

EX LIBRIS

In the United States District Court,

NORTHERN DISTRICT OF CALIFORNIA.

— *W. Dwinelle* —

THE UNITED STATES

vs.

No. 420.

ANDRES CASTILLERO

—♦♦—
“NEW ALMADEN.”
—♦♦—

TRANSCRIPT OF THE RECORD.

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—♦♦—
SAN FRANCISCO:

.....
1861.

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C. W. S.
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DEPOSITION OF PIO PICO.

—
 UNITED STATES DISTRICT COURT, }
 Northern District of California. }

THE UNITED STATES }
v.
 ANDRES CASTILLERO. }

SAN FRANCISCO, October 19, 1859.

On this day, before me, W. H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, etc., etc., came Pio Pico, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: A. C. Peachy, Esq., counsel for the claimant; and Edmund Randolph, Esq., for the United States.

Questions by counsel for claimant.

QUESTION 1. Your name, age, and place of residence?

ANSWER. My name is Pio Pico, and fifty-eight years of age; my residence is in Los Angeles county.

Q. 2. During what years were you Governor of the Department of California?

A. During the years 1845 and 1846.

Q. 3. Did you know Andres Castillero; and during what years, as well as you can recollect, was he in California?

A. I knew him here in the year 1838, and in the year 1845.

Q. 4. Do you know José Maria Covarrubias; and what office did he hold in December, 1845, and January, 1846, and answer the same question about Manuel Castro?

A. I know Mr. Covarrubias; he was Secretary of the Departmental Government in the years 1845 and 1846.

I also know Mr. Castro; he had charge of the Prefecture of Monterey, in the same years.

Q. 5. Do you remember whether Mr. Covarrubias was sent as Commissioner to the Central Government at any time; and when?

A. When I was Governor, in the month of February, 1846, I sent him as Commissioner to the Central Government.

Q. 6. Who was the Secretary of the Departmental Government, about the time of Mr. Covarrubias' departure, and during his absence?

A. I think that José Matias Moreno was Secretary after the departure of Mr. Covarrubias.

Q. 7. Look at this document, produced from the office of the U. S. Surveyor General for California, purporting to be the borrador or rough draft of a communication addressed by you on the 13th February, 1846, to the Minister of Exterior Relations, in which you make known to him the discovery of a mine of quicksilver in California, by Castellero; and state in whose handwriting it is?

A. It is in the handwriting of the Secretary of the Departmental Assembly—Don Augustin Olvera.

Q. 8. Look now at the document on pages 2 and 3 (in red ink) on "Exhibit Bassoco No. 9, O. H." and of which the borrador referred to in the last question, with the exception of your signature, and the marginal note, is an exact copy; and say whether you can tell in whose handwriting is the original letter to the Minister of Relations, and whose the signature, from the traced copy of it in said Exhibit.

A. I should judge from this traced copy that the handwriting of the original is that of the same Olvera; the signature is my own.

[Counsel for the claimant offers in evidence a copy of the borrador referred to in question 7th, marked "Exhibit Pio Pico No. 1, W. H. C.," which is admitted by the counsel for the United States to be an accurate copy.]

Q. 9. Now look at another document produced from the office of the U. S. Surveyor General for California, purporting to be an original communication from Manuel Castro, Prefect of the Second District to the Señor Secretary of the Departmental Government, dated Monterey, December 31st, 1845; say if you know the handwriting and the signature, and also in whose handwriting is the marginal note in these words, "Contestada el 22 de Enero de 1846," and whose the rubric thereto affixed.

A. I don't know the handwriting very well, but the signature appears to me to be that of Manuel Castro.

The marginal note appears to be in the handwriting of Covarrubias, and the rubric is his also.

[Counsel for the claimant offers in evidence a copy of the document referred to in the preceding question, marked "Exhibit

Pio Pico No. 2, W. H. C.," which is admitted by counsel for the U. S. to be an accurate copy.]

Q. 10. Look at another document from the office of the U. S. Surveyor General for California, which appears to me to be the borrador or rough draft of the reply of the Secretary of the Government to the said communication of the Prefect; and say if you know in whose handwriting it is.

A. It appears to be the handwriting of Mr. Covarrubias.

Q. 11. This document has no date, but it is written on the reverse of a leaf, and ends with that page. The leaf appears to contain borradores or rough drafts of other official documents.

Please examine the borrador next preceding that about which you have testified, and say what is the date of it and address.

A. It is dated January 22d, 1846, and is addressed to the Señor Prefect of the District of Monterey.

[Counsel for claimant offers in evidence a copy of the document referred to in question 10, marked "Exhibit Pio Pico No. 3, W. H. C.," which is admitted by counsel for the U. S. to be an accurate copy.]

Q. 12. Do you know Castellero's handwriting and signature?

A. Not very well.

Q. 13. Examine the document now produced from the office of the U. S. Surveyor-General for California, purporting to be an original letter addressed to you as Governor by Andres Castellero, dated Monterey, December 15th, 1845; and say if you know the handwriting and signature.

A. I don't remember the handwriting and signature of Andres Castellero, but I do remember that he did send me communications of this kind, informing me of the discovery of the mine; and he also sent me a sample of the quicksilver from the mine in a small bottle.

Q. 14. What did you do with those communications and that specimen of quicksilver?

A. I think I sent to the General Government of Mexico, by Mr. Covarrubias, one of the communications and the bottle of quicksilver?

Q. 15. When did you send that communication, etc. to the General Government?

A. In February, 1846.

Q. 16. Do you remember to have received a reply to your communication?

A. No, sir; I don't remember having received any.

Q. 17. Please state all that you remember about the discovery of the mine by Andres Castellero.

A. I remember nothing more than what I have stated.

Q. 18. Do you remember what action was had upon the petition of Andres Castellero for a grant of two leagues of land?

A. I do not.

[Counsel for claimant offers in evidence a copy of Castellero's letter of December 15th, 1845, referred to in question 13, marked "Exhibit Pio Pico No. 4, W. H. C." which is admitted by counsel for the U. S. to be an accurate copy.]

Direct examination closed.

Examination adjourned until to-morrow at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

—
SAN FRANCISCO, Oct. 20, 1859.

Examination of Pio Pico resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

CROSS-EXAMINATION.

Questions by Mr. Randolph.

Q. 19. How long have you been in San Francisco?

A. About three months.

Q. 20. I understand that the immediate cause of your coming was to testify in another land suit. What cause was that, and how long is it since you finished your testimony in the same?

[Question objected to as irrelevant.]

A. I came to testify in the suit about the ranch called Santos Calles. I don't remember how long it was since I finished my testimony in that case, but I think it was in the month of January last.

Q. 21. Have you remained here ever since for the purpose of testifying in this case?

A. Yes, sir.

Q. 22. At whose expense?

A. At my own expense. I have paid my own expenses since I arrived here.

Q. 23. Have you received anything, or are you to receive anything, for your time and trouble in and about your sojourn in this city since the month of August last, and in giving your deposition in this case?

A. I have received nothing, and I have been offered no sum whatever.

Q. 24. Have you not been informed that you would be indemnified for your losses and expenses incurred in this matter; and if yea, by whom?

A. No, sir; I have not been so informed.

Q. 25. Have you subjected yourself to all this inconvenience and loss of time for the benefit of other people, without any assurance of an indemnity?

A. Yes, sir.

Q. 26. Have you been served with any process from this Court, commanding you to remain for this purpose?

A. No, sir.

Q. 27. Will you then explain to me from what motive you have remained so long from your home and business, and at your own expense, to give your deposition in this case?

A. The reason why I have remained so long is, that I promised to give my testimony in this case, supposing that the Mexican gentlemen who were testifying in it would have concluded much sooner than they did; and having promised, I will remain if necessary a year for that purpose.

Q. 28. When Covarrubias went as Commissioner to the Central Government of Mexico, did he not go by sea?

A. Yes, sir.

Q. 29. What was the name of the vessel he went in?

A. I do not know.

Q. 30. From what port did he sail?

A. San Pedro.

Q. 31. Do you not remember either the name of the master of the vessel in which he sailed, or the name of the owner.

A. The owner was Mr. John Wilson; I don't know whether he went in her or not; I don't know who the captain was.

Q. 32. Do you mean only that there was one vessel that Mr. Wilson owned, and that you think it possible that he went in that one?

A. I know that Covarrubias went in that vessel; what I don't know, is whether Wilson went in her as captain or not.

Q. 33. What time in the month of February, 1846, did Covarrubias leave Los Angeles?

A. I don't remember exactly the day, but it was about the middle of February.

Q. 34. Did the vessel sail immediately thereafter from San Pedro?

A. I don't remember how soon the vessel left after he arrived at San Pedro.

Q. 35. Please endeavor by reference to some of your public

acts, or to well known events, to fix the time of Covarrubias' departure more accurately.

A. I cannot fix it more precisely than I have,—about the middle of February.

Q. 36. During the month preceding the departure of Covarrubias, had there been no vessel leaving California for Mexico by which you might have communicated with the Central Government?

A. I don't remember whether any vessel left during that time or not.

Q. 37. When you were Governor in 1845-6, who was the chief Military Comandante?

A. I wish to be excused from answering this question, because I consider it foreign to the case in which I have sworn to testify.

Q. 38. These cases have so much connection with the history of the country that I differ with you as to the bearing of the last question, and with your permission will now repeat it.

A. Don José Castro was the chief Comandante General.

Q. 39. Has he not been in the city of San Francisco at some time during the last summer?

A. I saw him here a few days ago.

Q. 40. How long is it since you have seen Manuel Castro, of whom you have spoken?

A. I saw him yesterday.

Q. 41. Do you know of anything that would prevent or render it difficult to call General José Castro, formerly Military Comandante, and Manuel Castro, former Prefect, etc., and put them on the stand as witnesses, and make them testify themselves as to all the documents and facts in this case with which they have had any connection?

[Question objected to as irrelevant, if it is intended to prove that it is in the power of the claimant to take the testimony of the two Castro's; if the object of the question is to ascertain whether it is practicable for the government to procure the attendance of those two gentlemen as witnesses on its behalf, no objection is made to it.]

A. I believe that there would be no difficulty whatever in obtaining their attendance as witnesses.

Q. 42. In question 9, on your direct examination, you were shown what purported to be an original communication from Manuel Castro, Prefect, etc., and were asked if you knew his signature to the same, and you answered that it appeared to you to be the genuine signature of Manuel Castro.

You don't think, of course, that you are as well able to answer that question as Manuel Castro himself?

[Question objected to as irrelevant. Counsel for the claimant suggests that if there is any doubt about the genuineness of that signature, counsel for the government can subpoena Mr. Castro.

Counsel for the government has no knowledge of the signature of Mr. Castro, and wishes to put in proof that better evidence on that subject than that of the present witness exists and is at hand.

Counsel for the claimant states, that notwithstanding the declared object of the question, he must insist upon his objection. He finds it impossible to discover in what respect the testimony of a person who signs a document is *better evidence* of a signature than the testimony of a person who is acquainted with that signature. He supposes that the counsel for the government in using the words "*better evidence*," intended *evidence of a higher grade*, which he does not admit that to be, which is suggested by the counsel for the government.]

A. Yes, sir, I thought it was his signature because I saw it in that connection, not that I was so familiar with the handwriting.

Q. 43. Hence I infer that there are other signatures which you know much better; for example, that of José Matias Moreno, and above all your own.

A. Yes, sir.

Q. 44. If you had not read the paper to which that signature of Manuel Castro is affixed, but had seen the signature on some other paper, and elsewhere, with what degree of confidence would you have been able to take your oath that it was Manuel Castro's signature.

A. The degree of confidence which I might feel in such a case, would depend upon the paper which I might see.

Q. 45. Independently altogether of the consideration from the contents, that the paper was such an one as ought to bear the signature of Manuel Castro, and judging only by the letters and the rubric, do you feel yourself entirely competent to swear to Manuel Castro's signature?

A. No, sir.

Q. 46. Did you ever know an Irish Catholic Priest by the name of Eugene McNamara?

A. Yes, sir. I knew him.

Q. 47. When, and where?

A. I don't remember very well, but I think it was in Los Angeles that I knew him. I don't remember the month, but it was in the year 1846.

Q. 48. Try again to remember the month.

A. I don't remember; but I think it was before the month of June that I first saw him.

Q. 49. Did you see him on two different occasions in Los Angeles; I mean did he make more than one visit to that city?

A. I think I first saw him in Los Angeles; and I saw him again, I think, about the end of June or beginning of July, somewhere near Santa Barbara.

Q. 50. How long before you saw him near Santa Barbara was it that you first saw him in Los Angeles?

A. It was perhaps about a month.

Q. 51. Did he remain in and about Los Angeles and Santa Barbara during that time?

A. No, sir; I believe not.

Q. 52. Where had he gone to in the interval between the time when you saw him at Los Angeles first and when you saw him afterward near Santa Barbara?

Have you any reasons to believe that he had been anywhere out of the neighborhood of those two places?

A. All that I can say is, that I believe I saw him twice, the first time at Los Angeles and the second on the road between Santa Barbara and Los Angeles, near Santa Barbara.

Q. 53. Were you going towards Santa Barbara and he to Los Angeles at that time?

A. I was coming from Los Angeles to Santa Barbara, and he was going south in the direction of Los Angeles.

Q. 54. As he came recommended from the Central Government of Mexico, and you made him a grant of the San Joaquin valley, I presume you became well acquainted with him, did you not?

A. That was probably so. I hope I may not be required to answer such questions as this, for if I am my testimony will become interminable, and I am unwell and dislike to be questioned about matters which have nothing whatever to do with the case in which I have sworn to testify.

I hope the Court will allow me to withdraw for I am unwell, having taken medicine this morning. I will return to-morrow at any hour you may name.

Examination adjourned until Saturday, at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

—
SAN FRANCISCO, Cal., October 22, 1859.

Cross-Examination of Pio Pico resumed from Thursday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 55. When you first saw Father McNamara, where had he come from ; where did he first land in California ?

A. I believe he came from Mexico, but I don't know where he first landed.

Q. 56. Did you not learn in what part of California he had been before his arrival in Los Angeles ?

A. I don't remember very well, but I think he came from up here, north.

Q. 57. Don't you remember his telling you at what places in California he had been, or any persons he had seen, or of anything he had done in California ?

A. No, sir ; I do not.

Q. 58. From the documents in the grant of the San Joaquin Valley, it appears that Father McNamara had made strong representations to the Departmental Government on the subject of the danger that the country would be seized by the Americans, and of the necessity of doing something to protect it from them, such as making large grants to him that he might colonize the same with Irish Catholics, who would be able to defend them against the Americans.

Did he not speak to you about the importance of putting other great interests of the country into the hands of British subjects for protection ?

[Question objected to as irrelevant.]

A. No, sir ; he did not. All I remember about that matter is, that Father M'Namara came to California to obtain a grant of land for the purpose of colonization ; that he came recommended by the Central Government of Mexico ; that as there was vacant land in the Department a grant of a number of leagues was made to him for that purpose, in accordance with said recommendation, but I don't know where the land is situated, or what land it was.

Q. 59. Did he not tell you that he had been at Monterey, and had come down south on the British ship "Juno," which had brought him to the country ?

A. I don't remember that he did.

Q. 60. Have you no recollection that he brought you the latest news from this upper part of the country, and of his telling you anything about what was going on up here at that time, or of his mentioning any prominent persons he had seen and conversed with ?

A. I do not remember.

Q. 61. Don't you remember his speaking to you about the New Alamaden Mine, how valuable it was, and how important that it should be in British hands, or in some manner under British protection ?

A. No, sir ; I don't even remember to have conversed with him more than half an hour, and my only recollection of the conversation is, that it related exclusively to the land which he was soliciting.

Q. 62. Did he bring you no letter or message from General Castro?

A. I don't recollect that he did.

Q. 63. Did he not remain some days in and about Los Angeles?

A. I did not learn whether he remained there some days or not.

Q. 64. Did you see him no more after you met him on the road—you going to Santa Barbara, and he going south?

A. I don't believe I saw him again ; it was on that occasion that I made the grant to him.

Q. 65. Where did you go from Santa Barbara?

A. To Los Angeles.

Q. 66. Do you know, or remember to have heard at the time, whether Father McNamara returned to Monterey by land?

A. I don't remember whether he returned to Monterey, or continued on south.

Q. 67. How long was it after that, that you saw Gen. Castro, and where?

A. It was probably but a very short time ; I think we met at San Luis Obispo.

Q. 68. General Castro was then coming down by land from his part of the country, was he not?

A. Yes, sir.

Q. 69. Did he mention to you having met Father McNamara on the road, or at any other time?

A. I don't remember whether anything was said about him or not.

Q. 70. Your conversation was of course about the Americans having possession of this part of the country, and which caused Gen. Castro to retire towards the south, was it not?

A. Yes, sir.

Q. 71. Did not General Castro mention to you that he had met with Father McNamara, who had agreed to assist him in keeping this quicksilver mine from falling into possession of the Americans?

[Question objected to as irrelevant.]

A. No, sir ; I don't remember that that was said.

Q. 72. What else do you remember to have known or heard about this quicksilver mine after the receipt of the letters from Manuel Castro and Andres Castillero, bearing date respectively

December 31st and December 15th, 1845, and after your own letter to the Minister of Relations, sent by J. M. Covarrubias?

A. I don't remember anything, except that I had heard it said that Mr. Castro had sold out, and that some land had been granted to Andres Castellero.

Q. 73. What land, by whom, and when?

A. I heard that the Supreme Government had granted him some land, I believe about the mine itself; I heard this when I returned from Sonora in 1848.

Q. 74. Who told you about it?

A. I don't remember, but I heard it generally spoken of.

Q. 75. How many grants of land in California do you know of having been made by the Central Government at the city of Mexico?

A. I don't remember of any other than the one I have mentioned, except the one made to Andres Castellero and Don Carlos Carrillo, of an island.

Q. 76. Are you correct in saying that that grant of the island to Castellero and Carrillo was made by the Central Government at Mexico; was not the grant made in the usual form by the Governor of California?

A. I don't remember how that was. I have an idea only that there was a grant of an island to them, either by the Central Government, or the Government of California.

Q. 77. If the Central Government of Mexico could grant to Andres Castellero an island and two leagues of land around about a mine, which, as the Prefect Manuel Castro reported to you, was on private property, do you know any reason to be gathered from the laws of colonization, and your experience in the administration of the same, why the Central Government should have referred Father McNamara to you, and left it to you to make him the grants of land for the colonies which the Central Government was so anxious for him to establish here for the protection of California?

[Question objected to as irrelevant.]

A. That was what happened—the Central Government did recommend Father McNamara to me, but I don't know what its motives were for doing so.

Q. 78. Was it not well understood in California when you were Governor, that under the laws the Central Government at the city of Mexico had no power to grant land in California, but that all grants must be made by the Governor?

[Question objected to, because it is not competent to prove what were the laws of Mexico by the general opinion which prevailed in California respecting them.]

A. When I was Governor, I understood that the General Government also might grant public lands in California.

Q. 79. Through what functionary and in what form were these grants to be made by the Central Government, and where was the evidence of them to be recorded?

[Question objected to, because it seeks a construction of law.]

A. I don't know what the practice was in Mexico, but I presume such grants would be through the Minister of Relations. It is natural to suppose that the evidence of it would be kept at the place where it was made.

Q. 80. That is, it is your idea that such grants should be made and recorded just as purports to have been done in this case of a grant of two leagues of land to Andres Castillero?

A. I don't know how his grant was made and recorded, but I suppose it was done as I have stated.

Q. 81. If the Central Government at the Capital could make and keep the records of grants of land in California, at the same time that the Governor of California was making grants of land here, and keeping the records of the same, what means would you have of knowing, or would anybody else have of knowing, that there were not just as many grants to California lands to be found in the archives at the city of Mexico, at this day, as there are to be found in our archives here in this State?

And what, under such a system as that, would prevent the same land from being granted twice—once by the Central Government, and once by the Governor of California—and everything concerning lands from being thus thrown into inextricable confusion?

[Question objected to as irrelevant.]

A. I don't think there would be any such confusion, because the parties interested, of course, would have to apply to the Departmental authorities to get possession of the land, and possession would be given unless it already belonged to some other person.

It is possible that there might be as many grants now in Mexico as there are here, but it seems to me that a party who would get a grant there, would do so for the purpose of coming here to live on his land, or make some use of it.

Q. 82. In such a case as the present is said to be, if a man obtained a concession from the Central Government of Mexico of two leagues of land, to be measured around a certain mine, and came to you as Governor of California, and asked you to give him possession of that land, but the Prefect reported to

you that the mine was situated on private property, of what land would you give possession; what would you do?

[Question objected to, because it states purely hypothetical facts, it being perfectly well known that the Berreyesa Ranch, upon which this mine was supposed at one time to be situated, is a grant of one league, within general limits containing about two leagues and a half, the sobrante being reserved to the nation.

And as for the other ranch, to wit, that of Justo Larios, upon which this mine is supposed by some persons to be situated, it could scarcely have been presumed, until recently, to have extended as far south as it has been made to go; therefore, the only question which could have been presented to the Governor, if he had been required by Castellero to give him the possession of the land which had been granted to him, would have involved the location of Berreyesa within his general limits.

Counsel for the United States finds the following words in the letter from Manuel Castro, Prefect, dated Monterey, December 31st, 1845, addressed to the Secretary of the Departmental Government, to wit:

“Don Andres Castellero has denounced and is now working the quicksilver mine which was found in the jurisdiction of the town of San José Guadalupe, on private property.”

And a like description in what is called the act of possession, and all other of the alleged title papers of the claimant, purporting to give the location of this mine.

Counsel for the claimant states, that he has not the least doubt that the counsel for the Government will agree with him, that when Castellero, in his denouncement of this mine, and the Alcade, in his act of possession, described it as situated on the rancho of José Reyes Berreysa, they were both mistaken.

Counsel for the claimant will introduce evidence to prove that Berreyesa deceived Castellero, by giving him what purported to be a copy of his grant, from which it appears that two leagues were granted to him. This copy will be proved to have been in Berreyesa's own handwriting, and that he died in June, 1846.

Therefore, the counsel for the claimant thinks that he has correctly stated the facts that would have been presented to the Governor in the case supposed.

Counsel for the United States:—On the question of the genuineness of this grant, it is not material to show where the mine

was in fact situated. It is sufficient that on the face of the papers, upon which this grant of land is based, the mine is represented to be, by the claimant himself, on private property, and must have been so taken by the Governor.

Counsel for the claimant supposed that the question was directed against the validity—not the genuineness—of the title papers, as he did not conceive it possible that there could be the least doubt now of the perfect genuineness of the claimant's title.

Counsel for the United States directs his question equally to the validity and the genuineness of the grant.]

A. If it were a grant of public land, I would put the party in possession; but if it were a grant of private land, I would refuse to do so.

Q. 83. If a man had brought you a paper, which commanded you to put him in possession of a tract of land around a mine, a tree, a well, or any other object, in the said order described to be situated on private property, and the said order bore a signature which purported to be that of the Minister of Relations of the Central Government of Mexico, would you not have believed that the order was forged, or the Minister insane?

[Question objected to on the ground that the facts supposed are purely hypothetical, for the reasons above stated.]

A. I don't know what I should consider in that case, nor how it would appear to me.

Examination closed.

PIO PICO.
[Rubric.]

Sworn to, and subscribed this 26th day of October, 1859.

W. H. CHEVERS,
U. S. Commissioner.

Filed Oct. 26th, 1859.

W. H. CHEVERS, Clerk.

EXHIBIT PIO PICO No. 1, W. H. C.

Gob°. & a.—Por la adjunta carta del Señor Dⁿ Andres Castellero que atentamente ácompañará V. E. originál, se impondrá del buen descubrimiento que de una mina de azogue se ha hecho en este Departam^{to}. En tal virtud aprovecho la buena oportunidad de remitir á V. E. con el S^{or}. Comisionado de este Gob°. Dⁿ José M^a Covarrubias, el azogue q. como muestra me mandó el S^{or}. Castellero, y la refiere en su carta que dirijo mencionados.

Con tal motivo suplicó á V. E. se sirva poner esto en el superior conocim^{to} del E. S. Presid^{te} manifestandole el q. produce dhã. mina, y se ponga y queda p^a q. S. E. se conblacion de la feliz descubrim^{to}. Repito á V. E. nuevam^{te} las atenciones de mi consideracion y respeto.

Dios &a. Ang^s. Feb^o 13, de 1846. E. S. Ministro de Relaciones exteriores.

[Four Rubrics.]

[Canceled by black lines drawn across transversely.]

OFFICE OF THE SURVEYOR GENERAL }
Of the United States, for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two inclusive, exhibit a true, full and correct copy of a document, as the same appears on file among said Archives.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

EXHIBIT PIO PICO No. 2, W. H. C.

Prefectura del 2º. Distrito.

Dⁿ Andres Castellero ha denunciado y actualm^{te}. trabaja una mina de azogue q^e. se encontró en la jurisdiccion del Pueblo de Contestada el Sⁿ José Guadalupe en una propiedad particular, y 22 de Enero esta Prefectura q^e. se interesa al fom^{to} de todos los de 1846, C. ramos de industria en el Departamen^{to}, felicita á V. S. y p^r. su conducto al Exmo. Sōr. Gobernador p^r. tan beneficio descubrim^{to}, encluyendo al mismo tiempo una inst^a. q^e. el espresado S^{or}. Castellero hace en solicitud de un terreno de dos sitios de ganado mayor q^e. se halla inmediato á la referido mina, á fin de q^e. en ex^a. si lo tiene á bien decrete como con venga p^a. q^e. esta Prefectura pueda practicar los informes necesarios.

Sírvase V. S. aceptar mi aprecio y distinguida consideracion. Dios y Libertad Monterey Dbre. 31 de 1845.

MAN^L. CASTRO.

S^r. Secr^{to}. del Gob^{no}. Departmental.

OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the one preceding, and hereunto annexed page, of written paper, numbered one inclusive, exhibits a true, full, and correct copy, of a portion of a Book entitled "Departmental State Papers, Benicia, Prefecturas and Juzgados, Vol. II," as the same appears on file among said Archives.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General, for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

EXHIBIT PIO PICO NO. 3, W. H. C.

Secretaria 4^a.—Con un verdadero placer dé cuenta al Exmo. S^{or}. Gobernador con la atenta notal de V. S. del 31 de Diciembre ultimo en que participa que Dⁿ. Andrés Castellero ha denunciado y trabaja una mina de azogue en la jurisdiccion de Sⁿ. José Guadalupe, y como este descubrimiento promete bienes considerables á este pais, tanto S. E. como yo, damos á V. S. las mas concual enhorabnena. Sirvase V. S. obsequier al decreto con consta en lo representacion del S^{or}. Castellero, que adjunta le remito, y accepter las seguridades.

[Canceled by black lines drawn transversely.]

OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the one preceding and hereunto annexed page of tracing paper, numbered one inclusive, exhibits a true, full and correct copy of a portion of a book entitled "State Papers. Vol XI. Missions, 1830, 1846," as the same appears on file among said Archives.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

EXHIBIT PIO PICO No. 4, W. H. C.

E. S. Governadór Dⁿ Pio Pico.MONTEREY, D^{re}. 15, 1845.

Estimado amigo que aprecio :—Tenga la grata satisfaccion de noticiar á V. si es que no ha recívido otra mia, por conducto de la prefectura, que a treinta leguas de aqui en jurisdiccion del pueblo de Sⁿ José Guadalupe he descubierto un mineral de azogue de la mejor calidad, habiendo dado una ã, de metal liquido ocho ã. de piedra.

El S^r. Dⁿ. Pablo Noriega, dado de esta presentara V. una solicitud mia que se apoya en una disposicion del Supremo Gobierno, pidiendo me mande V. dar posecion de la Ysla de Santa Cruz habiendo presedido la decisión de la de Santa Rosa por los S^{res}. Carillos cuyo impedimento impedir el q^e. la poblara, mas ahora tengo lla el ganado comprado p^a. que la y estimare á V. que con el mencionado S^r. remita el titulo y orden de posecion.

Conservese V. bueno, saludeme V. al S^r. Valle y Covarrubias, y mande á su at^{mo}. amigo q^e. b. l. m.

ANDRES CASTILLERO.

OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the one preceding, and hereunto annexed page, of written paper, numbered one inclusive, exhibit a true, full, and correct copy of a portion of a Book entitled "Departmental State Papers, Vol. VI. 1845," as the same appears on file among said Archives.

In testimony whereof, I have hereunto signed my name officially, and caused my Seal of Office to be [SEAL.] affixed, at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General, for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

TRANSLATION OF EXHIBIT PIO PICO No. 1.

Government, etc. :—By the annexed original letter of Sr. Don Andres Castellero, which I attentively inclose to your Excellency, you will inform yourself of the good discovery which has been made of a quicksilver mine in this department. With this view I avail myself of the good opportunity of remitting to your Excellency, by the Sovereign Commissioner of this Government, Don José Maria Covarrubias, the quicksilver sent me as a sample by Mr. Castellero, and referred to in said letter.

For such purpose I beg your Excellency will please impart this to the superior knowledge of the excellent Sr. President, showing him the quicksilver produced from said mine, so that his Excellency may inform himself and have the pleasure of such a fortunate discovery. I repeat to your Excellency again the courtesies of my consideration and respect.

Angeles, February 13, 1846.

God, etc.,

The Excellent Sr., Minister of Exterior Relations.

—

OFFICE OF THE SURVEYOR GENERAL }
Of the United States, for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two inclusive, exhibit a true, full and correct copy of a document, as the same appears on file among said Archives.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

TRANSLATION OF EXHIBIT PIO PICO No. 2.

Prefecture of the 2nd District:—Don Andres Castillero has denounced and is now working a quicksilver mine which was found in the jurisdiction of the town of San José Guadalupe, on private property; and this prefecture which interests itself in the encouragement of all branches of industry in the department, felicitates your Excellency, and through you the most excellent Señor Governor of the department, upon so beneficent a discovery; inclosing also a petition which the said Señor Castillero makes, soliciting a piece of land of two square leagues which is adjacent to the said mine, so that your Excellency, if you think fit, order what may be proper, so that this prefecture may be able to make the necessary reports.

Please accept my esteem and distinguished consideration.

God and Liberty,

MANUEL CASTRO.

Monterey, December 31, 1845.

For Secretary of Departmental Government.

—

OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the one preceding, and hereunto annexed page, of written paper, numbered one inclusive, exhibits a true, full, and correct copy, of a portion of a Book entitled "Departmental State Papers, Benicia, Prefecturas and Juzgados, Vol. II," as the same appears on file among said Archives.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General, for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

TRANSLATION OF EXHIBIT PIO PICO No. 3.

With real pleasure I gave the Most Excellent Señor Governor an account of the attentive note of Your Excellency of the 31st December ult., in which you impart that Don Andres Castellero has denounced, and is working a quicksilver mine in the jurisdiction of San José Guadalupe; and as this discovery promises considerable benefit to this country, His Excellency, as well as myself, give your Excellency the most cordial congratulation.

Your Excellency will please obey the decree shown by the representations of Mr. Castellero, which I herewith send you, and accept the assurance.

OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the one preceding and hereunto annexed page of tracing paper, numbered one inclusive, exhibits a true, full and correct copy of a portion of a book entitled "State Papers. Vol. XI. Missions, 1830, 1846," as the same appears on file among said Archives.

In testimony whereof, I have hereunto signed my
[SEAL.] name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

TRANSLATION OF EXHIBIT PIO PICO No. 4.

Excellent Señor Governor, Don Pio Pico.

MONTEREY, December 15, 1845.

Esteemed Friend whom I value:—I have the grateful satisfaction of informing you, if you have not received my other letter through the Prefecture, that at thirty leagues from here, in the jurisdiction of the town of San José Guadalupe, I have discovered a mine of quicksilver of the best quality, eight arrobas of ore having yielded one arroba of liquid metal.

Señor Don Pablo Noriega, the bearer, will present to you a petition from me, which is based upon an order (disposicion) of the Supreme Government, asking that you order that possession be given me of the island of Santa Cruz, the Messrs. Carrillo having already chosen that of Santa Rosa, which impediment prevented my occupying it, but now I have already purchased the cattle to occupy it, and I will be obliged by your sending me by said gentleman, the title and order of possession.

May you continue in good health. Salute Messrs. Valle and Covarrubias for me, and order your affectionate friend who kisses your hand.

ANDRES CASTILLERO.

OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the one preceeding, and hereunto annexed page, of written paper, numbered one inclusive, exhibit a true, full and correct copy of a portion of a Book entitled " Departmental State Papers, Vol. VI., 1845, as the same appears on file among said Archives.

In testimony whereof, I have hereunto signed my name officially, and caused my Seal of Office to be
[SEAL.] affixed, at the City of San Francisco, this 30th day of November, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, Keeper of Archives.

DEPOSITION OF FRANCISCO VILLALON.

UNITED STATES DISTRICT COURT, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, Cal., October 11, 1859.

On this day, before me, W. H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c., &c., came Francisco Villalon, a witness produced on behalf of the claimant, Andres Castillero, in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: Mr. A. C. Peachy, of counsel for claimant, and Mr. Edmund Randolph, for the United States.

Questions by counsel for claimant.

QUESTION 1. What is your name, age, place of residence and occupation?

ANSWER. My name is Francisco Villalon; I am 44 years of age; I reside at the city of Mexico, and I am a (escribano publico) notary public by occupation.

Q. 2. How long have you been a notary public?

A. Since 1845.

Q. 3. Now many notaries public are there in the city of Mexico?

[Question objected to as irrelevant.]

A. From fifty to fifty-five.

Q. 4. What is the National College of Notaries in Mexico? Refer me to the law which created it. Describe its organization.

[Question objected to as irrelevant.]

A. The college was established by a charter (cedula) from the Crown of Spain, in 1792, in the same manner that the College of Notaries in Madrid was established. It is composed of all the notaries in the capital, and the presiding officer of

the corporation is called a rector, who is elected by the members themselves. The other officers are four deputies (deputados), a treasurer, and a secretary. They examine applicants for appointments as notaries (escribanos) and make rules for the internal economy of the corporation.

Q. 5. Has the college of notaries a seal?

[Question objected to as irrelevant.]

A. It has.

Q. 6. Who is keeper of it?

[Question objected to as irrelevant.]

A. It is kept by the treasurer of the college.

Q. 7. For what purpose is the seal used?

[Question objected to as irrelevant.]

A. To authenticate documents.

Q. 8. What kind of documents?

[Question objected to as irrelevant.]

A. All documents which are required to have faith, beyond the limits of the capital.

Q. 9. What is a testimonio of a public act?

[Question objected to as irrelevant, because the question asks for a matter of law.]

A. It is a copy of the original, corrected in presence of witnesses by the notary, and signed with his name and signo by him.

Q. 10. To whom is it delivered?

[Question objected to as irrelevant.]

A. To the person interested.

Q. 11. If a party should desire to have a testimonio certified and authenticated, so that faith and credit should be given it beyond the capital, state in what manner you would proceed to have it so certified and authenticated.

[Question objected to as irrelevant.]

A. He would have to have a testimonio made by the notary, and examined by witnesses in the presence of a notary, and by him signed; and then apply to the treasurer of the college to have the seal of the college affixed to it; and then have it approved or "legalized" by three other notaries.

Q. 12. What do you mean by "approved or 'legalized' by three other notaries," and how is it done?

[Question objected to as irrelevant.]

A. I mean the certificate which we call "Diligencia," which is written at the end of the testimonio, and which states that the person by whom the testimonio was given is the person he represents himself to be; that his signature is genuine, and that he holds the office which he is represented by the testimonio to hold.

Q. 13. Is this certificate signed?

[Question objected to as irrelevant.]

A. Of course it is signed by the three Notaries who make it.

Q. 14. I now show you a document purporting to be a testimonio, of a certain contract, made in the City of Mexico on the 17th December, 1846, between Andres Castellero, of the one part, and Francisco Martinez Negrete, as the agent of Alexander Forbes, of the other. This contract purports to have been made by a public act, before Nazario Fuentes, Notary Public; the testimonio of it purports to have been certified by Romulo de Zevallos, Francisco Villalon and Andres Vellio Mejia, on the 19th day of December, 1846, and to bear the seal of the National College of Notaries of Mexico.

Say whether that is the genuine seal of the said College of Notaries; whether you are acquainted with the signatures of the above named persons; whether they are genuine; and whether the said certificate was authenticated with the seal, and signed on the day on which it purports to bear date.

[Question objected to, because the certificate does not attest the correctness of the testimonio, or copy, but merely the fact that Nazario Fuentes was a notary, and the signature, and seal, etc.; also, because the question is irrelevant, inasmuch as a Mexican Notarial certificate, if duly proved, is inadmissible as evidence in the Courts of the United States, being only the unsworn ex-parte statements of persons residing in a foreign country.]

Document shown to witness is marked "Exhibit Negrete No. 19, W. H. C."]

A. I know the signatures of Nazario Fuentes, Romulo de Zevallos, Andres Vellio Mejia; the genuine signatures of the two latter appear to this certificate, together with my own. I recognize the seal on this testimonio, as the seal of the National College of Notaries of Mexico. The genuine signature of Nazario Fuentes is signed to the testimonio; the diligencia or certificate signed by myself and the other two notaries, was so signed, and the said seal was so affixed, on the day of the date of said certificate, according to my understanding. It could not have been otherwise. The first notary who signs the dili-

gencia has the seal affixed by the Treasurer of the College of Notaries before the other two sign—the last two do not sign until the seal is on.

Q. 15. Can you say from the order in which the signatures are signed, which of the notaries signed first?

A. From the order in which they appear, Romulo Zevallos must have signed first.

Q. 16. I now show you another testimonio of the same public act, given on the 4th of February, 1847, by Nazario Fuentes; this testimonio or copy bears the certificate of Mariano Cabeza de Vaca, Miguel Aristigui and Francisco Villalon, and is authenticated with the seal of the National College of Notaries of Mexico.

Answer question 14th with reference to this testimonio.

[Question objected to on the same grounds as to question 14.

The document shown to witness is marked "Exhibit Negrete, No. 20, W. H. C."]

A. I answer this question in the like manner, with this difference, that this certificate or diligencia is signed by Mariano Cabeza de Vaca, Miguel Aristigui and myself. I know their signatures—their genuine signatures appear on this certificate; the seal affixed to this testimonio is also that of the National College of Notaries of Mexico. This certificate was made, and seal affixed on the day of the date of the certificate, as I believe. It could not have been otherwise, because the seal is always put on, and the certificate is dated on the day of its execution.

Q. 17. What offices did the said Fuentes, Zevallos, Mejia, Cabeza de Vaca, Aristigui and yourself hold at the respective dates of your signatures and certificates?

