languages, shall be appointed by the said Commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

SEC. 3. *And be it further enacted,* That such clerks, not to exceed five in number, as may be necessary, shall be appointed by the said Commissioners.

SEC. 4. *And be it further enacted,* That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interests of the United States in the premises, to continue him in such agency as long as the public interest may, in the judgment of the President, require his continuance, and to allow him such compensation as the President shall deem reasonable. It shall be the duty of the said agent to attend the meetings of the board, to collect testimony in behalf of the United States, and to attend on all occasions when the claimant, in any case before the board, shall take depositions; and no deposition taken by or in behalf of any such claimant shall be read in evidence in any case, whether before the Commissioners, or before the District or Supreme Court of the United States, unless notice of the time and place of taking the same shall have been given in writing to said agent, or to the District Attorney of the proper district, so long before the time of taking the deposition as to enable him to be present at the time and place of taking the same, and like notice shall be given of the time and place of taking any deposition on the part of the United States.

SEC. 5. *And be it further enacted,* That the said Commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy, whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

SEC. 6. *And be it further enacted,* That the said Commissioners, when sitting as a board, and each Commissioner at his chambers, shall be, and are, and is hereby, authorized to administer oaths, and to examine witnesses in any case pending be-

fore the Commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

SEC. 7. *And be it further enacted*, That the Secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or District Attorney of the United States, or of any claimant or his counsel, to issue writs of subpoena commanding the attendance of a witness or witnesses before said board or any Commissioner.

SEC. 8. *And be it further enacted*, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government, shall present the same to the said Commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the Commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the District Attorney of the United States in and for the district in which such decision shall be rendered.

SEC. 9. *And be it further enacted*, That in all cases of the rejection or confirmation of any claim by the Board of Commissioners, it shall and may be lawful for the claimant or the District Attorney, in behalf of the United States, to present a petition to the District Court of the district in which the land claimed is situated, praying the said Court to review the decision of the said Commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a derangement of the claimant's title, together with a transcript of the report of the Board of Commissioners, and of the documentary evidence and testimony of the witnesses on which it was founded; and such petition, if presented by the District Attorney in behalf of the United States, shall be accompanied by a transcript of the report of the Board of Commissioners, and of the papers and evidence on which it was founded, and shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, a copy of which petition, if the same shall be presented by claimant, shall be served on the District Attorney of the United States, and, if presented in behalf of the United States, shall be served on the claimant or his attorney; and the party upon whom such service shall be made shall be bound to answer the same within a time to be prescribed by the Judge of the District Court; and the answer of the claimant to such petition shall set forth fully the nature of the claim, and the names of the original and present claimants, and shall contain a derangement of the claimant's title; and the answer of the District Attorney in behalf of the United States shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, copies of which answers shall be served upon the adverse party thirty days before the meeting of the Court, and thereupon, at the first term of the Court thereafter, the said case shall stand for trial, unless, on cause shown, the same shall be continued by the Court.

SEC. 10. *And be it further enacted*, That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said Court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme

Court, in case the judgment of the District Court shall be affirmed, as the said Court shall prescribe; and if the Court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

SEC. 11. *And be it further enacted*, That the Commissioners herein-provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity and the decisions of the Supreme Court of the United States, so far as they are applicable.

SEC. 12. *And be it further enacted*, That to entitle either party to a review of the proceedings and decision of the Commissioners herein-before provided for, notice of the intention of such party to file a petition to the District Court shall be entered on the journal or record of proceedings of the Commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the District Court within six months after such decision has been rendered.

SEC. 13. *And be it further enacted*, That all lands, the claims to which have been finally rejected by the Commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said Commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said Commissioners, or by the District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the Surveyor-General of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said claims, the said Surveyor-General shall have the same power and authority as are conferred on the Register of the Land Office and Receiver of the Public Moneys of Louisiana, by the sixth section of the act "to create the office of Surveyor of Public Lands for the State of Louisiana," approved third March, one thousand eight hundred and thirty-one: *Provided, always*, That if the title of the claimant to such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the District Judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said Judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided, further*, That it shall and may be lawful for the District Judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the Commissioner of the General Land Office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said Judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

SEC. 14. *And be it further enacted*, That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof,

nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh of July, eighteen hundred and forty-six, being duly proved, shall be *prima facie* evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of said city, town, or village.

SEC. 15. *And be it further enacted*, That the final decrees rendered by the said Commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

SEC. 16. *And be it further enacted*, That it shall be the duty of the Commissioners herein-provided for to ascertain and report to the Secretary of the Interior the tenure by which the Mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

SEC. 17. *And be it further enacted*, That each Commissioner appointed under this act shall be allowed and paid at the rate of six thousand dollars per annum; that the Secretary of the Commissioners shall be allowed and paid at the rate of four thousand dollars per annum, and the clerks herein provided for shall be allowed and paid at the rate of one thousand five hundred dollars per annum; the aforesaid salaries to commence from the day of notification by the Commissioners of the first meeting of the board.

SEC. 18. *And be it further enacted*, That the Secretary of the board shall receive no fee except for furnishing certified copies of any paper or record, and for issuing writs of subpoena. For furnishing certified copies of any paper or record, he shall receive twenty cents for every hundred words, and for issuing writs of subpoena, fifty cents for each witness; which fees shall be equally divided between the said Secretary and the Assistant Clerk.

No. CIX.

DESCRIPTION OF LANDS, MESSUAGES TENEMENTS, AND THEIR APPURTENANCES, SITUATE IN THE CITY AND COUNTY OF SAN FRANCISCO, AND PATENTED TO JOSEPH SADOCA ALEMANY, ROMAN CATHOLIC BISHOP OF MONTEREY, AS SUCCESSOR OF THE FORMER ROMAN CATHOLIC BISHOP OF CALIFORNIA, AS CORPORATION SOLE, REPRESENTING THE ROMAN CATHOLIC CHURCH IN THAT BEHALF.

[This is Case No. 609, in the Land Commission, No. 425, in the District Court of the Northern District, and 388 in the Southern District. See 1 Hoffman's Rep.,

Appendix, page 83, No. 609. The introductory matter of the petition contains so much interesting information on points of history and of law that it is here copied.]

[Extracts from Bishop Alemany's petition.]

To the United States Commission for Ascertaining and Settling Land Claims in the State of California :

That the Roman Catholic Church in the State of California, of which your petitioner is Bishop, under the title of "Bishop of Monterey" (and which consists of your petitioner as Bishop, the various Roman Catholic Parish Priests, and Catholic congregations, and people in the said State), is the owner of and entitled to various parcels of real estate, situated in the said State, appropriated to the uses of religion and to the public worship of God, and herein designated as Church property.

That the government of the Catholic Church in California, prior to its conquest by and cession to the United States, was vested in the Roman Catholic Bishop of California ; that the territorial limits of your petitioner's Diocese of Monterey, and over which his jurisdiction extends, are the same as those of the former Mexican Bishopric of California, and that your petitioner is the lawful successor of the late Rt. Reverend Francisco Garcia Diego, the late Catholic Bishop of the Diocese of California, as the same existed under the former government of this State.

Your petitioner further shows, that by the fundamental law of the Republic of Mexico, which was in force in the present State of California at the time of its conquest by, and cession to the United States, the Roman Catholic Church being the religion of all the people of Mexico, was recognized as such, and for the government of said Church and its members, in all ecclesiastical matters, and in all things relating to the acquisition, transmission, use, and disposal of property, real or personal, belonging to the Church, or devoted or appropriated to religious purposes or uses, or to the service of God. The Canon law of the Roman Catholic Church was adopted and recognized, and was in force as the law of the Republic of Mexico, as it also had been of the Kingdom of Spain, whilst Mexico was a dependency thereof.

Your petitioner further shows, that the Diocese of California, as aforesaid, was and is divided into twenty-one missions and fifteen parishes, and that the property of the Church in the said Diocese consisted of Church edifices, houses for the use of the clergy and those employed in the services of the Church, etc. etc., and that the same do not include what were termed the Mission lands, or Mission Ranchos, but were entirely distinct therefrom.

Your petitioner further shows, that by the Canon law aforesaid, and by the laws of Spain and Mexico, as the same were in force at the time of the cession of California to the United States, the title, control, and administration of all ecclesiastical or Church property was vested in the hands of the Bishop and Clergy of the Diocese, within the territorial limits wherein the same was situated, and who for such purposes were regarded as a body corporate, the existence and succession of which was recognized by law, and the title, administration, and control of the Church property in the Mexican province of California, and vested in the Bishop and Clergy of said Diocese of California, then attached to and forming part of the Catholic Church of Mexico.

That by the conquest of California by, and its session to the United States, the said Diocese of California became attached to and made a part of the Catholic

Church of the United States, which is under the government of a National Synod of the ecclesiastical authorities thereof, periodically held in the City of Baltimore, in the State of Maryland.

That by the Canon law and statutes of the said National Synod of Baltimore aforesaid, as the same are in force in the Catholic Church in the United States, and formed the regulations and discipline thereof, the Church property in the United States is for motives of convenience, directed to be held by the various Bishops of the several Dioceses, and that at a Diocesan Convention of the Bishop and Clergy of said Diocese of Monterey, held in the City of San Francisco in the month of March, one thousand eight hundred and fifty-two, and at which the said missions and parishes are duly represented, it was for the purpose of conforming the administration of the temporalities of the Catholic Church in California to the system prevailing throughout the States of the American Union, and to the exigencies arising from the adoption by the State of California of the common law, with its system of land tenures, resolved unanimously, that your petitioner, as Bishop of the Diocese of Monterey, and on behalf the Catholic Church and Catholic people of the State of California, and for the purposes of preserving the same to the sacred uses and purposes to which it has been dedicated, and for which it has heretofore been used, should petition your honor for a confirmation to him and his successors of the aforesaid Church property within the State of California, to be held by him and them in trust for the various religious uses and purposes to and for which it has been devoted.

Your petitioner further shows, that for the purpose of being enabled to hold the said Church property as aforesaid, and administering the temporalities of the said Church, and managing the estate and property thereof, as required by the rules, regulations, and discipline of the said Roman Catholic Church, he has been duly incorporated as a sole corporation, and by virtue of the statute of California, passed April 22d, 1850, and amended May 4th, 1852, under the name and title of "Bishop of Monterey," as aforesaid.

* * * * *

The lands situate in San Francisco County, are thus described in the decree of confirmation :

"The Church and the buildings adjoining it, being the same which are known as the Church and Mission buildings of the Mission of San Francisco, in the County of San Francisco, commonly called the Mission Dolores, together with the land on which the same are erected, and the curtilage and appurtenances thereto belonging ; and the cemetery adjoining, according to its ancient limits and boundaries ; also, the premises known as the Mission Garden, lying in the rear of said Church, adjoining the same and the cemetery above-mentioned, with the ancient limits and boundaries of the same as used and occupied by the priests of said Mission ; and also, another garden of said Mission, situated in front of said Church, and on the opposite side of the street, with the ancient limits and boundaries of the same, as long used and occupied by said priests ; reference for the description of these two last-mentioned parcels of land to be had to the map, numbered nineteen, in the atlas before mentioned,* where the same is delineated, each parcel being designated by the word "Garden."

*The atlas herein referred to is described in another portion of this same decree, as an "atlas, marked 'Exhibit No. 1, A, F,' and annexed to the deposition of James Alexander Forbes, filed in this case November 29, 1854." The lands indicated as "another garden of said Mission, situated in front of said Mission, and on the opposite side of the street," etc.,

No. CXX.

EXTRACTS FROM THE PUBLISHED PRINTED PROCEEDINGS OF THE AYUNTAMIENTO OF SAN FRANCISCO, FOR THE YEARS 1849, 1850; SHOWING AN ASSERTION OF THE CLAIM OF THE PUEBLO OF SAN FRANCISCO FOR ITS PUEBLO LANDS, BY THE AYUNTAMIENTO, THE ALCALDES, THE CITIZENS, THE PREFECT, AND THE GOVERNOR OF CALIFORNIA.*

[August 17th, 1849, p. 54—AYUNTAMIENTO.]

An application for town lots was referred to the Committee on Streets, and, at the request of the Alcalde, the following motion was adopted:

Resolved, That the Alcalde is hereby prohibited from selling or disposing of any town or public lands, by grant or otherwise, unless under the special ordinance of this Council.

Mr. Harris gave notice that, at the next meeting, he should introduce a resolution to offer the public lands and other public property, belonging to the town of San Francisco, for sale to the highest bidder.

[November 3d, 1849, p. 78—AYUNTAMIENTO.]

A plan for disposing of the public lands, not heretofore granted, was submitted to the Council by the Alcalde, and, after some discussion, it was

Resolved, That the City Surveyor be and he hereby is directed to project on the official map, the lines of Larkin, Hyde, and Leavenworth streets to their intersection with Market Street; and, also, regularly to lay out on said map the unsurveyed ground lying between Market and Post streets, and east of the line of Larkin Street; the above-described ground to be divided into lots of fifty varas square each, and properly numbered on the map of the city.

Resolved, That the Surveyor be further directed to project the one hundred-vara lots to the Mission Bay and back to their junction on Market Street, with Leavenworth Street.

[November 5th, 1849, p. 80—AYUNTAMIENTO.]

Resolved, That one hundred and eighty of the town lots, of fifty varas each, and twenty of one hundred varas each, as laid down and numbered on the map of the town, recently made under the survey of Wm. M. Eddy, Esq., City Surveyor, and not heretofore granted or disposed of, shall be sold at public auction on the nineteenth day of November, instant, under the direction of the Alcalde, to the

are situate in the north-east angle of Dolores and Center streets. For the theory under which these churches, Mission buildings, cemeteries, and gardens were thus secured to the Roman Catholic Church in private ownership, see §§ 26, 79, etc., of the Argument, and authorities there cited.

* The sales of Municipal Lands ordered to take place by the resolutions and ordinances which are herein referred to, were made in pursuance of said orders, and generally took place on the days indicated, although some of them were adjourned. There were other sales ordered in like manner, and which also took place. These sales of the upland property of the Pueblo, which thus took place by order of the Ayuntamiento, constitute the most common source of title of that kind of property. Orders for the sale of the water lots of the city have not been referred to, as the title to that kind of property is not claimed under the four-league grant to the Pueblo.

highest bidder, the purchasers paying therefor a commission of five per cent. on the amount of the purchase, to be applied towards defraying the expenses attendant upon such sale.

[November 19th, 1849, p. 82—AYUNTAMIENTO.]

Resolved, That one hundred and eighty fifty-vara lots, and thirty hundred-vara lots be sold at public auction on Wednesday, December 28th, A.D. 1849, upon the same conditions as the last sale.

[December 1st, 1849, p. 88—AYUNTAMIENTO.]

Be it ordained, That two hundred fifty-vara town lots be sold at public auction on Friday, the tenth instant.

[December 10th, 1849, p. 94—AYUNTAMIENTO.]

Resolved, That the Alcalde be, and is hereby authorized to grant to any or all applicants, lots of one hundred varas, at and for the price of five hundred dollars each, and for fifty-vara lots, two hundred dollars each, and that such grants be continued for the space of thirty days from the fifteenth instant.

[December 21st, 1849, p. 98—AYUNTAMIENTO.]

On motion of Col. Steuart, that, whereas, it has this day been made to appear to Ayuntamiento that J. Q. Colton, a Justice of the Peace, in and for the town of San Francisco, has assumed the authority and pretends to exercise the right of selling, granting, and disposing of lots within the limits of said town,

Resolved, That Arch'd C. Peachy, Esq., City Attorney, be directed to institute legal proceedings against the said Colton to restrain him in such illegal and unwarrantable practices, and to make him amenable, by due process of law, for a misdemeanor and malfeasance in office.

[December 24th, 1849, p. 104—AYUNTAMIENTO.]

Resolved, That one hundred and fifty town lots in San Francisco be sold at public auction on the twentieth day of January next.

[February 20th 1850, p. 150—PREFECT.]

A certified copy of an order from the Governor, prohibiting the further sale of municipal lands in San Francisco until further order from the Executive, or until the Legislature shall pass some act in reference to said lands, was read and laid upon the table.

MESSAGE OF THE PREFECT.

To the Ayuntamiento, communicating the Governor's order, suspending the sale of Municipal Lands, and enjoining the Ayuntamiento, Justices of the Peace, and all other officers to observe it, Feb. 19th, 1850.

PREFECTURE OF SAN FRANCISCO, }
February 19th, 1850. }

To the Hon. Ayuntamiento of the Town of San Francisco:

An order of his Excellency, the Governor of the State of California, has been received and placed on file in this Prefecture, of which the accompanying is a true copy, suspending all sale of MUNICIPAL LANDS in the City of San Francisco, till

the further order of the Executive, or the Legislature shall have passed some act in reference to said lands.

The Honorable Ayuntamiento, Alcaldes, Justices of the Peace, and all others whom it may concern, will govern themselves accordingly.

I have the honor to be with the highest consideration, &c.,

HORACE HAWES,
Prefect of San Francisco.

GOVERNOR'S PROCLAMATION.

Whereas, It hath been represented to the undersigned that a large sum of money has been raised by the sale of MUNICIPAL LANDS in the City of San Francisco, a sum more than sufficient for all the wants of the city government, and that no further sale of said MUNICIPAL LANDS is demanded, either for purposes of revenue, or for the settlement and improvement of the city. Now, therefore, I, Peter H. Burnett, Governor of the State of California, in the name and by the authority of the People of said State, do order and declare that no further sales of the MUNICIPAL LANDS of said city shall be made, until the further order of the Executive, or until the Legislature shall pass some act in reference to said lands.

Given under my hand at San José, the fifteenth day of February, in the year of our Lord, eighteen hundred and fifty, and of the Independence of the United States, the seventy-fourth.

(Signed)

PETER H. BURNETT,
Governor of California.

[Page 232—PREFECT.]

OFFICIAL COMMUNICATION

Of the Prefect to Governor Burnett respecting the action of the Ayuntamiento.

PREFECTURE OF THE DISTRICT OF SAN FRANCISCO, }
February 27th, 1850.

To His Excellency, the Governor—

SIR: I have the honor to inclose herewith, the copy of a communication sent to the Ayuntamiento on Monday evening, in order that your Excellency may be informed of the progress of affairs in this district.

I regret to inform your Excellency that the Ayuntamiento appear to be determined to break loose from all checks that the law has established, and to set the superior authorities at defiance. It will be perceived from the enclosed copy of a letter from their Secretary, and the printed hand-bill which was sent me, accompanying it, that they intend to proceed with the sale of MUNICIPAL LANDS, and the probability is that no account will be rendered by them on the first of March. This state of things is exciting a high state of alarm with the public, who have sought in vain to know what has become of the immense sums of money that have already been raised, and now see that all that remains of THE PUBLIC PROPERTY OF THE CITY is about to be swallowed up and dissipated as effectively as if it was sunk in the bottom of the sea.

* * * * *

I have the honor to be, with high consideration of respect,

Your Excellency's obedient servant,
HORACE HAWES, Prefect.

[Page 239—PREFECT.]

PREFECTURE OF SAN FRANCISCO, }
 March 15th, 1850. }

To the Ayuntamiento of San Francisco—

GENTLEMEN: I have learned by examinations made by my direction, that at several auction sales of MUNICIPAL LANDS SITUATED IN THE TOWN OF SAN FRANCISCO, made by the order of the Ayuntamiento, a large number of lots were purchased by members of that body, and several by their Secretary, the auctioneer, one of the Alcaldes, and by business partners of members. I give below a list for your information, including the number of the lot, the date of sale, and name of purchaser.

[Here follows a list of alleged purchases made by members of the Ayuntamiento.]

The existing law of this county contains the most minute regulations respecting the management of MUNICIPAL PROPERTY, and the powers of the Ayuntamiento in respect to it. These regulations strictly prohibit any member of the corporation, whether Alcalde, Regidor, or Sindico, or Secretary, from purchasing, renting, or being directly or indirectly interested in the purchase or renting any part of THE LANDS OF THE PUEBLO in which they officiate. This principle of the existing law, so necessary to secure the fidelity and impartiality of these officers in the administration of municipal affairs, was introduced into the Spanish Ordinances for the government of Pueblos three hundred and fifty years ago, and has been preserved during all the changes and modifications which those ordinances have undergone in the Mexican Republic. By the rules of the common law also, as recognized in the United States, it is believed that the same principle would hold good, and be rigidly enforced by a Court of Equity acting under it. The reason of the rule is obvious. A man cannot be the seller and buyer of property at the same time. Those who are intrusted with property to sell, or dispose of otherwise, cannot directly, or by the intervention of a third party, transfer it to themselves, or convert it to their own use. It is to take away every temptation to fraud and collusion in the management of property held in trust, that Courts are rigid in the enforcement of this most salutary principle, and vigilant in detecting every artifice that may be adopted to evade it.

Considering the legal disqualification TO PURCHASE PUEBLO LANDS, especially at auction sales, as extending, not only to members of the Ayuntamiento, but to those connected with them in business, as partners, as well as to the Auctioneer, or agent, by whose intervention the sale is effected, I have to inform you that the sales of the lots above-specified, and all other sales made by the Ayuntamiento to any one of their own body, since the first of August last, are disapproved and annulled, expressing at the same time, the opinion that the purchasers have no claim, in law or equity to recover back that portion, if any, of the purchase money which they may have paid.

From this decision the Ayuntamiento, or any party interested, will have the right to appeal to the Governor.

It is proper for me to observe that I have never received any account from the Ayuntamiento of the lands sold by them, or of their receipts and disbursements, and that information of the above-mentioned purchases has been procured by me with some difficulty.

[Official.]

HORACE HAWES.

Prefect of San Francisco.

GEO. W. PUNCHARD, Secretary.

[April 1st, 1850, p. 189—GOVERNOR.]

Whereas, the Ayuntamiento of the City of San Francisco hath transmitted to the undersigned official reports from the City Treasurer, City Comptroller, and First Alcalde, exhibiting the receipts and expenditures of the city from the sixth day of December, 1849, to the fourth day of March, 1850; and also a LIST OF MUNICIPAL LANDS SOLD, showing to whom sold, the price for which they were sold, and a description of each lot sold from the sixteenth day of November, 1849, to the fourth day of March, 1850; and whereas, it appears from these and other statements, that a greater amount of funds will be required to finish certain projected public improvements in said city (for the construction of which contracts have already been entered into) than can be raised from taxation and the payment yet to become due upon the sales of lots heretofore made:

Now, therefore, I, PETER H. BURNETT, Governor of the State of California, do by these presents, in the name and by the authority of the People of California, set aside the Order of the Executive, suspending the sales of said lands, bearing date the fifteenth day of February, A.D. 1850.

Given under my hand, at the Pueblo de San José, this twenty-ninth day of March, in the year of our Lord, eighteen hundred and fifty, and of the Independence of the United States the seventy-fourth.

PETER H. BURNETT.

[Page 237—PREFECT.]

PROCLAMATION

By the Prefect countermanning the sales of Municipal Lands advertised by the Ayuntamiento in violation of the Governor's order.

All further sales of the MUNICIPAL LANDS OF THE TOWN OF SAN FRANCISCO are suspended for the present, and the public are hereby warned against purchasing at the sale advertised to take place by order of the Ayuntamiento on Friday, March 15th, or paying any money on account of them. The said sale is unauthorized, and under it the purchaser will acquire no title. The Governor, in the exercise of the power conferred upon him by law, by an order of the 15th of February, 1850, duly communicated to all the authorities of the district and published, has suspended for the present all further sales of the MUNICIPAL LANDS OF SAN FRANCISCO. That order is still in full force. *It was necessary in order to save the city a small remnant of the public property, the greater part of which has been disposed of by the Ayuntamiento in less than six months, without rendering any account of the proceeds.*

* * * * *

Given under my hand at the Prefecture of San Francisco, this thirtieth day of March, A.D. 1850.

[Official.]

HORACE HAWES,

Prefect of the District of San Francisco.

GEO. W. PUNCHARD, Secretary.

No. CXI.

LAWs OF THE UNITED STATES, AUTHORIZING THE ENTRY OF PUBLIC LANDS IN THE LAND OFFICES OF THE UNITED STATES, IN TRUST, FOR THE BENEFIT OF THE INHABITANTS OF TOWNS, VILLAGES, AND CITIES.

The following are the laws of Congress, and sections thereof, which have application to this case, and for convenient reference are herewith given :

Act of Congress, September 4th, 1841, "To appropriate the Proceeds of the Sales of the Public Lands, and to Grant Preëmption Rights."

[United States Statutes at Large, Vol. V., Pages 453-457.]

SEC. 8. *And be it further enacted*, That there shall be granted to each State specified in the first section of this act, 500,000 acres of land, for purposes of internal improvement : *Provided*, That to each of the said States, which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received, as aforesaid, make 500,000 acres ; the selections in all of the said States to be made within their limits, respectively, in such manner as the Legislatures thereof shall direct ; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land, except such as is, or may be reserved from sale by any law of Congress, or proclamation of the President of the United States ; which said locations may be made at any time after the lands of the United States, in said States, respectively, shall have been surveyed according to existing laws. And there shall be, and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement, as aforesaid, as shall make 500,000 acres of land, to be selected and located as aforesaid.

SEC. 10. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the Naturalization Laws, who, since the first day of June, A.D. 1840, has made, or shall hereafter make, a settlement in person on the public lands to which the Indian title had been, at the time of such settlement, extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby, authorized to enter with the Register of the Land Office for the district in which such land may lie, by legal subdivisions, any number of acres, not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such lands, subject, however, to the following limitations and exceptions : No person shall be entitled to more than one preëmptive right by virtue of this act ; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United

States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of preëmption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been, or may be extinguished by the United States, at any time during the operation of this act; no sections of land reserved to the United States, alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections, or fractions of sections, included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade, not agriculture; and no lands on which are situated any known salines, or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, 1838, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-Rabbit Creek, be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may be, appointed by the proclamation of the President; nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required, before the day appointed for the commencement of the sales as aforesaid.

An Act for the Relief of the Citizens of Towns upon the Lands of the United States, under certain circumstances.

[United States Statutes at Large, Vol. V, Page 657, Chapter 17.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any portion of the surveyed public lands has been, or shall be settled upon and occupied as a town site, and, therefore, not subject to entry under the existing preëmption laws, it shall be lawful in case such town or place shall be incorporated, for the corporate authorities thereof, and, if not incorporated, for the Judges of the County Court for the county in which such town may be situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust, for the several use and benefit of the occupants thereof, according to their respective interest; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same is situated: *Provided*, That the entry of the land intended by this act be made prior to the commencement of the public sale of the body of land in which it is included, and that the entry shall include only such land as is actually occupied by the town, and be made in conformity to the legal subdivisions of the public lands authorized by the act of twenty-fourth of April, one thousand eight hundred and twenty, and shall not in the whole exceed three hundred and twenty acres:

And provided, also, That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void and of none effect: *And provided, also,* That the corporate authorities of the town of Weston, in the county of Platte, State of Missouri, or the County Court of Platte County in said State, shall be allowed twelve months from and after the passage of this act, to enter at the proper land office the lands upon which said town is situate.

Act of March 3d, 1853, "Providing for the Survey of the Public Lands in California, the Granting of Preëmption Rights therein, and for other purposes."

[United States Statutes at Large, Vol. X, Pages 244, 247.]

SEC. 8. *And be it further enacted,* That the public lands, not being mineral lands, occupied as towns or villages, shall not be subdivided, or subject to sale, or to be appropriated by settlers, under the provisions of this act: but the whole of such lands, whether settled upon before or after the survey of the same, shall be subject to the provisions of the act entitled "An Act for the Relief of the Citizens of Towns upon the Lands of the United States, under certain circumstances," approved May 23d, 1844; except such towns as are located on or near mineral lands, the inhabitants of which shall have the right of occupation and cultivation only until such time as Congress shall dispose of the same; nor shall any lands specially reserved for public uses be appropriated under the provisions of this act.

No. CXII.

AN ACT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA, APPROVED MARCH 11, 1858, CONFIRMING CERTAIN ORDINANCES OF THE COMMON COUNCIL OF THE CITY OF SAN FRANCISCO, PASSED IN THE YEAR 1855 AND 1856, AND COMMONLY CALLED, IN THE AGGREGATE, "**THE VAN NESS ORDINANCE,**" RELATING TO THE DISPOSITION OF CERTAIN LANDS THEREIN MENTIONED, AND CLAIMED, OR TO BE CLAIMED, AS THE PATRIMONY OF THE CITIZENS OF THE CITY OF SAN FRANCISCO.

AN ACT CONCERNING THE CITY OF SAN FRANCISCO, AND TO RATIFY AND CONFIRM CERTAIN ORDINANCES OF THE COMMON COUNCIL OF SAID CITY. Approved March 11, 1858.

[Laws of 1858, Chapter 66, Page 52, etc.]

The People of the State of California, represented in the Senate and Assembly, do enact as follows:

SECTION 1. *Whereas,* The Common Council of the City of San Francisco passed an ordinance, approved by the Mayor, on the twentieth day of June, A.D. one thousand eight hundred and fifty-five, which ordinance is in the words and figures following, to wit:

Number Eight Hundred and Twenty-Two—Ordinance for the Settlement and Quieting of the Land Titles in the City of San Francisco.

The People of the City of San Francisco do ordain as follows :

§ 1. It shall be the duty of the Mayor to enter, at the proper land office of the United States, at the minimum price, all the lands above the natural high-water mark of the Bay of San Francisco, at the time of the admission of California into the Union as a State, situated within the corporate limits of the City of San Francisco, as defined in the act to incorporate said city, passed April fifteenth, one thousand eight hundred and fifty-one, in trust for the several use, benefit, and behoof of the occupants or possessors thereof, according to their respective interests.

§ 2. The City of San Francisco hereby relinquishes and grants all the right and claim of the city to the lands within the corporate limits, to the parties in the actual possession thereof, by themselves or tenants, on or before the first day of January, A.D. one thousand eight hundred and fifty-five, and to their heirs and assigns forever; excepting the property known as the Slip Property, and bounded on the north by Clay Street, on the west by Davis Street, on the south by Sacramento Street, and on the east by the Water-Lot Front. And excepting also, any piece or parcel of land situated south, east, or north of the Water-Lot Front of the City of San Francisco, as established by an act of the Legislature of March twenty-sixth, A.D. one thousand eight hundred and fifty-one; *Provided*, such possession has been continued up to the time of the introduction of this ordinance in the Common Council; or, if interrupted by an intruder or trespasser, has been, or may be, recovered by legal process; and it is hereby declared to be the true intent and meaning of this ordinance, that when any of the said lands have been occupied and possessed under and by virtue of a lease or demise, they shall be deemed to have been in the possession of the landlord or lessor under whom they were so occupied or possessed: *Provided*, that all persons who hold title to lands within said limits by virtue of any grant made by any Ayuntamiento, Town Council, Alcalde, or Justice of the Peace of the former Pueblo of San Francisco, before the seventh day of July, one thousand eight hundred and forty-six; or grants to lots of land lying east of Larkin Street and north-east of Johnson Street, made by any Ayuntamiento, Town Council, or Alcalde, of said pueblo, since that date, and before the incorporation of the City of San Francisco by the State of California; and which grant, or the material portion thereof, was registered, or recorded in a proper book of record deposited in the office, or custody, or control of the Recorder of the County of San Francisco, on or before the third day of April, A.D. one thousand eight hundred and fifty; or by virtue of any conveyance duly made by the Commissioners of the Funded Debt of the City of San Francisco, and recorded on or before the first day of January, one thousand eight hundred and fifty-five, shall, for all the purposes contemplated by this ordinance, be deemed to be the possessors of the land so granted, although the said lands may be in the actual occupancy of persons holding the same adverse to the said grantees.

§ 3. The patent issued, or any grant made by the United States to the city, shall inure to the several use, benefit, and behoof of the said possessors, their heirs and assigns, mentioned in the preceding section, as fully and effectually, to all intents and purposes, as if it were issued or made directly to them individually and by name.

§ 4. The city, however, as a consideration annexed to the next two preceding sections, reserves to itself all the lots which it now occupies, or has already set

apart for public squares, streets, and sites for school-houses, city-hall, and other buildings belonging to the corporation; and also such lots and lands as may be selected and reserved for streets and other public purposes, under the provisions of the next succeeding sections.

§ 5. The city shall have the right to proceed to lay out and open streets, as soon as the corporation may deem it expedient, in that part of the city west of Larkin Street and south-west of Johnson Street, and reserves the right to take possession of such lands as it may be necessary to occupy for that purpose, without compensation; and to assess, in the manner provided by the present, or any existing charter of the city, upon the lands bounded on such streets, the whole expense of laying out, opening, grading, and constructing the same; and payment of the costs of said improvements shall be deemed a charge upon the lands mentioned in this section, to which the City of San Francisco relinquishes her right and title by the second and third sections of this ordinance.

§ 6. The city shall also have the right to select and set apart, from the lands west of Larkin Street and south-west of Johnson Street, as many lots, not exceeding one hundred and thirty-seven and a half feet square each, as the Mayor and Common Council may, by ordinance, determine to be necessary for sites for school-houses, hospitals, fire-engine-houses, and other public establishments necessary and proper for the use of the corporation; and may lay out and reserve upon the said lands, at convenient and suitable points and distances, public squares, which shall not embrace more than one block, corresponding in size with the adjoining blocks; *Provided*, that the selection shall be made within six months from the time of the passage of this ordinance; and that the city shall not, without due compensation, occupy, for the purposes mentioned in this section, after the laying out the streets aforesaid, more than one-twentieth part of the land in the possession of any one person; and that such possessor shall voluntarily assent thereto; or, refusing to do so, shall not be entitled to the benefit of any concession contained in the second and third sections of this ordinance.

§ 7. The lots and lands reserved for the use of the corporation, under the provisions of the next preceding section, shall be selected in localities likely to be most convenient and suitable for their respective uses, and in such proportion to the quantity in the possession of the respective occupants as to make the apportionment as nearly equal as circumstances will admit.

§ 8. The selection of said lands and lots shall be made by a Commission to consist of three persons, who shall be chosen by the Common Council, in joint convention, who shall report the same to the Common Council, for its approval; and, upon such approval deeds of release to the corporation for the lands thus selected shall be executed, acknowledged, and recorded, in which deeds shall be specified the uses for which they are granted, reserved, and set apart, respectively.

§ 9. Although the city hereby renounces in favor of the actual possessors, in accordance with the provisions of section second, any right or claim of its own, nothing in this ordinance is intended to prejudice any outstanding title to the said lands adverse to the said possessors.

§ 10. Application shall be made to the Legislature to confirm and ratify this ordinance, and to Congress to relinquish all the right and title of the United States to the said lands, for the uses and purposes hereinbefore specified.

§ 11. Nothing contained in this ordinance shall be construed to prevent the city from continuing to prosecute, to a final determination, her claim now pending before the United States Land Commission, for pueblo lands, for the several use,

benefit, and behoof of the said possessors mentioned in section two, as to the lands by them so possessed, and for the proper use, benefit, and behoof of the corporation as to all other lands not herein-before released and confirmed to the said possessors.

§ 12. That all ordinances, or parts of ordinances, conflicting with this ordinance, or any of its provisions, be and the same are hereby repealed.

Approved, June twentieth, one thousand eight hundred and fifty-five.

S. P. WEBB, Mayor.

And whereas, The said Common Council passed another ordinance, approved by the Mayor of said city, September twenty-seventh, A. D. one thousand eight hundred and fifty-five, which last-mentioned ordinance is in the words and figures following, to wit :

Number Eight Hundred and Forty-Five—Ordinance providing for Selecting and Designating Public Squares and Reservations for Hospitals, Fire-Engines, and School Purposes, and for adopting the Plan of Streets, in the Western and South-Western portion of the City, according to the Provisions of Ordinance Number Eight Hundred and Twenty-Two, and confirmatory of said Ordinance Number Eight Hundred and Twenty-Two.

The People of the City of San Francisco do ordain as follows :

§ 1. Under and by virtue of the provisions of the Ordinance of the Common Council, Number Eight Hundred and Twenty-Two, entitled "An Ordinance for the Settlement and Quieting of Land Titles in the City of San Francisco, approved June twentieth, one thousand eight hundred and fifty-five," the Board of Aldermen and Board of Assistant Aldermen shall meet in joint convention at their next regular meeting after the passage of this ordinance, and proceed to elect three Commissioners, who shall have the powers, and proceed to discharge the duties specified in section eight of said Ordinance Number Eight Hundred and Twenty-Two.

§ 2. It shall be the duty of the City Surveyor, acting in conjunction with the said Commissioners, and with their concurrence, to furnish, by way of recommendation, to the Common Council, within one month from the date of their appointment, a plan for the location and dimensions of the streets to be laid out within the city limits, west of Larkin, and south-west of Johnston streets, upon which plan shall also be designated the lots and grounds selected by the said Commissioners for the use of the city under the provision of the aforesaid Ordinance Number Eight Hundred and Twenty-Two; *Provided,* that the compensation of said Commissioners shall not exceed the sum of one hundred dollars each, payable when the Common Council may legally make an appropriation therefor.

§ 3. The said Ordinance Number Eight Hundred and Twenty-Two, referred to in the preceding section one, is hereby re-ordained, ratified, and confirmed in all its parts.

Approved September twenty-seventh, one thousand eight hundred and fifty-five.

JAMES VAN NESS, Mayor.

And whereas, In pursuance of the aforesaid ordinances, Commissioners were appointed by the Common Council, who, in conjunction with the City Surveyor of said city, agreed upon, and reported for the approval of the Common Council a plan for the location of streets, public squares, and lots for public uses, to be laid out west of Larkin and south-west of Johnston streets, in said city, accompanied

by a map of the same, which said plan and map was, by the Justices of the Peace, exercising the powers of a Board of Supervisors of the City and County of San Francisco, adopted, approved, and ratified, by an order bearing date the sixteenth day of October, A.D. one thousand eight hundred and fifty-six, which is in the words and figures following, to wit :

The Board of Supervisors of the City and County of San Francisco do ordain as follows :

§ 1. That the Plan or Map of the Western Addition, reported by the Commission created under an ordinance of the last Common Council of the City of San Francisco, be adopted by this board, and be declared to be the plan of the city, in respect to the location and establishment of streets and avenues, and the reservation of squares and lots for public purposes, in that portion of the then incorporated limits of said city, lying west of Larkin and south-west of Johnston streets.

Be it therefore enacted, That the within and before-recited order and ordinances be, and the same are hereby ratified and confirmed ; and all the land entered, or to be entered, in the United States Land Office, in pursuance of section one of the first-recited of said ordinances, in trust, shall pass and inure to, and be deemed to have immediately vested in the occupants thereof, for their several use and benefit, according to their respective interests, in execution of the trust designated in an act of Congress entitled, "An Act for the Relief of Citizens of Towns upon the Public Lands of the United States, under certain circumstances," approved May twenty-third, one thousand eight hundred and forty-four, as extended and applied by an act of Congress, entitled, "An Act to provide for the Survey of the Public Lands in California, the Granting of Preëmption Rights therein," and for other purposes, approved March third, one thousand eight hundred and fifty-three ; and it shall be the duty of all Courts and officers to take judicial notice of the said order and ordinances, as hereinbefore recited, without further proof, as fully and effectually, to all intents and purposes, as if they were public acts of the State Legislature.

§ 2. That the grant or relinquishment of title made by the said city in favor of the several possessors, by sections two and three of the ordinance first-above recited, shall take effect as fully and completely, for the purpose of transferring the city's interest, and for all other purposes whatsoever, as if deeds of release and quit-claim had been duly executed and delivered to and in favor of them individually, and by name ; and no further conveyance or other act shall be necessary to invest the said possessors with all the interest, title, rights, benefits, and advantages, which the said order and ordinances intend or purport to transfer or convey, according to the true intent and meaning thereof ; *Provided,* that nothing in this act shall be so construed as to release the City of San Francisco, or City and County of San Francisco, from the payment of any claim or claims, due or to become due this State against said city, or city and county ; nor to affect or release to said city and county any title this State has, or may have, to any lands in said City and County of San Francisco.

No. CXIII.

RESERVATIONS MADE BY THE AUTHORITIES OF THE UNITED STATES, FOR THE USE OF THE FEDERAL GOVERNMENT, OF LANDS SITUATE WITHIN AND NEAR THE PENINSULA OF SAN FRANCISCO, AND NOT INCLUDED IN THE CONFIRMATION OF FOUR LEAGUES OF LAND TO THE CITY OF SAN FRANCISCO.

[No. I.]

WAR DEPARTMENT,
Washington, November 7th, 1850. }

SIR: I am directed by the Secretary of War to inclose to you this communication, from the President of the United States, exempting from sale and reserving for public purposes, certain pieces and tracts of land, in the State of California.

With great respect,

Your ob't serv't,

(Signed)

GEO. T. M. DAVIS,

Chief Clerk.

Hon. JUSTIN BUTTERFIELD,
Commis'r Gen. Land Office.

[No. II.]

GENERAL LAND OFFICE, }
June 24th, 1851. }

SIR: I have to inform you that the President of the United States exempts and reserves from sale for public purposes, the following tracts or parcels of land, in the State of California :

In the Bay of San Francisco, Cala. :

1st. From a point eight hundred yards south of Point José to the southern boundary of the Presidio, along the southern boundary of its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos.

2d. From the southern boundary of Sau Solito [Saucelito] Bay, a line parallel to the channel of entrance to the Pacific.

3d. Yerba Buena Island.

4th. Alcatrazes Island.

5th. Angel Island.

On the eastern side of the Bay of San Pueblo :

6th. Mare Island.

7th. The land on the eastern side of Mare Island Straits, beginning at the high hills between these straits and the City of Benicia, about 2,000 to 2,500 yards from the former, and extending in a line nearly parallel to it, to a point opposite the northern extremity of Mare Island, and thence to the straits so as to join them at

a point about eight hundred yards north of the northernmost high hills on the eastern side of the straits.

(Signed)

MILLARD FILLMORE.

WASHINGTON, November 6th, 1850.

I am, very respectfully,

Your ob't serv't,

J. BUTTERFIELD,

Commissioner.

SAM'L D. KING, Esq.

Surveyor General, San José, Cala.

[No. III.]

ENGINEER DEPARTMENT, }
Washington, 28th October, 1861. }

Hon. C. M. CONRAD,

Secretary of War,

SIR: The Surveyor-General of California having applied, through the General Land Office, for some additional instructions to enable him to run the lines of the lands proposed as Government Reservations, by the Joint Board of Navy and Engineer officers lately on that coast, his application therefor has been referred to this Department.

It thus appears that some of these reservations have not yet been surveyed, and on referring the subject above-mentioned to the Engineer officers of that Board, it would seem desirable to change the limits of one of the reservations, from those originally proposed by the Board. This reservation, as first recommended, and as directed by the President to be made, was defined as follows :

“From a point eight hundred yards south of Point José to the southern boundary of the Presidio, along that southern boundary to its western extremity, and thence in a straight line to the Pacific Ocean, passing by the southern extremity of a pond that has its outlet into the channel between Fort Point and Point Lobos.” Subsequent to this action of the Board, a private claimant to all this tract proposed to the Joint Board, through Capt. Halleck, Engineer, to substitute the following bounds, for those just mentioned, with the understanding that, if accepted by the Government, the claimant would resign all pretensions to title within the reservation as thus modified, viz. : The Government to reserve the promontory of Point José within boundaries not less than eight hundred yards from its northern extremity, and the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract to the southern extremity of a pond lying between Fort Point and Point Lobos, and north and east of a line passing through the middle of said pond and its outlet, to the channel of entrance from the ocean.

These two tracts were thought by the Joint Board to be sufficient for the Government, instead of the large one before described, and they so stated in writing to Capt. Halleck.

This Department is of the same opinion, and believing that the interests of the Government would be subserved and complication avoided by making the two separate reservations, with the limits as last mentioned, recommends that the reservations be made accordingly.

No plat of the Presidio tract is on file in this office, and it is respectfully suggested that the Surveyor-General of California be referred to Capt. Halleck's corps of Engineers, at San Francisco, for sketches which will enable him to run the lines in conformity with the foregoing description.

The sketch herewith shows the reserve as originally proposed and conjecturally drawn by the Board, also the two separate reservations now proposed to be substituted for it.

I have the honor to be, very respectfully,
 Your ob't serv't,
 JOS. G. TOTTEN,
 Bt. Brg.-Gen'l of Eng'rs.

[No. IV.]

WAR DEPARTMENT, }
 Washington, December 20th, 1851. }

SIR: I have the honor to submit herewith, for your consideration, the draught of an order modifying and reducing the reservation at Port Point and Point José, San Francisco Harbor, California, prepared in conformity with the recommendations of the Chief Engineer, herewith inclosed, and to request your approval of the same.

Very respectfully
 Your ob't serv't,
 C. M. CONRAD,
 Secretary of War.

To the President.

[No V.]

The reservation, including Fort Point, Point José, and the Presidio, at the entrance of the Harbor of San Francisco, California, made by an order dated November 6th, 1850, is hereby modified and reduced so as to embrace only the following described two tracts of land, viz.:

1st. The promontory of Point José, within boundaries not less than eight hundred yards from its northern extremity.

2d. The Presidio tract and Fort Point, embracing all the land north of a line running in a westerly direction from the south-eastern corner of the Presidio tract, to the southern extremity of a pond lying between Fort Point and Point Lobos, and passing through the middle of said pond and its outlet to the channel of entrance from the ocean.

MILLARD FILLMORE.

EXECUTIVE CHAMBER, }
 Washington, December 31st, 1851. }

No. CXIV.

ORDER TRANSFERRING THE CASE OF THE CITY OF SAN FRANCISCO VS. THE UNITED STATES, FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF CALIFORNIA, TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SAME DISTRICT.

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court Room, in the City of San

Francisco, on Monday, the fifth day of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, District Judge.

THE UNITED STATES
v.
THE CITY OF SAN FRANCISCO. } No. 427.

It appearing to the Court that, by an Act of the Congress of the United States, approved July 1st, 1864, the above entitled cause, now pending under the Act of March 3d, 1851, may be transferred to the Circuit Court of the United States for California, order that said cause be, and hereby is, transferred to said Circuit Court.

OGDEN HOFFMAN,
District Judge.

No. CXV.

OPINION OF MR. JUSTICE FIELD OF THE UNITED STATES
CIRCUIT COURT, CONFIRMING THE CLAIM OF THE CITY
OF SAN FRANCISCO FOR FOUR LEAGUES OF PUEBLO
LANDS, FILED OCTOBER 31ST, 1864.

THE CITY OF SAN FRANCISCO }
vs.
THE UNITED STATES. }

This case comes before this Court upon a transfer from the District Court under the Act of Congress of July 1st, 1864, "to expedite the settlement of titles to lands in the State of California." It was in the District Court on appeal from the decree of the Board of Land Commissioners, created by the Act of March 3d, 1851. It involves the consideration of the validity of the claim asserted by the City of San Francisco, to a tract of land situated in the County of San Francisco, and embracing so much of the peninsula, upon which the city is located, as will contain an area of four square leagues.

The city presented her petition to the Board of Land Commissioners in July, 1852, asserting in substance, among other things, that, in pursuance of the laws, usages, and customs of the Government of Mexico, and the Act of the Departmental Assembly of California of November, 1833, the Pueblo of San Francisco was created a municipal government, and became invested with all the rights, properties, and privileges of pueblos under the then existing laws, and with the proprietorship of the tract of land of four square leagues above described; that the pueblo continued such municipality and proprietor until after the accession of the government of the United States, July 7th, 1846, and until the passage of the Act of the Legislature of the State of California incorporating the city; and that she thereupon succeeded to the property of the pueblo, and has a good and lawful claim to the same.

In December, 1854, the Board of Commissioners confirmed the claim of the city to a portion of the four square leagues, and rejected the claim for the residue. The

land to which the claim was confirmed, was bounded by a line running near the Mission of Dolores, and known as the Vallejo Line. That line was adopted principally in reliance upon the genuineness and authenticity of the document described in the proceedings as the Zamorano document. The spuriousness of that document is now admitted by all parties. From the decree of the Board an appeal was taken by the filing of a transcript of the proceedings and decision with the Clerk of the District Court. The appeal was by statute for the benefit of the party against whom the decision was rendered—in this case of both parties—of the United States, which controverted the entire claim, and of the city, which asserted a claim to a larger quantity of land—and both parties gave notice of their intention to prosecute the appeal. Afterwards, in February, 1857, the Attorney-General withdrew the appeal on the part of the United States, and in March following, upon the stipulation of the District Attorney, the District Court ordered that appeal to be dismissed, and gave leave to the city to proceed upon the decree of the Commission as upon a final decree. The case, therefore, remained in the District Court upon the appeal of the city alone, and that is its position here. But the proceeding in the District Court, being in the nature of an original suit, the prosecution of the appeal by either party keeps the whole issue open. "The suit in the District Court," said Mr. Justice Nelson in *United States vs. Ritchie* (17 How. 534) "is to be regarded as an original proceeding—the removal of the transcript, papers, and evidence into it from the Board of Commissioners being but a mode of providing for the institution of the suit in that court. The transfer, it is true, is called an appeal; we must not, however, be misled by a name, but look to the substance and intent of the proceeding. The District Court is not confined to a mere reëxamination of the case, as heard and decided by the Board of Commissioners, but hears the case *de novo*, upon the papers and testimony which had been used before the Board, they being made evidence in the District Court; and also upon such further evidence as either party may see fit to produce."

But though the whole issue is thus open, the dismissal of the appeal on the part of the United States may very properly be regarded as an assent by the Government to the main facts upon which the claim of the city rests, namely: the existence of an organized pueblo at the site of the present city upon the acquisition of the country by the United States on the 7th of July, 1846; the possession by that pueblo of proprietary rights in certain lands, and the succession to such proprietary rights by the City of San Francisco. The District Attorney does not, therefore, deem it within the line of his duty to controvert these positions, but on the contrary admits them as facts in the case, contending only that the lands appertaining to the pueblo were subject, until by grant from the proper authorities they were vested in private proprietorship, to appropriation to public uses by the former Government and, since the acquisition of the country, by the United States. He, therefore, insists upon an exception from the confirmation to the city of land heretofore reserved or occupied by the Government for public uses; and I do not understand that the counsel of the city objects to an exception of this character.

It is unnecessary, therefore, to recite the historical evidence of the existence of a pueblo previous to, and at the date of, the acquisition of the country at the present site of the City of San Francisco, which is very fully presented in the elaborate opinion filed by the Commission on the rendition of its decision. Since that decision was made, the question has been considered by the Supreme Court of the State; and in an opinion in which the whole subject is examined a similar con-

elusion is reached; and if anything were wanting in addition to the arguments thus furnished, it is found in the able and exhaustive brief of the counsel of the city.* The documents of undoubted authenticity, to which the opinions and the brief of counsel refer, establish beyond controversy the fact that a pueblo of some kind, having an Ayuntamiento composed of Alcaldes, Regidores, and other municipal officers, existed as early as 1834; and that the pueblo continued in existence until, and subsequent to, the cession of the country. The action of the officers of the United States in the government of the city and the appointment or election of its magistrates after the conquest, both preceding and subsequent to the treaty of peace, proceeded upon the recognition of this fact; and the titles to property within the limits of the present city to the value of many millions rest upon a like recognition.

The material question, therefore, for determination, as the case stands before this Court, relates to the extent of the lands in which the pueblo was interested. It is not pretended that such lands were ever marked off and surveyed by competent authority. It is admitted, as already stated, that the so-called Zamorano document, given in evidence, is spurious. The question presented must therefore be determined by reference to the laws of Mexico at the date of the conquest.

As stated by the Commissioners in their opinion, there can be no doubt that by those laws, pueblos or towns, and their residents, were entitled to the use and enjoyment of certain lands within prescribed limits immediately contiguous to and adjoining the town proper; that this right was common to the cities and towns of Spain from their first organization, and was incorporated by her colonies into their municipal system on this continent; and that the same continued in Mexico, with but little variation, after her separation from the mother country. And there is as little doubt that by those laws, a pueblo or town, when once established and officially recognized, became entitled, for its own use and the use of its inhabitants, to four square leagues of land. The compilation known as the *Recopilacion de Leyes de las Indias* contains several laws relating to this subject. The Sixth Law of Title Five, of Book Four, provides for the establishment of towns by contract with individuals, and upon compliance with the conditions of the contract, for the grant of four square leagues of land, to be laid off in a square or prolonged form, according to the character of the country.

The opinion of the Assessor or legal adviser of the Vice Royalty of New Spain given to the Comandante General in October, 1785, upon the petition of certain settlers in California, for grants of tracts of land situated within the limits claimed by pueblos, recognizes this right of pueblos to have four square leagues assigned to them. His language is that the grants "cannot nor ought to be made to them within the boundaries assigned to each pueblo, which in conformity with the Law Six, Title Five, Liber Four of the Recopilacion must be *four leagues of land* in a square or oblong body according to the nature of the ground; because the petition of the new settlers would tend to make them private owners of the forests, pastures, water, timber, wood, and other advantages of the lands which may be assigned, granted, and distributed to them, and to deprive their neighbors of these benefits. It is seen at once that their claim is entirely contrary to the directions of the fore-mentioned laws, and the express provision in Art. 8 of the Instructions for Settlements (Poblaciones) in the Californias, according to which all the waters, pastures, wood, and timber, within the limits which in conformity to law may be allowed

* See Extracts from opinion of the Supreme Court of California annexed to this opinion.

to each pueblo, must be for the common advantage—so that all the new settlers may enjoy and partake of them, maintaining thereon their cattle, and participating of the other benefits that may be produced.”

But the royal instructions of November, 1789, for the establishment of the town of Pitic, in the province of Sonora, is conclusive as to the right of pueblos in California under the laws of Spain.

The instructions were made applicable to all new towns that should be subsequently established within the general *comandancia*, which included the province of California. They gave minute directions for the formation and government of the new pueblos, and referring to the laws of the Indies already cited, declared that there should be granted to the towns four leagues of land in a square or prolonged form. They also provided for the distribution of building and farming lots to settlers, the laying out of pasture lands and lands for the *propios*, the residue to constitute the *egidos* or commons for the use of the inhabitants.

The general provision of the laws of the Indies, to which these instructions and the opinion of the assessor refer, continued in force in Mexico after her separation from Spain. They were recognized in the regulations of November, 1828, which were adopted to carry into effect the Colonization Law of 1824, and in the regulation of the Departmental Assembly of August, 1834, providing funds for towns and cities. They were referred to in numerous documents in the archives of the former Government in the custody of the Surveyor-General. The report of Jimeno, for many years Secretary of the Government of California, found in the expediente of Doña Castro made in February, 1844, is cited by the Commissioners in their opinion as removing all doubt on this point. The report is as follows:

“MOST EXCELLENT GOVERNOR:—The title given to Doña Castro is drawn, subject to the conditions that were inserted in many other titles during the time of Gen. Figueroa, in which they subjected the parties to pay *censas* (tax) if the land proved to belong to the *egidos* of the town.

I understand that the town of Branciforte is to have for *egidos* of its population four square leagues, in conformity to the existing law of the Recopilacion of the Indies, in volume the second, folios 88 to 149, in which it mentions that to the new towns that extent may be marked, to which effect it would be convenient that your Excellency should commission two persons deserving your confidence, in order that, accompanied by the Judge of the Town, the measurement indicated may be made, and it may be declared for *egidos* of the town the four square leagues, leaving to the deliberation of your Excellency to free some of the grantees of the conditions to which they are subject. The supreme judgment of your Excellency will resolve as it may deem it convenient.

MANUEL JIMENO.

“MONTEREY, February 8th, 1844.”