A. We were all Notaries Public.

Q. 18. Who was Rector of the National College of Notaries, and who Treasurer, in 1846?

A. Don Roman de la Cueva was Rector, and Cabeza de Vaca was Treasurer.

Q. 19. When a notary dies, what becomes of his books or protocols?

A. If he kept an office during his lifetime they are kept in the same office by his successor. This is also the case when the deceased kept no office, but was attached to the office of another notary. There is another class of notaries called Escribanos de Diligencias, who keep no office, and when one of these dies, his protocols are taken by the Rector of the College and deposited in the office known as the office of mortgages (oficio de hipotecas), which is in charge of the Ayuntamiento or municipal corporation of the Capital.

Q. 20. Is Nazario Fuentes living; if not, when did he die and who was his successor?

A. He died in 1857. Fuentes when he died was attached to the office of Juan Navarro, and since his death Mr. Navarro has had the custody of his protocols.

Q. 21. Examine the document now shown you, marked "Exhibit Negrete No. 17, W. H. C.," purporting to be a certificate given by the said Navarro on the 10th February 1859, in which are set forth copies of certain documents existing in the book of protocols of the late Nazario Fuentes, now in the possession of the said Navarro.

Say whether you have compared the said copies in this certificate with their originals, when, where and in what manner was the comparison made, and are these accurate copies of their originals?

A. I compared these copies with their originals in April last, in the office of the notary Juan Navarro. The comparison was made by Mr. Navarro reading to me these copies while I read the originals. I had no time to make any other or further comparison. These are correct copies of the originals.

Q. 22. Examine the signature of Juan Navarro to the certificate referred to in the preceding question, and also the signatures of Mariano Alegria and J. Miguel Arroyo to their respective certificates affixed to the foregoing. Say if you know their signatures, and are they genuine; and say what offices the said Alegria and Arroyo held at the date of their respective certificates?

A. I know all those signatures and they are genuine.

Mariano Alegria was Oficial Mayor of the Ministry of Justice at the date of his certificate, at least I knew him as such at the date of this certificate; J. Miguel Arroyo was Oficial Mayor of the Ministry of Relations at the date of his certificate.

Q. 23. Examine now the certificate "Exhibit Negrete No. 18, W. H. C.," given by Juan Navarro on the 16th February, 1859, in which is set forth a copy of a certain petition made by Andres Castellero and Francisco Martinez Negrete, together with the action taken on the same.

Say whether you have compared this copy with the original, when, where and in what manner was the comparison made, and is this a faithful and accurate copy of the original?

A. I compared it with the original on the 24th of April last in the office of the said Navarro, by having him read to me the original while I read this copy. This is a faithful and accurate copy.

Q. 24. What is the meaning of the figures which I see in all these notarial documents above the signatures and rubrics of the notaries?

A. It is what we call "signo," and is a very ancient usage. It is used in lieu of a seal; one is given to each notary when he receives his commission from the Government; the commission contains a copy of the "signo" which we are required to use during our term of office.

Q. 25. Are you acquainted with the "signos" of Juan Navarro, Romulo de Zevallos, Francisco Villalon, Andres Vellio Mejia, Mariano Cabeza de Vaca, Miguel Aristigui and Nazario Fuentes, and are their "signos" wherever they appear on the documents and certificates concerning which you have been examined to-day, their genuine signos.

A. I know the signos of all those persons; the genuine signo of each of them appears above their signatures (firmas).

Examination adjourned until to-morrow at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, Cal., October 12, 1859.

Direct examination of Francisco Villalon resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 26. What compensation have you received, or are you to receive, for coming here to testify in this case?

A. I have received seven thousand dollars, part paid to my family.

Q. 27. How much is your business worth per annum in Mexico?

A. It is worth on an average four thousand dollars per annum.

Q. 28. When did you leave Mexico?

A. On the 25th April last.

Q. 29. With whom did you travel from Mexico to this city?

A. Messrs. Barron, Billings, Castillo Lanzas, Miranda, Balcarcel, Bassoco, Yrisarri, Negrete, Castillo, Castillo y Cos (son of Mr. Castillo Lanzas) and Velasco came with me.

[Mr. Randolph objects to the foregoing questions and answers, from question 17 to 25 inclusive; objected to as irrelevant, and because the Mexican national certificates referred to are inadmissible in evidence in the courts of the United States, being only the unsworn *ex parte* statements of persons residing in a foreign country.

Direct examination closed.

CROSS EXAMINATION.

Questions by Mr. Randolph.

Q. 30. How many of the fifty odd Mexican notaries keep no office?

A. There are about twelve who keep no offices of their own, being employed in the tribunals and public offices.

Q. 31. How many were there, who kept no offices in 1846?

A. About the same, there was but a slight difference in number.

Q. 32. Do you swear now that Nazario Fuentes was a notary public in 1846?

A. Yes, sir; I do.

Q. 33. What was the reason that he kept no office?

A. Because the offices of notaries are property, which are either purchased or inherited. All notaries do not have offices.

Q. 34. What do you mean is property which is either purchased or inherited,—the employment or the place where the business is conducted?

A. The right to keep the office and archives belonging to it, together with the privileges appertaining to it.

Q. 35. Can a man in Mexico buy a notary's office or employment; does a son inherit from his father the right to be a notary?

A. A person cannot buy the employment of a notary, but he can buy the office (oficio).

A son cannot inherit the right to be a notary, but he can inherit the oficio; he may afterwards become a notary if he possesses the necessary qualifications.

Q. 36. You are, you say, a notary; can you sell your right to do notarial business; can you sell a right to keep your notarial books and papers; should you die would your heir inherit the right to do notarial business; would he inherit the right to keep your notarial books and papers?

A. I cannot sell the right to do notarial business; I can sell the right which I have to the custody of the books and papers in my office, according to the provisions of the law upon the subject, I being the owner (propietario) thereof; if I should die my heir would not inherit the right to do business as a notary; he would inherit the right to the property of the office, but he would be compelled to place it in charge of a notary (if he were not one himself) from whom he would receive a portion of the profits of the business.

Q. 37. Upon the death of a notary, in whose charge the heir had placed the books, papers, etc., what would his heir inherit?

A. Nothing ; he not being the owner of anything, his heirs would inherit nothing.

Q. 38. By this time, therefore, I presume a great many, if not the greater part, of the notarial offices, books and papers in Mexico are the private property of persons who are not notaries, and that a great many, if not the greater part, of the notaries in Mexico have no property in the books, papers, etc., in the offices, but are doing business on shares (or perhaps wages) for the owners of the same?

A. Many of the notarial offices (or what we call *oficios*) now belong to persons who are not notaries (some of them women), but they are obliged, as I said before, to place the property of the office (*oficio*) in charge of a notary, as required by law ; there are certain proceedings to be followed in these changes in which the government by its officers has to concur.

Q. 39. Nazario Fuentes was one of those who did not own any office?

A. He was ; he had not the property in any office.

Q. 40. Well, who had the property ?

A. He was attached to different offices while I knew him as a notary.

Q. 41. Then there are three kinds, it may be said, of Notaries ; first, those who own their offices ; second, those who work in offices owned by other persons, frequently not notaries ; third, those who are sometimes attached to one and sometimes to another of the first two classes of notaries' offices ?

A. In fact, there are three classes ; one, owners (*propietarios*), another, *tenientes*—notaries in charge of offices they do not own ; and another, notaries who do not belong to either of those classes, but are otherwise employed in the tribunals, and in the offices of the first class, and in those offices they work on the responsibility of the owner or *teniente* who has the custody of and is responsible for their records—protocols ; but all notaries have the same powers by law.

Q. 42. Of these itinerant notaries, you will find some acts in one place and some in another, will you not ?

A. No, sir ; because his protocols always go with him to the offices to which he is attached ; other documents drawn by him are otherwise disposed of.

He has the custody of the protocols during his lifetime upon the responsibility of the owner of the office to which he is attached. When he dies they remain forever in such office, and if he is not in any office they are taken to the *oficio de Hipotecas*, which is in charge of the *Ayuntamiento*. The other papers in his possession relating to lawsuits remain, and are continued in the office to which he was attached, or are

transferred to the office of some other notary, at the option of the parties.

Q. 43. Why do not the protocols remain in charge of the principal notary, under whose responsibility they were executed?

A. Because the Agregado has the right to keep them under the responsibility and care of the notary in whose office he is working.

Q. 44. You mean that when he goes from one notary's office to another, and carries his protocols with him, he keeps them under the responsibility of the notary with whom he is tarrying, and so on through all the changes he may make from one to another of the notaries' offices in Mexico?

A. Yes, sir. It is not usual to change often.

Q. 45. After a protocol has been executed before one notary, and has made one or more removals, what guaranty will the responsibility of the last notary furnish, that there has been no substitution or alteration of the protocol?

Why is it not very much the same case as if these itinerant notaries carried their protocols about in a bag, or on their person?

A. Each propietario, or owner, is responsible for the protocols of the notary attached to his office while he remains in that capacity, and as the protocols are often examined, any alteration or substitution would easily be discovered.

He could not carry a large pile of protocols in a bag or about his person.

Q. 46. If a notary should have a protocol executed before him, but under the responsibility of a principal notary, where he then was, and should remove with it to nine other offices in succession, in each of which it was kept under the responsibility of the principals of these offices respectively, and a question should then be raised as to the genuineness of the protocol, would it not be necessary to have at least ten certificates—one from each office in which it had been kept, to say nothing of the intervals in which it was on its passage from one office to another?

A. I think it would not be necessary to have ten certificates. I think a certificate from the notary who drew up the protocol would be sufficient. Moreover, it is very improbable that so many changes would take place.

Q. 47. If that single certificate would suffice, what use is there in all you have said about the responsibility of the principal notary in the office where it was made, and the various other offices where it might have been kept?

A. I cannot say what their responsibility would be worth, for that is a question of law.

Q. 48. Was Nazario Fuentes ever one of those notaries who seemed not to belong to either of the three classes mentioned, but to have been the notaries of the tribunals, etc., etc.?

[Counsel for claimant objects to question, because the witness has mentioned only three kinds of notaries, and has said in substance that those three kinds embraced all notaries.]

A. Nazario Fuentes must have belonged to one of those classes, even if he was employed in the tribunals and government offices. He sometimes did notarial business for the Alcaldes Constitucionales, when they existed, and the Judges of First Instance, but we do not consider that an employment by the government.

Q. 49. At what time in the year 1845 did you become a notary?

A. I was examined in April, and received my commission in the same month.

Q. 50. Are you a propietario, teniente, or agregado?

A. I am a propietario.

Q. 51. Have you become lately propietario, or have you always been so?

A. The owner, a woman, (propietaria) renounced in my favor when I got my commission, so that legally I have been propietario since then, although in fact I was not so until I had paid her for it.

Q. 52. Please mention the name of this person?

A. Doña Josefa Barreda, widow of my predecessor, Don Ramon Villalobas.

Q. 53. To how many different offices was Nazario Fuentes attached; the names of the principal notaries in those offices, and the time when Fuentes was attached to each of them respectively?

A. I don't know where he was before he became attached to Mr. Navarro's office.

Q. 54. Why then in answer to question 40, did you answer, "He was attached to different offices while I knew him as notary"?

A. I knew he was attached to other offices, but I did not know to what offices.

I knew him to be attached to Mr. Navarro's office, because it adjoined mine.

In order to avoid confusion, it is necessary to explain that we notaries have two kinds of duty to perform—that of Secretaries to the tribunals, etc., and that of notaries. When I spoke of Fuentes being attached to different offices, I meant to include his connection with the tribunals, etc.

Q. 55. You have very clearly explained at length this morning what you mean by being attached to an office, and also distinctly said that Nazario Fuentes, during the time you knew him, was attached to different offices.

Can you not now mention any one office, except that of Navarro, to which he was attached; and if you mean to include secretaryships, please say to what tribunals you knew Nazario Fuentes to be secretary, and when?

A. I remember only his being attached to Navarro's office, because that adjoined mine. I know that he was engaged in the tribunals of the Alcaldes Constitucionales, though I cannot say at what time. I remember having seen him, and knowing that he was employed in other offices, but I can't state when, nor in what offices.

Q. 56. How is it that you know he was employed in other offices than that of Navarro, where he died, 1857, and yet cannot mention any of them, nor the time?

A. I remember that he told me about the time he was going with Mr. Navarro, that he was disgusted with the persons with whom he had formerly been, and wanted to come into my office, but I declined because my place was too small.

Q. 57. When was this?

A. I don't remember the year, but it was after the extinction of the Alcaldes Constitucionales, for I remember he told me that employment was scarce with him since those courts had been abolished.

Q. 58. Who suppressed the Alcaldes Constitucionales, and about what time?

A. I am unable to remember the date, but it was about the year 1848 or 1849, before the administration of General Santa Anna, next before that of General Salas.

Q. 59. You remember of course when the Americans were in occupation of the City of Mexico, the treaty of peace, and their withdrawal, etc. About how long after these events was it?

A. I cannot remember.

Q. 60. Was it about one year, two years, three years, or more?

A. I cannot remember. The conversation between us was very short.

Q. 61. Well, Fuentes came to live next door to you, in the office of Navarro. About how long did he live there before he died; one year, two years, three years, or more?

A. It was only about five years ago that all the notaries were required to keep their offices in the same streets, and since then my office and Mr. Navarro's have been adjacent to each

other. I judge from what Fuentes told me, that he was with Navarro before that time; but I had seen him at Navarro's office only from the time of our removal to our present locality, until he died.

Q. 62. Did he not go in with Navarro immediately after he proposed to come into your office?

A. I don't know whether he entered immediately, or delayed some time, or not.

Q. 63. In your answer to question 56, why then did you say, "I remember that he told me, about the time that he was going with Mr. Navarro, that he was disgusted with the persons with whom he had formerly been, and wanted to come into my office," etc.?

Why do you say that you judge he had been with Navarro from what he told you, when you knew the fact so well from what had passed between yourselves?

A. It was long after he had that conversation with me, that I heard that he had entered Navarro's office.

Q. 64. With whom was it he said he had become disgusted?

A. I don't remember who he told me he was disgusted with. It was a short conversation we had.

Q. 65. When did you first become acquainted with Fuentes?

A. I don't remember when I became acquainted with him, but I knew him several years before I became a notary. In the year 1843 I was with him for a month or two, practicing.

Q. 66. Where was he then, in whose office?

A. I don't know in whose office he was. He was acting as notary to the Alcaldes Constitucionales. I practiced under him there to learn the mode of procedure in the cases that were tried there.

Q. 67. In what office did Nazario Fuentes transact business on the 17th December, 1846, and on the 4th February, 1847, when he signed those certificates to which you in turn certified on the 19th December, 1846, and the 6th February, 1847?

A. I don't know where he drew up the protocols at that time.

Q. 68. I observe that in these certificates you declare that Nazario Fuentes was, like yourselves, notary public,—and in one of them you call him "our companion"—also that you know his signature, and his seal (signo), and that full faith and credit is due to his acts.

You say now that he had no office of his own, but was doing business with somebody else in Mexico; you cannot say with whom or where?

A. I saw him with the Alcaldes Constitucionales, but I don't know what notarial offices he was attached to as Agregado, but

his signature and signo warranted me in signing those certificates.

Q. 69. Where were you when you signed those certificates?

A. I don't know where I was,—whether at the Alcalde's tribunal where he was, the office of my companions who signed with me, or in my own office.

Q. 70. Do you remember anything at all about it; if so, what?

A. It would be impossible for me to recollect about the making of that certificate, because I sign two or three similar ones every day.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner

SAN FRANCISCO, CAL., October 13, 1859.

Cross Examination of Francisco Villalon resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant; and Mr. Randolph, for the United States.

Q. 71. In "Exhibit Negrete No. 18, W. H. C.," Juan Navarro begins by certifying that, by reason of the death of Nazario Fuentes, the books of protocols of public instruments which were executed before that notary remained in his possession.

From what you have testified it would appear that Navarro ought to know very little about these protocols; for example, these acts executed in 1846 were not executed in the office or under the responsibility of Navarro, but had been carried about by Fuentes from one to another of all the notarial offices to which he had been attached from 1846 up to the time that he entered the office of Navarro?

A. I don't know what knowledge Navarro had about those protocols.

Q. 72. Is it not customary in Mexico, as one would suppose it should be, for persons of wealth and intelligence to have their acts of sale and other like instruments affecting valuable property, executed before some notary who was a proprietor, or a *locum tenens* at least, and who had a fixed and permanent place of business in which to keep his records, and not before one of that itinerant class of notaries to which Fuentes belonged?

A. It should be so, and persons who are well informed on the subject do so; but persons not well informed apply indifferently to any notary, the acts of all notaries having the same validity.

Q. 73. I presume that you have never been informed, and can give no good reason why a man in the position of Andres Castellero, and a wealthy and intelligent man like Francisco Martinez Negrete, aided by a competent lawyer like Romero, should have had these acts concerning this great quicksilver mine executed before a notary who might be continually changing about, and carrying his records about with him from one to another of the various notarial offices in Mexico, instead of having them executed before some one of the notaries who were permanently established, and always kept their papers in the same place?

A. I know nothing whatever about that, but my opinion with regard to it is, that Messrs. Negrete and Romero applied to Mr. Fuentes, instead of going to some Notary Propietario, because I suppose they were all three from Guadalajara, although I had heard that Mr. Romero had been Governor of the State of San Luis Potosì.

Q. 74. You don't know whether Fuentes and Romero were from Guadalajara, or where they were from?

A. No, sir.

Q. 75. You said you were in the habit of signing any day two or three certificates like these which you signed on the 19th December, 1846, and the 6th February, 1847, to be found respectively in "Exhibits Negrete Nos. 19 and 20, W. H. C."

As these certificates merely declare the official character of the notary for whom you signed it, you notaries give them to one another as a matter of course, do you not?

A. When we know the person and the signature we make these certificates or legalizations, not with respect to notaries alone, but for other persons, such as doctors, curates etc., and we are required to do so by law.

Q. 76. Every time that you want to use one of these certificates to your notarial office, do you have to go out and find some other notaries to sign them for you, or don't you keep them in your office?

A. We have to have one made whenever it is required; we do not keep them in blank.

Q. 77. What is the reason of that particularity, inasmuch as they contain nothing in the world except that A or B is a notary, and that the signature is his?

Have you not confidence enough in one another to trust each other with one of these certificates in blank, for him to attach to any instrument he may execute?

A. That is never done; we would not only not certify to a signature in blank, but we do not all sign until after the seal of the College is affixed.

Q. 78. The seal of the College is a little square bit of paper stuck on the document :

Don't you keep these in your office, just as the clerk keeps or can stamp the seal of this Court?

Do you have to go to the National College to get one of those bits of paper every time you want one?

A. We do not keep them in our offices ; we have to go to the College every time we want one. The round part is what we call a seal.

Q. 79. These square bits of paper with the round impression of the seal on the inside, are kept in the National College already printed for use, are they not?

A. Yes, sir. I will explain about this :

There are a number of these square bits of paper, which I recognize as the seal of the College of Notaries, made every year in presence of the Rector, First Deputy and the Treasurer, and they are then deposited in a safe which has three different locks and keys to it. One of these keys is kept by each of these functionaries, so that the three have to be present when any seals are taken out. A limited number are delivered to the treasurer to be used by him, and when used he is supplied with more. He keeps a record of all the seals used and the notaries who applied for them, and at the end of the year the account of seals delivered to him and of seals disposed of by him are compared, to ascertain whether the number remaining on hand is correct.

This system was adopted to prevent abuse, to ascertain how many seals were used, and what notaries had applied for them.

The treasurer collects a tax of ten reales for each seal issued, for the funds of the College.

Q. 80. Does the treasurer never sell more than one of these stamps at a time, and does he or the Notary paste it on to the document?

A. The treasurer himself affixes the seals to the documents, and uses as many as are required for the document presented.

Q. 81. In what manner does the treasurer put the seal on ; with a stamp as we use in this country?

A. He merely pastes it on, as this is.

Q. 82. Is it not a very great inconvenience to the fifty-five notaries in Mexico to have to go to the treasurer's office every time they want a seal ; in a smaller way, something like going to a post-office to get a stamp every time you want to mail a letter?

Are you sure that he never sells a number of these stamps at the same time—particularly to notaries of respectability—that they may paste them on in their own offices when they have occasion to use them?

[Question objected to, upon the ground that it tends to mislead the witness, by comparing the seal of the College of Notaries, which is used to give faith and credit all over the Republic to the documents upon which it is placed, with a post-office stamp.]

A. I am sure that no seals are sold except what are necessary to be used there at the treasurer's office. The treasurer himself puts them on ; at least this is what I have always seen, and what I have done myself.

It is troublesome, but it is a duty which we have to comply with.

Q. 83. You then do swear positively, that it is the regulation and practice of that treasurer's office never to sell any stamps to any notary to be carried with him to his notarial office, and there to be used by him at his convenience ?

A. I can swear to what I have seen done by others, and what I have done myself.

Q. 84. That is to say, you cannot swear that Nazario Fuentes, and other notaries, did not purchase from the treasurer of the National College of Notaries a stock of these little stamps, and keep them in their offices to paste upon their documents ?

[Question objected to, because it asks the witness to establish a negative, and because it is irrelevant.]

A. I can swear that since I belonged to the college, no seal has ever been missed (because I have seen the accounts). I have no knowledge of seals having been disposed of otherwise than I have stated.

Q. 85. What is the reason that every year a certain number of these stamps are printed, as you have said ?

Why don't they print a great many of them, and lay up a stock for several years, as one might do of writing paper ?

A. Because the officers change every year.

Q. 86. If a portion of the stamps, for any given year, remain unsold at the end of a year, what is done with them ?

A. They are delivered to the new treasurer, who is charged with the number of them.

Q. 87. Is there any mode of distinguishing the stamps of one year from those of another ; if so, what is it ?

A. There is no difference in the seal, but some two or three years ago a method was introduced of having some pieces of paper around the seal, to be turned down upon it for its preservation ; the seal itself has been the same ever since Mexico achieved its independence.

Q. 88. Is there no date to distinguish stamps of one year from those of another ?

A. I don't remember having seen anything but "Colegio Nacional de Escribanos de Mexico" upon the seal, but sometimes the treasurer writes the date outside of the seal, but this is not necessary, because the date of the legalization by the notaries is the date on which the seal is put on. Sometimes the treasurer writes the date on the top, on the corner, or wherever he pleases.

Q. 89. The seal has been the same, and you have been using it ever since you were made a notary, in 1845; is it not so?

A. Yes, sir; the seal has been the same, and I have been in the habit of seeing it whenever I have had occasion to apply for it, for documents to go out of the city.

Q. 90. What office, if any, do you hold in the College of Notaries?

A. I have none at present; I was rector last year, and have been deputy several times.

Q. 91. How is it possible, then, that you could have fallen into the mistake of saying that the seals of each year were not dated of that year?

Look at the seals attached to these "Exhibits Negrete Nos. 19 and 20, W. H. C.," and say whether you do not find within the circle, on each impression, between the words "Colegio" on the left hand, and "Mexico" on the right, the words "año de 1846" on the one, and the words "año de 1847" on the other, and all printed, with the exception of the figures "46" and "47," which seem to have been filled in with a pen?

A. The seal is what is within the smaller circle, and the words "Colegio Nacional de Escribanos de Mexico." This is what constitutes the seal. The date is no part of the seal, as I understand it. When the design for the seal is taken to the printer, the treasurers sometimes insert the date, and sometimes do not.

Q. 92. The words and figures printed and written, to which I have called your attention, are on the face of this impression within the circle with the other words, and yet you say they constitute no part of the seal:

Is it possible that the person who ordered these impressions to be stamped would take the liberty of inserting anything which was not strictly a part of the seal, as prescribed by the law?

A. I once saw the original stamp with which these impressions were made, and there was a blank in it, where the date appears in this impression. I suppose that that portion of the date which is printed in the impression was at some time in the original seal; the portion which is written being left to be filled up. Some of the seals have the date, as shown by this one, and others have not.

Q. 93. When did you see that stamp?

A. I don't remember when.

Q. 94. About what time?

A. I cannot state precisely, but it was four or six years ago, on some of the many occasions on which I was attending to the business of the College, and I observed that there was a blank where the date appears in this impression.

Q. 95. The way then that you explain this matter is, that in your time there has been two stamps; one in use in 1846 and 1847, on which the date was engraved as in these impressions, and the other introduced within perhaps some six years, on which there is no date engraved; or in other words, that you have known two seals in the National College of Notaries, different in this particular.

A. Strictly speaking, I consider that the date is no part of the seal, nor is it required by the charter that the seal should have a date.

I don't consider that the College has had two different seals, or two different stamps, because I consider the date no part of the stamp.

Q. 96. The stamp of course is a piece of metal: if on that stamp in the year 1846, there were engraved these words and figures," "Año de 18" which appear on this impression before me, how have they since been removed from the stamp, so that those words do not any more appear upon the impressions as you say?

Do you not see that there must necessarily have been two stamps, unless some one has been at the trouble of effacing those words and figures "Año de 18?"

A. I know only of one stamp. I did not see the stamp in 1846 or 1847, and I had no business in the College then.

I repeat that I consider that the seal is composed exclusively of what appears in the smaller circle, together with the words "Colegio Nacional de Escribanos de Mexico."

Q. 97. What difference does it make in my question whether you saw the stamp in 1846 or 1847 or not, or whether you had anything to do with the College?

Here is an impression with your certificate declaring that you know it. On it appear engraved, printed, or stamped, the words and figures "Año de 18;" now you say that those words do not appear in the impressions of the seal made at the present time, and that you have seen the stamp within four or six years, and they are not upon that:

Is it not a demonstration then that there have been, since 1846, two stamps, or at least that the words "Año de 18" have been in some manner, by some one, and for some cause,

obliterated and removed from the face of the stamp used in 1846?

A. I see that those words and figures are in a different style of lettering from the other words on the seal: they appear to be more modern, and may have been made by something independent of the stamp.

I have seen only one stamp, and that had a blank where the date appears in this impression.

I don't remember whether the seal that is used now has a date or not. I saw the stamp to which I have alluded only once.

Q. 98. You have been signing two or three similar certificates every day for some twelve or thirteen years, as you say in your answer to question 70:

In each one of these you have declared that you know the impression of the seal of the College of Notaries:

Do you remember to have seen these words "Año de 18" printed, stamped, or engraved, upon any impressions of that seal, except these two now before you?

A. I have a vague recollection of having seen other seals with those words.

Q. 99. If you have seen other impressions with those words, and again have seen other impressions without those words, it is absolutely certain, either first that there have been two stamps, one with, and one without the words, or, second that there has been but one stamp, and after some impressions had been made with words, that then they have been removed from the stamp, or, third that those words were never on the stamp at all, and whenever they appear in an impression, have there been inserted by some distinct operation, and did not come from the stamp at all.

By which of these modes were the words "Año de 18" put upon the two impressions of the seal of the National College of Notaries in Mexico, to one of which you certified on the 19th December, 1846, and to the other on the 6th February, 1847, and both of which you have now before you?

A. In the years 1846 and 1847, Don Mariano Cabeza de Vaca was Treasurer, and I see by comparing the handwriting of his signature with the figures "47" in the date of the last seal, that these figures are in his handwriting, and written at the same time that his signature was written to the last of these certificates—from which I infer that in 1846 and 1847, the stamp bore the words and figures "Año de 18."

Q. 100. And as the impressions subsequently have not contained those words, it follows that the stamp which made them is not the same, does it not?

A. I believe so.

Q. 101. At last, then, you admit that there have been two stamps?

A. I can't admit that, because I have not known two.

Q. 102. Now, I'll ask you why, in answer to question 91, when you were explaining the reason why those words ("Año de 18") appeared in the impressions of the seal in these "Exhibits Negrete Nos. 19 and 20, W. H. C." did you say, "When the design for the seal is taken to the printer, the treasurer sometimes inserts the date, and sometimes does not," appearing to know all about the matter, and to say that the impression might be changed every year, or at least frequently, and was a small affair, which lay entirely between the treasurer and the printer?

A. I answered so because that was the truth. I have repeated several times what I considered constitutes the seal, and I suppose the insertion of the date lays with the Treasurer, he may put it in or not, as he pleases, and when he does so, it is done with an instrument independent of the seal, which he does for his own convenience or guidance.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., October 14, 1859.

Cross-Examination of Francisco Villalon resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 103. I do not understand very well, why the protocols of Nazario Fuentes have remained in the office of Juan Navarro:

You have mentioned the fact, please give me the reason for it?

A. I don't know what reason they had, but I suppose the reason was that they were in Navarro's office when Fuentes died.

Q. 104. Still, why should Navarro have kept his protocols any more than his private library, his family plate, or any other property that he might have had, and which chanced to be in the office of Navarro at the time when Fuentes died?

A. They were kept in the office of Navarro, because they were there when Fuentes died; and that was the office in which they were radicated—to which they belonged.

Q. 105. Why did not the heir of Fuentes take them away,

inasmuch as such things seem, in some sense, to be private property; for example, in the case of the notary propietario, you have said that the protocols belonged to the heir, even if a woman?

A. It must not be inferred from what I have said, that the protocols of the notary propietario belong absolutely to his heirs, upon his decease, or that they can have the possession of them. They inherit his right to the office and the protocols, but they must deposit them in charge of a notary, who conducts the business of the office, and has the custody of the protocols.

With regard to the protocols of Fuentes, his heirs had no right to them after his death, because he was not a propietario, and at his death, his protocols and other official papers belonged as public property to the office to which he was attached when he died.

Q. 106. Why should not his heirs have the same right to them after his death that he had during his life; if they were in any sense his private property, should not his heirs inherit it?

A. I don't know why the laws have not so provided.

Q. 107. If no property in them passed to Fuentes' heirs, I presume it would pass to Navarro's heirs, on his death, of course?

A. Navarro is not a notary propietario, for his office is to exist only during his life; when he dies all his archives will be taken to the mortgage office, including those protocols of Fuentes.

Q. 108. If a notary's office, where the protocols of one of these third-rate, itinerant and journeyman notaries like Fuentes are kept, have such a property in the protocols as to exclude every species of claim of right of the heirs, how is it that the principal of the notary's office in which the protocols were executed has not an equal right to them, and how is it that this inferior notary is permitted to take them away with him, and take them about whenever he moves his quarters?

Should not the principal notary of the office, where the protocol was made, have at least as good a claim to them as the head of the office in which they were found at the notary's death?

[Question objected to as irrelevant.]

A. The question involves points of law, with regard to which I am unable to answer.

Q. 109. You have undertaken to explain the relations between these principal and parasitical or accesorial notaries.

You have said that the latter worked under the responsibility of the first; that when the latter died their protocols remained as a part of the papers of the first.

If such be their relation, I wish to know how it can possibly be true, that the inferior notary, whenever he wishes to change his quarters, can carry with him from his superior's office the papers which he executed under that superior's supervision and responsibility, which also you have stated.

In other words, I want to know how it is, that this particular protocol is not found now in the office of that notary, wherever he may have been, under whose supervision and responsibility it was executed in 1846?

A. The facts with regard to those matters are as I have stated them, but why they are so, I am unable to say.

Q. 110. Yesterday, after many questions and answers, you could distinguish but three sorts of notaries, to wit, propietarios (proprietors), tenientes (locum tenens) and agregados (attaches). I understood you this morning to distinguish further, and make another class of those who hold an office which expires with their own life, there being no successor, such as Juan Navarro appears to be?

A. My answer yesterday was confined to the question; I was speaking of public offices (oficios publicos); the economy or internal operation of the body of notaries—their rights as to each other are different, but they are all equal in law. The office of a notary, such as Navarro, is called an escribania publica, which I considered and still consider the same as oficio publico, which is the name of the office of a notary propietario.

Q. 111. Look at the impression of the seal of the National College of Notaries of Mexico, attached to the document which I now show you, being an act of sale for three and a half shares in the contract of avio or lease (aviadores) of this mine, and four and eleven-fourteenths ($4\frac{11}{14}$) parts of the shares in the mine itself (aviados), viz., this mine of New Almaden, executed by Messrs. Jecker, Torre & Co., in favor of Messrs. Barron, Forbes & Co., in the city of Mexico, on the 7th day of December, 1852, before Ramon de la Cueva, National Notary Public, which appears by endorsement thereon to have been recorded in Book F of Deeds, on pages 42, 43, 44 and 45, in the county of Santa Clara, California, on the 18th of February, 1853, said indorsement being signed J. M. Murphy, Recorder, by S. O. Houghton, Deputy, and say whether it is not the impression of the genuine seal of the National College of Notaries in Mexico?

A. It is; I am glad this document has been presented, because this seal has attached to it the little pieces of paper which I referred to yesterday, as being used to turn down upon the seal so as to protect it from injury.

I wish to observe that my statement of yesterday, with regard to the seal, was intended to apply to the intellectual, and not the material part of the seal.

The die, or stamp with which the impression is made, may have been changed in the course of so many years, but I don't know that it has, but the impression has always been the same since I have known it.

What I understood by date, when asked if there was any on the seal, was whether it contained the day, month, and year?

Q. 112. Then you did know all the time when you said that there was no date on the seal, that the year was on it?

A. I supposed it had the year on. I wish to know, so as to avoid confusion, whether by the word "seal," the impression, or the die or stamp, is meant.

[Counsel for the U. S. informs the witness that he means both, the stamp and impression. The witness continues his answer.]

Then my answer is, that I supposed the stamp or die contained the words "año de" with some of the numbers which indicate the year.

Q. 113. What possible reason could you have had for saying, when I asked you about those very words and figures "año de 18," that you had seen impressions which did not contain them; and in answer to question 92, you say that you "once saw the original stamp with which these impressions were made, and there was a blank in it where the date appears in this impression"?

A. It is true that when I saw the die or stamp it had a blank where the date appears in these impressions, as I stated, and I have seen some impressions which contained the date, and others which did not. The die (matriz) which I saw had not those words when I saw it.

As I know nothing whatever as to how dies or stamps are made, I am unable to explain how the date could be inserted in it instead of a blank.

Q. 114. You say (and, I have no doubt at all, correctly), that the impression on the act of sale between Jecker, Torre & Co., now lying before you, is the genuine seal of the National College of Notaries of Mexico:

Please now compare it with the impressions on Exhibits Negrete Nos. 19 and 20, W. H. C., being the same to which you certified on the 19th day of December, 1846, and the 6th day of February, 1847, and say whether it is not very different from them.

Whether the impression on the act of sale between Jecker, Torre & Co. and Barron, Forbes & Co., is not larger than the impressions on the two Exhibits.

Whether there are not distinctly visible the prickles or thorns on the prickly pear or cactus in the impression on the act of sale, which are not to be found in the impressions on the two Exhibits.

Whether the leaves of the wreath in the impression on the act of sale, are not very different from those in the impressions on the two Exhibits.

Whether the lines forming the head of the eagle in the impression on the act of sale, are not different from those forming the head of the eagle on the two Exhibits.

Whether the space between the letter E in the word de, and the letter E in the word Escribano is not greater in the impression on the act of sale, than it is in the impressions on the two Exhibits.

Mr. John Roach, an optician of this city, is now present with glasses and other instruments, will aid you in making these comparisons, and will point out to you the differences which I have suggested, and which he has noted on a memorandum.

A. I am not an expert in these matters, and I have not the least doubt that those differences do exist, but it would be useless to make the comparison myself, for I am not at all conversant with such matters.

But I still consider that these three seals are the same in the moral or intellectual part.

Q. 115. What is the moral, and what the material part of a seal?

A. The moral or essential part is the figure, the National Coat of Arms, the words "National College," etc.; and the material part is what I call the die (matriz).

Q. 116. What is the reason that the moral part, that is, the National Coat of Arms, and the words "National College," etc., and the material part, viz., the stamp with which the moral part was made, are both larger in the impression on the act of sale, than they are in the two impressions on the Exhibits?

A. I don't know why; I am not competent to say why.

Q. 117. You have demonstrated that, in your time, there have been three stamps for the seal of the College of Notaries—

First. A stamp without the words and figures "Año de 18," as you swear you saw it, at some time that you can't exactly remember.

Second. The stamp which made the impressions on the two Exhibits, and did contain the words and figures "Año de 18."

Third. Another stamp which contained the words and figures

“Año de 18,” but was larger than the stamps which made the impressions on the Exhibits.

Now, as you have been a notary some thirteen years, daily certifying to the genuineness of the seal of the College of Notaries, can you not tell me something about these changes, when and for what causes they were made, etc?

A. I have no knowledge whatever of any change having been made.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., October 15, 1859.

Cross-Examination of Francisco Villalon resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant; and Mr. Randolph, for the United States.

Q. 118. Whereabouts in the City of Mexico is the National College of Notaries situated?

A. It has no fixed place of meeting, but meets always in the house in which the Rector happens to live.

Q. 119. Where does the College keep its records? At what place are the stamps of this College seal sold?

A. The archives are kept by the Secretary at his office or his house, and the seals are sold by the Treasurer at his office.

Q. 120. Where is the Treasurer's office?

A. At his Notarial office (oficio).

Q. 121. The College then is a corporation with no particular place of business, and which keeps its archives and sells these stamps or seals, sometimes in one notary's office, and sometimes in another?

A. Yes, sir.

Q. 122. The Treasurer who sold the stamps being a notary himself, there was of course nothing to prevent him from taking out more than one stamp at a time, and just as many as he thought proper to charge himself with?

A. There was nothing to prevent him from using those which were in his possession; of course, he could not dispose of those which were locked up.

Q. 123. Do you not consider yourself a remarkably good judge of handwriting?

A. No, sir.

Q. 124. How was it then that, in answer to question 99, you

said that you saw by comparing the handwriting of the signature of Mariano Cabeza de Vaca with the figures "47" in the date of the seal of the College of Notaries, attached to "Exhibit Negrete, No. 20, W. H. C." that these figures were in his handwriting?

Does it not require a wonderful skill to be able to make such a declaration on such scanty material?

A. I know his handwriting and signature very well, by having seen it frequently in the course of my business as notary; and perhaps I know the signature and handwriting of the other notaries as well as his.

Q. 125. Upon looking at that impression again, are you not of the opinion expressed on yesterday by Mr. Peachy, Mr. Roach, and other gentlemen present, that the figures "47" are not both in any man's handwriting; but that the "4" was printed and stamped like the "18" thus—"184"?

A. In what I said with regard to that, I meant to confine myself to the figure "7" on the last of these seals.

I know nothing about the handwriting in the date of the first seal.

I don't know what the opinion of Mr. Peachy or Mr. Roach may be, except so far as stated in the question.

Q. 126. Is Mariano Cabeza de Vaca still living?

A. He is.

Q. 127. How did you happen to remember, so accurately, that he was Treasurer in 1847, when you have forgotten so many other things?

A. For these two reasons, viz.:—That he was Treasurer when I was matriculated in 1846; and he was Treasurer in 1847, when a pronunciamiento occurred, during which the funds of the College were taken, and thereupon he resigned.

Q. 128. And you know this man's handwriting so well that you can recognize a figure "7" as having been made by him almost thirteen years ago, merely by comparing it with his signature?

A. I know his numbers and writing, because I have seen him daily write and make figures, as well as others of my brother notaries, and nobody but him could have made this "7" on the impression at the time it was affixed to the document.

Q. 129. You mean that you know the writing and the figures of Mariano Cabeza de Vaca about as well as you know the writing and figures of others of your brother notaries?

A. Yes, sir, the same as many of the others.

Q. 130. Hence you would know a figure "7" made almost twelve years ago to have been made by, and to be in the figuring of, any one of many of your other brother notaries?

A. If it were in a case like this, if it were in the same situation, and under the same circumstances,—near the signature and otherwise situated as this is,—I might.

Q. 131. What do you mean by the same circumstances?

A. The circumstance of knowing the handwriting, signature, etc., as well as I know those of Cabeza de Vaca; of knowing that he never wrote with any other than a quill pen, with a peculiar point; and of finding it close to his signature and signo.

Q. 132. You are just as certain about the signature of Nazario Fuentes as you are in all you have said about the writing of Cabeza de Vaca?

A. Yes, sir.

Q. 133. Look at “Exhibit Negrete No. 19, W. H. C.” and say whether it is not put together in the following manner, viz.:

“One sheet of paper marked “Sello Primero (first seal) Ocho Pesos” (eight dollars), and inside of that a number of sheets marked “Sello Cuarto (fourth seal), Un Real” (one real), in such manner that the first sheet forms a cover to all the rest?

A. I cannot see. It is sewed together.

Q. 134. Please do me the favor to look at it a little closely as I show it to you.

A. The leaf which has no seal on the head of it must be the half of the sheet marked “Sello Primero, Ocho Pesos.” The leaf which has no seal at the head of it is the one that has the signatures of Nazario Fuentes and the attesting notaries, and the seal of the College of Notaries, but I cannot tell by looking at it. It seems to me, however, by looking at it more closely, that it is the same sheet.

Q. 135. Then I was right. The Exhibit is put together like a quire of writing paper, the outside sheet being a stamped paper of the first stamp, and containing four other sheets which are of the fourth stamp; by which arrangement, the beginning of the Exhibit is on the first leaf of that outside sheet, and the conclusion, the signatures, etc., is on the last leaf of the same.

“Exhibit Negrete No. 20, W. H. C.,” is put up in a similar manner, the only difference being that the signature of Fuentes, the seal of the National College of Notaries, and the certificate and signature of the other notaries, are on the last page of the second sheet, instead of the first, and the last leaf of the first sheet is blank. This Exhibit also consists of seven sheets of stamped paper, the outside sheet being stamped with the first class, “Sello Primero,” and the others stamped with the fourth

class, "Sello Cuarto." You will observe that both these Exhibits purport to be habilitated for the years 1846 and 1847.

A. Yes, sir; the outside blank sheet on each Exhibit is used merely as a cover, and is called a caratula, which is of common paper, without a seal or stamp.

With this addition, your description of the manner in which these Exhibits are put together is correct.

Q. 136. It is now a long time since these two Exhibits were, as they purport, written and put together, viz., since the 19th December, 1846, and 6th February, 1847, these being the last dates on each paper. During this time they have been in many places and in many hands; amongst others, in the hands of Francisco Martinez Negrete, Alexander Forbes, Barron, Forbes & Co., and probably in those of Jesus Vejar, the notary, one of them having attached to it a certificate of the said Vejar, to wit, "Exhibit Negrete No. 19, W. H. C.;" and I also learn now from the counsel for claimant, that "Exhibit Negrete No. 20, W. H. C." has been in the hands of Mr. Robert Walkinshaw, deceased.

If, then, the treasurer of the National College of Notaries of Mexico had sometimes trusted his brother notaries, or himself, with more stamps than one at a time, and some of which were not to be used at the moment; and if the notaries in Mexico should sometimes have trusted a fellow notary so far as to give him their certificate when he presented to them his signature in blank, as I can see no reason why they should not, it not being pretended that these certifying notaries know anything about the contents of a document executed before the notary to whose office, etc., they certified;—if, in a word, there were to be found in Mexico, in blank, sheets of the proper kind of paper, bearing the signature and signo of Nazario Fuentes, the seal of the College of Notaries, and the certificate of the three notaries following the same,—what was there to prevent, during all these years, some one interested in these Exhibits, and having them in his possession, from writing them and re-writing them, substituting and altering them in any manner that he thought proper, and putting them on another sheet with the proper authentications, just in the same manner as the sheet containing the authentications is put on, attached to, and stitched up with these Exhibits?

[Question objected to because it asks the witness' opinion of what might be possible under certain circumstances, not one of which is proven to have existed, and most of which are proven not to have existed.

Counsel for the United States, so far as the facts supposed in

this question are not supported by or opposed to the testimony of this or other witnesses, rests them upon their intrinsic probability.]

A. I cannot admit these suppositions. With regard to the sealed paper, it is sold in Mexico in blank, but I consider it impossible that any stamps were given out by the treasurer which were not used at the moment, or that any notarial certificates could ever have been made in blank.

With regard to Cabeza de Vaca, he is one of the most honest men I ever knew.

I know nothing whatever as to who has kept these Exhibits, or where they have been since they were made.

Q. 137. I will ask you for the last time to explain why it is, and how you can swear, that the treasurer of the College of Notaries never gave out but one stamp at a time, and pasted that on the document.

Also, how it can be possible, and for what reason it should be, that three Mexican notaries will not certify to the signature and office of a fourth, unless they see his signature attached to some writing; what difference can it make to them, when it is not pretended that they read the writing to which the signature is attached?

[Question objected to because it is irrelevant.]

A. What I have sworn to with regard to the disposition of the seals by the treasurer is what has occurred under my own eyes; and with regard to the certificates in blank, notaries could not make them because it would be a violation of their duties and a crime to do so.

I have sworn only to facts that were within my own knowledge, and to none other.

Q. 138. Will you, if you please, make your signature and signo upon the Commissioner's paper?

A. Yes, sir; here it is:

†
FRAN^c . VILLALON.
[Rubric.]

Q. 139. Is there a difference between your signature to a certificate of this sort and your signature with which you authenticate instruments executed before you as a notary public; if so, what is it?

A. My signature is always the same, but I do not put my signo to private documents.

Q. 150. I see in the rubric of Nazario Fuentes the letters "E. N. P.," which stand, I presume, for Escribano Nacional Publico, but no letters of that sort in the rubrics of the nota-

ries attached to the certificates which follow ; is there any reason for that difference ?

A. Some notaries put those letters in and some do not ; I write the words entire.

Q. 141. Do you know in whose handwriting the body of these certificates are ?

A. I do not.

Q. 142. They are not in the handwriting of any one of the subscribing notaries ?

A. No, sir.

Q. 143. Do you know the handwriting of the body of either of these Exhibits ?

A. I do not.

Q. 144. Then you do not recognize in the body of either of these instruments, a handwriting which you have known in any of the notaries' offices in Mexico with which you are so familiar ?

A. As the clerks in the notaries' offices change so often, I could not tell.

Q. 145. When were you first spoken to about coming to California to testify in this case, and by whom ?

A. I was spoken to first about this certificate by Mr. Billings, in the month of February or March last. He asked me if I remembered the fact that I had made this certificate. He was in company with Mr. Pardo.

Q. 146. What did you say ?

A. They asked me if I remembered this fact, and I said no ; that I could not recollect it without seeing it. Mr. Billings having first asked me my age, my name, where I lived and when I became a notary. This occurred in my own office (oficio).

Q. 147. After that you saw these documents, what did you recognize about them ?

A. I never saw them until I saw them here in one of the offices of the Court ; when I saw them I recognized my signature ; I did not recognize the other signatures until I saw them here on this table.

I did not fix my attention on any of the signatures but my own, until I saw them here on this table when I came to be examined.

Q. 148. As you did not remember anything about the transaction, and did not see the documents in Mexico in February or March last, how did you know that you would be able to prove anything after you came to San Francisco ?

A. Because I was told that my signature was to it, and I stated that I could say nothing about it until I could see my signature, as I have made my signature so often in the course

of my official business, I could not remember the particular signature of so many.

Q. 149. With whom did you agree for the compensation for the voyage, and when?

A. With Messrs. William Barron and the licenciado, Pardo, on the 24th April last—the eve of our departure, which was the day on which I made up my mind to come; I had refused to come on three or four occasions before that.

Q. 150. Was the sum agreed upon the first offer made; by whom was the first offer made, and when? On the occasions when you refused to come, had there been a difference between you as to the sum you were to receive, and if there had been, what were the sums first offered and demanded respectively?

A. I had never had any conversation whatever with them about sums or amounts, until the day that I agreed to come. I had theretofore always refused, because I did not wish to come for any sum whatever; but after being repeatedly urged, I stated on the eve of our departure that I would come for the amount I have mentioned; and with the understanding that I should not be absent more than two and a half or three months, for I had a great deal of business to attend to in Mexico.

Q. 151. The amount which I understand you were to receive is seven thousand dollars; with all your expenses, also, to be paid by the claimants until you return to Mexico?

A. Yes, sir; but the seven thousand dollars has already been paid.

Q. 152. I understand, also, that you were only expected to prove, if you should recognize it, your own signature to these documents, and nothing more?

A. They only told me that there was a certificate or legalization of mine on the document.

Q. 153. How could you, for the chance of rendering so small a service, ask so enormous an amount?

[Question objected to as irrelevant.]

A. I consider it a small amount for the damages I have sustained.

Cross-examination closed.

Examination adjourned until Monday next, at 11 o'clock,

A. M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, Oct. 17th, 1859.

Examination of Francisco Villalon resumed from Saturday last.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

DIRECT EXAMINATION RESUMED.

Q. 154. You have said that you have seen a seal of the National College of Notaries on which there was no date; examine the certificate or diligencia of a testimonio or copy of a power of attorney, given by Doña Petra Moya to the Señor Licenciado Don José Maria Lafragua, on the 27th November, 1854; and, also, the certificate or diligencia affixed to a certificate given by the Bachelor Don José Ignacio Calapiz, permanent curate of the parish of San Sebastian, of Mexico, and say whether the seal of the National College of Notaries of Mexico on these documents were made by the die which you refer to as having no date?

[Question objected to as leading.]

A. Yes, sir; I think so.

Q. 155. Romulo de Zevallos, Andres Vellio Mejia, Mariano Cabeza de Vaca and Miguel Aristegui, whose signos and signatures, together with your own, are affixed to the certificates on Exhibits Negrete, Nos. 19 and 20, W. H. C.; are they living?

A. They were all living when I left Mexico, except Mejia.

Q. 156. When did Mejia die?

A. I don't know exactly, but it was about six or seven years ago.

Q. 157. Why is the seal referred to in question 154, used to authenticate said documents?

A. Because it is the seal called "De Oficio," as appears on the face of it.

Q. 158. Does the College of Notaries use this seal, and that which appears on the document referred to in question 111, indifferently; and if not, under what circumstances is the first named seal used, and under what the second?

A. This seal called "De Oficio" is one for the use of which no fee or tax is charged; the other seal a fee or tax is charged for. That is the only difference. The circumstance which induces the use of the first named seal is the pecuniary condition of the party applying for it, not the nature of his business; it is used in cases where the applicant is unable to pay.

Q. 159. Are you acquainted with the seal of the Supreme Court of Justice of Mexico?

A. I have seen it; I would recognize it if I should see it, although I am unable to describe it.

Q. 160. Look at the two impressions of that seal on the documents referred to in question 154; state whether you recognize it to be the seal of the Supreme Court of Justice of Mexico.

A. I think these are the seals of that Court.

Q. 161. Do you know the signature of Marcelino Castañeda?

A. I do.

Q. 162. Look at the signature on each of the certificates to which the said seal of the Supreme Court is affixed, and state whether it is his genuine signature.

A. I believe them to be so.

Q. 163. Who is the Rector of the College of Notaries, and who the Treasurer, now?

A. Don Ramon de la Cueva is Rector, and Don Agustin Vera y Sanchez, is Treasurer.

[Counsel for claimant offers in evidence the documents referred to in question 154, marked respectively, "Exhibit Villalon No. 1, W. H. C." and "Exhibit Villalon No. 2, W. H. C."]

Counsel for the United States objects to the foregoing questions and answers as irrelevant.]

Direct examination closed.

CROSS EXAMINATION RESUMED.

Q. 164. The seal with no date upon it which has been produced this morning, and you have recognized, I understand to be the charity seal of the College of Notaries, affixed gratis for poor persons?

A. Yes, sir.

Q. 165. Why did you not think to mention this seal before, when I was asking you so many questions about the seal of the College.

A. I did not think of it. I thought only of the seal which was before me at the time.

Q. 166. Last year when you were Rector of the College of Notaries, and kept one of the three keys necessary to open the safe in which the impressions were contained, how many different kinds of impressions were kept in that safe?

A. There were only two classes, the seal called "De Oficio," and the other called "De Parte,"—the one that is paid for.

Q. 167. Does the college keep any die, or not, with which to stamp these impressions, or does the treasurer merely take a design to an engraver or printer, and leave all the rest to him; as is implied by the following words, in your answer to ques-

tion 91,—“When the design for the seal is taken to the printer’s the treasurer sometimes inserts the dates and sometimes does not?”

[The interpreter states that the word “design” wherever it appears in the witness’ answers, was intended as a translation of the word “matriz,” which is an incorrect translation; the word “matriz” was the one used by the witness,—the correct translation of which he now thinks is “die.”]

A. What I stated in the answer referred to was that the die (matriz) was taken to the printer’s; sometimes the treasurer inserted the date, and sometimes not. My idea of the matter is, that when the treasurer wishes any date put in he has the first three figures that are to indicate the year put in, so that the last of the figures which express the number of the year may be written thus;—for the last decade 184—, the present decade 185—, and so on; so that this part of the seal would have to be changed only every ten years. This is what I suppose takes place, but I know nothing as to how it is done; I presume the process is the same as that which is followed in coining, although the die may change the impression still remains the same; so that in my opinion there would be but one seal, with perhaps some slight changes in the size or otherwise. This is what I have intended to express from the beginning.

Q. 168. Now, don’t you see that there never could be a blank on the die or impression, where you said you had seen one?

A. I remember having seen a stamp which had a blank, whether it was the Sello de Oficio or the other, I cannot now remember; I am inclined to think on looking at this stamp of the Sello de Oficio that it was this Sello de Oficio, for I see a considerable space here between the words “de” and “Oficio.”

Q. 169. So you are inclined now to think that the blank must have been upon the charity seal, of which you have spoken this morning for the first time?

A. Yes, sir; for I barely remember the fact of having seen the die.

Deposition closed.

FRAN^{co}. VILLALON.

[Rubric.]

Subscribed and sworn to before me this 27th day of October, 1859.

W. H. CHEVERS,
U. S. Commissioner.

Filed October 27, 1859.

W. H. CHEVERS, Clerk.

EXHIBIT VILLALON No. 1, W. II. C.

SELLO CUARTO [SELLO.] UN REAL.

El Br. Dⁿ. Jose Maria Huerta, Cura propio de la Parroquia de Sⁿ. Matias Yxtacaleo: Certifico en toda forma de derecho, q. en el Libro de partidas de bautismos de esta feligresia del año de mil ochocientos veintiseis, á la foja cincuenta y ocho partida sesenta y una, consta la q. copio por el tenor siguiente.

Petra Brigida Ysabel. De S ⁿ . Juan del Rio.	}	En la Parroquia de S ⁿ . Matias Yxtacaleo: á primero de Agosto de mil ochocientos veintiseis: Yo, el Br. D ⁿ . Jose, Maria Bucheli, Cura propio de este Curato, bautizé solemnemente y puse los Santos Oleos, a una Criatura de un dia nacida, a quien nombre, Petra Brigida Ysabel, hija legitima de D. José Trinidad Moya y de D ^a . M ^a . Jacoba Olbera, vecinos de S ⁿ . Juan del Rio: fueron sus padrinos D ⁿ Diego Guerrero, y D ^a . M ^a . de la Luz Varela, vecinos de Mexico, á quienes advertí su obligacion y parenteseo espiritual, y para constancia firmé.
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Por orden de la Sagrada, Mítra firmó el Sr. Lic^o. Dⁿ. Agustin Carpena.

AGUSTIN CARPENA==

La cual partida está fielmente copiada, y concuerda con su original, á q. me remito, de q. doy fé.

JOSE MARIA HUERTA.

[Rubric.]

Drōs. 4 p^s.

El Br. D. José Ygnacio Calapiz Cura propio de la Parroquia de San Sebastian de Mexica, &^a.

Certifico que en uno de dos Libros de Matrimonios de los feligreses de esta Parroquia, consta, que en cinco de Agosto del año de mil ochocientos cuarenta y cuatro, se casaron y velaron en esta Parroquia Don Lucas Garcia y D^a. Petra Moya. Y para que conste lo firmé. Parroquia de San Sebastian de Mexico Febrero 15 de 1854.

JOSE YGN^o. CALAPIZ.

[Rubric.]

Los infrascritos Escribanos,

Certificamos y damos fé: que las firmas con que se hayan suscritas las anteriores certificamos son de los Señores Curas que ellos espresan a los que se les da entera fé y exedito en todos los actos que por razon de su ministeria ejercen.

Y para constancia ponemos la presente sellada con el de oficio de Nuestro Ylustre y Nacional Colegio en Mejico á veinte y ocho de Noviembre de mil ochocientos cincuenta y cuatro.

†
FERMIN VILLA.
[Rubric.]

†
FRAN^{co}. CALAPIZ.
[Rubric.]

†
MAR^o. CABEZA DE VACA.
[Rubric.]

Marcileno Castañeda Magistrado del Supremo Tribunal de Justicia de la Nacion y actual Ministro Semanero de su primera Sala.

Certifico que D. Fermin Villa, D. Francisco Calapiz y D. Mariano Cabeza de Baca son escribanos publicos de la Nacion y que las firmas que se hallan alcalse del anterior documento son las mismas que usan en todos los instrumentos publicos que autorizan. Mejico Noviembre treinta de mil ochocientos cincuenta y cuatro.

MARCELINO CASTAÑEDA.

En infrascrito oficial mayor 1^o. del Ministerio de relaciones exteriores. Certifico: que el Sr. Dⁿ. Marcelino Castañeda es Magistrado del Supremo Tribunal de Justicia de la Nacion y su firma que antecede la que usa en los documentos que autoriza. Mexico Diciembre 1^o. de 1854.

[SELLO.]
Gratis.

J. MIGUEL ARROYO.

No. 2662. CONSULATE OF THE U. S. OF AMERICA,
Mexico, December 2d, 1854.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of J. Miguel Arroyo, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his Official acts, who is well known to me, and was at the time of subscribing the same Chief Clerk of the Department of Foreign Relations of the Mexican Government, and that all his Official acts are entitled to full faith and credit as such.

Register G, fo-
lio 271.

Fees, \$2.

[SEAL.]

In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first before written.

JOHN BLACK,
U. S. Consul.



EXHIBIT VILLALON No. 2, W. II. C.

SELLO QUINTO

[SEAL]

MEDIO REAL.

En la Ciudad de Mejico á veinte y siete de Nobembre de mil ochiocientos cuarenta y cuatro. Ante mi el Escribano Publico de la Nacion y testigos que se espresaran Doña Petra Moya de esta vecindad mayor de edad de estado casada con Don Lucas Garesa á la que doy fé conosco y en virtud de la licencia marital que el derecho previene la que de haber sido pedida con sedida y aceptada respectivamente tambien doy fé, otorga que da su poder amplio cumplido bastante en derecho el que se requiere y sea nesesario mas pueda y deva valer al Señor Licenciado Don José Maria Lafragua tambien de esta vecindad esppecial y señaladamente para que en nombre de la otorgante y representando su propia persona derechos y acciones, proseda á reclamar unos terrenos y demas bienes que de la propiedad de Don Trinidad Moya se hayan cituados en San Francisco de Californias y los cuales pèrtenecen hoy a la otorgante como hija y unica heredera de dicho Don Trinidad Moya; prosediendo en el particular segun lo haria la otorgante siendo presente facultandolo ampliamente para que haga las transacciones que cria oportunas pues al efecto y para el presente negocio le confiere este poder tan amplio como lo hubiere menester sin que por falta de clausula espresion requisito ó circunstancia que aqui no se contenga deje de proseder pues cuantas necesite ha per insertas con facultad de enjinerar jurar y sustituir rebocar sustitutos cobrar de ellos y nombrar otros de nuevo que á todos seleba en forma segun derecho. A cuyó cumplimiento se obliga con sus bienes habidos y por haber con la guarentigia en forma con las sumiciones y renunciaciones ne leyes nesesarias. Y asi lo otorgo y firmo en union de su marido siendo testigos Don Antonio Mutio, Don José Calapiz, y Don Ygnacio Torcida de esta vecindad doy fé—Petra Moya—Lucas Garcia—Francisco Calapiz, Escribano Publico.

Sacose para la parte despues de su otorgamento y va en este pliego del sello quinto por constarme la insolvencia de la interesada vienio corriente correjido doy fé.

Gratis.

FRAN^{co} CALAPIZ, E. P^{co}.
 [Rubric.]

Damos fé que D. Fran^{co} Calapiz por quien aparece firmado el documento anterior es Escrib^o Publico del numero de esta Ciudad fiel legal y de toda comfianza. Y para que consta ponemos la precente con el sello de oficio de nuestros Nac^l Colejio

en Mej^{co} á veinte y siete de Nov^e de mil ochocientos cincuenta y cuatro.

AG^{TO}. †
VERA.
[Rubric.]

†
J. DE JESUS PIÑA.
[Rubric.]

†
[SELLO.] MAR^o CABEZA DE VACA.
[Rubric.]

—
Marcelino Castañeda Magistrado del Supremo Tribunal de Justicia de la Nacion y actual Ministro Semanero de su primera Sala.

Certifico: que Don Francisco Calapiz es Escribano Público de la Nacion, y que la firma que se halla alcalee del anterior documento es la misma q usa en todos los instrumentos públicos que autoriza. Méjico Noviembre treinta de mil ochocientos cincuenta y cuatro.

[SELLO.] MARCELINO CASTAÑEDA.
[Rubric.]

—
El infrascrito oficial mayor 1^o del Ministerio de relaciones exteriores. Certifico: que el Sr. D^a Marcelino Castañeda es Magistrado del Supremo Tribunal de Justicia de la Nacion y su firma que antecede la que usa en los documentos que autoriza—México Diciembre 1^o de 1854.

[SELLO.] J. MIGUEL ARROYO.
[Rubric.]

Gratis.

—
No. 2661. CONSULATE OF THE U. S. OF AMERICA,
MEXICO, December 2, 1854.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of J. Miguel Arroyo, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his Official acts, who is well known to me, and was at the time of subscribing the same Chief Clerk of the Department of Foreign Relations of the Mexican Government, and that all his Official acts are entitled to full faith and credit as such.

Register G, fo-
lio 270.

Fees, \$2.

In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first before written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



Know all men by these presents; that I, José Maria Lafragua, by virtue of the power and authority to me given, in and by the letter of attorney, of Doña Petra Moyo, which is hereunto annexed, do substitute and appoint William E. Barron, of San Francisco, State of California, to do, perform and execute, every act or thing which I might or could do, in, by and under the same, as well for me, as being the true and lawful attorney and substitute of the said Petra Moya; hereby ratifying and confirming all that the said attorney and substitute hereby made and appointed, shall do in the premises by virtue hereof, and of the said letter of attorney.

In witness whereof, I have hereunto set my hand [SEAL] and Seal, the 31st day of January, A. D. 1855, eighteen hundred and fifty-five.

J. M. LAFRAGUA.

[Rubric.]

Sealed and delivered in the presence of
A. G. RANDALL.

STATE OF CALIFORNIA, }
County of San Francisco. } ss.

On this thirty-first day of January, A. D. one thousand eight hundred and fifty-five, before me Albert G. Randall, a Notary Public in and for said county, personally appeared José Maria Lafragua, to me known to be the individual described in and who executed the annexed instrument, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand [SEAL] and affixed my official Seal, the day and year first above written.

A. G. RANDALL,
Notary Public.

TRANSLATION OF EXHIBIT VILLALON No. 1.

FOURTH SEAL

[SEAL.]

ONE REAL.

The B^r. Dⁿ. José Maria Huerta, Curate of the Parish of Sⁿ. Matias Yxtacalco; certifies in due form of law, that in the book of the registry of baptisms of this church for the year one thousand eight hundred and twenty-six, on leaf (foja) fifty-eight, entry (partida) sixty-one, is found the original, of which the following is a copy:

In the Parish of Sⁿ. Matias Yxtacalco, on the first of August, one thousand eight hundred and twenty-six, I, the B^r. Dⁿ. José Maria Bucheli, Curate of this Curacy, solemnly baptized, and anointed with holy oil, an infant of the age of one day, to which I gave the name of Petra Brigida Ysabel, the same being a legitimate daughter of Dⁿ. José Trinidad Moya and of Dⁿ. M^a. Jacoba Olbera, residents of Sⁿ. Juan del Río: its sponsors being Dⁿ. Diego Guerrero and Dⁿ. M^a. de la Luz Varela, residents of Mexico, to whom I made known the obligations of their spiritual parentage, and in witness whereof, I signed:

By order of the Sacred Miter, signed by the Señor Lic^o. Dⁿ. Agustin Carpena.

AGUSTIN CARPENA.

Which said entry is faithfully copied and compared with the original, which I remit, to which I attest.

JOSE MARIA HUERTA.

[Rubric.]

Fees, \$4.

—

The Bachelor, Dⁿ. José Ygnacio Calapiz, Curate of the Parish of San Sebastian of Mexico, etc. etc.

Certifies that in one of the books of the registry of marriages of the parishioners of this Parish, it appears that on the fifth of August, one thousand eight hundred and forty-four, was married in this Parish, Don Lucas Garcia and Doña Petra Moya; and in witness whereof, I signed this.

Parish of San Sebastian of Mexico, Feb. 15th, 1854.

JOSÉ YGNACIO CALAPIZ.

[Rubric.]

—

We, the undersigned Notaries, certify and give faith, that the signatures subscribed to the foregoing certificates, are those of the Señores Curates mentioned in the same, to which is

given full faith and credit, in all the acts which they exercise by virtue of their ministry.

†
FRAN^{co}. CALAPIZ.
[Rubric.]

†
FERMIN VILLA.
[Rubric.]

†
MAR^o. CABEZA DE VACA.
[Rubric.]

—
Marcelino Castañeda, a Magistrate of the Supreme Tribunal of Justice of the Nation and actual Ministro Semanaro de su primera Sala,—

[SEAL.] Certify that Dⁿ. Fermin Villa, Don Francisco Calapiz and Dⁿ. Mariano Cabeza de Baca, are public Notaries of the Nation, and that their signatures as found at the conclusion of the foregoing document, are the same that they use in all the public instruments which they authorize. Mexico, November 30th, 1854.

[SEAL.] MARCELINO CASTAÑEDA.
[Rubric.]

[SEAL.]

The undersigned, chief clerk of the office of the Minister of Exterior Relations, certifies, that the Señor Dⁿ. Marcelino Castañeda is a Magistrate of the Supreme Tribunal of Justice of the Nation, and that his foregoing signature is the same that he uses in the documents which he authorizes.

December 1st, 1854.

J. MIGUEL ARROYO.
Rubric.

Gratis.

No. 2662.

CONSULATE OF THE U. S. OF AMERICA,
Mexico, December 2d, 1854.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of J. Miguel Arroyo, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same Chief Clerk of the Department of Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

Register G, folio 271.

In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first before written.

Fees, §2.

[SELLO.]



JOHN BLACK,
U. S. Consul.



TRANSLATION OF EXHIBIT VILLALON No. 2.

FIFTH SEAL.

[SEAL.]

HALF REAL.

In the city of Mexico, on the twenty-seventh day of November, one thousand eight hundred and forty-four, before me the Public Notary of the Nation, and the witnesses which are expressed, Doña Petra Moya, of this vicinity, above the years of minority (mayor de edad) and married with Don Lucas Garcia, to which I give faith, and in virtue of the marital license which the law provides, and that the same has been petitioned for, conceded and accepted, I also attest and give faith; executed and delivered her power, ample and sufficient as is required by law, to the Señor Licenciado Don José Maria Lafragua, also of this vicinity, especially and particularly, in order that in the name of the party giving the power (otorgante) and representing her proper person, rights and shares, he may proceed to make claim to the lands and other property of Don Trinidad Moya, which is situated in San Francisco of Californias, and which at this time belong to the party giving the power (otorgante) as the only daughter and heir of the said Don Trinidad Moya; proceeding in the matter in the same manner that the otorgante could do were she personally present, authorizing him amply to enter into all the transactions that he may think necessary, since to this end, and for the present business, this power is conferred upon him so ample as may be necessary for him to proceed, in default of a clause, expression, requisite or circumstance that may not be contained in the same, since whatever is necessary is considered as inserted, with authority to commence judicial proceedings (enjuiciar), swear and substitute, to revoke substitutes received from them and appoint others anew which shall relieve them. For the fulfillment of which she obligates herself with her property now in possession, or which she may hereafter possess, with the formal guaranty. This executed and signed in union with her husband, Don Antonio Matio, Don José Calapiz and Don Ygnacio Torcida, of this vicinity, being witnesses, which I attest.—Petra Moya—Lucas Garcia. Francisco Calapiz, Notary Public.

Copied for the party after its execution, as it appears on this sheet of the fifth seal, it appearing to me that the interested party is insolvent and it being corrected—which I attest.

Gratis.

[Rubric.]

†

FRAN^{CO} CALAPIZ, E. P^{co}.

[Rubric.]

We attest, that Dⁿ Fran^{co} Calapiz, by whom the foregoing document appears to be signed, is a Public Notary, of the number of this city, faithful, legal and worthy of all confidence. In witness whereof, we place to the present the seal of our National College, in Mexico, on the twenty-seventh day of November, 1854.

AG^{TY}. †
VERA.
[Rubric.]

†
J. DE JESUS PIÑA.
[Rubric.]

[SEAL.] †
MAR^o CABEZA DE VACA.
[Rubric.]

—

Marcelino Castañeda, a Magistrate of the Supreme Tribunal of Justice of the Nation and actual Minister Semanero de su primer Sala.

Certifies that Don Francisco Calapiz is a Public Notary of the Nation, and that his signature which appears to the foregoing document, is the same that he uses in all the public instruments which he authorizes.

Mexico, November the 30th, 1854.

[SEAL.] MARCELINO CASTAÑEDA.
[Rubric.]

—

The undersigned, Chief Clerk of the office of the Minister of Exterior Relations, certifies that the Señor Don Marcelino Castañeda is a Magistrate of the Supreme Tribunal of Justice of the Nation, and that his foregoing signature is the same that he uses in the documents which he authorizes.

Mexico, December 1st, 1854.

[SEAL.] J. MIGUEL ARROYO.
[Rubric.]

Gratis.

—

No. 2661. CONSULATE OF THE U. S. OF AMERICA,
Mexico, December 2, 1854.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of J. Miguel Arroyo, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in his Official acts, who is well known to me, and was at the time of subscribing the same Chief Clerk of the Department of Foreign Relations of the Mexican Government, and that all his Official acts are entitled to full faith and credit as such.

Register G, fo-
lio 270.
Fees, §2.

In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first above written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



Know all men by these presents; that I, José Maria Lafragua, by virtue of the power and authority to me given, in and by the letter of attorney, of Doña Petra Moya, which is hereunto annexed, do substitute and appoint William E. Barron, of San Francisco, State of California, to do, perform and execute, every act or thing which might or could do, in, by and under the same, as well for me, as being the true and lawful attorney and substitute of the said Petra Moya; hereby ratifying and confirming all that the said attorney and substitute hereby made and appointed, shall do in the premises by virtue hereof, and of the said letter of attorney.

In witness whereof, I have hereunto set my hand
[SEAL] and seal, the 31st day of January, A. D. 1855, eight-
teen hundred and fifty-five.

J. M. LAFRAGUA.

[Rubric.]

Sealed and delivered in the presence of

A. G. RANDALL.

STATE OF CALIFORNIA, }
County of San Francisco. } ss.

On this thirty-first day of January, A. D. one thousand eight hundred and fifty-five, before me Albert G. Randall, a Notary Public in and for said county, personally appeared José Maria Lafragua, to me known to be the individual described in and who execute the annexed instrument, and acknowledged that he executed the same freely and voluntary, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand
[SEAL.] and affixed my official Seal, the day and year first
above written.

A. G. RANDALL,
Notary Public.

DEPOSITION OF MARIANO G. VALLEJO.

—

UNITED STATES DISTRICT COURT, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, Cal., November 17th, 1859.

On this day before me, W. H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c., &c., came Mariano G. Vallejo, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

Questions by counsel for claimant.

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

ANSWER. Mariano Guadalupe Vallejo; my residence is in Sonoma, and my age is fifty-one years.

Q. 2. Were you acquainted with Andres Castillero; if yea, state when you knew him?

A. I have known him since 1836. My acquaintance with him continued until he left California the last time, in 1846. I knew him very well.

Q. 3. Do you remember whether he was at Sonoma in 1845?

A. Yes, sir; he was there in the early days of 1845, in company with General Castro and other Mexican officers. His business there was with me; it was political and military; he was then on his way to Sutter's Fort, whither he went, accompanied by General Castro, Colonel Prudon, Mr. Leese, and the officers of whom I have spoken. His object in going to Sutter's Fort was to purchase the establishment of New Helvetia for the Mexican Government.

While he was in Sonoma on that occasion, he stood godfather for my son Uladislao, who was baptized on the 6th December, 1845. I have with me a certificate of his baptism,

which is signed by the priest, and also by General Castro and Victor Prudon, as witnesses. This certificate is dated the 7th of November, 1845.

Q. 4. On leaving Sutter's Fort, where did Castellero go; and did you have any correspondence with him about that time?

A. When Castellero left Sutter's Fort, he went by way of the Cosumnes and the San Joaquin to Santa Clara. After he reached that place, I received letters from him.

Q. 5. Examine the documents now shown you, dated respectively December 2d, 1845, December 21st, 1845, February 21st, 1846, and March 11th, 1846, all of them dated from the Mission of Santa Clara, and purporting to be letters signed by Castellero, and addressed to you.

Do you know the signatures and the handwriting of these letters; did you receive them about the time they were written; and how came they in my possession?

A. Those letters are all in the handwriting of Castellero, and bear his signature; the address is also in his handwriting. On the letters of the 2d and 21st December, 1845, the date of the reception is noted by me; the first was received on the 3d January, and the second on the 31st January, 1846. These letters have remained in my possession until I handed them to you (Mr. Peachy), four or five months ago.

[Counsel for claimant offers these letters in evidence, and they are marked, respectively, in the order of their dates, Exhibits Vallejo Nos. 1, 2, 3, and 4, W. II. C.]

Objected to by counsel for the United States as irrelevant, and, as they are the claimant's own declarations, inadmissible to prove title in himself.]

Q. 6. In the letter of the 2d December, 1846, Castellero says: "I send you three assays; the largest of one ounce of ore, the second of three-quarters, and the smallest of half an ounce of ore."

What do you remember about those assays?

A. I remember having received some specimens of the ore wrapped up in paper, and some quicksilver in a vial.

Q. 7. Do you remember anything else about the discovery of this mine by Castellero; if so, please state it?

A. The only thing I remember was that I went down to Santa Clara and Monterey about March, 1846. Castellero's discovery was well known, and everybody was experimenting with the ore.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

SAN FRANCISCO, Cal., Nov. 19, 1859.

Examination of M. G. Vallejo resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph for the United States.

Q. 8. Who was the Piña mentioned in Castellero's letters; did you know him, and do you know what became of him?

A. He was lieutenant (alférez) of the permanent cavalry. He was for a long time my adjutant, and was a most excellent officer of artillery.

I know that he left California in 1846, and never returned. I have heard and believe he was killed at the battle of Cerro Gordo. His name was Lazaro Piña.

No cross-examination.

Examination closed.

M. G. VALLEJO.

Sworn to and subscribed before me, Nov. 19, 1859.

W. H. CHEVERS, U. S. Commissioner.

Filed November 19, 1859.

W. H. CHEVERS, Clerk.

EXHIBIT VALLEJO No. 1, W. H. C.

[Recibida el dia 3 de Enº. de 1845.]

Sr. Coron^l. Dⁿ. Mariano Guadalupe Vallejo.

SANTA CLARA, Diciembº. 2 1845.

Muy estimado Compadre á quien aprecio :—Con el Sargento Piña recivi todas las comunicaciones que benian anotadas en la guia, las de Dⁿ. José Castro fueron conducidas con seguridad.

Mientras se realiza mi salida p^a. el interior de la Republica me tiene V. de Minero á distancia de sinco leguas de aqui en la pertenencia del Sarg^{to}. Retirado Dⁿ. José Reyes Verreyesa, con las mayores esperanzas habiendo sacado de una misma veta Azogue plata y oro en cantidades sobresalientes, y seguram^{te}. se descubrirán sinco ó seis minas del mismo caracter; hoy remito á V. tres ensalles el mas grande de una onza de piedra el segundo de tres cuartas y el mas chico de media onza de piedra ninguna sin escojer.

Muy buenas me han paresido las comunicaciones qº. remite V. al Supremo Gobierno, y no las apollase personal^{te}. teniendo muy presente á Suter, lo mismo que lo de colonisacion respecto á nuestro amigo.

Pongame V. á los pies de mi comadrita y selebro infinito qº. mi ahijado este bueno, y con espresiones á todo la familia se despide de V. su af^{mo}. Compadre que atento b. l. m.

ANDRES CASTILLERO.

[Rubric.]

Saludeme V. á Dⁿ. Salvador disiendole qº. no olvido sus encargos.

[Endorsed.]

Al Sr. Com^{te}. de la Linea del Norte Dⁿ. Mariano G. Vallejo,
Sonoma.

EXHIBIT VALLEJO No. 2, W. H. C.

[Recibida el dia 31 de Enero de 1846.]

Sr. Coron^l. Dⁿ. Mariano G. Vallejo.SANTA CLARA y D^o. 21 1845.