The documents to which reference has been made are sufficient to establish the position that pueblos once formed and officially recognized as such, became by operation of the general laws entitled to have four square leagues of land assigned to them, for their use and the use of their inhabitants. It does not appear that formal grants were made to the new pueblos, though in some instances an officer was appointed to mark off the boundaries of the four square leagues, and to designate the uses to which particular tracts should be applied. But the right of the pueblos and their inhabitants to the use and enjoyment of the lands was not made dependent upon such measurement and designation.

It follows from these views that the pueblo, which is admitted to have been regularly established at the site of San Francisco on the 7th of July, 1846, was, as such pueblo, vested with the right to four square leagues of land, to be measured either in a square or prolonged form, according to the nature of the country, excepting from such tract such portions as had been previously dedicated to or reserved for public uses, or had become private property by grant from lawful authority.

It is difficult to determine with precision the exact character of the right or title held by pueblos to the lands assigned to them. The Government undoubtedly retained a right to control their use and disposition, and to appropriate them to public uses until they had been vested in private proprietorship. Numerous laws have been cited to show that the title remained absolutely in the Government. The same laws were cited to the Supreme Court of this State when the subject was before that tribunal, and in relation to them the Court said: "We see nothing in these laws opposed to the views we have already expressed, that the towns had such a right, title, and interest in these lands as to enable them to use and dispose of them in the manner authorized by law or by special orders, and consonant with the object of the endowment and trust. Undoubtedly the right of control remained in the sovereign, who might authorize or forbid any municipal or other officer to grant or dispose of such lands, even for the purposes of the endowment or trust. Such general right, with respect to a public corporation, exists in any sovereign State, and must, of course, have existed in the absolute monarchy of Spain, where the property of private corporations and individuals was to a great degree subject to the royal will and pleasure." (*Hart v. Burnett*, 15 Cal. 569.) And referring to objections to the theory of absolute title in the pueblo, and the questions which upon that view might be suggested, the Court said: "There is but one sensible answer to these questions, and we think that answer is given in the laws themselves, and in the recorded proceedings of the officers who administered them, and who must be presumed to have interpreted them correctly. It is, that the lands assigned to pueblos, whether by general law regulating their limits to four square leagues, or by special designation of boundaries, were not given to them in absolute property, with full right of disposition and alienation, but to be held by them in trust, for the benefit of the entire community, with such powers of use, disposition, and alienation as had been already, or might afterwards be conferred for the due execution of such trusts, upon such pueblos, or upon their officers." (*Id.* 573.) And this view, the Court adds, fully reconciles the apparently conflicting disposition of the laws and the commentaries of publicists respecting the relative rights of the Crown and the municipalities to which counsel had referred.

In this view of the nature of the title of the pueblo and of the city, its successor, I fully concur; and I am of opinion that under the provisions of the Act of March 3d, 1851, the city is entitled to a confirmation of her claim. I regret that the recent transfer of the case to the Circuit Court, and the great pressure of other engagements since, have prevented me from considering at greater length the interesting questions presented. To those who desire to extend their inquiries, the elaborate opinions to which I have made frequent reference, and the able brief of counsel will furnish ample materials.*

* The following extracts are from the opinion of the Supreme Court of the State, in *Hart vs. Burnett*, reported in 15 California Reports:

"On the third of November, 1834, the Territorial Deputation authorized the election of

A decree will be entered confirming the claim of the City of San Francisco to a tract of land, situated in the County of San Francisco, and embracing so much of the peninsula upon which the city is located, as will contain an area equal to four square leagues as described in the petition. From the confirmation will

an Ayuntamiento, to reside at the Presidio of San Francisco, to be composed of an Alcalde, two Regidores or Councilmen, and a Sindico-Procurador. This Ayuntamiento, when organized, was to exercise the political functions pertaining to such office, and the Alcalde was also to perform the judicial functions which the laws conferred upon him. This decree was communicated to the Military Commandant by the Governor, on the fourth of November, 1834. An election was accordingly held on the seventh of December, 1834, at the Presidio of San Francisco, and the Ayuntamiento duly installed. A similar election was held on the thirteenth of December of the following year (1835), at the same place, which was then officially designated as the Pueblo of San Francisco. Other elections of the same character were subsequently held; and there are numerous official documents of undisputed authenticity, which refer to the 'Ayuntamiento of San Francisco,' the 'Alcalde of San Francisco,' and to the 'Pueblo of San Francisco,' proving, as we think, beyond a doubt, that there was at that place, in 1834, 1835, 1836, and subsequently, a pueblo of some kind, with an Ayuntamiento composed of Alcaldes, Regidores, and other municipal officers. What were the rights of this municipality, and what the powers of its officers, and the extent of its territory and jurisdiction, we shall not now inquire. We here refer merely to the *fact* of the existence, at that time, and at that place, of such an organization, whether corporate or incorporate. And that fact is proved by the official returns of elections, by the official acts of the Governor and of the Territorial or Departmental Legislature, by the official correspondence of government officers, and by the acts, proceedings, records, and correspondence of the officers of the pueblo itself. As a part of the evidence of this *fact*, we refer to the election returns of December 7th, 1834, December 13th, 1835, December 3d, 1837, and December 8th, 1838; to the Governor's letters of January 31st, 1835, October 26th, 1835, January 19th, 1836, January 17th, 1839, and November 14th, 1843; to the expediente of proceedings between May and November, 1835, with respect to certain persons obliged to serve as municipal officers of that pueblo; and to the official correspondence between the Alcaldes of that pueblo and the various officers of the Territorial or Departmental Government of California. (15 Cal., 540.)

"The evidence in favor of the existence of a pueblo in San Francisco prior to July 7th, 1846, and its general right, for pueblo purposes, to four square leagues of land, to be measured, according to the *ordinanzas*, from the center of the plaza at the Presidio, is, to our minds irresistible.

"1st. We have the general laws of Spain and the Indies authorizing the formation of pueblos, assigning their general boundaries, directing how they were to be surveyed out, designating the uses to which such lands were to be devoted, and defining the character of the right which the pueblo acquired in them, and the control which its municipal authorities, as well as the King and his officers, were to exercise over them.

"2d. We have the special orders of the King, and the highest officers of his government, with respect to the establishment of pueblos in California, and more particularly for the conversion of presidios into pueblos, and the extent of land assigned to the pueblos so formed.

"3d. We have documentary evidence showing that at a very early period, and almost immediately after the discovery of the Bay of San Francisco, the Viceroy and Governor of California contemplated the establishment of a pueblo at this identical point, and that the foundation of the Presidio and Mission of San Francisco, in 1776, was then considered and so announced as merely preliminary to the organization of a great town, into which they were to be converted as soon as a sufficient number of settlers could be procured for that purpose.

"4th. We have documentary evidence of unquestionable authenticity, showing that the Governor and Territorial Deputation, in 1834, ordered an election at the Presidio of an Ayuntamiento, consisting of an Alcalde, two Regidores and a Syndico—officers recognized by law as belonging only to pueblos; that this and subsequent elections of the same kind were held at the same place; and that such municipal organization was then, and has been ever since, recognized in numerous official documents signed by the different Governors,

be excepted such parcels of land within said tract as have been heretofore reserved or dedicated to public use by the United States; or have been by grant from lawful authority vested in private proprietorship. The confirmation will be in trust for the benefit of lot-holders under grants from the pueblo, town, or city; and as to any residue, in trust for the use and benefit of all the inhabitants. A decree will be prepared by counsel in conformity with this opinion, and submitted to the Court.

FIELD, J.

NOTE.—*Documentary Evidence relating to the Pueblo of San Francisco, from the end of 1834, to July 7th, 1846.*

The following synopsis of original papers, of undoubted authenticity, from the Archives, City Claim, Limantour, etc., will serve to prove, if further evidence be required, the correctness of the opinion of the Court [Supreme Court of California] on this [the existence of a pueblo at the site of the present City of San Francisco] and some other points.

January 31st, 1835, Governor Figueroa writes to M. G. Vallejo, Military Commandant of *San Francisco*, acknowledging the receipt of a letter from the latter, dated January 1st, and thanking him for having constitutionally installed "the *Ayuntamiento of that pueblo*" (*el Ayuntamiento de este pueblo*).

June 22d, 1835, Governor Figueroa sends a circular to the Military Commandant and *Alcalde of San Francisco*. This is indorsed by the *Alcalde, Francisco de Haro*, as having been received and published by him, in "San Francisco de Asis, July 12th, 1835." It will be seen from this that even at that early day—the first year of the formation of the pueblo, and organization of the *Ayuntamiento*, at the *Presidio*—it was called by the official authorities, without distinction, "San Francisco," and "San Francisco de Asis."

Soon after this José Joaquin Estudillo applied for a grant of two hundred varas, in the place called Yerba Buena. This application was for a larger amount of land than that designated for house-lots, and consequently the matter was referred to the Territorial Deputation. On the twenty-second of September, that body, on motion of Alvarado, resolved generally, that the *Ayuntamiento of San Francisco* had authority to grant *solares* in the place of Yerba Buena, at a distance of two hundred varas from the beach.

September 23d, 1835, Governor Castro transmitted to the "Alcalde Constitutional of San Francisco," a copy of the foregoing resolution of the Territorial Deputation, with respect to the power of "the *Ayuntamiento of San Francisco*" to grant lots two hundred varas distant from the sea shore, "in the place called Yerba Buena."

October 28th, he addresses another official letter to the "Alcalde of San Francisco de Asis," containing a brief statement of the substance of the resolution of September 22d, and directing him to inform the residents of "that pueblo" not to apply to the political chief for lots, "as it is one of the favors which the *Ayuntamiento* can grant." For these grants a *canon* was to be paid to the *Ayuntamiento*.

There is filed in the city claim a certified copy, from the archives, of an old *expediente*, which contains several important papers. It begins with a petition to the *Gefe Politico*, dated May 30th, 1835, and purporting to be signed by residents of the ranchos of San

Secretaries of State, and other government officers, as the 'Pueblo of San Francisco,' or the 'Pueblo of San Francisco de Asis.'

"5th, We have documentary evidence showing that the Political Chiefs, Deputations, and other government officers, recognized, in numerous official papers, that this pueblo had some interest in, and its municipal authorities some control over, the lands within the general limits of four square leagues; and that, at different periods, they were authorized to grant in particular localities within such limits, small parcels of these lands to private persons in full ownership; and

"6th. We have documentary evidence showing that the municipal officers of this pueblo did, for a long term of years, both before and since the conquest, exercise this authority, by granting small lots of land to numerous individuals, and that their power was recognized both by the Mexican Government in California, and by the Government of Military Occupation which succeeded it." (15 Cal., 563, 564.)

Pablo, etc., asking to be separated from the jurisdiction of the Port of San Francisco," and annexed to that of San José. They allege, as reasons for the proposed change, the distance, the difficulty and danger of crossing the bay, and the want of accommodations for themselves and families at the *Presidio*, "for a whole year, when they shall be called upon to discharge some office in the Ayuntamiento," etc. This petition was, by the Territorial Deputation, on the fifth of September, 1835, ordered to be referred to the "Ayuntamientos of the Pueblos of San José and San Francisco," for reports; and the Governor so referred it on the twenty-eighth of September. November 4th, the Ayuntamiento of San José reports in favor of the petition, with the remark that the petitioners had previously pertained to that jurisdiction. December 20th, the "Ayuntamiento of San Francisco" reports against the petition, denying the genuineness of the signatures to it, and the correctness of its statements. With respect to the want of accommodations at the *Presidio*, it says, "it is a well-known and established fact, that the military commandant of the *Presidio* furnished houses to the functionaries of the present Ayuntamiento as soon as it was installed." This report is dated, "Port of San Francisco," and is signed by the Alcalde, Francisco de Haro, and the Secretary, Francisco Sanchez.

1836, January 2d, Governor Castro directs a communication to the "Illustrious Ayuntamiento of San Francisco de Asis," informing it that he had transferred the political government of the Territory to General Nicolas Gutierrez. On the same day Gutierrez directs a communication to the "Illustrious Ayuntamiento of San Francisco," informing that body that he had been placed in possession of the political government of the Territory.

1836, January 22d, the Alcalde, José Joaquin Estudillo, directs an official communication to the Sindico-Procurador, dated at the "Pueblo of San Francisco de Asis."

1836, January 19th, Governor Gutierrez transmits to the "Alcalde of San Francisco de Asis," a copy of an order received from the Supreme Government of Mexico.

1836, December 13th, Governor Alvarado transmits to the "Very Illustrious Ayuntamiento of San Francisco," copies of decrees of the Congress of the "Sovereign State of Alta California."

1837, January 2d, Alcalde Martinez sends to the Sindico-Procurador an order for paper for the use of the "office of this Ayuntamiento." It is dated, "Pueblo of San Francisco." There are various other official papers, signed by Martinez, which are dated in the same way. Francisco Sanchez, as Secretary of "this Illustrious Ayuntamiento," signs various official papers dated "Pueblo of San Francisco." In one case he dates "*Presidio*," and in some others "Yerba Buena."

1837, August 4th, José Carrillo appeared as the Commissioner from the Departmental Government, to administer the oath to "this municipality," of obedience to the constitution of 1836. The *acta* states that it was sworn to by the "First Alcalde of the Port of San Francisco de Asis."

1837, December 3d, the primary election "in the Pueblo of San Francisco de Asis," is certified to have been held in the "Plaza of said pueblo." The return is certified by Francisco de Haro, as President; Francisco Guerrero and Francisco Sanchez, as Secretaries; and A. M. Peralta and J. de la C. Sanchez, as Inspectors. The letter transmitting these returns is dated "San Francisco, December 7th, 1837," and directed to the "Constitutional Alcalde, Ignacio Martinez." At the secondary election, the returns of which were transmitted to the Governor on the twenty-third, William A. Richardson was chosen Alcalde; but he having applied to the Governor to be excused from serving *as such*, for the ensuing year, Alvarado on the thirtieth, directed a letter to the "Constitutional Alcalde of San Francisco," ordering a new election, which was held January 8th, 1838, and Francisco de Haro elected Alcalde in place of Richardson. Domingo Sais was, at the same time, elected second *Regidor*, which office, it appears, was also vacant. It will be observed that the above-mentioned Richardson is the same man who swore that there was no pueblo or town of San Francisco before July, 1846, and that he had no personal knowledge of any elections here prior to 1846. Richardson himself received from the Ayuntamiento of San Francisco a grant of a lot of one hundred varas in Yerba Buena, June 2d, 1836. In one part of his deposition he says that he received this grant in October, 1835, and that it was made by Francisco de Haro, "the Alcalde of the *Mission* of San Francisco de Asis," by order of the Governor, the same order which reserved two hundred varas all along the beach, and directed him, Richardson, to survey out the little strip of land assigned to the Pueblo of Yerba Buena. In another part of his testimony he says this lot was regranted to him in 1836, by Joaquin Estudillo, Alcalde of the same *Mission*. The order of the Governor, as well

as the proceedings of the Deputation respecting the reserve of two hundred varas along the beach, is found, but it contains no orders respecting any grant to Richardson, or the survey of any land. The petition of Richardson for the lot referred to is dated June 1st, 1836; it is directed to the "Illustrious Ayuntamiento," and asks for a grant of the lot by that body. It refers to no order of the Governor, and nothing is said about any previous grant or its loss. The grant is made in the name of the "*Corporacion*," and the land is there stated to be an "*ejido de esta poblacion*." Richardson's statements are therefore flatly contradicted by the record of his own title.

1839, January 17th, Governor Alvarado transmits to Alcalde de Haro a proclamation for putting into effect the constitutional system of 1837, and for holding elections according to the law of November 30th, 1836, which he says he received from "the Supreme Government by the last mail!"

1839, January 18th, Governor Alvarado sends another official communication, directed "to the Alcalde of San Francisco," in which he states that inasmuch as many individuals had asked for *solares* for building houses in the lands of Yerba Buena, which had previously been prohibited from being granted, and as he was desirous of advancing the commerce in that recent congregation of *vecinos*, he therefore had decreed (*dispuesto*) that grants for house-lots may be made of any part of said prohibited lands; with the understanding, however, that those asking for such concessions shall present to the Government their petitions for the favor, with the necessary reports, or *informes*. The Alcalde is directed to give notice of this to the *vecinos*.

1839, January 25th, Governor Alvarado directs a proclamation "to the Alcalde of San Francisco," and orders him to give it due publication.

1839, February 28th, Governor Alvarado directs "to the Illustrious Ayuntamiento of San Francisco" his proclamation of the previous day (twenty-seventh), dividing all California, from the frontier of the north to Cape St. Lucas, into three districts, the first district including all north of the ex-Mission of San Luis Obispo. This district was divided into two *partidos*, one extending from the north of Sonoma to the *Llagas*, with Dolores as the *cabecera*, and the other from the *Llagas* to San Luis Obispo, with the pueblo of San Juan de Castro as the *cabecera*. He also informs that body of the appointment of José Castro as Prefect of that district, and that he must be recognized and obeyed according to the laws.

1839, March 9th, Governor Alvarado sends "to the Alcalde of San Francisco" a proclamation, and directing that the notice be given that all petitions for lands or other things should be transmitted to the Secretary through the Prefects, for their reports thereon.

During the early part of this year Francisco de Haro continued to act as "Alcalde," but about the middle, or a little after, Francisco Guerrero assumed the duties of *Juez de Paz*, and continued to act in that capacity till the end of 1841, when he was succeeded by Francisco Sanchez, who held that office to the end of 1843, when the election was held for two "Alcaldes of Nomination," under the new organization made by Micheltorena.

1843, May 23d, Francisco Sanchez, as "*Juez de Paz* of the jurisdiction of the Port of San Francisco," issues an order to the owners of gardens "in the establishment of Dolores," respecting irrigation. He dates this order in "San Francisco."

1843, November 14th, Governor Micheltorena issues a proclamation restoring, in part, the old system of Ayuntamientos, and discontinuing the Prefects from the beginning of the coming year. The Pueblo of San Francisco was to elect, on the following December, two Alcaldes, of first and second nomination, the first to act as Judge of First Instance, and to take charge of the Prefecture. At this election William Hinckley was elected Alcalde of first nomination, and Francisco de Haro Alcalde of second nomination. The former resided at Yerba Buena, and the latter at the old Mission.

1844, January 20th, Secretary Jimeno writes to the "First Alcalde of the Port of San Francisco," congratulating him, in the name of the Governor, on his election, and hopes he will devote himself to the public welfare, and the improvement of that town and its vicinity.

1844, March 6th, Secretary Jimeno directs two official communications to the "First Alcalde of San Francisco."

1844, March 14th, Jimeno directs an official communication to "the Alcalde of first nomination of the Port of San Francisco."

1844, March 30th, the Superior Tribunal addresses an official communication to "William Hinckley, Alcalde of first nomination of San Francisco." April 29th, the Tribunal addresses him as "first constitutional Alcalde in San Francisco de Asis;" on June 4th, as "first Al-

calde of San Francisco;" and on October 29th, as "first *Juez* of San Francisco," etc. There are various official documents extant, addressed to him by the Governor, the Secretary, the Military Commandant, and other government officers, as "Alcalde of San Francisco," "Alcalde of San Francisco de Asis," "Alcalde of the Port of San Francisco," "Alcalde of the Pueblo of San Francisco," "Alcalde of the Pueblo of San Francisco de Asis," "Alcalde of Yerba Buena," "*Juez* of first nomination of the Pueblo of San Francisco de Asis," etc., etc. Of the local authorities, and private persons, some addressed him as "Alcalde of San Francisco," some as "Alcalde of San Francisco de Asis," some as "Alcalde of Yerba Buena," some as "Alcalde of the Pueblo of San Francisco," etc., etc. Hinckley dated his official papers, sometimes, "Pueblo of San Francisco," sometimes, "Court of first nomination of San Francisco de Asis," "Yerba Buena," etc., etc. In the official correspondence between him and the Second Alcalde, the former residing at Yerba Buena, and the latter at the Mission, their letters are dated, indiscriminately, "San Francisco," "San Francisco de Asis," "Pueblo of San Francisco," etc. At that time, at least, no distinction was made in the use of these names. On the 12th of November an order was issued by the Governor, and directed to the "First Alcalde of San Francisco," to hold an election of Alcaldes on the first Sunday in December, for the coming year. On the fifth of December Hinckley issued a notice, dated "San Francisco de Asis," for an election to be held in "Dolores," on Sunday, the eighth, for First and Second Alcaldes, no election having been held on the previous Sunday. At the secondary election, held December 15th, Juan Padilla was chosen First Alcalde, and José de la Sanchez Second Alcalde. In the returns it is described as an election "in the Pueblo of San Francisco de Asis;" and these returns were sent to Hinckley, who resided at Yerba Buena, and is addressed as "First Alcalde of San Francisco de Asis." Hinckley writes an official letter, dated "Pueblo of San Francisco de Asis," and sends it to De Haro, at the Mission, addressed to the "Alcalde of second nomination of San Francisco de Asis."

1845. In the official correspondence of this year Padilla and Sanchez are addressed as "First and Second Alcaldes;" sometimes "of San Francisco," sometimes "of San Francisco de Asis," and sometimes "of the Pueblo of San Francisco," etc., etc. On the twelfth of October, of this year, Sanchez issued a proclamation, dated at "Yerba Buena," in which he styles himself "Constitutional Alcalde of the jurisdiction of San Francisco."

1846. Sanchez continued to act as Alcalde during the early part of this year; and, after him, José Jesus Noe seems to have officiated until July. Noe is called, in the official documents, "Alcalde of San Francisco," "*Juez* of San Francisco," "Alcalde of first nomination," "*Juez de Paz*," etc., etc. The officers appointed and elected after the military possession by the United States, in July, at first assumed the title of "Magistrate," but very soon afterwards adopted the Spanish word "Alcalde," which was continued till 1850.

The foregoing is but a brief synopsis of a very small number of the official papers and records still existing. They are sufficient, however, to show the correctness of the reasoning of the Court on this point, and to disprove the absurd theories which have been raised by interested parties, about the different names applied, in old documents, to the *pueblo* generally, and to particular localities. The attempt of Richardson, and other Limantour witnesses, to ignore the Pueblo of San Francisco, which was organized at the end of 1834, and to erect a new "Pueblo of Yerba Buena," with a little plat of land between California and Dupont streets, and the beach, is so thoroughly exploded by the official records as to deserve not the slightest consideration.—[*Note 5 to Opinion in Hart vs. Burnett, by a Member of the California Bar.*]

Most of the above acts are to be found in the preceding ADDENDA, under their respective dates.

No. CXVI.

DECREE OF THE UNITED STATES CIRCUIT COURT, ENTERED
NOVEMBER 2D, 1864.

In the Circuit Court of the United States for the Northern District of the State of California.

THE CITY OF SAN FRANCISCO }
vs. }
THE UNITED STATES. }

In this case, after hearing the proofs, and allegations, and the arguments of counsel, it is ordered, adjudged, and decreed, that the claim of the petitioner is valid for four square leagues of land, and that the same be confirmed to that extent, as hereinafter stated.

The land of which confirmation is made, is a tract situated within the County of San Francisco, and embracing so much of the extreme upper portion of the peninsula upon which the City of San Francisco is situated, as will contain an area of four square leagues, as described in the petition. From this confirmation are excepted such parcels of land as have been heretofore reserved for public uses by the United States, and also such parcels of land as have been, by grant from lawful authority, vested in private proprietorship, and finally confirmed to claimants under the same by the respective tribunals of the United States. All of which excepted lands are to be included in the area of the four leagues when computed, and excluded from the tract hereby confirmed as finally surveyed, either by fixed boundaries or other precise description. This confirmation is in trust for the benefit of the lot-holders under grants from the Pueblo, Town, or City of San Francisco, or from other lawful authority in that behalf, and as to any residue for the use and benefit of the inhabitants of the city.

FIELD, J.

This decree was subsequently vacated. See ADDENDA, Nos. CXXIV and CXXV.

No. CXVII.

APPEAL OF THE UNITED STATES FROM THE DECREE OF CONFIRMATION IN THE UNITED STATES CIRCUIT COURT,
NOVEMBER 2D, 1864.

United States Circuit Court, Tenth Circuit in and for the Northern District of California.

THE UNITED STATES }
vs. } Wednesday, November 2d, 1864.
THE CITY OF SAN FRANCISCO. }

And now at this day, on application of Delos Lake, Esq., U. S. Dist. Att'y, it is *Ordered*, That an appeal from the decree in the above entitled cause, made at the present term, be, and the same is hereby granted in behalf of the United States; and that a transcript of the Record on Appeal be sent to the Supreme Court of the United States without delay.

No. CXVIII.

NOTICE OF MOTION ON THE PART OF JOHN B. WILLIAMS, ESQ.,
SPECIAL COUNSEL OF THE UNITED STATES, TO VACATE
THE ORDER ALLOWING THE APPEAL FROM THE DECREE
OF THE CIRCUIT COURT TO THE SUPREME COURT OF THE
UNITED STATES, CONFIRMING THE CLAIM OF THE CITY
OF SAN FRANCISCO TO ITS PUEBLO LANDS, TO OPEN SAID
DECREE, AND GRANT A REHEARING.

*In the Circuit Court of the United States for the Tenth Circuit, in and for the Northern
District of California.*

THE CITY OF SAN FRANCISCO }
vs. }
THE UNITED STATES. }

Gentlemen: Please take notice that on Monday, the twenty-first day of November, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, I will move the Court to vacate the order entered herein on the second day of November, inst., 1864, granting an appeal in behalf of the United States to the Supreme Court; to open the decree of the Court confirming the claim of the said city, entered on the said second day of November, 1864; and to grant a rehearing in the cause before a full bench, to be had at such a time as the Court may deem proper to assign.

The said motion will be made upon the ground that the decision of the Circuit Judge on the thirty-first day of October last was rendered under a misapprehension of the facts, and without considering the brief of the United States, which was suppressed by the Clerk of this Court; and will be based upon the papers in the case, the opinion of the Circuit Judge, and the affidavit of the special counsel for the United States, a copy of which is hereto annexed.

Dated San Francisco, November 14th, 1864.

JOHN B. WILLIAMS,

Special Counsel for the U. S.

To John H. Saunders, Esq., John W. Dwinelle, Esq., and E. W. F. Sloan, Esq.,
Counsel for the City.

NOTE.—A notice by the District Attorney was subsequently given. The notice is contained in ADDENDA, No. CXX.

"This brief has been handed to me by John B. Williams, Esq., but is not marked filed, as said Williams does not appear in the case by the authority of the District Attorney.

"GEORGE C. GORHAM, Clerk.

"SAN FRANCISCO, 28th October, 1864."

And also indorsed upon said supplemental brief of affiant as follows :

"This paper was marked filed by mistake. See reasons in indorsement on original brief.

"G. C. GORHAM, Clerk."

And affiant further says that he is informed and believes, that said Gorham unwarrantably, and in derogation of the rights of affiant as a member of this bar, and of the rights of the United States as litigants in their own Court, suppressed the said briefs, and withheld them from the Circuit Judge, and that the arguments submitted in behalf of the United States were, in consequence of such usurpation of power by the Clerk, not considered by the Circuit Judge in his determination of the case, but that said cause was decided under a misapprehension of the positions taken by, and the proofs offered in behalf of, the United States ; that the decision of the cause was announced from the bench of this Court by the Circuit Judge on the thirty-first of October, only three days, including one Sunday, subsequent to the date of the indorsement of the Clerk upon the brief of the United States ; that by said indorsement itself the brief of affiant was a good brief from the third of October, when the cause was submitted, to the twenty-eighth, when said indorsement was made, and should have been handed, with the record, to the Circuit Judge, or notice given to the District Attorney and affiant by the Clerk of his intended action in the premises, in which case the interests of the United States might have been protected ; but affiant expressly says that he remained entirely ignorant of the action of the said Clerk until informed by the card of Mr. Dwinelle, which appeared in the *Evening Bulletin* of November 2d.

And affiant further says, that the opinion the Circuit Judge, delivered October 31st, was published in the *Alta California* of November 1st, with editorial comments, which stated that the District Attorney had conceded : 1st. That a pueblo existed here at the time of the American conquest on seventh of July, 1846. 2d. That such pueblo owned the amount of town lands given to pueblos under Mexican law ; and, 3d. That the present City of San Francisco succeeded the pueblo as the owner of these lands. That affiant was greatly surprised at this statement, and immediately addressed a note to the editors of the *Alta*, denying that any such concessions had been made, either by the District Attorney or himself, which was published with comments in the *Alta* of November 2d ; that during the session of this Court on the 2d, a decree was signed by the Circuit Judge, which states that "after hearing the proofs and allegations, and the arguments of counsel, it is ordered, "adjudged, and decreed," etc., and an appeal taken from this decree by the District Attorney in behalf of the United States ; that affiant was present when the decree was entered and the appeal taken, but was in utter and entire ignorance of the fact that the brief for the United States, submitted on the third of October, had been suppressed by the Clerk of this Court ; that in the *Evening Bulletin* of the same day, appeared a communication over the signature of Mr. Dwinelle, in reply to the note of affiant published in the *Alta*, stating that the brief of affiant was not placed on the files of this Court, for the reason, at the time officially and expressly indorsed upon it, that the authority of affiant to appear in the case was not manifested, and

that the Clerk of this Court took this course not from any knowledge or suggestion of the counsel for the city, but upon his own knowledge of his official duties ; that these statements of Mr. Dwinelle was the first intimation affiant had of the unbecoming conduct of the Clerk ; that affiant proceeded immediately to the Clerk's office to see Mr. Gorham, but was unable to find either him or his deputy ; that on the morning of the third of November, the Circuit Judge having given notice he would hold Court at eight o'clock for a few moments, affiant was in attendance, having in the meantime obtained his brief from the Clerk's office, for the purpose of calling the attention of the Circuit Judge to the gross misconduct of the Clerk of this Court, and for the purpose of giving notice in open Court that an application would be made for a rehearing, on the ground that the cause had been decided under misapprehension, but as the Circuit Judge did not appear, affiant was unable to accomplish his purposes ; and that both the Circuit Judge and the Clerk sailed for Panama on the steamer *Golden City*, on the morning of the said third of November, 1864.

And affiant further says, that in the opinion rendered by the Circuit Judge it is said : "The dismissal of the appeal on the part of the United States may very properly be regarded as an assent by the Government to the main facts upon which the claim of the city rests—namely, the existence of an organized pueblo at the site of the present city upon the acquisition of the country by the United States on the seventh of July, 1846 ; the possession by that pueblo of proprietary rights in certain lands, and the succession to such proprietary rights by the City of San Francisco. The District Attorney, therefore, does not deem it within the line of his duty to controvert these positions, but, on the contrary, *admits them as facts in the case.*" That affiant is informed by the District Attorney that he admitted nothing, but that he considered the cause submitted on the brief prepared by affiant ; that said brief contended : 1st. On the authority of *LeRoy vs. Wright*, decided by the Circuit Judge of this Court, that the prosecution by the city of her appeal kept open the whole issue, notwithstanding the United States had dismissed their own appeal. 2d. That the case of *Hart vs. Burnett*, decided by the State Supreme Court, is not binding upon this Court in the present proceeding, where the United States are parties. 3d. That the city has failed to show herself the successor in interest of any pueblo existing on the seventh of July, 1846, and that, giving to the fourteenth section of the Act of 1851 the widest and loosest construction, the petition of the city for a confirmation to lands lying outside the charter limits of 1850–51 must be dismissed for want of jurisdiction ; and, 4th. That no pueblo existed on the seventh of July, entitled under the laws, usages, and customs of Mexico to four leagues of land in the present County of San Francisco, or to any greater or less quantity, except so far as lots may have been granted in private ownership prior to the seventh day of July, 1846, and which, under the fourteenth section of the Act of 1851, would be entitled to a confirmation in the name of the city : That the "dismissal of the appeal on the part of the United States cannot properly be regarded as an assent to the main facts upon which the claim of the city rests," because : 1st. Said dismissal was based, as affiant is informed and believes, upon the decision of the Board that certain lands had been assigned and laid off by competent Mexican authority, and the boundaries thereof described in the document known as the Zamorano document, which document, at the time of the visit of Hon. E. M. Stanton, special agent of the Attorney-General, to this country, was ascertained to be a forgery, but not until after the entry of the stipu-

No. CXXI.

STATEMENT OF U. S. DISTRICT ATTORNEY ON MOTION TO VACATE THE APPEAL FROM DECREE OF CIRCUIT COURT, AND TO GRANT A REHEARING, FILED MAY 3, 1865.*

United States Circuit Court, Northern District of California.

THE CITY OF SAN FRANCISCO }
 vs. }
 THE UNITED STATES. }

Among the cases pending when I assumed the duties of the office of United States Attorney, in September last, was the present one known as the "Pueblo Case," on appeal from the decision of the Board of Land Commissioners, by both parties, but the appeal on the part of the United States had been dismissed by order of the Attorney-General.

The case was on the calendar for argument a short time before his Honor, the Circuit Judge, left for Washington to attend the session of the Supreme Court.

I found Mr. J. B. Williams acting in the case on behalf of the United States, but by what authority, I had no knowledge.

He sought no conference, nor did he explain to me, prior to the submission of the case, what was his connection with it, nor by whom he was employed. I had been informed that he had been paid counsel fees in the case by persons making claims to what were known as "Outside Lands," and I hence inferred without inquiry that he was acting by the mere permission of my predecessor in office, without any pretensions to a voice in the conducting of the litigation.

This impression I then more readily imbibed from the fact that he, a short time before the case was submitted, applied to me for time to prepare or finish a brief, and seemed to ask it as a favor. I declined to postpone the case for the reason that the Circuit Judge was on the eve of his departure for Washington, and it was desirable that a speedy decision should be had.

Mr. Williams handed up his written brief either at the time, or shortly after the cause was submitted. Subsequently, and before the case was decided, one or more meetings took place before the Circuit Judge, at Chambers, and some additional testimony put in by me, and discussion had touching the Government reserves, and free conversations took place touching the law and the facts. It did not occur to me to invite Mr. Williams to be present. Indeed, on the question of excepting from the decree of confirmation the Government reserves, the interests of his real clients were directly in conflict with those of the United States.

I conceded that, by repeated decisions of the Supreme Court of this State, the existence of a pueblo was the settled law, which decisions had been made while the Circuit Judge was one of the judges of the Supreme Court, and concurred in by him. In view of this state of the law, in connection with the fact that the appeal on behalf of the United States had been dismissed by the Attorney-General, I did not ask or desire a reëxamination of the question in this Court, and so stated

*The motion was noticed for argument before the Circuit Court, held by the District Judge, for November 21st, 1864. The Attorney-General, however, directed the motion to be postponed until it could be heard by the Circuit Judge.

to the Circuit Judge, and I understood, and now believe, that my action in this respect met with his approval.

The case was decided a day or two before the Circuit Judge left for Washington. Soon after his departure, Mr. Williams, without consulting me, and in his own name, as special counsel, gave notice of a motion to open the case for reargument, based on an affidavit of his own. I regarded the proceeding, as well as some of the matters contained in the affidavit and notice, as not only offensive to the Judge, but wholly unauthorized on the part of "Special Counsel" for the Government, which I then noticed he, for the first time, claimed to be.

I at once addressed a note to him, refusing my assent to the motion, and stating that any and all motions or other proceedings in the conducting of the cause must be made by me.

I afterwards saw him personally and ascertained for the first time the nature of his employment.

He informed me that he was employed by the late Attorney-General, Mr. Bates. He admitted, however, that he had also been employed and paid by the outside land claimants in the same case.

In making the motion I have no doubt he acted in the interests of those claimants, and not from any desire to protect the interests of the Government.

Notwithstanding my positive refusal to permit the motion to be made, Mr. Williams appeared in Court and presented it, the District Judge—who did not participate in the decision of the case—being alone on the Bench. I thereupon stated, in open Court, in substance what I had already stated to him in private, adding that I should await instructions from the Attorney-General.

The District Judge took time to consider whether he would entertain the motion without my sanction. Meanwhile, I was instructed, by telegraph from the Attorney-General's office, to unite in the motion. This instruction was given, as I have since been informed, without full knowledge of the circumstances, but under the impression that it was an ordinary case of an application for a rehearing before the same Judge who rendered the decision. In accordance with the instruction, I signed and caused to be served notice of the present motion. By such notice, however, I did not intend to indorse or affirm to be true any of the statements made in Mr. Williams' affidavit or notice.

By a subsequent telegram the Attorney-General directed the motion to be postponed until it could be heard by the Circuit Judge.

In order that I may not seemingly be responsible for these matters, I have, with consent of the counsel for the city, substituted for the former notice the one which I now file.

So far as I am concerned, I now submit the motion without argument, leaving your Honor to make such disposition of it as may seem proper.

DELOS LAKE,

U. S. Att'y.

No. CXXII.

AFFIDAVIT OF THE CLERK OF THE UNITED STATES CIRCUIT COURT, READ ON THE MOTION TO VACATE THE APPEAL FROM DECREE OF CIRCUIT COURT AND TO GRANT A REHEARING, FILED MAY 3D, 1865.

In the Circuit Court of the United States for the Northern District of California.

THE CITY OF SAN FRANCISCO }
 vs. }
 THE UNITED STATES. }

Northern District of California, ss.

George C. Gorham, of the City of San Francisco, being duly sworn, saith, that he is Clerk of the Circuit Court of the United States for the Northern District of California; that he has been such Clerk since the first day of July, 1864; that at the last October Term of the Circuit Court, the above-entitled case, which is popularly known as the "Pueblo Case," was on the calendar for hearing, upon appeal from the decision of the Board of Land Commissioners, the case having been transferred to the Circuit Court by order of the District Court, under the Act of Congress of July 1st, 1864, entitled "An Act to expedite the settlement of titles to lands in the State of California;" that said case was called and submitted on the fourth day of October, 1864, and a decision was rendered thereon on the thirty-first day of the same month, and a decree was settled and filed therein on the second day of November following, and immediately afterwards an order was made granting an appeal on behalf of the United States from the decree to the Supreme Court.

And this deponent further saith, that on or about the fourteenth day of said November, John B. Williams, Esq., signing himself as "Special Counsel for the United States," gave notice of motion to vacate the order granting the appeal, to open the decree of the Court, and to grant a rehearing, said notice stating that the motion would be made upon the ground that the decision of the Circuit Judge was rendered "under a misapprehension of the facts, and without considering the brief of the United States, which was suppressed by the Clerk of this Court."

And this deponent further saith, that accompanying said notice of motion was an affidavit of said John B. Williams, in which the said Williams states that he is informed and believes, that this deponent "unwarrantably and in derogation" of his (said Williams') rights as a member of the bar, and "of the rights of the United States as litigants in their own Court, suppressed" his briefs in the case, and "withheld them from the Circuit Judge, and that the arguments submitted on behalf of the United States were, in consequence of such usurpation of power by the Clerk, not considered by the Circuit Judge in his determination of the case, but the said cause was decided under a misapprehension of the positions taken by, and the proofs offered on behalf of the United States."

And this deponent further saith, that the affidavit of said John B. Williams contains other allegations, charging or assuming that his said briefs had been suppressed and withheld from the Circuit Judge by this deponent.

And this deponent further saith, that all the allegations or charges in the said affidavit by said Williams, that his said briefs were suppressed and withheld from

the Circuit Judge are untrue and false in every particular; that this deponent never suppressed said briefs, or either of them, or withheld them, or either of them, from the Circuit Judge, but, on the contrary, this deponent handed the same to the Circuit Judge immediately after they were received, and they were retained by the Circuit Judge in his possession until after the decision of the case was rendered and announced in open Court.

And this deponent further saith, that he never suppressed any briefs whatever in any case, or withheld them from the Circuit Judge; and any statements to the contrary are wickedly and maliciously false.

And this deponent further saith, that the indorsement on one of the briefs of said Williams, that it was not "*marked* filed," as he did not appear in the case by the authority of the District Attorney; and the endorsement on the other that it "*was marked* filed by mistake," were made upon the belief at the time that said John B. Williams was a mere volunteer in the case, for his own interests, or the interests of parties claiming outside lands; that at the time it was understood that he was retained by the parties on such lands, although using the name of the United States; and this deponent was informed that he did not appear by any authority from the District Attorney.

And this deponent further saith, that his action in making said indorsements was approved at the time by the Circuit Judge.

GEORGE C. GORHAM.

Subscribed and sworn to before me this third day of May, A.D. 1865.

[L.S.]

W. F. HUESTIS,

U. S. Commissioner.

No. CXXIII.

OPINION OF MR. JUSTICE FIELD OF THE UNITED STATES
CIRCUIT COURT, DENYING THE MOTION TO OPEN THE
DECREE CONFIRMING THE CLAIM OF THE CITY, AND FOR
A REHEARING, FILED MAY 11TH, 1865.

THE CITY OF SAN FRANCISCO }
vs. }
THE UNITED STATES. }

This case was submitted to the Court for its consideration on the fourth of October last, and was decided on the thirty-first of the same month. The decree confirming the claim of the city was settled and entered on the second of November, and on the same day an appeal was allowed at the instance of the United States to the Supreme Court.

On the fourteenth of November, John B. Williams, Esq., styling himself "special counsel" for the United States, gave notice that he would move the Court on the twenty-first of the same month, to vacate the order allowing the appeal, to open the decree confirming the claim of the city, and to grant a rehearing of the case, upon the ground that the decision of the Circuit Court "was rendered under a misapprehension of the facts, and without considering the brief of the United States, which was suppressed by the Clerk of this Court." In support of the mo-

tion, the notice was accompanied with an affidavit of Mr. Williams, in which he states that he is "informed and believes" that the Clerk of the Court "unwarrantably and in derogation" of his (said Williams) rights "as a member of this bar, and of the rights of the United States as litigants in their own Courts, suppressed" his briefs in the case, and "withheld them from the Circuit Judge, and that the arguments submitted in behalf of the United States were in consequence of such usurpation of power by the Clerk, not considered by the Circuit Judge in his determination of the case, but that said cause was decided under a misapprehension of the positions taken by, and the proofs offered in behalf of the United States."

The affidavit contains other allegations based upon the assumption that the brief had been suppressed and withheld from the Circuit Judge. It also refers to certain concessions alleged to have been made by the District Attorney, which will be particularly considered hereafter.

In this proceeding the District Attorney was not consulted, and that officer upon hearing of it, addressed a note to the "special counsel," refusing his assent to the motion, and stating that all motions and other proceedings in the conduct of the cause must be made by him. Mr. Williams, however, persisted in the motion, and endeavored to have the same heard by the District Judge, who did not sit in the case, or participate in its decision.

The position of the District Attorney in claiming the control of the cause was entirely correct. He is the regular officer of the Government, having charge of all its legal proceedings within his district, subject only to the general direction and supervision of the Attorney-General. When other counsel are employed in these proceedings, it is to aid him in their management, not to assume his authority or direct his conduct. The position of Mr. Williams was solely that of assistant counsel. He could not control the proceedings in the case, or bind the Government by his admissions or action.

And it appears also from the statement of the District Attorney, that Mr. Williams at the time had been retained and paid as counsel by claimants of what are known as "outside lands;" that is, of lands within the asserted limits of the pueblo, but outside of the tract confirmed to the occupants by ordinances of the city, and the legislation of the State and the General Government, and that the interests of these third parties, upon the question of excepting from the decree of confirmation the Government reserves, were directly in conflict with those of the United States.

But there were other considerations which undoubtedly governed the conduct of the District Attorney. Some of the statements made in the affidavit he knew were inaccurate, and the correctness of other statements he had good grounds to distrust. He was also influenced, as we have reason to believe, by a just sense of the impropriety of asking a District Judge, though holding the Circuit Court, to vacate a decree rendered by the Circuit Judge, in a case of so much magnitude and importance, immediately after that officer had left the State, not upon grounds apparent upon the record, but upon statements, the truth of which rested chiefly in the knowledge of the latter.

The District Judge did not sit in any of the cases heard at the October Term by the Circuit Judge, and it was a matter of regret that the benefit of his counsel and assistance was not had in the determination of the present case. The familiarity of that officer with the laws and customs and policy of Mexico in the disposition

of her public domain, and in the establishment and endowment of her municipal bodies, would have greatly lessened the labor of investigating the case. But as he did not participate in its consideration, the District Attorney, as we may suppose, naturally felt the indelicacy of asking any subsequent interference by him, which, under the circumstances, would have been to ask him to do an act of judicial discourtesy.

The Attorney General, in subsequently directing the District Attorney to unite in the motion, was under the impression that it was the ordinary case of an application for a rehearing before the same Judge who rendered the decision. When made acquainted with the circumstances, he directed the postponement of the motion until it could be heard by that officer. In the investigation of the case, the briefs of the special counsel were carefully examined. His first brief was handed by the Clerk to the Circuit Judge the day on which the case was submitted, and the second brief was handed to him on the day of its presentation. Both were retained in his possession until after the decision was rendered and announced in Court. Numerous other briefs bearing upon the question of the existence of a pueblo at the site of the present City of San Francisco upon the cession of the country, were also examined by him, particularly the elaborate brief of Mr. Nathaniel Bennett, late one of the Justices of the Supreme Court of this State; the brief of the late Mr. Edmund Randolph, and the brief of Mr. Horace Hawes, of this city. These briefs were all upon the same side of the question taken by the "special counsel," and are characterized by great ability and learning, and until the appearance of the brief of that gentleman, they were supposed to have exhausted the argument on that side.

These several briefs were received by the Circuit Judge without any indorsement by the Clerk, and are still in his possession. The briefs of Mr. Williams were returned to the office of the Clerk. But as it was generally understood at the time that he was retained by the occupants of "outside lands," and the District Attorney knew of no other authority for his appearance as counsel, the Clerk indorsed upon one of them the reason for not marking it filed, and upon the other brief that it was marked filed by mistake, and left them both in that condition among the papers of the case to be given to the author when called for. His action in this respect was at that time approved by the Circuit Judge. No such injurious suggestion was made, or if made, entertained for a moment—that Mr. Williams was also retained by the United States, and thus had a "divided duty" between the settlers and the Government.

From these indorsements alone the special counsel drew his conclusion that his briefs were suppressed. Upon these indorsements alone, as he stated on the argument of this motion, he made the affidavit that he was "informed and believes" his briefs were suppressed and withheld from the Circuit Judge. His conclusion in this respect was illogical; there is no necessary connection between the indorsements made and the suppression alleged. The indorsements gave no such information as represented.

The subject provokes further comment, but we refrain, and will only observe that it is the first time within our judicial experience that any counsel has had the hardihood to make oath to what must necessarily have been with him only a matter of inference, and assuming his inference to be a fact has proceeded to cast imputations of misconduct upon officers of the Court.

In the opinion rendered in this case, after stating that, by the appeal on the part

of the city, the whole issue was open, the Court said, "But though the whole issue is thus open, the dismissal of the appeal on the part of the United States may very properly be regarded as an assent by the Government to the main facts upon which the claim of the city rests—namely, the existence of an organized pueblo, at the site of the present city, upon the acquisition of the country by the United States on the seventh of July, 1846; the possession by that pueblo of proprietary rights in certain lands; and the succession to such proprietary rights by the City of San Francisco. The District Attorney does not, therefore, deem it within the line of his duty to controvert these positions, but on the contrary, admits them as facts in the case, contending only that the lands appertaining to the pueblo were subject, until by grant from the proper authorities they were vested in private proprietorship, to appropriation to public uses by the former Government, and, since the acquisition of the country, by the United States. He therefore insists upon an exception from the confirmation to the city, of land heretofore reserved or occupied by the Government for public uses, and I do not understand that the counsel of the city objects to an exception of this character."

The views thus expressed of the effect which may justly be given to the dismissal of the appeal of the United States, the special counsel finds inconsistent with the views expressed in the case of *Le Roy vs. Wright*; and the concessions alleged to have been made by the District Attorney he asserts are denied by that officer.

There is no inconsistency in the views expressed in the two cases. In *Le Roy vs. Wright*, certain officers of the army of the United States, acting under orders of the Secretary of War, had taken possession of a tract of land adjoining the premises claimed by the complainant at Black Point, within the city limits, and commenced the erection of fortifications for the protection of the Harbor of San Francisco, and had declared their intention to take like possession of the premises in controversy, and to appropriate them for the erection of barracks and other buildings required in connection with the fortifications. The complainant by his suit sought to restrain such appropriation until compensation to him for the property was previously made. He derived his title under the City of San Francisco, and as evidence that the ownership of the property had been adjudged to the city as the successor of the former pueblo, he produced the decree of the Board of Land Commissioners confirming her claim. As the appeal from this decree on the part of the United States had been dismissed by consent of the Attorney General, he regarded the decree as closing the controversy between the city and the Government as to the land to which the claim was confirmed: and so his counsel contended.

But the Court held that in this view of the case the counsel was mistaken, that, had the city withdrawn her appeal, such result would have followed; but as she continued to prosecute it for an additional quantity beyond that confirmed, the whole issue was opened. The counsel of the United States was therefore allowed to introduce certain documents on file in the office of the Surveyor-General of the United States for California, tending to show that a tract embracing the premises in question, had been excepted and reserved from sale for public purposes, by order of the President, as early as November, 1850; evidence which had been inadvertently omitted when the case was pending before the Board of Land Commissioners. It was not then pretended by counsel or held by the Court, nor has it ever been pretended or held since, that the dismissal of the appeal by the United States was an act without any significance. On the contrary, the dismissal has always

been regarded as an admission by the Government of the main facts upon which the claim of the city rests. The Land Commissioners had adjudged that there was an organized pueblo at the site of the present City of San Francisco; that such pueblo held certain proprietary rights to land; and that the city had succeeded to those rights. The United States said in substance, through their highest legal officer, we admit the correctness of this adjudication; we acknowledge the law and the facts to be as there declared; and we consent that this recognition of the validity of the claim of the city to some lands shall be carried into the decree of the Court. And it was so carried into the decree, and that decree still remains of record in full force. Although on appeal the whole issue be opened, this recognition of the rights of the city does not lose all efficacy as evidence on the new hearing. Admissions once made in a cause are not necessarily excluded from consideration because a second trial of the same issue be had.

The consent of the Government thus remaining on the files of the Court, and being embodied in its decree, the only questions of difficulty in the case necessarily related to the extent and boundaries of the claim of the city, and of the reservations of the Government for public purposes.

In the statement filed by the District Attorney, he mentions that after the case had been submitted, one or more meetings were had at Chambers before the Circuit Judge, and additional testimony put in and discussion had relative to the Government reserves; and that "free conversations took place touching the law and the facts;" that he conceded that by repeated decisions of the Supreme Court of the State, the existence of a pueblo was the settled law; and that in view of this state of the law, in connection with the fact that the appeal on behalf of the United States had been dismissed by the Attorney-General, he neither asked nor desired a reëxamination of the question in this Court.

To this statement we will only add that the understanding of the Circuit Judge of the concessions made by the District Attorney, and of the assent made by the counsel of the city with respect to lands reserved or occupied by the Government for public purposes, was expressed in the paragraph cited above from his opinion. That paragraph was written after the "free conversations" of counsel before him, "touching the law and the facts," and it was read to the District Attorney and to the counsel of the city before the opinion was delivered in Court. Neither of these gentlemen expressed at the time any dissent from its language, or any intimation that the Circuit Judge had misapprehended the concessions, nor was any suggestion made by the District Attorney, until after the opinion was published, that the statement of the concessions was in any particular too broad and comprehensive.

These concessions, however, did not determine the case. They only obviated the necessity of setting forth a detailed statement of the evidence upon which the claim of the city rested. Referring to them the opinion says: "It is unnecessary, therefore, to recite the historical evidence of the existence of a pueblo previous to and at the date of the acquisition of the country at the present site of the City of San Francisco, which is very fully presented in the elaborate opinion filed by the Commission on the rendition of its decision. Since that decision was made the question has been considered by the Supreme Court of the State, and, in an opinion in which the whole subject is examined, a similar conclusion is reached; and if anything were wanting in addition to the arguments thus furnished, it is found in the able and exhaustive brief of the counsel of the city."

The decision was based upon the documentary evidence found in the record, and the action of the officers of the Government after the conquest.

“The documents,” says the opinion, “of undoubted authenticity, to which the opinions and brief of counsel refer, establish beyond controversy the fact that a pueblo of some kind, having an Ayuntamiento composed of Alcaldes, Regidores, and other municipal officers, existed as early as 1834, and that the pueblo continued in existence until and subsequent to the cession of the country. The action of the officers of the United States in the government of the city, and the appointment or election of its magistrates after the conquest, both preceding and subsequent to the treaty of peace, proceeded upon the recognition of this fact; and the titles to property within the limits of the present city, to the value of many millions, rest upon a like recognition.”

We have thus disposed of the main positions upon which the motion rests. The affidavit, it is true, contains several other matters; it details at some length the connection of the special counsel with the case, and it gives an account of communications made to the public journals of the city in relation to the decision of the Court and the brief of counsel, but it is not perceived that these particulars, however interesting in themselves, have any pertinency to the motion presented. The affidavit also attempts to state what the special counsel contended for in his brief, but as this appeared by the brief itself, which was considered by the Court previous to the decision, no information is imparted by the statement.

It follows, that the motion to open the decree and to grant a rehearing must be denied. It only remains to dispose of that part of the motion which asks that the order granting the appeal be vacated. We are disposed to think that a vacation of the order was only desired as a preliminary to the opening of the decree. Of course, if the United States desire the appeal to be withdrawn, their wishes in this respect will be carried out. The order denying the motion generally, will therefore be subject to their right to renew the motion in this particular.

Motion denied.

FIELD,
Circuit Judge.

No. CXXIV.

ORDER ENTERED MAY 11TH, 1865, IN THE CIRCUIT COURT OF THE UNITED STATES REFUSING MOTION TO OPEN DECREE OR GRANT A REHEARING IN THE PUEBLO CASE BUT STAYING THE ENTRY OF FINAL ORDER IN THIS BEHALF, FOR THE PURPOSE OF MODIFYING THE FINAL DECREE.

THE CITY OF SAN FRANCISCO }
vs. }
THE UNITED STATES. }

MAY 11th, 1865.

And now this day appear the parties here by their respective attorneys—Delos Lake, Esq., District Attorney for the United States, and John W. Dwinelle, Esq., and John H. Saunders, Esq., for the City of San Francisco; and thereupon the Court reads its opinion upon the motion heretofore made in this cause to open the decree of the Court confirming the claim of the city, and to grant a rehearing of the cause, and announces its judgment that the said motion be denied. Thereupon

it is suggested to the Court by counsel for parties claiming lands within the four square leagues confirmed, that the decree of this Court, entered on the second of November last, does not embody with entire precision the decision expressed by the opinion of the Court delivered at the time, and that said decree should be modified in some respects in its language, in order to avoid any uncertainty or doubt as to its purport and meaning. It is therefore ordered, the attorneys of the city consenting thereto, that the entry of the order denying said motion be stayed until counsel can be heard for a modification of the said decree, so that a modification, if allowed, may be made at the same time that the order denying said motion is entered.

FIELD,

Circuit Judge.

No. CXXV.

FINAL ORDER OF THE UNITED STATES CIRCUIT COURT DENYING THE MOTION OF THE UNITED STATES TO OPEN, FOR A REHEARING OF THE CASE, THE DECREE CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO TO THE PUEBLO LANDS, BUT ORDERING, FOR WANT OF CONFORMITY OF THE DECREE ENTERED TO THE DECISION EXPRESSED IN THE OPINION FILED AT THE TIME, THAT THE DECREE BE VACATED, AND A NEW DECREE ENTERED. ORDER ENTERED JUNE 18TH, 1865.

THE CITY OF SAN FRANCISCO }
 vs. }
 THE UNITED STATES. }

And now at this day appear the parties hereto by their respective attorneys—De-los Lake, Esq., the District Attorney for the United States, and John W. Dwinelle, Esq., for the city; and thereupon it is ordered and adjudged by the Court, that the motion heretofore made for a rehearing of this cause, the same having been argued, and due deliberation having been had thereon, be and the same is hereby denied.

But inasmuch as it appears to the Court upon reëxamination of the record and opinion filed on the decision of the case, that the decree entered herein on the second day of November, 1864, does not embody with entire precision the decision expressed by the opinion, and should be modified in some respects in its language, so as to avoid any uncertainty or doubt as to its purport and meaning, it is therefore ordered, adjudged, and decreed, that the decree entered in this cause confirming the claim of the City of San Francisco on the second day of November, A.D. 1864, be and the same is hereby vacated, and that in lieu thereof the decree herewith filed be entered as the final decree in the cause.

FIELD,

Circuit Judge.

MAY 18, 1865.

No. CXXVI.

FINAL DECREE CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO TO ITS PUEBLO LANDS, ENTERED MAY 18TH, 1865.

THE CITY OF SAN FRANCISCO }
 vs. }
 THE UNITED STATES. }

The appeal in this case taken by the petitioner, the City of San Francisco, from the decree of the Board of Land Commissioners to ascertain and settle private land claims in the State of California, entered on the twenty-first day of December, 1854, by which the claim of the petitioner was adjudged to be valid, and confirmed to lands within certain described limits, coming on to be heard upon the transcript of proceedings and decision of said Board, and the papers and evidence upon which said decision was founded, and further evidence taken in the District Court of the United States for the Northern District of California pending said appeal—the said case having been transferred to this Court by order of the said District Court, under the provisions of section four of the Act entitled “An Act to expedite the Settlement of Titles to Lands in the State of California,” approved July 1st, 1864—and counsel of the United States and for the petitioner having been heard, and due deliberation had, it is ordered, adjudged, and decreed, that the claim of the petitioner, the City of San Francisco, to the land hereinafter described, is valid, and that the same be confirmed.

The land of which confirmation is made is a tract situated within the County of San Francisco, and embracing so much of the extreme upper portion of the peninsula above ordinary high-water mark (as the same existed at the date of the conquest of the country, namely, the seventh of July, A.D. 1846) on which the City of San Francisco is situated, as will contain an area of four square leagues—said tract being bounded on the north and east by the Bay of San Francisco; on the west by the Pacific Ocean; and on the south by a due east and west line drawn so as to include the area aforesaid, subject to the following deductions, namely: such parcels of land as have been heretofore reserved or dedicated to public uses by the United States; and also such parcels of land as have been by grants from lawful authority vested in private proprietorship, and have been finally confirmed to parties claiming under said grants by the tribunals of the United States, or shall hereafter be finally confirmed to parties claiming thereunder by said tribunals, in proceedings now pending therein for that purpose; all of which said excepted parcels of land are included within the area of four square leagues above-mentioned, but are excluded from the confirmation to the city. This confirmation is in trust, for the benefit of the lot-holders under grants from the Pueblo, Town, or City of San Francisco, or other competent authority, and as to any residue, in trust for the use and benefit of the inhabitants of the city.

FIELD,
 Circuit Judge.

SAN FRANCISCO, May 18th, 1865.

No. CXXVII.

MOTION OF THE RESPECTIVE PARTIES FOR AN APPEAL FROM THE FINAL DECREE OF THE CIRCUIT COURT OF THE UNITED STATES, CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO TO FOUR LEAGUES OF PUEBLO LANDS.

MAY, 18th, 1865.

And the decree aforesaid having been duly entered, the District Attorney moves that an appeal be allowed therefrom on behalf of the United States to the Supreme Court.

And the attorneys of the City of San Francisco, also move that an appeal be allowed on behalf of said city to the Supreme Court from so much of said decree as includes in the estimate of the quantity of four square leagues confirmed, the parcels of land which have been heretofore reserved or dedicated to public uses by the United States, which said motions were taken under advisement by the Court.

No. CXXVIII.

OPINION OF MR. JUSTICE FIELD, OF THE UNITED STATES CIRCUIT COURT, DENYING THE MOTIONS FOR AN APPEAL TO THE SUPREME COURT OF THE UNITED STATES, FROM THE DECREE OF THE CIRCUIT COURT OF THE UNITED STATES, CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO TO FOUR LEAGUES OF PUEBLO LANDS, FILED MAY 29TH, 1865.

THE CITY OF SAN FRANCISCO }
 vs. }
 THE UNITED STATES. }

Both parties to this cause desire to appeal from the final decree entered on the eighteenth instant—the United States from the whole of the decree, and the City of San Francisco from so much of the decree as includes in the estimate of the quantity of four square leagues confirmed, the parcels of land which have been reserved or dedicated to public uses by the United States.

When the appeal from the decree as originally entered on the second of November last was allowed, it was supposed, without examination, that an appeal would lie to the Supreme Court. Since then our attention has been called to the Act of July 1st, 1864, under which the Circuit Court acquired its jurisdiction, and to the fact that it makes no provision for a review of the decisions of the Court.

The jurisdiction of the Supreme Court, under previous Acts of Congress, over the judgments and decrees of the Circuit Court, is limited to a review of final judgments and decrees in cases originally instituted in that Court, or transferred to it from the Courts of the several States, or removed to it by appeal or writ of error from the District Courts of the United States. (The Judiciary Act of Sept.

24th, 1789. Sec. 22, 1 *Statutes at Large*, 73; the Act of March 3d, 1803, in addition to the Judiciary Act, Sec. 2, 1 *Id.*, 244; the Act of July 4th, 1836, to promote the progress of the useful arts, Sec. 17, 5 *Id.*, 117; the Act of July, 1840, in addition to the acts respecting the judicial system of the United States, Sec. 3, 5 *Id.*, 392; the Act of May 31st, 1844, amending the Judiciary Act, 5 *Id.*, 658.)

The Act of March 3d, 1851, to ascertain and settle private land claims in the State of California, does not provide for any consideration by the Circuit Court of cases of this character. The jurisdiction over these cases is by that act vested, in the first instance, in a Board of Commissioners, and afterwards, on appeal from the decision of the Board, in the District Court. From the decrees of the District Court an appeal lies directly to the Supreme Court.

The Act of July 1st, 1864, authorizes a transfer from the District Court to the Circuit Court of cases of this kind, where the District Judge is interested in the land, the claim to which is pending before him, and also where the case affects the title to lands within the corporate limits of any city or town; but it does not confer any right of appeal from the action of the Circuit Court in these cases after they are transferred.

The Supreme Court, by the Constitution, takes its appellate jurisdiction over cases "with such exceptions and under such regulations as the Congress shall make." And the designation by Acts of Congress, of the cases to which this jurisdiction shall extend, has been held to be a legislative declaration, that all other cases are excepted from it.

"When the first Legislature of the Union," says Mr. Chief Justice Marshall, "proceeded to carry the third article of the Constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court. They have not, indeed, made these exceptions in express terms. They have not declared that the appellate power of the Court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it." (*Durousseau vs. The United States*, 6 *Cranch*, 307.) And in illustration of this principle reference is made to the provision of the law which allows a writ of error to a judgment of the Circuit Court, where the matter in controversy exceeds the value of two thousand dollars. "There is no express declaration," says the Chief Justice, "that it will not lie where the matter in controversy shall be of less value. But the Court considers this affirmative description as manifesting the intent of the Legislature to except from its appellate jurisdiction all cases decided in the circuits where the matter in controversy is of less value, and implies negative words."

It follows, therefore, that the appellate jurisdiction of the Supreme Court exists only in those cases in which it is expressly granted. In conformity with this principle, it has been held that such jurisdiction does not extend to final judgments in criminal cases, it not having been conferred by Congress. A question arising in a criminal case can only be brought before the Supreme Court for decision upon a certificate of a division of opinion between the Judges of the Circuit Court. (*Forsyth vs. The United States*, 9 *How.*, 571.) So under the Judiciary Act of 1789, jurisdiction to review a judgment or decree of the Circuit Court, rendered in an action brought before it from the District Court *on writ of error* was denied, as the act only mentioned judgments and decrees brought before the Circuit Court *on*

appeal from the District Court. (United States vs. Goodwin, 7 *Cranch*, 108.) And in *Barry vs. Mercein*, it was decided that under the 22d section of the Judiciary Act, which provides for a review by the Supreme Court of final judgments and decrees of the Circuit Court, where the matter in dispute exceeds the sum or value of two thousand dollars, the appellate power of the Court did not exist unless the matter in dispute was money, or some right, the value of which in money could be calculated and ascertained. In that case the controversy was between parents for the custody and care of their child, a matter, as justly observed; rising superior to all money considerations; yet the Court refused to entertain jurisdiction, observing that there were no words in the law which, by any just interpretation, could be held to authorize it to take cognizance of cases to which no test of money value could be applied; that a similar limitation upon its appellate power existed with reference to judgments in criminal cases, although the liberty or life of the party might depend on the decision of the Circuit Court; and that inasmuch as it could exercise no appellate power unless it was conferred by Act of Congress, the writ of error issued in the case must be dismissed. (5 *How.*, 103.)

From these authorities—and others to the same effect might be cited—it is clear that in the absence of any provision in the Act of July 1st, 1864, giving a right of appeal from the decision of the Circuit Court in the present case, the right does not exist.

Nor is the absence of such provision an oversight on the part of Congress. It is evident, we think, from the general language of the act, and the object sought to be accomplished by it, that it was the intention of the Legislature to give finality to the action of the Circuit Court in the cases transferred to its jurisdiction.

The act was designed, as its name purports, to *expedite* the settlement of titles to land in the State. Great delays and embarrassments were found to exist in determining the location and boundaries of tracts confirmed after the question of title had been adjudicated. The hearing by the District Court of exceptions to surveys returned by the Surveyor-General, interposed by parties possessing or asserting adverse interests, the taking of depositions, the discussion of counsel, and the modifications or new surveys sometimes ordered, necessarily occupied the time usually taken by an ordinary suit at law. Then followed the right of appeal to the Supreme Court from the action of the District Court, not merely by the original contestants to the proceeding, but by third parties intervening, whether adjoining proprietors, purchasers under the original grantee, or persons claiming by preëmption, settlement, or other right under the United States. To obviate the delays and expense necessarily attending proceedings of this character, particularly as occasioned by the appeal to the Supreme Court, and to relieve that tribunal, already burdened by a crowded docket, the act limited its jurisdiction to cases in which appeals were then pending, and vested jurisdiction in the Circuit Court, over cases in which appeals might be subsequently taken. When from the decree of the District Court approving or correcting the survey, no appeal had been taken, "no appeal," says the act, "to that Court shall be allowed, but an appeal may be taken, within twelve months after this act shall take effect, to the Circuit Court of the United States, for California, and said Court shall proceed to fully determine the matter."

Following these provisions is the section which directs that when the District

Judge is interested in any land, the claim to which, under the Act of March 3d, 1851, is pending before him on appeal from the Board of Commissioners, the case shall be transferred to the Circuit Court, "which shall thereupon take jurisdiction and determine the same." The act then proceeds as follows: "The said District Courts may also order a transfer to the said Circuit Court of any other cases arising under said act, pending before them, affecting the title to lands within the corporate limits of any city or town, and in such cases both the District and Circuit Judges may sit."

At the passage of the act there were only two cases pending in the District Courts of California, with reference to which the authority conferred by this last clause could be exercised—the case of the City of San Francisco, and the case of the City of Sonoma, both against the United States. The first case had then been pending in the District Court for over eight years. In the mean time the city had extended in all directions, and interests of vast magnitude had grown up which demanded that the title to the land upon which the city rested should be, in some way, speedily and finally settled. The Land Commissioners had adjudged that the claim of the city was valid within certain described limits. The United States through their highest legal officer, had assented to this adjudication: and the decree of the District Court, declaring its finality as against the Government, had been on record for years, and was then in full force. And by the act itself the United States relinquished whatever right and title they possessed to the land within the charter limits of 1851.

The case of the City of Sonoma had been likewise pending in the District Court on appeal for over eight years. In this case the United States had, through the Attorney-General, signified their assent to a confirmation of the decree of the Board, and the notice of prosecuting the appeal on the part of the city had not been given within the six months prescribed by the Act of Congress.

It was under these circumstances that the law was passed authorizing a transfer of these cases to the Circuit Court. If an appeal from its action had been intended, no beneficial object would have been accomplished by the transfer, for the same delay would follow an appeal from the Circuit Court as would follow an appeal from the District Court. Nor can any reason in that view be assigned for allowing both the District and Circuit Judges, if they desired, to sit in the hearing of these cases.

If the matter were less clear we might yield to the suggestion of counsel, and allow the appeal *pro forma*; but as we have no doubt whatever that our decision is final, our duty is plain. We might with equal propriety sign a citation upon an appeal under the 22d Section of the Judiciary Act, where the matter in dispute is less than the sum or value of two thousand dollars.

The decision not being subject to appeal, the controversy between the city and the Government is closed, and the claim of the city stands precisely as if the United States owned the land and by an Act of Congress had ceded it, subject to certain reservations, to the city in trust for the inhabitants.

Motion to allow an appeal denied.

FIELD,
Circuit Judge.

No. CXXIX.

ORDER ENTERED IN THE CIRCUIT COURT OF THE UNITED STATES DENYING THE MOTIONS FOR APPEALS TO THE SUPREME COURT OF THE UNITED STATES FROM THE DECREE CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO TO FOUR LEAGUES OF PUEBLO LANDS, ENTERED MAY 29TH, 1865.

THE CITY OF SAN FRANCISCO }
 vs. }
 THE UNITED STATES. }

And now at this day appear the parties hereto by their respective attorneys, Delos Lake, Esq., the District Attorney for the United States, and John W. Dwinelle, Esq., and John H. Saunders, Esq., for the City of San Francisco, and thereupon the motions heretofore made by the said parties that an appeal be allowed to them to the Supreme Court of the United States from the decree rendered herein on the eighteenth instant, confirming the claim of the City of San Francisco, having been duly considered, it is ordered, adjudged, and decreed, by the Court, that the same be denied.

FIELD,
 Circuit Judge.

MAY 29th, 1865.

 No. CXXX.

ACT OF CONGRESS OF JULY 1ST, 1864, CEDING TO THE CITY OF SAN FRANCISCO, ALL THE RIGHT, TITLE, AND INTEREST OF THE UNITED STATES IN THE LANDS EMBRACED WITHIN THE CORPORATE LIMITS OF SAID CITY, AS DEFINED BY THE CITY CHARTER OF 1851, FOR THE USES AND PURPOSES SPECIFIED IN THE **VAN NESS ORDINANCE**; AND ALSO AUTHORIZING CLAIMS FOR PUEBLO LANDS TO BE TRANSFERRED FROM THE UNITED STATES DISTRICT COURTS TO THE UNITED STATES CIRCUIT COURTS; AND ALSO REGULATING SURVEYS OF CERTAIN LANDS.

[U. S. Statutes at Large, vol. 13, page 332.]

CHAP. CXCIV.—*An Act to expedite the Settlement of Titles to Lands in the State of California.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever the Surveyor General of California shall, in compliance with the thirteenth section of an act entitled "An Act to ascertain and settle the private land claims in the State of California," approved March third, eighteen hundred and fifty-one, have caused any private land claim

to be surveyed and a plat to be made thereof, he shall give notice that the same has been done by a publication, once a week for four consecutive weeks, in two newspapers, one published in the City of San Francisco, and one published near the land surveyed; and shall retain in his office, for public inspection, the survey and plat until ninety days from the date of the first publication in San Francisco shall have expired; and if no objections are made to said survey, he shall approve the same, and transmit a copy of the survey and plat thereof to the Commissioner of the General Land Office at Washington, for his examination and approval; but if objections are made to said survey within the said ninety days, by any party claiming to have an interest in the tract embraced by the survey, or in any part thereof, such objections shall be reduced to writing, stating distinctly the interest of the objector, and signed by him or his attorney, and filed with the Surveyor General, together with such affidavits or other proofs as he may produce in support of the objections. At the expiration of said ninety days the Surveyor General shall transmit to the Commissioner of the General Land Office at Washington a copy of the survey and plat, and objections, and proofs filed with him in support of the objections, and also of any proofs produced by the claimant and filed with him in support of the survey together with his opinion thereon; and if the survey and plat are approved by the said Commissioner, he shall indorse thereon a certificate of his approval. If disapproved by him, or if, in his opinion, the ends of justice would be subserved thereby, he may require a further report from the Surveyor General of California, touching the matters indicated by him, or proofs to be taken thereon, or may direct a new survey and plat to be made. Whenever the objections are disposed of, or the survey and plat are corrected, or a new survey and plat are made in conformity with his directions, he shall indorse upon the survey and plat adopted his certificate of approval. After the survey and plat have been, as hereinbefore provided, approved by the Commissioner of the General Land Office, it shall be the duty of the said Commissioner to cause a patent to issue to the claimant as soon as practicable after such approval.

SEC. 2. *And be it further enacted*, That the provisions of the preceding section shall apply to all surveys and plats by the Surveyor General of California heretofore made, which have not already been approved by one of the District Courts of the United States for California, or by the Commissioner of the General Land Office: *provided*, that where proceedings for the correction or confirmation of a survey are pending on the passage of this act in one of the said District Courts, it shall be lawful for such District Court to proceed and complete its examination and determination of the matter, and its decree thereon shall be subject to appeal to the Circuit Court of the United States for the district in like manner, and with like effect as hereafter provided for appeals in other cases to the Circuit Court; and such appeals may be in like manner disposed of by said Circuit Court.

SEC. 3. *And be it further enacted*, That where a plat and survey have already been approved or corrected by one of the District Courts of the United States for California, and an appeal from the decree of approval or correction has already been taken to the Supreme Court of the United States, the said Supreme Court shall have jurisdiction to hear and determine the appeal. But where from such decree of approval or correction, no appeal has been taken to the Supreme Court, no appeal to that Court shall be allowed, but an appeal may be taken, within twelve months after this act shall take effect, to the Circuit Court of the United States for California, and said Circuit Court shall proceed to fully determine the matter.

The said Circuit Court shall have power to affirm, or reverse, or modify the action of the District Court, or order the case back to the Surveyor General for a new survey. When the case is ordered back for a new survey, the subsequent survey of the Surveyor General shall be under the supervision of the Commissioner of the General Land Office, and not of the District or Circuit Court of the United States.

SEC. 4. *And be it further enacted*, That whenever the District Judge of any one of the District Courts of the United States for California is interested in any land, the claim to which, under the said act of March third, eighteen hundred and fifty-one, is pending before him, on appeal from the Board of Commissioners created by said act, the said District Court shall order a case to be transferred to the Circuit Court of the United States for California, which Court shall thereupon take jurisdiction and determine the same. The said District Courts may also order a transfer to the said Circuit Court of any other cases arising under said act, pending before them, affecting the title to lands within the corporate limits of any city or town, and in such cases both the District and Circuit Judges may sit.

SEC. 5. *And be it further enacted*, That all the right and title of the United States to the lands within the corporate limits of the City of San Francisco, as defined in the act incorporating said city, passed by the legislature of the State of California, on the fifteenth of April, one thousand eight hundred and fifty-one, are hereby relinquished and granted to the said city and its successors, for the uses and purposes specified in the ordinances of said city, ratified by an act of the legislature of the said State, approved on the eleventh of March, eighteen hundred and fifty-eight, entitled "An Act concerning the City of San Francisco, and to ratify and confirm certain ordinances of the common council of the city," there being excepted from this relinquishment and grant all sites or other parcels of lands which have been, or now are, occupied by the United States for military, naval, or other public uses, or such other sites or parcels as may hereafter be designated by the President of the United States, within one year after the rendition to the General Land Office, by the Surveyor General, of an approval plat of the exterior limits of San Francisco, as recognized in this section, in connection with the lines of the public surveys: *and provided*, That the relinquishment and grant by this act shall in no manner interfere with or prejudice any *bona fide* claims of others, whether asserted adversely under rights derived from Spain, Mexico, or the laws of the United States, nor preclude a judicial examination and adjustment thereof.

SEC. 6. *And be it further enacted*, That it shall be the duty of the Surveyor General of California to cause all the private land claims finally confirmed to be made, whenever requested by the claimants: *provided* that each claimant requesting a survey and plat shall first deposit in the District Court of the district within which the land is situated a sufficient sum of money to pay the expenses of such survey and plat, and of the publication required by the first section of this act. Whenever the survey and plat requested shall have been completed and forwarded to the Commissioner of the General Land Office, as required by this act, the District Court may direct the application of the money deposited, or so much thereof as may be necessary, to the payment of the expenses of said survey and publication.

SEC. 7. *And be it further enacted*, That it shall be the duty of the Surveyor General of California, in making surveys of the private land claims finally confirmed, to follow the decree of confirmation as closely as practicable whenever

such decree designates the specific boundaries of the claim. But when such decree designates only the out-boundaries within which the quantity confirmed is to be taken, the location of such quantity shall be made, as near as practicable, in one tract and in a compact form. And if the character of the land, or intervening grants, be such as to render the location impracticable in one tract, then each separate location shall be made, as near as practicable in a compact form. And it shall be the duty of the Commissioner of the General Land Office to require a substantial compliance with the directions of this section before approving any survey and plat forwarded to him.

SEC. 8. *And be it further enacted*, That the act entitled "An act to amend an act entitled 'An act to define and regulate the jurisdiction of the Disirict Courts of the United States in California, in regard to the survey and location of confirmed private land claims,'" approved June fourteen, eighteen hundred and sixty, and all provisions of law inconsistent with this act, are hereby repealed.

Approved, July 1, 1864.

No. CXXXI.

GOVERNMENT RESERVES

LAI D OUT AT RINCON POINT, AND FROM THE BEACH AND WATER LOTS GRANTED TO THE TOWN OF SAN FRANCISCO, BY GEN. S. W. KEARNY, MILITARY GOVERNOR OF CALIFORNIA, AS SET FORTH, ANTE, ADDENDA NO. LXXII, p. 104.*

No. I.

[*Colonel Mason, Military Governor of California, by Lieutenant (now Major General) W. T. Sherman, to Major James A. Hardie, U. S. A., commanding at San Francisco, June 23d, 1847.*

HEAD QUARTERS 10TH MILITARY DEPARTMENT, }
 Monterey, Cal., June 23d, 1847. }

SIR: Colonel Mason has not yet officially learned that any selections have been made of lots in the town of San Francisco, known as the Beach and Water Lots, granted to the said town for sale, excepting such as should be selected for the use of the General Government, by the Senior Officer of the Army and Navy.

*These "GOVERNMENT RESERVES" are wholly different from the "GOVERNMENT RESERVATIONS" referred to in the preceding ADDENDA No. CXII, page 221. Why one class of lands retained by the superior authority for future use or disposition, should be called "Reserves," and another class denominated "Reservations," it is difficult to conceive; but it is in fact convenient in use that "Reserves" are known at once to point to Kearny's grant for their origin, while the "Reservations" claim their validity from the act of the President.

The time of sale, under the decree of General Kearny, of March 10th, 1847, renders it necessary that the selection be made soon, and Colonel Mason wishes you to consult with Commander Biddle, or other senior naval officers that may be on the station, and to select in accordance with the terms of the grant, if it has not already been done, the lots best suited for wharves, both for army and navy purposes, with space enough for all the buildings that it may become necessary to erect hereafter.

A suitable lot should also be selected for a Custom House, with the storehouses thgt it may require.

Colonel Mason wishes these selections to be made, so far as the army is concerned, and officially communicated to the Alcalde of the town, before the day of sale.

I have the honor to be your most ob't serv't,

(Signed)

W. T. SHERMAN,

1st Lt. 3d Art'y, A. A. A. Gen'l.

Major James A. Hardie, com'd in San Francisco.

A true copy.

E. D. TOWNSEND,

Ass't adj't Gen'l, Head Qrs. Dept. of the Pacific,
San Francisco, December 9th, 1853.

No. II.

[Major James A. Hardie, U. S. A., commanding at San Francisco, to Alcalde of San Francisco, July 18th, 1847.]

HEAD QUARTERS WAR, MIL. DEP'TM'T, }
San Francisco, California, July 18th, 1847. }

SIR: In obedience to orders from His Excellency, the Governor, Col. R. B. Mason, I have the honor to inform you that I have selected for the use of the Government the following lands in the town of San Francisco: All the portion of Rincon Point not divided off into lots, and marked "Government Reserve," upon a map entitled, "Map of the Beach and Water Lots of San Francisco, A. D. 1847," now in the Alcalde's Office, of San Francisco. On the map referred to, and now remaining of record in the office of the Surveyor of the City and County of San Francisco, all that portion of RINCON POINT lying east of Beale Street, and south of Folsom Street, and bounded by the tide waters of the Bay of San Francisco, is laid out and marked as "GOVERNMENT RESERVE," and is not laid out or divided into lots; also, all the Beach and Water Lots, bounded by streets entitled Montgomery, Washington, and Jackson streets, on a map entitled "Map of San Francisco," now in the Alcalde's office, and the Bay, running out to deep water, and marked on the aforesaid Map of Beach and Water Lots, "Government Reserve;" and also all the Beach and Water Lots bounded by streets entitled Sansome, Broadway, and Pacific streets, on the aforesaid Map of San Francisco, and the Bay, running out to deep water, and marked "Government Reserve," on the aforesaid Map of the Beach and Water Lots of the Town of San Francisco.

I am, Sir, very respectfully,

Your ob't serv't,

(Signed)

JAS. A. HARDIE,

Major 1st N. Y. Regt. Vols.

To Alcalde of the Town of San Francisco, Cala.

I certify that the foregoing is a true copy of the original paper, now in my possession.

(Signed)

E. D. SAWYER,

Capt. 3d Arty.

Presidio of San Francisco, July 10th, 1852.

No. III.

[*The Military Governor of California (General Bennett Riley) disapproves of a proposed lease of some of the "Government Reserves" to Steinberger, and returns the same with instructions as to future leases. Nov. 16th, 1849.*]

HEAD QUARTERS 10TH MIL'Y DEPT.,
Monterey, Cal., November 16th, 1849. }

CAPTAIN: After consultation yesterday with the Collector for the District of California, the Commanding General was satisfied that the lot reserved in your lease with Mr. Steinberger will be entirely insufficient for Custom House purposes at San Francisco; he has accordingly directed the transfer to the Treasury Department of so much of the reservation at that place as may be required for these purposes. In conversation with Mr. Collier a lot double the size (or two hundred feet square) of that reserved in the lease was deemed the least that would be sufficient for the Custom House at San Francisco, and you are desired to call upon the Collector, and accompany him wherever he thinks proper to make the selection. After this selection is made you are directed to lease the remainder of the Government Reservations, at San Francisco, to a responsible individual or individuals, upon the conditions expressed in the enclosed paper.

You will see by these conditions that the length of the lease was deemed objectionable, as was also the amounts for which the land was leased. This last consideration, however, is of subordinate importance to that of leasing the land to individuals who are perfectly responsible, and act in good faith towards the United States; but it will be proper to obtain as great a consideration as may be consistent with the fulfilment of the conditions above referred to.

The lease of Mr. Steinberger is returned herewith.

Very respectfully, Captain,

Your obed't servant,

(Signed)

ED. M. CANBY,

Asst. Adj. Genl.

To Captain E. D. Keyes, commanding Presidio of San Francisco.

NOTE.—Applications have been made at different times for the lease of the Government Reservations by individuals or companies, in San Francisco. They have been heretofore informed that it was not the intention of the Commanding General to lease any particular portion of them until the action of the Government at home, in relation thereto, was made known.

So far as is now recollected these applications were from Messrs. Wright & Co., De Witt & Harrison, Mr. Shillaber, and the General thinks it proper that his instructions to lease these lands should be made known to those persons, and offers from them and from other individuals invited. He entertains no doubt that these lands may be leased upon the conditions prescribed in the within paper, for at least four hundred or five hundred dollars per annum.

(Signed)

Very respectfully,

ED. M. CANBY,

Asst. Adj. Genl.

I certify the above and foregoing to be a true copy.

W. W. MACKALL,
A. A. Genl.

No. IV.

[Accompanying preceding Letter.]

CONDITIONS FOR THE GOVERNMENT OF CAPT. E. D. KEYES, 3D ARTILLERY,
IN LEASING THE GOVERNMENT RESERVATIONS, AT SAN FRANCISCO.

1st. The indenture to be made in the name of the United States, by its agent, the consideration to be paid to him or his successor.

2d. The lease will terminate definitely at the expiration of five (5) years.

3d. The United States reserves the right to terminate the lease at any time after the expiration of two (2) years by giving to the lessee, or lessees, one (1) year's notice.

4th. The United States reserves the right to re-occupy, for Government purposes, any unoccupied portion of the lands so leased, by giving to the lessee, or lessees, six (6) months' notice. In which case a proportional diminution may be made in the amount of the rent. This diminution to be fixed by appraisers appointed in a manner to be specified in the contract.

5th. The acquisition and surrender to the United States, by the lessee, of all titles and claims to said lands, held by other individuals, unless it should be decided by the proper tribunals that they are *bona fide* and valid.

6th. The payment by the lessee, or lessees, of all taxes and assessments.

7th. The lessee, or lessees, engage honestly and faithfully to defend the title of the United States to all lands embraced in the indenture.

8th. In default of the payment, within any one year, of the stipulated rent, the rents of the lessee to cease, and the whole of the lands included in the indenture to be surrendered to the United States.

9th. The lessee to have the right to remove, within three (3) months after the expiration of his lease, all his buildings, etc.

10th. The Government shall have the right to purchase of the lessee, at the expiration of his lease, any of his buildings, at a fair valuation, to be fixed by appraisers appointed in a manner to be prescribed by the lease.

11th. No allowance to be made by the Government for any excavations or embankments, or other improvements put upon the premises.

12th. The lessee to stipulate that no person or persons whatsoever shall be allowed to participate in the use or profits of the said premises, who do not fully, and without reservation or predisposition of his claim, subscribe to all the conditions and exceptions of this lease.

By order of Genl. Riley.

No. V.

[Leases made by Captain E. D. Keyes, U. S. A., on behalf of the United States, under the preceding instructions.]

1st. A lease to JOHN B. STEINBERGER, dated November 27th, 1849, for ten years from date, under certain conditions therein expressed, of all those lots, parcels, and

blocks of ground, in the said town of San Francisco, known and indicated on the map of said town as Government Reserve, "which are embraced between Broad Street, on the north, Pacific Street, on the south, and on the east by the limits of the town on the side of the water:" acknowledged before John W. Geary, First Alcalde, November 28th, 1849, and of record in the Recorder's Office of the City and County of San Francisco, in Book 1, of Leases, at page 302.

2d. A lease to THEODORE SHILLABER, dated November 28th, 1849, for ten years from date, under certain conditions therein expressed, of "all the lots, parcels, and blocks of ground, in the town of San Francisco, Upper California, which have hitherto been set apart, indicated, or known as 'Government Reserve,' and which are embraced, *first*, by Montgomery Street, on the west, Jackson Street, on the north, Washington Street, on the south, and the limits of the town, or deep water, on the east: and *second*, by what is commonly known and indicated on the map of said town as 'Rincon Point;' the second piece or parcel of land embracing all that has heretofore been set apart as Government Reserve, on 'Rincon Point,' and its immediate neighborhood:" acknowledged before John W. Geary, November 29th, 1849; approved by Governor Riley, December 20th, 1849; recorded in Alcalde's Office, in Book K, at page 10, December 28th, 1849, and approved (no date of approval) by Alex. H. H. Stuart, Secretary of the Interior.

No. VI.

ON DECEMBER 10TH, 1852, THE COMMON COUNCIL OF THE CITY OF SAN FRANCISCO PASSED THE FOLLOWING ORDINANCE:

ORDINANCE NO. 280.

FOR CONVEYING CERTAIN LOTS TO THE GOVERNMENT OF THE UNITED STATES.

The People of the City of San Francisco, do ordain as follows:

That his Honor the Mayor be directed to convey, on their behalf, all their right, title, and interest to certain six fifty vara lots, bounded and described as follows: On the east by Spear Street, on the south by Harrison Street, on the west by Front Street, and north by the beach, the whole comprehended within an area of one hundred varas by one hundred and fifty varas.

J. P. HAVEN,

President Board of Aldermen.

JAS. DELONG,

President of the Board of Assistant Aldermen.

SAN FRANCISCO, December 10th, 1852.

Approved.

C. J. BRENHAM, Mayor.

MAYOR'S OFFICE, December 9th, 1852.

I hereby certify the foregoing to be a true copy of an original Ordinance now on file in this office.

DANIEL S. ROBERTS, Clerk.

And in pursuance of the preceding Ordinance, the Hon. Chas. J. Brenham, Mayor of the City of San Francisco, afterwards executed and delivered to the United States the following deed of conveyance:

CITY OF SAN FRANCISCO,
 By C. J. Brenham, Mayor,
 to
 UNITED STATES OF AMERICA.

Whereas, by Ordinance No. 280, of the Common Council of the City of San Francisco, it was ordained as follows; "The People of the City of San Francisco do ordain as follows—That his Honor the Mayor be directed to convey on their behalf to the United States all their right, title, and interest in and to certain six fifty-vara lots bounded and described as follows: On the east by Spear Street, on the south by Harrison Street, on the west by Front Street, and on the north by the beach, the whole comprehended within an area of one hundred varas by one hundred and fifty varas."

Now, therefore, this deed made and entered into this eleventh day of December, eighteen hundred and fifty-two, by and between the City of San Francisco by Charles J. Brenham the Mayor thereof, party of the first part, and the United States of America, party of the second part—

Witnesseth, that for and in consideration of the premises and of the sum of one dollar to the party of the first part in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said party of the first part doth by these presents grant, convey, and quitclaim unto the said party of the second part, all the right, title, interest, claim, and demand, legal or equitable, in possession, remainder or reversion, of the said party of the first part in and to the premises aforesaid, and every part thereof, which premises are situated and being within the corporate limits of said city, and are bounded and described as set forth in said Ordinance.

To have and to hold the said premises with all the privileges and appurtenances thereunto belonging unto the said party of the second part forever.

In witness whereof, the said Charles J. Brenham, Mayor of said City, on behalf of said city, hath hereunto set his hand and caused the Official Seal of said city to be hereunto affixed the day and year aforesaid.

[L.S.]

C. J. BRENHAM, Mayor.

I hereby certify that the copy of Ordinance No. 280 included within the foregoing deed, is a true copy of an original Ordinance returned by the Mayor to the Common Council, with his approval, December 10th, 1852.

SAN FRANCISCO, Dec. 13th, 1852.

EDWARD TOBY,
 Clerk of the Common Council.

STATE OF CALIFORNIA,
 County of San Francisco, } ss.

On this fourteenth day of December, 1852, personally appeared before me, Fred'k A. Sawyer, a Notary Public for said county, Charles J. Brenham, Mayor of the City of San Francisco, and Edward Toby, Clerk of the Common Council of said City, to me known to be the individuals described in and who executed the several instruments above to which their names are subscribed, and acknowledged

to me that they executed the same freely and voluntarily and for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and seal of office the day and year last above written.

[L.S.]

F. A. SAWYER, Notary Public.

The above is a true copy of the original, recorded at the request of T. B. King, December 14th, 1852, 12 o'clock, M.

THOS. B. RUSSUM, County Recorder.

In *Hubbard vs. Sullivan*, case No. 7,953, in the Twelfth District Court, in and for the City and County of San Francisco, and afterwards appealed to the Supreme Court and reported in 18 Cal. Rep. 508, it was held that the preceding instrument was effectual as a license from the City of San Francisco to enter upon and hold the lands described in and purporting to be conveyed by it. Whether it was operative as a conveyance, or whether the Van Ness Ordinance operated in favor of the United States, was not decided; nor do any objections appear to have been made to the substantive form of the instrument, or to its mode of execution.

FINAL NOTE.—In two ejectment suits, of *Rogers vs. Hentsch et al.*, brought for the recovery of the two fifty-vara lots respectively situated on the south-west and north-west corners of Jackson and Montgomery streets, in the City of San Francisco, and tried in the United States Circuit Court for the Northern District of California, before Mr. Justice Field, in 1864, Jasper O'Farrell, a witness for defendants, testified that he was Official Surveyor for the Pueblo of San Francisco, in 1847; that he prepared an official map of the Beach and Water Lots of San Francisco, for the town sale of the same had under Kearny's Grant, being the map so designated, bearing his official attestation, and produced from the office of the Surveyor of the City and County of San Francisco, where it now remains of record, and that the line of ordinary high-water mark, being the wavy line laid down on that map, was established by him after repeated and careful observations of the ordinary tides. There is much other testimony in these cases on the subject of "ordinary high-water mark," which is interesting and curious, particularly as to the effect of a concurrence of a spring tide with a south-easter; and this testimony of Mr. O'Farrell must always be considered as admissible and decisive on the point of "ordinary high-water mark." See *Norton vs. Folger*, 15 Cal. 275, etc.

The above documents and leases, respecting the "Government Reserves," will be found in full, together with much valuable testimony in reference to them, in the cases of *The People, ex rel. Burr, vs. Dana et al.*, No. 6,070, and of *Blanc vs. Bowman*, No. 6,408, in the Fourth District Court, County of San Francisco, State of California. They are reported in 22 California Reports, at pages 11 and 22 respectively; but the reports there given do not contain much of the testimony introduced in the Court below.

NO. CXXXII.

AN ACT TO PROVIDE FOR THE DISPOSITION OF CERTAIN PROPERTY OF THE STATE OF CALIFORNIA, PASSED MARCH 26, 1851, (LAWS 1851, CH. 41, PAGE 307) COMMONLY CALLED

THE FIRST WATER-LOT BILL.

An Act to provide for the Disposition of certain Property of the State of California.
Passed March 26th, 1851.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. All the lots of land situated within the following boundaries, according to the survey of the City of San Francisco, and the map or plat of the same now on record in the office of Recorder of the County of San Francisco, are known and designated in this Act as the San Francisco Beach and Water-Lots; that is to say, beginning at the point where the eastern line of Simmons Street intersects the southern boundary line of the city; thence northerly on the eastern line of Simmons Street, to the southern line of South Street; thence easterly on the southern line of South Street to a point three hundred and seventy-five feet easterly from Simmons Street; thence at right angles to South Street, northerly to the eastern line of Hubbel Street; thence easterly on the line of Hubbel Street, two hundred and seventy-five feet; thence northerly at right angles to Hubbel Street, to the southern side of Hooper Street; thence easterly on the southern line of Hooper Street, to the eastern line of Fifth Street; thence northerly on the eastern line of Fifth Street, to the southern line of Channel Street; thence easterly on the southern line of Channel Street to the eastern line of Third Street; thence northerly on the eastern line of Third Street, to the southern line of Berry Street; thence easterly on the southern line of Berry Street, to the eastern line of Second Street; thence northerly on the eastern line of Second Street, to the southern line of King Street; thence easterly on the southern line of King Street three hundred and seventy-five feet; thence northerly at right angles to King Street, to the southern line of Townsend Street; thence easterly on the southern line of Townsend Street, to the eastern line of First Street; thence northerly on the eastern line of First Street, to the southern line of Brannan Street; thence easterly on the southern line of Brannan Street, to the eastern line of Beal Street; thence northerly on the eastern line of Beal Street to the southern line of Bryant Street; thence easterly on the southern line of Bryant Street, to the eastern line of Spear Street; thence northerly on the eastern line of Spear Street, to a point within one hundred and thirty-seven and one-half feet of the southern side of Harrison Street; thence easterly at right angles to Harrison Street, to the eastern side of Stuart Street; thence northerly on the eastern line of Stuart Street, to the southern line of Folsom Street; thence easterly on the southern line of Folsom Street, to the eastern line of East Street; thence northerly on the eastern line of East Street, to its point of intersection with the northern side of Jackson Street;

thence northerly at right angles with the northern side of Jackson Street, to the northern line of Pacific Street; thence westerly along the northern side of Pacific Street, to the eastern line of Davis Street; thence northerly along the eastern line of Davis Street, to the northern line of Vallejo Street; thence westerly along the northern line of Vallejo Street, to the eastern line of Front Street; thence northerly on the eastern line of Front Street, to the northern line of Greenwich Street; thence easterly on the northern line of Greenwich Street, to the eastern line of Battery Street; thence northerly on the eastern side of Battery Street, to the northern line of Lombard Street; thence westerly on the northern line of Lombard Street, to the eastern line of Sansome Street; thence northerly on the eastern line of Sansome Street, to the northern line of Chestnut Street; thence westerly on the northern line of Chestnut Street, to the eastern line of Montgomery Street; thence northerly on the eastern line of Montgomery Street, to the northern line of Francisco Street; thence westerly on the northern line of Francisco Street, to the eastern line of Kearny Street; thence northerly on the eastern line of Kearny Street, to the northern line of North Point Street; thence westerly on the northern line of North Point Street, to the east line of Dupont Street; thence northerly on the eastern line of Dupont Street, to the northern line of Beach Street; thence westerly on the northern line of Beach Street, to the eastern line of Powell Street; thence northerly on the eastern line of Powell Street, to the northern line of Jefferson Street; thence westerly on the northern line of Jefferson Street, to the western line of Larkin Street; thence following the line of ship's channel to the western boundary line of said city; thence southerly along the western boundary line of said city, to the natural high-water mark; thence along the line of the said high-water mark, to its point of intersection with the southern boundary line of said city; thence easterly along the southern boundary line of said city, to its point of intersection with the eastern line of Simmons Street, being the place of beginning.

§ 2. The use and occupation of all the land described in the first section of this act is hereby granted to the City of San Francisco, for the term of ninety-nine years from the date of this Act; except as hereinafter provided, all the lands mentioned in the first section of this act, which have been sold by authority of the Ayuntamiento, or town, or City Council, or by any Alcalde of the said town or city, at public auction in accordance with the terms of the grant known as Kearny's grant to the City of San Francisco; or which have been sold or granted by any Alcalde of the said City of San Francisco, and confirmed by the Ayuntamiento, or town, or city Council thereof, and also registered or recorded in some book of record now in the office, or custody, or control, of the Recorder of the Court of San Francisco, on or before the third day of April, A.D. one thousand eight hundred and fifty, shall be and the same are hereby granted and confirmed to the purchaser or purchasers or grantees aforesaid, by the State relinquishing the use and occupation of the same and her interests therein to the said purchasers or grantees and each of them, their heirs and assigns, or any person or persons holding under them, for the term of ninety-nine years from and after the passage of this Act: *Provided*, that the City of San Francisco shall pay into the State Treasury twenty-five per cent. of all moneys hereafter arising in any way from the sale or other disposition of the property described in the first section of this Act; the same to be paid within twenty days after its receipt by said city. The property known as the Government Reservation is exempt from the operation of

this Act; except that any estate held by virtue of any lease or leases, executed or confirmed by any officer of the United States on behalf of the same, shall be and the same are hereby granted and confirmed to the lessees thereof, and the written instrument whereby such lease or leases was made shall, in all actions brought by the lessees for the recovery of the lands so demised, be sufficient evidence of title and possession to enable the plaintiff to recover.

§ 3. That the original deed, or other written or printed instruments of conveyance, by which any of the lands mentioned in the first section of this Act were conveyed or granted by such Common Council, Ayuntamiento, or Alcalde; and in case of its loss, or not being within the control of the party, then a record copy thereof or a record copy of the material portion thereof, properly authenticated, may be read in evidence in any Court of Justice in this State, upon the trial of any cause in which the contents of the same may be important to be proved, and shall be *prima facie* evidence of title and possession, to enable the plaintiff to recover the possession of the land so granted.

§ 4. That the boundary line described in section first of this Act, shall be and remain a permanent water front of said city; the authorities of which shall keep clear and free from all obstructions whatsoever the space beyond said line, to the distance of five hundred yards therefrom.

§ 5. The City of San Francisco shall, within thirty days after the passage of this Act, deposit in the office of the Secretary of State of California, and in the office of the Surveyor General of this State, and in the office of the Surveyor of the City of San Francisco, a correct map of said boundary line mentioned in section one of this Act, distinctly and properly delineated by a red line; said maps to be duly certified to by the Mayor and Surveyor of said city, and under the official seal of said city.

§ 6. Nothing in this Act shall be construed as a surrender by the State of its right to regulate the construction of Wharves or other improvements, so that they shall not interfere with the shipping and commercial interests of the Bay and Harbor of San Francisco.

NO. CXXXIII.

AN ACT IN RELATION TO THE CITY OF SAN FRANCISCO, PASSED
MAY 1ST, 1851, (LAWS 1851, CH. 44, p. 311) COMMONLY CALLED

THE SECOND WATER LOT BILL.

AN ACT IN RELATION TO THE CITY OF SAN FRANCISCO.

*The People of the State of California, represented in Senate and Assembly, do enact
as follows:*

SECTION 1. The City of San Francisco is hereby authorized and empowered to construct wharves at the end of all the streets, commencing with the Bay of San Francisco, the wharves to be made by the extension of said streets into the Bay, in their present direction, not exceeding two hundred yards beyond the present

outside line of the beach and water lots, and the City is authorized to prescribe the rates of wharfage that shall be collected on said wharves when constructed. The space between said wharves, when they are extended, which is situated outside of the outer line of beach and water lot property, as defined by the Legislature, shall remain free from obstructions, and be used as public slips for the accommodation and benefit of the general commerce of the City and State.

SEC. 2. The right of the State to the Beach and Water Lot Property in the City of San Francisco is hereby relinquished to said City: *Provided, always*, that the relinquishment to the City is made upon the express conditions that said City shall confirm the titles to all lots which have been granted by any Justice of the Peace; which lots are situated on that part of the Kearny grant which is within the following boundaries, to wit: bounded on the north by Vallejo Street, on the south by Harrison Street, on the east by the easterly boundary of said beach and water lots as defined by the Legislature, and on the westerly side by Front and Fremont Streets; said grants shall be, and the same are hereby confirmed and made evidence of title in all Courts of this State, and holders under them shall have possession of said property so granted: *Provided, always*, that this Act shall not be construed as confirming grants to the property known as the Public Slip, bounded by Davis, Clay, and Sacramento streets, nor to any property the title or lease to which has been confirmed to individuals by any former Act of the Legislature; and said grant must have been recorded in the Recorder's office prior to the first day of February, one thousand eight hundred and fifty-one.

[REPEALED, Laws 1853, Chap. XXIV, p. 36.]

NO. CXXXIV.

ACT OF THE LEGISLATURE OF CALIFORNIA PASSED MAY 1ST, 1851, TO CONFIRM A CONTRACT FOR BUILDING PACIFIC STREET WHARF, BETWEEN THE COMMISSIONERS OF THE FUNDED DEBT AND M. R. ROBERTS AND JOSEPH R. WEST.

[Laws 1851, Chap. 40, page 313.]

AN ACT TO CONFIRM CERTAIN CONTRACTS OF THE COMMISSIONERS OF THE SINKING FUND OF THE CITY OF SAN FRANCISCO FOR THE BUILDING OF BROADWAY AND PACIFIC STREET WHARVES, Passed May 1st, 1851.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. The contracts severally entered into on the thirteenth day of February, Anno Domini eighteen hundred and fifty-one, between the Commissioners of the Sinking Fund of the City of San Francisco and Francis Salmon, for the construction of a wharf at the foot of Broadway, and between said Commissioners and M. R. Roberts and Joseph R. West, for the building of a wharf at the foot of Pacific Street, are hereby ratified and confirmed.

§ 2. No lien or claim or judgment upon the wharves specified in the first section of this act shall be invalidated or affected in any manner by the passage of this Act. Nothing in this Act shall allow the said wharves to be constructed beyond the line of East Street.

NO. CXXXV.

ACT OF THE LEGISLATURE OF CALIFORNIA, PASSED APR. 28TH, 1851, TO CONFIRM A CONTRACT FOR BUILDING MARKET STREET WHARF AND CALIFORNIA STREET WHARF, BETWEEN THE COMMISSIONERS OF THE FUNDED DEBT, H. A. BREED, AND WILLIAM E. DENNIS.

[Laws 1851, Chap. 52, page 315.]

AN ACT TO RATIFY AND CONFORM A CONTRACT ENTERED INTO ON THE TWENTY-EIGHTH DAY OF MARCH, A.D. EIGHTEEN HUNDRED AND FIFTY-ONE, BETWEEN THE COMMISSIONERS OF THE SINKING FUND OF THE CITY OF SAN FRANCISCO AND HENRY A. BREED AND WILLIAM E. DENNIS, FOR THE CONSTRUCTION OF MARKET STREET WHARF, AND CALIFORNIA STREET WHARF, Passed April 28th, 1851.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

§ 1. That a contract entered into on the twenty-eighth day of March, eighteen hundred and fifty-one, by the Commissioners of the Sinking Fund for the City of San Francisco, of the one part, and Henry A. Breed and William E. Dennis, in relation to the construction of Market Street Wharf be, and the same is hereby ratified and confirmed in all its provisions.

 No. CXXXVI.

FIRST ACT FOR SALE OF STATE'S INTEREST IN SAN FRANCISCO WATER FRONT OF MAY 18TH, 1853.

AN ACT TO PROVIDE FOR THE SALE OF THE INTEREST OF THE STATE OF CALIFORNIA IN THE PROPERTY WITHIN THE WATER-LINE FRONT OF THE CITY OF SAN FRANCISCO, AS DEFINED IN AND BY THE ACT ENTITLED "AN ACT TO PROVIDE FOR THE DISPOSITION OF CERTAIN PROPERTY OF THE STATE OF CALIFORNIA," PASSED MARCH TWENTY-SIXTH, ONE THOUSAND EIGHT HUNDRED AND FIFTY-ONE.

[Laws of 1853, Chap. CLX, page 219.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Governor of the State shall, by and with the advice and consent of the Senate, appoint five persons as Commissioners, who shall hold their offices for two years, and shall have the charge and disposition of the property, and interests of property of the State of California, in the City of San Francisco, situated within the water-line front as mentioned and described in section five of this act.

SEC. 2. Each of the said Commissioners shall, within ten days after his appointment and confirmation by the Senate, take the oath of office, as prescribed by law, before a Judge of the Supreme Court or any District Court, and shall further take the following oath or affirmation: "I, A B, solemnly swear [or affirm] that I am not interested directly or indirectly, by or for myself or any other, in any property or interests of property, of the State of California, within the limits of the City of San Francisco, nor in any property sold, or to be sold under or by virtue of the act under which I am appointed, nor in any property or advantages (except my official salary as fixed by law) to result from the administration of my office, or the office of my associate Commissioners, and that I will not be so interested during my term of office." Said oath shall be indorsed in writing upon a copy of the commission of each Commissioner, and such copy and oath shall be filed in the office of the Secretary of State. A violation of the above oath in any of its parts, or any other violation of duty in office, shall be a felony, for which the person offending shall be punished by fine, not less than five thousand dollars nor more than fifty thousand dollars, and by imprisonment in the State Prison not less than six months nor more than three years. Upon probable cause the Governor may remove any Commissioner and fill the vacancy, as in other cases according to law.

SEC. 3. The said Commissioners shall, within five days after having been sworn in, organize as a Board, by choosing a President from among their own number, and a Secretary. The duties of the President, besides those herein imposed, shall be such as may be prescribed for him by the Board, not inconsistent with this act. The Secretary shall keep distinct and proper minutes of the proceedings of the Board, and shall record the names of every Commissioner present at each meeting, and voting on each resolution, act, or proceeding, and whether he voted in the affirmative or negative. Every such vote shall be taken *viva voce*, and by ayes and nays. He shall perform such other services as are provided by this act, and as may be prescribed for him by the Board in accordance therewith. His minutes and record shall be open to public inspection during business hours, and the proceedings of said Board at each meeting shall be published in one of the city papers.

SEC. 4. The meetings of the Board shall be public, and shall be held in the City of San Francisco, and at least as often as once a month. The Board shall have power to rent an office, at an expense not to exceed one hundred dollars per month.

SEC. 5. The said Commissioners, after their appointment and confirmation, shall as speedily as possible, and they are hereby empowered to enter upon and take possession of all the property and interests of property of whatever description, of the State of California, within the line fixed by an act entitled "An Act to provide for the Disposition of certain Property of the State of California," passed March twenty-sixth, one thousand eight hundred and fifty-one, and defining the present water front of the City of San Francisco, and to dispose of the same in the manner and for the purposes in this act provided, and they are hereby authorized in and by the name of The People of the State of California, to bring and maintain all suits and proceedings at law in any Court of this State or of the United States, and to do any other act, or exercise any other power necessary to carry out the provisions of this act.

SEC. 6. Every act of the Board of Commissioners for the disposition of the property, or interests of property of the State as herein provided, or directing the

manner of its disposition, shall require the vote of at least three of the Commissioners; and every conveyance or agreement for a conveyance, executed by the Board, shall have the signatures and seals of three of the Commissioners, including the President.

SEC. 7. The Commissioners shall first ascertain the extent, nature, and character, of all the property and interests of property of the State of California, situated within the line in section five of this act referred to; and as soon as possible thereafter, they shall proceed to sell at public auction, in the City of San Francisco, all the right, title, and interest of the State of California, of, in, and to, all the said property or interests of property. Such sale shall be made by lots, as the same are now laid out on the official map of said city, and where none such are so laid out, then in such lots as may be laid out by the Board in conformity with the said official map. But no open slip authorized by law to be kept open as a slip shall be sold, but the same shall remain open for the purpose of commerce until otherwise ordered by law. The terms of such sale shall be as follows: cash, or the civil bonds of the State of California, or the civil warrants of the Comptroller of State on the Treasury. Ten per cent. to be paid on the day of sale, twenty-five per cent. in ten days thereafter, and the remaining sixty-five per cent. in three months; in default whereof, the property shall be resold at the expense and on the account of the purchaser. The acts of sale at the purchaser's expense. At least thirty days' notice of all sales shall be given in three daily newspapers in the City of San Francisco, of which the newspaper known as the "*Times and Transcript*" shall be one; in the newspaper known as the "*Democratic State Journal*," in the City of Sacramento, and in the newspaper known as the "*San Joaquin Republican*," in the City of Stockton. Such notices shall specify the property to be sold, by its numbers, and locality as to streets on the city map, and by such other description as shall be sufficient to fully inform purchasers, and also the time, place, and conditions of sale. In closing each bid the auctioneer shall allow a sufficient time to give notice after having declared the same, and then if an advance of twenty-five dollars or more shall be bid, the bidding shall be renewed until finally closed. The compensation of the auctioneer shall not exceed one-half of one per cent. on the gross sales, to be paid by the purchaser: *provided*, that nothing in this act contained shall affect any lands legally appropriated for the use of wharves in the said city, prior to the passage of this act, where the contracts under which said wharves were built have been heretofore ratified or confirmed by a statute of the State: and, *provided*, also, that nothing in this act contained shall authorize or empower the Commissioners, or any officer under this act, to take charge of or sell any property legally sold by the authorities of the City of San Francisco, under or confirmed, or granted by the provisions of the act entitled "An Act to provide for the disposition of certain Property of the State of California," passed March twenty-sixth, one thousand eight hundred and fifty-one (excepting it be the remaining interest of the State in said property, after the expiration of the estate or term granted or mentioned in said last-mentioned act, and) excepting also it be the property known as the Government Reserves, which remaining interest and reserves may be sold, and are not intended to be exempted from sale by this proviso.

SEC. 8. Upon a sale, the Commissioners shall make to the purchaser, as soon as such purchaser complies with the terms of sale, a conveyance, by deed, of bargain and sale; such deed shall convey all the right, title, and interest of the State in the premises, and shall be *prima facie* evidence of the regularity of all the pre-

liminary proceedings and sale on the part of the Commissioners, and shall also be *prima facie* evidence of title and right of possession in the grantee, his heirs and assigns; upon which actions, for the recovery and possession of real property, or for injuries thereto, may be maintained and defended in all the Courts of this State having jurisdiction thereof.