Estimado Compadre que aprecio :—Hoy hase ocho dias que por dos extraordinarios seguidos, me hisieron salir con presipitacion para Monterey, á causa de que el Sr. Governador Dⁿ. Pio Pico embarcó p^a. Mexico al Sr. Dⁿ. Antonio Carrillo, y uno de los Varelas en la Clarita, por haber descubierto dicho Govern-

adór, una conspiracion en contra de el. Santa Barbara desconosio al Gobierno politico, prendiendo á sus autoridades, ocupando el rincón y mandando una comision á el Comand^{te}. Gen^l. el que sale mañana p^a. aquel punto; no aprovando un paso, segun sus comunicaciones, ni el Governadór la demasia de atrapellar la autoridad militar, veremos lo q^o. resulte de todo y le dare á V^d. parte.

A otro cosa, tenemos mucho Azogue que sale con tanta abundancia que de veinte ā piedra sacamos treinta lb^s. azogue liquido calculando llo q^o. nos produce un quintal diario, tenemos tambien minas descubiertas de ley de plata.

Mi viaje no puede verificarse como quitiera por falta de trasporte.

La asamblea dió lla el Bando de la venta de misiones en estos terminos, (en estas terminos) Sⁿ. Luis Rey, Sⁿ. Fernando S^{na}. Barbara en arrend^{to}., S^{na}. Clara y Sⁿ. José suspensas hasta su liquidacion de cuentas, y las demas rematadas el mes q^o. entra; yo creo q^o. el pronunciam^{to}. de S^{na}. Barbara adolese de esta providencia teniendo alguna parte la autoridad eclesiastica, estas con mis sospechas, nada mas q^o. sospechas, pero con motivo.

Pongame V. á los pies de mi comadrita, de le V. un beso á mi ahijado, y mande V. á su af^{mo}. Compadre que atento B. S. M.

AND^s. CASTILLERO.

[Rubric.]

P. L. Saludeme V. á Dⁿ. Victor, dejame V. si de presenta una bueua mina si quedra V. llebar parte. Finemos una de Estaño.

[Endorsed.]

Al S^r. Comandante militar de la Linea del Norte Dⁿ. Coron^l. Dⁿ. Mariano G. Vallejo.

EXHIBIT VALLEJO No. 3, W. II. C.

Sr. Coron^l Comandante de la Linea del Norte, Don Mariano Guadalupe Vallejo.

MISION DE S^{TA} CLARA, Feb^o 21, 1846.

Estimado Compadre que aprecio:—Tengo el gusto de acompañar á V^d una carta de el E. S. Presidente en que me comunica el motivo que hai p^a que la espedicion no hubien benido aqui, mas en oficio que recibió Dⁿ José Castro le anuncian del ministerio de la guerra la salida del S^r Coron^l Dⁿ Ygn^o Yniestra por el Bergantine Goleta que trajo estas comunicaciones hemos

sabido que la republica está en completa paz, este buque marcha pronto y lleba las comunicaciones de lo ultim^{te} acaesido.

Yo ó Piña salimos en el, o los dos juntos solo me detiene, la llegada de la Division que toca aqui de un dia a otro.

Digame V. lo que mas le ocurra para la capital, q^e llo lo ejecutaré bien por el mencionado Piña ó personalm^{te} segun se presenten las circunstancias.

Nada hai de Gobierno unido á la Com^a gen^l este punto solo se resuelve hasta mi vista ó como^{on} con el Sup^e Gov^o.

No deje V. de contestarme pronto y ablar me con lo franquese q^e le es propia.

Saludeme V. á mi Comadrita, y de le V. un vero á mi ahijado, mande á su af^{mo} Comp^e q. b. l. m.

AND^s CASTILLERO.

[Rubric]

[Endorsed.]

Al Sr Com^{te} de la Linea del Norte Coron^l Dⁿ Mariano Guadalupe Vallejo, Sonoma. Exp^{nes} á Dⁿ Victor Prudon.

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EXHIBIT VALLEJO No. 4, W. H. C.

Sr. Coron^l Dⁿ Mariano G. Vallejo.

M. de Santa Clara, M^{zo} 11, 1846.

Estimado Compadre que aprecio.—En la Cierra del Gavilan frente á la Natividad, se ha hecho fuerte el Capitan J. C. Fremont al q. se le han unido extranjeros mas el S. Com^{te} Gen^l esta sobre ellos, y yo salgo luego p^a reunirme, lo que pongo en su conocim^{to}.

Piña se embarcó el cuatro de este en Monterey, y ba perfectam^{te} despachado caminando por la posta hasta Mejico.

Saludeme V. á mi comad^{ia} y demas fam^a y mande á su af^{mo} Comp^e q. b. l. m.

AND^s. CASTILLERO.

P. L.—Saludeme V. al S. Dⁿ Salvador y á Dⁿ Victor.

[Endorsed.]

S. N.—Al Sr Comand^{te} Gen^l de la linea del Norte, Coron^l Dⁿ Mariano G. Vallejo, Sonoma.

TRANSLATION OF EXHIBIT VALLEJO, No. 1.

(Received, January 3, 1846.)

SANTA CLARA, December 2, 1845.

Colonel Don Mariano Guadalupe Vallejo—My Dear Compadre :—By sergeant Piña I received all the communications noted in the pass, and those for Don José Castro were forwarded safely.

While waiting for the time for my departure for the interior of the Republic, I have employed myself as a miner at a place five leagues from here, on the lands of the retired sergeant Don José Reyes Berreyesa, and with good prospects, having extracted from one same vein, quicksilver, silver and gold in surpassing qualities, and I believe that five or six mines of the same kind will be discovered. I send you three assays, the largest of one ounce of ore, the second of three-quarters, and the smallest of half an ounce of ore, all picked.

The communication which you transmit to the Supreme Government appear to be all very good, and I will corroborate them personally, and bear Sutter in mind, and likewise the colonization matter of our friend.

I desire my respects to my comadrita, and shall be glad that my god-son is in good health, and with remembrance to all the family, I bid you farewell.

ANDRES CASTILLERO.

Respects to Don Salvador, and tell him that I shall not forget his commission.

[Endorsed.]

To the Commander of the Line of the North, Dⁿ M. G. Vallejo.

TRANSLATION OF EXHIBIT VALLEJO, No. 2.

(Received, January 31, 1846.)

SANTA CLARA, December 21, 1845.

Col. Don Mariano G. Vallejo—My dear Compadre: It is a week to-day since, having received dispatches by two express couriers in succession, I set out for Monterey, in consequence of the Governor, Don Pio Pico, having shipped off to Mexico, in the Clarita, Don Antonio Carillo, and one of the Varela's; the Governor having discovered that they had formed a con-

spiracy against him. Santa Barbara disowned the political government, made prisoners the authorities, took possession of the rincón, and sent commissioners to the Commandant-General, who sets out for that place to-morrow. From his correspondence, he does not approve of the step taken, neither does he uphold the Governor in the measure of defying the military authority. We shall see the results, of which I will inform you.

To another matter. We have much quicksilver, which is found in such abundance that from twenty arrobas of ore we have extracted thirty pounds of liquid quicksilver, and I estimate that the yield is one quintal (100 pounds) per day. We have also discovered mines with ley of silver.

I cannot undertake my voyage as I wish, for want of a conveyance.

The Assembly has decreed the sale of the Missions in the following terms: San Luis Rey, San Fernando, Santa Barbara, to be leased; Santa Clara and San José, suspended till the liquidation of their accounts; and the others to be sold by auction next month. I believe that the revolt in Santa Barbara was in consequence of that decree, and that the ecclesiastical authority took part in it. This is what I suspect, it is only a suspicion, but with some foundation.

Please give my respects to my comadrita, and a kiss to my god-son, and send your commands to your affectionate compadre and obedient servant.

ANDRES CASTILLERO.

P. S.—Respects to Don Victor. Tell me if a good mine should be found whether you will take a share in it. We have one of tin.

[Endorsed.]

To the Military Commander of the Line of the North, Col.
M. G. Vallejo.

—

TRANSLATION OF EXHIBIT VALLEJO, No. 3.

MISSION OF SANTA CLARA, February 21, 1846.

Colonel-Commander of the Line of the North,

Don Mariano Guadalupe Vallejo—My Dear Compadre: I have the pleasure to transmit to you a letter from His Excellency, the President, in which he informs me of the reasons why the expedition should not have come here, but in an official communication received by Don José Castro, he is advised

by the Ministry of War that Colonel Don Ygnacio Yniestra had set out.

By the brigantine schooner which brought these communications, we have received information that the Republic is in perfect peace. This vessel sails shortly and will carry communications of what has occurred lately.

Myself or Piña will leave in it, or both together. I am only detained waiting the arrival of the division which may touch here in a day or two.

Tell me what commands you have for the Capital, and I shall execute them faithfully in person, or order Piña to do so, as the circumstances may be.

Nothing has been done regarding the uniting of the Government to the Commandancy-General, and this matter will not be decided until I have an interview with the Supreme Government, or communicate with it.

Do not fail to reply to this soon, and write to me with the frankness which is congenial to you.

Respects to my comadrita, and a kiss to my god-son, and order your affectionate compadre and obedient servant.

ANDRES CASTILLERO.

[Endorsed.]

To the Commander of the Line of the North, Col. M. G. Vallejo.

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TRANSLATION OF EXHIBIT VALLEJO, No. 4.

MISSION OF SANTA CLARA, March 11, 1846.

Colonel Don Mariano Guadalupe Vallejo—My Dear Compadre:—In the mountain range of the Gabilan, over against the Natividad, Captain J. C. Fremont has fortified himself, and he has been joined by some foreigners; but the Commandant-General is upon them, and I set out immediately to accompany them. This I advise you of for your information.

Piña embarked on the fourth of this month, in Monterey, and was dispatched in perfect order. He will travel post to Mexico.

Respects to my comadrita and family, and order your affectionate compadre and obedient servant.

ANDRES CASTILLERO.

P. S.—Expressions to Don Salvador and Don Victor.

[Endorsed.]

To the Commander General of the Line of the North, Col. M. G. Vallejo.

DEPOSITION OF
JOSE MARIA COVARRUBIAS.

UNITED STATES DISTRICT COURT,
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, November 23d, 1859.

On this day, before me, W. H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c., &c., came José Maria Covarrubias, a witness produced on behalf of the claimant, Andres Castillero, in Case No.420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter:

Present: A. C. Peachy, of counsel for claimant, and Edmund Randolph, for the United States.

Questions by Mr. Peachy.

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

ANSWER. My name is José Maria Covarrubias; I am fifty-one years of age; my residence is in Santa Barbara county.

Q. 2. What public offices have you held in California under the Mexican and American Governments?

A. I have held a great many; I have been Secretary of the Departmental Government, Commissioner to Mexico, Judge of the Superior Court in Territorial times, Member of the Constitutional Convention and of the Legislature for seven or eight years. I also hold the office of Major General.

Q. 3. When did you leave California as Commissioner for Mexico; from what port, and on what vessel did you sail; who were your fellow-passengers; when did you reach San Blas; when the city of Mexico; how long did you remain there, and when did you return to California?

A. I sailed from San Pedro on the 14th February, 1846, in the schooner "Juanita," (Capt. Snook,) Messrs. Francis Mellus,

McKinley, Pacheco, Scott and John Young (who was an officer of the ship) were my fellow-passengers.

I don't remember the date of my arrival at San Blas, nor the date of my arrival at the Capital.

I don't remember the exact number of days I was in the Capital, but I think it was about twenty, in the months of March and April.

I returned to California on the same vessel, and arrived at Santa Barbara on the 2d July of the same year.

Q. 4. To what officers of the Mexican Government did you bear dispatches?

A. To the Minister of Relations.

Q. 6. Did you deliver your dispatches to him; did you make his acquaintance; what was his name?

A. I delivered the dispatches to him; I became acquainted with him; and his name was Castillo y Lanzas.

Q. 6. Were you acquainted in 1845, and 1846, with Andres Castellero?

A. Yes, sir.

Q. 7. Do you remember to have taken down any dispatches relating to him, or any business of his; if yea, describe fully all you recollect about it?

A. I don't remember having taken any dispatch relating to Castellero.

I can state, however, that Don Pio Pico, who was then Governor of California, delivered to me a bottle of quicksilver which he had received from Castellero (together with a letter), and instructed me to present it to the Cabinet at Mexico.

The letter written by Castellero to Pio Pico I did not receive; I saw it, but did not take it with me.

Q. 8. Did not Governor Pico, in the communication to the Mexican government, refer to the bottle of quicksilver which he sent by you?

[Objected to as leading, because it don't appear that the witness had read the communication of the Governor.]

A. He did.

Q. 9. Examine the document in "Exhibit Bassoco No. 9, O. II.," purporting to be a traced copy of a letter addressed by Governor Pico to the Minister of Relations, dated "Angeles, Feb. 13th, 1846," and also, another document, purporting to be a traced copy of an original letter addressed by Andres Castellero to Governor Pico, dated, "Santa Clara, December 10th, 1845;" and state whether your memory is refreshed as to the events of which you have been speaking.

A. They do. With regard to the first letter mentioned, I am

convinced that I took the original to Mexico myself; I remember that Don Pio Pico instructed me to take that original and the quicksilver with me to Mexico.

I also remember that when I was Secretary to Governor Pico, he told me of the great discovery of the quicksilver mine, now called New Almaden.

[The question to which the foregoing answer is given is objected to as leading.]

Q. 10. To whom did you deliver the bottle of quicksilver, and the original letter of which you have spoken?

A. I delivered the bottle of quicksilver and the communications which I had for the Mexican government, to Mr. Castillo y Lanzas, Minister of Relations, etc.

Q. 11. Do you remember to have had any conversation with Mr. Castillo y Lanzas, Minister of Relations, on the subject of quicksilver in California?

[Objected to as irrelevant and inadmissible.]

A. I do.

Q. 12. Do you remember what was said?

[Objected to as above.]

A. Mr. Castillo Lanzas and me were boarding in the same house, and I dined with him and his sons every day at Zurutuga's house, a hotel called "Casa de Diligencias," and we were in the habit of talking over the discovery of this mine, among other matters relating to California.

Direct examination closed.

No cross examination.

J. M. COVARRUBIAS.

Sworn to, and subscribed, November 23d, 1859, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed Nov. 23d, 1859.

W. H. CHEVERS, Clerk.

DEPOSITION OF AGUSTIN OLVERA.

UNITED STATES DISTRICT COURT, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, November 30, 1859.

On this day, before me, W. H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, etc., etc., came Agustin Olvera, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by a sworn interpreter: to wit, by Richard Tobin.

Present: Frederick Billings, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

Questions by counsel for the claimant.

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

ANSWER. My name is Agustin Olvera; I am 39 years of age, and I reside in Los Angeles county.

Q. 2. How long have you resided in Los Angeles, and what places or offices of trust have you held under the Mexican Government?

A. I have lived there 22 years; I was Secretary of the Departmental Assembly in the years 1845 and 1846; and was also a member of that body during the latter year.

Q. 3. What places of trust have you held under the American Government?

A. I was civil judge of the First Instance—first county judge of Los Angeles county, and Presidential elector at the last Presidential election.

I am at present Receiver of public moneys for the Los Angeles district.

Q. 4. Did you know Andres Castellero, claimant in this case; if so, when and where?

A. I knew him in Los Angeles, in the year 1837 or 1838.

I saw him at Los Angeles afterwards, but I do not know at what time; but I think it was in the year 1845.

Q. 5. Look at this document, produced from the office of the United States Surveyor General for California, purporting to be a borrador or rough draft of a communication, addressed on the 13th of February, 1846, to the Minister of Exterior Relations of Mexico, in which is made known to him the discovery of a quicksilver mine in California, a copy of which borrador is on file in this case, marked "Exhibit Pio Pico No. 1, W. H. C."—and state in whose handwriting is said document.

[The counsel for the United States admits that said document is found on file among the archives, in the office of the United States Surveyor General.]

A. It is my own handwriting.

Q. 6. When was it written?

A. I don't know; but I suppose that I wrote it on the day it bears date.

Q. 7. How came you to write that borrador?

A. Because I was Secretary of the Assembly at that time; and it was also my duty to assist in the office of the Governor's Secretary, when called upon; and I suppose the Governor directed me to write it.

Q. 8. Look at the document now shown you, on pages 2 and 3 (in red ink) in "Exhibit Bassoco No. 9, O. H." and of which the borrador referred to, with the exception of the signature of Pio Pico and the marginal note, is a copy, and say whether you can tell from the traced copy in said exhibit, in whose handwriting is the original, and whose the signature.

A. The original is in my own handwriting. The signature to it is Pio Pico's.

Q. 9. When was the original written?

A. I don't know; but I must have written it at the time I wrote the borrador or rough draft.

Q. 10. State what knowledge you had, if any, at that time or before, of the discovery of a quicksilver mine by Andres Castellero?

A. I heard a rumor in Los Angeles, prior to the date of those papers, that Castellero had discovered a quicksilver mine near Santa Clara.

Q. 11. Did you see any specimens of the ore, or any quicksilver from the mine?

A. I have an idea that I saw some specimens of the ore, but my recollection of it is not clear.

Direct examination closed.

No cross-examination.

AGUSTIN OLVERA.

Sworn to, and subscribed this 30th November, 1859, before me.

W. H. CHEVERS,
U. S. Commissioner.

Filed November 30, 1859.

W. H. CHEVERS, Clerk.

DEPOSITION OF JOSE CASTRO.

UNITED STATES DISTRICT COURT, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, Cal., November 28, 1859.

On this day, before me, W. H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came José Castro, a witness produced on behalf of the claimant, Andres Castillero, in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: A. C. Peachy, of counsel for claimant, and Edmund Randolph, Esq., for the United States.

Questions by counsel for claimant.

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

ANSWER. José Castro; my age is fifty-one years, and I reside in Lower California.

Q. 2. Where were you born, and what offices have you held under the Mexican Government?

A. I was born in the Mission of Soledad, near Monterey.

I have held the office of Deputy in the Territorial Junta, Political Chief, Prefect, Lieutenant-Colonel in the Militia, Permanent Captain and Colonel in the regular army, Comandante-General of California in 1846. At present, I am Comandante Militar and Political Chief of Lower California.

Q. 3. Did you know Andres Castillero, the claimant, and when?

A. I first knew him in the year 1834 or 1835, as well as I can recollect, when he came here as Secretary to General Chico.

Q. 4. When did Castillero leave California the last time?

A. I think it was in April, 1846.

Q. 5. Do you remember to have accompanied Castillero on

a visit to Sutter's Fort in 1845; if yea, please state what month the visit was paid, for what object, with what result, who composed the party, how long you remained at Sutter's Fort, and where you went on leaving it?

A. I remember that we did make such a visit to that place in that year. I think it was in the month of November. The party was composed of Castellero, Juan Soberanes, Felipe Butro, Manuel Castro, Francisco Arce, fifteen or twenty soldiers, and myself. My object in going there was to adopt some measures in concert with the Military Commandant (Don Mariano Vallejo) for the security of the country. I went from here to Sonoma, to see the Military Commandant, and from there I went to Sutter's Fort and Santa Clara. Castellero's object was to see the country, and he also spoke to Sutter about purchasing his establishment from him while we were at Sutter's Fort, for the Government. I believe he was then a Commissioner from the Mexican Government. Messrs. Leese and Prudon accompanied us from Sonoma to Sutter's Fort.

I did not learn what was the result of Castellero's proposal to purchase the establishment. We remained there one or two days. We went from there to the Mission of San José, crossing the San Joaquin and Cosumnes rivers, and from the Mission, we went to Santa Clara.

Q. 6. What was Castellero's profession?

A. He was a Captain in the army, and was also a Surgeon and Chemist.

Q. 7 Will you please to state all you remember concerning the discovery of what is now called the mine of New Almaden, by Andres Castellero?

A. Castellero started with us from Monterey, to go to the places that I have named at the time that we made the visit to Sutter, and as we traveled along, he occasioned some delay by looking for minerals in the hills, on either side of the road. When we came near Santa Clara, I remembered having heard, since I was a child, that there was a mine near there, not knowing what kind of a mine it was. I told Castellero of having heard about that mine, and suggested that he might examine it then, or on our return. In consequence of this, immediately upon our arrival at Santa Clara, he took a little cart and went to the mine, (which had been called Chaboya's mine). He got some minerals, and made an assay. He found a little gold and silver, and a very small quantity of quicksilver, but he considered this latter of no importance, there was so little of it. We then continued our journey to Sonoma and Sutter's Fort as I have stated, and upon our return to Santa Clara, Castellero made further assays. He remained at Santa Clara, and I went

on to Monterey. It was then that Castellero discovered the large quantities of quicksilver. He denounced the mine as a quicksilver mine, and established a company to work it, of which I was a member, having four shares in the mine. The Alcalde of San José put him in possession of the mine, and three thousand varas in all directions, as discoverer. The Alcalde was Antonio Maria Pico. He placed the mine in working order, and as I found it necessary to send him to Mexico, he left the mine in charge of Padre Real and myself. I remember that, after Castellero's departure, I drew up a representation to the Alcalde, touching the mine, and also a power of attorney to Padre McNamara, authorizing him to contract for the habilitacion or working of the mine.

Q. 8. Did you ever see the original article of partnership between yourself, Castellero, Padre Real, and the two Robles; do you know where it is; when did you see it last?

A. I never saw it; but I gave Castellero authority to enter into the contract on my behalf, and I learned from him that he had done so, and that the contract was in possession of Padre Real.

Q. 9. Look at the document now shown you purporting to contain two representations made by Castellero to the Alcalde of the Pueblo of San José, dated respectively the 22d November and 3d December, 1845, making known the discovery of this mine, asking that the fact of the discovery should be noticed as required by the ordinances, and that possession of the mine be given. This document also contains what purports to be the record of the act of juridical possession, given by Alcalde Pico to Castellero in December, 1845; and it contains further what purports to be a petition to the first Alcalde of San José, made and signed by you on the 27th June, 1846:

Please to say in whose handwriting are these various documents, whose the signatures to them, and when the same were written and signed, as far as you know?

A. Castellero's first representation, dated 22d November, 1845, is in the handwriting of Castañeda, with the signature of Castellero. The second, dated 3d December, 1845, is written and signed by Castellero.

I do not know the handwriting of the act of possession, but I do know the signatures to it. They are the genuine signatures of Suñol, Pico, and Noriega.

My petition to the Alcalde is in the handwriting of one of my officers, Diaz, Soberano or Soto; I cannot say which. The signature to it is mine. I signed it on the day of its date.

I have no reason to believe but what the other documents were signed on the day of their date. I believe they were so signed.

Q. 10. I draw your particular attention to the day on which your petition was actually signed by you, because Benito Diaz, a witness produced by the Government in this case, has sworn that he wrote that petition somewhere about April or May, 1847, under the dictation of Padre Real, and that at that time your name was not signed to it. With this statement of Benito Diaz made known to you, please answer my question again with reference to the day on which you actually signed that paper.

A. This statement of Benito Diaz is false. I have the best reason for knowing that I signed this document on the day of its date; and after having examined it again, I repeat that I did so sign it.

I remember that when I sent Castellero to Mexico, he told me when he was about leaving, that this requisite was wanting, and gave me a rough draft (borrador) of this petition, and told me to attend to it; and when I got back to Santa Clara, I gave it to Padre Real, and told him to have the petition drawn from it by one of the officers there. It was so drawn, and I signed it, and sent it to the Alcalde of San José.

I afterwards left Santa Clara, and on my return I met the Alcalde, and he told me in presence of Juan B. Alvarado and Manuel Castro that my petition had been granted as prayed for.

Q. 11. Are you acquainted with the handwriting and signature of Alcalde Pacheco.

A. I am.

Q. 12. In whose handwriting is the marginal note on your said petition, and whose the signature to it?

A. The handwriting of the marginal note is the handwriting of Salvio Pacheco, and the signature to it is that of Dolores Pacheco.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

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SAN FRANCISCO, Nov. 29, 1859.

Direct Examination of José Castro resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 13. Did you leave California in 1846; where did you go, and when did you return?

A. I started from Los Angeles on the 10th August, 1846,

and traveled through Sonora and Sinaloa to Tepic. I returned to California in about two years. I think it was in the early part of 1848.

Q. 14. While you were in Tepic, did you sell the whole or any part of your interest in the mine to any person?

A. Whilst I was there, I sold all my interest in the mine, four shares, to Mr. Forbes.

Q. 15. I observe in the acts of sale to Mr. Forbes, you state that the mine consists of three pertenencias: Please to state why you used that expression; what you meant by it.

A. At that time I had no knowledge whatever of mining matters—being only a soldier, and I got that expression from the borrador which Castellero gave me when he was leaving here for Mexico. I did not know how many barras there were in a pertenencia; Castellero, himself, was the only person who knew anything about mines.

Q. 16. Do you know James Alexander Forbes, of Santa Clara, and how long have you known him?

A. I do know him; I have known him about twenty-five years.

Q. 17. When did you leave Lower California on your present visit to this State?

A. On or about the 20th of last June. I came up here from San Diego on the steamer "Senator."

Q. 18. Just before you left Lower California on that occasion, had not James Alexander Forbes been there on a visit to you?

A. Yes, sir; he was there about the latter part of April, or the early part of May.

A. 19. Please to state what was the object of Mr. Forbes' visit to you, as disclosed by himself, and what passed between you in your interviews; and under what circumstances Mr. James Alexander Forbes left Lower California.

A. At my residence (the Sausal de Camacho) I received a letter from James Alexander Forbes, dated at Don Juan Bandin's rancho, in which he stated that he had a matter of great importance to consult me about, and requested me to come at once to see him. I did so, and took my Secretary with me. When we arrived, after the usual salutations had passed, Mr. Forbes and myself walked out together from the house, and he then stated to me that he was authorized by a powerful company of speculators (empresarios) in San Francisco to furnish me with the necessary means, if I would consent to detach Lower California from Mexico, to make it independent, and that subsequently it should be annexed to the United States. I listened to this calmly, and told him to go on. He

then said, there is another matter of importance to you. If you will give your testimony against the owners of the Almaden mine, the Government will pay you a considerable sum—more than ten thousand dollars. I answered, “with regard to what you first proposed, I am an officer of the Mexican Government, and will not be guilty of treason; and as to the other matter, I cannot be bought with money to do an infamous action; say nothing further to me on the subject.” We then returned to Mr. Bandini’s house.

I then went home, leaving Mr. Bandini an order, directed to Forbes, stating that my duty, and his own personal safety, required that he should immediately leave the country. A few days afterwards I heard from Mr. Bandini that Forbes had left the day after he received my order.

Q. 20. Then I am to understand that this rancho of Bandini’s, where you met Mr. Forbes, is in Lower California?

A. Yes, sir.

Q. 21. In the course of Mr. Forbes’ conversation with you, did he refer to the testimony which he had given in this case?

A. I remember that he did mention that he had given testimony against the owners of the mine, being dissatisfied with them on account of their having refused him a sum of money.

He spoke at considerable length about this, and of his having deposited a box of papers, but I did not pay much attention to what he said about that.

Q. 22. Did he assign no other reason than what you have mentioned, for giving his testimony against the owners of the Almaden mine?

Did he not also tell you that he had received (\$20,000) twenty thousand dollars from Henry Laureneel and James Eldridge, the owners of the Fossat claim, for giving that testimony?

[Question objected to as leading.]

A. I did not give him an opportunity to enter into further details. He was speaking about being dissatisfied with the house, etc., as I stated before, when I stopped him, saying that I did not wish to hear any further explanations about his affairs.

Q. 23. Did he mention the names of any members of this powerful company of speculators in San Francisco, who were desirous of detaching Lower California from the Mexican Republic, and of annexing it to the United States?

A. He gave no names.

Q. 24. Did he tell you by what authority he spoke for the Government, when he promised you ten thousand dollars and

more, if you would give your testimony in its behalf, and against the owners of the mine?

A. He did not state how he was authorized to make the offer; he only said the Government would pay me.

Q. 25. Did he exhibit to you any written authority from the Government to treat with you about this matter?

A. No, sir.

Q. 26. Did he tell you who defrayed the expenses of his mission to Lower California?

A. He said that there was a fund here in San Francisco, out of which his expenses were paid.

Q. 27. Do you know how long he had been in Lower California before he addressed you the note, of which you have spoken?

A. I think about three or four days.

Q. 28. Then his stay in Lower California must have been very short. Did he have any business in that country besides that which you have mentioned?

A. His stay was very short. That was the only business I knew of that he had there. He spoke to me of no other business.

Q. 29. Where were you on the 12th June, 1846?

A. In Monterey; I left there about 4 o'clock on the afternoon of that day for Santa Clara.

Q. 30. Do you remember to have given a power of attorney to the Padre McNamara, to negotiate a contract of habilitacion of the mine?

[Objected to as leading.]

A. I remember that I left such a power of attorney for Padre McNamara, with Mr. Antonio Maria Osio, in Monterey, to be delivered by him or Padre Real to Padre McNamara.

Q. 31. Examine the document now shown you, purporting to be a power of attorney, such as you have described, and to be signed by yourself as principal, and by David Spence, Manuel Diaz, Antonio Maria Osio, and Juan Malarin, as subscribing witnesses:

State whether your signature and those of the subscribing witnesses are genuine; and if you signed it on the day on which it bears date?

A. The body of the instrument is in the handwriting of Antonio Maria Osio, one of the subscribing witnesses. My signature and the signatures of the witnesses to it are genuine.

I signed it on the day of its date.

Examination adjourned until to-morrow, at 12 o'clock, M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, Cal., Nov. 30, 1859.

Direct Examination of José Castro resumed from yesterday.

Present : Frederick Billings Esq., counsel for the claimant ; and Edmund Randolph, Esq., for the United States.

Examination adjourned by consent, until to-morrow, at 12 o'clock, M.

W. H. CHEEVERS,
U. S. Commissioner.

SAN FRANCISCO, CAL., December 1st, 1859.

Direct Examination of José Castro resumed from yesterday.

Present: Mr. Billings, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 32. In answer to question 8, you said you never saw the original article of partnership between yourself, Castellero, Padre Real, and the two Robles ; that you gave authority to Castellero to enter into the contract on your behalf, and that you learned from him that he had done so, and that the contract was in possession of Padre Real : you did not answer that part of the question which asked if you knew where said original article of partnership is now : please answer that.

A. I understand that it is in possession of Mr. Leonidas Haskell, of this city.

I learned this from a conversation which occurred between Don Manuel Castro and Don Maximino Barragan, in my presence. Mr. Castro said that a Mr. Soza had arrived here from Mazatlan, with power from Padre Real to sell the Guadalupe mine, and that among the papers which he had brought was the original contract of partnership referred to, and that Mr. Haskell, and a Frenchman whose name I do not recollect, had deceived him, and got it from him by some trick.

Castro said that Soza stated that they (Haskell and the Frenchman, whose name I now recollect as Laurencel) had deceived him, and made a fool of him in getting the paper from him. Castro said he believed that Haskell had relations with Laurencel.

[Counsel for the United States objects to all the foregoing as hearsay and irrelevant.]

Q. 33. Have you in your possession and can you produce the letter which you say, in answer to question 19, you received from Alexander Forbes ?

A. No, sir. I showed it to Mr. Barragan, but I don't know

what I did with it afterwards; whether I left it among my papers at home, or not.

Q. 34. Who is Mr. Barragan?

A. He is my secretary, who accompanied me when I went to see Mr. Forbes at Bandini's rancho; he is now here.

[Counsel for claimant offers in evidence the power of attorney of José Castro to Eugene McNamara, dated Monterey, 12th June, 1846, referred to in question 31, and marked "Exhibit Castro No. 1, W. H. C."]

Direct Examination closed.

[The witness desires to state, that he would like to read over his testimony so far, before the cross-examination commences, so that he may correct whatever errors there are in it; he remembers having made one mistake in stating that Forbes' visit to him in Lower California, was in April or May—it was in January or February, and not in April or May.

Counsel for the United States informs the witness that he can read his testimony when he gets through; moreover, it has been printed every morning in the newspapers, in English.

Witness says he may have made some other mistakes with regard to dates, and therefore would prefer to read his testimony; he is unable to read the newspapers, and does not read English at all; still, he is willing to go on if desired.

Counsel for the claimant desires the Commissioner to allow Mr. Castro to read and correct his testimony.]

The Examination adjourned until to-morrow at 12 o'clock, M., for the purpose of allowing the witness to read and correct his testimony.

W. H. CHEVERS,
U. S. Commissioner.

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SAN FRANCISCO, Cal., December 2d, 1859.

Examination of José Castro resumed from yesterday.

Present: Mr. Billings, of counsel for claimant, and Mr. Randolph, for the United States.

CROSS EXAMINATION.

Questions by Mr. Randolph.

Q. 35. When did you leave Lower California on your present visit to San Francisco?

A. I think it was on the 17th of June last.

Q. 36. How came you to make such a mistake in so recent a matter, as to say that you saw James Alexander Forbes at Bandidi's ranch, in Lower California, in the month of April or May last, when in fact it was in January or February?

A. Because I was mistaken in the date.

Q. 37. Have you got a very bad memory for dates?

A. I have not a good one.

Q. 38. Then how could you venture to fix the precise day, or even the month, of those things which you have sworn to as happening in 1846?

A. I remember the dates of events that happened in that year, and shall remember them until I die, because that year is one that is very marked and distinct in my memory, for the reason that I was then Comandante General of California, and responsible for the integrity and defense of the country; I defended it to the best of my ability. Those are well marked days in my memory.

Q. 39. Don't you think that those very important public transactions in which you were engaged at that time, would be a reason why you should forget, rather than why you should remember, the precise day when you signed a petition to an Alcalde for three more pertenencias in a mine, in addition to the one which you said you already had; and the day when you signed a power of attorney to a foreign priest, that he might hunt for capital to work the mine?

A. No, sir.

Q. 40. About this date of your interview with James Alexander Forbes in Lower California, what had happened in the two or three days which had elapsed to enable you, on yesterday, to remember more accurately what the date was?

A. Because I thought the matter over, and came to that conclusion in my own mind; but I am not even now absolutely certain about the date.

Q. 41. Had not Forbes been to see you, and told you that he could prove your statement was false, and that he was not in Lower California at all, at the time that you had mentioned?

A. It is not true that Forbes ever told me that any statement of mine was false. I allow no one to tell me personally that I am a liar, and I have never received such an insult from any one in my life. Forbes came to me in a friendly manner, saying that he regretted I had revealed what had passed between us, that it was a secret, and so on, and endeavored to make excuses about it. I told him that being under oath I had to tell the truth.

Q. 42. How much have you received, or are you to receive, for testifying in this case?

A. Not a cent.

Q. 43. What are your circumstances; are you a rich man, or, on the contrary, are you not a poor man?

A. I am a poor man; I have a pension from the government amounting to about \$225 or \$250 per month.

Q. 44. Am I right in supposing that that salary is but nominal, and that the government does not pay at all, or very badly; also that you do not draw it all the time that you are absent in San Francisco?

A. You are not. It is true that the government does not remit to me on that distant frontier, but the revenues of the country are more than sufficient to pay twice that amount.

I have received six thousand dollars for guano, about four thousand dollars taxes on cattle, about four thousand or five thousand dollars for the duty of twenty per cent. upon imported foreign goods; and since I have been here, I have received fourteen hundred dollars from Mr. Alviso, and twelve hundred dollars from Mr. Castro, for lands granted to them in Lower California. I have also received from my son part of two thousand dollars for lands sold by him up here (300 dollars), and I have friends in this State who would lend me 500 or 1,000 dollars if I should need it at any time; so that I am not without means.

Q. 45. Who proposed to you to come from Lower California to San Francisco, to testify in this case?

A. Nobody.

Q. 46. Who proposed to you to come for any purpose?

A. No one proposed to me to come for any purpose, except Forbes, as I stated before; I came of my own accord, and on my own private and public business.

Q. 47. Then you left your government of Lower California, and are here testifying in this case without any solicitation on the part of the claimants, without having received any money from them, without any promise of any, and without any expectation of any; and you have remained here all this summer and fall, only for the purpose of making grants of land, and attending to your affairs, as you have just said?

[Objected to, on the ground that the witness has not stated that he was here for the purpose of making grants of land, but that he was here simply on his own private business.]

A. I left Lower California in obedience to instructions from my government, directing me to take command of La Paz, the capital of the territory; and I came here to San Francisco to leave and go to see my wife and children who live in Monterey, and whom I had not seen for four years, with the intention of sailing on some vessel from here to La Paz.

In the early part of July, Mr. Campbell called to see me at the California Hotel, where I was stopping, and after saluting, inquired if I had owned some shares in the Almaden mine. I said I had. He asked me if I knew anything about this matter, and I said I did; that I had owned shares in it, and was well acquainted with it from the beginning. He then said, you will be willing to give your testimony? I replied that I had no objection. I could not refuse, because I had received many favors from Mr. Forbes, of Tepic. He said that my testimony could not be taken immediately, for a month or two, because the testimony of the witnesses from Mexico was being taken. I told him that I had to leave here first, to see my family, and then to go to La Paz. He then told me that if I were delayed here for the purpose of giving my testimony, my expenses would be paid. I have been detained here, but not for that purpose solely; I have other good reasons for having remained here.

This is how I came to be a witness in the case.

It would be entertaining a very poor opinion of me to suppose that I was here for the purpose of making titles; that I, an officer of the Mexican Government, in a foreign country, would make titles to land. I have never done so, nor even thought of doing so.

Q. 48. What other person have you spoken with about the compensation you were to have, or the expense you would be put to in remaining here?

A. With no other person.

Q. 49. Have you not spoken to any other person all this time on this subject?

A. No, sir.

Q. 50. Have you received nothing on account of your expenses?

A. Not a cent.

Q. 51. What is the amount of these expenses which you are to receive?

A. They may pay what they please. I will receive whatever they may give. I have not remained here solely for this purpose.

Q. 52. When are you going away?

A. As soon as I get well.

Q. 53. Why did you say you had received no promise of any compensation, and yet had this agreement all along with Mr. Campbell?

A. Because it is at their discretion to pay my expenses or not, as they please.

Q. 54. Did nobody else in Lower California ever speak to

you about the revolution you were to make, except James Alexander Forbes?

A. No.

Q. 55. Did not Bandini?

A. No.

Q. 56. Bandini is dead now, is he not?

A. I am sorry to say that he is.

Q. 57. Was not this project of separating Lower California from Mexico entertained by a good many persons in Lower California, and by the Mexican population on our side of the line?

A. No, sir; I would have had anybody shot that thought of doing so.

Examination adjourned until to-morrow, at 12 o'clock.

W. H. CHEEVERS,
U. S. Commissioner.

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SAN FRANCISCO, Cal., Dec. 3, 1859.

Cross-Examination of José Castro resumed from yesterday.

Present: Mr. Billings, of counsel for claimant, and Mr. Randolph, for the United States.

Examination adjourned until Monday next, at 11 o'clock A.M.

W. H. CHEEVERS,
U. S. Commissioner.

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SAN FRANCISCO, Cal., Dec. 5, 1859.

Cross-Examination of José Castro resumed from Saturday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 58. Did James Alexander Forbes mention the names of any present who desired you to revolutionize Lower California?

A. No, sir.

Q. 59. Did you not ask Forbes whether he was authorized by some persons in Lower California, and who they were?

A. I did not.

Q. 60. What was the reason, when this treasonable proposition was made to you, that you did not endeavor to find out whether it had any ramifications in the country, or not. Why did you not ask Forbes whether he expected you to do such a thing alone and unaided, and what backing he meant to give you, so that you might ascertain the full extent of the plot?

A. I despised his proposition. I did not think it worth while to make inquiries about it.

Q. 61. As Forbes was a guest of Bandini, had you no suspicion that Bandini was associated with him in the scheme, not enough to induce you to mention the matter to Bandini?

A. No, sir. Bandini only told me that he was tired of Forbes, and I told him that I would remove him from there by an order which I was going to give, requiring him to leave the country. He said other things against Forbes which I might state if Bandini were not dead.

Q. 62. Did you attach any more importance to what Forbes said about the United States giving you more than \$10,000, if you would come forward and give your testimony against this company?

A. I despised both equally.

Q. 63. Did you ask him no questions as to his authority for making this proposition about the money?

A. No, sir.

Q. 64. You seem then to have treated all that he said as if it came from a drunken man or a fool?

A. No, sir.

Q. 65. How then did you regard it?

A. I considered what he said as the statement of a rational man.

Q. 66. From your long acquaintance with Forbes in the respectable office of British Vice Consul in this country, your long continued friendly intercourse with him, and many favors which you received at his hands when you were in need of them, you did not feel justified, I suppose, to consider his statements as idle falsehoods, unworthy of attention?

A. I despised his proposals; and I never received any favor whatever from him, but on the contrary, as Governor of this country, I have done him favors.

Q. 67. The result of the whole then is that when this man proposed to you to commit treason to one government, and to accept a bribe from another, you thought so little of the matter that you did not even mention it to your friend Bandini, at whose house you were stopping.

A. That is true.

Q. 68. You have said that when Forbes came to you the other day and complained that you had revealed his secrets, that you answered you were under oath and obliged to tell the truth: how do you suppose that the counsel for claimant in this case got their information as to what Forbes had been about, so as to be able to ask you the question, which compelled you to reveal the secret?

A. I don't know how they got it, but it is very generally known here that Forbes went to Lower Culifornia to see me.

Q. You had not revealed any of these secrets to anybody before you were put under oath, had you; neither to Mr. Campbell, Mr. Peachy, Mr. Barron, or anybody else interested in this claim?

A. No, sir.

Q. 70. How was it possible then for counsel for claimant to have asked you such a precise question as to your interviews with James Alexander Forbes, and as to something peculiar in the circumstances under which he left the country; referring obviously to your meeting, away down in Lower California, without witnesses, in a solitary place, and to your order requiring him to leave Lower California immediately?

A. He asked me questions as a lawyer, and I answered.

Q. 71. I ask you again, whether instead of its being an involuntary disclosure made, as you have pretended, under the compulsion of an oath, you have not mentioned the matter to somebody or other, and in this way furnished the opportunity for counsel to hear of it, and to be able to ask questions, accordingly?

[Counsel for the claimant objects to the use of the word "pretended," in the above question.]

A. I did not mention it to any one.

Q. 72. How far north did you march from Santa Clara to meet Col. Fremont and his men, under the the Bear flag?

A. As far as the Arroyo San Leandro, on the rancho of the Estudillos, at a place were there were some trees at the foot of the hills.

Q. 73. What day did you leave Santa Clara, on that occasion?

A. About sundown on the 27th June, 1846.

Q. 74. What day did you counter-march from the Estudillo Rancho?

A. I got back to Santa Clara on the 29th of the same month.

Q. 75. Where were you on the 25th of that month?

A. In Santa Clara.

Q. 76. What had you been doing since the fourteenth of that month?

A. I was taking all measures that I deemed necessary under the circumstances, as Comandante-Generál.

Q. 77. When did you first hear of Fremont's insurrection?

A. I heard of it by a special courier on the 12th June, 1846, at Monterey River, as I was on my way to Santa Clara. The courier was sent by Lieut. Arce, informing that he had been surprised and taken prisoner by what he called a party of

adventurers. A large number of horses which he had collected for the head-quarters at Santa Clara were also taken.

Q. 78. From that time until you left the country, was for you a very busy and most anxious period; was it not?

A. Certainly. They were the gloomiest days of my life; my spirit was very much afflicted.

Q. 79. Did you not in those times send dispatches to sundry officials, publish some addresses to the people, and write letters to various individuals?

A. I availed myself of every possible means of defending the country. I wrote letters, made speeches until I was scarcely able to speak at all, issued proclamations, wrote dispatches, and did everything I could.

Q. 80. Mention the day on which you issued some proclamation, or the day on which you sent a dispatch to the Governor, or some other official?

On the 12th June, I wrote to Don Manuel Castro, who was then Prefect of Monterey, stating that it was time to lay aside our private differences and unite for the defense of the country. I requested him to collect all the men he could and join me. The letter was written by Juan B. Alvarado, and issued by myself. Mr. Castro may have that letter yet. I don't remember precisely the date of my proclamation, but it was about the 15th or 16th.

Q. 81. Mention the precise date of a dispatch to the Governor, or other documents which ought to be found in the archives?

A. On the first of July I sent from Santa Clara a commission, composed of Don Manuel Castro and Don José Maria Villa, to the Governor at Los Angeles, for the purpose of putting an end to the dissensions existing between us.

Q. 82*a*. Mention some other document and its date, which you wrote during the same period, and which ought to be now in the archives?

A. I don't remember any other documents signed by me as Comandante-Generál, on public business.

I sent a dispatch and private letter with the commission to the Governor.

Q. 82*b*. How does it happen that when you remember the date of so few of the multitude of communications, which in those times of invasion, you, the commanding general on the frontier, wrote upon public affairs, you can yet be so precise about an insignificant petition, addressed to an Alcalde on the subject of your private interests?

A. I remember that private matter, because it involved my personal interests, and I had been requested to attend to it by my partner and friend who gave me the borrador.

Q. 82c. When was it that Castellero gave you that borrador of the petition to the Alcalde, asking for three more pertencias in addition to the one which had already been granted?

A. He gave it to me at my house in Monterey, about the middle of April.

Q. 82d. Your recollection of dates is not good, is it?

A. It is not.

Q. 82e. It might have been the first of April instead of the middle of April, that Castellero gave you that borrador, might it not?

A. It was a day or two before he left—when he was preparing for his departure—about the middle of April.

There are many persons living who were present at the table when he gave it to me.

Q. 82f. You don't mean to be positive, do you, that Andres Castellero left here about the middle, and not the first of that month?

A. I cannot state the date positively, but I believe that it was about the middle of April.

Q. 83. Why can't you remember the day on which he gave you the borrador, as well as you can remember the day on which you gave the petition to the Alcalde?

A. Because there are special circumstances which enable me to remember the one and not the other.

Q. 84. After Castellero went away, where were you all the time until the 12th June?

A. It was at and around Monterey and Santa Clara, which was head-quarters.

Q. 85. During the three months which had elapsed since Castellero gave you the borrador, why had you not presented this petition to the Alcalde. From what motive did you defer it until the very crisis of the public disorders, and the eve of your marching against the public enemy; how should it come to your mind just at that moment?

A. Castellero, when he left me, said that he would return about the month of July, and requested me to attend to the petition, which he said was necessary for my interest and the interest of us all, if he should not return as intended; and I did not attend to it sooner, because I expected he would return, and that the difficulty between the two Republics would be settled. But finding that he did not return, that I had to encounter the enemy, and perhaps I might be killed, as some of our people had been already, I gave the borrador to Padre Real to have it attended to, as I have stated.

Examination adjourned until to-morrow at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, Cal., December 6th, 1847.

Cross-Examination of José Castro resumed from yesterday.

Present : Gregory Yale, Esq., of counsel for claimant, and Mr. Randolph, for the United States.

Q. 86. Who was present when Castellero gave you the borrador of that petition of which you have spoken?

A. Don Manuel Castro, Don Juan B. Alvarado, Don Francisco Rico, Don Guadalupe Soberanes, Don José Maria Soberanes, and some others who are dead.

Q. 87. How long after you received that paper did you remain in Monterey?

A. A few days.

Q. 88. Then, I suppose you went up to Santa Clara, your head-quarters?

A. Yes, sir. I remained in Monterey about eight or ten days before I started for Santa Clara.

Q. 89. What were you doing in Monterey on the 12th June?

A. I frequently visited my family in those days, there. My home was there; that being the Capital also, I used to go there to meet the authorities—give them instructions—being constantly apprehensive of danger to the country.

We were at war, but desirous of making peace.

Q. 90. Where was the power of attorney to Father McNamara, of which you have testified, which is filed in this case as Exhibit Castro, No. 1, W. II. C., signed by you; in what house?

A. In my house in Monterey.

Q. 91. What is the reason that you gave this power of attorney to Osio, that he or Padre Real might give it to Padre McNamara?

A. What I stated was, that I gave it to Osio, for him to give it to Padre Real, and for him to give it to Father McNamara. I did so because Padre Real and myself considered him an influential person. I could not give it to him personally, because I did not know where he was—whether in the north or the south.

Q. 92. How many copies were made and signed by you of this power of attorney to Padre McNamara?

A. Only one.

Q. 93. When you signed, was the power of attorney already written out, or did you sign in blank, and leave Osio or some one else to write out the power of attorney over your signature?

A. It was written before I signed.

Q. 94. After you signed it, did the witnesses then sign, or were their names already signed, leaving a blank for you to

fill up when the paper was handed to you; I mean did they attest your signature before you had affixed it to the paper?

A. They signed it after I did. After I had signed, and Osio had signed as a witness, I told him to take it, have it properly attested, and deliver it to Father Real.

Q. 95. Did not the other witnesses see you sign it?

A. Osio was the only one that saw me sign it.

Q. 96. Why did you not call in all the witnesses to see you sign?

A. It was not necessary. In those days things were done in good faith; contracts were not made with scrupulous or rigorous care. It was usual among the inhabitants to do just as I did—to sign documents in presence of one or more of the witnesses, and then give it to one of the witnesses who had signed, to go and get the signatures of the other witnesses named in the contract, and to remit it to its destination.

Q. 97. How did you know that Osio would be able to find, or would select just those particular persons, who afterwards signed as witnesses?

A. Because those persons were named as witnesses in the instrument, and lived in town.

Q. 98. Is it possible that those persons would have signed as witnesses without having seen you sign, or having had your acknowledgment that the signature was yours?

A. Yes, because they knew my signature very well, and because they knew Osio, who was a person of character.

Q. 99. But they might know your signature, without knowing whether you had affixed it to this power of attorney or not, or whether you had not given it to Osio in blank, for some other purpose?

A. Our contracts and intercourse were governed by good faith in those times.

Q. 100. When this power of attorney says, then,

“I José Castro, in the presence of the witnesses, who will be named at the end,” have given this power of attorney, etc., it was untrue; only one of the four, Antonio Maria Osio, being really present?

A. That is true, there was but one present when I signed it; but it was common to execute documents in that way, in those times.

Q. 101. Well, if those witnesses, as was common in those days, were willing to attest your signature to a contract which they had not seen you sign, or heard you acknowledge that you had signed, they would doubtless have been willing to attest your signature to a contract to which it was not affixed at all, but which was in blank, and in anticipation that you

would sign it at some other time when it might be presented to you for your signature—would they not?

A. No; that would not be done; they could not possibly do that.

Q. 102. Why might they not do that as well as the other?

A. Because that would not be good faith. It was done in cases of this kind, for instance,—If I should buy a man's house, I, who was well known, would go to the witnesses with the contract, and say "I have bought Mr. such a one's house, and I want you to sign this contract as witnesses," and they would do it, though they did not see the party sign.

Q. 103. Explain fully what you mean, when you say it would be bad faith for witnesses to attest a contract which had no signature to it: Do you mean that it would be criminal and dishonest?

A. It would be dishonest and wrong to do so.

Q. 104. Did you see Osio deliver this power of attorney to Father Real?

A. No, sir.

Q. 105. Did you see Father Real deliver it to Father McNamara?

A. No, sir.

Q. 106. When did you next see it, after giving it to Osio on that occasion?

A. I am doubtful whether I saw it or not at Tepic before I sold my shares, whether I did not ratify it, or something of the kind, there. But I am certain of having seen it lately, in July last, in the office of the County Recorder of Santa Clara county. I have seen it here also.

Q. 107. What do you mean, when you speak of having possibly ratified this paper in Tepic; what do you mean by ratifying your own contract?

Might it not be, after all, that instead of ratifying this power of attorney at Tepic, you actually signed it there, with all the names of the witnesses already attached to it before you signed it, and awaiting your signature when it could be got?

A. I did not sign it at Tepic. I would not have done so.

Q. 108. What was this paper doing in the County Recorder's office of Santa Clara county, last June; how came it there?

A. When I was on my way to Monterey, I was called upon by a lawyer in Santa Clara, to go and acknowledge some signatures of mine, and I went to the office, and recognized my signatures to the document shown me here.

Q. 109. Your signature to this power of attorney, now shown you (Exhibit Castro No. 1, W. H. C.)?

A. Yes, I think so.

Q. 110. How could that be, when this power of attorney to Father McNamara is not kept in that office, but is a private paper kept by the parties, I presume?

A. I think I saw it there with the petition which I sent to the Alcalde, in the form of an expediente.

Q. 111. Who was the attorney that took you to the Recorder's office to acknowledge your signatures?

A. Mr. Billings.

Q. 112. Did you not say anything to Mr. Billings about Forbes' visit to Lower California, and your interviews with him, and your ordering him to leave the country?

A. Not a word.

Q. 113. What was the reason that you gave Father Real the borrador of your petition to the Alcalde, that he might have it copied by one of your own officers?

Why did you not give it to your own officer yourself, and tell him to copy it?

A. Padre Real was a partner with me in the mine, and it was proper for me to consult with him about that business at the time.

Q. 114. Had you never spoken before to Father Real about that borrador, and exhibited it to him?

A. No.

Q. 115. Never until the 26th day of June—three months after you had received it, and you were just going to meet Colonel Fremont?

A. No, sir.

Q. 116. Was not this very strange, as you were living at head-quarters in Santa Clara, Father Real was living there, and you were partners in the mine?

A. It was not, because I had hopes that Castellero would return.

Q. 117. Still, as you were partners, and Castellero had told you that the borrador was of much importance, and you would naturally have a great deal of conversation with Father Real about the mine, would you not have even told him that you had this borrador?

A. I did not do so.

Q. 118. Were not you and Father Real very intimate; did you not regard him as a friend, and have a great deal of confidence in him?

A. He was my friend, and I considered him a respectable, honest man, but he was not a very intimate friend of mine. I had confidence in him as an honest man, but I had not such a peculiarly blind confidence in him as you seem to think.

Q. 119. When you retired from Santa Clara towards the

southern country, about the 8th or 9th July, 1846, did you not leave with Father Real your signature in blank, to be used in and about your interest in this mine?

A. I left him not merely one, but three signatures in blank; with one, I told him to secure my rights in this mine, and with the other two I told him to secure all my property, cattle, ranchos, etc., to my wife in her own right.

I have seen one of those signatures since, and condemned it. (Father Real had made a grant of the orchard of Santa Clara with it.) The others I have not seen; if I had I would have condemned them also.

Q. 120. You have no idea then what use Father Real had made of the other two signatures you gave him?

A. No, sir.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., December 7, 1859.

Cross-Examination of José Castro resumed from yesterday.

Present: Mr. Yale, of counsel for claimant; and Mr. Randolph, for the United States.

Q. 121. When was the last time that you saw Father Real?

A. About four years ago, in Mazatlan.

Q. 122. Is that the first time that you had seen him since you retired from Santa Clara, in July, 1846?

A. I saw him in the mines in 1848. That was the first time I saw him after I left him in Santa Clara.

Q. 123. Is he alive now; if yea, where does he live?

A. He is alive, and I think at Guadalajara.

Q. 124. How long did it take you to make the round trip, when you went with Castillero, in 1845, to Sutter's Fort?

A. Six or seven days from the time we left until we returned to Santa Clara. It took some two or three days more, counting from Monterey.

Q. 125. In what month was it that you made this trip?

A. In the latter part of October, I think.

Q. 126. What time in October did you leave Monterey on that trip?

A. About the middle of the month of October, as well as I can remember; probably nearer the end than the middle of the month.

Q. 127. Did you get back to Monterey, and of course to Santa Clara, in October?

A. I got back to Monterey about the first of December.

Q. 128. How can that be, when you have just said that you left Monterey some time in October, and got back there again in seven or eight days; if the round trip had taken twice that time, don't you see that you would have been back to Monterey by the middle of November at the furthest?

A. My answer referred to the round trip from Santa Clara until I got back there.

To be more specific about this, I will say—

[NOTE BY THE COMMISSIONER.—At this time Mr. Tobin, the interpreter, was compelled to leave, and Mr. A. G. Randall was sworn as interpreter in his place, by consent.]

I left Monterey somewhere about the last of October, and we remained in Santa Clara until the 22d or 23d of November, at which time I left Santa Clara for Sonoma, from there I went to Sutter's Fort, and arrived back in Santa Clara about the last of November, and from there I returned immediately to Monterey.

Q. 129. It was after you got back to Monterey then, that Castellero made the discovery that the mine was a quicksilver mine?

A. He had an idea previously, but after my return to Monterey (Castillero remaining in Santa Clara) he continued his assays, and discovered quicksilver in abundance.

Q. 130. What is the reason then, that Castellero signed the writing of partnership for you; why did you not sign it yourself?

A. I was not present, and had previously given my power of attorney to Castellero, and had treated it as a matter of little importance.

Q. 131. When had you given your power of attorney to Castellero, and where were you when the writing of partnership was signed?

A. At the time previously stated, when I last left Santa Clara for Monterey, about the last of November. I was in Monterey at the time it was signed. This is the best of my recollection; I cannot say positively. I gave him this power verbally; not in writing.

Q. 132. Was it some time after you returned from Sutter's Fort that you gave this authority to Castellero?

A. I will state as before, that I am not positive; but I think when I left Santa Clara for Monterey, I told Castellero to sign for me, or do anything that he pleased in representing me.

Q. 133. You would hardly have asked your traveling companion to sign your name for you to a paper executed when you were personally present, would you, and that to a contract with himself?

A. At the moment I told Castellero to do what he pleased for me, I did not consider my four shares of any value; and if I had been offered five dollars for them, I should have said "take them," I treated the matter with that indifference. It was only after some days that the richness of the mine was demonstrated, that I began to treat the matter seriously, and appreciate its value.

Q. 134. Where were you during the month of December of that year, 1845, particularly from the 25th to the 1st January?

A. I was in Monterey, and may have made a trip to Santa Clara and San José. The most of that time I was in Monterey. I might have been to some other place; I don't recollect distinctly.

Q. 135. Was not Castellero also in Monterey during the same time?

A. No, he was not there. He came there in February. He was in Santa Clara in December and January, and if he was in Monterey, it was for but a very short time.

Q. 136. You sent Castellero to Mexico in April, 1846, to carry a dispatch to the Government, giving information of what had passed between Fremont and yourself when he was encamped on the "Gavilan," did you not?

A. I did.

Q. 137. At what time in the month of June, 1846, were you at Sonoma?

A. I was not there, as I remember.

Q. 138. Or at San Rafael, or at any other place on the north of the bay?

A. I don't recollect.

Q. 139. Had you not been at San Rafael, Sonoma, or somewhere on the north of the bay, a short time before Lieut. Francisco Arce left Sonoma with his band of horses, and was intercepted on the route by the Americans, as you have testified above?

A. In the first part of June I left Santa Clara, and reached San Rafael the same day; I there collected a band of horses, and immediately returned to Santa Clara. I am not certain whether I crossed from Saucelito, or to San Pablo. I arrived back in Santa Clara in four days, the trip having been made as by express.

Q. 140. Did not Lieut. Arce accompany you and take the band of horses from San Rafael, and those collected at Sonoma, and proceed immediately with them, by the way of Sacramento, on his return to join you at Santa Clara?

A. I gave Lieut. Arce orders to collect these bands of horses and proceed with them to Santa Clara. I gave this order either at San Rafael or on the road.

Q. 141. Did you tell Arce in what time he was to execute this order, that he should act promptly and without delay?

A. I told him to execute it as quick as possible.

Q. 142. Do you know about how long after you gave this order to Arce it was before he was captured by the Americans?

A. He was captured about the 10th or 11th; perhaps I gave him the order about six or seven days before that, I don't remember exactly.

Q. 143. Would it take him all that time to execute such an order, being merely to march with a band of horses?

A. It was a large expedition, fifteen soldiers, seventy or eighty horses, and many mares. They were obliged to cross the Sacramento river (owing to the want of facilities) on rafts, which necessarily involved delay.

Q. 144. For what purpose were those horses wanted?

A. They were to be used for cavalry. It was feared at that time that there was to be war, as the Californians were always fighting among themselves, and the relations between the United States and Mexico had been interrupted, and we had some idea of a war with them.

Q. 145. Were you not collecting those horses in anticipation of a conflict with Governor Pico?

A. I was expecting to defend myself from Governor Pico's forces. I heard that he was going to invade my authority.

Q. 146. Did you not remain at Santa Clara, waiting for Arce, until you heard the news of his capture; did you not hear the news at Santa Clara from Arce himself?

A. No, sir; I first heard it at the river of Monterey (Salinas), and from there I sent the letter to Manuel Castro, the Prefect at Monterey, which is in the handwriting of Juan B. Alvarado, signed by myself; and I presume Manuel Castro has it now.

Cross-examination closed.

Deposition closed.

JOSÉ CASTRO.

Sworn to and subscribed before me, this 12th December,
A. D. 1859.

W. H. CHEVERS,
U. S. Commissioner.

Filed December 12, 1859.

W. H. CHEVERS, Clerk.

EXHIBIT CASTRO No. 1, W. H. C.

En el puerto de Monterey á las doce dias del mes de Junio de mil ochocientos cuarenta y seis yo José Castro con presencia de los testigos que al fin se nombraran : usando del derecho que me han otorgado mis socios, para celebrar cualquier contrato que se pudiera ofrecer con respecto a las tres pertenencias que por justos titulos y como descubridores tenemos en la mina de azogue situada en la comprehencion de St^a. Clara y favoreciendoles las ordenanzas de Minería y leyes concernientes especialmente el soberano decreto de siete de Octubre de mil ochocientos veinte y tres para que se proporcione el grande provecho y utilidad al lavorio de esta clase de minas, y siendo la que poseen en la actualidad, la primera, unica y principal por su ley que se ha descubierto en la Nacion Mejicana, y que no pudiendo el Gobierno supremo darles los auxilios que les corresponde por hallarse en una distancia inmensa y ultramarina, sin esperansa que este paiz por si mismo fomenteste este interesante ramo por no tener ningunos fondos de que disponer y sin encontrarse al mismo tiempo un facultativo mineralogico, ni haber brasos para el lavorio continuo que se requiere para el adelanto de esta industria desconocida en este departamento : ha combenido y combiene dar poder especial amplio bastante y por quanto por derecho se requiere mas pueda y deba valer al presvetero Dⁿ. Eugenio Macnamara para que representando su persona y la de sus socios contrate con una compañía inglesa con esclucion de cualesquiera otra nacion para que se haga cargo del lavorio de las tres pertenencias de dicha mina por el tiempo de nueve años con el fin de proporcionar los avios, hacer los gastos necesarios y mantenerla en buen giro y con arreglo a los mencionadas ordenansas de minería siendo los productos de las tres pertenencias de la mina para los dueños una mitad y la otra mitad para la compañía inglesa y cuando no se pudiera combenir á ello se ofrecera á la compañía inglesa las dos terceras partes para que los dueños reciban la otra tercera parte entendiendose que la parte que corresponde a los dueños sera libre de gastos, y si aun en esto no hubiere combenio se haran otras estipulaciones de acuerdo con Dⁿ. Andres Castelleros para facilitar la realizacion de un contrato, y concluido el tiempo mencionado de nueve años se prorrogaran otros siete años mas en los mismos terminos que se celebre la primer contrata quedando la negociacion despues de todo este tiempo a disposicion absoluta de los dueños de la mina, como tambien todos los materiales, fabricas y demas pertenencias que ha ella le correspondan como maquinas y demas utiles adherentes

á este beneficio sin que por causa alguna tenga la compañía inglesa derecho á reclamar cualesquiera otro clase de gastos que para su beneficio y propia utilidad llegare á originar.

Y á la firmera y valedacion de lo que en virtud de este poder se ejecutare se obliga el otorgante en toda forma de derecho á su cumplimiento y para lo cual se somete á los Sōres. Jueces que del caso deban conocer: en cuyo testimonio lo firmo con los cuatro testigos que lo son Dⁿ. David Spence, Dⁿ. Juan Malarin, Dⁿ. Manuel Diaz y Dⁿ. Antonio M^a. Osio, en el dia mes y año ya mencionado.

ANTONIO M^a. OSIO.
[Rubric.]

DAVID SPENCE.

JUAN MALARIN.
[Rubric.]

MAN^L DIAZ.
[Rubric.]

JOSE CASTRO.
[Rubric.]

—

SELLO CUARTO

[SELLO.]

UN REAL.

Jesus Vejar Escribano Publico, en esta Ciudad.

Certifico y doy fé que la firma del Señor Don José Castro con que se halla subscrito el presedente poder que otorgó al Presbitero Don Eugenio Magnamara ante los cuatro testigos que tambien se subscribieron cuya constancia dejo rubricada, dicha firma es la que usa y acostumbra dicho Señor, y es igual á otras que en mi protocolo ha puesto por actos que ante mí ha otorgado.

Y á pedimento de los Señores Barron, Forbes y Compañía signo y firmo el presente en Tepic, á diez y ocho de Marzo de mil ochocientos cincuenta.

†
JESUS VEJAR.
[Rubric.]

—

El Alcalde 1^o. Constitucional y Escribano Publico que firmamos, Certificamos y damos fé que el signo y firma que antecese autorizando el presedente Certificado es del Escribano Publico en este Ciudad Don Jesus Vejar quien se halla en el ejercicio de su profecion. Asi lo comprovamos en Tepic, á diez y ocho de Marzo de mil ochocientos cincuenta.

†
EUSEBIO FERNANDEZ.
[Rubric.]

LORETO CORONA.
[Rubric.]

CONSULATE OF THE UNITED STATES.

I, George W. P. Bissell, Consul of the United States of North America for this district, hereby certify that the signatures attached to the foregoing document, are in the true handwriting of the subscribers, who legally hold the situations therein represented and are worthy of all faith and credit.

In testimony whereof, I have hereunto set my hand [SEAL.] and seal of office, in the city of Tepic, this first day of December, in the year one thousand eight hundred and fifty.

G. W. P. BISSELL,
U. S. Consul.

 TRANSLATION OF EXHIBIT CASTRO, No. 1.

In the port of Monterey on the 12th day of the month of June, 1846, I, José Castro, in the presence of the witnesses who are named at the end, by virtue of the right which has been given to me, by my associates, to make whatever contract that may be offered in relation to the three pertenencias that, by just titles, and as discoverers, we hold in the quicksilver mine situated in the jurisdictional limits of Santa Clara; and favored by the mining ordinances and the laws concerning the same, especially the sovereign decree of the 7th October, 1823, for the profit and utility of the labor in this class of mines; and that which they now possess, being the first, only and principal one which, by the law, has been discovered in the Mexican Nation; and that the Supreme Government not being able to give them the assistance which they require, by reason of its being at an immense distance and beyond the sea; without hope that this country within itself will improve, having no funds at its disposal, and at the same time being without any professor of Mineralogy, nor having the necessary means to carry on the continual labor which is required for the advancement of this branch of industry, which is unknown in the Department; have agreed and do agree to give special, ample and sufficient power, as required by law, to the Presbyter Don Eugenio Me-Namara, in order that, representing my person and that of my associates, he may contract with an English company, to the exclusion of every other nation, in order that it may take charge of the labor of the three pertenencias of the said mine for a term of nine years, for the purpose of furnishing supplies and making the necessary expenditures and maintaining the same

in good condition, and in accordance with the said mining ordinances; the products of the three pertencencias of the mine being one-half for the owners, and the other half for the English company, and if this cannot be agreed upon then there will be offered to the English company the two-thirds part, and the owners will receive the other one-third part, it being understood that the part which may belong to the owners will be free from charges; and if they should not even agree to this, other stipulations will be made, with the consent of Don Andres Castellero, in order to facilitate the completion of a contract; and after the said term of nine years shall have been completed, there shall be an extension of another seven years in the same terms agreed upon in the first contract. The matter to remain after the completion of all this time at the absolute disposition of the owners of the mine, as also also all the materials, houses, and other appurtenances belonging to the same, such as machinery and other useful articles belonging to the business. The English company by no means to have any right to claim any other class of expenses than such as are for the proper benefit and utility of the mine.

And for the ratification and fulfillment of whatever may be executed under this power, the maker of this obligates himself in due form of law, to which end he submits himself to the justices who may have jurisdiction in the matter.

In witness whereof, I sign it with the four witnesses, who are David Spence, Don Juan Malarin, Don Manuel Diaz, and Don Antonio Maria Osio, on the day, month and year already mentioned.

JOSÉ CASTRO.

DAVID SPENCE, ANTONIO M^a. OSIO,
MANUEL DIAZ, JUAN MALARIN.

—

FOURTH SEAL, [SEAL.] ONE REAL.

I, Jesus Vejar, Notary Public in this city, certify that the signature of Don José Castro, which is found subscribed to the foregoing power which he made to Don Eugenio McNamara, before the four witnesses who also subscribed the same, and which power remains rubricated, is the signature which he is accustomed to use, and is the same as others which he has placed in my protocol in other acts which he has made before me.

And at the request of Messrs. Barron, Forbes & Co., I affix my sign and subscribe this, in Tepic, the 18th day of March, 1850.

JESUS VEJAR.

The First Constitutional Alcalde and Notary Public who subscribe, certify that the foregoing sign and signature authorising the preceding certificate is that of the Notary Public in this city, Don Jesus Vejar, who is now in the exercise of his profession.

This we witness, in Tepic, on the 18th day of March, 1850.

LORETA CORONA, EUSEBIO FERNANDEZ.

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CONSULATE OF THE UNITED STATES.

I, George W. P. Bissell, Consul of the United States of North America for this district, hereby certify that the signatures attached to the foregoing Document, are in the true handwriting of the subscribers, who legally hold the situations therein represented, and are worthy of all faith and credit.

[SEAL.] In testimony whereof, I have hereunto set my hand and seal of office, in the City of Tepic, this first day of December, in the year one thousand eight hundred and fifty.

G. W. P. BISSELL,
U. S. Consul.

DEPOSITION OF JOHN BIDWELL.

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DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, December 31st, 1859.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came John Bidwell, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of said Board of Commissioners, and was duly sworn and testified as follows:—

Present: Frederick Billings, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is John Bidwell; my age is 40 years, and I reside in Chico, Butte county. I am a farmer by occupation.

Q. 2. When did you come to California, and what generally has been your business?

A. In 1841, and from that time till the spring of 1846, I was generally in the employ of Captain Sutter. At that time the war broke out between the United States and Mexico, here in California. I engaged in the service of the United States, and continued in it until the end of the war in California. Since then I have been engaged in mining and farming.

Q. 3. Do you know the claimant in this case, Andres Castillero; if so, when and where did you make his acquaintance?

A. I do. I became acquainted with him at Sutter's Fort, on the 11th of November, 1845, where he arrived on that day in company with Jacob P. Leese, Victor Prudon, and Gen. José Castro, and an escort of about fifteen men. On the next day, the 12th, Wednesday, they left Sutter's for Santa Clara, by way of San Joaquin. This was the only time that I ever saw Castillero.

Q. 4. State, if you know, what was the object of Castillero's visit to Sutter's Fort?

A. Castillero was in California as a commissioner of the Mexican Government; his object in visiting the Fort was to make the acquaintance of Captain Sutter, and as I understood to urge him to continue faithful to the Mexican Government; and to make propositions on behalf of the Government to purchase Sutter's establishment, including the Fort.

Q. 5. What was your particular employment with Sutter at this time, and how are you able to fix so definitely the dates of the arrival and departure of Castillero and the gentlemen with him?

A. I was at that time Sutter's secretary and book-keeper, and I kept a journal in which were noted the principal arrivals and departures, and other matters of interest occurring at the Fort; and it is by reference to that journal which I have here in my hand that I am enabled to fix the exact dates. Without reference to the journal I could swear positively that Castillero, with Castro and others, was at Sutter's Fort in the fall of 1845.

Q. 6. What are the entries in the journal for the 11th and 12th of November, 1845, and in whose handwriting are they?

A. The entry for the 11th is as follows:

"Tuesday, 11th, arrived José Castro, Prudon, Leese and Mexican Commissioner, with an escort of about fifteen men—fired a salute of seven cannon."

The entry for the 12th, is as follows:

"Wednesday, 12th, departed José Castro, for Monterey by way of San Joaquin; arrived the whale boat from the Yerba Buena, with Maintop, Kanaka. John Williams bought the National horses and mares. Arrived Marcos Baca from Sonoma."

They are both in my handwriting.

Q. 7. What time is covered by this journal which you have brought here?

A. From the 9th day of September, 1845, to the 25th of May, 1848.

Q. 8. From whom did you get this journal?

A. From General John A. Sutter, in whose possession I suppose it has always been.

It is principally in my handwriting to February, 1846, and after that more or less to June, 1846. After which time to the close it is in Captain Sutter's handwriting.

Q. 9. State if you had any knowledge; if so, what, and when, of the discovery of any quicksilver mine by Castillero in California?

A. I remember hearing of the discovery of what is now call-

ed the New Almaden mine, by Castellero, after he left Sutter's Fort, the same fall. It was a matter generally known. I have no other knowledge of it.

No Cross-Examination.

J. BIDWELL.

Sworn to, and subscribed before me, this 31st December, 1859.

W. H. CHEVERS,
U. S. Commissioner.

Filed Dec. 31, 1859.

W. H. CHEVERS, Clerk.

DEPOSITION OF MILO CALKIN.

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO, }

SAN FRANCISCO, May 21, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Milo Calkin, a witness produced on behalf of the claimant in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 366, on the docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Milo Calkin; my age is fifty years, and I reside in San Francisco.

Q. 2. Did you ever reside in the Sandwich Islands; if yea, state during what time, and in what capacity?

A. I resided in the Sandwich Islands from the fall of 1836, until the last of December, 1846. During the years 1843, '44, and 1845, I occupied the position of vice-consul of the United States at Lahaina.

Q. 3. Were you during that time familiar with a newspaper called the Polynesian?

A. I was from the time the first number was printed until I left the islands; I subscribed to it, received it, read it, and frequently contributed to its columns.

Q. Would you recognize a copy of that paper if you were to see it now?

A. I would.

Q. 5. Look at the newspaper now shown you, entitled "The Polynesian," and marked "Sandwich Island paper, W. H. C." and filed as an Exhibit in this case, September 27th 1859; paper shown you being No. 10 of the 3d volume, and published at Honolulu, Saturday, July 25th, 1846; and state if you recog-

nize it to be a copy of the "Polynesian" newspaper, of which you have spoken.

A. I do recognize it as such copy. I find in this paper a note from Mr. G. P. Judd to the editor, in which Mr. Judd says that he forwards for publication the letter from Thomas O. Larkin, United States Consul at Monterey, and sends also specimens of the precious ore mentioned in Mr. Larkin's letter; Judd's note is dated 20th July, 1846.

Q. 6. Examine the note and also the accompanying letters from Thomas O. Larkin, and state if you remember to have read them on or about the 23d July, 1846, and whatever else you may remember about the matter to which they relate.

A. I was in Honolulu at the time this paper was printed, and read it at or about that time. I remember the article to which my attention has been drawn in the question, and I also remember to have seen the samples of ore, referred to in Mr. Judd's note. I took some interest in the matter at the time, as I had half a notion to come over myself at that time to benefit myself. It was also a matter of some interest in the mercantile community. The specimen also excited my curiosity, because it was the first specimen of cinnabar I had ever seen, very rich and very heavy.

Q. 7. Who was the editor and who the printer of the "Polynesian," in 1846?

A. J. J. Jarvis was the editor, and C. E. Hitchcock was the printer.

Mr. Jarvis I believe is now traveling in Italy, and Mr. Hitchcock I am told is at present in this city.

Cross-Examination waived.

MILO CALKIN.

Sworn to, and subscribed, this 22d May, 1860, before me.

W. H. CHEVERS,
U. S. Commissioner.

Filed May 22, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF CHARLES E. HITCHCOCK.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO }

SAN FRANCISCO, May 21, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Charles E. Hitchcock, a witness produced on behalf of the claimant in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant. What is your name, age, and place of residence?

ANSWER. My name is Charles E. Hitchcock; my age is 36 years, and my residence is San Francisco.

Q. 2. Did you ever live in the Sandwich Islands; if so, during what time?

A. I did live there from about September, 1845 until December, 1848. I lived at Honolulu during the whole of that time. For the first two years I was printer of the "Polynesian" newspaper, and for the last year editor.

Q. 3. Would you know a copy of the "Polynesian" if you were to see it?

A. I would.

Q. 4. Look at the paper now shown you, purporting to be the 10th number of the 3d volume of the "Polynesian," published at Honolulu on the 26th July, 1846, filed by the claimant as an Exhibit in this case September 27th, 1859, marked "Sandwich Island paper, W. H. C." and state if you recognize it to be a true copy of said paper.

A. I do.

Q. 5. I find in this number of the "Polynesian" a letter

from G. P. Judd to J. J. Jarvis, editor, dated July 20th, 1846, in which Mr. Judd informs the editor that he forwards for publication a letter from Thomas O. Larkin, U. S. Consul at Monterey, and that he also sends him a specimen of the precious ore mentioned in Mr. Larkin's letter. Do you remember anything about this note of Mr. Judd and the accompanying letter of Mr. Larkin, and the specimens sent by Mr. Larkin?