SEC. 9. A sale regularly called and advertised, may be adjourned by proclamation from day to day, or may be postponed in the discretion of the Commissioners, in which last case it shall be readvertised, but it shall not be lawful for the Commissioners in any one sale, to sell and dispose of more of the property and interest of property of the State, as herein provided, than shall exceed more than the amount of three hundred and fifty thousand dollars, nor to ordain and call sales at intervals of time of less than two months, one sale from and after another: *provided*, that the Commissioners may at any time during a public sale, pass and discontinue the sale of any property, when they deem such action to be best for the interest of the State.

SEC. 10. The cash proceeds of all sales shall forever be and remain—

First. A sinking fund, for the payment and redemption of the principal and interest of the three per cent. bonds of the State, and of the seven per cent. civil bonds, to be applied to such purposes as hereinafter provided, and in accordance with existing law: and,

Second. After such payment and redemption, the balance if any, shall be paid into the treasury to the credit of the General Fund.

SEC. 11. The proceeds of sales, whether bonds, warrants, or money, shall be paid to the Treasurer of the State, whose duty it shall be to attend all sales under this act, and receive all such proceeds.

SEC. 12. The salary of each of the said Commissioners shall be three thousand dollars per annum, except of the President, whose salary shall be thirty-five hundred dollars. The salary of the Secretary shall be thirty-five hundred dollars per annum. Said salaries shall be payable monthly, out of the proceeds of any sales under this Act, upon the certificate of the President and of the two Commissioners.

SEC. 13. The said Commissioners shall file with the Comptroller of State at the close of each sale, accounts of such sale, with the number and description of the property sold, the purchaser's name, and other needful information, of their receipts and disbursements, with all necessary vouchers, which accounts shall be sworn to and certified by the President and Secretary of the Board. They shall also make to the Legislature, the first week of the session, a full report of their transactions during the preceding year, with such suggestions as may be proper.

SEC. 14. It shall be the duty of the Attorney-General of this State to aid and advise with said Commissioners, when required by them, in carrying out the provisions of this act, and in the prosecution and defending all suits under the same.

SEC. 15. It shall not be lawful for any Judge or Court of this State, to restrain or prohibit any sale of the Commissioners authorized under this act, by any order or injunction, and if any such order or injunction shall be issued for that purpose, all officers acting under this act may proceed with such sale, notwithstanding such injunction shall have been served on such officer.

SEC. 16. So much of the property known as the Government Reserves, situate on the block bounded by Sansome, Battery, Washington, and Jackson streets, as may have been selected by or on behalf of the General Government for the erection of a Custom-House, are reserved and excepted from the provisions of this act.

APPROVED, May 18th, 1853.

No. CXXXVII.

SECOND ACT FOR SALE OF STATE'S INTEREST IN SAN FRANCISCO WATER FRONT, OF MAY 1ST, 1855.

[Laws 1855, Chap. CLXXXI, page 226.]

AN ACT SUPPLEMENTARY TO, AND AMENDATORY OF, AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE SALE OF THE INTEREST OF THE STATE OF CALIFORNIA, IN THE PROPERTY WITHIN THE WATER LINE FRONT OF THE CITY OF SAN FRANCISCO, AS DEFINED IN AND BY THE ACT ENTITLED AN ACT TO PROVIDE FOR THE DISPOSITION OF CERTAIN PROPERTY OF THE STATE OF CALIFORNIA, PASSED MARCH 26TH, 1851," PASSED MAY 18TH, 1853.

This bill having been returned by the Governor with his objections thereto, and after a reconsideration, having passed both houses by the constitutional majority, it has become a law, this 1st day of May, A.D. 1855.

W. W. STOW, Speaker of the Assembly.
SAMUEL PURDY, President of the Senate.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

SECTION 1. The Governor, Secretary of State, and Controller of State, are hereby appointed a Board, whose duty it shall be (when in their opinion the same may be deemed expedient) to advertise and dispose of the interest of the State, in all property authorized to be sold under the Act entitled "An Act to provide for the Sale of the Interest of the State of California, in the property within the water line front of the City of San Francisco, as defined in and by the Act entitled An Act to provide for the Disposition of certain Property of the State of California, passed March twenty-sixth, eighteen hundred and fifty-one, passed May eighteenth, eighteen hundred and fifty-three," and yet remaining unsold.

SEC. 2. The said Board shall supersede the Commissioners appointed under said Act, from and after the time when the official term of said Commissioners shall expire by law ; and they shall discharge all the duties imposed on said Commissioners by attending to and closing all business connected with the sale and disposition of said property.

SEC. 3. It shall be lawful for said Board to appoint an Agent and Clerk from time to time, for such length of time as they may think proper, or to authorize one of their own members to attend all sales ; and it shall be the duty of said Agent so authorized to make all collections, receive payments in cash, or the civil warrants of the Controller of State, and pay the same over to the Treasurer on the warrant of the Controller ; and discharge such other duties as may be assigned him by said Board.

SEC. 4. The Treasurer of State shall not be required to attend said sales, nor shall he receive any of the proceeds arising from sales heretofore or hereafter made, except as they may be paid over to him by the person, and in the manner provided in the third section of this Act.

SEC. 5. The said Board shall not be required to give more than fifteen days' notice of any sale.

SEC. 6. The said Board shall also require their Agent to give bond and security

to the State, for the faithful performance of his duties ; which bond shall be filed in the office of the Secretary of State.

SEC. 7. All the necessary contingent expenses of the Board, including the pay of the Clerk and Agent, which said pay for either shall not exceed ten dollars per day, for each day of actual service ; and the charges for advertising and printing, shall be paid out of the proceeds of the sales by the Board, and the same shall be accounted for in their annual report ; but the members of the Board shall receive no compensation for their services, other than for necessary expenses.

SEC. 8. The existing Board of Land Commissioners, at the expiration of their term, as limited by law, shall deliver over to the Board constituted by this Act, all books and papers relating to their office.

No. CXXXVIII.

THIRD ACT FOR SALE OF STATE'S INTEREST IN SAN FRANCISCO WATER FRONT, PASSED APRIL 12TH, 1858.

[Laws 1858, Chap. 185, page 139.]

CHAP CLXXXV.—AN ACT SUPPLEMENTARY TO AND AMENDATORY OF AN ACT ENTITLED “AN ACT SUPPLEMENTARY TO AND AMENDATORY OF AN ACT ENTITLED AN ACT TO PROVIDE FOR THE SALE OF THE INTEREST OF THE STATE OF CALIFORNIA IN THE PROPERTY WITHIN THE WATER-LINE FRONT OF THE CITY OF SAN FRANCISCO, AS DEFINED IN AND BY THE ACT ENTITLED AN ACT TO PROVIDE FOR THE DISPOSITION OF CERTAIN PROPERTY OF THE STATE OF CALIFORNIA,” PASSED MARCH TWENTY-SIXTH, ONE THOUSAND EIGHT HUNDRED AND FIFTY-ONE ; PASSED MAY EIGHTEENTH, ONE THOUSAND EIGHT HUNDRED AND FIFTY-THREE. Approved April 12th, 1858.

The People of the State of California, represented in Senate and Assembly, do enact as follows :

SECTION 1. That said board specified in the act entitled “An Act supplementary to and amendatory of an act entitled An Act to provide for the Sale of the Interest of the State of California in the Property within the Water-Line Front of the City of San Francisco, as defined in and by the act entitled An Act to provide for the Disposition of certain Property of the State of California,” passed March twenty-sixth, one thousand eight hundred and fifty-one ; passed May eighteenth, one thousand eight hundred and fifty-three, is hereby authorized and empowered to require the agent or clerk who shall have been appointed by it, or who may hereafter be appointed by it, under and by virtue of the provisions of said act, to report to it in writing, and under oath, showing the land or property of the State sold under and by virtue of the provisions of said act, whilst he was acting as such agent or clerk ; to whom the same was sold ; the terms of sale ; the price paid ; to whom paid ; and the disposition made of any and all moneys which may have come into his hands when acting as such agent or clerk. And said board may, also at any time, require such agent or clerk to deliver to it, or some member

thereof, any or all books, papers, or vouchers, pertaining to the transactions of said board or of said agent or clerk, as such.

SEC. 2. That if said agent or clerk shall neglect or refuse to make the report, or deliver the books, papers, or vouchers, named in section one of this act, within ten days from and after the same shall have been required by said board, as provided in said section, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any Court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars, nor over five thousand dollars, and may be imprisoned until such fine be paid; and said board, or any member thereof, may apply, upon five days' previous notice thereof, to the District Court of the district in which said agent or clerk shall then reside, for an order compelling said report, or the delivery of such books, papers, or vouchers, or any of them; and said District Court may, after hearing the allegations and proofs of the parties, make the order applied for; and a failure to comply with such order shall be deemed a contempt of said Court, and may be punished as such.

SEC. 3. That if said agent or clerk shall fail or refuse to pay over to the Treasurer of State, on the warrant of the Controller, any money which has come into his hands, as such agent or clerk, within ten days after demand of the same shall have been made by such Treasurer or his clerk, then said agent or clerk so failing or refusing to pay over such money, shall be deemed guilty of a felony, and punished by imprisonment in the State Prison for a period of not less than one year, nor more than five years; *provided*, that no prosecution shall be maintained under this act where the sum not paid over is less than one hundred dollars.

SEC. 4. This act shall take effect and be in force from and after its passage.

No. CXXXIX.

FOURTH ACT FOR SALE OF STATE'S INTEREST IN SAN FRANCISCO WATER FRONT, BUT RELATING WHOLLY TO THE SO-CALLED CITY SLIP PROPERTY, PASSED APRIL 26TH, 1858.

[Laws 1858, Chap. 337, page 323.]

CHAP. CCCXXXVII.—AN ACT TO PROVIDE FOR THE SALE OF CERTAIN PROPERTY OF THE STATE OF CALIFORNIA, WITHIN THE WATER-LINE FRONT OF THE CITY AND COUNTY OF SAN FRANCISCO. Approved April 26th, 1858.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Governor of the State is hereby authorized to enter upon, and take possession of all that certain tract or piece of land in the City and County of San Francisco, bounded as follows, to wit: On the north, by the south line of Clay Street; on the south, by the north line of Sacramento Street; on the east, by the Water-Line Front of the said City and County of San Francisco; and on the west, by Davis Street.

SEC. 2. The said tract of land shall be divided, or laid out into lots and streets, in exact conformity with a division and plan, or map thereof, made by J. J. Gardiner, surveyor, in December, one thousand eight hundred and fifty-three; and which plan or map is recorded in the office of the City and County Recorder of the City and County of San Francisco, in Map Book Number One, on page six.

SEC. 3. The Governor shall employ an auctioneer, and, as soon as possible, proceed to sell at public auction, in the City and County of San Francisco, all the right, title, and interest, of the State of California of, in, and to, all the said tract or property. Such sale shall be made by lots laid out as hereinbefore provided, and only one lot shall be sold at one time. The terms of such sale shall be as follows: Cash, or the civil bonds of the State of California—ten per cent. to be paid on the day of sale, and the balance, or remainder, in ten days thereafter, in default whereof the property shall be resold, at the purchaser's expense and on his account; *provided*, that any person who has made payment or payments in cash, or in State indebtedness, receivable for public dues by the State, or twenty-five per cent. of the price which he bid for any of the lots hereinbefore mentioned, at a sale thereof made on the twenty-sixth day of December, one thousand eight hundred and fifty-three, by the City of San Francisco, or by the then Mayor and a committee composed of persons who were then members of the Common Council of said city, shall have a credit to the extent of said twenty-five per cent. upon the purchase by him, at the sale authorized and directed by this act, of the same lot or lots, or upon which he has paid said twenty-five per cent.; *provided*, also, that any person who has made payment of the price which he bid for any of the lots herein mentioned, at the sale made thereof on the tenth day of October, one thousand, eight hundred and fifty-five, by the Governor of the State of California, the Controller of State, and Secretary of State, acting as a Board of Commissioners, shall have a credit for the price so paid by him to said Commissioners, or the agent appointed by them, upon the purchase by him of the same lot or lots, at the sale authorized and directed by this act, which he purchased at said sale on the tenth day of October, one thousand eight hundred and fifty-five. At least twenty days' notice of the sale shall be given, in three daily newspapers published in said city and county. The compensation of the auctioneer shall not exceed two per cent. on the gross sale.

SEC. 4. As soon as any purchaser has complied with the terms of sale, the Governor shall make to the purchaser a conveyance, by deed of bargain and sale, duly acknowledged, which deed shall be sealed with the seal of this State, and shall be *prima facie* evidence of the regularity of the sale, and of all previous proceedings by the Governor under this act, and shall be evidence of title and right of possession in the grantee, his heirs and assigns, in all the Courts of this State.

SEC. 5. The Governor shall pay all the expenses of said sale out of the proceeds thereof, and pay over the balance, or remainder, into the State Treasury.

SEC. 6. Any buildings, structures, or improvements upon said lots, shall not be sold; and the owners thereof shall have thirty days after the sale authorized by this act, to remove or dispose of the same.

SEC. 7. All the streets within the said Water-Line Front of said City and County of San Francisco, as laid down on the map called the Official Map of said city, and high-water mark, and all the streets mentioned and referred to in the act entitled "An Act to provide for the Disposition of certain Property of the State of California," passed March 26th, one thousand eight hundred and fifty-one, to

the full extent of said streets; and the streets as laid down on the said map or plat made by J. J. Gardiner, Surveyor, hereinbefore mentioned, are hereby confirmed, established, and dedicated to the public use as streets.

SEC. 8. All acts, and parts of acts, conflicting with this act, are hereby repealed.

No. CXL.

AN ACT AUTHORIZING THE CITY AND COUNTY OF SAN FRANCISCO TO CONVEY LANDS TO THE UNITED STATES, AT POINT LOBOS, FOR A LIGHT HOUSE, OF MARCH 17TH, 1858.

[Laws 1858, Chap. 86. page 70.]

CHAP. LXXXVI.—AN ACT TO AUTHORIZE AND EMPOWER THE CITY AND COUNTY OF SAN FRANCISCO TO CONVEY TO THE UNITED STATES A SITE FOR A LIGHT HOUSE. Approved March 17th, 1858.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Corporation of the City and County of San Francisco is hereby authorized and empowered, by deed of conveyance under the corporate seal, and duly signed and executed by the President of the Board of Supervisors, to release and convey to the United States of America, for a light-house site, all the right and title of the said corporation to a lot of land four hundred feet square, situated at Point Lobos, in the County of San Francisco, together with the right of way.

SEC. 2. The said lot of land, together with the tenements and hereditaments, shall be exempt, so long as it is used and occupied by the United States as a light-house site, from all taxation by the State of California and the City and County of San Francisco.

No. CXLI.

AN ACT LEGALIZING CERTAIN CONVEYANCES MADE BY A MAJORITY OF THE COMMISSIONERS OF THE FUNDED DEBT OF THE CITY OF SAN FRANCISCO, PASSED APRIL 14TH, 1857.

[Laws 1857, Chap. CLXXVII, page 200.]

AN ACT TO LEGALIZE CERTAIN CONVEYANCES. Approved April 14th, 1857.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. That all sales at auction made *bona fide* by three or more of the Commissioners of the Funded Debt of the City of San Francisco before the first

day of January, A.D. one thousand eight hundred and fifty-four, on which the purchase money has been paid before said last-mentioned day, be, and the same are hereby confirmed, and all deeds or conveyances of land within the then corporate limits of the City of San Francisco, signed, sealed, and delivered by three or more of the said Commissioners, and recorded in the office of the County Recorder of San Francisco County, before the first day of January, A.D. one thousand eight hundred and fifty-four, are hereby legalized, and made as good, effectual, and binding, as though the same had been legally executed by a full Board of Commissioners, and signed by each member thereof. But nothing contained in this Act shall be held or construed to affect or impair any adverse title or claim acquired prior to the passage of this Act, nor shall this Act be construed to apply to or affect in any manner whatever, any suit, or cause of action now pending in any Court in this State.

NOTE.—The above act was passed to obviate the effect of the decision in *Leonard vs. Darlington*, 5 Cal. Rep. 123, that it was necessary that *all* the Commissioners of the Funded Debt should join in conveyances of the real estate held in trust by them.

No. CXLII.

AN ACT AUTHORIZING THE GOVERNOR OF CALIFORNIA TO EXECUTE A CONVEYANCE ON BEHALF OF THE STATE TO THE UNITED STATES OF THE LANDS IN SAN FRANCISCO, KNOWN AS THE CUSTOM HOUSE BLOCK, PASSED MAY 3D, 1854.

[Laws of 1854, Chap. 36, page 41.]

AN ACT TO AUTHORIZE THE GOVERNOR OF THIS STATE TO CONVEY CERTAIN PROPERTY IN THE CITY AND COUNTY OF SAN FRANCISCO TO THE UNITED STATES FOR CERTAIN PURPOSES, PASSED MAY 3D, 1854.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Governor of this State is hereby authorized and directed to convey to the United States, by good and sufficient deed by him in behalf of the State of California executed, all the right, title, and interest of the State of California in and to a certain tract or parcel of land situated in the City and County of San Francisco, and bounded and described as follows, to wit: All that certain lot or block of land, or beach and water property, in the City of San Francisco, bounded on the north by Jackson Street, on the east by Battery Street, on the south by Washington Street, and on the west by Sansome Street, in consideration and for the purposes hereinafter specified.

EC. 2. The value of the interest of the State of California, in the real estate described in the preceding section, shall be ascertained as follows: The Governor of this State shall appoint one Appraiser on behalf of the State, and Samuel J. Bridge, or his successor in office, Appraiser-General of the United States for the Pacific Coast, shall act as Appraiser on behalf of the United States, and within

ten days from and after the passage of this act, or as soon thereafter as practicable. The said two Appraisers shall meet in the City of San Francisco, and after viewing the premises described in the first section of this act, estimate the present cash value of the State interest in the same; and if the said two Appraisers cannot agree as to the value of the same they shall call and choose a third Appraiser to act in conjunction with them, and the value which the three may fix upon said premises they shall immediately, under their respective hands, certify and deliver to the Governor.

SEC. 3. As soon as the return of the appraisement is made to the Governor, in accordance with the provisions of the preceding section, the Governor shall execute a deed for the said premises to the United States, as provided in the first section of this act, in consideration of one-half of the appraised value thereof, as returned to him by said Appraisers, and upon the payment to him by the United States of a sum equal to one-half of said appraised value, he shall deliver said deed to the District Attorney of the United States for the Northern District of California; which said deed, when so executed and delivered, shall vest all the right, title, and interest of the State of California in and to said premises, in the United States, for the purpose of erecting and continuing thereon a Custom House and other necessary public buildings for the use of the United States, and for no other purpose: *provided*, if the United States shall at any time hereafter sell or dispose of the said property, or any part thereof, then the whole or part so sold or disposed of, as the case may be, shall revert to the State of California.

NOTE.—In execution of the authority expressed in the preceding act of the Legislature, a conveyance was subsequently made by the State of California to the United States, in the words and figures following:

THE STATE OF CALIFORNIA,
 By John Bigler, Governor, }
 to
 THE UNITED STATES. }

STATE OF CALIFORNIA.

To all to whom these Presents shall come—

Greeting: Whereas the Legislature of the State of California did, during the session commencing on the first Monday in January, in the year of our Lord one thousand eight hundred and fifty-four, pass a certain act which was approved by the Governor of the State on the third day of May, in the year above mentioned, which said act is in the words and figures following, to wit: "An Act to authorize the Governor of this State to convey certain Property in the City and County of San Francisco to the United States for certain purposes," The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1 (as above set forth).

SECTION 2 (as above set forth).

SECTION 3 (as above set forth).

And whereas, in compliance with the provisions of said law, Levi Hermance being duly appointed by the Governor of said State one of the Appraisers to value said property on the part of the State of California, the said Appraisers, to wit: Samuel J. Bridge, Appraiser-General of the United States for the Pacific Coast, on

the part of the United States, and Levi Hermance, on the part of the State of California, met in San Francisco on Saturday the sixth day of May, A.D. 1864, and after viewing the premises, appraised the cash value of the above-mentioned and described property at three hundred thousand dollars (\$300,000).

Now know ye, that under and by virtue of the above recited act, and in accordance with the appointment of said Appraisers, which has been duly certified and delivered to the Governor of said State, for and in consideration of the sum of one hundred and fifty thousand dollars, (\$150,000) being one-half of the appraised value, paid by the United States, to the undersigned Governor of the State of California, the receipt of which is hereby acknowledged on this the fifth day of September, A.D. 1854, there is this day granted, sold, and conveyed, by the State of California to the United States, all the right, title, and interest of the State of California in and to the following described tract or parcel of land with all the appurtenances thereto belonging, situate, lying, and being in the City and County of San Francisco, and State of California, viz. : bounded on the north by Jackson Street, on the east by Battery Street, on the south by Washington Street, and on the west by Sansome Street. To have and to hold the same in manner and form as prescribed in said recited act, with all the rights, privileges, and appurtenances unto the same belonging or in any wise appertaining unto the United States forever.

Given under my hand and the great seal of the State of California at Sacramento, this the fifth day of September, A.D. 1854.

JOHN BIGLER,
Governor of the State of California.

Attest :

[L.S.] J. W. DENVER,
Secretary of State.

STATE OF CALIFORNIA, }
County of San Francisco, } ss.

On this fifth day of September, A.D. 1854, before me, T. A. Lynch, a Notary Public in and for said county, personally appeared John Bigler, the Governor of the State of California, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned as such Governor of the State of California.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[L.S.]

T. A. LYNCH,
Notary Public.

UNITED STATES ATTORNEY'S OFFICE, }
San Francisco, Sept. 5th, 1854. }

I hereby certify that the within deed is in due and proper form, and conveys a valid title to the United States.

S. W. INGE,
U. S. Attorney.

A true copy of an original, recorded [in Book 41 of Deeds, page 468] at request of Richard P. Hammond, September 8th, 1854, at 12 M. [in 41 of Deeds, p. 468].

JAMES GRANT,
County Recorder.

No. CXLIII.

AN ACT GIVING THE CONSENT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA TO THE PURCHASE BY THE UNITED STATES, OF LAND WITHIN THIS STATE FOR PUBLIC PURPOSES, PASSED APRIL 27TH, 1852.

[Laws 1852, Chap. LXXVI, page 149.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. That the consent of the Legislature of California be and the same is hereby given to the purchase by the Government of the United States, or under the authority of the same, of any tract, piece, or parcel of land, from any individual or individuals, bodies politic or corporate, within the boundaries or limits of this State, for the purpose of erecting thereon Armories, Arsenals, Forts, Fortifications, Navy Yards or Dock Yards, Magazines, Custom Houses, Light Houses, and other needful public buildings or establishments whatsoever; and all Deeds, Conveyances, or Title Papers for the same, shall be recorded, as in other cases, upon the Land Records of the county in which the land so conveyed may lie; and in like manner may be recorded a sufficient description, by metes and bounds, courses and distances, of any tract or tracts, legal divisions or sub-divisions of any public land belonging to the United States which may be set apart by the General Government, for any or either of the purposes before mentioned, by an order, patent, or other official document or paper so describing such land. The consent herein and hereby given being in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the Acts of Congress in such cases made and provided.

SEC. 2. The lots, parcels, or tracts of land so selected, together with the tenements and appurtenances, for the purposes before mentioned, shall be held exempt from taxation by the State of California.

Approved April 27th, 1852.

No. CXLIV.

AN ACT TO LEGALIZE CERTAIN CONVEYANCES OF THE COMMISSIONERS OF THE SINKING FUND OF THE CITY OF SAN FRANCISCO, PASSED MARCH 25TH, 1858.

[Laws 1858, Chap. 108, page 84.]

CHAP. CVIII.—AN ACT TO LEGALIZE CERTAIN CONVEYANCES MADE BY THE COMMISSIONERS OF THE SINKING FUND OF THE CITY OF SAN FRANCISCO. Approved March 25th, 1858.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. That all the sales at auction made *bona fide* by the Commissioners of the Sinking Fund of the City of San Francisco, on the twenty-fifth day of January, one thousand eight hundred and fifty-one, by virtue of Ordinance Number Forty-Nine of the City Council, approved the twenty-third day of August, one thousand eight hundred and fifty, on which the purchase-money has been [paid ?] to the said Commissioners, and for which deeds or conveyances of land, within the then corporate limits of the City of San Francisco, have been made, and signed, sealed, and delivered, by John W. Geary, Benjamin L. Berry, Talbot H. Green, William Hooper, and James King of William, the said Commissioners of the Sinking Fund, and recorded in the office of the County Recorder of San Francisco County, be, and the same are hereby confirmed, legalized, and made good, effectual, and binding.

 No. CXLV.

AN ACT TO AUTHORIZE THE COMMISSIONERS OF THE FUNDED DEBT OF THE CITY OF SAN FRANCISCO TO FINALLY SETTLE CLAIMS TO CERTAIN REAL ESTATE, PASSED APRIL 14TH, 1862.

[Laws of 1862, Chap. 203, page 217.]

AN ACT TO AUTHORIZE THE COMMISSIONERS OF THE FUNDED DEBT OF THE CITY OF SAN FRANCISCO TO COMPROMISE AND SETTLE CERTAIN CLAIMS TO REAL ESTATE, AND TO CONVEY SUCH REAL ESTATE, PURSUANT THERETO. Approved April 14th, 1862.

WHEREAS, pursuant to the provisions of section twelve of an act entitled "An Act to authorize the Funding of the Floating Debt of the City of San Francisco, and to provide for the payment of the same," passed May first, in the year one thousand eight hundred and fifty-one, certain real estate formerly held by the Town or City of San Francisco, was conveyed by the Commissioners of the Sinking Fund, mentioned in the said section of the said act, to the Commissioners of the Funded Debt of the said City of San

Francisco; and whereas, it is alleged that certain parcels of said real estate have never been sold, leased, dedicated, reserved, or conveyed by the said Commissioners of the Funded Debt, but are in the actual possession of certain persons, who have purchased the same in good faith, and for valuable considerations, and who, by themselves, their tenants, or persons through whom they claim and derive possession of the said lands, have been in the actual possession of the same, from and including the first day of January, in the year one thousand eight hundred and fifty-five, and who therefore claim to have become entitled to and possessed of all the right, title, claim, interest, and estate of the said City of San Francisco, of, in, and to the said lands by them respectively occupied, as aforesaid, by virtue of the provisions of an act entitled "An Act concerning the City of San Francisco, and to ratify and confirm certain ordinances of said city," approved March eleventh, in the year one thousand eight hundred and fifty-eight, and of the ordinances mentioned in the said last-mentioned act, and particularly of the ordinance therein mentioned, commonly called the "Van Ness Ordinance;" and whereas, it is doubtful whether or not the said claims of the said possessors of the said lands are well founded in fact and in law, and, also, whether the said claims of the said Commissioners of the Funded Debt have not become barred by the Statutes of Limitation of this State; therefore—

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. Upon receiving a petition from any person or persons claiming that they, by themselves, their tenants, or the persons through whom they claim or derive possession, have been, from and including the first day of January, in the year one thousand eight hundred and fifty-five, and still are in the actual possession of any of the lands conveyed to the Commissioners of the Funded Debt of the City of San Francisco, by the Commissioners of the Sinking Fund of said city, according to the provisions of section twelve of an act entitled "An Act to authorize the Funding of the Floating Debt of the City of San Francisco, and to provide for the payment of the same," passed May first, in the year one thousand eight hundred and fifty-one, and that such lands have not been sold, leased, dedicated, reserved, or conveyed by the said Commissioners of the Funded Debt, to any one, or for any purpose, and that such claimant or claimants were the purchasers of such lands so claimed by them, for a valuable consideration, and asking for a grant of such lands under the provisions of this act—the said Commissioners of the Funded Debt shall proceed to take testimony as to the matters alleged in such petition. Full and accurate notes of such testimony shall be made and preserved, all documentary testimony shall be copied in full, and the testimony of witnesses shall be made in writing, signed by the witnesses, and attested by the Commissioner taking the same. Any one or more of the said Commissioners of the Funded Debt shall be competent to take such testimony, and to administer the requisite oath or affirmations on taking the same and in all proceedings under this act, as well as for the purpose of verifying the petition aforesaid. Such petition shall be verified by the oath or affirmation of the party in whose behalf the same is presented; or, in case it shall appear that he is absent from the State, or from any other cause is incapable of verifying the same in his own person, the same may be

verified by his agent or attorney in the premises, before one of the Commissioners of the Funded Debt, or before any officer authorized to take affidavits to be read in Courts of Record. Any person who shall be guilty of wilful false swearing in any material matter provided for in this act, shall be adjudged to be guilty of the crime of perjury, and shall suffer the penalty thereof.

SEC. 2. Upon the completion of the testimony offered by any such petitioner, the said Commissioners of the Funded Debt shall proceed to act upon the same, and if, in their judgment, the claim is well founded, according to the provisions of this act, they shall, by an order entered in their minutes, adjudge and award a grant of such lands, so petitioned for, according to the provisions of this act. They shall, thereupon, give public notice of such their award, by a notice published at least once a week, for three successive weeks, in a daily public newspaper, published in the City and County of San Francisco, which notice shall specify the name of the applicant, the date and filing of his petition, the tract of land awarded, by metes and bounds, the official number of the lot of which it consists, or is a parcel, if any, and the streets upon which it is situated. Proof of such publication shall be made in the manner now or hereafter required by law for the proof of publication in civil process.

SEC. 3. Upon receiving proof, as hereinbefore provided, for the publication of such notice, the said Commissioners of the Funded Debt shall execute and delierv conveyances of the respective lands, upon the assessment and payment of moneys, per centages, and expenses, required by the subsequent provisions of this act, as hereinafter provided; *provided*, that in case a complaint shall be, or shall have heretofore been filed in any Court of competent jurisdiction, by any person or persons, against any such claimant or claimants, duly verified by oath, demanding the possession of any such lands against such claimant, and alleging that the plaintiff therein was wrongfully dispossessed or ejected therefrom, and a copy of such complaint, certified under the seal of the Court, shall be filed with the Secretary of the said Commissioners of the Funded Debt, before they shall have executed and delivered a conveyance in the respective case, then, and in that case, they shall withhold such conveyance until such suit shall be finally determined, and shall thereafter execute a conveyance of the respective lands to the person or persons who shall be finally adjudged and decreed in such action to be entitled to the possession of the same; *provided*, that the payment required in the fourth section of this act shall be made before such conveyance shall be delivered.

SEC. 4. The value in money of such lands shall thereupon be assessed by the said Commissioners of the Funded Debt, without any unnecessary delay, in the manner following: If the same specific parcel of lands shall stand assessed upon the next preceding assessment roll of said city and county, the amount for which it shall stand assessed shall be deemed the value of such lands. If the same shall not stand so specifically assessed, the said Commissioners of the Funded Debt, or a majority of them, may agree with the respective petitioner as to the value at which the same shall be assessed. If no such agreement be made, then the same shall be assessed by two arbitrators, one to be chosen by the said Commissioners of the Funded Debt, and the other by the respective petitioner or petitioners, with power to such arbitrators, in case of their disagreement, to choose a third, and the assessment so made by such arbitrators shall be final. No conveyance shall be delivered to any petitioner until at least ten per cent. of such assessed value of the respective lands shall be paid to the said Commissioners of the Funded Debt, to be by them applied to the extinguishment of the said Funded Debt, according to

the provisions of the said act in that behalf made and provided, nor until the respective petitioner or petitioners shall have paid to the said Commissioners of the Funded Debt all of the expenses of the respective proceedings, including publication, proofs thereof, the conveyance, and the acknowledgment thereof, but no charge shall be made for taking testimony.

SEC. 5. Upon any award being finally made, as aforesaid, and upon the previous payment of the per centage upon the ascertained assessed value of the respective lands, and of the expenses of the respective proceedings, as provided in the preceding section, the said Commissioners of the Funded Debt, or a majority of them, shall, by a deed of conveyance, executed under their hands and seals, or under the hands and seals of a majority of them, grant, convey, remise, and release to such petitioner or petitioners, the lands so respectively petitioned for and awarded, which said deed of conveyance shall be construed to convey to such petitioner, his heirs and assigns, all of the interest of the said City and County of San Francisco, and of the Commissioners of the Funded Debt, in and to such lands. Such deed of conveyance shall contain recitals, showing that the same was executed under the provisions of this act; and when the same shall contain recitals showing that all the provisions of this act have been regularly complied with, such deed of conveyance shall be deemed *prima facie* evidence of such facts so recited; *provided*, however, that no such conveyance shall be executed or delivered in any case, until a per centage upon the assessed value of such lands, in money, and the expenses of the respective proceedings, shall be paid to the said Commissioners of the Funded Debt, as provided in this act.

SEC. 6. No conveyance of any such lands, made as hereinbefore provided, shall be deemed to conclude the rights of third persons; but such third persons may have their action in the premises, to determine alleged interest in such lands, against such grantee, his heirs and assigns, to which they may deem themselves entitled, either in law or equity.

SEC. 7. This act shall take effect immediately, and the said Commissioners of the Funded Debt shall execute the same within one year from the date of its passage; *provided*, however, that if they are hindered or delayed in the execution of any proceeding, by any process of law, the time during which they are so hindered or delayed shall not be taken to be a part of such period of one year, so far as that proceeding is concerned.

NOTE.—This act was extended two years from its passage, by Laws of 1863, page 69, Chap. 71; and for three years from April 4th, 1864, by Laws of 1863-4, page 474, Chap. 422; and decided to be constitutional in *Babcock vs. Middleton*, 20 Cal. 643.

No. CXLVI.

THE VAN NESS ORDINANCE, WITH ALL THE PROCEEDINGS HAD UPON THE SAME.

No. I.

THE FIRST VAN NESS ORDINANCE.

“Ordinance 822, for the settling and quieting of the Land Titles in the City of San Francisco,” commonly called, the “Van Ness Ordinance,” from its author,

the Hon. James Van Ness, is the same ordinance of that number and title, recited in "An Act concerning the City of San Francisco, and to ratify and confirm certain ordinances of the Common Council of said City." Approved March 11, 1858, [Laws 1858, Chap. LXVI, p. 52, etc], and contained in the ADDENDA, *ante* pp. 216-17.

The original of this ordinance has been lost, having been lent from the office of the Clerk of the Board of Supervisors upon a receipt of an attorney, on December 15, 1864, and never returned; but a certified copy may be found at pages 895-9, in Manuscript Book No. 3 of Ordinances, in the office of the City and County Clerk, certified as follows:

"I hereby certify the foregoing to be a true copy of an ordinance passed the Common Council finally, and returned by the Mayor with his approval. Dated June 20, 1855.

T. M. DEHON,

Clerk Common Council."

As the ordinance is recited in full in the act just mentioned, and Courts are required by section three of that act to take judicial notice of it, the loss of the original is presumed to be of no consequence.

No. II.

MESSAGE OF THE MAYOR AND CERTIFICATE OF ENTRY OF LAND, ACCORDING TO PROVISIONS OF SECTION ONE OF ABOVE ORDINANCE NO. 822.

MAYOR'S OFFICE,
San Francisco, June 27, 1855. }

Gentlemen of the Common Council:

By Ordinance 822 it is made the duty of the Mayor to enter at the proper land office of the United States, all the lands above the natural high-water mark of the Bay of San Francisco, situated within the corporate limits of the City of San Francisco, as defined in the Act of Incorporation, passed April 15, 1851, for the several use, benefit, and behoof of the occupants or possessors thereof, according to their respective interests. In conformity to said provision, I caused an entry of said lands to be made in the United States Register's Land Office at Benicia, on the twenty-first day of June, A.D. 1855. I herewith transmit a copy of said entry, certified by Col. Gift, Registrar of said Land Office.

S. P. WEBB, Mayor.

To W. W. Gift, Registrar of the United States Land Office at Benicia—

Sir: In pursuance of the ordinance of the Common Council of the City of San Francisco, passed and approved June 20, 1855, and under the provisions of the Act of Congress of the United States, passed May 23, A.D. 1854, entitled "An Act for the relief of Citizens of Towns upon Lands of the United States, under certain circumstances," and also of the eighth section of an Act of Congress passed March 3d, 1853, entitled "An Act to provide for the Survey of the Public Lands in California, the granting Preëmption Rights thereon, and for other purposes;" I, S. P. Webb, Mayor of the said City of San Francisco, do hereby, in the name of the corporate authorities of said city, enter with the Registrar of the United States Land Office at Benicia, at the minimum price, in trust for the several use and benefit of the occupants or possessors thereof, according to their respective interests, all the lands above the natural high-water mark of the Bay of San Francisco,

situate within the following limits of the said City of San Francisco, to wit: Bounded on the south by a line parallel with the street of said city known as Clay Street; and two and one-half miles distant south from the center of Portsmouth Square; on the west by a line drawn parallel with Kearny Street, two miles distant west from the center of Portsmouth Square; on the other side by the line of natural high-water mark, along the shore of the Bay of San Francisco, as it existed at the admission of California into the Union as a State, until the said water line intersects the south and west lines above mentioned; all the above lands being at the date of the last-mentioned act, and being actually settled upon and occupied as a town site, and I do hereby give notice that it is the intention of the said City of San Francisco to claim said lands under the provisions of the aforesaid acts of Congress, and for the use therein mentioned.

(Signed)

S. P. WEBB,

Mayor of the City of San Francisco.

STATE OF CALIFORNIA, }
County of San Francisco. }

On this twentieth day of June, A.D. 1855, before me, Gilbert A. Grant, a Notary Public in and for said county, Stephen P. Webb, the person whose name is subscribed to the foregoing instrument, and well known to me to be the present Mayor of the City of San Francisco, who being by me duly sworn, does depose and say that he is the Mayor of the said City of San Francisco, and did subscribe the foregoing instrument as such Mayor, and that the lands in the said instrument described, and whole thereof, were on the third day of March, A.D. 1853, and still are actually settled upon and occupied as a town site.

(Signed)

S. P. WEBB.

Subscribed and sworn before me, this twentieth day of June, 1855.

[L.S.]

GILBERT A. GRANT,

Notary Public in and for said County.

—
LAND OFFICE, BENICIA, CALIFORNIA.

I, Wm. W. Gift, Registrar, do hereby certify that the foregoing is a true and correct copy of an instrument filed in my office on the twenty-first day of June, A.D. 1855.

WM. W. GIFT, Register.

By P. S. MORRIS, Clerk.

—
Ordered on file in concurrence. On motion adjourned to meet at the call of the President.

JOHN CRANE, Clerk.

—
No. III.

MAYOR'S MESSAGE ADVISING THE APPOINTMENT OF COMMISSIONERS UNDER THE VAN NESS ORDINANCE, TO SELECT LANDS FOR THE PUBLIC PURPOSES OF THE CITY, ACCORDING TO ITS PROVISIONS, APRIL 8, 1855.

MAYOR'S OFFICE, August 8th, 1855.

To the Common Council—

Gentlemen: By the terms of the ordinance approved June 20th, 1855, entitled "An Ordinance for the Settlement and Quieting of Land Titles in the City of San

Francisco," it is provided that a Commission, consisting of three persons, shall be chosen by the Common Council, in joint convention, whose duty it shall be to select from the lands within the corporate limits of the city, and lying west of Larkin Street and south-west of Johnson Street, as many lots as the Mayor and Common Council may, by ordinance, determine necessary, for public and municipal purposes, and that said selection shall be made within six months from the passage of the Ordinance so approved June 20th, 1855.

The Ordinance also declares that the city shall have the right to proceed to lay out and open streets as soon as the corporation may deem it expedient, in that part of the city west of Larkin Street and south-west of Johnson Street, and reserve the right, etc.

I would respectfully suggest to the Common Council the propriety and expediency of adopting at an early moment the necessary measures to ascertain the lines and boundaries of the streets contemplated to be laid out and opened in the as yet unsurveyed portion of the city. And also to determine by ordinance the number and dimensions of the lots to be selected for public and municipal purposes by the Commission above referred to, and further, to appoint the said Commission.

It will be readily seen that until these preliminary steps are taken by the Common Council, it will be impossible to determine with accuracy which lands are destined for streets and other public uses, and which are to be retained by the proprietors as private domain. In this condition of things, improvements in western and south-western portions of the city will be greatly retarded, and the wholesome and general benefits expected to be derived from the passage of the ordinance for the settlement and quieting of land titles within the city will be correspondingly delayed.

JAMES VAN NESS, Mayor.

In the Board of Assistant Aldermen, August 8th, 1855, on motion, the Message was referred to the Committee on Streets and Public improvements, and ordered published.

ROBERT C. PAGE, Clerk.

No. IV.

REPORT OF THE COMMITTEE ON STREETS AND PUBLIC IMPROVEMENTS, ON THE PRECEDING MESSAGE, August 11th, 1855.

To the Honorable the Board of Assistant Aldermen—

Gentlemen: Your Committee on Streets and Public Improvements, to whom was referred the message of his Honor the Mayor, dated August the 8th, in reference to the importance of immediate action upon the subject of reservations for streets and other public purposes, which the city have the right to make, by virtue of Ordinance No. 822—report in favor of the recommendations expressed in said message, and that, in compliance therewith, they have carefully prepared the Ordinance herewith presented.

The benign effects and advantages of said Ordinance No. 822, has been so fully illustrated and experienced and give such fair promise of future peace and prosperity to our fellow-citizens, individually and collectively, and the further advantage which it gives to the city, of its now possessing itself, without expense, of all the streets, lots, and lands, which may be forever required, the same to be distrib-

uted most conveniently throughout the length and breadth of the city, is so manifest and important, in the opinion of your Committee, as to render it unnecessary for them to add to the high recommendation, with the consideration of which your Committee have the honor to be charged. All of which, with the accompanying Ordinance, is respectfully submitted.

E. P. PECKHAM,
J. C. BEIDEMAN,

Committee on Streets and Public Improvements.

August 11th, 1855.

In the Board of Assistant Aldermen, August 11th, 1855, on motion, the report was accepted and adopted.

ROBERT C. PAGE, Clerk.

No. V.

REPORT OF THE JUDICIARY COMMITTEE OF THE BOARD OF ALDERMEN UPON THE PRECEDING MESSAGE OF HIS HONOR THE MAYOR (NO. III) AND UPON THE ORDINANCE ON THE SAME SUBJECT NEXT FOLLOWING (NO. VI), SEPTEMBER 24TH, 1855.

Your Committee, to whom was referred the Message of his Honor the Mayor, and an Ordinance in accordance with the recommendations thereof, entitled "An Ordinance providing for selecting and designating Public Squares, and reservations for Hospitals, Fire Engine and School Houses, and adopting the plan of Streets in the Western and South-Western portion of the City, according to the provisions of Ordinance No. 822, and confirmatory of said Ordinance No. 822," adopted by the Board of Assistant Aldermen, Aug 11th, 1855—

Respectfully report, that they have carefully examined the same, and have arrived at the conclusion that no measure ever originated in the Common Council capable of conferring a title of the benefits upon the city at large, which may be derived from said Ordinance No. 822. We ascertained from personal inquiry and investigation, that his Honor the Mayor, in his recommendation of fixing at an early day a plan of streets, and designating the reservations the city may make in compliance with said Ordinance No. 822, but effects the wishes and requirements of several thousand inhabitants of the city, who are prevented by delay in these particulars from making proper and desirable improvements.

We therefore recommend concurrent action by this Board with the Board of Assistant Aldermen, upon the Ordinance, which, with the accompanying papers, are respectfully submitted.

WILLIAM GREEN,
C. H. CORSER,

Committee of Judiciary.

September 24th, 1855.

No. VI.

ORDINANCE [845] PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS, AND ALSO CONFIRMING THE VAN NESS ORDINANCE, AND APPROVAL OF THE SAME BY THE MAYOR, SEPTEMBER 27TH, 1855.

The following Ordinance, introduced by the Committee on Streets and Public Buildings, was passed by the Board of Assistants—Ayes, Messrs. Wilson, Tobin, Peckham, Dow, Beideman, and Wells. In the Board of Aldermen it passed unanimously; and after having been approved, was published on September 29th, 1855:

Ordinance 845, providing for selecting and designating Public Squares and Reservations for Hospital, Fire Engine and School Houses, and other public purposes, and for adopting the plan of streets in the western and south-western portion of the City according to the provisions of Ordinance No. 822, and confirmatory of said Ordinance No. 822.

The People of the City of San Francisco do ordain as follows:

SECTION 1. Under and by virtue of the provisions of the Ordinance of the Common Council, 822, entitled "An Ordinance for the Settlement and Quieting of Land Titles in the City of San Francisco," approved June 20th, 1855, the Board of Aldermen and the Board of Assistant Aldermen shall meet in joint convention at their next regular meeting after the passage of this Ordinance, and proceed to elect three Commissioners, who shall have the powers, and proceed to discharge the duties specified in section eight of said Ordinance No. 822.

SEC. 2. It shall be the duty of the City Surveyor, acting in conjunction with said Commissioners, and with their concurrence, to furnish, by way of recommendation to the Common Council, within one month from the date of their appointment, a plan for the location and dimensions of the streets to be laid out within the city limits, west of Larkin and south-west of Johnson streets, upon which plan shall also be designated the lots and grounds selected by the said Commissioners for the use of the city, under the provisions of the aforesaid Ordinance No. 822; *provided*, that the compensation of said Commissioners shall not exceed the sum of one hundred dollars each, payable when the Common Council may legally make an appropriation therefor.

SEC. 3. The said Ordinance No. 822, referred to in the preceding section one, is hereby reordained, ratified, and confirmed in all its parts.

HENRY J. WELLS,
President Board of Assistant Aldermen.

R. W. SLOCUM,
President Board of Aldermen.

APPROVED September 27th, 1855.

JAMES VAN NESS, Mayor.

I hereby certify the foregoing to be a true copy of an Ordinance passed by the Common Council finally, and returned by the Mayor, with his approval, dated September 27th, 1855.

WM. H. STEVENS,
Clerk of the Common Council.

MAYOR'S OFFICE, September 27th, 1856.

To the Common Council—

Gentlemen: I herewith return with my approval Ordinance No. 844, entitled "An Ordinance providing for selecting and designating Public Squares and Reservations for Hospitals, Fire-Engine, and School purposes, and for adopting the plan of streets in the western and south-western portion of the city, according to the provisions of Ordinance No. 822, and confirmatory of said Ordinance No. 822."

Respectfully,

JAMES VAN NESS, Mayor.

No. VII.

APPOINTMENT OF COMMISSIONERS TO SELECT LANDS FOR THE CITY UNDER THE VAN NESS ORDINANCE, NOV. 12TH, 1855.

SAN FRANCISCO, NOV. 12TH, 1855.

BOARD OF ALDERMEN.

Assistant Aldermen Dow and Beideman appeared as a Committee from the Board of Assistant Aldermen, proposing to go into Joint Convention to elect three persons to fill the office of Commissioners created by Section 1 of Ordinance 345.

Proposition accepted, and the Board adjourned to the room of the Assistants.

JOINT CONVENTION.

Present: *Aldermen*—Hopkins, Hathaway, Tewksbury, Greene, and Slocomb; *Assistant Aldermen*—Wilson, Tobin, Peckham, Vandewater, Dow, Beideman, and Wills.

Nominations being in order, the following persons were named, viz.: H. Hawes, M. Hayes, O. H. Gough, C. D. Carter, W. P. Jones, L. McLane, jr., and R. H. Sinton. On proceeding to ballot, the result was as follows, viz.: H. Hawes, 8 votes; W. P. Jones, 5 votes; L. McLane, jr., 3 votes; M. Hayes, 7 votes; C. D. Carter, 3 votes; C. H. Gough, 7 votes; R. H. Sinton, 3 votes.

Messrs. Hawes, Hayes, and Gough having received the highest number of votes, were duly declared elected.

There being no other business, the convention dissolved, and the Board of Aldermen withdrew.

No. VIII.

ORDINANCE EXTENDING THE TIME TO MARCH 20TH, 1856, FOR THE COMMISSIONERS APPOINTED BY SEC. 8, OF ORDINANCE NO. 822, TO COMPLETE THEIR LABORS.

The People of the City of San Francisco do ordain as follows:

SECTION 1. That the Commissioners appointed by the Common Council under the provisions of Ordinance No. 822, for the purpose of selecting and setting apart lands for public purposes west of Larkin and south of Johnson streets, are hereby granted until the twentieth day of March, 1856, to complete their labors.

APPROVED, December 21, 1855.

No. IX.

ORDINANCE [FURTHER] EXTENDING THE TIME TO APRIL 20TH, 1856, FOR THE COMMISSIONERS APPOINTED BY SEC. 8, OF ORDINANCE NO. 822, TO COMPLETE THEIR LABORS, APRIL 27TH, 1856.

The People of the City of San Francisco do ordain as follows:

SECTION 1. That the Commissioners appointed by the Common Council under the provisions of Ordinance No. 822, for the purpose of selecting and setting apart lands for public purposes west of Larkin and south of Johnson streets, be and they are hereby granted until the twentieth day of April, 1856, to complete their labors.

HENRY J. WELLS,

President of the Board of Assistant Aldermen.

J. M. TEWKSBURY,

President of the Board of Aldermen.

APPROVED, April 7th, 1856.

JAMES VAN NESS,

Mayor.

No. X.

REPORT TO THE COMMON COUNCIL BY THE COMMISSIONERS APPOINTED AS BEFORE, TO SELECT LANDS FOR THE CITY UNDER THE PROVISIONS OF THE VAN NESS ORDINANCE, APRIL 19TH, 1856.*

The following is the report of the Surveyor and Board of Commissioners, made to the Board of Assistants, and published in the City official paper at the time, April 19th, 1856:

Report of the Commissioners on the Survey of the Western Addition of the City.

To the Hon. COMMON COUNCIL of the City of San Francisco—

Gentlemen: The undersigned, Commissioners appointed to select, under the provisions of Ordinance No. 822, lots and squares for school, fire, hospital, and other public purposes in that portion of the city west of Larkin and south-west of Johnson streets, and to lay out the streets therein, beg leave to make the following report:

Your Commissioners, after a patient and thorough examination of the land, have adopted the accompanying plan or map thereof, showing the streets so laid out, and the lots and squares selected for the above public purposes, and recommend its adoption as the official map of the portion of the city above mentioned. Your Commissioners found that it was impossible to perform the work assigned them

* This report has been irrecoverably lost, but is here reproduced from an authentic source. In the view I take of the subject matter, the validity and legal operation of the legislation upon it are wholly based upon the act of the Legislature of California confirming the so-called Van Ness Ordinance, and the map of the Western Addition, adopted and confirmed by that legislative statute. See the statute as set forth *ante*, ADDENDA, No. CXII, pages 216-20 inclusive. Yet these proceedings have a historical interest as containing the chronological narrative of the facts as they actually occurred, and possibly a legal value as embodying the real or supposed necessities out of which this legislation originated. The Van Ness Ordinance was, beyond doubt, a wise and beneficent act of legislation, for it gave to the possessors of land a sure source of title, no matter what the final decision of the Courts might be as to the origin of the legal title.

without a partial survey being first made; and as no provision was made by the City for defraying the expenses of such survey, they became responsible for the hire of the chainmen, flagmen, and other expenses incidental to the survey, expecting to be reimbursed by subscription, which has been partially done. The annexed schedule, marked "A," shows the total amount of their disbursements in making the survey.

The number of school lots selected is twenty-eight (28); their size one hundred and thirty-seven and one half feet by one hundred and thirty-seven and one-half feet ($137\frac{1}{2}$ ft. by $137\frac{1}{2}$ ft.), except those located on the Potrero, which are one hundred feet by two hundred feet (100 ft. by 200 ft.). The number of lots for fire purposes is twenty-five (25); their size thirty feet by one hundred and thirty-seven and one-half feet (30 ft. by $137\frac{1}{2}$ ft.), except those located on the Potrero which are thirty feet by one hundred feet (30 ft. by 100 ft.). Six (6) squares or plazas are selected, size four (4) blocks, containing about twelve acres each (12 a.), and four (4) squares, size two (2) blocks, containing about five (5) acres each, and one lot for hospital, size two (2) blocks. Perhaps more lots and squares have been selected than are necessary for the above purposes; yet the selection of the above number was deemed advantageous, since as a city enlarges, so do her wants.

Ordinance No. 822 gave your Commissioners the power to take only the one-twentieth (1-20) of the land of one person for School, Fire, Hospital, and other public purposes. In a great many instances they found, in laying out the lots for such purposes, that in order to place them at proper distances from each other, they would fall entirely upon the land of one person, or cover his house or yard; and moreover, in many cases, such persons did not own more than one block. In order, then, to avoid such difficulties, we were forced to locate some of the public lots and squares in places different from those originally designated.

Your Commissioners also made a personal inspection of all the lots and squares selected for public purposes, and ascertained from most of the owners thereof that they would deed the lots to the City, whenever called upon, provided the City would deed to them her right and title to the balance of their claim. The time is passed when it is necessary to support this course by argument. The City has pledged its faith by Ordinance No. 822; the measure has become part of the settled policy of the corporation, and yet the parties interested have not reaped the benefit of it. Your Commissioners would therefore recommend the appointment of two or three suitable persons with authority to receive the deeds of the lots and squares selected for public purposes, and to deed the right and title of the City to all parties in possession as contemplated by Ordinance No. 822.

All which is respectfully submitted, April 19th, 1856.

MICHAEL HAYES,
C. H. GOUGH,
Commissioners.

JOHN T. HOFF, City Surveyor.

In the Board of Assistant Aldermen, April 21st, 1856, received, read, and ordered published, and laid over for further consideration.

No. XI.

ORDINANCE PROVIDING FOR RECEIVING OBJECTIONS TO THE REPORT OF THE COMMISSIONERS, AND ACTION THEREON BY THE COMMON COUNCIL AND THE COMMITTEE APPOINTED UNDER IT, MAY 5TH, 1856.

On the twenty-eighth of April, 1856, Alderman Bartlett introduced the following resolution, which passed unanimously, in both Boards :

JOINT RESOLUTION 532—Relative to receiving objections to the adoption of the PLAN OF THE WESTERN ADDITION.

Resolved, That a special Committee of three from each Board be appointed, to whom shall be referred the report and accompanying map of the City Surveyor and Commissioners, and that said Committee be instructed to meet daily, at the office of the City Surveyor, between the hours of three and four o'clock, P.M., for one week, for the purpose of receiving objections to the recommendations of said Surveyor and Commissioners; and that said Committee shall advertise said meetings, inviting all interested to present themselves and make known their desires—said Committee to report at the next regular meeting of the Board.

Passed the Common Council finally, May 5th, 1856.

WM. H. STEVENS,

Clerk of the Common Council.

In the Board of Assistants, the President appointed Messrs. Bartlett, Dow, and Wilson, this Committee. In the Board of Aldermen, the President appointed Messrs. Corsor, Green, and Bryant.

The Committee gave notice under the above resolution, by advertisement published in the "*Alta*:" and many of the city papers in their editorial columns called attention to the fact of the meeting of the Committee to receive objections. Members of the Committee attended daily at the Surveyor's Office, and at the meeting on the fifth of May made the following report—

To the Honorable Common Council of the City of San Francisco :

Your Committee, appointed to attend at the City Surveyor's office, and receive objections to the adoption of the Report of the Commissioners appointed to lay off the Western Addition, and the plan drawn by the same, beg leave to Report :

That they have attended to this duty, and up to the present have heard but of three complaints. In view of the large number of persons interested, your Committee must regard this opposition as entitled to slight regard, and believe the plan meets with the general favor of the people of that part of the city.

They, therefore, respectfully recommend that the accompanying ordinance be adopted, which legalizes said plan, and makes provision for its being carried into effect.

Your Committee would further recommend, that the City Supervisors be instructed to report to the Common Council the names proposed for the different streets and squares, and that the same be first confirmed, or other names adopted in their place, before they be officially placed on the map.

C. J. BARTLETT,
CHAS. WILSON,
WM. H. DOW,
CHAS. H. CORSER,
W. GREENE,
G. W. BRYANT.

No. XII.

ORDINANCE REPORTED BY THE COMMITTEE ABOVE MENTIONED (ante, No. 11)
FOR THE ACTION OF THE COMMON COUNCIL, BUT NOT ADOPTED. MAY
5TH, 1856.

An Ordinance confirming the report of the Commissioners appointed by the Common Council in pursuance of Ordinance No. 845 [ante, No. 6], entitled "An Ordinance providing for selecting and designating Public Squares for Reservations or Hospitals, Fire Engine and School Houses, and other Public Purposes, and for adopting the Plan of Streets in the western and south-western portion of the City, according to the provisions of Ordinance No. 822, and confirmatory of said Ordinance No. 822," passed September 27th, 1855; and authorizing the Mayor to execute and deliver, and accept and receive deeds in pursuance of the provisions of said Ordinance No 822, entitled "An Ordinance for the settlement and quieting of Land Titles in the City of San Francisco," passed June 20th, 1855.

SECTION 1. The Common Council hereby approves the map and plan of streets to be laid out within the city limits west of Larkin Street and south-west of Johnson Street, presented by the said Commissioners, acting in conjunction with the City Surveyor, and approves the selections made by said Commissioners of lands and lots for public uses, in pursuance of the eighth section of the said Ordinance, entitled "An Ordinance for the settlement and quieting of Land Titles," passed June 20th, 1855.

SEC. 2. The streets as represented on the map and plan referred to in the preceding section are hereby located and established as public streets, and the several lots and parcels of land by the said Commissioners selected as aforesaid are hereby dedicated, set apart, and reserved for the several uses as in their said report specified.

SEC. 3. The Mayor is empowered to accept and receive, and cause to be duly recorded, the deeds of the city for the said lands and lots, according to section eighth of the said Ordinance No. 822, entitled "An Ordinance for the settlement and quieting of land titles in the City of San Francisco," approved June 20th, 1855, and to execute and deliver, in the name of the City of San Francisco, deeds of release and quitclaim to the several possessors entitled thereto according to the provisions of section second of said Ordinance.

SEC. 4. The deeds so executed and delivered shall be signed as well by the grantee or grantees therein named, as by the Mayor, and the said grantee or grantees, declaring his or their assent to the conditions of said Ordinance 822, referred to in the preceding section, shall on his or their part, release and quitclaim to the City of San Francisco all the rights, privileges, and reservations reserved to the city in and by the provisions and conditions of the Ordinance last aforesaid.

SEC. 5. No person shall be entitled to receive a deed under the provisions of this Ordinance until he shall have paid up all delinquent taxes and assessments levied by the city upon the land released to him, and shall also have executed, acknowledged, and paid the expense of recording the deed properly required of him for the lands or lots selected from his possession for public uses under the provisions of the Ordinance hereinbefore mentioned.

SEC. 6. Aldermen — — and Assistant Aldermen — — are hereby

appointed a joint committee from the Board of Aldermen and Board of Assistant Aldermen, who are required to render their advice and assistance to the Mayor in the execution of his duties under this Ordinance, but shall not be required to sign the said deeds.

No. XIII.

ORDINANCE OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, ADOPTING THE MAP OF THE WESTERN ADDITION, AND THE LOCATION OF THE STREETS, SQUARES, AVENUES, AND LOTS FOR PUBLIC PURPOSES, REPORTED BY THE COMMISSIONERS APPOINTED UNDER THE VAN NESS ORDINANCE, OCT. 16TH, 1856.

This ordinance is the same as that set forth in Law LXVI, Chap. page 55, etc., of the Statutes of 1858, of "An Act concerning the City of San Francisco, and to ratify and confirm certain Ordinances of the Common Council of said city," passed March 11th, 1855, and to be found in the ADDENDA, *ante*, page 220. See No. XIV, next following.

No. XIV.

THE MAP OF THE WESTERN ADDITION ABOVE ADOPTED AND APPROVED,

Is a large map, several feet square, mounted and framed, and remaining of record in the office of the City and County Surveyor, bearing the following title and certificate, the signatures of Messrs. Gough, Hayes, Hawes, and Hoff, being in their handwriting respectively, namely:

"City of San Francisco.

"For the location and dimensions of the streets, with the lots or grounds selected or set apart for the several public uses as herein designated, made, selected, and presented for the approval of the Common Council by the undersigned, City Surveyor and Commissioners, under, and in pursuance of the provisions of an ordinance of the Common Council of the City of San Francisco, entitled, "An Ordinance for the settlement and quieting of land titles in the City of San Francisco," approved June 20th, 1855; and also an ordinance of the said Common Council, entitled, "Ordinance providing for selecting and designating public squares and reservations for Hospital, Fire Engine, and School Houses, and other public purposes, and for adopting the plan of the streets in the western and south-western portions of the City, according to the provisions of Ordinance No. 822, and confirmatory of said Ordinance No. 822," approved September 27th, 1855.

C. H. GOUGH,
MICHAEL HAYES, } Commissioners.
HORACE HAWES, }

JOHN J. HOFF, City Surveyor."

This ordinance is called an ordinance of the Board of Supervisors, and was passed by certain Justices of the Peace, who, by the Consolidation Act, Laws 1856, Chapter 125, page 75, § 5, were declared by Statute to be a Board of Supervisors for the time being. I suppose there can be no doubt that this statutory

delegation was wholly inoperative, and that all the acts of the said Justices of the Peace, acting as such Supervisors, were absolutely void. *Burgoyne vs. Supervisors of San Francisco*, 5 Cal. Rep., 9, etc. But as the whole Van Ness Ordinance was itself wholly and absolutely void until it was confirmed by the Legislature, by Laws 1858, page 52, chapter 66, as herein before set forth, *ante*, ADDENDA, page 220, it is of no consequence whatsoever by whom the scheme was matured and presented, whether by Justices of the Peace who had no valid authority, or by Supervisors lawfully acting as such.

No. CXLVII.

THE ARGENTI PATENT.

PATENT FROM THE STATE OF CALIFORNIA TO FELIX ARGENTI OF CERTAIN LANDS AT THE PRESIDIO OF SAN FRANCISCO, UNDER CERTAIN CLAIMS CALLED "SCHOOL LAND WARRANTS," DATED MARCH 1ST, 1854.

[Argenti's Patent, dated June 27th, 1853, Recorded in Miscellaneous Records, Book "C," p. 75.]

STATE OF CALIFORNIA }
to }
F. ARGENTI, ASSIGNEE. }

UNITED STATES OF AMERICA, }
State of California. }

To all whom these presents shall come, Greeting :

Whereas, under the provisions of the Act of Congress of the United States, approved the fourth day of September, 1841, entitled "An Act to appropriate the proceeds of the sales of the Public Lands and to grant preëmption rights," the State of California became entitled to the quantity of five hundred thousand acres, to be selected in such manner as the Legislature of the State should direct, out of any of the Public Lands of the United States not reserved from sale by law of Congress or proclamation of the President of the United States, at any time after the said lands are surveyed by the United States; and whereas, by the Act of the Legislature of the State of California, approved on the third day of May, 1852, entitled "An Act to provide for the disposal of the five hundred thousand acres of land granted to this State by the eighth section of the Act of Congress, approved fourth of April, 1841, entitled "An Act to appropriate the proceeds of the Public Lands and to grant preëmption rights," provisions were made for the location and sale of the lands so granted by the United States to the State of California: Now, know ye, that under and by virtue of the said recited acts, fractional sections thirty-one (31) in township one (1) south range five (5) west, containing four hundred and seventeen acres (417), fractional section thirty-six (36) in township one (1) south range six (6) west, four hundred and twenty-two (422) acres, the north half ($\frac{1}{2}$) of section one (1) in township two (2) south range six (6) west, three hundred and twenty acres (320), the east fractional half ($\frac{1}{2}$) of north-east

fractional quarter ($\frac{1}{4}$) of section two (2), in township two (2), south of range west, sixty-five (65) acres, the south-east fractional quarter ($\frac{1}{4}$) of section thirty-five (35) in township one (1) south of range six (6) west, ten (10) acres, the north-west quarter ($\frac{1}{4}$) of section six (6) in township (2) two south of range five (5) west, one hundred and sixty acres (160), the north half ($\frac{1}{2}$) of the north-east quarter ($\frac{1}{4}$) of section six (6) in township two (2) south range (5) west, containing (80) eighty acres, according to the United States survey of said premises within the State of California, have been selected and designated as being a portion of the five hundred thousand acres thus granted to the State of California, and that said tracts have been taken and selected by Felix Argenti as assignee of Emanuel Berri, Frank Soulé, George Kerr, and George O. Eeker, by virtue of and in full satisfaction of State land warrants No. 138, and dated eleventh of February, 1853, No. 154, dated eighth of June, 1852, No. 117, eleventh of March, 1853, No. 178, eleventh of March, 1853, No. 457, fourteenth of February, 1853, No. 474, fifth of March, 1853, in favor of the said Emanuel Berri, Frank Soulé, George Kerr, and George O. Eeker. And all the requirements of said act having been fully complied with, he, the said Felix Argenti, assignee as aforesaid, has become entitled to a patent from the State of California for the said tract. There is, therefore, hereby granted by the State of California to the said Felix Argenti and to his heirs forever, the said described tracts or parcels of land with the appurtenances, to have and to hold the said described tracts or parcels of land with all the rights, privileges, and appurtenances unto the same, belonging or in any wise appertaining unto the said Felix Argenti, his heirs, and assigns forever. In testimony whereof, I, John Bigler, Governor of the State of California, have caused these letters to be made patent, and the seal of the State of California to be hereunto affixed.

Given under my hand at the City of Benicia, this twenty-second day of June, in the year of our Lord one thousand eight hundred and fifty-three.

[L.S.]

JOHN BIGLER.

By the Governor.

J. W. DENVER,
Secretary of State.

A true copy of original recorded at the request of F. Argenti, November 7th, 1853, at two and one-half o'clock, P.M.

JAMES GRANT,
County Recorder.

REGISTER'S OFFICE, }
Benicia, California. }

I, William W. Gift, Register, hereby certify that Felix Argenti has this day deposited in this office land warrants of the State of California issued under a law of the State for portions of the five hundred thousand acres of land granted to each of the new States, under the Act of Congress of the fourth of September, 1841, said warrants being Nos. 138, 154, 177, 178, 457, 474, 655, which he, the said Argenti, gives notice have been located by him as the agent of the State of California, upon the following tracts, pieces, or parcels of land, viz: Tract No. 31, township No. 1, south range No. 5, west tract, Sec. 31, T. No. 1, S. R. No. 5, W. Tract, Sec. 31, T. 1, S. R. 6 W, N. $\frac{1}{2}$ of Sec. 1, T. 2, S. R. 6 W., E. Tract, half of N. E. Tract, Qr. Sec. 2, T. 2, S. R. 6 W., S. E. Tract, Qr. of Sec. 35, 1

S. R. 6 W., W. $\frac{1}{2}$ of Sec. No. 6. T. 2, S. R. 5 W., lying and being in the County of San Francisco, California, and selected by him, the said Argenti.

Witness my hand, this first day of March, 1854.

WM. W. GIFT,
Register.

A true copy of original recorded at request of J. C. Bates, April 24th, 1854, at eleven A.M.

JAMES GRANT,
County Recorder.

No. CXLVIII.

CONVEYANCE OF THE U. S. HOSPITAL LOT AND OTHER PROPERTY AT RINCON POINT, TO THE UNITED STATES.

ON DECEMBER 10TH, 1862, THE COMMON COUNCIL OF THE CITY OF SAN FRANCISCO PASSED THE FOLLOWING ORDINANCE.

[Ordinance No. 280.]

FOR CONVEYING CERTAIN LOTS TO THE GOVERNMENT OF THE UNITED STATES.

The People of the City of San Francisco do ordain as follows.

That his Honor the Mayor be directed to convey on their behalf, all their right, title, and interest to certain six fifty-vara lots, bounded and described as follows.

On the east by Spear Street, on the south by Harrison Street, on the west by First Street, and north by the beach, the whole comprehended within an area of one hundred varas by one hundred and fifty varas.

J. P. HAVEN,
President Board of Aldermen.

JAS. DeLONG,
President of the Board of Assistant Aldermen.

SAN FRANCISCO, December 10th, 1852.

Approved.

C. J. BRENHAM, Mayor.

MAYOR'S OFFICE, December 9th, 1862.

I hereby certify the foregoing to be a true copy of an original Ordinance now on file in this office.

DANIEL S. ROBERTS, Clerk.

And in pursuance of the preceding Ordinance, the Hon. Charles J. Brenham, Mayor of the City of San Francisco, afterwards executed and delivered to the United States the following deed of conveyance:

CITY OF SAN FRANCISCO,
by C. J. Brenham, Mayor,
to
UNITED STATES OF AMERICA. }

WHEREAS, by ordinance No. 280, of the Common Council of the City of San Francisco, it was ordained as follows: *The People of the City of San Francisco*

do ordain as follows, That his Honor the Mayor be directed to convey on their behalf to the United States all their right, title, and interest in and to certain six fifty vara lots, bounded and described as follows, on the east by Spear street, on the south by Harrison street, on the west by Front street, and on the north by the Beach; the whole comprehended within an area of one hundred varas by one hundred and fifty varas."

Now, therefore, this deed, made and entered into this eleventh day of December, eighteen hundred and fifty-two, by and between the City of San Francisco by Charles J. Brenham, the Mayor thereof, party of the first part, and the United States of America, party of the second part; witnesseth, that for and in consideration of the premises, and of the sum of one dollar to the party of the first part, in hand paid by the party of the second part, the receipt of which is hereby acknowledged, the said party of the first part doth by these presents grant, convey, and quitclaim unto the said party of the second part, all the right, title, interest, claim, and demand, legal or equitable, in possession, remainder, or reversion of the said party of the first part in and to the premises aforesaid and every part thereof, which premises are situated and being within the corporate limits of said city, and are bounded and described as set forth in said ordinance, to have and to hold the said premises, with all the privileges and appurtenances thereunto belonging unto the said party of the second part forever.

In witness whereof, the said Charles J. Brenham, Mayor of said city, on behalf of said city, hath hereunto set his hand and caused the official seal of said city to be hereunto affixed, the day and year aforesaid.

[L.S.]

C. J. BRENHAM,
Mayor.

I hereby certify that the copy of Ordinance No. 280, included within the foregoing deed, is a true copy of an original ordinance returned by the Mayor to the Common Council, with his approval, December 10th 1852.

San Francisco, December 13th, 1852.

EDWARD TOBY,
Clerk of the Common Council.

STATE OF CALIFORNIA, }
County of San Francisco. } ss.

On this fourteenth day of December, 1852, personally appeared before me, Frederick A. Sawyer, a Notary Public for said county, Charles J. Brenham, Mayor of the City of San Francisco, and Edward Toby, Clerk of the Common Council of said city, to me known to be the individuals described in, and who executed the several instruments above to which their names are subscribed, and acknowledged to me that they executed the same freely and voluntarily, and for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal of office, the day and year last above written.

[L.S.]

F. A. SAWYER,
Notary Public.

The preceding is a true copy of the original recorded at the request of T. B. King, December 17th, 1852, 12 o'clock M.

THOS. B. RUSSUM,
County Recorder.

In *Hubbard vs. Sullivan*, case No. 7953, in the Twelfth District Court, in and for the City and County of San Francisco, and afterwards appealed to the Supreme Court and reported in 18 Cal. Rep., 508, it was held that the preceding instrument was effectual as a license from the City of San Francisco to enter upon and hold the lands described in and purporting to be conveyed by it. Whether it was operative as a conveyance, or whether the Van Ness Ordinance operated in favor of the United States, was not decided; nor do any objections appear to have been made to the substantive form of the instrument, or to its mode of execution.

No. CXLIX.

CONVEYANCE OF LANDS TO THE "SAN FRANCISCO ORPHAN ASYLUM SOCIETY," GENERALLY CALLED THE "PROTESTANT ORPHAN ASYLUM."

THE CITY OF SAN FRANCISCO	}
to	
STEPHEN FRANKLIN et als., Trustees	}
of San Francisco Orphan Asylum Society.	

WHEREAS, the People of the City of San Francisco did by ordinance of the Common Council of said city, passed on the seventh day of April, A.D. 1853, ordain as follows :

The People of the City of San Francisco do ordain as follows :

SECTION 1. That all the right, title, and interest in and to that certain lot or parcel of land bounded and described as follows, to wit: Commencing at a stake ten hundred and seventy-five varas westerly from Yerba Buena Cemetery, measured at right angles to Larkin street; and eight hundred and seventy-five varas southerly from McAllister street, measured at right angles to said street; thence running same course south eight degrees and forty-five minutes east, two hundred and twenty-five varas; thence south eighty-one degrees and fifteen minutes west, one hundred and fifty varas; thence north eight degrees and forty-five minutes west, two hundred and twenty-five varas; thence north eighty-one degrees and fifteen minutes east, one hundred and fifty varas to place of commencement—be, and the same is hereby given, granted, and conveyed unto Stephen Franklin, F. W. Macondray, and Amos B. Eaton, as Trustees of the "San Francisco Orphan Asylum Society," and to their successors and assigns in that office, for the use and benefit of said Society; and his Honor, the Mayor, is hereby directed to execute and deliver a proper instrument of conveyance therefor. Now, therefore, I, Charles J. Brenham, Mayor of said city, in pursuance of said ordinance and in consideration of one dollar to me in hand paid, for and in behalf of said city, by Stephen Franklin, Frederick W. Macondray, and Amos B. Eaton, of said City, Trustees of the "San Francisco Orphan Asylum Society," have remised, released, bargained, sold, and conveyed, and by these presents do remise, release, bargain, sell and convey unto the said Franklin, Macondray, and Eaton, as Trustees of said "San Francisco Orphan Asylum Society" as aforesaid, and to their successors and assigns all the right, title, interest, claim, and demand, both at law and in equity of

the said City of San Francisco, of, in, and to the said tract or parcel of land in said city, as above described in said ordinance, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity of the said City of San Francisco, of, in, or to the above described premises, and every part and parcel thereof with the appurtenances, to have and to hold all and singular the above mentioned and described premises together, with the appurtenances unto the said Franklin, Macondray, and Eaton, as Trustees as aforesaid, and to their successors in office forever. In witness whereof, the said Charles J. Brenham, in behalf of the said city, has hereunto set his hand and the corporate seal of said city, this seventh day of April, A.D. one thousand eight hundred and fifty-three.

[L.S.]

C. J. BRENHAM,
Mayor.

Scaled and delivered in presence of

DANIEL S. ROBERTS,
JOHN HANNA.

STATE OF CALIFORNIA, }
County of San Francisco. } ss.

On the eighth day of April, A.D. 1853, before me, a Notary Public in and for said county, personally appeared Charles J. Brenham, Esq., Mayor of the City of San Francisco, to me known to be the person described in and who executed the foregoing deed of conveyance, and acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[L.S.]

C. V. GILLESPIE,
Notary Public.

A true copy of the original, recorded April 9th, 1853, at 11 A.M., at request of S. Franklin.

THOS. B. RUSSUM,
County Recorder.
Per JOHN A. CLARK, Deputy.

No. CL.

NOTICE OF APPLICATION TO THE SUPREME COURT OF THE UNITED STATES, ON THE PART OF THE UNITED STATES, FOR A MANDAMUS COMMANDING THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, TO ALLOW AN APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE DECISION OF THE SAID CIRCUIT COURT IN THE PUEBLO CASE.

[The Circuit Court having confirmed the claim of the City of San Francisco

for four leagues of Pueblo Land (ante, page 250, No. CXXVI), and both parties having moved for an appeal from said decision, and said motions having been denied (ante, pages 251, 255, Nos. CXXVII-CXXIX), the District Attorney of the United States moved the Supreme Court of the United States for a Mandamus to compel the allowance of such appeal, upon the following papers.]

No. I.

NOTICE OF MOTION FOR MANDAMUS.

Please to take notice, that on an affidavit, with a copy whereof you are herewith served, a motion will be made before the Supreme Court of the United States, at the next term thereof, to be held at the Capitol, in the City of Washington, on the first Monday of December next, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, that a writ of Mandamus issue from the said Supreme Court to the Circuit Court of the Tenth Circuit of the United States, in and for the Northern District of California, therein and thereby commanding the said Circuit Court, or the Judges thereof, to allow an appeal in the case, matter, or proceeding mentioned and set forth in the foregoing affidavit, and from the judgment, decree, and final decision of the said Circuit Court therein, to the said Supreme Court; and for such other and further order in the premises as shall be deemed fit and proper.

Dated, October 16th, 1865.

Yours, etc.,

DELOS LAKE,
United States Attorney.

To the Judges of the Circuit Court, Tenth Circuit.

No. II.

AFFIDAVIT FOR MANDAMUS.

STATE OF CALIFORNIA, }
City and County of San Francisco. } ss.

Delos Lake, United States Attorney for the Northern District of California, being sworn, deposes and says :

That on the second day of July, A.D. 1852, the City of San Francisco, a body corporate and politic, created and existing by and under the laws of the State of California, filed its petition before the Board of Commissioners to Ascertain and Settle Private Land Claims in the State of California, praying for a confirmation to said city of four square leagues of land upon the peninsula on which said city is situated, and including the site of said city; which said claim was made by said city as successor of the former Pueblo or town of San Francisco, under an alleged grant of said four leagues of land to said Pueblo, for municipal purposes, by the former governments of Spain and Mexico. That, thereupon and thereafter, such proceedings were had by and before said Board of Commissioners, that on the twenty-first day of December, A.D. 1854, a decree was entered by said Board of Commissioners, confirming to said city a portion of said lands so claimed, but not

the whole of the same, from which decree the said City of San Francisco appealed, on the twenty-ninth day of August, A.D. 1851; and the United States also appealed on the second day of June, A.D. 1856, and the transcript on said appeals was duly filed in the office of the Clerk of the District Court of the Northern District of California, in which district all the lands so claimed are situated, on the third day of March, A.D. 1856. That afterwards, and on or about the day of the appeal on behalf of the United States was dismissed.

That on the fifth day of September, A.D. 1863, the case was, by an order made by the said District Court, and entered in its minutes, transferred to the Circuit Court of the United States, in and for the Northern District of California, and the said transcript was thereupon filed in the office of the Clerk of said Circuit Court, on the fifth day of September, A.D. 1864. That thereupon and thereafter, such proceedings were had in and by the said Circuit Court, that on the eighteenth day of May, in the year 1865, a decree was made and entered by said Circuit Court, confirming the said claim of the said City of San Francisco, to said four leagues of land, with certain reservations and exceptions specified in the said decree.

That after the said last mentioned decree had been entered, the United States, by its District Attorney of the Northern District of California, moved the said Circuit Court, in open Court, on or about the twenty-fifth day of May, 1865, to allow an appeal from said decree, to the United States so applying therefor, to the Supreme Court of the United States, which motion was, by an order, entered in the minutes of said Circuit Court, on the twenty-ninth day of May, A.D. 1865, peremptorily denied, upon the sole ground that no such appeal was allowable by law, but that the decree of the said Circuit Court, was final in the premises.

A copy of the final decree is hereto annexed, marked "A."

A copy of the order dismissing the appeal, is hereto annexed, marked "B."

DELOS LAKE.

Subscribed and sworn to, before me, this sixteenth day of October, 1865.

GEO. H. GORHAM,
U. S. Commissioner.

EXHIBIT "A."

FINAL DECREE CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO
TO ITS PUEBLO LANDS, ENTERED MAY 18TH, 1865.

THE CITY OF SAN FRANCISCO, }
vs. }
THE UNITED STATES.

[This decree is set forth in full, ante, page 250, No. CXXVI.]

EXHIBIT "B."

ORDER ENTERED IN THE CIRCUIT COURT OF THE UNITED STATES, DENYING THE MOTIONS FOR APPEALS TO THE SUPREME COURT OF THE UNITED STATES, FROM THE DECREE CONFIRMING THE CLAIM OF THE CITY OF SAN FRANCISCO TO FOUR LEAGUES OF PUEBLO LANDS, ENTERED MAY 29TH, 1865.

THE CITY OF SAN FRANCISCO }
vs.
 THE UNITED STATES. }

[This order is set forth in full, ante, page 255, No. CXXIX.]

No. CLI.

OPINION OF THE SUPREME COURT OF THE UNITED STATES,
 ON ITS DECISION AWARDING A MANDAMUS TO ALLOW AN
 APPEAL IN THE PUEBLO CASE.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES EX REL. THE }
 ATTORNEY GENERAL OF THE UNITED }
 STATES, Petitioner, }
vs. }
 THE JUDGES OF THE CIRCUIT COURT } On petition for a mandamus.
 OF THE UNITED STATES FOR THE }
 DISTRICT OF CALIFORNIA, TENTH }
 CIRCUIT. }

Mr. Justice Nelson delivered the opinion of the Court.

The question in this case is, whether or not an appeal lies from the decree of the Circuit Court which has been rendered under the fourth section of the act of Congress, passed July 1st, 1864. The provision is that whenever the District Judge of any one of the District Courts of the United States for California is interested in any land, the claim to which, under the act of 1851, is pending before him on appeal from the Board of Commissioners, the said District Court shall order the case to be transferred to the Circuit Court, which Court shall thereupon take jurisdiction and determine the same.

The said District Courts may also order a transfer to the said Circuit Court of any other cases arising under said act, pending before them, affecting the title to lands within the corporate limits of any city or town, and in such cases both the District and Circuit Judges may sit.

In the present case an appeal was pending in the District Court for the Northern District of California from a decree of the Board of Land Commissioners, and was transferred from the District Court to the Circuit under the above provision.

It was there heard and decided, and the United States, represented by the Attorney General, which claims to be aggrieved by the decree, applied in due form to the Court for an appeal to the Supreme Court of the United States, which application, after full consideration, was denied, on the ground that upon a true construction of the above fourth section, no appeal had been provided for.

The question is a nice one in practice, and is not without its difficulties.

The section itself does not provide for an appeal, and, unless the case is governed by some general law, or established practice of the Court derived from acts of Congress, the right of appeal cannot be maintained.

By the 22d section of the judiciary act, in connection with the act of March 3d, 1803, all judgments and decrees in civil actions, and in suits in equity in a Circuit Court, brought there by original process, or removed there from Courts of the several States, or, *removed there by appeal from a District Court*, may be re-examined and reversed or affirmed in the Supreme Court. It is said that the present case was not brought into the Circuit by an appeal from the District Court, and hence is not within the provision.

The case, as we have seen, comes into the Circuit under the fourth section of the act of 1864, not by appeal, but by an order of the District Court transferring it to the Circuit.

This fourth section was taken from, or part of it at least, is but a transcript of the 11th section of an act of Congress, passed May 8th, 1792. The act provided that in all suits and actions in any District Court of the United States in which it shall appear that the Judge is in any way interested, or has been counsel for either party, it shall be his duty to cause the fact to be entered in the minutes of his Court, and order an authenticated copy thereof, with all the proceedings in the suit, to the next Circuit Court, which Court shall thereupon take cognizance of the case, and hear and determine the same. And a similar provision will be found in the act of March 2d, 1809, (2 U. S. St., p. 534) in case of the disability of the District Judge to perform the duties of his office during such disability. The cases are transferred by the Clerk on the order of the Circuit Judge. And a like provision is found in the act of March 3, 1821, (3 U. S. St., p. 643) in case of the relationship of the Judge to either of the parties to the suit.

Now, these acts, as will be seen from their date, have been in force from an early period, and it has never been doubted but that the judgments and decrees rendered in the Circuit Court were subject to be re-examined, reversed, or affirmed by the Supreme Court, as in any other case under the 22d section of the judiciary act. A case was before us at the present term that had been transferred to the Circuit under the act of 1792.

The law providing for the transfer of the case from the District Court to the Circuit, was regarded as enlarging the cases provided for in the 22d section; and virtually incorporated therein a removal by transfer, when thus authorized, to the Circuit, in addition to the cases of removal by appeal as provided for in that section.

It will be observed that this fourth section of the act of 1864 provides for a compulsory transfer only in the case of an interest of the Judge in the land in controversy. But suppose he had been counsel in the cause, or disabled by sickness, or by reason of relationship to either of the parties, this fourth section does not provide for the disability. The cases were, however, already provided for by the acts of 1792, 1809, and 1821, and they are peremptory, that on the application of the

counsel of either party, the case shall be transferred to the Circuit Court. The construction, therefore, contended for, would present the singular inconsistency of a denial of an appeal in case of the interest of the Judge in the subject-matter of the controversy; but its allowance in case of a transfer, when he had been counsel in the cause, or general disability to discharge his duties, or in case of relationship to either of the parties.

The remaining clause of this section makes it optional with the Judge to transfer other causes arising under the act of 1851, affecting the title to lands within the corporate limits of a city or town, and then both Judges may sit.

But whether the transfer is optional or compulsory, cannot vary its legal effect. If made at all, it must be by the authority of the fourth section—by the authority of law—the same as in the case of interest of counsel, or general disability of the Judge, or from relationship, and falls within the practice applicable to these cases.

This clause is subject to an additional objection; for as the transfer is optional, and may be granted or not, if the decree or judgment of the Circuit Court is not matter of appeal, or writ of error, whether any appeal be permitted or not in the case, is within the power of the District Judge. If he retains the case and determines it, an appeal, it is admitted, lies; if he transfers the case, and the decree or judgment is in the Circuit, it must be denied. We think Congress could hardly have intended this result. It places the right of an appeal, not on the judgment of the Circuit Judge who rendered it, but in the discretion of the Judge of the District Court.

It is urged that the proceedings under the act of 1851, concerning California land titles, are special, and not to be regarded as cases either in law or equity. The law is general, and concerns the title to the whole of the real property of the State. Many of the provisions of this law are taken from the act of May 26, 1824, which provided for the trial of claims under imperfect Spanish and French grants within the State of Missouri, before the District Judge of that district. These were grants under the protection of the treaty of San Ildefonso. The proceedings were informal, like those under the act of 1851. The claims were to be determined according to the law of nations, the stipulations of the treaty, the several acts of Congress in relation thereto, the laws and ordinances of the government from which the titles were derived. The proceedings were regarded as in the nature of a proceeding in equity, though the analogy was not very close, the decision on the claim being in the form of a decree.

The proceedings under the act of 1851, we think, should be regarded in the same light—in the nature of a proceeding in equity. The form of the decision has always been in conformity thereto. An appeal is the appropriate mode of bringing the case up to the Appellate Court for review, and such has been the uniform practice under the act.

Upon the whole, our conclusion is, that an appeal lies in behalf of the United States.

No. CLII.

DISSENTING OPINION OF JUSTICES FIELD, GRIER, AND MILLER FROM THE DECISION OF THE SUPREME COURT OF THE UNITED STATES, AWARDING A MANDAMUS FOR AN APPEAL IN THE PUEBLO CASE.

SUPREME COURT OF THE UNITED STATES.

THE CITY OF SAN FRANCISCO	}	
<i>vs.</i>		
THE UNITED STATES.	}	On petition for a mandamus.
THE UNITED STATES EX REL. OF THE		
ATTORNEY GENERAL		
<i>vs.</i>	}	
THE CIRCUIT COURT OF THE UNITED		
STATES FOR THE DISTRICT OF CALI-	}	
FORNIA, TENTH CIRCUIT.		

Mr. Justice Field dissenting.]

Unable to concur in the opinion of a majority of the Court, which has just been read, I will proceed to give the grounds of my dissent.

The Supreme Court, by the Constitution, takes its appellate jurisdiction over cases "with such exceptions, and under such regulations as the Congress shall make." And the designation, by acts of Congress, of the cases to which this jurisdiction shall extend, has uniformly been held to be a legislative declaration that all other cases are excepted from it. Thus in *Wiscart vs. Dauchy*, (3 Dallas, 327), which was decided as early as 1796, the Court said, that if Congress had not provided any rule to regulate its proceedings on appeal, it could not exercise an appellate jurisdiction, and, if a rule were provided, the Court could not depart from it. And, in *Clarke vs. Bazadone*, (1 Cranch, 212) it was decided that a writ of error did not lie from this Court to the general court for the territory northwest of the Ohio, because Congress had not by its legislation authorized such writ. It was urged, on the argument, that the judicial power, under the Constitution, extended to all cases arising under the Constitution and laws of the United States, and to controversies in which the United States were a party; and that the Supreme Court had appellate jurisdiction in all these cases, with such exceptions and under such regulations as Congress might make; that Congress had made no exception in that case, which was one arising under the laws of the United States, and no regulation was necessary to give the Court the appellate power; that it derived that from the Constitution itself. But the Court adhered to its previous ruling, although observing, at the same time, that from the manifest errors on the face of the record it felt every disposition to support the writ.

In *Durousseau vs. The United States*, (6 Cranch, 307) the subject was again considered, and the Court held, that though its appellate powers were given by the Constitution, they were limited and regulated by the judicial act and such other acts as had been passed on the subject. "When the first legislature of the Union," said Mr. Chief Justice Marshall, in delivering the opinion of the Court, "proceeded to carry the third article of the Constitution into effect, they must be under-

stood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court. They have not, indeed, made these exceptions in express terms. They have not declared that the appellate power of the Court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it." And, in illustration of this principle, reference is made to the provision of the law which allows a writ of error to a judgment of the Circuit Court, where the matter in controversy exceeds the value of two thousand dollars. "There is no express declaration," said the Chief Justice, "that it will not lie where the matter in controversy shall be of less value. But the Court considers this affirmative description as manifesting the intent of the legislature to except from its appellate jurisdiction all cases decided in the circuits where the matter in controversy is of less value, and implies negative words."

It follows, therefore, that the appellate jurisdiction of this court exists only in those cases in which it is expressly granted. In conformity with this principle it has been held that such jurisdiction does not extend to final judgments in criminal cases, it not having been conferred by Congress. A question arising in a criminal case can only be brought before this Court for decision upon a certificate of a division of opinion between the Judges of the Circuit Court. (*Forsyth vs. The United States*, 9 How., 571.) So, under the judiciary act of 1789, jurisdiction to review a judgment or decree of the Circuit Court, rendered in an action brought before it from the District Court, *on writ of error*, was denied, as the act only mentioned judgments and decrees brought before the Circuit Court *on appeal* from the District Court. (*United States vs. Goodwin*, 7 Cranch, 108.)

The act of July 1st, 1864, under which the Circuit Court acquired jurisdiction over this case makes no provision for an appeal from the decree of the Court, or for any re-examination of the decree by the Supreme Court. If an appeal exists it must be found in the amendatory judicial act of March 3d, 1803, or in the act of March 3d, 1851, to ascertain and settle private land claims in the State of California.

The judiciary act of 1789 only provides for a review, upon a *writ of error*, of the final judgments and decrees of the Circuit Court where the matter in dispute exceeds the sum or value of two thousand dollars. It is the act of 1803 which extends the appellate power of the Court to a review of final judgments and decrees brought up *on appeal* when the matter in dispute is of the like amount or value; and it limits the review to judgments and decrees rendered in "cases of equity, of admiralty and maritime jurisdiction, and of prize or no prize." Subsequent acts of Congress have reduced the required amount or value of the matter in dispute in some cases—as in suits for the protection of copyrights and patents; but in none of them is there any change in the character of the case in which the judgment or decree of the Circuit Court can be reviewed on appeal. Where a review of the action of the Circuit Court upon any other matter is intended it is authorized by special provision in the act creating the proceeding.

The question, then, upon the act of 1803 is, whether its terms embrace a proceeding taken for the ascertainment and settlement of a claim to land derived from the Spanish or Mexican governments? Such a proceeding is not a suit in admiralty, of course; nor is it a suit in equity, as those terms are there used. By those terms is meant a regular proceeding in a court of justice for relief on equitable grounds,

in contradistinction to an action at law for the enforcement of legal rights—a proceeding which can only be sustained when plain, adequate, and complete remedy cannot be had at law. The act mentions the pleadings by which the suit is to be conducted; it requires a transcript of the bill, answer, and deposition to be transmitted to the Supreme Court on appeal, clearly indicating the nature of the proceeding to which it refers. The proceeding for the confirmation of a California land claim is of a very different character; is governed by different principles, and supported by different evidence. It is a proceeding taken under a statute conferring a peculiar and limited jurisdiction, created for the purpose of enabling the government to separate private lands from the public domain, and to discharge its political obligations under the treaty of cession. It is in the nature of an inquisition of the government, invoked by the petition of the claimant, and governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity, and the decisions of the Supreme Court, so far as they are applicable. Though the principles of equity are to constitute one ground of the decision, the proceeding has nothing in it whatever which will justify its designation as a suit in equity, as those terms are used in the act of 1803.

The heads of the different departments are often required, by acts or resolutions of Congress, to settle claims for losses and liabilities incurred on behalf of the government, or in the attempted performance of contracts on the principles of equity. Thus, in the case of *De Groot*, who asserted claims for furnishing materials for the Washington aqueduct, the resolution of Congress directed the Secretary of War to settle the claims "on the principles of justice and equity." (12 Stats., 874.) Yet, no one would pretend that the proceeding before the Secretary was a suit in equity, as these terms are understood in a legal sense. Nor is an application for a patent, or a proceeding for the assessment of damages, where private property is taken for public purposes, a suit of that nature. Nor would such special proceeding lose its distinctive and special character if, by an act of Congress, it was made subject to review on appeal by the District Court of the United States. These cases belong to that class of controversies which are properly the subjects of administrative regulation, and do not become converted into suits in equity because judicial agency is brought in to aid the administrative proceeding. They may be submitted to the entire disposition of a board of commissioners without the violation of any principle, just as the California land cases are submitted, in the first instance, to such board for investigation.

The Act of March 3d, 1851, does not provide for any consideration by the Circuit Court of cases of this character. The jurisdiction over these cases is by that act vested, in the first instance, in a board of commissioners, and afterwards, on appeal from the decision of the board, in the District Court. From the decrees of the District Court, an appeal lies directly to the Supreme Court. The language of the act is, that "the District Court * * * shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States."

The act of July 1st, 1864, authorizes a transfer from the District Court to the Circuit Court of cases of this kind, where the District Judge is interested in the land, the claim to which is pending before him, and also where the case affects the title to lands within the corporate limits of any city or town; but it does not confer any right of appeal from the action of the Circuit Court in these cases after

they are transferred. It is contended, however, by counsel, that the right of appeal goes with the transfer of the case.

The argument is, that there is no rule for the decision of the case after it is transferred, unless the provisions of the act of 1851, on this point, are considered as governing; and that it is not to be presumed that Congress intended that the right of appeal from the decision should depend upon the contingency of the District Judge having an interest in the claim, or the fact that some of the lands involved are situated within the limits of a corporate city.

The answer to the first head of the argument is found in the fact that the rules prescribed by the act of 1851, would govern independent of their statutory enactment. Whether a title alleged to have been acquired under the former Government was in fact thus acquired, and entitled to recognition after a change of sovereignty by the new Government, would necessarily depend upon the laws, customs, and usages of the former Government, the law of nations, the stipulations of the treaty by which a change of jurisdiction was effected, and the considerations which should govern a just nation in treating of the property of its newly acquired subjects, as explained by the highest tribunal of the country.

And as to the second head of the argument, it may be suggested that it would be a reasonable position to assume that Congress, in passing the act in question, understood the meaning of the language it used, and recognized the difference between the District and Circuit Courts of the United States, and when it omitted to provide any appeal from the decree of the Circuit Court, it intended that none should exist. There is no repugnancy between the acts of 1851 and 1864. Reading them together, it would seem to be clear that Congress intended that when a case was decided by the District Court an appeal should lie, but when decided by the Circuit Court, its decision should be final. There is nothing singular in a provision of the kind, and if there were it is sufficient that such was the will of the legislature. In matters of survey, which oftentimes determine the value of the whole claim, the decision of the Circuit Court is admitted to be final, made so in express terms by the act. Is there any more reason for doubting the disposition of Congress to trust to that Court the final settlement of the title, than there is to trust the final settlement of the boundaries of the land when the title is confirmed?

But it is not necessary to rest this matter upon reasons of this nature. The absence of a provision allowing an appeal was not an oversight on the part of Congress. It is evident, from the general language of the act, and the object sought to be accomplished by it, that it was the intention of the legislature to give finality to the action of the Circuit Court.

The act was designed, as its name purports, to *expedite* the settlement of titles to land in the State. Great delays and embarrassments were found to exist in determining the location and boundaries of tracts confirmed after the question of title had been adjudicated. The hearing by the District Court of exceptions to surveys returned by the Surveyor-General, interposed by parties possessing or asserting adverse interests, the taking of depositions, the discussion of counsel, and the modifications or new surveys sometimes ordered, necessarily occupied the time usually taken by an ordinary suit at law. Then followed the right of appeal to the Supreme Court from the action of the District Court, not merely by the original contestants to the proceeding, but by third parties intervening, whether adjoining proprietors, purchasers under the original grantee, or persons claiming by preemption, settlement, or other right under the United States. To obviate the

delays and expense necessarily attending proceedings of this character, particularly as occasioned by the appeal to the Supreme Court, and to relieve that tribunal, burdened by a crowded docket, the act limited its jurisdiction to cases in which appeals were then pending, and vested jurisdiction in the Circuit Court over cases in which appeals might be subsequently taken. When from the decree of the District Court, approving or correcting the survey, no appeal had been taken, "no appeal," says the act, "to that Court shall be allowed, but an appeal may be taken, within twelve months after this act shall take effect, to the Circuit Court of the United States, for California, and said Court shall proceed to fully determine the matter."

Following these provisions is the section which directs that when the District Judge is interested in any land, the claim to which, under the act of March 3d, 1851, is pending before him on appeal from the board of commissioners, the case shall be transferred to the Circuit Court, "which shall thereupon take jurisdiction and determine the same." The act then proceeds as follows: "The said District Courts may also order a transfer to the said Circuit Court of any other cases arising under said act, pending before them, affecting the title to lands within the corporate limits of any city or town, and in such cases both the District and Circuit Judges may sit."

The answer to the last objection will be more obvious if reference is made to the circumstances under which the Act of 1864 was passed, as given in the opinion of the Circuit Court. These circumstances are not referred to for the purpose of controlling the construction of the language of the act, but in answer to suppositions as to the intention of Congress.

At the passage of the act there were only two cases pending in the District Courts of California, with reference to which the authority conferred by the clause in question could be exercised—the case of the City of San Francisco, and the case of the City of Sonoma, both against the United States. The first case had then been pending in the District Court for over eight years. In the mean time the city had extended in all directions, and interests of vast magnitude had grown up, which demanded that the title to the land upon which the city rested should be, in some way, speedily and finally settled. The Land Commissioners had adjudged that the claim of the city was valid within certain described limits. The United States, through their highest legal officer, had assented to this adjudication, and the principal question on appeal before the District Court was as to the additional quantity claimed over the quantity confirmed.

The case of the City of Sonoma had been likewise pending in the District Court on appeal for over eight years. In this case the United States had, through the Attorney-General, signified their assent to a confirmation of the decree of the board, and the principal question on appeal here was also as to the additional quantity claimed by the city.

It was under these circumstances that the law was passed authorizing a transfer of these cases to the Circuit Court. If an appeal from its action had been intended, no beneficial object would have been accomplished by the transfer, for the same delay would follow an appeal from the Circuit Court as would follow an appeal from the District Court. Nor can any reason in that view be assigned for allowing both the District and Circuit Judges, if they desired, to sit in the hearing of these cases.

The acts of 1792, 1809, and 1821, which authorize a transfer of causes from the District Court to the Circuit Court, where the District Judge is interested, or has

been counsel in the case, or is disabled from performing the duties of his office, or is related to either of the parties, have no bearing upon the question under consideration. They do not confer any right of appeal from the action of the Circuit Court after the cases are transferred, or any right to have such action reviewed on writ of error. Such right, when it exists, depends upon the acts of 1789 and 1803—that is, upon the nature of the case and the amount or value of the matter in controversy; and the latter act, which is the only one relating to appeals, does not cover, as I have endeavored to show, a decree in the proceeding for the settlement of a California land claim, where the right or title is alleged to have been derived from the Spanish or Mexican Governments.

I am authorized by Justices Grier and Miller to state that they concur with me in this opinion.

No. CLIII.

ACT OF CONGRESS APPROVED MARCH 8TH, 1866, ENTITLED—

AN ACT TO QUIET THE TITLE TO CERTAIN LANDS WITHIN THE CORPORATE LIMITS OF THE CITY OF SAN FRANCISCO.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That all the right and title of the United States to the land situated within the corporate limits of the City of San Francisco, in the State of California, confirmed to the City of San Francisco by the decree of the Circuit Court of the United States for the Northern District of California, entered on the eighteenth day of May, 1865, be, and the same are hereby relinquished and granted to the said City of San Francisco and its successors, and the claim of the said city to said land is hereby confirmed, subject, however, to the reservations and exceptions designated in said decree, and upon the following trusts, namely: that all the said land, not heretofore granted to said city, shall be disposed of and conveyed by said city to parties in the *bona fide* actual possession thereof, by themselves or tenants, on the passage of this act, in such quantities and upon such terms and conditions as the Legislature of the State of California may prescribe, except such parcels thereof as may be reserved and set apart by ordinance of said city for public uses; *provided*, however, that the relinquishment and grant by this act shall not interfere with, or prejudice any valid adverse right or claim, if such exist, to said land or any part thereof, whether derived from Spain, Mexico, or the United States, or preclude a judicial examination and adjustment thereof.

No. CLIV.

DECREE OF MARCH 20TH, 1837, GIVING GOVERNORS AND PREFECTS THE POWER TO DISPOSE OF PUÉBLO LANDS. FROM ARRILLAGA, RECOPIACION DE LEYES DE 1837, PAGES 202-217.

[This decree of the Sovereign authority of Mexico is recognized in Governors and Prefects the power to dispose, executively, of Pueblo lands. Many grants, so made by Prefects, have been finally confirmed, and this provision, therefore, belongs to the history of the corresponding branch of the laws.]

REGLAMENTO PROVISIONAL PARA EL GOBIERNO INTERIOR DE LOS DEPARTAMENTOS.

[PROVISIONAL REGULATION FOR THE INTERNAL ADMINISTRATION OF THE DEPARTMENTS.]

De los Prefectos: [Concerning Prefects.]

* * * *

ART. 77. Arreglaran gubernativamente y conforme á las leyes el repartimiento de tierras comunes en los pueblos del distrito, siempre que sobre ellas no haya litigio pendiente en los tribunales, quedando á los interesados su derecho á salvo para acudir al gobernador, quien sin ulterior recurso decidirá lo mas conveniente, de acuerdo con la junta departmental.

* * * *

ART. 77. They (the Prefects) shall regulate, executively and conformably to the law, the distribution of the common lands of the Pueblos of their Districts, provided there be no lawsuit pending in the Courts respecting the same; but this shall be without prejudice to the rights of the interested parties to apply to the Governor, who, with the concurrence of the Departmental Junta, shall make such determination as may be thought most expedient.

NOTE.—See the Law of the Cortes of 1813, ante, No. XI, page 20; the comments on the same in the ARGUMENT, page 39, § 52; the Colonization Laws of 1828 and 1829, ante, No. XIV, page 25, §§ 13, 14, 15, 16, and the comments on the same in the ARGUMENT, page 41, § 56. The above decree is based upon the Sixth Constitutional Law of 1836, a portion of which is given, ante, page 100, No. LXIX.

 No CLV.

GRANT OF FOUR HUNDRED VARAS SQUARE, AT THE MISSION DOLORES, BY GOVERNOR GUTIERREZ, TO FRANCISCO GUERRERO, NOVEMBER 3D, 1836.

Provisionally authorized by the Administrator of the Maritime Custom House of Monterey, of Upper California, for the years 1834 and 1835.

(Signed) CASTRO.

(Signed) ANGELO RAMIREZ.

Revalidated for the two years 1836 and 1837.

(Signed) GUTIERREZ.

(Signed) A. RAMIREZ.

MONTEREY, Novem- }
ber 4, 1836. }

Let the Administrator of the Mission of San Francisco report whether the land is vacant, and can be granted to the petitioner.

(Sig'd) GUTIERREZ.

DOLORES, 9th of No- }
vember, 1836. }

In compliance with the Superior Decree, I will say that the land is vacant, and in conformity with the order of the deceased General Figueroa, it may be granted to the person interested.

(Signed)

GUM'DO FLORES.

Señor Commanding General and Governor of the Territory of Upper California:

I, Francisco Guerrero, a Mexican by birth, before your Excellency make representation that, being a member of the Colony which came to this Territory, and that, as his Excellency, the Commanding General, Jose Figueroa, directed that we should settle whenever we might think proper, I pray your Ministration, in the use of your power, to grant me four hundred square varas, in a marshy place, which forms a plan N. N. W. of the Mission, from the place where the water springs from the north to the southeast, and west to the road of Yerba Buena, according to the map which I transmit: for I will receive this favor from your Excellency, to make use of said land for my benefit.

Wherefore, I earnestly pray your Excellency to grant that which I request, by which I will receive favor and grace, swearing what may be necessary, etc.

SAN FRANCISCO, October 28th, 1836.

FRANCISCO GUERRERO.

MONTEREY, November 30th, 1836.

Having previously seen the report of the Administrator of the Mission of Dolores, and the Superior order relative to the individuals of the Colony, there are granted to citizen Francisco Guerrero, four hundred varas in the place petitioned for, according to the present petition. He will, therefore, present this document to the Government of the Territory, so soon as the Missions are regulated, that the present decree may be respected.

NICOLAS GUTIERREZ.

NOTE.—This grant has been finally confirmed and surveyed. See 1 Hoffman's Rep., 97; Do. Appendix, No. 229.

No. CLVI.

GRANT OF TWO HUNDRED AND SEVENTY VARAS SQUARE, AT THE MISSION DOLORES, BY MANUEL CASTRO, PREFECT, TO FRANCISCO DEHARO, JUNE 2D, 1846.

YERBA BUENA, }
Nov. 9th, 1845. }

Let the Señor Sub Prefect report, first causing such investigations to be made as are necessary in order to ascertain if the lands petitioned for are vacant, and if there be any reason why they should not be conceded to the petitioner.

MANUEL CASTRO.

To the Señor Prefect:

I, Francisco de Haro, a resident of the jurisdiction of San Francisco, before your Señor, with due respect, appear and say, that there being in the immediate neighborhood of my house, to the north, a piece of land which is called La Huerta Vieja, on the Establishment of Dolores, which is vacant, and desiring to cultivate the same for my own benefit and that of my family, I apply to your Honor, to the end that, in the exercise of your authority, you may be pleased to concede me a suerte in said land, for which I have, heretofore, made a petition to the Governor of the

Department, which was reported upon favorably by the Mayordomo of the establishment, and which should be in the Archives of the Government at Monterey: Wherefore, I pray your Honor to be pleased to provide, in accordance with justice, upon this my petition, which is made upon common paper for want of that which has a corresponding seal.

SAN FRANCISCO, October 30th, 1845.

FRANCISCO DE HARO.

YERBA BUENA, November 10th, 1845.

In view of the foregoing decree, found upon this petition, I say that the petitioner possesses the necessary requisites; that the land petitioned for is vacant; and that he has always occupied it. It pertains to the Establishment of Dolores; and, inasmuch as his Excellency, the Governor, issued a decree in relation to matters pertaining to the Mission, your Honor may concede him the small piece of land for which he petitions for the benefit of himself and family.

FRANCISCO GUERRERO.

MONTEREY, June 2d, 1846.

In view of the foregoing petition, and of the report of the Sub Prefect of the District of Yerba Buena, in exercise of the authorities conferred upon me by the law of the twentieth of March, 1837, and in consideration of the services rendered by the petitioner, as well also of the occupation that he alleges in his petition, I concede to him, in property, the suerte of land for which he petitions in this *Expediente*, in the place called La Huerta Vieja, situated to the northwest of the Establishment of the Pueblo of Dolores, as set forth in his petition; said suerte comprehending two hundred and seventy varas square, of which the respective Judge will give him the corresponding possession when he may ask the same. Let this be returned to the petitioner, in order that it may serve him as a title, making registry of the same, in the office of the Prefectura under my charge.

The undersigned, Prefect of the District, thus decreed, ordered, and signed.

MANUEL CASTRO.

NOTE.—This grant is in the Archives, although it does not belong there, pertaining to the class of Pueblo grants, under the law of 1837, ante, No. CLIV. It is said to form a portion of the lands described in the grant contained in the preceding No. CLV. It has never been presented for confirmation.

No. CLVII.

THE CITY SLIP PROPERTY.

[The legislative and judicial history of the CITY SLIP PROPERTY occupies too large a place in the history of San Francisco to be entirely omitted. A Digest of references to it is accordingly subjoined.]

No. I.

The grant of Beach and Water Lots, purporting to be made by the United States, through Gen. Kearny, Military Governor of California, to the town of San Francisco, March, 10th, 1847. See ante, Addenda No. LXXII, page 104.

No. II.

An act, purporting to be an act of incorporation of "The Central Wharf Joint Stock Company of San Francisco," for ninety-nine years, from May 1st, 1849, "for the purpose of building and keeping in repair a wharf, to run from some point in Montgomery Street, between Clay and Sacramento streets, to the ships' channel, in front of said town," passed by the Legislative Assembly of the District of San Francisco, on May 3d, 1849, and afterwards amended by said Legislative Assembly. See the history of this Legislative Assembly, in Sections 128, 129, of the Brief, and ante, in the Addenda, Nos. LXXIII and LXXIV, pages 104-107. These pretended acts of incorporation were, of course, utterly void.

No. III.

A grant of one hundred varas square, being twelve Beach and Water Lots, numbered from 154 to 165, inclusive, comprising the block bounded by Clay, Battery, Sacramento, and Front streets, made May 5th, 1849, by T. M. Leavenworth, Alcalde of San Francisco, to Rodman M. Price, "to encourage the building of a wharf." [See the Pueblo entries, Book of Grants, in the County Recorder's Office.]

No. IV.

An ordinance, passed December 24th, 1849, by the Ayuntamiento of the Pueblo of San Francisco, confirming "the Act to incorporate the Central Wharf Joint Stock Company, of San Francisco, passed May 3d, 1849, by the People of San Francisco, represented in Legislative Assembly." [See ante, No. 2, of this Addendum.]

No. V.

A grant of the lands situated between Clay and Sacramento streets, the ordinary high water mark and the water front of said city, made by the State of California, by the first Water Lot Bill, to City of San Francisco and the holders under Pueblo grants, passed by the Legislature of the State of California, March 26th, 1851. See ante, No. CXXII, page 265.

No. VI.

An ordinance of the Mayor and Common Council of the City of San Francisco, approved September 22d, 1851, ordaining: "That the wharf company known as the Central Wharf Joint Stock Company, be and are hereby authorized to complete their wharf out to deep water, pursuant to their charter confirmed to them by the Ayuntamiento, as speedily as possible."

No. VII.

An ordinance of the Mayor and Common Council of the City of San Francisco, Section 8 of which is in the words and figures following, viz: "§ 8. All the space of land and water lying and being between Clay Street and Sacramento Streets, and between Davis Street and the deep waters of the Bay, as laid down upon the public maps or plans of the city, is set apart and dedicated to the public use, as a free public dock, for ships and other vessels: *provided*, notwithstanding, that nothing herein contained shall prevent the Common Council from amending, altering, or annulling this grant." Codified Ordinance, approved Nov. 4th, 1852, Chap. IV, Title IV, Sec. 8.

No. VIII.

An ordinance, purporting to be passed by the Mayor and Common Council of the City of San Francisco, approved December 5th, 1853, entitled "Ordinance 481—To provide for the sale of certain City Property"—directing the City Slip property on each side of Central Wharf, and bounded by Clay, Davis, East, and Sacramento streets, to be sold at auction by the Mayor and Joint Committee on Land Claims, of the City of San Francisco, purporting to repeal the above dedication of said lands, ante, No. 6, of this addendum, of said lands as a city slip. See said ordinance, in *McCracken vs. City of San Francisco*, 16 Cal. Reports, 595. A sale at public auction of said City Slip property was accordingly had, in the year 1854, by the Mayor and said Joint Committee.