A. I was at that time printer of the paper, and remember receiving the note of Mr. Judd, the letter of Mr. Larkin, and the sample of quicksilver ore. It was printed at that time, and the letter, as printed in this paper, is a copy of the letter sent by Mr. Judd to the office. I think Mr. Judd sent the original letter from Mr. Larkin, which I think I returned to Mr. Judd. Mr. Jarvis, the editor, was absent from Honolulu, and I edited this number of the paper.

Cross-examination waived.

CHARLES E. HITCHCOCK.

Sworn to and subscribed this 22d May, 1860, before me.

W. H. CHEVERS,
U. S. Commissioner.

Filed May 22, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF WILLIAM J. LEWIS.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, CAL., June 18, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came William J. Lewis, a witness produced on behalf of the claimant, Andres Castellero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of said Board of Commissioners, and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1, by counsel for the claimant: What is your name, age, place of residence and occupation?

ANSWER. My name is William J. Lewis, my age is 48 years, my residence is in San Francisco, and my occupation is that of surveyor and civil engineer.

Q. 2. How long have you resided in California; what has been your profession or employment here?

A. I have resided in California since June, 1849; I have lived in Santa Clara and San Francisco counties ever since, with the exception of four months that I was in the mining districts, in the year 1849. I resided in Santa Clara county from November, 1849, to June, 1855; during that time I was engaged in surveying private ranches, claimed under Mexican grants; pre-emption claims and public roads. I was county surveyor from July, 1850, to June, 1855.

Q. 3. Do you know where the Almaden mine is situated, and where the ranchos of Berreyesa and Justo Larios?

A. I do; the Almaden mine is situated in Santa Clara county, about fifteen miles southwardly from the City of San Jose. The ranchos of Berreyesa and Justo Larios adjoin the Almaden mines.

Q. 4. Did you ever make a survey of these ranchos? if yea,

state under what circumstances, and when: Whether you have a map of said survey, and can produce it to be filed with this deposition: What knowledge you have of the country around about those ranchos, and of the names and localities of the natural objects referred to in the concession and diseños in the expedientes of those two ranchos, as the boundaries thereof.

A. I made a survey of the Berreyesa rancho in September, 1850, and of the Justo Larios rancho in December, 1854, and January, 1855; I have a map of those surveys and the country in the vicinity of the Almaden mines.

[Witness here produces a map, which is marked by the Commissioner, "Exhibit Lewis' Map, W. H. C."]

This map was made under my direction; the lithographic lines and printed portions by Henry Steineger, from an original drawn by Vitus Wackenrender; the coloring, the explanation of the colors, and the letters and lines in india ink were made by Samuel W. Newhall; the whole was done under my supervision, and is a correct map of my surveys, and the country delineated. The surveys shown on the map by numbered stations were made by me. Besides the surveys of the boundaries of the ranchos as delineated, surveys were made along the summit and northern base of the Pueblo hills, along the summit of the Laurel hills, and of the ridge east of the hacienda; triangulations to a large number of points outside and inside of the boundaries of the ranchos, and angles of elevation and depression; and topographical sketches of the features of the country, at various dates, from December, 1854, to May, 1855.

I have a knowledge of the country and the natural objects referred to in the question.

The lines of the Berreyesa ranch were run as follows: Commencing at a sycamore stump, which I marked "O," at the junction of the Arroyo Seco with the Alamitos Creek, thence N. $10^{\circ} 23'$ E., 1.17 chains to the Pueblo Hills; thence following the foot of said hills S. $74^{\circ} 37'$ E., 24 chains; S. $55^{\circ} 32'$ E., 99.92 chains; N. $84^{\circ} 47'$ E., 56.80 chains; S. $25^{\circ} 28'$ E., 79.22 chains; S. $66^{\circ} 50'$ E., 52.74 chains; N. $83^{\circ} 20'$ E., 38.51 chains; S. $30^{\circ} 59'$ E., 45.67 chains; S. $65^{\circ} 18'$ E., 78.34 chains, to an oak tree which I marked 24 at station 9, at the juncture of the Pueblo with the Laurel Hills; thence following the foot of the Laurel Hills S. $28^{\circ} 22'$ E., 39.54 chains; thence S. $32^{\circ} 30'$ W., 136.87 chains, to a marked oak at the foot of the Sierra; thence crossing a spur of the Sierra, N. $82^{\circ} 35'$ W., 366.83 chains, to a marked sycamore on the right bank of Alamitos Creek; thence up and along said Creek S.

83° 23' W., 40.67 chains; thence N. 15° 23' E., (magnetic North) 289.49 chains, to the eastern brow of the hill situated in the middle of the valley; thence N. 10° 23' E., 45.61 chains to the place of beginning, containing 10,265 acres. By the regulations first adopted by the United States Surveyor-General of California, the vara was estimated at 33 inches, and the Mexican league at $4,340 \frac{277}{1000}$ acres. The new regulations make the league $4,438 \frac{682}{1000}$ acres; but as this testimony refers to surveys made several years since, the old standard is retained. Adopting this, 10,265 acres are equal to $2 \frac{36}{100}$ Mexican leagues. My survey of the rancho was made by order of Court in the suit of the Widow Berreyesa and others against Forbes and Walkinshaw. In Neuman and Baretti's Spanish and English Dictionary (the only one in my possession in 1850), the word "falda" applied to ground is defined as "the brow of a hill," but the Dictionary of the Spanish Academy defines it in latin to mean *radix montis*. If this definition be correct, the western line of the Berreyesa ranch should have been run from station O, by the eastern base of the "Loma" or low hill, and continued in a straight line to intersect the southern boundary. This line on the map runs from O, by stations 64 and 65, to "A." Adopting this for the western boundary of the rancho, the area is 8,895 acres, or a little more than two leagues.

I made two surveys of the land claimed under the Justo Larios grant. The first survey commenced at the junction of the Arroyo Seco and Alamitos creek (at station O, already described); thence following the several courses of the Arroyo de los Capitancillos, to its junction with the Arroyo Seco, on the side of the establishment of Santa Clara, at station No. 24; thence up and along said Arroyo Seco, to the base of the mine ridge, at a station marked 44; thence along the northern base of said ridge to station 64, at Berreyesa's western line; thence in a straight line, along the eastern base of the "loma" (low hill) situated in the middle of the valley, to the place of beginning: containing 3529 acres, or $811 \frac{27}{100}$ acres less than one league. If a straight line were drawn from the point O (at the junction of the Arroyo Seco with Alamitos creek), to station 24, at the northwest corner of the rancho, and at the mouth of Capitancillos creek, the area contained between that line and the Capitancillos creek, would be 416 acres. Adopting this as the northern boundary of the rancho, and the other lines last described as the other boundaries, the tract would contain 3,945 acres, or $395 \frac{27}{100}$ acres more than one Mexican league. The line I. J. K. is drawn so as to include between it and the southern line of the last described survey $811 \frac{27}{100}$ acres, consequently the tract lying between the Capitancillos creek and the line I. J. K., and be-

tween Berreyesa's western line and the Arroyo Seco on the side of the establishment of Santa Clara, contains exactly one league.

I made another survey of land claimed under the Justo Larios grant: Commencing at station 64, on the western boundary of Berreyesa's rancho, the course of said boundary was continued southwardly across the mine ridge to the Arroyo de los Alamos, at station 65; thence up the most northern branch of said Arroyo to station 90; thence to the summit of a high ridge or spur of Mount Umunhum at station 95, which is 1349 feet above the level of the sea; thence descending to a tributary of the Arroyo Seco, at station 98; thence along said tributary to its mouth, at station 101; thence down and along said Arroyo Seco, to station 44 of the survey already described.

There are included between the line of survey last described and the southern boundary of the previous survey (along the northern base of the mine ridge) from station 44 to station 64, 450½ acres, and in the two surveys 8.033 acres, or $1\frac{5}{100}$ leagues.

If the straight line from station O, to station 24, be taken for the northern boundary, and the lines from station 65 to station 44, for the southern boundary of the Justo Larios rancho, the area of the tract will be 8.449 acres, or $1\frac{95}{100}$ leagues.

Q. 5. What is the square colored in blue, represented by the letters A, B, C, D.?

A. It represents a tract containing two square leagues of land, having the old mouth of the Almaden mine in the centre, and the sides of the square correspond with the cardinal points.

Q. 6. What does the inner square marked "E, F, G, H," represent?

A. It represents a square, each side of which measures six thousand varas, with the old mouth of the mine in the middle; the courses of the sides correspond with the cardinal points.

Q. 7. How much of the land contained in the first named square lies within the general limits of the Berreyesa rancho, taking for the western boundary of that rancho the straight line from station O, by the base of the Lomita, to the point "A"?

A. About 2.786 acres, or $\frac{64}{100}$ of a league, which would leave $1\frac{36}{100}$ leagues within the general limits of the Berreyesa rancho.

Q. 8. How much of the square A, B, C, D, lies within the general limits claimed for the Justo Larios rancho, its southern boundary being from station 65 to station 44, and its northern boundary being a straight line connecting station O and 24?

A. It is about 3.418 acres, or $\frac{79}{100}$ of a league, which would leave within the said general boundaries $1\frac{16}{100}$ leagues.

Q. 9. Point out on this map what you regard as the southern boundary of the Justo Larios rancho, as it is described in his petition to the Governor, in the diseño or map which accom-

panied his petition, and in the concession made by the Governor.

A. It is at or very near the line marked in red from station 44 to station 64.

Q. 10. In Justo Larios' grant one of the boundaries is said to be the Sierra, and the grant proceeds to say, "the land herein referred to is one square league, a little more or less, as is explained by the map in the expediente."

Examine the copy of that map now shown you, filed by the Government in this case on the 30th January, 1858, marked "Expediente and grant (and translation) of Justo Larios," and say what mountains on your map correspond with those on Larios' diseño named "Sierra del Encino."

A. It is the ridge on which the Almaden mine is situated, marked X, Y, on the map.

Q. 11. What are your reasons for thinking so?

A. I see on the lower part of Larios' diseño a stream marked Arroyo de los Capitancillos, between that stream and the ridge designated Sierra del Encino no hills are represented, but the intervening ground is represented as a wide plain. I conclude, therefore, that the ridge X, Y, which is nearest the Arroyo de los Capitancillos, is the one intended to be represented in the Justo Larios diseño. I also perceive that on the Justo Larios diseño two arroyos are represented as issuing from the Sierra into the plains, in directions which correspond well with the general directions in which the Arroyo de los Alamitos and Arroyo Seco leave X, Y. Also, the distance of the two arroyos from each other, where they leave the mountains, as shown on the diseño, corresponds well with the distance where they leave the mine ridge, shown by my map.

Q. 12. You will perceive on Larios' diseño that his eastern boundary, as he first petitioned for it, ran across the cañada from a point a little to the east of the place where he represents the Capitancillos as issuing out of the Sierra. If you draw a line on his diseño from that point to the place where the Arroyo Seco is represented as issuing out of the Sierra, it would be the southern boundary of the tract described in the diseño, would it not?

A. It certainly would.

Q. 13. What, then, would lie on the north of that boundary line, and what on the south, as appears from the diseño?

A. On the north there would be an open plain, and on the south the Sierra.

Q. 14. How much of that southern boundary would lie in the Arroyo de los Capitancillos, and how much in the Arroyo Seco?

A. It merely crosses the Arroyo de los Capitancillos at nearly right angles, all the rest of the line is on dry land, as it stops when it reaches the Arroyo Seco.

Q. 15. Then that southern boundary line, after it crosses the Capitancillos, would run over dry land, having the plain to the north of it and the Sierra to the south of it, and would separate by its entire length the waters of the Capitancillos and the Arroyo Seco, would it not?

A. It would.

Q. 16. If the range of hills, represented on Larios' *diseño* as the Sierra del Encino, do not correspond with those represented on your map by the ridge X, Y, but are intended to represent the mountains lying to the south of the ridge X, Y, on your map, where would be the southern boundary of the tract which Larios petitions for, and describes on his *diseño*, as shown by your map?

A. It would be represented, as near as I can designate it, by the lines from station 65 to station 130.

Q. 17. On the supposition contained in the foregoing question, Larios' *diseño* would describe as a plain a tract of country which is partly a plain, and in part mountainous. Please describe the mountainous part of the tract which would be included.

A. It would be about five and a half miles in length, about two and a quarter in breadth at its widest part, and about three-quarters of a mile at its narrowest part; it would average about a mile and a quarter wide. At one point it would be 1707 feet above tide, at another it would be 1500 feet high, at another 1436 feet high, at another 1100 feet high, as shown by the map. It declines in height as it approaches the Arroyo Seco on the west.

Q. 18. As near as you can judge from Larios' *diseño*, how much valley land is contained in the tract for which he petitions, supposing the southern boundary to be the ridge X, Y, on your map?

A. Over one league; two or three hundred acres more. I cannot state accurately, for I cannot judge from the *diseño* how far to the east of the Alamitos (or the Capitancillos, as it is called on his *diseño*) his eastern line was intended to run.

[All the foregoing is objected to by U. S. counsel as irrelevant and incompetent, being the mere opinion of the witness respecting private surveys, made without any authority of law.]

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, June 19th, 1860.

Examination of W. J. Lewis resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Direct examination closed.

CROSS EXAMINATION.

Questions by Mr. Randolph.

Q. 19. Under what authority, and at whose request, did you survey the Justo Larios rancho in December, 1854, and January, 1855?

A. I made the two surveys of the Justo Larios rancho at the request of Captain H. W. Halleck, who, I understood, was Director General of the New Almaden Company, a member of the firm of Halleck, Peachy and Billings, in this city. They were made as private surveys, and paid for by Capt. Halleck.

Q. 20. Have you not been examined before in reference to these surveys, as a witness in behalf of the United States, in the case of Charles Fossat against the United States, No. 132, on the docket of the United States District Court?

A. I have.

Q. 21. You mean now in your testimony given in this case to make the same statements of fact, and to give the same opinion in reference to those surveys which you then gave; do you not?

A. So far as the questions have called them out, I mean to say the same things, as I am not conscious of any change of opinion.

Q. 22. How long did the examination and cross-examination last on the former occasion; and how many questions were you asked?

A. The examination commenced on the 19th of August, 1856, and concluded on the 18th of September following, with some adjournments of a few days, and three hundred and twenty-seven questions were asked. It occupies more than 68 octavo printed pages.

Q. 23. On that examination who asked the questions on behalf of the United States; was it not Mr. Peachy, the same who has now been examining you on behalf of the claimant in this case?

A. It was.

Q. 24. You have in your hand now a printed transcript entitled "United States District Court, Northern District of California; The United States v. Charles Fossat; Testimony on

Boundaries;" does it not contain in full your examination and cross-examination on the subject of these surveys of the Justo Larios rancho?

A. I have no doubt but that it does; and if there are any errors they are accidents, and can be corrected by comparison with the original on file in that case in this court, and which I now have before me.

Examination closed.

WM. J. LEWIS.

Sworn to, and subscribed, this 19th June, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed June 19, 1860.

W. H. CHEVERS, Clerk.

STIPULATION ADMITTING DEPOSITION OF LEWIS
IN No. 132, AS EVIDENCE IN THIS CASE.

UNITED STATES DISTRICT COURT, }
Northern District of California. }

THE UNITED STATES }
v. } No. 420.
ANDRES CASTILLERO. }

It is hereby stipulated that the deposition of William J. Lewis, taken on behalf of the United States in the claim of Charles Fossat No. 132, in this Court, may be read in evidence in this case with the same effect as if herein taken—but subject to all objections which might be made, if taken in this case and offered as evidence. June 19, 1860.

PEACHY & BILLINGS,
Atty's for Castellero.

EDMUND RANDOLPH,
Ass't Counsel of the United States.

Filed June 19, 1860.

W. H. CHEVERS, Clerk.

CERTIFIED PAPERS FROM UNITED STATES STATE
DEPARTMENT.

UNITED STATES OF AMERICA, }
DEPARTMENT OF STATE. }

To all to whom these presents shall come, Greeting:

I certify, that the extracts contained in the paper hereunto annexed, are true copies from the original despatches of Thomas O. Larkin, U. S. Consul at Monterey, dated 4th May, 1846, and March 28, 1848.

In testimony whereof, I, Lewis Cass, Secretary of State of the United States, have hereunto subscribed [SEAL.] my name and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this 28th day of November, A. D. 1859, and of the Independence of the United States of America the 84th.

LEW. CASS.

Extract from despatch from Thomas O. Larkin, U. S. Consul at Monterey, California, dated 4th May, 1846.

“From the town of San José, and near the mission of Santa Clara, there are mountains with veins of quicksilver ore, discovered by D. Andres Castellero (of Mexico) in 1845, which the undersigned has seen twice produce twenty per-cent. of pure quicksilver, by simply putting the pounded rock in an old gun-barrel, one end placed in the fire, the other end in a pot of water for the vapor to fall into, which immediately becomes condensed; the metal was then strained through a silk handkerchief; the red ore produces far better than the yellow; there appears to be no end to the production of the metal from these mountains; working of the quicksilver is but now commenced under great disadvantages from not having any of the materials generally used in extracting that metal; near the town of Sonoma, about sixty miles from the entrance of the Bay of San Francisco, there are other mines, the rock or ore of which appears of a greyish cast, and to be equal to the others.” * * *

“By the laws and customs of Mexico respecting mining, every person or company, foreign or native, can present themselves to the nearest authorities and denounce any unworked mine; the authorities will then, after the proper formalities,

put the denouncer in possession of a certain part of it, or all, which is, I believe, according to its extent—the possessor must hereafter occupy and work his mine, or some other may denounce against him—in all cases the government claims a certain proportion of the products; up to the present time, there are few or no persons in California with sufficient energy and capital to carry on mining, although a Mexican officer of the army, a Padre and a native of New York, are, on a very small scale, extracting quicksilver, from the San José mine; it is considered doubtful whether a foreigner can hold a mine in this country.”

—
Extract from despatch of same, dated March 28, 1848.

“Messrs. Barron, Forbes & Co., of San Blas and Tepic, one of the richest English houses in Mexico, in 1846, became lessees for sixteen years, of a quicksilver mine, seventy miles north of this—since that period they have become part owners; they have had a few common laborers with some pick-axes, crow-bars, shovels and common whaling try-pots, at work four or five months, most of this time in making preparation, and every thing done very imperfectly—nevertheless they are now taking out near two hundred pounds per day, and are now shipping about \$20,000 (said to be \$30,000) worth of quicksilver to Mazatlan.” * * * *

“Some of the ore now found is one half pure quicksilver.” * * * *

“Several mines of quicksilver have in 1847–48, been discovered in this Territory—from every appearance California will soon supply all Mexico and South America, and be able to undersell any mines in the world. * * * Under the Mexican laws, if the owner of a mine was unable or unwilling to work it, any person could, before the nearest Alcalde denounce it and take possession of it, as his sole property, by carrying on operations on the place; many English, Americans and natives have of late been so much engaged on the lands of private persons, that Governor Mason has annulled the laws on this subject, securing to each private owner of land all he may have on it, by which means a purchaser of mineral land will obtain a fair compensation for his property, or retain it to suit his convenience or inclination, which he could not do by the former Mexican laws.”

Filed June 22d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF WILLIAM F. SWASEY.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, June 21st, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came William F. Swasey, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant. What is your name, age, and place of residence?

ANSWER. My name is William F. Swasey; my age is 37 years, and I reside in San Francisco, California.

Q. 2. When did you arrive in California, how, and with whom did you come?

A. I came across the mountains, in company with Major J. R. Snyder, Judge Blackburn, and others, and arrived in California in September, 1845. Sutter's Fort was the first settlement we stopped at, at which place I arrived the 26th day of September, 1845.

Q. 3. How long did you remain, and what was your business there?

A. I was employed by Captain Sutter as clerk or book-keeper, and remained there about two months.

Q. 4. Where did you next go?

A. I left the Fort in a whaleboat, in company with Captain Wm. A. Leidesdorff and Captain Wm. Hinekley, and came to Yerba Buena, now San Francisco, where we arrived in three or four days. It was about Christmas, 1845.

Q. 5. While you were at Sutter's Fort did you see Andres Castillero?

A. I did. He arrived at the Fort in company with General José Castro, Don Victor Prudon, and Mr. Jacob P. Leese.

Q. 6. How long did you remain in San Francisco at that time; with whom did you stay, and what was your occupation?

A. I remained about six weeks; I was not employed in any business while there. I was alternately the guest of Captains Leidesdorff and Hinckley.

Q. 7. Where did you next go, and what was your occupation?

A. I went to Monterey, where I arrived about the last of February, or first of March, 1846, and immediately engaged with Mr. Thomas O. Larkin as his Consular clerk.

Q. 8. What were your duties as such?

A. Writing and copying official and other dispatches. I also kept some of his private books.

Q. 9. Did he keep copies of all his official correspondence; if yea, in what books were they kept?

A. He did. They were kept in one book, entitled on the back "Correspondence with the Department of State, Thomas O. Larkin, Monterey." Also in another book, entitled "Copies of official letters, Thomas O. Larkin, Monterey." They are large record books, strongly bound in calf. These books are now here before me.

Q. 10. Where did you obtain them?

A. I obtained the book entitled "Copies of official letters" from Mr. Frederick Larkin; and afterwards, with Mr. Frederick Larkin, called upon Mr. Edmund Randolph at his office, and inquired for the book entitled "Correspondence with the Department of State;" he pointed to a safe in the office, saying that he believed Mr. Henry Laurencel had locked up the book, and that Mr. Sellier had the key of it. I went to Mr. Sellier, who came, unlocked the safe, and Mr. Randolph delivered the book to Mr. Larkin, who then delivered it to me. This was after Mr. Thomas O. Larkin's death. Mr. Frederick Larkin was his eldest son, and one of his executors.

Q. 11. Do you know whether any other person besides yourself was in the habit of recording Mr. Larkin's correspondence in these books; if yea, who?

A. There was. I was his clerk for about six months, that is, from February to July or August, 1846; during that time a Mr. Allen, who died I think before 1850, did most of the copying in these books. I did most of the original writing under Mr. Larkin's dictation, and also a part of the copying.

Q. 12. Are you acquainted with the handwriting of Mr. Allen; if so, how do you know it?

A. I am perfectly well acquainted with it; I having written in the same room with him constantly for some months.

Q. 13. Do you know who wrote in the books, after you left Mr. Larkin's employment, and do you know their handwritings?

A. I do know that Mr. E. L. Stetson and Mr. Stirling wrote in the books, and I am well acquainted with their handwritings, having often seen them write.

Q. 14. Examine the document now shown you, purporting to be an extract from Mr. Larkin's letter to J. C. Fremont, dated March 8th, 1846: Say whether you have compared this extract with the copy of the original in the book entitled "Copies of official letters," etc., how the comparison was made, and is it a faithful copy?

A. I have made that comparison; it was made in this way: a copy from the book was read to me while I compared it with the extract, and then the extract was read to me while I compared it with the book. This extract is a faithful copy. The copy in the book is in the handwriting of Mr. Allen.

Q. 15. Do you remember when the original was written?

A. Perfectly well, and am under the impression that it was in my own handwriting.

Q. 16. In this letter the brig Hannah is mentioned as being in the port of Monterey, and about to sail for Mazatlan; do you remember the fact of such a brig being in port at that time?

A. I remember distinctly that there was a vessel of that name in the port of Monterey, at that time. I recollect it from the fact that Mr. Larkin requested the captain or supercargo to wait a few days for the purpose of giving Capt. J. C. Fremont an opportunity of sending home his dispatches. I remember also that Mr. Larkin sent a letter and dispatches by her. She left Monterey some time between the 8th and 12th of March, 1846. I know this from the fact that Commodore Sloat received the news by her, at Mazatlan, of Fremont's difficulties, which caused him to send up the sloop of war Portsmouth, Captain Montgomery, which vessel arrived at Monterey some time in the latter part of April, 1846.

Q. 17. I call your attention particularly to the facts detailed in your foregoing answer, because they contradict the testimony of Wm. P. Reynolds and Lewis Warrington Sloat, witnesses examined in this case, on behalf of the Government, in the year 1858. Mr. Reynolds has testified that during the months of January, February and March, 1846, no vessel sailed from Upper California for a Mexican port. Mr. Sloat testifies that from the first of January to the first of June, 1846, he was on board the Frigate Savannah in the harbor of Mazatlan, Mexico, and was Secretary to Commodore Sloat, Commander of the Pacific Squadron. That the Savannah sailed for California on the 8th June, 1846, arrived at Monterey the second of the

following month, and thinks that they then first received the information of Fremont's difficulties with the authorities of California. What do you say with these authorities against you?

A. They are both certainly mistaken, for I know that Mr. Larkin sent dispatches to the Secretary of State in March, 1846, by the brig Hannah. I know further, that the Portsmouth came to Monterey in April, 1846, in consequence of the news of Fremont's difficulties having reached Mazatlan in March, 1846, I know it further, from the fact that on the 23d of April, 1846, Mr. Larkin wrote a letter to Mr. Archibald H. Gillespie, an extract of which is in the following words: "Consulate of the United States of America, April 23d, 1846. Sir: Capt. Montgomery of the Portsmouth being under sailing orders (the first or second instant) at Mazatlan, was waiting for the Mexican mail, when Commodore Sloat heard per brig Hannah of the situation of Capt. Fremont near San Johns, and immediately dispatched the ship. She was twenty-one days from Mazatlan to Monterey."

A copy of this letter is recorded in my own handwriting in the book exhibited "Copies of official letters," etc.

[The counsel for claimant now offers in evidence the extract referred to in question 14th, which is marked "Exhibit Swasey No. 1, W. H. C."]

Q. 18. Examine the document now shown you purporting to be a copy, from the book marked "Copies of official letters," etc., of a letter addressed by Mr. Larkin to our Minister in Mexico, dated April 3d, 1846; say whether you have compared it with the copy in the book, how the comparison was made, and is it a faithful copy?

A. I compared it in the same manner that I compared "Exhibit Swasey No. 1, W. H. C." It is a faithful copy.

[The counsel for claimant now offers in evidence the copy referred to in question 18, which is marked "Exhibit Swasey No. 2, W. H. C."]

Q. 19. Answer the same question in relation to the documents now shown you.

A. I answer the same way in regard to all of them; they are all faithful copies.

[The counsel for claimant offers these copies in evidence, and they are respectively marked "Exhibits Swasey Nos. 3, 4, 5, 6 and 7, W. H. C."]

Q. 20. Before you left San Francisco in the first part of the year 1846, for Monterey, had you ever heard of the discovery of a quicksilver mine in California, by Andres Castillero; if so, state generally what you heard about it?

A. I had heard frequently Capt. Leidesdorff, Hinckley, and others, speak of the discovery by Don Andres Castillero; and Capt. Leidesdorff talked frequently of buying some share of it, and said if he did, that he would be able to give me some employment at the mine. The fact of the discovery was notorious. After I arrived at Monterey in the spring of 1846, it was the subject of conversation between all intelligent persons, and Mr. Larkin particularly took so much interest in it that he not only talked of purchasing an interest, but that he procured specimens of the ore, which he and myself smelted in an old gun-barrel, and put the liquid quicksilver in quills, which, with specimens of the ore, were sent by Mr. Larkin to various parties; among whom I recollect were the Hon. Daniel Webster, Hon. Thomas H. Benton, Hon. James Buchanan, and the Rev. Wm. M. Rogers, of Boston, and to some persons at the Sandwich Islands.

Q. 21. Did you know Castillero; when first, and when did he leave Monterey?

A. I knew Castillero; first, when he visited Sutter's Fort, in November, 1845. I afterwards saw him in Monterey in the months of March and April, 1846. He left Monterey in the early part of April, 1846, in the barque Don Quixote, Capt. John Paty. Mr. Larkin sent dispatches by the same vessel to our Minister of Legation in the City of Mexico.

Q. 22. Do you know whether Mr. Larkin visited the mine in 1846; if yea, about what time?

A. He did visit the mine, and I think some time in the month of April. He brought the specimens mentioned in his letters when he returned to Monterey; he got them at the mine.

[Counsel for the United States objects to the introduction of all the foregoing letters, upon the ground that they are irrelevant, and are not sufficiently proved to be written at their date.]

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, CAL., June 22d, 1860.

Examination of William F. Swasey resumed from yesterday.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

CROSS-EXAMINATION.

Questions by Mr. Randolph.

Q. 23. How long has Thomas O. Larkin been dead?

A. It is about a year and a half since he died.

Q. 24. Where did he reside at the time of his death, and how long had he been living there?

A. He resided in San Francisco at the time of his death, and had been living in San Francisco since 1849, with the exception of some year and a half or two years that he passed in the Atlantic States.

Q. 25. Do you know of his having evinced any objection to being called to give his testimony in this case?

A. I do not.

Q. 26. You have said that you obtained one of these books (viz.: "Correspondence with the Department of State") from me at my office; how many of the seven letters you have produced were copied from that book, and which of them?

A. Two; one is dated "Monterey, California, May 4th, 1846," addressed to the Hon. James Buchanan, Secretary of State, City of Washington. The other is addressed to the same person, dated "Monterey, March 5th, 1848."

Q. 27. Those two letters ought to be found in the State Department at Washington; ought they not?

A. They ought.

Q. 28. Have you never seen them printed officially, among Senate or Executive documents, or both?

A. I don't recollect of having seen them.

Q. 29. Now, what was the object of your particularity in detailing the circumstances and manner of your obtaining that book, containing the correspondence of Mr. Larkin with the State Department, from me in my office, as in answer to question 10?

A. Simply to answer the question by the counsel for the claimant.

[Counsel for the United States offers the whole of the letter dated April 23, 1846, addressed to Archibald H. Gillespie, an extract from which was offered by counsel for claimant in "Exhibit Swasey No. 3, W. H. C." which is marked "Cross-Examination Exhibit Swasey No. 8, W. H. C."]

Also the whole of the letter dated May 2, 1846, addressed to Capt. John B. Montgomery, an extract from which was offered by counsel for claimant, in "Exhibit Swasey No. 4, W. H. C." which is marked, "Cross-Examination, Exhibit Swasey No. 9, W. H. C."]

Q. 30. The letter contained in "Exhibit Swasey No. 6, W. H. C." is without address; is it not?

A. Yes, sir.

Q. 31. In whose handwriting is that letter?

A. In Mr. Allen's.

Q. 32. Do you know of any other letters in these books, without an address?

A. I do not, in either of the books.

Q. 33. Did you copy letters into these books before they were sent?

A. It was the custom of Mr. Larkin to have the letters copied into the books from the originals before they were sent, and I know of no deviation from that custom.

Q. 34. This letter without address in this book is the same as the letter printed in the "Polynesian," a newspaper published at Honolulu, Sandwich Islands, July 25th, 1846, there dated June 24th, 1846, and addressed to G. P. Judd; is it not?

A. It appears to be a copy of this in the book, with some immaterial difference in the phraseology. It is very possible that the letter in the book may have been sent to some other parties, which would account for the apparent difference in date and phraseology.

Q. 35. You don't mean that the letter printed in the newspaper was copied from the book, but the contrary, don't you, when you look at their dates?

A. I don't mean that either one was copied from the other, but that the two letters are very much alike; and the one in the book may have been written after the one to Mr. Judd, and sent to some one else. While I was with Mr. Larkin he only made a practice of copying his official letters in these books; and this letter to Mr. Judd I don't look upon in the light of an official letter.

I find another letter following the letter to Mr. Judd, in the same paper, directed to no one, which seems to be almost an exact copy of the letter under date of May 4th, 1846, addressed by Mr. Larkin to Mr. James Buchanan, Secretary of State, at Washington, which last letter is marked "Exhibit Swasey No. 5, W. H. C."

It was usual for Mr. Larkin, after compiling valuable information on the resources of the country generally, to send the same information to different persons, at times perhaps slightly varied in expression.

Q. 36. How do you keep these books now?

A. I have generally kept them in the vault of Mr. Randall, in Merchant street in this city, up to the time he left. They are now kept in my office.

Q. 37. For what purpose did you want the books when you were looking for them, and how came you to my office for one of them?

A. I wished them to obtain information regarding the early history of California, as well as matters relating to this case. I had possession of the book entitled Official Letters, some months before I ascertained the whereabouts of the book entitled "Correspondence with the Department of State;" I learned, in conversation with Mr. Christopher E. Hawley, that the book was in possession of Mr. Randolph, and had been so for a year or over. I was anxious at that time to procure this book, not only to get information in regard to what I have testified, and to corroborate my testimony, but also to procure information not relating to the case. When I first applied to Mr. Frederick Larkin, for the book entitled "Correspondence with the State Department," both he and Mr. Bigelow (who had been Mr. Larkin's agent) were under the impression that there was no such book; I told them that I knew there was, and they both said they would look for it. I afterwards, some few days, saw them, and they said that they had been unable to find them, and did not think such book existed. A few days after that I met young Mr. Thomas O. Larkin, and he informed me that, before his father died, he had been sent by his father to some office in Court Block, for one of his consular record books, but had been unable to find its whereabouts, and supposed that the book I had already received was the one he was sent for; he told me that he could not recollect who it was that his father sent him to, but that it was in Court Block.

Q. 38. Did any one of the sons of Mr. Larkin, or anybody else, tell you that they had applied to me for that book?

A. No, sir, they did not.

Examination closed.

. WILLIAM F. SWASEY.

Sworn to, and subscribed, this 22d June, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed June 22, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT SWASEY No. 1, W. H. C.

Copy from the Consular Book of the late Thomas O. Larkin, entitled "Copies of Official Letters, Thomas O. Larkin, Monterey." Extract from letter to J. C. Fremont, page 61, letter No. 80.

"CONSULATE OF THE UNITED STATES, }
Monterey, California, March 8, 1846. }

"Sir:—With this you have my Consular answer to the General and Prefecto's letters to you of last week, of which I had the honor to receive copies from them. I also add the Señor Prefecto's second letter to me of this day; by your messenger of last week I forwarded some United States newspapers, a Spanish grammar, some magazines, and English copies of the General's and Prefecto's letters to you on the 5th inst. I then informed you that there was an American brig (brig "Hannah") of Salem, at anchor in this port, bound to Mazatlan, whose supercargo I had requested to remain here until the third day, to enable you to send letters to the United States, if you were so inclined."

EXHIBIT SWASEY No. 2, W. H. C.

Copy of Letter from the Consular Book of the late Thomas O. Larkin, entitled "Copies of Official Letters, Thomas O. Larkin, Monterey." Pages 70 and 71, letter No. 91.

"CONSULATE OF THE UNITED STATES OF AMERICA, }
Port of Monterey, California, April 3d, 1846. }

"Sir:—Don Andres Castillero, formerly member of Congress from this Department, leaves this port in a few days for Aca-pulco, on board the Hawaiian barque Don Quixote, as commissioned to Mexico from General José Castro, Military Commandant of California. He will arrive in Mexico by the 25th or 30th of this month.

"I am under the impression that the President of Mexico is to be informed from Don Andres, or the correspondence he carries, that there is danger of an invasion from Americans (I am confident there is not) in this country; and to give some information relative to what they call driving Captain J. C. Fremont out of California. He is yet, I believe, surveying, or resting his horses in the interior.

When a translation of Captain Fremont's letter was first given to the authorities, the words "and refuse quarter" was wrote, I will give no quarter. The translator informed the Alcalde of the mistake. It may be so printed, in which case you have a copy that should immediately follow in the Mexican papers; for which purpose, and that you may be well acquainted with all the circumstances, I send you copies of this Consular correspondence on the subject. About four hundred emigrants arrived in California in 1845.

"At the town of San José, eighty miles from Monterey, Don Andres Castellero has discovered a quicksilver mine; the ore produces from fifteen to sixty per cent. I have seen him, from an old gun-barrel, in thirty minutes run out about thirty per cent. in pure quicksilver. This must be a great advantage to California.

"I remain, Sir,
Your most obedient servant.

"To the Hon. Minister of Legation of the
U. S. of America, City of Mexico."

EXHIBIT SWASEY No. 3, W. H. C.

Copy from the Consular Book of the late Thomas O. Larkin, entitled "Copies of Official Letters, Thomas O. Larkin, Monterey." Extract of a letter to Archibald H. Gillespie, Esq.; page 73, letter No. 95.

"CONSULATE OF THE UNITED STATES OF AMERICA, }
Monterey, California, April 23d, 1846. }

"Sir:—Captain Montgomery, of the "Portsmouth," being under sailing orders (the 1st or 2d instant) at Mazatlan, was waiting for the Mexican mail, when Commodore Sloat heard, per brig "Hannah," of the situation of Captain Fremont near San John's, and immediately dispatched the ship. She was twenty-one days from Mazatlan to Monterey."

EXHIBIT SWASEY No. 4, W. H. C.

Copy from the Consular Book of the late Thomas O. Larkin, entitled "Copies of Official Letters, Thomas O. Larkin, Monterey." Extract of letter to Captain J. B. Montgomery, United States ship "Portsmouth"; page 75, letter No. 96; under date May 2d, 1846.

"Five or six miles from the town of San José, and near the Mission of Santa Clara, there are mountains of quicksilver ore, discovered in 1845 by Don Andres Castellero, of Mexico, which I have twice seen produce twenty per cent. of pure quicksilver, by simply putting the pounded rock in an old gun-barrel, one end placed in the fire, the other end in a pot of water for the vapor to fall into, which immediately becomes condensed; the metal was then strained through a silk handkerchief: the red ore produces far better than the yellow. There appears no end to the production of the metal from these mountains; working of the quicksilver is but now commenced."

EXHIBIT SWASEY, No. 5, W. H. C.

Copy of Letter from the Consular Book of the late Thomas O. Larkin, entitled "Correspondence with the Department of State, Thomas O. Larkin, Monterey." From page 54, letter No. 43.