No. IX.

A sale by a constable of the said City Slip property, under an execution upon a judgment in a Justice's Court against the city, and decided to be invalid in the case of *Argenti vs. San Francisco*, 6 California Reports, 677.

No. X.

Decisions of the Supreme Court of the State of California, to the effect that the above ordinance, referred to in No. 8, and the sale had under it, were void, because said ordinance was not passed by "a majority of all the members elected to each Board." *San Francisco vs. Hazen*, 5 Cal., 169; *Holland vs. San Francisco*, 7 Cal., 361; *McCracken vs. San Francisco*, 16 Cal., 591; *Pimental vs. San Francisco*, 21 Cal., 351.

No. XI.

"An act to authorize the Treasurer of the City and County of San Francisco to execute certain deeds and cancel certain claims;" Laws 1858, page 322, and

"An act conferring additional powers on the Board of Supervisors of the City and County of San Francisco," passed May 20th, 1861, (Laws of 1861, page 602) authorizing said Board of Supervisors to repeal said ordinance (ante No. 7) and sell said City Slip property.

No. XII.

"An act to give further powers to the Board of Supervisors of the City and County of San Francisco," approved April 17th, 1862, (Laws of 1862, page 265) authorizing said Board to adjust all controversies respecting the "City Slip property," and to sell the same "on such terms and conditions as it may deem proper."

No. XIII.

ORDER NO. 547, OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY of San Francisco, approved September 16th, 1863, found in Book 2, of Orders, page 85, ordaining that certain of the City Slip Lots should be sold at auction and further providing as follows: "§ 4. All ordinances dedicating the said lots, or any of them, to public use, for any purpose whatever, are hereby repealed;" and "An Act to provide for the sale of certain property of the State of California, within the Water Line Front of the City and County of San Francisco," approved April 26th, 1858 [Laws 1858, page 323], § 7 of which lays out East Street across the entrance of the City Slip, laid out as above, No. 7, of this

ADDENDA. Either of these enactments is generally held to repeal the above dedication set out in No. 7, of this ADDENDA.

No. XIV.

ORDER NO. 686, OF THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, "Directing the sale, at public auction, of certain City Slip Lots belonging to the City and County of San Francisco," approved February 13th, 1866, [Book 2 of Orders, page 146] puts up for sale, on February 24th, 1866, a number of the City Slip Lots, at the Auction Rooms of Cobb & Sinton, 406 Montgomery Street, San Francisco.

No. XV.

"An act to provide for the sale of certain Property of the State of California, within the Water Line Front of the City and County of San Francisco," approved April 26th, 1858, ante, p. 275, No. CXXXIX. Under this act the residuary interest of the State in the City Slip property was sold at auction, and conveyed by the State to the purchasers at such sale.

No. CLVIII.

MANDATE OF THE SUPREME COURT OF THE UNITED STATES
ORDERING AN APPEAL TO BE ALLOWED FROM THE DE-
CREE OF THE CIRCUIT COURT, CONFIRMING THE CLAIM OF
THE CITY OF SAN FRANCISCO TO ITS PUEBLO LANDS.
DATED JANUARY 29, 1866.

UNITED STATES OF AMERICA, SS.

The President of the United States of America, to the Honorable Judges of the
[L.S.] *Circuit Court of the United States for the Northern District of*
California, Greeting :

Whereas, lately, in the Circuit Court of the United States for the Northern District of California, before you, or some of you, in a cause between the city of San Francisco, appellant, and the United States, appellees, an order was entered, on the 29th day of May, 1865, denying the motion for an appeal to the Supreme Court of the United States, from the decree of said Circuit Court, entered on the 18th of May, 1865, in said cause. And whereas, at the present term of the Supreme Court of the United States, begun and held at the City of Washington on the first Monday of December, in the year 1865, the Attorney General of the United States did, on the twenty-second day of December, 1865, being a day of said term, file a certain motion, affidavit, and exhibits thereto attached, for a writ of mandamus, to be directed to the Circuit Court of the Tenth Circuit, requiring and commanding the said Circuit Court, or the judges thereof, to allow an appeal on behalf of the United States, in the said cause, from the decree of the said Circuit Court therein, to the said Supreme Court of the United States, and for such other

and further order in the premises as shall be deemed fit and proper. And whereas, afterwards, to-wit: at the same term of the said Supreme Court, the said motion coming on to be heard, on the affidavit and exhibits thereto attached, and upon the arguments of counsel thereupon had, as well in support of as against the same, it is considered, ordered, and adjudged by the said Supreme Court that the writ of the United States issue, requiring and commanding the Judges of the Circuit Court of the United States, for the Northern District of California, to allow an appeal, as prayed for, in the case of *The City of San Francisco vs. The United States*, from the decree of the said Circuit Court, entered in said cause on the eighteenth day of May, 1865, and to issue all and every process necessary to perfect said appeal: You, therefore, are hereby commanded that immediately after the receipt of this writ, and without delay, you do allow the appeal in said cause, on behalf of the United States, as according to right and justice, and the laws of the United States, so that complaint be not again made to the said Supreme Court; and that you certify perfect obedience and due execution of this writ to the said Supreme Court, to be held on the first Monday of December next, and return then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and sixty-six.

D. W. MIDDLETON,

Clerk Supreme Court U. S.

No. CLIX.

ORDER OF THE CIRCUIT COURT OF THE UNITED STATES
OF THE TENTH CIRCUIT, IN AND FOR THE NORTHERN DISTRICT
OF THE STATE OF CALIFORNIA, ALLOWING AN
APPEAL, ON THE PART OF THE UNITED STATES, FROM
THE DECREE IN THE PUEBLO CASE, ON JUNE 12TH, 1866.

THE CITY OF SAN FRANCISCO }
 vs. }
THE UNITED STATES. }

On reading the mandate of the Supreme Court of the United States, bearing date on the twenty-ninth day of January, one thousand eight hundred and sixty-six, directed to the Judges of this Court, commanding them to allow an appeal on behalf of the United States, to the Supreme Court, from the decree of this Court, entered in the above entitled cause on the eighteenth day of May, one thousand eight hundred and sixty-five, it is ordered, in obedience to said mandate, that an appeal to the Supreme Court, on behalf of the United States, from the decree of this Court in the above entitled cause, entered on the 18th day of May, one thousand eight hundred and sixty-five, be and the same is hereby granted, and that a certified transcript of the record of the proceedings in the said cause be sent to the said Supreme Court without delay.

SAN FRANCISCO, June 12th, 1866.

No. CLX.

GRANT OF FOUR HUNDRED VARAS SQUARE AT THE MISSION DOLORES BY THE HON. HORACE HAWES, PREFECT OF SAN FRANCISCO, TO EDWARD CARPENTER, DATED JANUARY 20TH, 1850.

To the Honorable Horace Hawes, Prefect of the District of San Francisco :

PREFECTURE OF SAN FRANCISCO,

Jan. 2d, A. D. 1850.

The annexed petition is referred to Francisco Guerrero, Esq., Sub Prefect, who will report whether the land asked for be vacant, and if there exist no opposing possession or claim to the said land, the Justice of the Peace at the Mission of Dolores will make a grant thereof conformable to the prayers of said petition, and the laws.

HORACE HAWES,
Prefect.

occupied nor claimed by any other party, and that the whole of said land is necessary to the establishment of said manufactory in order to furnish wood and clay therefor. Wherefore your petitioner prays that you will grant him the aforesaid lot of land, he performing the legal conditions which such grant shall impose upon him.

The undersigned, Edward Carpenter, a citizen of the United States, resident in the Mission of Dolores, respectfully represents that he is desirous of having a certain lot of land lying in said Mission, for the purpose of cultivation, and especially for the purpose of building a dwelling house and establishing a manufactory of bricks thereon, that is to say, that lot of land lying westerly of the four hundred vara lot of Don Francisco Guerrero, and bounded as follows, viz : beginning at the southwesterly corner of said four hundred vara lot of Don Francisco Guerrero at the back of the buildings of the Mission, thence running northerly along the westerly line of Guerrero's lot, four hundred varas, to a stake, thence running westerly at right angles four hundred varas to a stake, thence running southerly at right angles, four hundred varas to a stake, and thence running easterly at right angles four hundred varas to a stake at the place of beginning, all of which land is public land, and neither oc-

EDWARD CARPENTER.

MISSION DOLORES, Dec. 27th, 1849.

ESTABLISHMENT OF DOLORES, January 8th, 1850.

Sub Prefecture of the District of San Francisco.

In virtue of the superior decree attached to the present petition, I have the honor to state that the land which is requested formerly belonged to the Mission of Dolores, and by an order of the Departmental Government of California, powers were issued to the Justice of the Peace of this jurisdiction to make grants of lots, but not to exceed fifty square varas, in consequence of the limited space for a Township, and that the Government reserved to itself the powers to make larger grants. His Honor the Prefect will therefore, if he deems it expedient, sanction the present request after due investigation by the Justice of the Peace, as these lands are not yet surveyed, who will inform himself by some of the inhabitants of

the vicinity, and the title of the adjacent lands of this petition does not interfere with previous rights, for which reasons he will be pleased to submit the present to the corresponding authority.

FRANCISCO GUERRERO,
Sub Prefect.

If the land is vacant and the applicant is a citizen of the United States, let the grant be made without prejudice to any prior and better right and title, and subject to the superior title of the United States.

HORACE HAWES,
Prefect.

NOTE.—This expediente is not archived in the Mexican Archives of California, as it could not regularly be, because it did not belong to the Archives of the Department of California, but only to those of the Prefecture of San Francisco. There is no doubt of its genuineness. It is followed in the original by a grant made to the said applicant, of the said lands by F. P. Tracy, Justice of the Peace. But, as has been heretofore shown, ante Argument, § 90, and authorities there cited, Justices of the Peace had authority to grant lands in those cases only where there was no Ayuntamiento existing in the Pueblo, and Tracy, Justice of the Peace, had no power in this instance, because there was an Ayuntamiento existing in San Francisco in full vigor at that time. Ante, Argument, page 90, § 130, page 92, § 132. The grant purporting to be made by Tracy was therefore superfluous, and the grant made by Prefect Hawes was within the powers of Prefects, as set forth ante, page 314, Addenda No. CLIV, Art. 77. This grant is herein stated, not only for purposes of general information and illustration, but as a cogent enforcement of the proposition that all classes of citizens concurred in the assertion of the claim of the Pueblo to its four square leagues of land; for we here find an eminent American lawyer, acting as Prefect under the Hispano-Mexican laws, assuming to grant lands, which he could not do if they were public lands of the United States, for by the change of sovereignty the public land system of California was changed to that of the United States, and no Prefect could make any grant of any portion of them. Prefect Hawes, therefore, assumed to grant this four hundred varas square of the Pueblo of San Francisco, under the law of the Cortez of 1813, which authorized these Pueblo lands to be distributed in parcels in private ownership, ante, page 20, No. XI, and the subsequent superior decree, March 20, 1837, which authorized Prefects to make such distribution. Ante, page 314, No. CLIV, Art. 77. It was therefore only because these lands were Pueblo lands that Prefect Hawes thus assumed to distribute them, as charged with that function by the laws of Cortez of 1813, which, as a merely municipal law, had survived not only the Mexican Revolution, but also the conquest of the country by the Americans.

No. CLXI.

CHAP. DXXV.—AN ACT TO AUTHORIZE THE COMMISSIONERS OF THE FUNDED DEBT OF THE CITY OF SAN FRANCISCO TO COMPROMISE WITH ADVERSE CLAIMANTS TO CERTAIN LOTS, APPROVED APRIL 2D, 1866. LAWS 1865-6, PAGE 686.

Whereas, pursuant to the provisions of Section twelve of an act entitled "An Act to authorize the Funding of the Floating Debt of the City of San Francisco, and to provide for the Payment of the same," passed May first, in the year eighteen hundred and fifty-one, certain real estate formerly held by the Town or City of

San Francisco was conveyed by the Commissioners of the Sinking Fund, mentioned in said section of said act, to the Commissioners of the Funded Debt of said City of San Francisco; and whereas, it is alleged that certain lots or parcels of said real estate have never been sold, leased, dedicated, reserved, or conveyed by the said Commissioners of the Funded Debt, but are held or claimed adversely by persons who have purchased the same in good faith and for a valuable consideration; therefore,

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The said Commissioners of the Funded Debt of the City of San Francisco, or a majority of them, are hereby authorized and empowered, by and with the consent of the Board of Supervisors, to sell at either public or private sale, and convey by deeds properly executed under their hands and seals, any lot or lots described in the conveyance by the Commissioners of the Sinking Fund to the said Commissioners of the Funded Debt, to any person or persons claiming the same, or claiming a title thereto by purchase for a valuable consideration, or by a devise or descent; *provided*, that no such sale or conveyance shall be made for a sum less than fifteen per cent. of the assessed value of the property so sold or conveyed.

SEC. 2. Any sale and conveyance made in pursuance of the authority herein conferred, shall transfer to the grantee or grantees all the rights of said Commissioners of the Funded Debt and of said City and County of San Francisco, but shall not impair the rights of persons who claim any portion of said property adversely to said City and County of San Francisco; and nothing in this act shall be construed to authorize the sale or conveyance of any real estate, except that described in the conveyance above referred to as made by the Commissioners of the Sinking Fund to the Commissioners of the Funded Debt.

No. CLXII.

AN ACT TO PROVIDE FOR THE SALE OF THE MARSH AND TIDE LANDS OF THIS STATE, APPROVED MAY 14TH, 1861.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The sales of all Marsh and Tide Lands belonging to this State, that have been made in accordance with the provisions of any of the acts of the Legislature, providing for the sale of the swamp and overflowed lands belonging to this State, are hereby ratified and confirmed; and any of said marsh and tide lands that remain unsold may be purchased under the provisions of the law now in force, providing for the sale of the swamp and overflowed lands of this State; and all money derived from the sale of such lands shall be paid into the State Swamp Land Fund, to be used for the reclamation of the swamp and overflowed lands; *provided*, no marsh or tide lands, located within five miles of the City of San Francisco, or of the City of Oakland, or within one mile and one half of the

State Prison grounds, at Point San Quentin, shall be sold, or purchased, by authority of this act; and *provided*, further, that no sales of lands, *either tide or marsh, excepting Alcalde grants, which are hereby ratified and confirmed*, within five miles of said cities, or within one mile and one-half of the State Prison grounds aforesaid, shall be confirmed by this act.

SEC. 2. This act shall take effect from and after its passage.

NOTE.—It has been asserted that the words “either tide or marsh, excepting Alcalde grants which are hereby ratified and confirmed,” were fraudulently interpolated in this act, after its passage by the Legislature, and before it was signed by the Governor, and that these words are therefore no part of the statute. On this subject see “Reports of Joint Committee in regard to an alleged fraudulent interpolation in Senate Bill No. 73, ‘An Act to provide for the sale of the Marsh and Tide Lands of this State, approved May 14th, 1861,’” Appendix to Journals of Senate and Assembly for 1862, No. 14. But in the case of the People by F. M. Pixley, Attorney General, on the relation of *Teschmacher vs. Dennis*, decided by the Supreme Court of this State, in January Term, 1866, reported in the Sacramento “Daily Union,” of February 21st, 1866, and which will probably be reported in 29 Cal. Reports, it was held that the term “tide lands,” as used in this act, does not embrace lands which are always below the line of low tide. As to the effect of the alleged interpolation, see *Sherman vs. Story*, Sup. Ct. California, July Term, 1866.

No. CLXIII.

REFERENCES TO GRANTS, LEGISLATIVE, EXECUTIVE, AND OTHER ACTS, AFFECTING, OR WHICH MAY BE CLAIMED TO AFFECT THE LANDED PROPERTY WITHIN THE CITY OF SAN FRANCISCO.

The landed property of the City of San Francisco may be divided into three classes :

- I. PUEBLO LANDS.
- II. WATER LOTS.
- III. ISLANDS.

The following is a list, more or less complete, of grants, documents, legislative, executive, and other acts, affecting, or which may be claimed to affect these different kinds of property. Some of them have been affirmed by legislative, executive, or judicial acts, and are now beyond controversy; some have been rejected by the courts; others are void on their face, or are palpable forgeries, but there is hardly one of them which may not be adopted as the basis of a claim in private ownership; and the effect of the legislation of the last fifteen years upon city titles has, as yet, been determined in but a small degree by the Courts. It is therefore convenient to have these acts ranged in a list in a form convenient for consultation. The completeness of the following one is not vouched for, but it is believed to be accurate so far as it goes. Some of these claims are certainly amphibious in their character, and are therefore repeated in two or more classes.

I. PUEBLO LANDS.

These lands are the four square leagues belonging to the Pueblo as its patrimony, which were confirmed to it by the decree of the Circuit Court of the United States, and extend to ordinary high water mark, and therefore include the swamp and overflowed lands. See the decree, ante, page 250, No. CXXXVI; *People vs. Morrill*, 26 Cal., 336; *United States vs. Pacheco*, 2 Wallace, 587.

The grant of house and sowing lots made out of these lands within the Pueblo, I regard as made by "the lawful authorities thereof," whether made by Ayuntamiento, Alcalde, Justice of the Peace, Prefect, or Governor; provided, the respective officer had the requisite authority to act in the given case, and that therefore it was not necessary for the party interested under such grant to present his petition for confirmation to the California Land Commission, under § 14, of the "Act to ascertain and settle Private Land Claims in the State of California," cited in the Argument, page 98, § 136. If it was so presented and rejected, I do not pretend to determine the legal effect of the proceeding. The grants made of large tracts such as the Rancho San Miguel, ante, No. LXIV, page 92; Las Salinas, ante, No. XLVI, page 64; and La Laguna de la Merced, ante, No. XXVI, page 38, I do not regard as grants made under the Colonization Laws, ante, Nos. XII and XIV, pages 23-25, but as distributions of Pueblo Lands, made under the Law of the Cortez of 1813, ante, No. XI, page 20, which was a municipal law, surviving the Mexican Revolution of 1824. See the Argument, page 39, § 52, and also *Brown vs. San Francisco*, 16 Cal., 451, both arguments of counsel and opinion of the Court, and Addenda No. CLXVI, page 337, "Leyes Vigentes."

ACTS RELATING TO THE PUEBLO LANDS.

1. Grant of the Laguna de la Merced, one league and half a league, by Governor Castro to Galindo, in 1865; finally confirmed: 1 Hoffman's Rep., Appendix, No. 102: ante, page 38; Addenda, No. XXV.
2. Grant of 100 varas square on the beach in Yerba Buena, to William Richardson, by the Ayuntamiento in 1836; ante, page 53, Addenda, No. XXXIV.
3. Grant of the Ojo de Agua de Figueroa, 100 varas square near the Presidio, by Prefect Castro to Miranda, 1838; ante, page 55, No. XXXVI; and finally confirmed. 1 Hoffman's Rep., Appendix, No. 310.
4. Grant of the Rancho Las Salinas, one square league, by acting Governor Jimeno to Bernal, in 1839; ante, page 64; No. XLVI; confirmed and patented. 1 Hoffman's Rep., 50; *id.* Appendix, No. 30.
5. Grant of the Rancho la Visitacion to Leese by Governor Alvarado in 1841; ante, page 67; finally confirmed. 1 Hoffman's Rep., Appendix, 142, 745.
6. Grant of 50x100 varas at the Cañutal, by Guerrero, Justice of the Peace, to Vieget, in 1840; ante, page 69.

7. Grant or license of the Potrero Nuevo de San Francisco, one half square league, in San Francisco, by Governor Micheltorena to De Haro, in 1844; ante, page 86; 1 Hoffman's Rep., Appendix, No. 101; rejected by the District Court, and pending on appeal in the Supreme Court of the United States.

8. Grant of the Rancho San Miguel, one square league, in San Francisco, by Governor Pico to Noé, in 1845; ante, page 92, No. LXIV; finally confirmed and patented; 1 Hoffman's Rep., Appendix, No. 17. See also *Brown vs. San Francisco*, 16 Cal., 451.

9. Espediente of Fitch and Guerrero for 3000 varas [square] at the Mountain Lake and on Lobos Creek, in San Francisco, in 1845; espediente never completed, and claim finally rejected; ante, page 95, No. LXVI; 1 Hoffman's Rep., 272; *Ib.* Appendix No. 268.

10. Espediente of Diaz for two leagues of land at Point Lobos; claim finally rejected. Ante, page 10; 1 Hoffman's Rep., 249; *Ib.* Appendix, No. 515; *Palmer vs. The United States*, 24 Howard U. S. Rep., 125.

11. Grants of house lots made by municipal authorities between the years 1835 and July 7, 1846. Ante, page 113, No. LXXVIII; 163, No. LXXXVI.

12. Alleged grant of four leagues of land by Gov. Micheltorena, in 1843, to Limantour, finally rejected. Ante, page 173, No. XC; 1 Hoffman's Rep., 389; *Ib.* Appendix, No. 584.

13. Alleged grant of three square leagues of land at the Mission Dolores, by Governor Pico, in 1846, to Santillan; claim rejected by the Supreme Court of the United States. Ante, page 175, No. XCII; 1 Hoffman's Appendix, No. 81; *The United States vs. Bolton*, 23 Howard's U. S. Rep., 321.

14. Grant of 600 varas square, at the Mission Dolores, by Governor Pico, in 1846, to Andradé; rejected by the District Court, and pending on appeal in the Supreme Court of the United States. Ante, page 176, No. XCIII; 1 Hoffman's Rep., Appendix, No. 94.

15. Grant of eight hundred varas square, on Rineon Hill, to Sherreback in 1845; pending in District Court. Ante, page 178, No. XCV; 1 Hoffman's Rep., Appendix, No. 795.

16. Alleged grant of one league of land, at San Francisco, by Governor Micheltorena to Marchena, 1844; not archived or presented for confirmation. Ante, page 179, Addenda, No. XCVI.

17. Alleged grant to Piña, of lands at Point Lobos by Governor Pico, in 1845; not fully archived, nor ever presented for confirmation. Ante, page 182, No. XCVII.

18. Grant to Leese and Salvador Vallejo of two hundred by six hundred varas, at the landing place in Yerba Buena, by Governor Alvarado, in 1839; finally confirmed and patented. Ante, page 183, No. XCVIII; 1 Hoffman's Rep., Appendix, No. 74.

19. Grant by Governor Alvarado, in 1840, to Noé, of the Camaritas, two hundred by three hundred varas ; finally confirmed. Ante, page 186, No. XCVI ; 1 Hoffman's Rep., Appendix, No. 629.

20. Lands situate at the Mission Dolores, patented to Bishop Joseph Sadoc Alemany, as corporation sole, representing the Roman Catholic Church ; consisting of the Church and Mission Buildings, the Cemetery adjoining, the old Mission Garden ; and the old Mission Orchard opposite. Ante, page 206, No. CIX ; 1 Hoffman's Rep., Appendix, No. 609.

21. Presidio Reservation at the Presidio of San Francisco, Fort Point, and Point San José (Black Point) supposed to embrace three thousand varas square. See the Argument, Sec. 119 ; ante, Addenda, No. CXIII, page 221.

22. Government Reservation at Rincon Point, including the Marine Hospital lot and lots conveyed to the United States by the City of San Francisco. Ante, page 258, Addenda, No. CXXXI.

23. Grant of four hundred varas square, at the Mission Dolores, to Francisco Guerrero. Ante, page 314, Addenda, CLV ; finally confirmed. 1 Hoffman's Rep., Appendix, No. 229.

24. Grant of two hundred and seventy varas square, at the Mission Dolores, by Prefect Manuel Castro to Francisco De Haro. Ante, page 315, No. CLVI. Not presented for confirmation.

25. Grant of two hundred yards square, at the Mission Dolores, made by Prefect Mariano Castro to Toribio Tanfaran ; finally rejected. 1 Hoffman's Rep., Appendix, No. 29.

26. Grant of two hundred varas square, at the Mission Dolores, by Prefect Mariano Castro to Eustaquio and José Ramon Valencia, in 1845 ; finally rejected. 1 Hoffman's Rep., Appendix, No. 33.

27. Grant of fifty varas square by Governor Alvarado to Calendario Valencia, November 18th, 1840 ; finally confirmed. 1 Hoffman's Rep., Appendix, No. 34.

28. Grant of one hundred varas square, at the Mission Dolores, by Governor Alvarado, to Calendario Valencia, May 18th, 1841. See 1 Hoffman's Rep., Appendix, No. 34½.

29. Grant of fifty varas square by Francisco Sanchez, Justice of the Peace, to Carlos Moreno, October 12th, 1842 ; finally confirmed. 1 Hoffman's Rep., 98 ; *Ib.* Appendix, No. 603.

30. Grant of two fifty vara lots, in San Francisco, by Governor Pico to Stephen Smith, in 1845 ; finally rejected. 1 Hoffman's Rep., Appendix, No. 604.

31. Grant of two hundred varas square, at the Mission Dolores, by Governor Figueroa to José Cornelio Bernal, in 1834 ; finally confirmed. 1 Hoffman's Rep., Appendix, No. 671 and 682.

32. Grant of two hundred varas square, in San Francisco, made by Governor José Castro to José Joaquin Estudillo, in 1835; finally rejected. Hoffman's Rep., Appendix, No. 811.

33. Donation to actual occupants, made by the so-called VAN NESS ORDINANCE. Ante, pages 216, 285, Nos. LXVI and CXLVI.

34. Lands claimed at or near the Presidio of San Francisco, by virtue of the so-called Argenti Patent, issued by the Governor of California, in 1854, under a location of school warrants. Ante, page 297, No. CXLVI.

35. Lands granted by the City of San Francisco to the Protestant Orphan Asylum, in 1853. Ante, page 301, No. CXLIX.

36. Lands granted by the City of San Francisco to the Commissioners of the Sinking Fund of said city, December 25th, 1850. Ante, page 192, No. CIV. Held to be void in *Smith vs. Morse*, 2 Cal., 524; *Heydenfeldt vs. Hitchcock*, 15 Cal., 514. But the Commissioners of the Sinking Fund were thereafter made forced agents of the City of San Francisco to convey to the Commissioners of the Funded Debt all the property of said City, (ante, page 197, No. CVI) and did immediately thereafter convey to said Commissioners of the Funded Debt all of the property which purported to have been conveyed to them. (See ante, page 199, No. CVII.) Afterwards, an act of the legislature was passed confirming all sales and conveyances made by the Commissioners of the Sinking Fund, which is supposed to have operated on certain property included in the conveyance by the city to them, and conveyed by them to private purchasers, but not included in the conveyance by them to the Commissioners of the Funded Debt; but I am not informed as to the description of any such property. See ante, page 282, No. CXLIV.

37. Lands conveyed by the Commissioners of the Sinking Fund of the City of San Francisco to the Commissioners of the Funded Debt of the City of San Francisco, in 1851. Ante, page 199, No. CVII.

38. Act of the Legislature of the State of California, of 1857, making valid conveyances executed by a majority of the Commissioners of the Funded Debt of the City of San Francisco. Ante, page 277, No. CXXI.

39. Act of the Legislature of the State of California, of 1862, authorizing the Commissioners of the Funded Debt to compromise and settle with persons in adverse possession of lands conveyed to said commissioners. Ante, page 282, No. CXLV.

40. "An act to authorize the Commissioners of the Funded Debt of the City of San Francisco to compromise with adverse claimants to certain lots," passed April 2d, 1866. Laws 1865-6, page 686, chap. 525. Ante, page 321, No. CLX.

41. An act authorizing the City and County of San Francisco to convey lands to the United States at Point Lobos for a Light House, passed March 17th, 1858. Ante, page 277, No. CXXI. I cannot ascertain that any conveyance has ever been made under this Act.

42. Lands held by the Board of Education of the City and County of San Francisco, or claimed by others under grants made by said Board of Education under the statutes establishing said Board, and defining its powers. Laws 1863, page 601, class 398, Sec. 2, Subdivisions seven, eight, and nine, and other similar laws.

43. Conveyance of the real estate occupied by the Deaf and Dumb and Blind Asylum to the State, under an act to authorize the City and County of San Francisco to convey certain real estate to the State of California. Laws of 1863-4, page 260.

44. Claims of William Alvord, his associates and assigns, to submerged, and tide and marsh lands, at the Potrero Nuevo, under "An Act to authorize the sale and conveyance to William Alvord, his associates and assigns, of certain overflowed lands in the City and County of San Francisco." Laws 1865-6, page 841. This is supposed to include lands both above and below high water mark.

45. Claims of the Golden City Homestead Association to certain swamp and overflowed lands, under the provisions of "An Act to authorize the sale and conveyance to the Golden City Homestead Association, of certain overflowed lands in the City and County of San Francisco." Laws 1863-4, page 463. This is supposed to include lands both above and below the ordinary high water mark.

46. Claims of the North San Francisco Homestead Association to certain overflowed lands, under the provisions of "An Act to authorize the sale and conveyance to the North San Francisco Homestead and Railroad Association of certain overflowed lands in the City and County of San Francisco." Laws of 1863-4, page 482. This is supposed to include lands both above and below ordinary high water mark.

47. Claims of private persons under conveyances from the Commissioners of the Funded Debt of the City of San Francisco, under the various acts and proceedings for that purpose. Ante, page 197, No. CVI; page 192, No. CVII; page 277, No. CXLI; page 282, No. CXLIV; page 282, No. CXLV; page 321, No. CLX.

48. Sales and conveyances made by the Sheriff of the County of San Francisco of portions of the Pueblo [upland] lands of the City and County of San Francisco upon judgment against the City of San Francisco in favor of Peter Smith, and of Jesse D. Carr, and of others, which are generally classed together as "Peter Smith Titles." These sales were for a long time restrained by injunction issued out of the District Court; see the Argument, § 133; but they finally took place, and the titles under them were first held to be valid, in *Smith vs. Morse*, 2 Cal. Reports, 524, and afterwards held to be invalid, in *Hart vs. Burnett*, 15 Cal., 530.

49. Claims under grants of town lots at San Francisco and the Mission Dolores, made in the years 1849 and 1850, by G. Q. Colton and F. P. Tracy, Justices of the Peace. But justices had no power to make such grants while there was an Ayuntamiento in existence. See the Argument, § 90.

50. Claims under locations of lands under the so-called "Sioux half-breed Scrip," issued under the Act of Congress of July 17, 1854, 10 U. S. Statutes at large, page 304. I cannot accurately ascertain where this scrip has been located, all the information I could gather being doubtful.

51. Claims to marsh or tide lands under the "Act to provide for the sale of the salt marsh and tule lands of this State;" passed May 14th, 1861. Ante, page 321, No. CLXI.

52. Claims under squatting locations on swamp and overflowed lands; part of the Pueblo lands. See page 336, Addenda, No. CLXIV.

53. Claims under alleged locations of lands under the pre-emption laws of the United States.

54. Claims under alleged locations of lands under School Land Warrants. See page 337, Addenda, No. CLXV.

55. Claims under the Van Ness Ordinance, ante, page 217, by persons in possession on January 18th, 1855, of portions of the Government Reserves at Rincon Point, which have never been occupied by the United States, under Section 85 of an act of Congress entitled "An Act to expedite the settlement of titles to lands in the State of California, passed July 1, 1864; ante, No. CXXX, page 257, Sec. 5.

56. Power claimed to be reserved by the United States to reserve any of the Pueblo lands for the use of the United States by a reservation to be made by the President of the United States, within one year after the rendition to the General Land Office, of an approved plat of the exterior limits of San Francisco, under the charter of 1851, in connection with the public surveys; ante, page 257, Sec. 5. But if the city holds her Pueblo lands under the decree of the Circuit Court, the United States had no lands to grant, and consequently could reserve no such power over the Pueblo lands.

II. WATER LOTS.

These are lands lying between the ordinary high water mark and the Water Front as established by act of the legislature. The Spanish grant of four square leagues carried the proprietary right of the Pueblo down to the ordinary high water mark, which is the line to and from which the daily tide ordinarily flows and ebbs, leaving above it, and included in the grant, the lands covered by the spring tides. (*People vs. Morrill*, 26 Cal., 336; *United States vs. Pacheco*, 2 Wallace U. S. Sup. Ct. Rep., 587.) These lands, above ordinary high water mark and covered by the spring tides, in California are generally salt marshes with a luxuriant vegetation of marine plants, such as samphire and the like. The lands below the ordinary high water mark belong to the sovereign power, by virtue of its sovereignty. (*Pollard's Lessees vs. Hagan*, 3 Howard U. S. Rep., 212.) While California belonged to Mexico, the traditional policy against granting such lands generally prevailed, and I do not know of any alleged grant of that kind which is not disputed. When the United States became the sovereigns of California—first by conquest, and afterwards by treaty—they had the power of disposing of the lands below ordinary high water mark; and when California became a State, that attribute of sovereignty passed to her.

ACTS, ETC., RELATING TO THE WATER LOTS.

57. Grant of Beach and Water Lots in San Francisco, purporting to be made by the United States to the Town and People of San Francisco, through Brig. Gen. S. W. Kearny, Military Governor of California, in March, 1847. (See Argument Sec. 127; ante, page 104, No. LXXII, and town sales made under the same.)

58. Government Reserves, made out of the Beach and Water Lots granted by the United States, through Gov. Kearny, to the Town of San Francisco, as lastly above stated, and pursuant to the terms of that grant. (Ante, page 258, No. CXXXI.)

59. Grant made by the State of California to the City of San Francisco of certain Beach and Water Lots for ninety-nine years, defining the Water Front, and confirming previous grants made by authorities of the Pueblo, by the FIRST WATER LOT BILL, March 26th, 1851. (Ante, page 265, No. CXXXII.)

60. An act passed May 1st, 1851, but repealed March 12th, 1853, commonly called the SECOND WATER LOT BILL, purporting to confer certain purchases and rights of property on the City of San Francisco, but which never became operative—the act being repealed the next year. (Ante, page 267, No. CXXXIII.)

61. Act of the Legislature of the State of California, confirming certain Wharf contracts, made by the Commissioners of the Funded Debt of the City of San Francisco. (Ante, pages 268, 269, Nos. CXXXIV, CXXXV.)

62. Four successive acts of the Legislature of the State of California, under which the interest of the State in the lands below the ordinary high water mark and the water front of the City of San Francisco were sold and conveyed to purchasers at public auction. (Ante, pages 269–277, Nos. CXXXVI–CXXXIX.)

63. A conveyance made by the State of California to the United States of the Beach and Water Lots in San Francisco, bounded by Washington, Sansome, Jackson, and Battery streets, commonly called the Custom House Block, September 8th, 1864. (Ante, page 279, No. CXLII.)

64. Claims to the residuary interest of the State in the "Government Reserves," being the fee of the same after the expiration of the leases of the same, made by the authorities of the United States. (Ante, pages 258, 261, No. CXXXI, Subdivision No. V.) Said leases were protected, and the fee of the State reserved by Section 2, of the First Water Lot Bill. (Ante, page 266, CXXXII.) The *residuary* interest of the State in said lands was afterwards sold at public auction and conveyed to the respective purchasers, under the first three acts for the sale of the State's interest in the Water Front property. (Ante, pages 269–277, Nos. CXXXVI–CXXXVIII.)

65. Claims under a grant of four hundred varas square, on the southeast corner of Broadway and Sansome streets, purporting to have been made by Governor Alvarado to Robert Elwell, in 1842 or 1843. (Ante, page 189, No. CII.)

66. Claims of private persons under conveyances of Beach and Water Lot property from the Commissioners of the Funded Debt of the City of San Francisco, under the various acts and proceedings for that purpose. (Ante, page 108, No. CVI; page 199, No. CVII; page 277, No. CXLI; page 282, No. CXLIV; page 282, No. CXLV; page 321, No. CLX.)

67. Sales and conveyances made by the Sheriff of the County of San Francisco of portions of the Beach and Water Lots, released by the State of California to the City of San Francisco by the First Water Lot Bill. (Laws of 1851, Ch. 41, page 307; ante, page 265, No. CXXXII.) Held by the Supreme Court of California, that the City of San Francisco had a leviable interest in these water lots, and that a regular sale on execution upon a valid judgment against the city would convey a title to that interest to the purchaser. (*Smith vs. Morse*, 2 Cal. Rep., 524; *Holladay vs. Frisbie*, 15 Cal. Rep., 630; *Wheeler vs. Miller*, 16 Cal., 125.)

68. Conveyances made by Alcaldes and other Pueblo officers to private persons of portions of said water lots, confirmed by Section 2, of the First Water Lot Bill. (Laws 1851, Ch. 41, page 307; ante, page 265, No. CXXXII.)

69. Conveyances to private persons of portions of said water lots, made by the Commissioners of the Sinking Fund of the City of San Francisco, and afterwards confirmed by act of the legislature. (See ante, page 192, No. CIV; page 282, No. CXLIV.)

70. Possible claims which may be asserted under the Second Water Lot Bill. (Laws 1851, Ch. 44, p. 311; ante, page 267, No. CXXXIII.)

71. Claims of William Alvord, his associates and assigns, to submerged and tide and marsh lands, at the Potrero Nuevo, under "An Act to authorize the sale and conveyance to William Alvord, his associates and assigns, of certain overflowed lands in the City and County of San Francisco." (Laws 1865-6, page 841.) This is supposed to include lands both above and below the ordinary high water mark, and also below the ordinary low water mark.

72. Claims of the North San Francisco Homestead and Railroad Association to certain overflowed lands under the provisions of "An Act to authorize the sale and conveyance to the North San Francisco Homestead and Railroad Association of certain overflowed lands in the City and County of San Francisco." (Laws of 1863-4, page 482.) This is supposed to include lands both above and below the ordinary high water mark, and also below the low water mark.

73. Claims of the Golden City Homestead Association, under "An Act to authorize the sale and conveyance to the Golden City Homestead Association of certain overflowed lands in the City and County of San Francisco." (Laws of 1863-4, page 463, Chap. 407.)

74. Claims under the "Act to provide for the sale of the Salt Marsh and Tide Lands of this State," passed May 14th, 1861. (Ante, page 321, No. CLXI. See *Teschmacher vs. Dennis*, 29 Cal. Reports.)

75. Claims to a lot of land on Steuart Street, one hundred and thirty-seven and one-half feet by forty-five feet ten inches, under "An Act to authorize the Governor of the State of California to convey certain real estate [to Barbara Cunningham]. (Laws of 1862, page 236.)

76. Extension and confirmation of a lease of the GORE of land bounded by Market, Front, and Pine streets to Edward Minturn, for ten years from May 22d, 1863, under laws of 1865, page 307; said lease having been previously made by the city and by the Commissioners of the Funded Debt.

77. Claims to the City Slip property by private owners under the acts referred to: (ADDENDA, No. CLVI, ante, page 316.)

78. Claims to franchises in the City Slip property by the Central Wharf Joint Stock Company. (Ante, page 316, ADDENDA, No. CLVI; Nos. II, IV, VI.)

III. ISLANDS.

Islands situated in navigable waters near the shore, and especially those lying within harbors and capable of being fortified or planted with batteries, have generally been retained as the property of the sovereign, by all nations; and no people have been more jealous in this respect than the Spanish. So notorious was this fact that the Supreme Court of the United States consider an alleged grant of such an island as almost presumptively fraudulent on its face. (United States vs. Ohio, 23 Howard's U. S. S. C. Rep., 286.) The history of the islands in the Bay of San Francisco is a simple, yet a curious one: they were first reserved by the President of the United States for military purposes, and then, after the lapse of thirteen years, those within the City and County of San Francisco and not occupied by the United States were, by what was apparently a mistake in an act of Congress, granted to the City of San Francisco. The following is a short history of the matter:

In 1851 President Fillmore reserved for public purposes the following islands situate in the Bay of San Francisco: Yerba Buena Island, Alcatras Island, and Angel Island. (See the reservation, ante, page 221, No. CXIII.) Alcatras Island, and a portion of Angel Island were occupied, and continue to be so, with military works. The Van Ness Ordinance provided that application should be made to Congress to relinquish to the City of San Francisco all the right and title of the United States to the lands embraced within the scope of that ordinance, for the uses and purposes specified in it, so that if the Pueblo title failed, a valid title would enure by grant from the United States. (See the ordinance, ante, No. CXII, page 218, Sec. 10.) Accordingly, by Section 5, of an act of Congress, entitled "An Act to expedite the settlement of Titles to Lands in the State of California," approved July 1st, 1864, an attempt was made by Congress to confirm the Van Ness Ordinance as desired. (See the act, ante, No. CXXX, page 255, Sec. 5.) But the author of that act seems to have overlooked the fact that the Van Ness Ordinance did not embrace all the lands lying within the city limits under the charter of 1851, but *extended only to the line of the Water Front*, while the boundary of the city under the charter of 1851, on the east and north was the same as that of the county, and included the following Islands situate in the Bay of San Francisco,

namely: Yerba Buena, Angel Island, Alcatraz, the Farallones, and Mission Rock. This will be apparent from a comparison of the respective boundaries. The Van Ness Ordinance, after granting to actual occupants "all the right and claim "of the city to the lands within the corporate limits," excepts "any piece or parcel "of land situated south, east, or north of the Water Front of the City of San "Francisco as established by an act of the Legislature of March 26th, A.D. one "thousand eight hundred and fifty-one." (See the Van Ness Ordinance, ante, No. CXII, page 217, Sec. 2, and the First Water Lot Bill establishing the Water Front, ante, No. CXXXII, pages 265, 267, Sections 1 and 4.) The provisions fixing the Charter Line of 1851, conclude as follows: "Its southern and eastern boundaries shall be coincident with those of the County of San Francisco." (Laws of 1851, page 351, Chap. 84, Sec. 2.) The boundaries of the County of San Francisco, as fixed by laws of 1851, Chap. 14, page 174, Sec. 8, are thus defined: "Beginning at low water mark on the west side of the entrance of the Bay of San "Francisco, and following the line of low water mark along the southern and "anterior coast of said Bay to a point due southwest of Golden Rock" [nine mile Rock or Red Rock]; "thence due southeast to a point within three miles of high "water mark of Contra Costa County; thence in a southerly direction to a point "three miles from and opposite the mouth of Alameda Creek," etc. The city limits under the charter of 1851, therefore, included the following islands, namely: Angel Island, Alcatraz, Yerba Buena, the Farallones, and Mission Rock; and these islands are therefore included in the body of the grant, that is to say, within the general description of the lands granted. But this act of Congress, however, contains the following exception: "there being excepted from this relinquishment "and grant all sites or other parcels of lands which *have been or are now occupied* "by the United States for military, naval, or other public uses, or such other sites "or parcels as may hereafter be designated by the President of the United States "within one year after the rendition of an approved plat of the exterior limits of "San Francisco as recognized in this section in connection with the public surveys." (Sec. 5 of said act, ante, page 257, as above.) It will be observed, that "lands "heretofore reserved for the use of the United States," are not the lands excepted from the grant, but only those "which have been, or now are *occupied* by the "United States," and the only islands which at the date of said act of Congress were not, and never had been occupied by the United States, were YERBA BUENA, FARALLONES, MISSION ROCK, and a part of ANGEL ISLAND. These islands, any or all of them, are still liable to be reserved by the President, as above provided, within one year after the filing in the General Land Office of an approved survey of the exterior limits of the City of San Francisco according to the charter of 1851. Even the grant as it stands is declared to be for the "uses and purposes specified" in the Van Ness Ordinance, which still further demonstrates the mistake made by Congress, for there is no consideration of equity, convenience, or policy which would grant Yerba Buena Island, of one hundred and sixty acres, to any two or three squatters who may have scrambled for its possession on the first day of January, A. D. 1855. The President would doubtless, on the application of the city, make the reservation of Yerba Buena Island, as he is authorized to do by this act, and Congress could then grant it to the city, to be occupied as its Bridewell, and for other kindred purposes to which it is so well adapted, as it has been pronounced by military engineers to be of no value to the United States for purposes of fortification or defense.

ACTS, ETC., AFFECTING THE ISLANDS GRANTED TO THE CITY
BY ACT OF CONGRESS.

79. Grant purporting to have been made of Yerba Buena Island by Governor Alvarado to Dón Juan Castro, Nov. 8th, 1838, claimed by Joel S. Polack and finally rejected. 1 Hoffman's Rep., Appendix, No. II, ante, page 187, No. C.

80. Grant purporting to have been made of the Islands Farallones, Alcatras, and Yerba Buena, to José y Limantour, by Governor Micheltorena, Dec. 16, 1863. Finally rejected, 1 Hoffman's Rep., 389. *Ib.* Appendix No. 549. ADDENDA, ante, page 174, No. XCI.

81. Exception of Alcatras Island from the grant to the city, by said act of Congress of July 1st, 1864, by reason of its being occupied by the United States for public purposes at and before the time of the passage of said act, as specified in Sec. 5 of said act; ante, page 257.

82. Claims of alleged occupants to Yerba Buena Island under the Van Ness Ordinance on the alleged ground that said Island was granted to the city of San Francisco by said act of July 1st; 1864, for the uses and purposes specified in said ordinance; ante, No. CXII, page 217.

83. Grant purporting to have been made of Angel Island in the Bay of San Francisco to Don Antonio Maria Orsio by Governor Alvarado, February 19th, 1838. Finally rejected. 1 Hoffman's Rep., 100. *Ib.* Appendix, No. 18, ante, page 188, No. CI.

84. Exception of a portion of Angel Island from the grant to the city by said act of July 1st, 1864, by reason of its being occupied by the United States for public purposes, at and before the time of the passage of said act as specified in Sec. 5 of said act; ante, page 257.

85. Claims of occupants of portions of Angel Island on January 1st, 1855, under the Van Ness Ordinance; ante, page 216, No. CXII, and said act of Congress, ante, page 217, Sec. 5.

86. Power reserved by the United States to reserve any or all of these Islands for the use of the United States, by a reservation to be made by the United States within one year after the rendition to the General Land Office, by the Surveyor General, of an approved plat of the exterior limits of San Francisco (charter of 1851) in connection with the lines of the public surveys; ante, page 257, Sec. 5.

No. CLXIV.

PORTION OF AN ACT OF CONGRESS ENTITLED "AN ACT TO APPROPRIATE THE PROCEEDS OF THE SALES OF PUBLIC LANDS, AND TO GRANT PRE-EMPTION RIGHTS," APPROVED SEPTEMBER 4TH, 1841, UNDER WHICH THE STATE OF CALIFORNIA DERIVES HER TITLE TO 500,000 ACRES OF PUBLIC LANDS WHICH WERE AFTERWARDS DEVOTED TO THE SUPPORT OF COMMON SCHOOLS AND THE ERECTION OF PUBLIC BUILDINGS BY THE LEGISLATURE OF CALIFORNIA, AND UNDER WHICH **SCHOOL LAND WARRANTS** WERE ISSUED BY THE STATE. 5 U. S. STATUTES AT LARGE, PAGE 455, CHAP. 16, § 8.

"SECTION 8. *And be it further enacted,* That there shall be granted to each State specified in the first section of this act, [Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan] five hundred thousand acres of land for purposes of internal improvement: *Provided,* that to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States to be made within their limits respectively in such manner as the Legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States in said States respectively shall have been surveyed according to existing laws. And there shall be and hereby is, GRANTED TO EACH NEW STATE THAT SHALL HEREAFTER BE ADMITTED INTO THE UNION, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid."

NOTE.—For the various acts of the Legislature of the State of California regulating the disposal and management of these lands, and the location of School Warrants upon them, see Hittel's Digest, Articles 3,970 to 4,057 inclusive, and Laws of 1865-6, pages 284 and 854.

No. CLXV.

THE SO-CALLED "ARKANSAS SWAMP LAND ACT" OF CONGRESS, APPROVED SEPT. 28TH, 1850, UNDER WHICH THE STATE OF CALIFORNIA DERIVES HER TITLE TO THE SWAMP AND OVERFLOWED LANDS WITHIN HER LIMITS. 9 U. S. STATUTES AT LARGE, PAGE 519, CHAP. 84.

AN ACT TO ENABLE THE STATE OF ARKANSAS AND OTHER STATES TO RECLAIM THE "SWAMP LANDS" WITHIN THEIR LIMITS.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

That to enable the State of Arkansas to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas, and, at the request of said Governor, cause a patent to be issued to the State therefor; and on that patent the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *provided, however*, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. 3. *And be it further enacted*, That the provisions of this act be extended to, and their benefits be conferred upon, *each of the other States of the Union* in which said swamp and overflowed lands, known as designated aforesaid, may be situated.

APPROVED, September 28th, 1850.

NOTE.—The term "swamp and overflowed lands" includes all lands which are "wet and unfit for cultivation" by reason of being overflowed by water, as well those lands which are overflowed by the spring tides of salt water, as those which are overflowed by the fresh waters of rivers. These do not belong to the State by virtue of her sovereignty, but belong to the United States by virtue of her ownership of public lands; and Spanish and Mexican grants which were bounded by tide waters extended to the ordinary low water mark, and therefore included such marsh, swamp, or overflowed lands; and if the State of California does not hold the salt marshes under the above "Arkansas Swamp Land Act," then she does not hold

them at all. Pollard's Lessees *vs.* Hagan, 5 Howard U. S. Rep., 312; People *vs.* Morrill, 26 Cal. Rep., 336; United States *vs.* Pacheco, 2 Wallace, U. S. Sup. Ct. Rep., 587; Teschemacher *vs.* Dennis, 29 Cal. Rep. See ante, page 330, ADDENDA, No. CLXIII, "Water Lots."

For the legislation of the State of California on this subject see Hittell's Digest, Articles 4058 to 4214, inclusive; and Laws of 1865-6, pages 315, 465, 530, 640, 662, 795, 799-801, 832.

No. CLXVI.

"LAS LEYES VIGENTES"—MUNICIPAL LAWS OF SPAIN AND MEXICO, SURVIVING THE MEXICAN REVOLUTION OF 1821, AND THE AMERICAN CONQUEST OF CALIFORNIA.

The Mexicans have a law term: "Las Leyes Vigentes—the laws still in force"—which they apply to those orders and decrees of the Cortes of Spain, which, being Municipal Laws, were considered still in force in Mexico after the successful accomplishment of the Revolution of 1821, for the reason stated in § 54 of the argument, that "it is a well established principle of law that a change in the sovereignty of a country changes the *political law*, but leaves all the *laws respecting private property* in full force." But as it is constantly asserted by the upholders of a partisan interest that the Hispano-Mexican laws relating to the distribution of Pueblo Lands were repealed by the conquest of California by the Americans, I shall endeavor to elucidate the above principle at some length.

The clearest and fullest statement of this principle that I have met, and the one fortified by the largest citation of authority, is that contained in Halleck's International Law:

"§ 14. The laws of a conquered country,' says Lord Mansfield, 'continue in force until they are altered by the conqueror; the absurd exception as to pagans, mentioned in Calvin's case, shows the universality and antiquity of the maxim. For that distinction could not exist before the christian era, and in all probability arose from the mad enthusiasm of the crusades.' This may be said of the municipal laws of the conquered country, but not of its political laws, or the relations of the inhabitants with the government. The rule is more correctly and clearly stated by Chief Justice Marshall, as follows: 'On the transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory;—the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state.' This is now a well settled rule of the law of nations, and is universally admitted." p. 824.

"§ 24. It has already been remarked that, in the transfer of territory by conquest or cession, the *political* rights of its inhabitants may be essentially changed. This results from a difference in the powers and character of governments, as depending upon their constitutions or fundamental laws. The new government may not be capable of receiving or exercising all the powers of the old one, or it

may not extend to the governed all the political rights which they enjoyed under the former sovereign. But a change of sovereignty is not, in modern times, permitted to effect any change in the rights of private property. What was the property of the former sovereign becomes the property of the new one, and what was the property of individuals before, remains private property, notwithstanding the conquest or cession. 'The modern usage of nations,' says Chief Justice Marshall, speaking of the transfer of a country from one government to another, 'which has become a law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world, would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.' The rule of international law, thus clearly enunciated by the Supreme Court of the United States in 1833, has since been repeatedly recognized in the decisions of the same tribunal. (*United States vs. Perchman*, 7 Peters Rep., p. 87; *Mitchel vs. The U. S.*, 9 Peters Rep., p. 734; *Strother vs. Lucas*, 12 Peters Rep., p. 38; *New Orleans vs. The U. S.*, 10 Peters Rep., pp. 720, 729; *Riquelme*, *Derecho Pub. Int.*, lib. 1, tit. 2, cap. 12.)" p. 836.

"§ 25. As the new State merely displaces the former sovereignty, and acquires by cession or complete conquest, no claim or title whatever to private property, whether of individuals, *municipalities*, or *corporations*, and as it assumes the duties and obligations of the former sovereign with respect to private property within such acquired territory, it is consequently bound to recognize and protect all private rights in lands, whether they are held under absolute grants or inchoate titles, for *property* in land includes every class of claim to real estate, from a mere inceptive grant to a complete, absolute, and perfect title. A mere equity is protected by the law of nations as much as a strictly legal title. In the words of Chief Justice Marshall, 'The term 'property,' as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract; those which are executory; as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away.' (*Soulard et al. vs. The United States*, 4 Peters Rep., p. 512; *Mitchel et al. vs. The United States*, 9 Peters Rep., p. 733; *United States vs. Perchman*, 7 Peters Rep., p. 51; *Chouteau's heirs vs. The United States*, 9 Peters Rep., pp. 137, 147." p. 837.

The same principles were recognized by the Mexican jurists after the accomplishment of the Revolution of 1821, and it is due to that class to say, that it embraces in its ranks lawyers, who in learning, integrity, and skill, have never been excelled in any country, or at any time in the world's history. The following is from the preface to the "Collection of Decrees and Orders of the Cortes of Spain which are considered in force in the Republic of the Mexican United States," published at Mexico in 1829.*

"The independence of Mexico having been happily achieved by the occupation of the capital on the 27th September, 1821, and the destruction of the viceregal government, and though the bonds of dependence upon Spain are broken forever, yet the laws prescribing the duties and rights of those composing this new social gath-

* Colecion de los Decretos y Ordenes de las Cortes de España, que se Reputan Vigentes en la republica de los Estados-Unidos Mexicanos: Mexico; 1829. Imprenta de Galvan á cargo de Mariano Arévalo calle de Cadena, No. 2, p. 216.

ering neither could nor should have remained without force; because as they could not have been remodeled except after a certain lapse of time, and by the competent authorities, their sudden and total abolition would have been equivalent to the establishment of absolute anarchy at a time when order was mostly needed. So that with the exception of those laws which came in direct conflict with the memorable Plan of Iguala,* and with the new order of things created by that Plan, all the other laws which had emanated from the Kings of Spain and from the sovereign authority, and which had been acknowledged up to that date, were adopted and respected; lawsuits were decided and justice was administered in conformity with them, and the Mexicans adapted their social existence to their spirit. Hence it has resulted that the Spanish codes, which have not as yet been replaced by any purely national, are greatly sought after by judges, by men of letters, and even by simple citizens, because in them they find their rule of action, the guarantees of their reciprocal rights, and the guide for their proceedings. Among these codes the principal one is that comprising the collection of decrees and ordinances issued by the Spanish *Cortes* in the years 1812, 1813, 1814, 1820, and 1821, when independence was acquired. This collection, which has increased to ten volumes, has become amongst us rare and costly; and even when it can be obtained, it has this inconvenience: that those laws are found scattered throughout the first seven volumes, containing the decrees issued, while Mexico still depended upon the legislation of Madrid, and which are yet in force in the republic, because they have either been executed, or they refer exclusively to these countries, or they have not as yet been revoked.