"CONSULATE OF THE UNITED STATES OF AMERICA, }
Monterey, California, May 4th, 1846. }

"SIR:—The undersigned has the honor to forward to the Department the following information respecting the mines of California, most of them discovered within six or nine months. For many years previous to this, the inhabitants have supposed the places in question contained metal of some kind. Ninety miles (by sea) south of San Diego there are some very extensive copper mines belonging to Don Juan Bandini. The undersigned is informed by Don José Rafael Gonzales, that on his Rancho, sixty or eighty miles south of Monterey, there are coal mines; at San Pablo, in the Bay of San Francisco, there are others; at the Mission of San Juan, twenty-five miles north of Monterey, there are sulphur beds or mines; fifty to eighty miles north of Monterey, there is said to be several silver. There are several places throughout California where the

people obtain a bituminous pitch to cover the roofs of their houses—some make a floor of it by mixing earth with it; at these places rabbits, squirrels and birds, often get half-buried in the pitch, and some die; even horses and horned cattle are lost there. A few miles north of Santa Barbara, the sea for several miles upon the coast is colored by the pitch oozing from the banks. Five or six miles from the town of San José, and near the Mission of Santa Clara, there are mountains with veins of quicksilver ore, discovered by Don Andres Castellero (of Mexico) in 1845, which the undersigned has twice seen produce twenty per cent. of pure quicksilver, by simply putting the pounded rock in an old gun-barrel, one end placed in the fire, the other end in a pot of water for the vapor to fall into, which immediately becomes condensed. The metal was then strained through a silk handkerchief: the red ore produces far better than the yellow. There appears no end to the production of the metal from these mountains. Working of the quicksilver is but now commenced under great disadvantages, from not having any of the materials generally used in extracting that metal. Near the town of Sonoma, about sixty miles from the entrance of the Bay of San Francisco, there are other mines, the rock or ore of which appears of a grayish cast, and to be equal to the others. Near the same town there are sulphur mines; the piece which the undersigned has in his possession is perfectly pure, without rock or dirt mixed with it. At the same place there are said to be lead mines. Some Indians have brought a blanket of lead ore to the Mission of San Juan, refusing to tell from whence they brought it. On the Rancho of Captain Richardson, one side of the entrance to the Bay of San Francisco, there is a lead mine; the undersigned has two or three pounds, said to be from that Rancho; this is full of pebble stones, which when taken out by a nail or knife, left the lead entirely pure and indented like honeycomb. Twenty miles from Monterey there is a mine of silver and lead, which has been taken out, but not separated; there is also slate of the best quality at the Sacramento river. There is said to be black lead in the country at San Fernando, near San Pedro; by washing the sand in a plate any person can obtain from one to five dollars per day of gold, that brings seventeen dollars per ounce in Boston; the gold has been gathered for two or three years, though but few have patience to look for it. On the south-east end of the island of Catalina there is a silver mine, from which silver has been extracted. There is no doubt but that gold, silver, quicksilver, copper, lead, sulphur and coal mines, are to be found all over California, and it is equally doubtful whether, under their present owners, they will ever be worked. The Indians always

have said there were mines in the country, but would not show their location, and the Californians did not choose to look for them.

By the laws and customs of Mexico respecting mining, every person or company, foreign or native, can present themselves to the nearest authorities and denounce any unworked mine; the authorities will then, after the proper formalities, put the denouncer in possession of a certain part of it, or all, which is I believe according to its extent; the possessor must thereafter occupy and work his mine, or some other may denounce against him; in all cases the Government claims a certain proportion of the products. Up to the present time there are few or no persons in California with sufficient energy and capital to carry on mining, although a Mexican officer of the army, a Padre, and a native of New York, are, on a very small scale, extracting quicksilver from the San José mine.

“I remain, sir, with the highest consideration,

“Your obedient servant,

“(Signed.)

THOMAS O. LARKIN.

“P. S.—It is considered doubtful whether a foreigner can hold a mine in this country.

“Hon. James Buchanan,

“Secretary of State,

“City of Washington.”

EXHIBIT SWASEY No. 6, W. H. C.

Copy of Letter from the Consular Book of the late Thomas O. Larkin, entitled “Copies of Official Letters, Thomas O. Larkin, Monterey.” Page 97, Letter 124.

“CONSULATE OF THE UNITED STATES OF AMERICA, }
Port of Monterey, California, July 2d, 1846. } ”

“Sir:—I have the pleasure of forwarding to you a specimen of California Quicksilver Ore, from a mine seventy miles north of Monterey, and ten miles from the pueblo of José, discovered in 1845 to have quicksilver in it. The place was known for eighteen years, and supposed by the Californians to be a silver mine; they, in 1828, having with some foreign quicksilver extracted the other metal. In 1845, a Mexican being in the vicinity heard that the mountains contained rock different from any other, went to examine it, and immediately denounced

the place before the nearest Alcalde, and then made known what it contained.

“The owner, with a priest, in a small and imperfect manner has commenced extracting the metal. The mine is on the top of a steep mountain, a mile or more from the plain, to which it is brought down on a mule, piled up with a whaler’s pot covered over it, well cemented with clay, some six or eight cords of fire-wood placed over and fired; in fourteen or sixteen hours the quicksilver is found below in a small wooden tank of water; though much of the rock is thrown away afterwards that has not been well heated, they obtain about fifteen per cent. of the metal.

“The specimen I send can be proved by dropping a simple pinch of the pounded stone (the red is preferable) on a red hot iron, holding a tea-cup over one or two minutes in such a manner that the vapor shall be caught, then with the finger rub the smoke on a piece of silver money, or with the finger for five minutes rub all the smoke in the cup together, which produces at first hundreds of almost invisible globules, brought by contact into one globule of quicksilver.

“Second operation: take a tube, a common gun-barrel, air tight, is very convenient, fill it with the ore (pounded to the size of beans) to within four or six inches of the end, which end immerse in a pot of water, with a plate to catch the production; keep the gun-barrel red hot for thirty or forty minutes, and from the condensed vapor you have from twenty to thirty per cent. quicksilver. Should the latter be dirty from the ashes falling into the water, squeeze it through a silk handkerchief; on receiving the ore, should it be dirty from its own dust, wash it; when dry, the quicksilver can be discovered without a glass: the yellow part of the rock is the least valuable. Care should be taken that the vapor does not exhale in the mouth, thereby producing salivation.

“Mines of pure sulphur, and mines of lead, copper, silver and gold, have been lately discovered in California, but not one is yet in operation.

“I am, with the highest respect,

“Your most obedient servant,

“(Signed)

THOMAS O. LARKIN.”

EXHIBIT SWASEY NO. 7, W. H. C.

Copy of Letter from the Consular Book of the late Thomas O. Larkin, entitled "Correspondence with the Department of State, Thomas O. Larkin, Monterey." Letter No. 72.

"Monterey, March 25, 1848.

"HON. JAMES BUCHANAN, Secretary of State.

"Sir:—Since your dispatch of the 19th August, 1846, requesting information respecting Jones, supposed to have belonged to the brig Helen, I have made repeated inquiries for the persons mentioned in the information. For some years back there had been a sea-faring man by the name of Jones in California, but his many years residence here prevented him from being one of the party; he left California before your dispatch reached me. Some three or four years back there was a crazy man by the name of Reed in California, who came from Mazatlan, had been sufficient time in South America and Mexico to learn the Spanish language, he was a man of good family and fair education; on traveling from Santa Barbara to Monterey he joined the traveling troops of Micheltorena, one day traveled in advance of them, saying he was coming to me to assist him, and disappeared in the mountains; at times he was calm, mild and pleasant, at other times so very deranged as to tear off his clothes. He belonged to Maine. I have in keeping his daguerreotype portrait, sent to me from San Pedro. I cannot place much faith in the story told by Reed in his deposition.

"Messrs. Barron, Forbes & Co., of San Blas and Tepic, one of the richest English houses in Mexico, in 1846 became lessees for sixteen years of a quicksilver mine, seventy miles north of this. Since that period they have become part owners; they have had a few common laborers, with some pickaxes, crow-bars, shovels, and common whaling try-pots at work four or five months, most of this time in making preparations, and everything done very imperfectly. Nevertheless, they are now taking out near two hundred pounds per day, and are now shipping about twenty thousand dollars worth of quicksilver to Mazatlan. I believe they cannot obtain any more iron flasks or bottles in California, which are made to hold seventy-five pounds each. Some of the ore now found is one half pure quicksilver. In January, 1846, per Salem bark Angola, consigned to the care of Mr. William M. Rogers, of Boston, Mass., I had the pleasure of forwarding to you, Hon. Thomas H. Benton, and one or two other gentlemen in Washington, some specimens of California quicksilver ore, with some statements rela-

tive to the proving its quality in a simple manner. Several mines of quicksilver have, in 1847-'48, been discovered in this territory; from every appearance California will soon supply all Mexico and South America, and be able to undersell any mines in the world.

"The mines in California are easy wrought, perhaps almost as easy as iron; at present the ore or rock is only broken up with large hammers, by a single person, covered over with a try-pot, which produces the metal after being kept red hot twenty-four hours. Under the Mexican laws, if the owner of a mine was unable or unwilling to work, any person could before the nearest Alcalde demand it and take possession of it as his sole property, by carrying on operations on the plan. Many English, Americans and natives have of late been so much engaged on the lands of private persons, that Governor Mason has annulled the laws on this subject, securing to each private owner of land all he may have on it, by which means a purchaser of mineral lands will obtain a fair compensation for his property, or retain it to suit his convenience or inclination as he may see fit.

"Everything in California is very quiet and prosperous.

"I have the honor to be, sir,

"Very respectfully,

"Your obt. servt.,

"(Signed)

THOMAS O. LARKIN."

EXHIBIT SWASEY No. 8, W. H. C.

Copy from the Consular Book of the late Thomas O. Larkin, entitled, "Copies of Official Letters, Thomas O. Larkin, Monterey." Page 73, No. 95.

"CONSULATE OF THE UNITED STATES OF AMERICA, }
Monterey, April 23d, 1846. }

"Sir:—Captain Montgomery, of the Portsmouth, being under sailing orders (the 1st or 2d instant) at Mazatlan, was waiting for the Mexican mail, when Commodore Sloat heard, per brig Hannah, of the situation of Captain Fremont near San Johns, and immediately dispatched the ship. She was twenty-one days from Mazatlan to Monterey. I send to you four or five New York and one Mexican newspapers, the former to

5th of February, the latter of March. New York papers of February 25, were in the hands of the Commodore. Captain Montgomery has not any certain information of Mr. Slidell's situation in Jalapa, in March; he says that the Comandante-General of Mazatlan had later news by six days than Commodore Sloat; that all Custom House and other Government officers had left Mazatlan, taking away the archives and other Government property; publishing in the street that Commodore Sloat would, in all probability, declare a state of blockade the next day, thereby giving reasons to suppose they were aware of the cause. Mr. Parrott's private letter to Don Pablo Saguiro, has an opinion that there will be no war, that some of the Mexican Northern States were declaring for the United States, others forsaking, and most all against Paredes; the whole Mexican country being in a deplorable state. Captain Montgomery is of the opinion that Commodore Sloat may, by the next mail (six or eight days), have a declaration on the part of the United States against Mexico, in which case we shall see him in a few days to take the country. The English Corn Laws are repealed; Peel was out ten days, Lord Russell in his place; not being able to form a Ministry, Sir Robert Peel was recalled. Mr. Packingham has the second or third time made Oregon propositions to Mr. Buchanan, even to offering to leave the business to other nations, or the Prussians. Mr. Polk will have none of it; he is for our own territory (of which Oregon is a part), without arbitration on the part of any one. The Portsmouth will remain here and in San Francisco some weeks, perhaps a month, according to circumstances. I have (as my opinion) said to Señores Castro, Carrillo and Vallejo, that our flag may fly here in thirty days. The former says, for his own plans, war is preferable to peace, as by war, affairs will at once be brought to a close, and each one know his doom. I answered, without war he could make certain offices, and secure to himself and his friends, fame, honor, permanent employ and pay; he and others know not what to do or say, but wait advices from Mexico, per their Commissioner, by Don Quixote; she ought to be here by the first of July.

"The letters I sent to Mazatlan on the 10th or 11th of March, respecting Captain Fremont, I suppose did not reach Mr. Parrott; the people here are astonished at the appearance of this vessel in forty-two days, to look into the business, which astonishment I am glad to see. I have had many of the leaders at my house to inquire into the news, and believe they are fast preparing themselves for the coming events. The Shark has sailed from Mazatlan, to Oahu for repairs. I know nothing of Commodore Stockton,—in fear of my forgetting some ver-

bal news, I have requested Mr. Mellus to write to you. Please return the English papers.

“I remain with respect,

“Your obedient servant,

“(Signed)

THOMAS O. LARKIN.

“ARCHIBALD H. GILLESPIE, Esq.

“Yerba Buena.”

EXHIBIT SWASEY No. 9, W. H. C.

Copy from the Consular Book of the late Thomas O. Larkin, extitled “Copies of Official Letters, Thomas O. Larkin, Monterey.” Page 75, No. 96.

“CONSULATE OF THE UNITED STATES OF AMERICA, }
Monterey, California, May 2d, 1846. } ”

“Sir :—In answer to your request for information respecting the mines lately found in California, I have to say, that ninety miles (by sea) south of San Diego, there are some very extensive copper mines belonging to Don Juan Bandini. I am informed by Don José Rafael Gonzales, that on his rancho, sixty or eighty miles south of Monterey, there are coal mines; at San Pablo there are others. At the Mission of San Juan, twenty-five miles north of Monterey, there are sulphur beds, or mines; fifty or eighty miles north of Monterey, there is said to be several silver mines. There are several places throughout California where the people obtain a bituminous pitch to cover the roofs of their houses; some make a floor of it by mixing earth with it. I have at these places seen many rabbits, squirrels and birds half-buried in the pitch, where they soon die; even horses and black cattle are lost there. A few miles north of Santa Barbara the sea for four or five miles is covered by the pitch oozing from the banks and running several miles upon the coast. Five or six miles from the town of San José, and near the Mission of Santa Clara, there are mountains of quicksilver ore, discovered in 1845 by Don Andres Castillero, of Mexico, which I have twice seen produce twenty per cent. of pure quicksilver, by simply putting the pounded rock in an old gun-barrel, one end placed in the fire, the other end in a pot of water for the vapor to fall into, which immediately becomes condensed; the metal was then strained through a silk hand-

kerchief: the red ore produces far better than the yellow. There appears no end to the production of the metal from the mountains; working of the quicksilver is but now commenced. Near the town of Sonoma, about sixty miles from the entrance to the Bay of San Francisco, there are other mines. This rock or ore appears of a grayish cast. I have never seen it proved, but am informed it is equal to the others. Near the same town there is sulphur mines. The piece I saw (about a pound) was perfectly pure, without rocks or dirt mixed in it. At the same place there is said to be lead mines; some Indians have brought a blanket full of lead ore to the Mission of San Juans, refusing to tell from whence they brought it. On the rancho of Capt. Richardson, one side of the entrance of the Bay of San Francisco, there is lead; I have seen two or three pounds, said to be from that rancho; this piece was full of pebble stones, which, when taken out by nail or knife, left the lead entirely pure and indented like honey comb. Twenty miles from Monterey there is a mine of silver and lead, which have been got out but not separated. I have reason to believe there is much slate of the best quality at the Sacramento River. I understand there is black lead in the country. At San Fernando, near San Pedro, by washing the sand in a plate any person can obtain from one to five dollars per day of gold that brings seventeen dollars per oz. in Boston; the gold has been gathered for two or three years, though but few have the patience to look for it. There is no doubt in my mind but that gold, silver, quicksilver, copper, lead, sulphur, and coal mines are to be found all over California; and I am very confident they will, under their present owners, continue as they are. The Indians have always said there were mines, but would not show their location, and the Californians did not choose to look for them. On the south-east end of the island of Catalina is a silver mine, from which some silver has been extracted.

“I remain, your obedient servant,

“(Signed)

THOMAS O. LARKIN.

“Captain John B. Montgomery,

“U. S. ship Portsmouth.”

DEPOSITION OF JOHN C. FREMONT.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, June 26, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, etc., etc., came John C. Fremont, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., of counsel for the United States.

QUESTION 1, by counsel for the claimant: Please to state the character of your exploring survey across the continent in 1845.

ANSWER. It was a topographical exploration, with the immediate object of ascertaining the most direct route across the continent. It was made under the orders of the Topographical Bureau. I was at that time a Captain in the Topographical Engineers.

Q. 2. Do you remember the day of your arrival at Sutter's Fort?

A. On or about the 10th day of December, 1845.

Q. How long did you remain there, and where did you next go?

A. I remained there about four days; on the 14th of the same month I left the Fort, and traveled to the head waters of King's River, with the object of meeting the main body of my party, which I had left at Walker's Lake. Returning, I reached Sutter's Fort on the 15th of January, 1846.

Q. 4. How long did you remain there, and where did you next go?

A. I remained there four days; and on the 19th left the Embarcadero in Captain Sutter's launch, accompanied by eight

of my party, for Yerba Buena, now the City of San Francisco, where we arrived in the course of a day or two.

Q. 5. Then you must have reached San Francisco on the 21st or 22nd January, 1846?

A. If my memory serves me, we reached here on the 20th; as the river was high at that time, we had the advantage of the current, and so made a quick passage.

Q. 6. While in San Francisco, on that occasion, whose acquaintance did you make?

A. Captain William A. Leidesdorff and Captain William Hinckley were the principal acquaintances I made. I was there but a short time. I became quite well acquainted with Captains Leidesdorff and Hinckley.

Q. 7. About that time did you visit the Pueblo of San José, and with whom.

A. I did, with Captain Hinckley. I had arranged with Captain Leidesdorff to go with him to Monterey, and having a day or two of leisure before he could be ready, Captain Hinckley offered to go with me to see the quicksilver mines near San José, which Captains Leidesdorff and Hinckley had mentioned to me as an object of interest, and as having been recently discovered. I left Yerba Buena on or about the 21st January, 1846, at one o'clock, P. M., in a whaleboat. We reached the embarcadero, now Alviso, about day-break the next morning. There we procured horses, and, passing through San José, reached the mine on the same day. These dates are as nearly accurate as I can make them.

Q. 8. Did any one besides Hinckley go to the mine with you; when did you reach there; whom did you see there; and please state everything that occurred while you were there?

A. I think no one went with me to the mine but Hinckley; arrived there I should think about noon; at the mine Captain Hinckley introduced me to Mr. Castellero, the owner of the mine, who showed me about—showed me the excavation from whence he had taken the ore—showed me two or three heaps of the ore and gave me some specimens, some of which I brought away.

Before visiting the mine, Captain Leidesdorff and myself had some conversation together with regard to purchasing the mine. When there, I spoke slightly with Castellero on the subject, and Mr. Hinckley also said something to him at greater length, tending to the same end; but Castellero was not at all disposed to converse about selling. At this time, I think Castellero was engaged in building a house below in the valley, to be used for the occupation of himself or his workmen.

He also went through the process, roughly, of extracting the quicksilver from the ore, by putting some on red-hot iron, and collecting the fumes in a cup. We remained there, perhaps, some two hours.

Q. 9. As I presume, about that time, you were a stranger to the Spanish laws on the subject of mining, perhaps your curiosity was excited to learn something on that subject: you will please to state whether you received any information as to the mode in which titles to mines were then acquired; and what, if any, steps had been taken by Castellero in acquiring the ownership of his mine.

A. I learned from Castellero that he held the mine under a denouncement. I then for the first time became acquainted with the Spanish system of acquiring mines by denouncement. Whether I learned this in answer to questions propounded by me to Castellero, or whether he volunteered the statement, I do not now remember. The impression distinctly and strongly remained upon my mind as a piece of knowledge acquired at that time, and which I afterwards made use of in this State during my operations in 1849.

The discovery of gold in the rock was first made in 1849, on my Mariposa tract; it was considered that that discovery was the first of the kind in California. In the uncertainty respecting titles in California which then existed, I denounced the mine before Judge Geary in San Francisco, before Alcalde May in San José, and before the Alcalde in Stockton, whose name I do not remember. That vein is now known as the old Mariposa or Fremont vein, near the town of Mariposa. I made these denouncements entirely upon the information which I derived, at the time spoken of, from Castellero. When I left California, in 1847, the gold placeres had not been discovered. I heard of it as I was leaving the western frontier of the United States, in 1848, to return to California, where I arrived in the spring of 1849.

Q. 10. When did you return from the mine to Yerba Buena; how long did you remain; and where go to from there?

A. I returned directly from the mine to Yerba Buena, which place I left about sundown of the 24th January, 1846, in company with Capt. Leidesdorff and Capt. Hinkley; remained that night at Sanchez' rancho. In the morning, Capt. Hinkley returned to Yerba Buena, and Capt. Leidesdorff and myself continued our journey to San José, where we stopped for the night at Suñol's house. The next night we spent with Mr. Gomez, in the Cañada San Juan; and the day following, the 27th, we reached Mr. Larkin's house at Mon-

terey. I there called on Gen. Castro, and the Prefect, Manuel Castro.

Q. 11. After your visit to the mine, did you converse further with Capt. Leidesdorff respecting the purchase of the mine?

A. I did, on the journey to Monterey. I talked the subject over with him, but the amount required was larger than my means. At that time the mine was exceptional to any other kind of property; every thing else—such as land, cattle, etc.—being very low and of little exchangeable value, while the mine was considered as something of immense value, compared with other property. Thirty thousand dollars, which was the sum for which Leidesdorff supposed the mine might be purchased, was considered an immense sum of money in California, in those days. This circumstance gave great prominence to the mine.

Q. 12. Since January, 1846, have you ever been to the mine?

A. I think not; I have been in its neighborhood.

Q. 13. What was the name of the mine in January, 1846; do you remember?

A. I do not remember that I heard it designated other than as the quicksilver mine. I never, at that time, heard it called the Almaden, so far as I can recollect. This latter designation stands in my mind as one subsequently given.

Q. 14. Where were you in the month of March, 1846?

A. At the end of February I crossed the mountains called the Sierra de los Gatos, part of the Santa Cruz mountains; early in March encamped on the Gabilan peak, Salinas range; thence around by Sutter's Fort, north.

Q. 15. In that month did you not have some difficulties with the Californian authorities?

A. I did; those difficulties covered the space of four or five days, and occurred in the early part of March.

Q. 16. Do you remember to have received a letter from Mr. Thomas O. Larkin, American Consul at Monterey, dated 5th March, 1846, and with it a Spanish grammar, some magazines, and English copies of the General's and Prefect's letters to you?

A. I remember to have received the Spanish grammar and some letters from Mr. Larkin, about the time and while I was in camp.

Q. 17. Do you remember whether information of your difficulties was sent to Mazatlan, and if anything was done in consequence?

A. Mr. Larkin sent such information to Mazatlan, and I have always supposed that the sloop-of-war Portsmouth came up in consequence of the receipt of the information.

Examination adjourned until to-morrow, Wednesday, the 27th day of June, 1860, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

June 27th, 1860.

Direct Examination closed.

J. C. FREMONT.

Sworn to and subscribed, June 27th, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, Cal., June 28, 1860.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

Examination of J. C. Fremont continued.

CROSS-EXAMINATION.

Questions by Mr. Randolph.

Q. 18. Have you a copy of the denouncement you made of the gold mines in 1849?

A. I think not. I presume there is a copy in the Geary records.

Q. 19. I infer that you did not understand the Spanish language at that time?

A. I did understand the language reasonably well at the time, so as to enable me to converse understandingly.

Q. 20. Did Castillero show you the book containing the mining laws?

A. He did not; there was no such particularity?

Q. 21. Have you ever read the book of the mining laws of Mexico since?

A. I have, carefully. Before I made the denouncements in 1849, I had not read those laws.

Q. 22. When you made this denouncement in 1849, did you know the difference between the denouncement and the registry of a mine?

A. I doubt if I did. I presume I know now.

Q. 23. You do not know, therefore, whether Castillero told you he had denounced or registered the quicksilver mine?

A. I know he told me he had denounced the mine. The

term registry has no particular place in my mind, from the interview with Castellero.

Q. 24. You are now aware that a discoverer registers a new mine, and that denouncement is the proof by which a person acquires an old mine which had been abandoned or forfeited, are you not?

A. I had supposed a denouncement was applicable to either old or new mines—the act necessary to acquire title.

Q. 25. You cannot say, therefore, from any conversation which you had with Castellero, whether he then meant you to understand that he had occupied an old mine, or had discovered a new one?

A. No; I cannot state more particularly than I did on the direct examination.

Q. 26. Make any statement touching that matter, if you can, further than you have before answered.

A. I do not think there is anything remaining in my mind, further than I have already stated. I remember, indefinitely, that Castellero told me he was preparing to extract quicksilver.

DIRECT RESUMED.

Q. 27. From what you heard of the mine at that time, was it spoken of as a newly discovered quicksilver mine, or an old one which had been abandoned, and the operations in which had been recently resumed.

A. There is no definite impression remaining on my mind as to the point of the question. Castellero was brought to my notice as the discoverer, but whether of the mine or of the quicksilver, I do not remember now; probably the latter.

Examination closed.

J. C. FREMONT.

Sworn to and subscribed, this 28th June, 1860, before me.

W. H. CHEVERS,
U. S. Commissioner.

Filed June 28, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JOHN YOUNG.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 17th, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came John Young, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, residence and occupation?

ANSWER. My name is John Young, my age is 36 years, my residence San Francisco. I own a rancho.

Q. 2. Before the injunction which stopped the operations of the Almaden mine, you were the Superintendent of its works, were you not, and in the employment of the company on a salary?

A. Yes, sir.

Q. 3. You are the sole executor of the last will and testament of the late Robert Walkinshaw, are you not?

A. Yes, sir.

[This witness objected to as incompetent, being a party to this action, and directly interested in the result.]

Q. 4. When did he leave California; in whose charge did he leave his papers when he left; did he ever return to California, and when did he die?

A. He left California the 20th May, 1858; he left his papers in my charge. He never returned to California. He died in Scotland, in August, 1858.

Q. 4. What interest did he have or claim in the New Almaden mine?

A. He owned two barras or twenty-fourth parts of the mine, which he derived from the Robles' brothers; he claimed another barra under a conveyance from Padre Real; his claim for the first two barras was recognized by the company, on which he received his dividends regularly; his title to the last barra was disputed by the Company, who never paid him the dividend corresponding to it.

Q. 6. Do you remember whether Mr. Walkinshaw brought an action against Messrs. Bolton, Barron & Co., then the agents of the New Almaden Company, to recover the dividend corresponding to the Padre Real barra: if yea, when was the action brought, and by what attorney?

A. I recollect there was such an action brought,—I think about the year 1853. Mr. Hall McAllister was the plaintiff's attorney in that case.

Q. 7. Do you remember when the papers relating to that claim were delivered by Mr. McAllister to Mr. Walkinshaw, and what Mr. Walkinshaw did with them?

A. They were delivered by Mr. McAllister to Mr. Walkinshaw, the 19th May, 1858; Mr. Walkinshaw gave them to me to keep, as he was about to leave the country the next day.

Q. 8. What did you do with them?

A. A few days afterwards, I enveloped them in a piece of paper which I labeled. I have this envelope in my hand.

Q. 9. What label has that envelope?

A. "Papers relating to disputed barra between R. Walkinshaw and Messrs. Bolton, Barron & Co. May 24th, 1858, J. Y."

Q. 10. Did you ever examine Mr. Walkinshaw's papers after he left California, in search of documents relating to the title of the Almaden mine?

A. Yes, sir.

Q. 11. Was not your search directed especially to the testimony of the act of juridical possession given by the Alcalde to Castellero in December, 1845?

A. To that and other papers.

Q. 12. Did you ever find that paper?

A. I never discovered it until a few weeks ago, when at the request of Mr. Thomas Bell, who told me that Mr. Billings desired to find the papers relating to the Padre Real interest in the mine, I searched among Mr. Walkinshaw's papers with Mr. Bell. In looking over the papers Mr. Walkinshaw received from Mr. McAllister, and which I had enveloped and labeled as above stated, Mr. Bell examined a document in Spanish, and remarked that he thought it was an important paper which the Company had been long in search for. Mr. Bell then left with the paper to take it to the office of Messrs. Peachy and Billings.

Q. 13. Where is that paper?

A. It is here in my hand.

[Document offered in evidence by counsel for claimant, to be annexed to the deposition of this witness, marked "Exhibit J. Y. No. 1, W. H. C."]

Q. 14. Examine the document now shown you, purporting to be a receipt from Robert Walkinshaw to Hall McAllister, of certain originals and copies of original papers relating to the suit of Robert Walkinshaw against Bolton and Barron, dated May 19, 1858, and containing also a statement to the effect that Mr. Walkinshaw had paid Mr. McAllister five hundred dollars to account of his charges in that case, with a note signed "Hall McAllister," vouching for the correctness of the above in every respect: State where you found that paper.

A. I found it in the same bundle of papers in which Mr. Bell found the Spanish document above referred to. Mr. Walkinshaw's signature to this paper is genuine. I saw him sign it.

[Document offered in evidence by counsel for claimant, to be annexed to the deposition of this witness, marked "Exhibit J. Y. No. 2, W. H. C."]

Q. 15. In whose possession has that bundle of papers been, since Mr. Walkinshaw left California?

A. In my possession—first, as his agent,—then as his executor.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., July 18, 1860.

Direct Examination of John Young resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

Q. 16. Did Mr. Walkinshaw have any peculiarities in regard to his papers?

A. He had a sort of mania—I regarded it as such—about keeping his papers. He was always exceedingly careful about them, keeping them tied up together. They never were kept in any order. He was very jealous about surrendering the possession of his papers, even to his counsel. He never would permit anybody to look over his papers.

Q. 17. What was the state of Mr. Walkinshaw's health, for some time previous to his departure for Europe?

A. He was very sick and feeble, so much so, that I did not think he would live to reach Panama, and made arrangements in the event of his death between this place and that, for the return of his family. He had been ill for two years before he died, and very ill for a year preceding his departure.

Q. 18. Did he pay his usual attention to business before he left here?

A. Four or five months before he left, he paid but little attention to business; in fact he was incapacitated from doing so by illness.

Q. 19. Do you know in whose handwriting is the endorsement on "Exhibit J. Y. No. 1, W. H. C." of the words "Titles of Mine"?

A. Yes, sir. It is in Mr. Walkinshaw's handwriting. I am perfectly familiar with his handwriting.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

—
SAN FRANCISCO, July 20, 1860.

Examination of John Young resumed from the 17th inst.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

CROSS EXAMINATION.

Q. 20. Is not your wife a daughter of the late Mr. Walkinshaw, and have you not through her an interest in the two barras or shares in this mine, which were held by Mr. Walkinshaw as a member of the New Almaden Company?

A. Yes, sir; my wife is the daughter of the late Mr. Walkinshaw; she has an interest in the mine, which was devised to her by her father, and another interest which she inherited from her mother; both of those interests are, I am informed, my wife's separate property, according to the laws of this State.

Q. 21. Will you please produce, that I may file as evidence in this case, the copy of the deed from Padre Real to McNamara, of June 10th, 1846, mentioned as "No. 15," in "Exhibit J. Y. No. 2, W. H. C."?

A. Yes, sir.

[Counsel for the U. S. offers in evidence the document referred to; it is now marked "Exhibit Cross-Examination J. Y. No. 3, W. H. C."]

Witness states that said Exhibit is in the handwriting of H. W. Halleck, Esq.]

JOHN YOUNG.

Sworn to, and subscribed this 20th day of July, A. D. 1860, before me.

W. H. CHEVERS,
U. S. Commissioner.

Filed July 20, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT YOUNG No. 1, W. H. C.

Año de 1845.

Expediente de denuncia posesion y Compañia de la Mina de Azogue nombrada Santa Clara Jurisdiccion de Sn. José Guadalupe en la Alta California.

Noviembre 22, de 1845.—Dⁿ Andres Castellero hace el denuncia de la mencionado en el Pueblo de Sⁿ José Guadalupe por falta de diputacion de mineria y de Juez de letras.

Diciembre 3, de 1845.—Escrito que el mencionado Castellero presentó testificando haber sacado azogue y otros metales pidiendo se agregue al espediente.

Diciembre 30, de 1845.—Acto de posesion que con testigos de asistencia dio el Alcalde de el Pueblo de Sⁿ José a Dⁿ Andres Castellero de la Mina de Santa Clara por haberse cumplido el tiempo de los pregonos.

Diciembre 30, de 1845.—Recivo de los derechos de posesion firmado por el Juez de Sⁿ José Guadalupe.

Diciembre 8, de 1845.—Escritura de Compañia p^a los trabajos de la mina autorizado por el S^r Prefecto de el 2^o Distrito.

S^r Alc^o de 1^a Nominacion :—Andres Castellero, Capⁿ de Cav^a Perm^{te} y Residente hoy en este Depart^o ante la Notoria Justificacion de V. hace presente que abiendo discubierto una veta de plata con ley de oro en terreno de! Rancho pertenente al Sargento retirado de la Compañia Presidial de San Fran^o, José

Reyes Berreyeza; y queriendo trabajarla en Compañía, Suplico á V. que arreglado a la ordenanza de mineria se sirva fijar rotulones en los parajes publicos de la Jurisdiccion, para que llegado el tiempo de las posesion juridica asegure mi dechō segun las leyes de la materia.

A V. Suplico provea de conformidad en lo que recibire merced y justicia: advirtiendo este en papel comun por falta del sellado correspo^{to}.

Noviembre, viente y dos, de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Es copia a lo que me remito firmandolo con los testigos de asã. en el Pueblo de Sn. José Guad°, a 13 Enero de 1846.

PEDRO CHABOLLA.

[Rubric.]

De asã. P. SAINSEVAIN.

[Rubric.]

De asã. JOSE SUNOL.

[Rubric.]

Sr Alcalde de 1ª Nominacion del Pueblo de Sⁿ José Guad°: —Andres Castellero Capitan permanente de Cavaleria ante la notoria justificacion de V. compareso y dijo: entablado el mineral que con anterioridad denuncie á ese Juzgado; he sacado á mas de plata con ley de oro, azogue liquido, en presencia de algunos concurrentes que podre citar en caso oportuno, y por combenir asi; a mí derecho le he de merecer á V. que unido al escrito del denunciō se archibe está presentacion no yendo en papel del sello por no haverlo.

A V. Suplico provea de conformidad en lo que recibira merced y justicia. S^{ta} Clara, Diciembre 3, de 1845.

ANDRES CASTILLERO.

Es copia a lo que me remito firmandolo con los testigos de asã. en el Pueblo de Sⁿ José Guad°, a 13 En° de 1846.

PEDRO CHABOLLA.

[Rubric.]

De asã. P. SAINSEVAIN.

[Rubric.]

De asã. JOSE SUNOL.

[Rubric.]

No encontrandose en el Depart° de California Diputacion de Mineria y siendo esta la unica vez desde de poblacion de Alta California que se travaje con arreglo a las Leyes un mineral, y careciendo ademas de Juez de letras el 2° Distrito. Yó el Alcalde de la 1° nominacion C. Ant° M° Pico, he venido acom-

pañdo de dos testigos para actuar por Receptoría, a falta de Escrivano Público que no lo hay, para dar posesion jurídica de la Mina conocida con el nombre de S^{ta} Clara en este Jurisdiccion situada en el Rancho del Sargento José Reyes Berreyeza, porque habiendo fenecido el tiempo que señala la ordenanza de minería, para deducir su accion el C. Andres Castellero, y que otros pudieran alegar mejor derecho desde el tiempo del denuncia a la fecha, y encontrandose dicho mineral con abundancia de metales explotados, el pozo hecho con la reglas del arte y produciendo la elavoracion de la mina, abundancia de azogue liquido segun las muestras que tiene el Juzgado y estando tan recomendado par leyes vigentes la proteccion de un articulo tan necessario para la amalgamaⁿ de oro y plata en la Republica, he benido en conceder tres mil varas por todos rumvos, a reserva de lo que señale la Ordenanza General de Minería para ser trabajada en Comp^a de lo que doy fé, firmando conmigo los testigos quedando agregado este acto de posesion al cumuló del esped^{te} que queda depositado en el archivo de mi cargo no yendo puesto en el papel del sello respectivo que no le hoy en los term^s. de la Ley.

Juzgado de Sⁿ José Guad^o, Dic^o 30, de 1845.

ANTONIO MA. PICO.

[Rubric.]

De asã. ANTONIO SUNOL.

[Rubric.]

De asã. JOSE NORIEGA.

[Rubric.]

—

He recibido del S^r Dⁿ Andres Castellero la cantidad de beinte y cinco pesos por cuenta de los dr^{os}. de posecion de la mina de Azogue que está en esta jurisdiccion de mi cargo nombrada de S^{ta} Clara en tierras perten^{tes} al Sr. Dⁿ José Reyes Berreyeza.

Juzgado de San José Guad^o Diciembre 30, de 1845.

ANTONIO MA. PICO.

[Rubric.]

Son \$25.

[Endorsed.]

Titles of Mine.

EXHIBIT YOUNG No. 2, W. H. C.

FOURTH DISTRICT COURT,
City and County of San Francisco. }

ROBERT WALKINSHAW }
v. } May 14, 1858.
BOLTON AND BARRON. }

ORIGINALS AND COPIES OF ORIGINAL PAPERS.

1.—A document in Spanish, headed “Año de 1845, Expediente de denuncia, posesion y compañía de la Mina de Azogue nombrado Santa Clara, jurisdicción de S^a José Guadalupe en la Alta California.” 5 pages of writing and certificate. Endorsed “Titles of Mine.”

2.—A document in Spanish. Deed of sale of una varra in a certain mine, by el Reverendo Padre Fray José Maria del Refugio Zuarez del Real to Roberto Walkinshaw—dated August 9th, 1849. Acknowledged before Geo. T. Knox, by subscribing witness, Octo. 22, 1853.

3.—Missive of sale of 2 Barras Quicksilver Mine, known in its act of Registration by Don Andres Castellero by the name of S^{ta} Clara, and at present New Almaden, executed by Jas. Alex. Forbes to Robert Walkinshaw, dated New Almaden, 14th April, 1848.—Recorded in Alcalde’s office, District of San José, May 31, 1849, Book 5 of Deeds, page 87.

4.—Copy missive of payment of \$7,000, value of 2 varras, addressed to Jas. Alex. Forbes, dated 14 April, 1848.

5.—Receipt of James A. Forbes, \$7,000, in full of price of 2 varras, dated March 23, 1850. Recorded Book of Deeds D, pages 125 to 127, S^{ta} Clara Co. Recorder’s office.

6.—Draft of letter Jas. Alex. Forbes to Alex. Forbes, June, 1848.

7.—Receipt by Jas. Alex. Forbes, Agent, for \$2,000, on account of two barras, Nov. 22, 1848, from Robert Walkinshaw.

8.—Letter of Jas. A. Forbes, 25th June, 1848.

9.—Copy letter of Walkinshaw to James A. Forbes, 26th June, 1848.

10.—Paper endorsed “Copy Correspondence James A. Forbes and Robert Walkinshaw, June 25th and 26th, 1848.”

11.—Statement of case (by Mr. Walkinshaw), 15 pages, Aug. 1852.

12.—Copy decree of Santa Anna.

13.—Account current Walkinshaw with Bolton, Barron & Co., Dec. 31, 1852.

14.—Copy letter of Bolton, Barron & Co. to Robert Walkinshaw, 25th January, 1853.

15.—Copy Deed of Padre Real to McNamara, June 10, 1846.

16.—Memorandum (odd leaf) in handwriting of Mr. Walkinshaw.