“Convinced by these observations of the usefulness of reducing them to a single volume, at a reasonable price and in convenient form, the difficulty there would be in codification, for fear of omitting some law yet in force, or inserting others already void, was duly weighed. To avoid this difficulty in this collection, a period of time was fixed upon, when, beyond a doubt, the laws of Madrid were binding in Mexico, and this runs from the first volume to the beginning of the eighth, which volume opens with the ordinance of the twenty-third of September, 1821, whereby it was decreed that the supplements in relation to the countries beyond the sea should not be considered by the *Cortes*. This action of the Spanish Congress, (independence being at that date accomplished) if it does not involve a kind of recognition of that fact, yet places it beyond a doubt that all laws made thereafter could have no force whatever in regard to the Mexicans, who had broken forever the bond which united them to Spain, and who had not coöperated in the making of them; not even through the paltry representation which had been granted them as a favor, and notwithstanding the principles of equality which had been promulgated, and the character of the representative system of government. Excluding the last three volumes, the examination is limited to the first seven. In them are found many laws, the exclusive object of which was the well being of the territory of the peninsula; others essentially monarchical, and others relating exclusively to private individuals; none of these are to the present purpose, and

* The “Plan of Iguala,” so called, because it was promulgated at the town of Iguala, in Mexico, on February 24th, 1821, to the army there under his command by Augustine Iturbide, afterwards Emperor of Mexico. This “Plan” was the basis of the Mexican revolt from Spain; its principal features were the establishment of Roman Catholicism as the religion of the State; the equality of all citizens in the sight of the law, irrespective of race or color; and the establishment of a constitutional monarchy. The “Plan of Iguala,” therefore, changed only the *political* law of the country.

their insertion would uselessly augment the volume of matter, and would frustrate the object of this digest. This digest comprises all those laws which, not being in conflict with the order of things after independence, nor in conflict with the form of government then adopted, remained at that time and are still in force in some of their provisions, and in some places in the republic; as for example, those organizing the Courts, which although adopted in the different States by their respective legislatures, were not adopted in the districts and territories where they exist only in those provisions proper to the federal system. There are others relating to objects, the right to legislate upon which was reserved by the federal constitution to the general Congress; and these laws, not having as yet been definitely passed upon, remain in full force; among these is the one relating to the liberty of the press. Others have been considered useful and deserving insertion herein, notwithstanding they refer to matters under the supervision of the States, as it is not known whether they have legislated upon the subject, although some of these States continue still to act in accordance with them; such for instance as the one touching the responsibilities of public officers. Again, some of these laws concern regulations upon establishments which Mexico did not have until after her independence; hence we see that those laws did not contemplate those establishments, but having been sometimes enforced, it has been thought advisable to insert them likewise; of this class may be considered the law fixing the honors and privileges of those who have served in the bureaus of State. Finally, as this digest is not limited to certain fixed places, all the laws and ordinances which might bear upon any case in any part of the Republic, have also been inserted. For the reason that should one find in this digest a law inapplicable in one State, he will find many others which are not so, and he will be compensated for the apparent superfluity of buying a volume containing certain provisions of no use to him, by the advantage of securing at a reasonable price, a collection of all the laws which remain still in force.

“In order to finish giving an idea of the method which has been followed in the codification and insertion of the ordinances and decrees, we have still to say a few words:

“1st. Although many of the laws made by the Spanish Congress in the year 1821 were not published in this country, yet all those laws having the characteristics above mentioned have been inserted, because we see practically that many of these laws are in force, notwithstanding they lack the essential requisite of publication. Among such can be found the law of May 18th, 1821, about compromises (*conciliaciones*) which never had legal publication, and only appeared in the *Noticioso* of the seventeenth of October of that year, after independence had been consummated; and yet it is observed in the capital and elsewhere, notwithstanding its opposition to Article 155, of the Constitution.*

“2d. The Spanish Constitution has not been inserted, because in our opinion it can have no force, not even temporarily, in the districts and territories which have no constitution, on account of the absolute diversity of system and conflict with the federal Constitution of Mexico. Although the laws contained in this volume emanate from that Constitution, and ought to suppose its existence, this would be the case in Spain, where they have a permanent character, and not in Mexico, where they are merely temporary and provisional, in the absence of more suitable

*For the reason that custom, under the Spanish and Mexican law, overrides all law. See LAWS ESTABLISHED BY CUSTOM, below in this Article.

legislation not in conflict with our Constitution. This is the case with many of said laws, and hence only certain of their provisions are in force, while the balance are considered abrogated.

“These considerations we think sufficient to enable the reader to comprehend the system adopted in this compilation of laws, and the just value to be placed by him upon each of them, concluding with the assurance that our object in this undertaking has been the public good alone.”)

The titles of some of these laws which thus survived the Mexican Revolution are highly suggestive of the distinction between those *political* laws which determine the relation of the individual to the sovereign, which, upon a revolution or conquest, are immediately replaced by those of the new government, and those *municipal* laws regulating private rights, which remain unchanged upon the happening of such events. I cite them from the “*Leyes Vigentes*”: Freedom of Trade in Quicksilver, p. 1; Rewards offered for the Discovery of Quicksilver Mines in America, p. 2; The right to Fish for Pearls and Whales Declared, p. 7; Concerning the Establishment of Military Hospitals, p. 9; Abolition of Torture, p. 8; Secular Priests may vote in the Election of Ayuntamientos, but cannot hold office in them, p. 33; Various Measures for the encouragement of Agriculture and Cattle Breeding, p. 82; A Law of Copy Right, p. 84; A law respecting Conciliation, p. 116; Decree of the twelfth of March, 1811, Various Measures for the Encouragement of Agriculture and Industry in America, p. 2; Decree of the thirteenth of March, 1811, Indians and Castes Exempted from Tribute; Distribution of Lands to the former; Prohibition to the Justices to traffic in such lands; Page 3, Decree of the twenty-second of April, 1811, Abolition of the Torture, and Compulsions, and Prohibitions of other Painful Practices; page 18, Decree of the twenty-second of April, 1811, of the free Incorporation of Lawyers in their Colleges; page 8, Decree of the sixth of August, 1811, Incorporation of the Seigniorial Jurisdictions of the Nation, Abolition of Privileges; that no one can call himself the lord of vassals or exercise jurisdiction as such; page 17, Decree of the 11th November, 1811, Of the Responsibility as to the Observance of the Decrees of the National Congress, p. 22; Decree of the eighteenth of January, 1812, Of Employments which cannot be filled by Substitutes, p. 24; Formation of the Constitutional Ayuntamientos; p. 28, see ante, p. 18, No. X. Rules for the Formation of Constitutional Ayuntamientos, p. 32; see ante, p. 30, No. XI. Decree of the ninth of October, 1812; of the Constitutional Alcaldes of the Pueblos, p. 50.

It is thus very evident that the laws of Spain and Mexico did not differ from those of other civilized nations, and that the Hispano Mexican laws regulating Pueblos and the management of their property, and especially the act of the Cortes of Spain of January 4, 1813, ante, p. 20, No. XI, as a municipal law, survived both the Mexican Revolution and the American Conquest, and is still in force, until except so far as it may have been altered or repealed by the Legislature of California.

LAWS ESTABLISHED BY CUSTOM.

“By the Spanish law, and equally by the Mexican law, custom is sometimes allowed not only to control, limit, modify, and interpret the general rules of the system, but even to establish a rule in direct and palpable contravention of the positive written law. It is the teaching of the books that custom may attain the force of law,

not only when there is not law to the contrary, but when the effect of it is to overturn the previous law which stands in opposition to it, whence arises the maxim, that there may be a custom without a law, a custom contrary to law, and a custom according to law. (Escriche, *Derecho Español*, 23, 24, Escriche, Dic. Title "Costumbre ; 1 Feb. Mej., 55 to 61.") Per Bennett, Justice, in *Von Schmidt vs. Huntington*, 1 Cal. Rep., 64 ; said of provisions of the Mexican *Constitution* of 1836, which was decided to be subverted by an adverse custom. Thus custom overrides written and unwritten law, statutes, and even constitutions, in Spain and Mexico. See also, *Panaud vs. Jones*, 1 Cal. Rep., 500 ; *Reynolds vs. West* ; *Id.* 326 ; *Tevis vs. Peters*, 10 Cal., 477 ; *Adams vs. Norris*, 23 Howard U. S. Sup. Court Rep., 353 ; *Gregory vs. McPherson*, 13 Cal., 573.

So that when we find a *Municipal* law of old Spain existing unrepealed upon the statute books, we may conclude that it survived both the Mexican Revolution and the conquest of California by the Americans ; still more strongly, when we find such a law still followed and enforced by the Americans themselves after the conquest. For example : the law of the Cortes of Spain, of January, 1813, authorizing Pueblo Lands to be sold, and giving only the preference in such sales to the residents of the respective Pueblo. Ante, page 20, §§ 1, 3, 6, 7, etc.

No. CLXVII.

LETTER OF THE ATTORNEY GENERAL, COMMUNICATING, IN COMPLIANCE WITH A RESOLUTION OF THE U. S. SENATE OF THE SEVENTEENTH OF JANUARY, 1866, INFORMATION RELATIVE TO THE CASE OF THE UNITED STATES vs. THE CITY OF SAN FRANCISCO.

[This letter was returned to the Senate at the time when the act of March 8th, 1866, was before that body for its action, (ante, page 813, No. CLIII) in reply to the resolution above referred to, and is supposed to be the *suggestion* of Hon. J. S. Black, some time Attorney General of the United States, who at the time it was written held a retainer in this very case adverse to the claim of the City of San Francisco. Attorney General Speed could, of course, know nothing of the case personally, and is, therefore, not responsible for the misinformation which was furnished him. The italics and the numerals within brackets have been inserted by myself, for the sake of reference.]

ATTORNEY GENERAL'S OFFICE, Feb. 13th, 1866.

SIR—In compliance with the resolution of the Senate relative to the case of the United States vs. City of San Francisco, I beg leave to make the following statement for the information of that body :

The cause originated in the Land Commission appointed under the act of March 3d, 1851, being a claim against the United States under a *pretended Mexican grant* [1] for a large tract of land, including that upon which the City of San Francisco is built.

I am, of course, not expected to go at length into the facts upon which the claimants rest their assertion of title, or give in detail the reasons which influenced the Government in resisting the confirmation.

The claim to the extent to which it is prosecuted has been regarded, I believe, by all my predecessors, as well as by all the local law officers under whose notice it has come, as unfounded [2].

I am requested to state who are interested in the success of the United States. To this I reply, that, in my opinion, the entire people of the United States are interested in resisting a claim for a valuable part of the public domain, if the claim be false and unfounded in fact and in law. To allow such a claim would be very injurious to the public finances as well as to the public morals. The United States became the proprietors of the land in dispute by virtue of the conquest of California and the treaty of cession subject, however, to the stipulation that, if it had been previously granted to any person or corporation, the rights of such grantee should be protected. The city corporation is one of several claimants under alleged Mexican grants [1]. The United States have acted on the assumption that the title was in the public; they have devoted portions of it, I am informed, to military, naval, judicial, and sanitary purposes, and other portions of it have passed into the hands of private individuals. If the title as now claimed by the city, under *her pretended grant, be confirmed, the decree will nullify and make void, in my opinion, all the title derived from the United States since the conquest* [7] *and all the titles derived from Mexico under junior grants*[6].

In such cases as this, the United States are bound in honor and in law to make defense against a claim of this character, not only for the protection of their own proprietary rights, but for the sake of justice to others [5].

The treaty requires us to see that the true owners under Mexican titles are permitted to enjoy what belongs to them. If we would suffer an honest grantee to be deprived of his property, by allowing a pretended grant of earlier date to be conclusively established for the same land, we would betray our trust. [6]Neither the claims under Mexico, nor those under the United States,[7] have any protection except what is given them by this Government; and our protection is extended to them by resisting in the Courts counter claims which may be unfounded. The treaty, and the act of 1851, devolve upon us the duty of seeing that justice be done in this respect to all parties.

I am aware that an act of Congress was passed in 1864, by which the United States relinquished to the City of San Francisco all their title to lands within the city limits,[8] with certain exceptions and reservations, (13 Stat. at Large, 333). The United States, by that act, gave to the city all the title which was then vested in the Government for all land within the city limits not needed by the Government for its own special uses[8]. *The United States could not, in justice to others, have given more*[9].

The act, therefore, reserved the rights of other parties for judicial determination. I do not see how the present litigation could be abandoned without impairing the rights of those other parties; because, by such abandonment a title would be established, as it seems to me, which would be paramount to that of the United States, and cut out the rights of all other grantees from both Mexico [6] and this Government[7].

The city has not been content with the large and liberal donation made in the act of 1864. She has not accepted the title of the United States, thus generously and graciously offered,[10] but has preferred to attempt the establishment of a title superior to that of the United States,[11] and which, *if judicially confirmed,* would defeat, as I have suggested, the right of all other grantees, whether claiming under Mexico[6] or of the United States[7].

THE RECORDS OF THIS OFFICE afford me no means of ascertaining the names of the persons who are interested individually in defeating the claim which is set up by the City of San Francisco[12]. All of which is respectfully submitted by

Your obedient servant,

JAMES SPEED,

Attorney General.

Hon. L. F. S. FOSTER,

President pro tem. United States Senate.

NOTE.—I do not know which is the more remarkable in this document, the ignorance of those facts which the writer ought to know, or his suppression of the facts which he did know. But with all its ignorance and suppression it throws a great deal of light on the history of the litigation in the Pueblo case.

[1] "A pretended Mexican grant." The writer does not seem to know that the Pueblo claim is not founded upon any Mexican grant, but upon a dedication made by a general ordinance of the King of Spain before the year 1598. See the Argument, § 28.

[2] Attorney General Cushing for one, admitted the Pueblo claim to be good, and consented to its confirmation, and directed the dismissal of the appeal taken by the United States District Court from the decree of the Board of Land Commissioners. Many of the District Attorneys have unofficially admitted its validity, and most of them have opposed it in the Courts in a mere perfunctory manner.

[5] "The justice to others," spoken of by the writer, is made apparent when we come to consider subsequently what class of titles will be set up to the Pueblo lands claiming under the United States[7] below.

[6] "Claims under Mexico" must be protected, says the writer, or "we would betray our trust." He is here speaking of the consequences of the confirmation of the Pueblo Lands by the United States Circuit Court being sustained, which confirmation expressly excepts all lands held under such grants which have been and may hereafter be confirmed by the tribunals of the United States. Ante, page 250, No. CXXVI. Had the writer ever read this decree?

[7] "Claims under the United States." Here the motive of this communication appears. What then are the "claims under the United States" which would be prejudiced by a confirmation to this city of her Pueblo Lands? They are the following, and none other:

Preëmption claims:

School Land locations: ante, page 330, § 54.

Swamp and Overflowed Lands: ante, page 330, § Sec. 51.

Sioux Half Breed Scrip locations: ante, page 330, § 50.

If there are any other claims "under the United States," the citizens of San Francisco are yet to learn of them. And in behalf of these claims the Pueblo title is sought to be defeated.

[8] The writer understands so little what he is writing about, that he twice avers that the act of Congress of 1864 granted to the City of San Francisco all the lands "within the city limits;" whereas, it granted only the lands within the chartered limits of 1851, not one-fourth of the lands within the present city limits, or of the four leagues of Pueblo Lands. See the act of Congress, ante, page 313, No. CLIII.

[10] "The city has not accepted the title of the United States thus generously and graciously offered." On the contrary, the city desired the donation from the

United States of the land within the chartered limits of 1851 before it was made, applied to Congress for it, and procured the legislature of California to sanction it beforehand. See the Van Ness Ordinance, ante, page 218, § 10; the act of the legislature confirming it, ante, page 216, etc., No. CXII; and the act of Congress passed in pursuance of that application, ante, page 257, No. CXXX.

[11] "The city has preferred to attempt the establishment of a title superior to that of the United States." This is what every claimant attempts, who endeavors to establish any title under the treaty with Mexico, namely: to establish that the lands claimed belong to himself, and not to the United States.

[12] "The records of this office afford me no means of ascertaining the names of the persons who are interested individually in defeating the claim which is set up by the City of San Francisco." It is not to be supposed that the private retainer book of the distinguished counsel at Washington who is retained against the Pueblo claim is kept in the Attorney General's Office; but that book would at least have furnished him with the names of the persons who have employed him to defeat the claim, and it is to be hoped that it shows an aggregate amount of compensation proportioned to the value of the service.

No. CLXVIII.

THE SAN FRANCISCO OUTSIDE LAND BILL PASSED BY THE LEGISLATURE OF 1865-6, AND VETOED BY THE GOVERNOR.

AN ACT TO PROVIDE FOR THE SETTLEMENT OF CERTAIN LAND CLAIMS WITHIN
THE CITY AND COUNTY OF SAN FRANCISCO.

*The People of the State of California, represented in Senate and Assembly, do enact
as follows:*

SECTION 1. The Board of Supervisors of the City and County of San Francisco are hereby empowered to release and quitclaim to the parties in possession, with the reservations, conditions, and exceptions as hereinafter mentioned and provided, all right, title, interest, estate, and claim of said city and county to the lands within its present corporate limits situated above the natural highwater mark of the Bay of San Francisco and the Pacific Ocean, and without the former corporate limits of the City of San Francisco, as established and defined in the Act to re-incorporate said city, passed April fifteenth, eighteen hundred and fifty-one.

SEC. 2. Munroe Ashbury, Andrew B. Forbes, and Frank McCoppin are hereby appointed Commissioners, who shall be known as the Board of San Francisco City and County Land Commissioners, who shall hold office until the trusts and duties herein confided to them be completed, not exceeding the term of three years from the time of their giving bonds and taking the oath of office as provided in this Act, and whose duty it shall be, as soon as practicable after their appointment, to ascertain the character and extent of claims and possessions to said lands, and to appraise the value of the same, irrespective of the value of the improvements thereon, and to perform such other powers, trusts, and duties as may be conferred upon them by this Act.

SEC. 3. Each of said Commissioners shall be required to give bonds for the faithful performance of the duties of his office in the sum of ten thousand dollars, to be approved by the Mayor and Board of Supervisors of the City and County of San Francisco, and shall also be required to take the customary oath of office, and that he has no interest directly or indirectly in said lands or any part thereof. Said bonds to be filed with the Auditor of the City and County of San Francisco, and the oath to be filed with the Board of Supervisors; *provided*, that no person shall be eligible to be a Commissioner, or a bondsman for any such Commissioner or Commissioners, who shall own or claim any portion of said Lands at the time of making such bond.

SEC. 4. The Said Commissioners shall give public notice, by advertising daily for one week in two daily newspapers published in the City and County of San Francisco, of their intention, and shall, within thirty days after giving bonds and taking the oath as provided in the foregoing section, organize as a Board under the title of the Board of San Francisco City and County Land Commissioners, by the election of a President from among themselves. They shall also appoint a Secretary, who shall be required to take the oath of office, and whose duty it shall be to keep faithful and distinct minutes of all the proceedings of said Board, and shall enter the name of each Commissioner present at each meeting, and record the votes of each Commissioner, record the evidence produced before said Commissioner, and shall perform such other duties as may be directed by the said Board of Commissioners. The office of the Board shall be open and the Secretary shall be present during business hours every day, except non-judicial days. Its meetings shall take place within the City and County of San Francisco, and may be adjourned from time to time; *provided*, said Board shall hold a meeting at least once a week until the purposes of this act shall be accomplished. A majority of all the Commissioners shall constitute a quorum to transact business, and no order or resolution of said Board shall be valid without the assent, by votes in the meetings of a majority of the whole number of Commissioners, which votes shall be taken in all cases by ayes and noes, and recorded in the minutes, but a smaller number may adjourn from day to day. Each of said Commissioners shall receive a salary to be fixed by the Board of Supervisors, not to exceed the sum of two thousand four hundred dollars per annum during their continuance in office. The Secretary of said Board shall receive for his salary a sum not exceeding eighteen hundred dollars per annum. Said salaries shall be allowed and audited by the Auditor, and paid in monthly instalments by the Treasurer out of the General Fund of the City and County of San Francisco; *provided*, said salaries, or any of them, may be reduced or discontinued altogether, by an order of the Board of Supervisors, if, in their opinion, anything should occur to justify such order.

SEC. 5. In the event of any vacancy occurring from death or otherwise in said Board of Commissioners, the Mayor of the City and County of San Francisco, by and with the consent of the Board of Supervisors, shall forthwith fill such vacancy by appointment; and should the said Mayor or Board of Supervisors neglect or fail to perform said duty, they may be compelled so to do by mandamus upon relation of any member of said Board of Commissioners.

SEC. 6. The Commissioners, or any two of them, shall have power and are hereby authorized to make, and execute, and acknowledge, as is hereinafter mentioned, deeds of release and quitclaim to the several parties, in their proper proportions, who were in the peaceable possession, either by themselves or tenants, or by a co-tenant in joint or common tenancy, or by actual and well defined bound-

aries, on or before the date of the passage of an Act of Congress to quiet the title to certain lands within the corporate limits of the City of San Francisco, approved on or about the eighth day of March, eighteen hundred and sixty-six, and have continued such possession up to the time of the passage of this act, (or if interrupted by an intruder or trespasser, such possession has been or may be recovered by process of law, or awarded under the provisions of this act) upon the conditions, with the reservations and exceptions, and in pursuance of the provisions of this act, of all the right, title, interest, estate, and claim of said city and county in and to the lands mentioned in section one of this act, and to all the lands described in the decree of the United States Circuit Court for the Northern District of California, in the action of the City of San Francisco against the United States, or that may be mentioned and described in any decree that may hereafter be made therein; *provided*, that no person by himself or as tenant in common or joint tenant of an undivided tract, upon a proper partition and allotment thereof among the co-tenants, shall be entitled to receive as his share more than fifty acres of said lands; and, *provided*, further, that as a condition precedent to the delivery of any deed executed as herein mentioned, the several grantees, in consideration thereof, shall grant, give, release, and convey to said city and county, by good and sufficient deeds of conveyance duly executed and acknowledged, all their right, title, and possession to such portion of the same lands of said city and county as they may severally or jointly hold or possess in excess of said fifty acres per capita, and shall also pay into the Treasury of said city and county, for a tract not exceeding ten acres of land, ten per cent of its appraised value; and for every additional ten acres, up to fifty acres, ten per cent of the appraised value shall be added, thus: there shall be charged and paid for ten acres, ten per cent; for the second ten acres, twenty per cent; for the third ten acres, thirty per cent; for the fourth ten acres, forty per cent; for the fifth ten acres, fifty per cent of its appraised value; and in the same proportion for fractional quantities.

SEC. 7. Any patent issued, or grant made or to be made by the United States, or any other authority, to the City or to said City and County of San Francisco, or its successor, for the said lands or any portion thereof, upon the execution and delivery of the several deeds by said Commissioners, shall inure to the use, benefit, and behoof, of the several possessors in whose favor such release and quitclaim shall be made, and their heirs and assigns, as fully and effectually to all intents and purposes as if it were issued or made to them individually by name. A deceased person's interest may be conveyed to his proper legal representative.

SEC. 8. Where a tract of land exceeds in quantity the limit herein expressed and defined, the claimant or his legal representative shall, before receiving a deed as aforesaid, be required to quitclaim and peaceably deliver the possession of any surplus so held and claimed to the Commissioners for the use and benefit of the City and County of San Francisco, to be disposed of as hereinafter required; *provided*, the parties respectively whose claims are recognized by the Commissioners, shall be authorized and required to locate in one compact body as nearly as possible the quantity of land allotted to them, and to which they shall be entitled; but when there are several tenants in common, or joint tenants, claiming an undivided tract of said lands and the undivided portion or interest of any one of them therein does not exceed fifty acres, the Commissioners may locate the quantity allotted to all such claimants in one tract.

SEC. 9. The Commissioners, with the concurrence of the Board of Supervisors, are hereby required to cause said lands to be surveyed by the City and County

Surveyor, and to lay off and reserve one or more public parks, and to lay off, appropriate, and reserve sufficient lands for public streets, and provide for defining and laying out the same, and to lay off, appropriate, and reserve sufficient lands for charitable objects and City Cemetery, and for school, hospital, and engine house lots, or for other necessary public purposes, at convenient distances, with a view to provide for the wants, health, comfort, and recreation of the inhabitants of the city; *provided*, that if the lands claimed by any valid claimant shall be taken for any of the aforesaid purposes, equivalent allotments shall be provided for them by the Commissioners out of the nearest ungranted lands to such valid claim, or where this cannot be done, the City shall pay for the lands so taken, excepting for public streets, at the appraised value thereof, less the percentage payable thereon, as provided in this act, in case it had been awarded to a claimant; *provided*, also, that the improvements thereon shall be paid for at their full appraised value, said appraisal to be made by the Commissioners.

SEC. 10. Every person claiming to be entitled to a deed of release and quitclaim under the provisions of this act shall present to the said Commissioners, within two years after their organization, a petition in writing, setting forth minutely the value, time of location or purchase, extent and boundaries, with a plat and survey of the possession which he claims; and said petition shall set forth such other material facts and be in such form as the Board of Commissioners may prescribe. The petition shall be verified by the affidavit of the claimant, or in case of the absence from the State of such claimant, by his agent or attorney; and said affidavit shall further state that the claimant has no other interest, either direct, secret, or contingent, in his own name or in the name of any other person or persons, or any agreement for an interest to any portion of the lands authorized to be released and quitclaimed under the provisions of this act except the claim so presented in writing to said Commissioners.

SEC. 11. Whenever special surveys shall be required to determine the boundaries and value of any claim or selected portion of any claim, whether ordered by the Board or requested by the claimants or applicants, the expense of such survey shall be borne by such claimants or applicants, and no survey shall be received by the Board except it shall have been made by the Surveyor of said city and county, or one designated by the Commissioners; and the amount of compensation for such survey shall be fixed by the Board of Commissioners at a reasonable rate, not to exceed the ordinary charges for such services.

SEC. 12. The said Commissioners shall have power to examine into and determine the validity, quantity, and boundaries of any claim to lands under this act, to confirm or reject the same, in whole or in part, and to order deeds to be executed in favor of parties who in their judgment may be justly and legally entitled thereto under the provisions of this act; and for that purpose they shall have power to hear and determine all conflicting claims and rights set up by different persons claiming adversely to each other, and to decide all questions respecting the same; and the decision and decree of the Board of Commissioners as to the rights of adverse claimants to receive a deed of release and quitclaim under the provisions of this act shall be final and conclusive; *provided*, when the possession or right of possession to said lands or any portion thereof be controverted or claimed adversely, and shall, during the continuance of the office of said Commissioners, be prosecuted in and finally be determined by the judgment or decree of some competent Court as between the adverse claimants, the Board, upon the application of a party in interest, shall receive and adopt such determination and judgment as

settling the questions of possession between such adverse claimants. The judgment record, verified by the affidavit of the party thereto using the same, that the same was obtained in good faith without any collusion or intent to defraud, shall be the only evidence of such judgment or decree, and may be introduced in support of a claim presented to said Board. All deeds by the said Commissioners under the provisions of this act shall be executed and delivered in their official capacity, in the name and in behalf of the City and County of San Francisco, but may be subscribed by the Commissioners, in the individual names of said Commissioners, or by any two of them, in their own proper handwriting, sealed with their private seals respectively, and acknowledged in the form and manner required of private persons; they shall, in substance, recite that the grantee therein named having petitioned for the lands therein described, and the same having been awarded to him under the provisions of this act, and he having paid the consideration prescribed by law therefor, the said City and County of San Francisco does grant, release, and forever quitclaim and convey to such petitioner all the right, title, interest, and estate of said City and County of San Francisco in and to such lands, (describing them) and concluding substantially with the formal parts, or some of them, usually inserted in deeds of quitclaim. Such deeds shall not, in fact or in law, contain or be construed to contain any express or implied covenant or warranty of title, possession, or otherwise, on the part of said city and county, but shall be held and construed, so far as said city and county is concerned, to convey to the grantee therein named all the right, title, interest, and estate of said city and county, both as against the said city and county as a corporation and the inhabitants of said city and county.

SEC. 13. The City and County of San Francisco may appear by attorney at any time before the Commissioners, in opposition to any claim which may be presented for adjudication.

SEC. 14. The Board of Commissioners shall be authorized to employ such additional clerical force as may be found necessary to carry on the business of the Board, and record its proceedings, etc.; the compensation to such clerk or clerks to be fixed by the Board of Supervisors, and to be paid for out of the General Fund of said City and County of San Francisco, in the manner heretofore provided for the payment of the salaries of said Commissioners.

SEC. 15. The Board of Supervisors are required to provide an office or offices for the use of said Commissioners, within the City and County of San Francisco, and order paid out of the General Fund all necessary incidental expenses of said office.

SEC. 16. The residue of the said lands shall be sold at public sale, under the directions of the Commissioners, in such quantities, not exceeding one hundred varas square, and upon such terms as will enable persons of limited means to purchase. Said Commissioners are authorized and empowered to make, execute, acknowledge, and deliver deeds of release and quitclaim, as herein provided in other cases, with the proper change of recitals to purchasers, upon payment of the purchase money; such deeds shall be of the same force and legal effect, and as near as may be shall conform to the directions contained in section twelve of this act.

SEC. 17. The proceeds of such sales, as well as all moneys received for grants of lands made as aforesaid, shall be paid into the Treasury of the said city and county, and shall constitute a fund to be known as the Outside Land Fund, to pay for lands taken for the purposes herein mentioned, and in the manner heretofore expressed, and for the improvement of the grounds reserved for a public park or parks.

SEC. 18. At the termination of said Commission the minutes of the proceedings of the said Commission, and all books containing the record of evidence on the subject of claims presented to said Commissioners, and all books of record pertaining to the proceedings of said Commissioners, shall be deposited in the office of the Recorder of the City and County of San Francisco, and shall be of the same force and effect as evidence of the records of said city and county as may be provided by existing or any subsequent provisions of law; and before said Commission shall have terminated, all said books shall be open to the public between the hours of ten A.M. and four P.M., daily, Sundays and holidays excepted.

SEC. 19. The said Board of Supervisors shall have full power and authority to establish all such rules and regulations not in conflict with the provisions of this act as they shall deem necessary and proper for carrying the provisions thereof into complete effect, and for the absolute and final granting, quitclaim, and disposition of the lands mentioned in the first and fifth sections of this act in favor of the parties rightfully entitled to and claiming the same under the provisions here inbefore contained; and for the purpose aforesaid, to make all orders and authorize to be done all acts and things necessary and proper in the premises confirmatory of the action of said Board of Commissioners.

SEC. 20. The Board of Commissioners and each of its members shall have power to administer oaths and affirmations, examine witnesses, take testimony and depositions, in accordance with rules and regulations the Board may adopt for its government; and the Clerk of the said city and county, upon the application of any party in interest, is authorized and required, upon payment of the legal fee therefor, to issue subpoenas from and out of the County Court of said city and county, for the appearance of witnesses before said Board of Commissioners. Such subpoenas may be served as is provided by law in other cases; and any disobedience of, or refusal to obey such subpoena, may be punished by said County Court in the same manner as is provided for in cases pending before said County Court.

SEC. 21. All money paid out of the General Fund under the provisions of this act, shall be returned to said fund from the Outside Land Fund as soon as the same is received into the Outside Land Fund, and the Treasurer is hereby authorized to make such transfer.

SEC. 22. The Auditor of said city and county is hereby directed to audit, and the Treasurer thereof to pay, all sums authorized to be paid under the provisions of this act, after the same have been allowed by the Board of Supervisors, and not before.

NOTE.—For the veto of the Governor, see ADDENDA No. CLXIX, next following.

No. CLXIX.

VETO OF THE GOVERNOR OF CALIFORNIA OF THE OUTSIDE
LAND BILL IN THE NEXT PRECEDING ADDENDUM, APRIL
2D, 1866.

[NOTE.—The numerals in brackets are inserted by myself for convenience of reference.]

SACRAMENTO, April 2d, 1866.

To the Assembly of California :

I herewith return, without my approval, Assembly Bill No. 544, an Act to provide for the settlement of certain land claims within the City and County of San Francisco.

The bill makes provision for disposing of all the lands situated above high water mark, which are within the present corporate limits of the city, without the charter limits, as defined by the Act of 1861. The authority for this action by the Legislature is derived from the Act of Congress [1] approved on or about the 8th of March, 1866, which is in the following words :

“That all the right and title of the United States to the land situated within the corporate limits of the City of San Francisco, in the State of California, confirmed to the City of San Francisco by the decree of the Circuit Court of the United States for the Northern District of California, entered on the 13th of May, 1865, be and the same are hereby relinquished and granted to the said City of San Francisco and its successors ; and the claim of the said city to the said land is hereby confirmed, subject, however, to the reservations and exceptions designated in said decree and upon the following trusts, namely, that all the said land, not heretofore granted to said city, shall be disposed of and conveyed by said city to parties in the *bona fide* actual possession thereof, by themselves or tenants, on the passage of this act, in such quantities and upon such terms and conditions as the Legislature of the State of California may prescribe, except such parcels thereof as may be reserved and set apart by ordinance of said city for public uses ; *provided*, however, that the relinquishment and grant by this act shall not interfere with or prejudice any valid adverse right or claim, if such exists, to said land or any part thereof, whether derived from Spain, Mexico, or the United States, or preclude a judicial examination and adjustment thereof.”

From the Act of Congress and the Decree of the Circuit Court referred to therein and made a part of it, the following propositions seem to me clear :

1st. That the lands in question are confirmed and granted to and vested in the City of San Francisco.

2d. That the confirmation and grant are made upon an express trust ; the terms of which neither the city nor the Legislature have any power to modify [2].

3d. That the lands are to be disposed of and conveyed “by the city,” and cannot, consistently with the Act of Congress, be disposed of or conveyed by any other person or authority, although such disposition and conveyance may be made “in such quantities and upon such terms and conditions as the Legislature may prescribe” [3].

4th. That certain lands to be reserved for public uses are excepted, and that those lands can only be reserved and set apart by “Ordinance of the City,” and

that mode being prescribed in the Act of Congress, no other can be authorized by the Legislature [4].

5th. That the lands to be disposed of and conveyed to private persons must be conveyed to parties in the "*bona fide* actual possession thereof," by themselves or tenant, at the date of the passage of the Act of Congress [5].

6th. That as the lands reserved for public uses are, by the exact terms of the Act of Congress, to be designated and set apart by ordinance of the city, the Legislature cannot, in advance, specify and define the specific purposes for which the reservations are to be made, so as to take away or limit that discretion which the Act of Congress rests absolutely in the Municipal Government [6].

7th. That under the Act of Congress, the lands to be granted to individuals must and can only be conveyed to those in possession; that this possession must be *actual*, not merely constructive; that it must have existed at the date of the passage of the Act of Congress, and it is not in the power of the Legislature to exact in regard to the time or the character of the possession more or less than Congress prescribed [7].

In my opinion, the provisions of the bill are in conflict with all of the foregoing propositions. It is true, the first section in general terms empowers the Board of Supervisors to release and quitclaim the lands, but all that follows is in direct conflict with this section, for it provides for the conveyance and disposition of the lands without the consent or any action of the city, and by authorities entirely independent of the municipal government [8]. A Commission is instituted and organized, all the Commissioners named, and their powers and duties prescribed by the Legislature, in which Board is vested the power of conveying the lands, designating and setting apart for public uses such portions as the Board may deem proper; of determining all claims, of making sale of the residue of all lands not granted to parties in possession or reserved for public use, and making a final disposition of the whole subject. In all this the city has no voice, except that in surveying the lands and reservations for public uses the Commissioners are to act "with the concurrence of the Board of Supervisors." But by the Act of Congress the power to dispose of and convey the lands, and to designate and set apart the portions reserved for public uses under the restrictions named, is vested in the city *alone*, and the latter power can only be exercised by ordinance. This power, confided by Congress to the city, cannot be shared with any other authority, nor can any other authority exercise it with the *concurrence* of the city or of the municipal council or government. It is a power and trust to be exercised within the terms of the instrument conferring it. The Legislature, in attempting to divest the city of it and to place it in the hands of a commission independent of the city, has, I think, transcended its authority [8]. The Legislature can only prescribe in what quantities and upon what terms and conditions the city shall dispose of and convey the lands. The reservation of portions for public uses must be done by *ordinance of the city*, and not by Act of the Legislature, or by any Commission established and acting independent of the municipal government. By the terms of this bill, the only participation which the city or its proper officers is allowed to have in the whole transaction, appears to be to approve the bond of the Commissioners, to pay their salaries, to provide them with an office, clerk, and whatever else may be required by the Commissioners, and to be allowed to appear before the Commissioners by attorney. The city is allowed to bear the burdens of the Commission, established without its consent or participation, but is not allowed to exercise the authority which, by the Act of Congress, is conferred upon the municipal corpora-

tion exclusively. It is true that, by the 18th section of this bill, the Board of Supervisors are empowered to establish all such rules and regulations, not in conflict with the provisions of the Act, as they shall deem necessary and proper for carrying its provisions into effect, etc. This gives no power, for the Legislature by this bill has itself established all the rules which are of any essential importance [8].

The Commissioners are also, in the deeds that they are to give, to use the name of the City and County of San Francisco, and to recite that the City and County grants, etc., while they are to execute the deeds without the coöperation of any municipal board or officer. This can in no proper sense be deemed or constructed to be the act of the City so as to comply with the Act of Congress. Again, by the Act of Congress, the possession requisite in parties claiming lands under it, is to be *actual* possession, while this bill provides that deeds of conveyance shall be given to the parties in *peaceable* possession, which can hardly be construed to mean one and the same thing. Neither the Legislature nor the City can recognize as a valid claim to land any possession which is not *actual and bona fide*. [7.]

The bill further transcends the power granted by the limitations of the Act of Congress, by recognizing as a valid claim any possession whatever which is not merely "by actual and well defined boundaries." It is easy to conceive that "actual and well defined boundaries" might be laid off to any tract of land, however great or small, and might exist for any length of time without the shadow of actual possession.

It is too clear to admit of discussion, that to convey the public lands to parties claiming them on such grounds would be in violation of the trust created by the Act of Congress, even though it were done by the City, much more if done by any other authority. Again, while the Act of Congress requires that the lands should be disposed of in favor of the parties in possession by themselves or tenants, this bill authorizes such disposition to be made in favor of those in possession by themselves or tenants, "or by a covenant in joint or common tenancy." If these words are intended to mean anything more or less than simply "tenants," as that term is used in the Act conferring the trust, then they are in conflict with it, and this bill in that respect would fail to carry out the trust.

In addition to the objections already stated, founded on its repugnance to the Act of Congress, there are still others relating to the powers of the Commissioners which seem to me worthy of serious consideration. These Commissioners are vested with unrestricted power to appraise all the lands to which the provisions of the bill relate; to take possession of, and set apart for certain enumerated public purposes, any lands in any quantities, improved or unimproved, whoever may claim or possess them, and having taken away the lands of parties having a valid title to them, to give them "equivalent allotments out of the nearest ungranted lands," which means, I imagine, that they shall be given any lands most contiguous, not granted by the Commissioners, whoever may own or occupy them, or when this can not be done, the City is to pay for the lands so taken at the appraisal of the Commissioners, whose award shall be final and conclusive. [8.]

The Commissioners are to ascertain the character and extent of claims and possession of said lands, to determine the validity, quantity, and boundaries, to hear and determine all conflicting claims and rights set up by parties claiming adversely to each other, and their decision on all these subjects is to be final. And all this to be done without regard to any rule of law or evidence, or any legal form whatever. Parties are allowed to resort to the Courts for the determination of conflicting claims, but the Commissioners are not bound by the judgments unless the

suit be finally determined "during the continuance of the term of office of the Commissioners," which cannot extend beyond three years. With regard to the quantity of land that may be taken and appropriated by them for any of the public objects designated in the bill, there does not appear to be any limitation. This is left to their own discretion. It is also extremely doubtful whether the unlimited power of adjudication upon the rights of parties which is conferred upon the Commissioners by the twelfth section of the bill, can be reconciled with the provisions of the Constitution.

The bill, if it were to become a law, could scarcely fail to give rise to expensive and protracted litigation, and would, in my judgment, entirely fail of the end for which it is intended. Its tendency would be to disturb and unsettle, rather than settle land titles in San Francisco.

FRED'K F. LOW,
Governor.

While I gladly take this opportunity to recognize the firmness, intelligence, and integrity with which the Executive has discharged the duties of his high office, I cannot refrain from believing that the legal propositions contained in his Veto Message were supplied to him from a source which was clouded by interest or prejudice: for, to a lawyer who understands the subject, some of them are of the most astounding character.

NOTES.—I shall deal very summarily with the legal propositions of this remarkable document.

[1.] "The authority for this action of the Legislature is derived from the Act of Congress approved on or about the eighth of March, 1866, which is in the following words:" says the message. This is an assumption which is not founded in fact. The utmost that could be said would be that the Act of the Legislature had a double aspect, like the Van Ness Ordinance, and was intended to dispose of the title of the city, *whether* it was derived from the PUEBLO claim, *or* from the Act of Congress. But even this is not the case; the act itself recognizes the Pueblo title, for the act of Congress is only once mentioned, and that not as indicating the source of title, but for the purpose of affixing a convenient date of possession in the claimant; see section six, of the Act, in the next preceding ADDENDA: and that very section six not only indicates the decree of the Circuit Court as the present recognized source of title, but also provides for the contingency of the modification of the existing decree, and the making of a new one, and the relinquishment of the *Pueblo* title under any and all decrees.

[2.] "The confirmation and the grant are made upon an express trust, the terms of which neither the city nor the Legislature have any power to modify:" is the language of the message. If this is so, then the Van Ness Ordinance is void, for the Legislature and the city did, in that memorable instance of beneficial legislation, attempt to "modify" the trusts under which the city held the lands described in it, whether the same were held under the Pueblo title, or under the Act of Congress which is recited in the Addendum, ante, page 214, CXI. But the proposition of the Message happily is not law. The legislatures of civilized communities always had power to alter the mode of executing public trusts, provided the beneficial purposes of the donor were accomplished. See § 100, of the argument, and cases there cited; Tallant *vs.* Woods, 7 Cal. Rep., 584; Thomson *vs.* Hooker, 14 Cal. Rep., 11; Babcock *vs.* Middleton, 20 Cal. Rep., 643.

[3.] The message does not appear to recognize the doctrine of agency, and by implication asserts that the Legislature had no power to direct the Commissioners of the Sinking Fund to convey to the Commissioners of the Funded Debt "all the property and all the rights, titles, and interests in property belonging to said city," as it did direct them to do by the Funding Act of 1851, and as the said Commissioners of the Sinking Fund actually did do. See the law, ante, page 198, ADDENDA No. CVI, § 12, and the conveyance, ante page 199, No. CVII. The term "forced agent" does not seem to enter into the vocabulary

of the veto message; nor the proposition that a municipal corporation which depends for its existence upon the will of the Legislature, is completely in its power. *People vs. Coon*, 25 Cal., 639.

[4.] By this act the Legislature expressly reserves the power to the Board of Supervisors "to establish such rules and regulations as they shall deem necessary and proper for carrying thereof into complete effect." See section 19. Under this provision they could prescribe, and doubtless would have prescribed, that no conveyance or reservation of lands should be made until it had been reported to and approved by ordinance of the Board of Supervisors. This was the mode in which the reservations for public uses, and the rest of the Western Addition were approved under the Van Ness Ordinance. See ante page 216, No. CXII; and page 285, No. CXLVI. The Commission created by this act of the Legislature was thus in fact only a committee outside of the Board of Supervisors created for the purpose of preparing and reporting proposed measures to that Board, which when approved by the ordinances of that body, they were empowered to carry into effect; and both the Common Council and the Legislature approved of these acts *after* they were done, in the case of the Van Ness Ordinance.

[5.] If the words "*bona fide* actual possession" are used in the Act of Congress, and the act of the Legislature is passed in execution of that Act of Congress, using merely the word "possession," and the question arises "what kind of possession is meant?" of course the answer would be: "that kind of possession which is defined in the Act of Congress."

[6.] This is already answered above under [4.]

[7.] This is only a reiteration of [5] and is answered alone under [5].

[8.] This is only a reiteration of [4], and is answered above under that head.

It certainly illustrates the hardships to which the holders of real estate are subjected in the city of San Francisco, when we find the Governor of the State repudiating the Pueblo title, which no Governor either Mexican or American ever denied before him: (see argument, § 134;) and laying down legal propositions, which, if true, not only overturn all titles under the Van Ness Ordinance, but also deny all title whatsoever to the city in the Outside Lands. For, if the Legislature cannot modify the execution of a beneficial public trust, or cannot adopt and confirm the previous action of a municipal corporation, then the Van Ness Ordinance is void. The municipal corporation cannot accept the trust created by the Act of Congress of March 8th, 1866, (ante, page 313, ADDENDA, No. CLIII,) without the consent of the Legislature. The city has, therefore, nothing but the Pueblo title to repose upon in the distribution of the Outside Lands; but the holders of real estate may rest assured that not one of the propositions of the Governor's veto message is sound law, and that the Van Ness Ordinance is valid, as well as the PUEBLO title.

No. CLXX.

CONSIDERATION OF THE FINAL QUESTION: WHAT ARE THE SOURCES OF TITLE TO THE MUNICIPAL LANDS OF THE CITY AND COUNTY OF SAN FRANCISCO? BY WHOM CAN SAID LANDS BE DISPOSED OF? AND IN WHAT MANNER?

Having finished such a selection of those legislative and other acts as seemed desirable in order to make this collection a property handbook for the executive and legislative departments of the municipal government, I shall now, in conclusion, proceed to discuss the above questions, which at the present time are of most pregnant interest. Those portions of the PUEBLO lands of the city which still remain undisposed of, and which are commonly known as "the Outside Lands," because they lie outside of the Charter Line of 1851, are for the most part claimed in private ownership, but are not in the "actual possession" of any one. The

claimants generally will not pay taxes on them, and the city always withdraws them from the sales for delinquent taxes, for fear of being estopped from reclaiming them from the purchasers at such sales. The claimants dare not make valuable improvements upon them, on account of the insecurity of their title; and, altogether, these lands are in a condition which is most unprofitable and unsatisfactory to the city and to its inhabitants.

The present Board of Supervisors, appreciating the importance of a final and practical removal of the difficulty, endeavored to give it an immediate solution by the creation of an Executive Board outside of their own body, to whom was to be intrusted the vast labor of making distribution of Outside Lands to the claimants of the same, subject to the approval of the Board of Supervisors; and wishing in so important a matter to obtain the direction and advice of the Legislature, and permission to employ agents to finish the work when they had approved it, and also to realize something from sales of a portion of these lands, caused a proposed law to be prepared for that purpose, which was so judicious in its provisions as to meet with almost universal acceptance, even from a large majority, both in numbers and interest, of the adverse claimants of the municipal lands. This proposed law was passed by both branches of the Legislature by large majorities, but was vetoed by the Governor, at so late a period of the session as to preclude any further action upon it. See Ante, pages 346-356.

What are the sources of title to the Municipal Lands of the City and County of San Francisco?

This question is capable of two different solutions, depending wholly upon what basis is accepted as a starting point; and of such bases there are two, namely:

- I. A LEGISLATIVE GRANT MADE BY ACT OF CONGRESS:
- II. THE GRANT MADE TO THE PUEBLO OF SAN FRANCISCO BY THE KINGS OF SPAIN, AND CONFIRMED TO THIS CITY BY MR. JUSTICE FIELD IN THE CIRCUIT COURT OF THE UNITED STATES.

DIVISION I.

The Legislative Grant made by Act of Congress.

By an Act of Congress, approved March 8th, 1866, entitled an act to quiet the title to certain lands within the corporate limits of the City of San Francisco, it was enacted as follows.

“ That ALL THE RIGHT AND TITLE OF THE UNITED STATES to the land situated within the corporate limits of the City of San Francisco, in the State of California, confirmed to the City of San Francisco by the decree of the Circuit Court of the United States for the Northern District of California, entered on the eighteenth day of May, 1865, be, and the same are hereby relinquished and granted to the said City of San Francisco, and its successors, *and the claim of the said land IS HEREBY CONFIRMED*, subject, however, to the reservations and exceptions designated in said decree, *and upon the following trusts, namely: that all the said land, not heretofore granted to said city, shall be disposed of and conveyed by said city to parties in the bona fide actual possession thereof, by themselves or tenants, on the passage of this*

act, in such quantities and upon such terms and conditions as the Legislature of the State of California may prescribe, except such parcels thereof as may be reserved and set apart by ordinance of said city for public uses; provided, however, THAT THE RELINQUISHMENT AND GRANT BY THIS ACT SHALL NOT INTERFERE WITH, OR PREJUDICE any valid adverse right or claim, if such exists, to said or any part thereof, WHETHER DERIVED FROM SPAIN, MEXICO, OR THE UNITED STATES, or preclude a judicial examination and adjustment thereof."

It will be observed, in the outset, that this Congressional grant does not assume to grant to the City of San Francisco any interest in said lands except "the right and title of the United States", and it needs no argument to show that the United States could grant no greater interest than they possessed. If therefore the United States once possessed these lands as part of their public lands, and had vested any third persons with any claim or right to any portion of them, before this Act of Congress was passed, then the city would, under this act, receive the Pueblo lands subject to such adverse claim or right. The whole theory of this Act of Congress is that the lands are *public lands of the United States*, and that all the interest in them which the United States ever had, *and have not since parted with*, is granted to the City of San Francisco. It therefore becomes necessary to inquire what "adverse claim or right" may be asserted to them and alleged to be valid, because derived from the United States before this act was passed.

1. SWAMP AND OVERFLOWED LANDS. All the swamp and overflowed lands in California were granted by the United States to the State of California by the Arkansas Act of 1850. See ADDENDA, No. CLXIV, page 335. If, therefore, these were public lands of the United States, then all the marsh lands in the City and County of San Francisco belong to the State of California because they were granted to it as soon as it became a State. And under this description of swamp and overflowed lands the State would own that vast tract of ground which was marshy until it was filled up, embracing most if not all the lands bounded by Third and Mission streets, the tract known as Russ's Garden, and the Mission Bay, as will be apparent by consulting the old maps of the city and those published by the Coast Survey. There are probably ten thousand male residents of California who can attest that this marsh could not be traversed by any vehicle, nor by man or beast at any point east of Mission street, nor even on that street, until a bridge was built about the year 1850 by the Mission Street Plank Road, some twenty feet high, and supported from broad platforms of plank and timber laid flat upon the surface of the marsh, and sinking into it so as to form pools of water above the surface.

2. PRE-EMPTION CLAIMS. A very large portion of these lands are covered with pre-emption claims, which were located before the passage of the Consolidation Act of 1856, and outside of the city limits as they existed at the time of the location; they were therefore not within the limit of the city at the time of their location.

3. SCHOOL LAND WARRANTS have been located on a large and very valuable portion of these lands. See ADDENDA, No. CLXV, ante, page 336.

4. SIOUX HALF BREED SCRIP, it is currently reported, has been very extensively located on extensive and valuable tracts of these lands, respecting which see ADDENDA, No. CLXII, page 330, Subd. 50.

These claims under Pre-emption, School Warrant and Half-Breed Scrip locations are sometimes held up to ridicule because it is supposed they are wholly invalid; but their validity is to be determined by the Commissioner of the Land Office at Washington, who has the power to decide, upon affidavits sent to him, whether or not a patent shall issue to the claimants, and if it does issue, that is practically either the end of the matter, or the commencement of a long and doubtful litigation. The provision in the above act of Congress of March 8th, 1866, for a "judicial examination and adjustment thereof," means simply that the Commissioner of the Land Office may be kept by the Courts within the lines marked out for him by statute, but it does not mean that the Courts can alter or control his judicial decisions upon questions of fact. The persons who have made these locations are intelligent men, and are generally understood to have been very certain of obtaining patents for the lands from the United States, in case they were held to be Public Lands, and the Pueblo claim was defeated. It is a historical fact, that for some reason or other, the Land Office at Washington is not a tribunal which has won either the confidence or the affection of the people of California. Under this Congressional grant the city would therefore certainly lose all its Swamp and Overflowed Lands; and probably all the lands covered by Pre-emption claims, School Land Warrants, and Half-Breed Scrip; or, if she did not lose these latter, the title to them would be involved in long and expensive litigation, which would probably outlast the present generation.* Again: under the Decree of Confirmation of the Pueblo Lands, as made by Mr. Justice Field in the Circuit Court of the United States, the confirmation is made to the city, "in trust, for the benefit of the lot-holders, under grants from the Pueblo, Town or City of San Francisco, or other competent authority, and as to any residue, IN TRUST FOR THE USE AND BENEFIT OF THE INHABITANTS OF THE CITY." See ante, ADDENDA, No. CXXVI, page 250. This was precisely the same trust under which the Pueblo held these lands. But the above Act of Congress of March 8th, 1866, substitutes an entirely different trust, namely: not for all the inhabitants of the city, but "that all the said land not heretofore granted, to said city, shall be disposed of and conveyed by said city TO THE PARTIES IN THE BONA FIDE ACTUAL POSSESSION THEREOF, by themselves or tenants, on the passage of this act, in such quantities, and upon such terms and conditions as the Legislature of the State of California may prescribe, except such parcels thereof as may be reserved and set apart by ordinance of said city for public uses." The city must therefore first obtain the consent of the Legislature of California, two years hence, in order to enable it to accept this new trust, under this Act of Congress, and then, after the Swamp and Overflowed Lands are lost, and the claims under Pre-emptions, School Warrants and Half-Breed Scrip are disposed of; out of the remainder reservations may be made of some "parcels" for public uses, and the rest will pass over to the parties in possession on March 8th, 1866.

Other curious questions present themselves under this Act of Congress. If the lands which purport so be donated by it were all actually occupied at the time of

*There are multitudes of claimants under Spanish and Mexican grants, made more than twenty years ago — some made even by the King of Spain — whose grants have been confirmed by the Courts of the United States, but which have not yet been finally surveyed. The citizens of California have recently had occasion to experience, in the Suscol Ranch cases, the length to which a Commissioner of the Land Office may carry his insolence and tyranny, and violate the law. It was only by accident that he was defeated, and his own removal in office procured. Such accidents do not often occur.

the passage of the Act, then these actual occupants would hold them under this act. But if any such were not so occupied, to whom would they belong? Would they not revert to the United States, under the principle that when a trust has been completely executed, or fails for want of a beneficiary or a valid appointment, the estate which remains undisposed of reverts to the donor, which in this case is the United States?

Again: it is claimed that this Act of Congress gives a remedy in Court to such grants as those of Piña and Marchina: *ADDENDA*, No. XCVI, page 180, and *ADDENDA*, No. XCVI, page 179, which were never presented to the Land Commission for confirmation, and allows them to be brought forward now for "a judicial examination or adjustment thereof." And some of the claimants under the alleged grants of Santillan, Guerrero and Benito Dias, ante, page 175, *ADDENDA*, No. XCII; page 95, *ADDENDA*, No. LXVI; and page 101, *ADDENDA*, No. LXX are asserting that they, also, although their claims have been once rejected, are allowed a new opportunity to litigate them, not with the United States, indeed, but with private claimants under the city, in the Courts of the State. I do not mean to express an opinion that the views of these claimants can be sustained; but it is well known that they are seriously entertained, and that they will be made the basis of future litigation, if it is once admitted that the Pueblo title under the judicial confirmation by the Court has failed.

Such are some of the consequences which would result from the acknowledgment that these were public lands of the United States, and from an attempt to derive a title to them only by this Act of Congress. The City would probably get nothing except a few parcels reserved for public uses, and even that only after almost interminable litigation with all these classes of claimants.

DIVISION II.

The Title made under the Judicial Confirmation by the Courts of the Claim by the City to its PUEBLO LANDS.

This confirmation is based upon the theory that these lands, for many years before the Conquest of California by the United States, belonged to the Pueblo of San Francisco, and were held by it in trust for the benefit of *all* the inhabitants, and have since been transmitted to the City of San Francisco, as the successor of the Pueblo, charged with the same beneficent trust. The PUEBLO TITLE therefore possesses these advantages:

1. The SWAMP AND OVERFLOWED LANDS are secured to the city, for these are included in the Spanish grant, which extended to ordinary highwater mark, and embraced all the lands above that line. *People vs. Morrill*, 26 Cal., 336; *United States vs. Pacheco*, 2 Wallace, U. S. Sup. Ct. R., 587. Ante, page 325, No. CXLIII, "Pueblo Lands." Moreover, these swamp and overflowed or marsh lands, although included within the lines of the grant, are not estimated in the computation of the area; but the four square leagues are made up of solid land without computing them, so that the city gets them in addition to the four square leagues. See § 30 of the Argument.

2. THE PRE-EMPTION, SCHOOL WARRANT, AND HALF BREED SCRIP LOCATIONS are effectually disposed of; for if these lands were not public lands of the

United States, but municipal lands of the PUEBLO, afterwards CITY of San Francisco, no such location could be made by private parties, or confirmed by the United States.

3. It leaves the title to the remaining Pueblo lands vested in the Municipal Corporation known as the City and County of San Francisco, in trust for the benefit of the inhabitants thereof, the same as it was under the laws of Spain and Mexico, and subject to be applied at once to the purposes of that trust by the Board of Supervisors, without any recourse to the Legislature, or any further statutory authority whatsoever, as will appear in Division III of this ADDENDUM.

DIVISION III.

In whom are the Pueblo Lands Vested? By whom can they be Disposed of? And in what Manner?

I answer: the title to the Pueblo lands is vested in the Corporate City and County of San Francisco, subject to be disposed of by its Board of Supervisors, without any further authority from the Legislature of the State. This will clearly appear from the following summary of historical and legislative facts:

1. The title, to the four square leagues of Pueblo lands was first vested in the Pueblo. See §§ 28, 38, 43, 44, of the Argument. It was not necessary that the Pueblo should have a corporate existence in order to own this land; but the Pueblo of San Francisco was in fact a corporation. See §§ 135, 82, of the Argument.

2. The lands so held by the Pueblo were held in trust for all the inhabitants, that is to say, a portion was held for town buildings; a portion to be rented; a portion to be granted as building and sowing lots: a large portion was occupied for town buildings, streets, and squares; a portion to be rented for municipal revenue (*propios*); a portion to be granted for building and sowing lots (*solares* and *suertes*); a large portion, just outside of the settlement, was used as a vacant suburb (*ejidos*); and the remaining portion, lying outside and larger than all the rest, was occupied as the great cattle pasture (*dehesas*); and for commons of wood and water (*montes y aguas*). See the Argument, §§ 28, 10, 11, 13, 14, 15. *Hart vs. Burnett*, 15 Cal. Rep., 530. The Governor was the person first intrusted with the distribution of building and sowing lots; afterwards, in 1781 and 1789, he was authorized to appoint Commissioners for that purpose, ante, page 7, ADDENDA, No. IV, § 17; page 14, ADDENDA, No. VII, § 17; and finally, in 1791, Captains of Presidios were authorized to distribute the Pueblo lands in the Pueblos which were growing up under their protection: ante, page 17, ADDENDA No. VIII. Thus, as late as the year 1791, we have Pueblos owning four square leagues of land, and Captains of Presidios, who were the Chief Magistrates of the Pueblos growing up around them, (*al abrigo del Presidio*) distributing building and sowing lots among the inhabitants of the Pueblos, but with no authority vested in any one except the Sovereign to dispose of any of the other property of the Pueblo.

3. But in the year 1813, the Cortes of Spain, which at that time not only exer-

cised sovereign authority throughout all the vast dominions of Spain, but actually assumed the title of Majesty, decreed that all the lands of the Pueblos, except the suburbs immediately outside of the settlements, (ejidos) should be divided up into convenient parcels, and conveyed in private ownership. These proceedings were to be conducted by the Ayuntamientos, or Common Councils of the Pueblos, ante, page 20-23, ADDENDA, No. XI, §§ 1, 17. This was a modification of the trust which the Legislature had a right to make, for the Legislature is the superior visitor of all public trusts, and can alter the mode of their execution, provided the intended result—which in this case was for the benefit of the inhabitants—is thereby better attained. See § 100 of the argument, and cases there cited. See also *Tallant vs. Woods*, 7 Cal. Rep., 584; *Thornton vs. Hooper*, 14 Cal. Rep. 11; *Babcock vs. Middleton*, 20 Cal. 643. So in the year 1813, we have Pueblos owning four square leagues of land, and their Ayuntamientos possessing the power to dispose of them. In 1821 the Mexican Revolution occurred, but this law of 1813 was not affected by it because it was a law relating to private property, namely, the private property of Pueblos. See §§ 100, and 53 of the argument. The Mexican jurists still publish this law among those which are still in force. See ADDENDA, No. CLXV, page 338, concerning the LEYES VIGENTES.

4. In 1824, and 1828, after the Mexican Revolution, Colonization Laws were passed in reference to "the national public lands, which were neither private property, nor belonging to any corporation or PUEBLO," and it was provided that the Governor might grant such public lands. Ante, page 23, No. XII, §§ 2; page 25, No. XIV, §§ to 6. Pueblos being thus expressly excepted from the operation of these Colonization Laws, were not affected by them, and accordingly were left, as the above cited laws of the Cortes of 1813 left them, owning their four leagues of land, subject to the disposition of the Ayuntamientos in execution of that law.

5. Accordingly we find that after an Ayuntamiento had been organized for the Pueblo of San Francisco, and was still in existence, in the year 1835, a citizen of San Francisco applied to the Governor of California for a grant of a "building and sowing lot," and after a full consideration it was determined by the Departmental Legislature, including the Governor, that the power to make such grants resided in "the Ayuntamiento of that PUEBLO." See §§ 83, 84 of the argument, and page 42, ADDENDA, No. XXVI. It may be remarked in passing, that the Governor and Departmental Legislature would hardly advise the Ayuntamiento to attempt to grant any portion of the *public domain*, in violation of the above cited Colonization Laws.

6. But the PUEBLO of San Francisco, as well as all the Pueblos of California, lost its Ayuntamiento under the operation of the new Mexican Constitution of 1836. See argument, §§ 89, 90, 91, 92. What then became of the power to dispose of Pueblo lands which belonged to the Ayuntamiento at the time that body ceased to exist? It was vested in Justices of the Peace who were *ex officio* Alcaldes, and under that same Constitution possessed the powers of Ayuntamientos. See ante, pages 100, 101, ADDENDA, No. LXIX, §§ 22, 27, 29, 30. Accordingly we find Justices of the Peace making grants of Pueblo lands down to the date of the conquest by the Americans, ante, page 162, ADDENDA, No. LXXXVI, as officers of the Pueblo. And the fact that they did so, universally, is complete evidence of their authority. *Hart vs. Burnett*, 15 Cal., Rep., 15 Cal. 530.

7. In the year 1837, the Supreme Government of Mexico by a decree made in execution of the Constitution of 1836, authorized the Governor and Prefects to act executively in the distribution of Pueblo Lands. Ante, page 314, No. CLIV, As the matter then stood, the distribution of Pueblo lands might be made therefore :

I. By Ayuntamientos, or in default of such bodies, by Justices of the Peace, exercising their functions :

II. By Prefects :

III. By the Governor.

Accordingly we find Justices of the Peace making grants of building lots down to June 6th, 1846 ; only thirty-one days before the conquest. Ante, page 163, No. LXXXVI ; Prefects making grants in 1838 ; ante, page 55, No. XXXVI ; and the Governor making large grants of pasture lands as late as December, 1845. Ante, page 92, No. LXIV.

8. After the conquest of California by the Americans, the Alcaldes, who were *ex officio* Justices of the Peace, still continued to make grants of PUEBLO LANDS, not because they had or assumed any right to grant public lands to the United States, but because these were lands of the corporate PUEBLO, and because they were the officers of that Pueblo. See Wheeler's Land Titles. They knew that these Pueblo Lands were not public lands of the United States, for the very reason that they were Pueblo Lands ; they knew also that all laws affecting Pueblo Lands were municipal laws, affecting private rights, and remained unaltered by the conquest of the country, and that as the above cited law of the Cortes of 1813 had survived the Mexican Revolution, and all the Constitutional changes in Mexico, so it, and the above laws of 1836 and 1837 had survived the American conquest, and were still in force. See § 64 of the Argument, and ante, page 338, No. CLXV, concerning the *Leyes Vigentes*. 524

9. In 1849, the Pueblo of San Francisco having gained the requisite population of four thousand, became entitled again to its Ayuntamiento, which was accordingly restored to it by the American Military Governor, who in the communication which he made to the citizens on that occasion, explained to them very clearly the powers and functions of that body. See § 130 of the Argument.

10. The Ayuntamiento, thus restored, knew perfectly well that it owned the Pueblo Lands, and had the power to dispose of them, for on August 17th, 1849, it passed a resolution restraining the Alcalde from selling or disposing of Pueblo Lands, and put them up for sale itself ; and this continued down to the end of March, in the year 1850 ; till which time, therefore, we have a PUEBLO of San Francisco owning PUEBLO Lands, subject to be disposed of by its Ayuntamiento, and large portions of them actually disposed of by it. Ante, pages 209, 213, ADDENDA, No. CX.

11. On April 15th, 1850, San Francisco was incorporated as a City, by act of the Legislature. By that act it became the legal successor of the Pueblo of San Francisco, vested with all its property, and that same statute took away all the power of the Prefect. See § 131 of the Argument. The title to the PUEBLO Lands was therefore vested in the City of San Francisco. This charter was sub-

sequently repealed by the charter of 1851, which, in its turn was repealed by that of 1854; but the charter of 1850 authorized the city to "hold, lease, sell and *dispose of property for the benefit of the city.*" Laws of 1850, page 223, chap. 98, § 2. The charter of 1851 empowered the city to purchase, receive, and hold property, real and personal, and sell or otherwise *dispose of the same for their common benefit* Laws of 1851, page 357, chap. 84, § 1; the charter of 1855, continue the power in the city to "purchase, receive, hold and enjoy real and personal property, and sell, convey, mortgage and *dispose of the same for the common benefit.*" Laws 1855, page 251, chap. 197, § 1: and also, "to confirm, *dispose of*, and make all needful rules and regulations respecting the title to lands or other property of the city." "Laws 1855, page 266, chap. 251, § 65; and the Consolidation Act of 1856, authorizes the new corporation to hold and enjoy real and personal property, and sell, convey, mortgage and dispose of the same for the common benefit." Laws of 1856, page 146, chap. 125, § 1, and afterwards "to provide for the security of all property of said city and county, without any power to *sell* or encumber the same," and "to provide by regulation, where it may be necessary, for carrying the provisions of this Act into complete effect." Laws of 1856, pages 165-6, chap. 125, § 74. Subdivisions 2 and 19, as amended by laws 1866, page 551, chap. 493, § 15; Subdivisions 2 and 19.

By all these enactments the power of the Governor and Prefect over the Pueblo lands was forever extinguished, and these lands were left, as they still are left, vested in the existing Municipality of the city and county of San Francisco, subject to the original trust imposed upon them by the laws of Spain, "to be *disposed of for the common benefit,*" or in the language of Judge Field's decree: "for the benefit of the inhabitants of the city;" but such disposition to private citizens must be by *gift*, inasmuch as the Consolidation Act prohibits any *sales*.

This legislation illustrates the exercise of a legitimate authority on the part of the Legislature, which always has the power to alter the mode of executing a public trust, when such alteration is beneficial. See § 100 of the Argument. *Tallant vs. Woods*, 7, Cal. Rep. 584; *Thornton vs. Hooper*, 14 Cal. Rep. 11; *Babcock vs. Middleton*, 20 Cal. Rep. 643. It may, moreover, be doubted if municipal corporations, which can be created or destroyed by the mere breath of the Legislature, can be said to have any vested rights beyond the control of the Legislature: per Currey, Justice, *People vs. Coon*, 25 Cal., 639.

The Board of Supervisors, therefore, has power to enact by way of order, any law which shall beneficially execute the trust with which it is vested "to dispose of the public property for the common benefit." It can thus enact this very law which was enacted by the last Legislature, and which failed to receive the approval of the Governor, with two alterations: *first*, providing that the conveyances to be executed shall be executed by the Mayor, under the seal of the corporation; and *secondly*, striking out the provisions for selling any portion of its lands. For the only power which that law would have conferred upon the Board of Supervisors, which they did not already possess, was the power on the part of the proposed Commissioners to execute conveyances when the Board of Supervisors had approved their previous action, which was merely a convenient power, but by no means a necessary one; and the power to *sell* lands, which as I have above shown, was denied by the Consolidation Act of 1856. But the present want of this power to sell can be compensated by a larger percentage of lands to be retained by the city; and the power to sell that portion of the lands which may be retained by the city can be obtained from the next Legislature. The

No. CLXXI—Bis.

FINAL ORDER MADE BY THE UNITED STATES CIRCUIT COURT FOR CALIFORNIA, DISMISSING THE APPEALS TAKEN FROM THE DECISION OF SAID COURT IN THE PUEBLO CASE, PURSUANT TO MANDATES FROM THE SUPREME COURT OF THE UNITED STATES, FEBRUARY 4, 1867.

At a Stated Term of the Circuit Court of the United States for the District of California, held at the City of San Francisco, Monday, February 4, A.D. 1867.

Present.—Hon. O. HOFFMAN, U. S. District Judge.

THE UNITED STATES }
vs. }
THE CITY OF SAN FRANCISCO. }

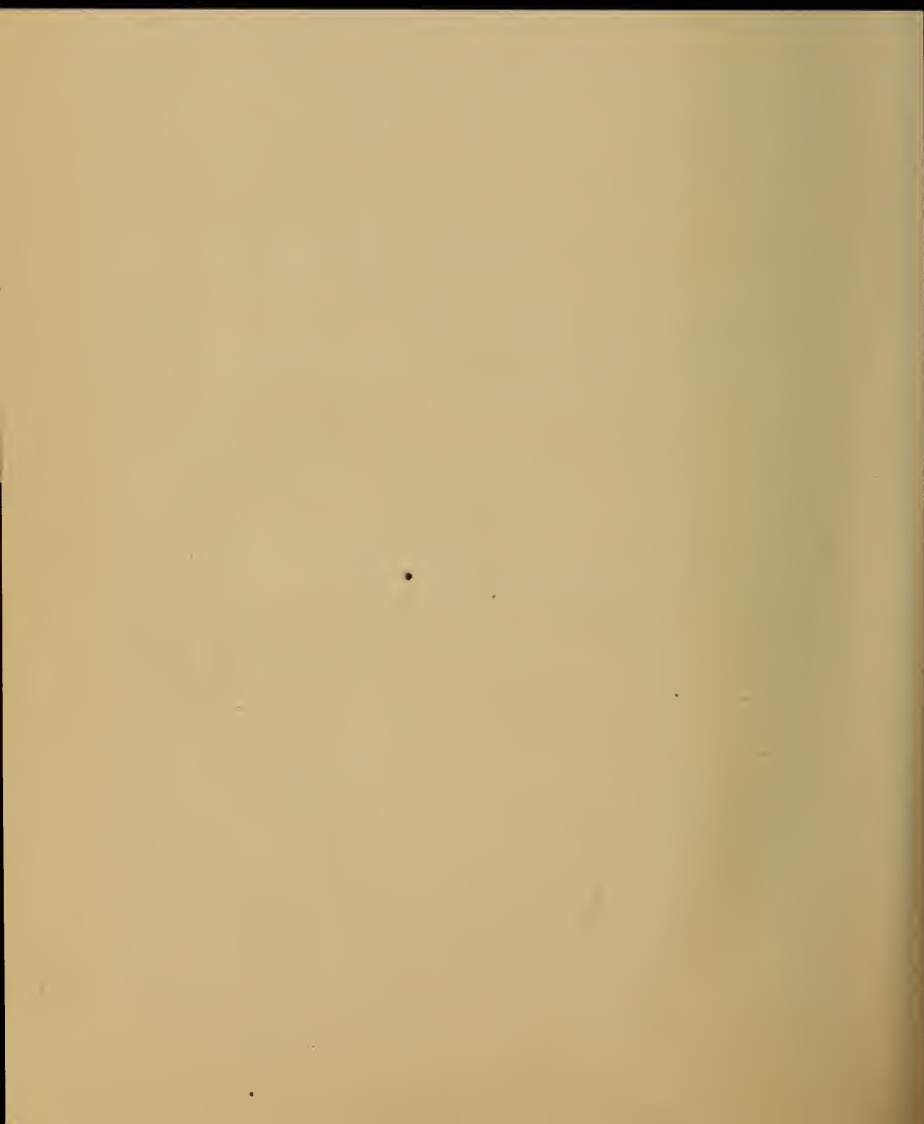
And now at this day, to wit: the fourth day of February, in the year eighteen hundred and sixty-seven, appears the City of San Francisco, by John W. Dwinelle, Esq., her counsel, and Delos Lake, Esq., the District Attorney of the United States, and thereupon the said City produces to the Court the mandates of the Supreme Court of the United States, whereby it appears that the appeal heretofore taken by the United States and the City of San Francisco from the final decree of confirmation entered in this cause by this Court on the eighteenth day of May, 1865, have been, by the judgment of the said Supreme Court, dismissed, and moves this Court that the said mandates be filed, etc., and that said parties may proceed under said Decree as upon a final Decree.

Wherefore, it is

Ordered, That the said Mandates be filed in this cause as a part of the Record thereof, and that the said appeals be respectively dismissed, etc., and that the parties be at liberty to proceed upon said decree as upon a final decree of this Court.

And the written consent of the attorneys for the respective parties to the rendition and entry of said order, is filed in the cause.

See *ante*, 320, for appeal of the United States; see No. CLXXI, this same page, or the appeal of the City.



same Legislature could also confirm the proceedings of the Board of Supervisors, in case any claimants preferred to hold under the Act of Congress; as the Legislature in 1858 confirmed the Van Ness Ordinance which had been previously passed in 1855.

NOTE.—It is hardly possible, for even a lawyer who has not had occasion to study thoroughly the body of ordinances and statutes familiarly known as the “Van Ness Ordinance,” to appreciate fully the wisdom and foresight of that most remarkable and beneficent act of the Legislature. It was carefully prepared with a double aspect, so as to quiet the title of all the lands embraced within its scope, whether they should ultimately be held to be Pueblo lands, or public lands of the United States. If Pueblo lands, then the holders of titles from that source were protected; if public lands, then those holding titles from that source were equally protected, as were actual occupants of the residue. The provision requiring an application to be made to the Legislature “to confirm and ratify the ordinance,” ante, page 218, § 10, was necessary only in case the lands should ultimately be held to be public lands, for in that case the act of Congress provides that the manner of their disposition shall be prescribed by the Legislature, ante, page 215, Section at the foot of the page; but the act of the Legislature, ratifying what the city had already done, has been held to be a valid execution of the trust. *Hart vs. Burnett*, 15 Cal., 530. The only apparent oversight in the Van Ness Ordinance I conceive to be that it did not require those who claimed by mere occupancy to take a conveyance from the city. This has given rise to great inconvenience, which has as yet been only partially removed by judgments against the city in actions by the occupants to quiet title, and by a recent statute authorizing such judgments to be recorded in the County Recorder’s office, with the same effect as if they were conveyances. Laws 1865-6, page 531.

No. CLXXI.

ORDER MADE BY THE UNITED STATES CIRCUIT COURT FOR
CALIFORNIA, ALLOWING THE CITY AN APPEAL IN THE
PUEBLO CASE AUGUST 31st, 1866.

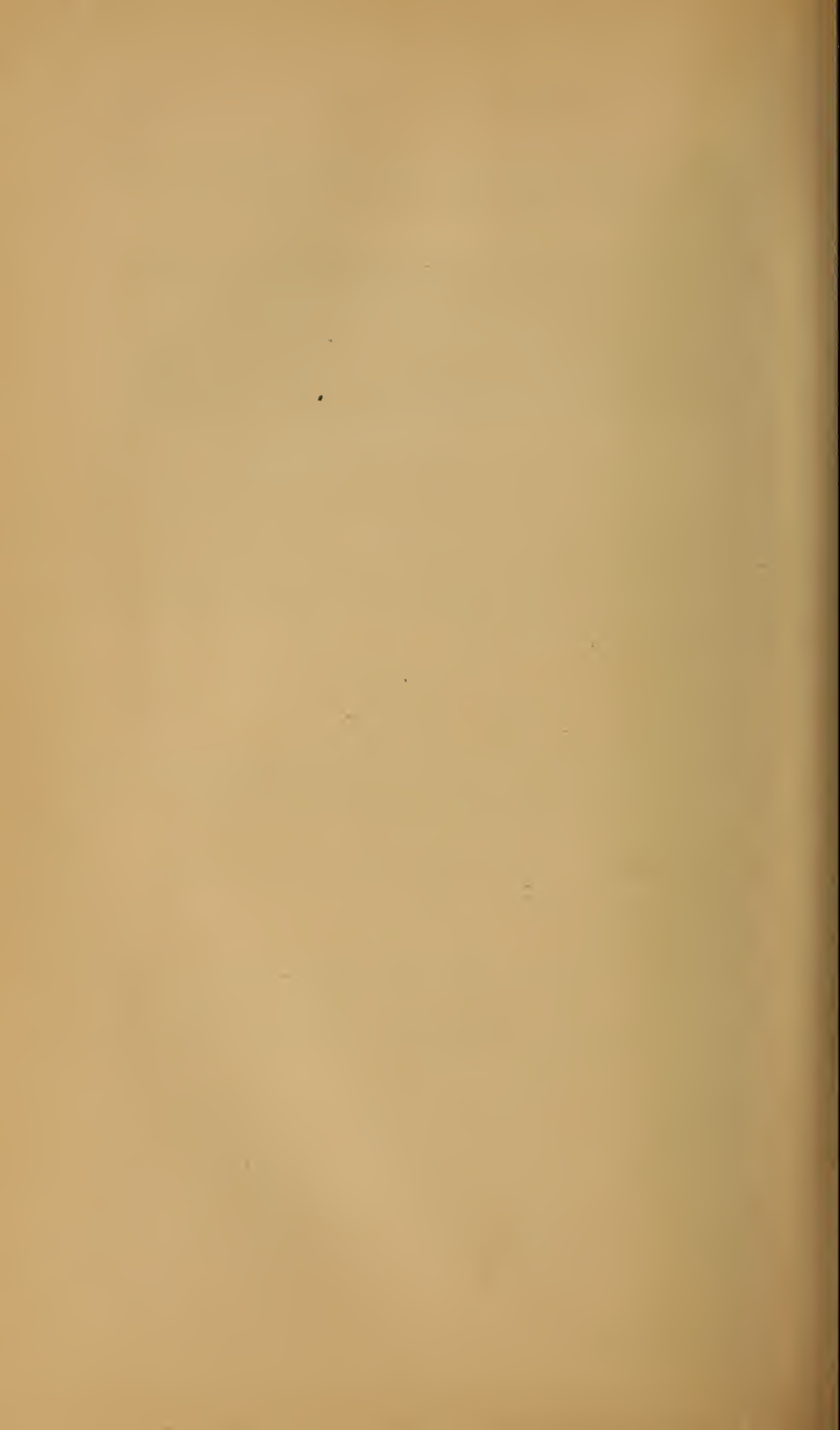
Circuit Court of the United States for the Northern District of California.

THE CITY OF SAN FRANCISCO }
 vs. }
THE UNITED STATES. }

And now at this day appears the City of San Francisco, by John W. Dwinelle, Esq., her attorney in this case, and moves that an appeal be allowed on behalf of the said city from so much of the final decree of confirmation, rendered herein on the eighteenth day of May, one thousand eight hundred and sixty-five, as includes in the estimate of the quantity of four square leagues confirmed, the parcels of land which have been heretofore reserved or dedicated to public uses by the United States; and inasmuch as a motion in the same terms was made on the part of the city immediately after the rendition of said decree, and was on the twenty-ninth day of said May denied on the ground that said decree was not subject to appeal; and the Supreme Court has since adjudged that the said decree was subject to appeal; it is therefore ordered and decreed that the motion be granted, and that said appeal on the part of the City of San Francisco be allowed and entered *nunc pro tunc* as of said eighteenth day of May, one thousand eight hundred and sixty five.

FIELD,
Circuit Judge.

September 3d, 1866.



No. CLXXII.

THE OUTSIDE LAND ORDER INTRODUCED BY SUPERVISOR R. P. CLEMENT, AND PASSED BY THE BOARD OF SUPERVISORS; APPROVED, OCTOBER 12TH, 1866.

Order No. 733.—An order for the settlement and quieting of the title to lands in the City and County of San Francisco, situated above high water mark of the Bay of San Francisco and the Pacific Ocean, and without the former corporate limits of the City of San Francisco.

The people of the City and County of San Francisco do ordain as follows :

SECTION 1. Immediately after the passage of this order, the Board of Supervisors shall proceed to devise and adopt a plan for the subdivision into blocks and lots of all the lands not reserved to the United States, situated on the peninsula of San Francisco, and within the present corporate limits of said city and county, and above the natural ordinary high water mark of the Bay of San Francisco and the Pacific Ocean, as the same existed on the seventh of July, 1846, and without the corporate limits of the City of San Francisco as defined in the act to re-incorporate said city passed by the Legislature of California on the fifteenth day of April, 1851, so far as said Board may deem such subdivision necessary; and to select and set apart for public uses, such lots and portions of said land as said Board may deem necessary, subject to the limitations and provisions hereinafter in this order contained.

SEC. 2. After the adoption of the plan provided for in Section 1 of this order, the Board of Supervisors shall cause to be made a map of said lands according to said plan. Such map shall show the streets and highways, the blocks formed by the intersection of the streets and highways, and the lots into which said blocks shall be subdivided; and upon such map shall be designated the lots and portions of land set apart for public uses, and the particular use for which each lot or portion of land shall have been set apart.

SEC. 3. Upon the completion of the map provided for by Section 2 of this Order, it shall be deposited for public inspection in the office of the Clerk of Board of Supervisors, and there remain for a period of sixty days; and notice shall be published in three of the daily papers during the whole time that said map shall so remain in said office.

SEC. 4. Any person having or claiming any interest in any portion of said lands under and by virtue of any of the provisions of this Order, may at any time before the completion of said map, or while the same shall remain in the office of the Clerk of the Board of Supervisors for public inspection, present to the Committee on Outside Lands, hereinafter in this Order provided for, a description and diagram of the lands in which he shall so claim an interest, and have the same delineated on said map, and may also present to the said Committee in writing, his objections to the location or use of any lot or portion of land designated on said map as set apart for public uses and embraced within the description and diagram

ADDENDA, NO. CLXXII.

presented by him; but no claim shall be delineated on said map by said Committee unless all taxes have been paid thereon for the five fiscal years preceding the year beginning July 1st, 1866.

Board of Supervisors to act upon objections to locations for public uses.

SEC. 5. After the said map shall have remained in the office of the Clerk of the Board of Supervisors for the said period of sixty days, as provided in Section 3 of this Order, the Board of Supervisors shall examine the objections, if any, made thereto, and may make such alterations in the location or designation of any lots or portions of land set apart for public uses as may be necessary to obviate any objection which the said Board shall deem just and proper; provided, that no alteration shall be made which shall affect any person whose claim shall have been delineated on said map, and who shall not have made any objection to the location or designation of the lots or portions of land set apart for public uses.

Map to become official, and locations for public use final, when objections to map are disposed of.

SEC. 6. As soon as the alterations provided for, in Section 5 of this Order, shall have been made and delineated on said map, the said map shall become and be the official map of said lands; and the portions of land thereon designated as public streets and highways shall become and be dedicated to public use as streets and highways; and the lots and portions of land thereon designated as set apart for other public uses shall severally become and be dedicated to the uses for which they severally shall have been set apart.

Restrictions in amount of lands reserved for public use.

SEC. 7. No lot set apart for public use, other than for a park, plaza, cemetery, or public square, or for the erection thereon of a City Hall, or buildings for a City Library, Hospital or an Asylum, shall exceed in extent two fifty-vara lots; and no tract or portion of land set apart for a plaza or public square shall exceed in extent four whole blocks, formed by the intersection of the main streets of the plan; and the tract or portion of land set apart for a cemetery shall not exceed in extent 200 acres, nor be less than 100 acres; and the tract or portion of land set apart for a public park shall not be less than 300 acres.

Provisions respecting amount of lands reserved for public use out of those occupied by private persons.

SEC. 8. In addition to streets and highways, not less than one twentieth, nor more than one tenth part of any tract, which, including streets and highways, does not exceed fifty (50) acres in extent, shall be set apart for public use; but if any tract which by the provisions of this order would pass to one person, shall exceed fifty (50) acres in extent, including streets and highways, there shall be set apart for public use, other than for a public park, and for a Cemetery, and in addition to the streets and highways, not less than one-twentieth, nor more than one tenth part of fifty (50) acres, and not less than one-tenth part of all above fifty (50) acres. From any tract which by the provisions of this Order would pass to a number of persons as joint tenants or tenants in common, so much shall be set apart for public use, and no more, as by the provisions of this Section might be set apart if the interests of the respective tenants were several and divided. If of any tract less in extent than one half of a block, formed by the intersection of the main streets of the plan, a portion shall be set apart for public use, other than for a public park, or for a cemetery, or for streets and highways, the person or persons to whom said tract would pass by the provisions of this order, may purchase the amount so set apart for public use, by paying to the City and County, in gold coin, the value thereof—

the value to be determined by the Board of Supervisors, on the report of the Committee on Outside Lands.

SEC. 9. The tract or portion of land set apart and designated on said map as a Public Park, and the tract or portion set apart and designated thereon as a Cemetery, and the several portions thereon designated as public streets and highways, shall be deemed absolutely dedicated as such; but persons who, by the provisions of this Order, would, but for such dedication, be entitled to any of the lands embraced within such Park or Cemetery, shall be entitled to receive compensation for their claims to portions to which they would be so entitled, less the deductions which might be made therefrom, according to the provisions of Section 8 of this Order, such compensation to be made according to the value of the lands taken—the value to be determined by the Board of Supervisors on the report of the Committee on Outside Lands; but no person shall be entitled to receive, either under the provisions of this section or of Section 8 of this Order, compensation for any lot or portion of land set apart for public use, unless his claim shall have been delineated on the map hereinbefore in this Order provided for, nor until all conflicting claims to such lot or portion of land shall have been finally determined; and no person shall be entitled to receive compensation for any portion of land included in any street or highway.

Further provisions respecting amount of lands reserved for park, cemetery, and streets, out of lands occupied by private persons.

SEC. 10. No conveyance of any tract of land, or any interest therein made after the eighth day of March, 1866, shall be regarded in the selection and designation of lots and portions of land for public use; but the amount of land that may be reserved and set apart for public use shall be determined by the claims and possessions as they existed on the eighth day of March, 1866.

Conveyances after March 8th, 1866, to be disregarded in reservations

SEC. 11. All that portion of the land described in Section 1 of this Order, which lies south of a line drawn due south $81^{\circ} 35'$ east magnetic, through Seal Rock, and west of a line easterly, not less than two hundred feet from ordinary high water mark, is hereby reserved and set apart for public use as a public highway.

Ocean Beach reserved as a highway.

SEC. 12. The City and County of San Francisco hereby relinquishes and grants all the right, title, and claim which the said city and county now has, or may hereafter acquire, as the successor of the Pueblo of San Francisco, or as the grantee or patentee of the United States in and to the lands hereinbefore in this Order described, and not excepted, or reserved, or intended to be excepted or reserved, by any of the preceding sections or provisions of this Order, and which may not be set apart for public use under any of the preceding sections and provisions, and upon which shall be paid, previous to the first day of April, 1867, all taxes which have been assessed thereon during the five fiscal years preceding the year beginning July 1st, 1866, unto the persons, or to the heirs and assigns of persons who were on the eighth day of March, 1866, in the actual *bona fide* possession thereof, by themselves or their tenants, or having been ousted from such possession before or since said day, have recovered or may recover the same by legal process. And it is hereby declared to be the intent and object of this section to pass the right, title, and claim of the said city and county in and to every tract or portion of said land, except the portions that are or may be reserved as aforesaid, possessed by one person, unto

Residue of said lands granted to persons in actual *bona fide* possession on March 8th, 1866.

the possessor thereof in severalty; and every separate tract or portion thereof, except the portions that are or may be reserved as aforesaid, possessed by more than one person, jointly or in common, unto the possessors thereof jointly or in common.

Grant subject to previous reservations.

SEC. 13. The grant and relinquishment by this Order made, shall be subject to the selections, reservations and conditions hereinbefore in this Order made and provided for.

Committee to be appointed to report plan, map, locations, and superintend execution of this order

SEC. 14. A Committee of three members of the Board of Supervisors shall be chosen by said Board, whose duty it shall be to prepare and report to the Board the plan provided for in Section 1 of this Order, to supervise the making of the map provided for in Section 2, to select, set apart, and designate the lots and portions of land hereinbefore provided to be set apart for public use, and generally to superintend the carrying out of the provisions of this Order; all the acts of said Committee to be subject to the approval of the Board of Supervisors.

Provisions respecting surveys.

SEC. 15. Whenever a survey shall be required to determine the boundaries of any claim or portion of any claim, whether ordered by the Committee or requested by the claimants, the expense of such survey shall be borne by such claimants; and no survey shall be received by the Committee, except it shall have been made by the City and County Surveyor, or a Surveyor designated by the Committee; and the amount of compensation for such survey shall be fixed by the Committee at a reasonable rate, not to exceed the ordinary charges for such services.

Provisions respecting compensation to private claimants.

SEC. 16. The compensation which may become due, by virtue of Sections 8 and 9 of this Order, shall be made in such manner as the Legislature may hereafter provide.

Order to take effect immediately.

SEC. 17. This Order shall take effect from and after its passage.

APPROVED, October 12th, 1866.

H. P. COON, MAYOR,

And *ex officio* President Board of Supervisors.

ELECTION OF COMMITTEE UNDER THE ABOVE ORDER.

IN BOARD OF SUPERVISORS, }
October 15th, 1866. }

On motion, the Board proceeded to elect three Committee-men, under the above order, by ballot. Supervisors R. P. Clement, Frank McCoppin, and C. H. Stanyan were chosen on the first ballot. On motion, the choice was made unanimous; and on further motion, Supervisor R. P. Clement was made Chairman of the Committee.

No. CLXXIII.

THE LAND ORDER INTRODUCED BY SUPERVISOR FRANK McCOPPIN, AND PASSED BY THE BOARD OF SUPERVISORS, APPROVED DECEMBER 22ND, 1866, COMMONLY CALLED
THE McCOPPIN ORDER.

ORDER No. 748.

TO EXPEDITE THE SETTLEMENT OF LAND TITLES IN THE CITY AND COUNTY OF
 SAN FRANCISCO.

Whereas, The duly constituted authorities of the City of San Francisco, and of the City and County of San Francisco, have, by Ordinances and Orders, ceded the lands of said city and county to the parties in the possession thereof, subject to the exceptions and reservations in said Ordinances and Orders contained; and, Preamble.

Whereas, It is desirable that all parties should be quieted, and secured in the possession of the lands rightfully possessed by them to which the City and County of San Francisco claim title;

Now, therefore, the people of the City and County of San Francisco do ordain as follows:

SECTION 1. Upon receiving a Petition from any person or persons claiming that they by themselves, their tenants, or the persons through whom they claim or derive possession, have been, from and including the EIGHTH DAY OF MARCH, 1866, and still are in the possession of any of the lands described in the decree of Justice Field, of the U. S. Circuit Court, confirming the claim of the City and County of San Francisco, entered November 2d, 1864, in the Circuit Court of the United States for the Northern District of the State of California, or embraced within the corporate limits of the City of San Francisco, (and above high-water mark) as defined in the Act to re-incorporate said city, passed by the Legislature of the State of California, on the 15th day of April, 1851, and that such lands have not been sold, leased, dedicated, reserved, or conveyed by authority of the said City and County of San Francisco or the United States, to any one, or for any purpose, asking for a grant from said City and County, the Board of Supervisors shall proceed to act thereon as hereinafter provided. This petition shall be verified by the oath or affirmation of the party in whose behalf the petition is presented, or by some one acting as his agent, and conversant with the facts detailed in the petition.

Petition to
 Board of
 Supervisors
 to be verified
 and filed.

Proceedings to be had on such Petitions, and award of lands to be made.

Notice of award to be published.

Deeds to be executed under certain provisions.

Lands in litigation provided for.

Deposit of moneys for expenses.

SEC. 2. All petitions mentioned in the first section of this Order shall be referred to the Committee on Outside Lands; said Committee shall appoint a clerk, who shall be a Notary Public, to perform the duties herein prescribed. The party presenting the said petition may appear before said clerk, and make proof, verbal and documentary, of the truth of the matters alleged in his petition. Copies of the documentary evidence shall be filed with said clerk, and the oral testimony shall be reduced to writing by said clerk, and subscribed by the witness. The proofs of the petitioner being closed, the said committee shall proceed to consider the same, and shall make such report and recommendation thereon, as to them shall seem just and proper in the premises. The said committee shall file with the Clerk of the Board of Supervisors the testimony taken as aforesaid, together with the report of the said committee, and said report shall be submitted to the Board of Supervisors for their approval, and if in their judgment the claim of the petitioner is well founded, they shall by an order entered in their minutes, adjudge and award a grant of such lands to the petitioner or petitioners therefor, less the amount reserved for public use. The said Board shall thereupon give public notice of their award by a notice published at least once a week, for three successive weeks, in some daily public newspaper published in the City and County of San Francisco, which notice shall specify the name of the applicant, the date and filing of his petition, and the tract of land awarded, by a good and sufficient description thereof. Proof of publication of such notice shall be made in the manner now or hereafter required by law for the proof of publication in civil process. The clerk of the said committee shall be allowed the same compensation for taking the oath or affirmation of witnesses, and for reducing the testimony to writing, as is now allowed by law to Notaries Public for like services on taking depositions. The compensation herein allowed to the clerk of said committee shall be paid to said clerk by the party presenting the petition.

SEC. 3. Upon receiving proof of the publication of the notice provided for in the Second Section hercof, it shall be the duty of the aforesaid Committee of the Board of Supervisors, or any two of such committee, to execute, acknowledge, and deliver to the party or parties presenting the aforesaid petition, a deed of conveyance of the tract or lot of land, as aforesaid adjudged and awarded to the petitioner; *provided*, the petitioner or petitioners shall, before receiving a deed as aforesaid, be required to quitclaim and peaceably deliver the possession of all land, claimed by said petitioner or petitioners, reserved by the Commissioners acting under Ordinance eight hundred and twenty-two, (822) and all those lands which shall be reserved by the Committee of the Board on Outside Lands, for the use and benefit of the City and County of San Francisco; *provided*, however, that in case a suit shall be pending between the petitioner and some third person involving the right of possession of the tract or some portion thereof petitioned for, and such third person shall file with the Clerk of the Board of Supervisors a copy of the complaint filed in such action, before the deed shall have been executed and delivered to the petitioner; then and in that case the deed shall be withheld until such suit shall be finally determined, and there shall thereafter be executed a deed of conveyance of so much of the tract of land as shall be involved in the said suit, to the party in whose favor the said suit shall be finally determined, as aforesaid; *provided*, further, that the expenses hereinafter provided for shall be paid before such conveyance shall be delivered.

SEC. 4. Upon the filing of a petition as hereinbefore provided, the petitioner shall deposit with the Clerk of the Board of Supervisors a sum of money sufficient

to pay for the publication of the notice hereinbefore provided, notarial fee, and other expenses incident to the granting of the prayer of the petitioner.

SEC. 5. A conveyance executed and delivered in pursuance of the provisions of this Order, shall operate to grant, convey, remise, and release to the party, his heirs and assigns named therein, the lands in such conveyance described, and all the estate and interest, present and future, of the said City and County of San Francisco in and to such lands.

Effect of conveyance.

Third persons protected.

SEC. 6. The conveyance of such lands made as hereinbefore provided, shall not be deemed to include the rights of third persons.

SEC. 7. Nothing in this order contained shall be considered as in conflict with or as abrogating any of the provisions of Order No. 733.

In Board of Supervisors, San Francisco, December 17th, 1866, after having been published five successive days, according to law, taken up and finally passed by the following vote, viz :

Ayes—Supervisors Daly, Clement, Fairman, Phelps, Ashbury, Torrey, Clayton, Tittel, Shrader, Reynolds, McCoppin, Stanyan.

JAS. W. BINGHAM, Clerk.

APPROVED, San Francisco, December 22d, 1866.

H. P. COON,

Mayor and ex-officio President Board of Supervisors.

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Since the Index was printed the following additions have been made to the text of the ADDENDA.

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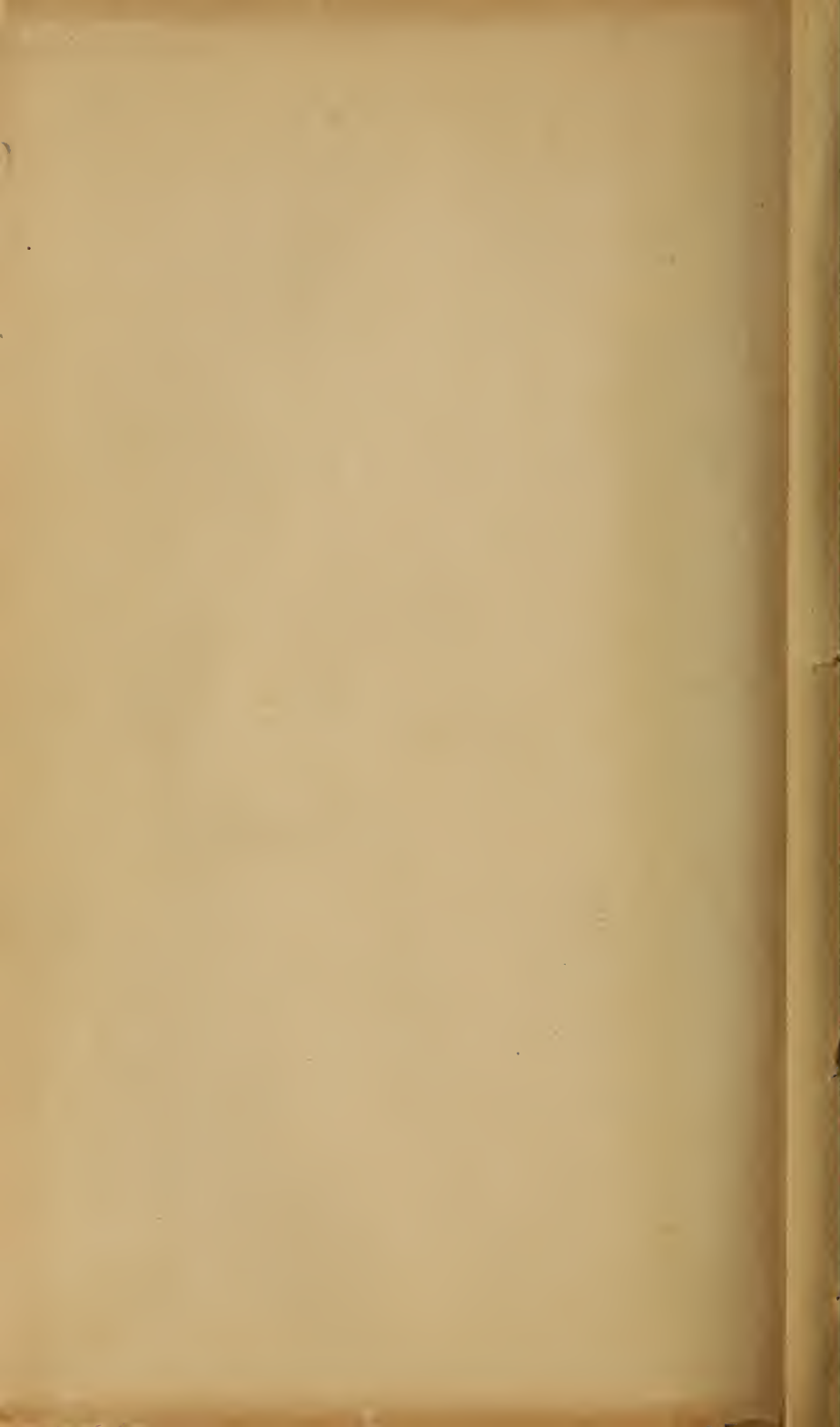
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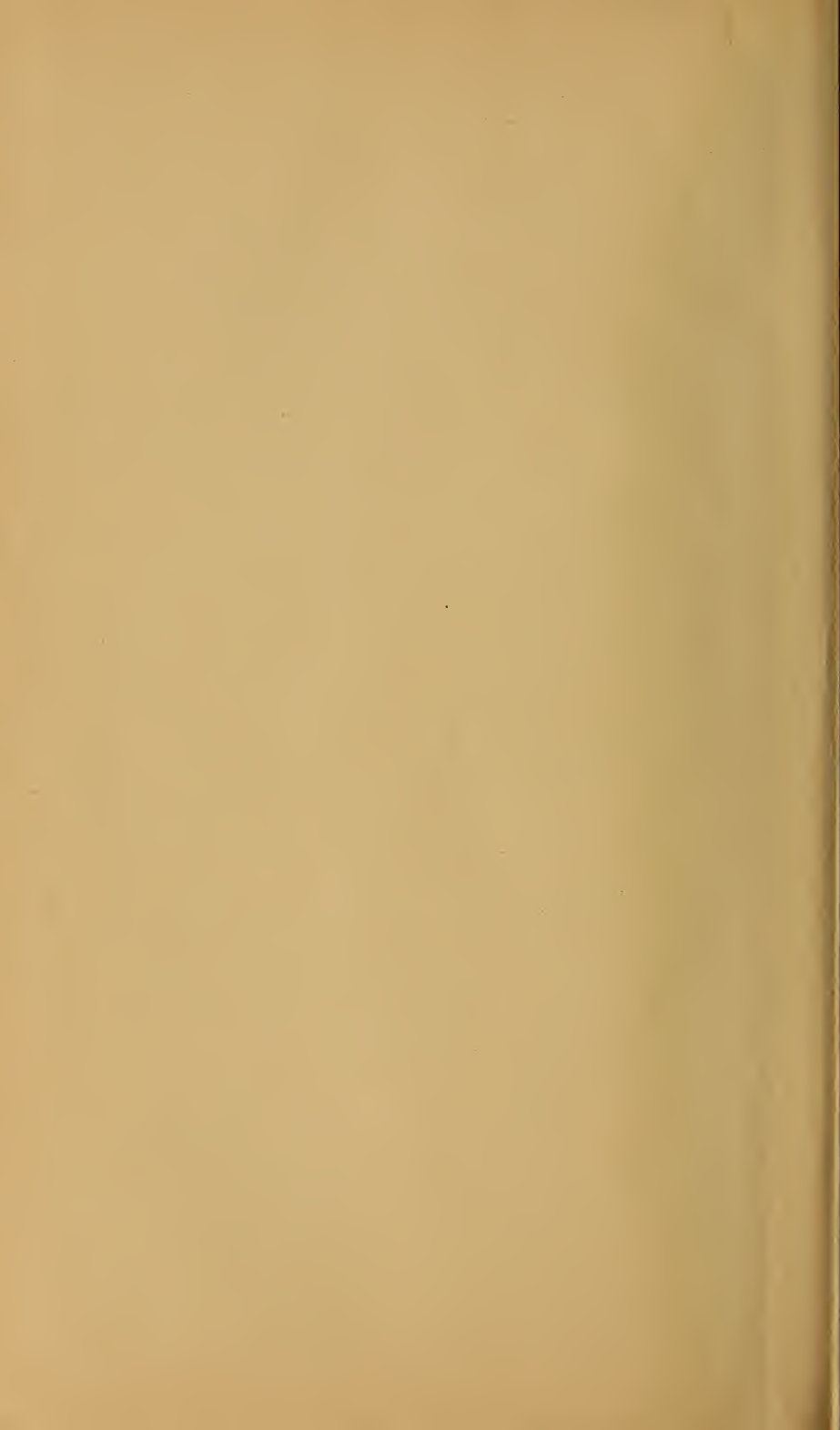
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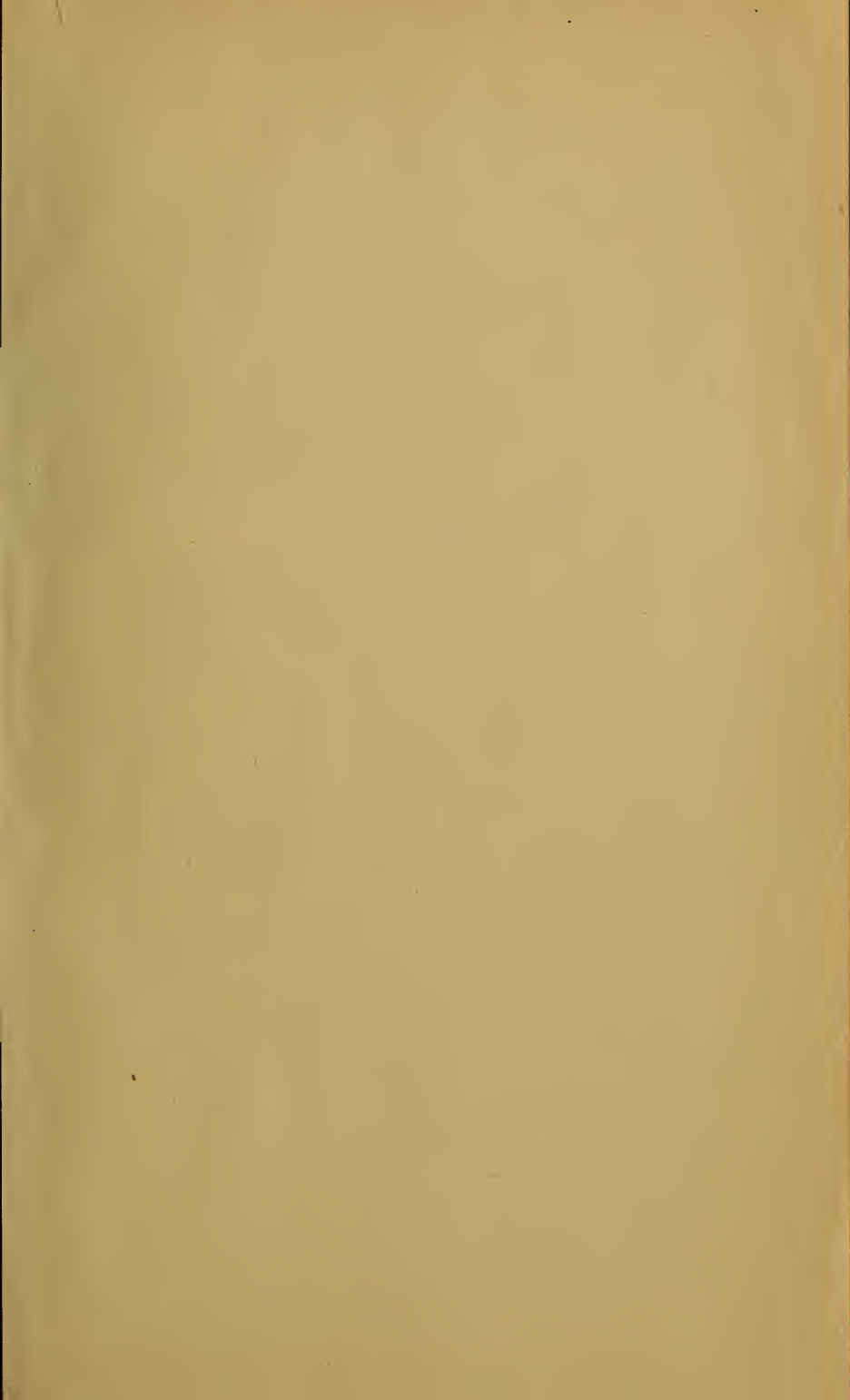


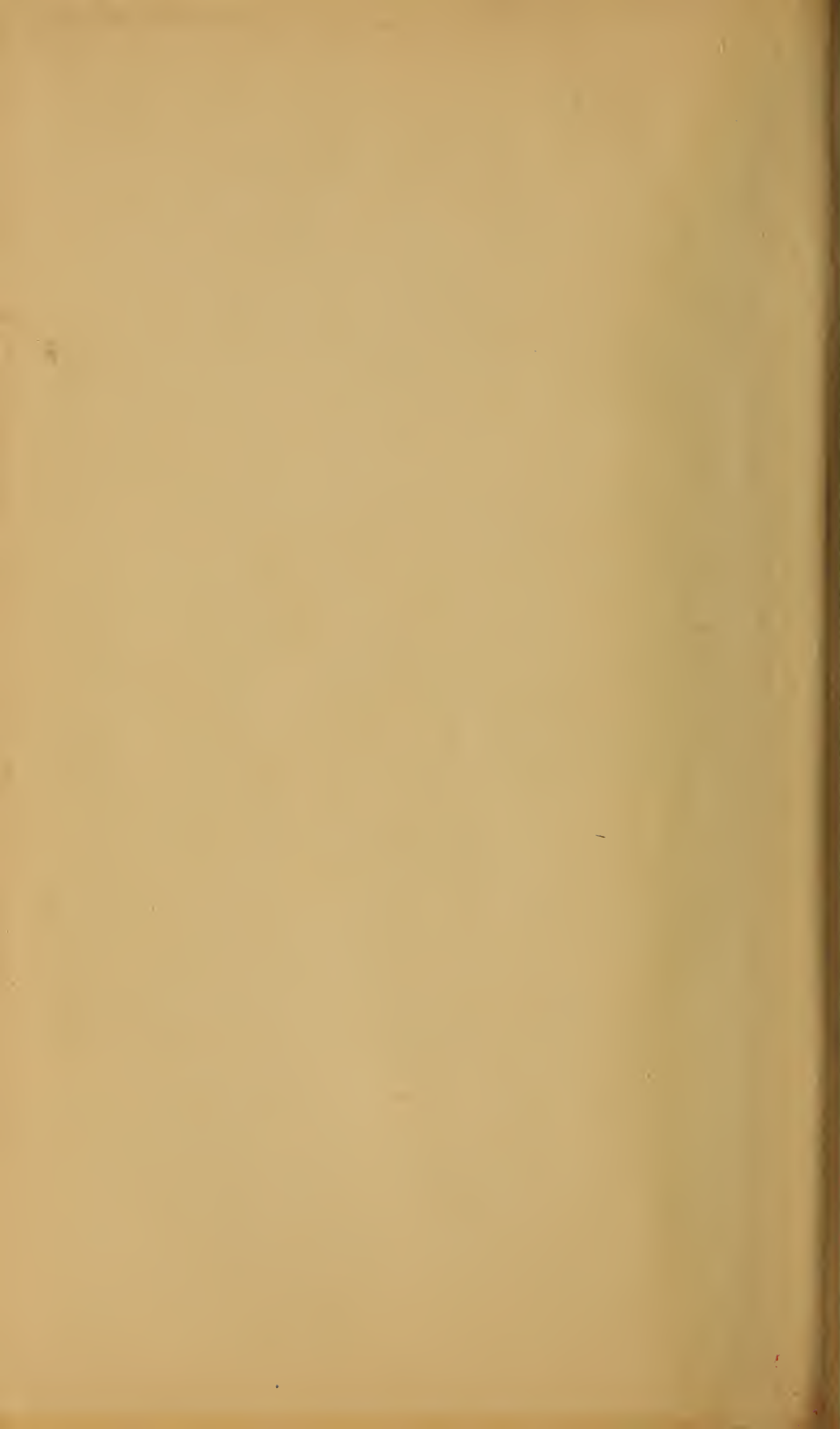












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