17.—Information for Counsel, from Robert Walkinshaw, Esq., Feb. 5th, 1854. 11 pages.

18.—Deposition of Don José Castro, dated Feb. 21st, 1854, taken before Wm. A. Cornwall, N. P.

Received of Mr. Hall McAllister the papers contained in the foregoing list, and at same time paid him five hundred dollars (\$500.00) to account of his charges.

San Francisco, May 19, 1858.

ROBERT WALKINSHAW.

The above is in every respect correct.

HALL McALLISTER.

May 19, 1858.

EXHIBIT YOUNG No. 3, W. H. C.

“En el Puerto de Monterey á 10 de Junio de 1846, el que suscribe, socio de la Mina de Azogue de Santa Clara, hace por el presente sesion voluntaria perpetuamente á Don Eugenio Macnamara de una Barra de cuatro á que tengo derecho, en cada pertenencia, siendo testigos Don Juan Malarin, y Don Antonio Maria Pico. Y hara la debida constancia estiendo el presente que firmo.

“FR. JÉ. MA. DEL R. S. DEL REAL.

“ ANTONIO MARIA PICO. }
 “ JUAN MALARIN.” }

TRANSLATION OF EXHIBIT YOUNG No. 1.

Year 1845.

Expediente of the denouncement, possession, and partnership of the Quicksilver Mine, called Santa Clara, Jurisdiction of San José Guadalupe, in Upper California.

November 22d, 1845.—Don Andres Castellero makes the denouncement of the aforesaid, in the Pueblo of San José Guadalupe, for want of Deputation of Mining and of Judge *de letras*.

December 3d, 1845.—Writing which the said Castellero presented, testifying to having taken out quicksilver and other metals, asking that it be annexed to the expediente.

December 30th, 1845.—Act of possession, which with the assisting witnesses the Alcalde of the Pueblo of San José gave to Don Andres Castellero, of the mine of Santa Clara, because of the time of the notices being completed.

December 30th, 1845.—Receipt for the fees of the possession, signed by the Judge of San José.

December 8th, 1845.—Writing of partnership for the works of the mine, authorized by the Prefect of the 2d District.

Señor Alcalde of 1st Nomination :

Andres Castellero, Captain of permanent cavalry, and at present resident in this Department, before your notorious justification, makes representation : that having discovered a vein of silver, with a ley of gold, on the land of the rancho pertaining to Jose Reyes Berreyesa, retired sergeant of the presidial company of San Francisco, and wishing to work it in company, I request that, in conformity with the ordinance on mining, you will be pleased to fix up notices, in public places of jurisdiction, in order to make sure of my right when the time of the judicial possession may arrive, according to the laws on the matter.

I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

November twenty-second, eighteen hundred and forty-five.

ANDRES CASTILLERO.

This is a copy of the original, to which I refer, signing it with two assisting witnesses, in the pueblo de San José Guadalupe, on the 13th of January, 1846.

PEDRO CIABOLLA.

Assisting witnesses,

P. SAINSEVAIN.

JOSE SUNOL.

Señor Alcalde of 1st Nomination of the Pueblo of San José Guadalupe :

I, Andres Castellero, permanent captain of cavalry, before your well known justification, appear and say : that on opening the mine which I previously denounced in this Court, I have taken out, besides silver with ley of gold, liquid quicksilver, in the presence of several bystanders, whom I may summon on the proper occasion, and considering it necessary for the security of my right so to do, I have to request of you, that uniting this representation to the denouncement, it may be placed on file, it not going on stamped paper, because there is none.

I pray you to take measures to this effect, in which I will receive favor and grace.

Santa Clara, December 3d, 1845.

ANDRES CASTILLERO.

This is a copy of the original, to which I refer, signing it with the witnesses of my assistance, in the pueblo of San José Guadalupe, on the 13th of January, 1846.

PEDRO CHABOLLA.

Assisting witnesses,

P. SAINSEVAIN,
JOSE SUNOL.

There being no deputation on mining in the Department of California, and this being the only time since the settlement of Upper California, that a mine has been worked in conformity with the laws, and there being no "Juez de Letras," (Professional Judge,) in the second district; I, the Alcalde of First Nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office, for want of a Notary Public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the rancho of the retired sergeant, José Reyes Berreyesa, the time having expired which is designated in the ordinance of mining, for citizen Don Andres Castellero to show his right, and also for others to allege a better right, between the time of denouncement and this date, and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this court has; and as the laws now in force so strongly

recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have granted three thousand varas, in all directions, subject to what the General Ordinance of Mines may direct, it being worked in company, to which I certify, the witnesses signing with me; this act of possession being attached to the rest of the expediente, deposited in the archives under my charge; this not going on the respective stamped paper, because there is none, as prescribed by law.

Juzgado of San José Guadalupe, Dec. 30, 1845.

ANTONIO MARIA PICO.

Assisting witnesses,

ANTONIO SUNOL,
JOSE NORIEGA.

I have received of Don Andres Castellero the sum of twenty-five dollars, on account of the fees of possession of the Quicksilver Mine, which is in this jurisdiction under my charge, named Santa Clara, in lands pertaining to Don José Reyes Berreyesa.

Court of San José Guadalupe, December 30, 1845.

(§25.)

ANTONIO MARIA PICO.

TRANSLATION OF EXHIBIT YOUNG No. 3.

"In the port of Monterey, on the 10th day of June, 1846, the subscriber, a partner in the quicksilver mine of Santa Clara, hereby makes voluntary perpetual cession to Don Eugenio McNamara, of one barra of the four which I have a right to in each pertenencia, Don Juan Malarin and Don Antonio Ma. Pico being witnesses hereto. In testimony whereof, I sign these presents.

"FR. JÉ. MA. DEL R. S. DEL REAL.

"ANTONIO MARIA PICO,

"JUAN MALARIN."

DEPOSITION OF THOMAS BELL.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 17, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Thomas Bell, a witness on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: You reside in San Francisco, do you not, and are a partner in the firm of Barron & Co.?

ANSWER. Yes, sir.

Q. 2. Will you state what you recollect in relation to the finding of the Spanish document now shown you, marked "Exhibit J. Y. No. 1, W. H. C."?

A. Some time, about three weeks ago, at the request of Mr. Billings, I was looking for the documents relating to the barras in the mine of New Almaden, which at one time had belonged to Padre Real; not finding one of the documents which I was in search of among the papers of the mine, I asked Mr. Young to get the box containing the papers relating to the estate of Walkinshaw, to see if it could not be found there. He produced the box, and then we proceeded to overhaul the papers. I saw a bundle marked—"Papers relating to disputed barra," which I opened, and in looking over these papers I found one endorsed—"Titles of Mines." I was struck with the antique appearance of the paper, and knowing that it was suspected that Walkinshaw had had documents relating to the Almaden mine in his possession, after glancing over the pa-

pers I took them to the office of Messrs. Peachy and Billings, to ascertain more particularly their nature. It was then discovered that it was an expediente which they had been anxious to obtain for a long time.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—

SAN FRANCISCO, CAL., July 20, 1860.

Cross-Examination of Thomas Bell resumed from the 17th.

Present: A. C. Peachy, Esq., of counsel for claimant; and Edmund Randolph, Esq., for the United States.

Cross-Examination waived.

THOMAS BELL.

Sworn to, and subscribed this 20th day of July, A. D., 1860, before me.

W. H. CHEVERS,
U. S. Commissioner.

Filed July 20, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF HALL M^cALLISTER.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 17, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Hall McAllister, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Hall McAllister; my age is 34 years; my residence is the city of San Francisco, and my profession is that of a lawyer, and have been practicing law in San Francisco since August, 1849.

Q. 2. Were you employed by the late Robert Walkinshaw to recover, by action against Bolton, Barron & Co., then the agents of the New Almaden Company, the dividend corresponding to a barra or one-twenty-fourth part of the mine, etc., to which Mr. Walkinshaw claimed title under a conveyance from Padre Real? if yea, state when that suit was instituted, what issues it involved, and what was the result of it.

A. In December, 1852, or January, 1853, Jonathan Edwards, one of my then partners (my firm then consisting of Jonathan Edwards, Julius K. Rose, Sidney V. Smith and myself, under the name of McAllister, Edwards & Rose) spoke to me in relation to a suit which Mr. Robert Walkinshaw, of Santa Clara county, proposed to bring against James R. Bolton and William E. Barron, then doing business under the name of Bolton, Barron & Co. My impression is, that at the time Mr. Edwards first

spoke to me, he had already had some conversation with Mr. Walkinshaw as to the proposed suit, and that he, Edwards, then gave me a general outline of the proposed case. Subsequently, and some time in the month of January, 1853, Mr. Robert Walkinshaw called at our office. Mr. Walkinshaw had a long conversation with me, showed me his papers which he had brought with him, and explained his case. After this conversation and explanation on the part of Walkinshaw, he left his papers with me for examination, and desired me to commence the proposed suit with all convenient speed. This suit was commenced on the 2d of February, 1853, in the District Court of the Fourth Judicial District, State of California. The complaint was drawn by Mr. Sidney V. Smith, who at that time attended to the attorney business of the firm. It was signed in the firm name of McAllister, Edwards & Rose. The action was for money had and received, and the amount of the claim was, I believe, five thousand dollars. The claim of Mr. Walkinshaw in this suit, was for dividends collected by Bolton, Barron & Co., for the New Almaden Mine, and belonging to a certain barra (one-twenty-fourth) of that mine, originally owned by Padre Real. Mr. Walkinshaw claimed that he was entitled to these dividends, under a conveyance of the barra in question, made by Padre Real to him, Walkinshaw, on the 9th of August, 1849. The adverse claim represented by Bolton, Barron & Co. was, that anterior to the alleged conveyance to Walkinshaw, to wit, on the 10th June, 1846, Padre Real had conveyed the barra in question to Padre McNamara. The object of Mr. Walkinshaw's suit was to test the validity of last mentioned conveyance as against his own. At the time Mr. Walkinshaw instituted this suit, he was the acknowledged owner of two barras of the mine (other than the barra in dispute), which he had derived from the Robles brothers, through James Alexander Forbes. This suit was defended by the then firm of Halleck, Peachy, Billings & Park, and pending the suit, it was distinctly stipulated in writing, by the attorneys for defendants, that the barra of the mine, in dispute, was distinct from the two barras aforesaid, acquired by Walkinshaw from the Robles brothers. The title of the New Almaden Mine from the Mexican Government was in no way involved in the suit of Walkinshaw; on the contrary, both parties claimed from and under the same original title. Pending the suit, plaintiff's attorneys applied for and obtained an order from the court for the inspection of and permission to take a copy of the original conveyance from Padre Real to Padre McNamara, then in the possession of defendant's attorneys. We obtained such inspection and such copy on the 21st April, 1853. Finding this

last conveyance genuine, we proposed to attack it on the ground that it did not comply with the formalities of Mexican law relating to such conveyances, and that it was not recorded at the time that Walkinshaw purchased. This suit of Walkinshaw continued pending from the 2d February, 1853, to 26th June, 1854. During its pendency Mr. Sidney V. Smith left the firm of McAllister, Edwards & Rose, and Charles H. S. Williams entered it. After Mr. Smith left the firm, I had entire charge of the Walkinshaw suit, and with the permission of Mr. Walkinshaw employed John W. Dwinelle to aid me in it. This Walkinshaw suit was called for trial on the 26th June, 1854, in the said Fourth District Court. We (Mr. Dwinelle and myself) applied for a postponement, on the ground of the absence of material testimony which Mr. Walkinshaw was trying to obtain. The application was refused, and the cause thereupon dismissed. A few days subsequently we made an unsuccessful motion to reinstate the cause on the calendar. After this there was no attempt to revive the suit. I still have in my office an old register, which contains a summary history of this suit, the entries being made therein contemporaneously with its progress; a reference to these entries has aided my recollection as to dates. During the progress of this suit, to wit, in November, 1853, Mr. William S. Reese, my present chief clerk, came into the employment of our firm; he has been with me ever since in the capacity of chief clerk in my office. The papers which Mr. Walkinshaw deposited with me in January, 1853, remained in the custody of my firm, and after its dissolution in my own custody, from that time down to the 15th day of May, 1858.

Q. 3. Examine the documents marked respectively "Exhibit J. Y. No. 1, W. H. C.," and "Exhibit J. Y. No. 2, W. H. C.," and state what you recollect about them.

A. As to "Exhibit J. Y. No. 1, W. H. C.": This document, containing four sheets and a half of paper, and six pages written upon, was delivered to me by Robert Walkinshaw, some time in January, 1853, and remained from that time in the custody of the firm of McAllister, Edwards & Rose (of which I was a member); after its dissolution in the custody of McAllister, Williams & Rose (composed of Charles H. S. Williams, Julius K. Rose and myself); after its dissolution in the custody of the firm of McAllister and Rose (composed of Julius K. Rose and myself); and after its dissolution in my own custody, until the 15th May, 1858, when it was delivered, as Mr. William S. Reese tells me, to Mr. John Parrott. On or before (a day, perhaps two) the 14th May, 1858, Mr. Robert Walkinshaw called at my office and asked for the papers which he had delivered to me, about the time the aforementioned suit of Walkinshaw

vs. Bolton and Barron was commenced. I was absent from the office when Mr. Walkinshaw so called. Upon my return Mr. Reese informed me of his (Walkinshaw's) visit, and of its object, at the same time Mr. Reese handed me the bundle of papers relating to the Walkinshaw suit, which he had taken from the paper case of "Finished business." Mr. Reese at the same time mentioned to me that he had looked over the old ledger, and found a balance still due the office by Mr. Walkinshaw; Mr. Reese told me he had declined surrendering the papers in question to Mr. Walkinshaw, till he had seen me. I examined the bundle of Walkinshaw papers which Mr. Reese handed me, and subsequently told Mr. Reese that he (Walkinshaw) could have the papers in question, upon paying the balance to his debit on the ledger, which was about five hundred dollars. Mr. Reese visited Mr. Walkinshaw at his hotel, and communicated to him my message; so Mr. Reese informed me. There was considerable demur on Mr. Walkinshaw's part to the payment of aforesaid balance, and according to my recollection several days' negotiation on the subject. According to my information, Mr. Walkinshaw requested Mr. Reese to deliver his (Walkinshaw's) papers to Mr. Parrott, as he (Walkinshaw) desired to examine them. Mr. Walkinshaw was extremely particular about his papers, and I instructed Mr. Reese, before surrendering the papers, to obtain a full receipt for them; such a receipt, describing the papers in detail and with particularity, was drafted by Mr. Reese, and is now before me in his handwriting, and is "Exhibit J. Y. No. 2, W. H. C.," about which I am interrogated. On the 15th of May, 1858, Mr. Reese, as I am informed by him, delivered the Walkinshaw papers to Mr. John Parrott, and with them said "Exhibit, J. Y. No. 2, W. H. C.," (then unsigned, and without any memorandum as to paper marked therein No. 18), to be signed by Mr. Walkinshaw. On the 19th May, 1858, Mr. Robert Walkinshaw called at my office, accompanied by Mr. John Young; Mr. Walkinshaw was looking very badly, and appeared very feeble. He stated to me that he proposed to leave in the steamer of next day for Europe, for the benefit of his health; and that he had come to settle up with me. Mr. Walkinshaw complained to me that I had not returned to him all his papers, mentioning the original deed from Padre Real to Padre McNamara, and the deposition of José Castro in his, Walkinshaw's, suit. I explained to Mr. Walkinshaw that I never had had in my possession the conveyance from Padre Real to Padre McNamara; that that was the deed to overthrow which had been the object of his suit, and finally satisfied him on that point. As to the Castro deposition, I told him that I had it. Mr. Walkinshaw

brought with him to my office, at the time I now refer to (19th May, 1858), the Walkinshaw papers which had been delivered to Mr. Parrott the 15th May, 1858, and the receipt "Exhibit J. Y. No. 2, W. H. C.," (then unsigned, and without any memorandum as to paper marked No. 18). Mr. Walkinshaw produced the papers and receipt; I then asked Mr. Reese (who was in and out of my room during my interview with Mr. Walkinshaw) to get the Castro deposition, which he did. Thereupon Mr. Walkinshaw gave me a check for five hundred dollars, and Mr. Reese added on "Exhibit J. Y. No. 2, W. H. C." the memorandum, as to the Castro deposition marked subdivision, No. 18. I then desired Mr. Walkinshaw to sign this receipt for the papers, as thus amended; but he pertinaciously and as I thought very whimsically insisted that I should sign the receipt, and not himself. Finally, to satisfy the old gentleman, Mr. Reese wrote that portion of the receipt which follows the specification and enumeration of the papers in "Exhibit J. Y. No. 2, W. H. C." This Mr. Walkinshaw subscribed; and I, after verifying the receipt with the papers, wrote underneath Mr. Walkinshaw's signature as follows:—"The above is in every respect correct; May 19, 1858;" and subscribed my name thereto, and delivered the whole paper ("Exhibit J. Y. No. 2, W. H. C.") to Mr. Walkinshaw. Mr. Reese then furnished me with his original draft of last mentioned Exhibit (somewhat less carefully written than the engrossed copy), and Mr. Walkinshaw signed thereon a receipt for the papers delivered to him, which receipt I now have.

When Mr. Walkinshaw deposited his papers with me in January, 1853, I examined all his papers carefully, but paid particular attention to those which related directly to the matter in controversy in his suit. The paper "Exhibit J. Y. No. 1, W. H. C." had no bearing upon, and was of no use in, that suit; hence it received but slight attention at my hands. I saw it frequently during the progress of the suit, and since the termination of the suit (June 26th, 1854), I have at various times, in looking in my paper case of "finished business," seen the bundle of Walkinshaw papers, but I never regarded "Exhibit J. Y. No. 1, W. H. C." as a paper of value, supposing it to be merely a copy or a certified copy of the mining title.

During the progress of the Walkinshaw suit, his papers were kept together in a single bundle in my paper case of "finished business." I recognize the words "Titles of Mine" on the back of "Exhibit J. Y. No. 1, W. H. C." to be in the handwriting of the late Robert Walkinshaw.

I am now one of the counsel in the New Almaden case on the part of the claimants; since my employment as such, to wit,

November 16th, 1858, it never occurred to me that there existed among the papers of Mr. Walkinshaw, formerly in my possession, any document important to the interests of the said claimants in this suit, until about three weeks ago.

About three weeks ago I received a message through a clerk of Halleck, Peachy and Billings to attend at the office of Barron & Co. upon important business. I immediately went there, and found Mr. Joseph Barron, Mr. John Young, Mr. Thomas Bell, Mr. Peachy, Mr. Billings, and Mr. Emmet there. Mr. Peachy showed me "Exhibit J. Y. No. 1, W. H. C." and other papers of Walkinshaw's, and I then recognized last mentioned Exhibit as one of the papers delivered to me in January, 1853, by Mr. Walkinshaw, and re-delivered by me to Walkinshaw on the 19th May, 1858.

Q. 4. Do you understand Spanish; and while you had that paper in your possession, were you sufficiently acquainted with Mexican ordinances relating to mines to be able to appreciate its legal effect, and its importance as a title paper?

A. I neither read nor speak Spanish, although I understand the meaning of occasional words. I never paid any attention to the mining ordinances of Mexico until my employment in this case, and I never did appreciate the importance of "Exhibit J. Y. No. 1, W. H. C." until my attention was particularly called thereto about three weeks ago.

Q. 5. Have you with you the duplicate receipt for the Walkinshaw papers, signed by Mr. Walkinshaw on the 19th May, 1858, and delivered to you at that time?

A. I have, and this is the paper.

[Counsel for claimant offers the document in evidence, to be annexed to this deposition, marked "Exhibit McA. No. 1, W. H. C."]

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., July 20th, 1860.

Examination of Hall McAllister resumed from the 17th instant.

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

CROSS-EXAMINATION.

Q. 6. State when you were first employed in this case by the New Almaden Company, or any member of the same.

A. Some time after the injunction was refused in the case of Tobin vs. Walkinshaw, in the U. S. Circuit Court, Mr. John Parrott spoke to me about being employed as his counsel in the Almaden matters. According to my recollection, I had an idea on my mind that it would not be agreeable to the then counsel of the Almaden mine to have other attorneys employed. I mentioned this to Mr. Parrott, and he stated to me that he desired me at least to represent his interest. We had considerable conversation on the subject, but nothing was concluded between us. About January, 1857, Mr. Laurencel had some conversation with me in regard to Almaden matters, and he desired me to attempt to effect a compromise, and spoke of employing me in the matter on his side of the case. I told Mr. Laurencel that if I took any part in the matter at all, as Mr. Parrott had first spoken to me, I should have to act for him. I saw Mr. Parrott on the subject, and was retained by him as his counsel in Almaden matters about February, 1857; the exact date on my ledger is February 25th, 1857. About Nov. 16th, 1858, I was retained generally by the claimants of the Almaden mine. I have refreshed my recollection as to these dates, by reference to the testimony of Mr. Laurencel in this case, and also by reference to my ledger.

Q. 7. Of how many separate sheets is "Exhibit J. Y. No. 1, W. H. C." composed?

A. Four full sheets and one-half sheet, each now separate, but having the appearance of having been once sewed or fastened together.

Q. 8. Please state the substance of what appears on each sheet and each half sheet of that document.

A. The first page of the first sheet (and I now speak according as I can gather the meaning from the Spanish words, which I very imperfectly understand) begins with the title of an expediente of the mining title of a mine of quicksilver called Santa Clara, in the jurisdiction of San José Guadalupe, Alta California; then follows a minute or index of five papers, four of which are to be found on the succeeding sheets—the fifth one, to wit., the one dated in this index "December 8th, 1845," and entitled "Escritura de Compañía," etc., I do not find annexed, and it appears to be missing from the papers.

The first page of the next sheet contains (and doubtless my knowledge as to these succeeding papers is considerably aided by being familiar with English translations of all of them except the writing on the last half sheet, dated December 30th, 1845, which I do not now recollect of having ever seen translated, although perhaps I may have done so) a certified copy of a representation made by Andres Castellero to the Alcalde,

dated November 22d, 1845, signed "Andres Castellero," which I presume to be a copy of his signature, and certified as a copy by Pedro Chabolla, in the presence of two assisting witnesses, 13th January, 1846.

The first page of sheet No. 3, purports to be a certified copy of a subsequent representation made by Andres Castellero to the Alcalde, on the 3d December, 1845, of his discovery of liquid quicksilver, etc., purporting to be certified as a copy by Pedro Chabolla, on the 13th January, 1846, in the presence of two assisting witnesses.

The first two pages of the fourth sheet purport to be an act of possession by Antonio Maria Pico, described in the body of the paper as first Alcalde, and in favor of Andres Castellero, and dated the 3d day of September, 1845, and purporting to be executed in the presence of two assisting witnesses.

The writing on the half page purports to be a receipt by Antonio Maria Pico, for twenty-five dollars from Andres Castellero, dated December 30th, 1845.

Q. 9. While you had those papers in your possession were they sewed or fastened together in any way, or were they loose, as they are now?

A. According to my best recollection, loose, as they are now.

Q. 10. Had you such a knowledge of the contents of each of the four and a half sheets at the time that you had them, that you are able to swear that the contents of each of the four and a half sheets that you have before you now are precisely the same with those that you had?

A. I was not very familiar with the contents of this paper when in my possession. I knew that in January, 1853, Mr. Walkinshaw had left with me a paper to which I then gave no particular examination, but which I then, and always, supposed to be a copy of the mining title of the Almaden mine, and I cannot say that I knew it, without reference to the paper, to be a certified copy. I was familiar during the pendency of the Walkinshaw suit, and during the time this paper was in my office, with the general appearance of this paper, and with the fact that it was endorsed in the handwriting of Walkinshaw, with which I was well acquainted, "Titles of Mine." I have some recollection also of the heading of the first page of the first sheet, "Año de 1845," and of the cross lines and the word "blanca" written and marked on some of the blank pages. This perhaps is a correct statement of my knowledge of this paper and my means of identification up to the 14th May, 1858; about that time, or a day or so before, I examined the bundle of Walkinshaw papers after they were handed to me by Mr. Reese; not a very thorough examination,

but doubtless it increased my general knowledge of the papers. This was done before the delivery of the papers to Mr John Parrott, as mentioned in my direct examination. I may also have compared the papers with Mr. Reese, so as to ascertain whether the receipt did correctly describe them, before the delivery to Mr. Parrott; but of this I have no distinct recollection. When Mr. Walkinshaw, with Mr. Young, came to my office on the 19th May, 1858, he brought with him the papers he had received from Mr. Parrott, and my recollection is, that after Mr. Reese made additions to the receipt ("Exhibit J. Y. No. 2, W. H. C."), I compared the bundle of papers with this receipt before I signed it. I was thus particular in the matter of these papers because Mr. Walkinshaw was extremely fussy about his papers, and had accused me of losing two of his papers, one of which I never had in my possession (to wit, the original deed from Padre Real to Padre McNamara). When these papers were shown to me in Barron & Co.'s office about three weeks ago, I had no hesitation in identifying them.

Q. 11. Look at the half sheet in that Exhibit, and say whether you are able to swear that you ever had that piece of paper in your possession at any time?

A. I can only state from the general apprance of the paper and the writing, that I believe it to be one of the papers delivered to me by Mr. Walkinshaw, and which I saw at my office on or about the 14th May, 1858. I cannot say that my recollection is aided by a reference to the meaning of the contents of this half sheet.

Q. 12. Walkinshaw's receipt ("Exhibit J. Y. No. 2, W. H. C.") calls for five pages of writing and certificate. Now look and see whether in this document ("Exhibit J. Y. No. 1, W. H. C.") there are not five written pages and sundry certificates on some of the same, without including this half sheet?

A. There are five pages written on, exclusive of this half sheet, and at the foot of two of these pages there is a certificate that the writing preceding the certificate is a copy.

My explanation of the receipt drafted by Mr. Reese in this respect is, that by the certificate Mr. Reese mentions in the receipt was intended the writing that appears on this half sheet, the translation of which is as follows:

[Mr. McAllister translates with some little assistance from a third party present.]

"I have received of the Señor Don Andres Castellero the sum of twenty-five dollars, on account of my fees for the possession of the mine of quicksilver, which is in this jurisdiction

of my charge, called Santa Clara, in the lands of Sr. Dn. José Reyes Berreyesa.

Juzgado of San José Guadalupe, December 30, 1845.

Son. \$25.

ANTONIO M^a. PICO."

Q. 13. Did not you or Mr. Reese, your chief clerk, at that time understand Spanish well enough to know the difference between a certificate and a receipt for twenty-five dollars; and why may not the memorandum in "Exhibit J. Y. No. 2, W. H. C." have referred to the two certificates which appear on separate sheets of "Exhibit J. Y. No. 1, W. H. C.," and not to the receipt for twenty-five dollars at all, which could hardly be called a certificate?

A. I think so far as a knowledge of the Spanish language is concerned, Mr. Reese and myself stand about on an equality, with perhaps a little advantage in his favor; and I think that at the time referred to, either of us could, upon examination, have detected the difference between a certificate in Spanish, certifying a paper to be a copy of an original, and a receipt for twenty-five dollars, or any other sum; but I think the word certificate may not be incorrectly applied to a paper given by a public officer to a third party, which attests the fact that said public officer has received a certain sum of money from such third party. As I read subdivision No. 1, of "Exhibit J. Y. No. 2, W. H. C.," it refers to five pages of writing, and a certificate outside of those five pages, not to any certificate or certificates of such written pages.

Q. 14. If during the time you had these papers in your office they had been surreptitiously taken away, and afterwards the same number of other sheets returned in their stead; and now, that you have seen them again more than two years after you delivered them to Mr. Walkinshaw, could you, with all the aid of memory at your command, identify these four and a half sheets of loose paper with so much certainty that you would be able to swear, and can now swear, that they are the same four and a half sheets of paper, containing without addition or diminution the same writings which, under the denomination of "Titles of Mine," Mr. Walkinshaw gave you in January, 1853, and which on the 15th day of May, 1858, Mr. Reese, your chief clerk, delivered to Mr. Parrott, supposing always that any substituted papers related to the same subject, the titles of the mine of New Almaden?

A. Undoubtedly, a fraud of the character described might be perpetrated, and I be unconscious of it; such a thing is possible, but the probability of its successful accomplishment very remote; it would have required access to my office when no

one was present, some knowledge of the mode in which I kept my papers, and, after the Walkinshaw suit was finished, knowledge of the place where my "finished business" was kept, and would also have required Mr. Walkinshaw to be a party to the fraud. Such a thing would have been more practicable (by this I mean more likely to escape detection on my part) between January, 1853, and May, 1858, than subsequently, because, as before mentioned, I made some examination of these papers in May, 1858, before their delivery to Mr. Parrott, which revived and increased to some extent my familiarity with them. It seems to me that if any substitution had taken place as to any of the papers embraced in "Exhibit J. Y. No. 1, W. H. C." between the time of their delivery to Mr. Parrott (May 15th, 1858) and their return by Mr. Walkinshaw to my office (May 19th, 1858), I should have noticed it when, on the 19th May, 1858, I looked at the papers and compared them with the receipt which Mr. Reese had drawn up. Still I do not mean to assert that such a fraudulent substitution as supposed could not by possibility have occurred. I simply mean to say that I deem such a thing as very improbable, and do not believe that it took place.

Q. 15. I did not mean to intimate at all a suspicion that the papers had been removed from your office and changed between January, 1853, and the 15th May, 1858; but by a pure supposition to test your knowledge of the papers during that period.

What I want to know is, whether, with all the circumstances you can bring to aid your memory, you can now swear that the four and a half loose sheets of paper, which about three weeks ago were shown you at the office of Barron & Co. (to wit: "Exhibit J. Y. No. 1, W. H. C."), are the same four and a half sheets of paper, containing without addition or diminution the same writings, which on the 19th May, 1858, you finally gave up to Mr. Robert Walkinshaw?

A. In answer to this question I can only state, that about three weeks ago, on an examination of these four sheets and a half, at the office of Barron & Co. in this city, I did identify them as the same which were delivered to me by Mr. Walkinshaw, in January, 1853, and re-delivered by me to Mr. Walkinshaw in May, 1858. My memory may have been aided by seeing these papers together; had they been shown to me separately at Barron & Co's, perhaps I might have had more difficulty in identifying them. I have stated with tolerable fullness my means of knowledge and of identification of these papers, and can only now repeat that, according to my best knowledge and belief, they are the same received from Walkinshaw as already detailed.

I have no recollection of ever having had these papers translated to me, or of having been furnished with a written translation of them.

Q. 16. Are you not satisfied that the persons interested, who had these papers for the last two years or more in their possession, might, if so disposed, have written very different words upon similar old paper, and substituted the same for one or more sheets of those which you once had in your possession, and that you would now be wholly unable to detect the change; supposing all this time that the substituted papers related to the title of the Almaden mine?

A. Such a substitution of papers might by possibility have taken place and escaped my detection. In reference to different words being written on similar paper, I would observe that in identifying these papers I do not rely upon any precise remembrance of words, but first upon the general appearance of the paper, the general appearance of the writing, the substance of the contents, the whole appearance of the sheets when placed in juxtaposition, the appearance of the cross-lines, the word "Blanca," the indorsement of Mr. Walkinshaw on the back, "Titles of Mine," the two signatures of Chabolla, appear familiar to me; the arrangement of the writing is familiar to me also, particularly the first page; and there may be other things about these papers which when I look at them produces an effect on my memory which I cannot define, and which I sum up by the term "general appearance." I do not mean to be understood as testifying to any familiarity with the handwriting in which the word "Blanca" is written.

Q. 17. Giving the fullest effect to all these small circumstances, does your identification amount to any more than this: That you once had in your possession a bundle of old papers which looked like these, and which also purported to concern the titles of the New Almaden Mine?

A. I consider that my identification amounts to considerably more than that supposed in the question, as appears from my previous testimony, to which I refer.

Examination closed.

HALL McALLISTER.

Sworn to and subscribed, this 20th July, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed July 20th, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT M^cALLISTER, No. 1, W. H. C.

FOURTH DISTRICT COURT,
City and County of San Francisco. }

ROBERT WALKINSHAW }
v. } May 14, 1858.
BOLTON AND BARRON. }

ORIGINALS AND COPIES OF ORIGINAL PAPERS.

1.—A document in Spanish, headed “Año de 1845, Expediente de denuncia posesion y Compañia de la Mina de Azogue nombrado Santa Clara, jurisdiccion de Sⁿ José Guadalupe, en la Alta California.” 5 pages writing and certificate, endorsed “Titles of Mine.”

2.—A document in Spanish. Deed of sale of una varra in a certain mine, by el Reverendo Padre Fray José Maria del Refugio Zuares del Real, to Roberto Walkinshaw—dated August 9th, 1849; acknowledged before Geo. T. Knox, by subscribing witness, Octo. 22, 1853.

3.—Missive of sale of 2 Barras Quicksilver Mine, known in its act of Registration by Don Andres Castellero by the name of S^{ta} Clara, and at present New Almaden, executed by Jas. Alex. Forbes to Robert Walkinshaw, dated New Almaden, 14th April, 1848; recorded in Alcalde’s office, District of San José, May 31, 1849, Book 5 of Deeds, page 87.

4.—Copy missive of payment of \$7,000, value of 2 varras, addressed to Jas. Alex. Forbes, dated 14 April, 1848.

5.—Receipt of James A. Forbes, \$7,000, in full of price of 2 varras, dated March 23, 1850.—Recorded Book of Deeds D, pages 125 to 127, S^{ta} Clara Co. Recorder’s office.

6.—Dr. of letter, Jas. A. Forbes to Alex. Forbes, June, 1848.

7.—Receipt by Jas. Alex. Forbes, Agent, for \$2,000, on account of two Barras, Nov. 22, 1848, from Robert Walkinshaw.

8.—Letter of Jas. A. Forbes, 25th June, 1848.

9.—Copy letter Walkinshaw to James A. Forbes, 26th June, 1848.

10.—Paper endorsed Copy Correspondence James A. Forbes and Robert Walkinshaw, June 25th and 26th, 1848.

11.—Statement of case (by Mr. W.), 15 pages, Aug. 1852.

12.—Copy decree of Santa Anna.

13.—Account current, Walkinshaw with Bolton, Barron & Co., Dec. 31, 1852.

14.—Copy letter of Bolton, Barron & Co. to Robert Walkinshaw, 25th January, 1853.

- 15.—Copy Deed of Padre Real to McNamara, June 10, '46.
 16.—Memorandum (odd leaf) in handwriting of Walkinshaw.
 17.—Information for Counsel from Robert Walkinshaw, Esq., Feb. 5th, 1854. 11 pages.
 18.—Deposition of Don José Castro, dated Feb. 21st, 1854, taken before Wm. A. Cornwall, N. P.

Received of Mr. Hall McAllister the papers contained in the foregoing list, and at same time paid him five hundred dollars (\$500.00) to account of his charges.

San Francisco, May 19, 1858.

ROBERT WALKINSHAW.

[Endorsed.]

Dr. list of papers delivered to John Parrott for Robert Walkinshaw.

DEPOSITION OF WILLIAM S. REESE.

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DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 18, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came William S. Reese, a witness produced on behalf of the claimant in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, place of residence, and occupation?

ANSWER. My name is William S. Reese; my age is 31 years; I reside in San Francisco, where I have lived since October, 1852; and I am an attorney at law, and am chief-clerk in the office of Hall McAllister, Esq., and have been so since the middle of November, 1853.

Q. 2. Examine the Exhibits "J. Y. No. 1, W. H. C.," "J. Y. No. 2, W. H. C.," and "McA. No. 1, W. H. C.," the first two annexed to the deposition of John Young, and the last to that of Hall McAllister, and state what you remember about them.

A. I recognize this "Exhibit J. Y. No. 1, W. H. C." as having been among the papers in the case of Robert Walkinshaw against Bolton and Barron, brought to recover certain dividends upon one barra, or share, in the New Almaden mine, which was a pending suit at the time at which I entered the office of Mr. McAllister, in November, 1853. This paper, with the others in the case mentioned, was kept in the appropriate pigeon-hole in the case of "current business," suspended over my desk, and remained there, except when taken out for examination in the progress of the cause, until after the discontinuance of that suit in the month of June, 1854; all the papers

in the case were then transferred to the case of "finished business," where I think it remained until about the 14th May, 1858, when Mr. Robert Walkinshaw called at Mr. McAllister's office, and told me he had come to get his papers, which were in Mr. McAllister's possession, in his suit against Bolton and Barron; that he was going to leave the country, for a time at least, and wished to have the papers under his own control. Mr. McAllister was absent from the office at the time at which he called, and I told Mr. Walkinshaw that I would speak to Mr. McAllister about the papers, and get them ready to be delivered to him. When Mr. McAllister came in, I mentioned the matter to him, and stated that there was a balance due to him, in the account with Mr. Walkinshaw, of five hundred dollars. According to Mr. McAllister's direction, I got the papers together, and drafted a receipt specifying with some particularity each paper to be delivered to Mr. Walkinshaw, and in the course of making out the receipt numbered each one of the papers to be delivered to Mr. Walkinshaw, consecutively from 1 to 17 inclusive, in lead pencil, at the bottom of the back of each paper as it was folded. This document (Exhibit J. Y. No. 1, W. H. C.) is the one which is first described in that list, endorsed "Titles of Mine," in the handwriting of Robert Walkinshaw, and having the number "(1)" in brackets in lead pencil, on the back, at the bottom, in my handwriting. There are eighteen papers mentioned in the list, but the eighteenth, which is the deposition of José Castro, was dated on the 19th May, 1858, when Mr. Walkinshaw called at Mr. McAllister's office the last time, with the seventeen papers in his possession. The draft of the receipt was made on the 14th May, 1858, at the same time I engrossed it. On the 15th May I took the papers in a bundle and delivered them to Mr. John Parrott at his banking house, Mr. Walkinshaw having told me that if the papers were left with Mr. Parrott he would get them there. I also left with Mr. Parrott an engrossed copy of the receipt mentioned, for Mr. Walkinshaw to sign, and also a bill against Mr. Walkinshaw for the balance due Mr. McAllister. I requested Mr. Parrott at the same time to get Mr. Walkinshaw to sign the receipt and pay the bill, inasmuch as Mr. Walkinshaw appeared to me to be in very feeble health, and I was somewhat doubtful whether if payment were not obtained then, through the instrumentality of Mr. Parrott, it ever could be. Afterwards Mr. Walkinshaw claimed that two original important papers which he had delivered to Mr. McAllister, or a member of the firm, had not been delivered to him. One of these papers was an original conveyance from Padre Real to Padre McNamara, and the other, the deposition of Don José Castro.

As to the first paper, it was an original conveyance, which, as I believe, was in the possession of the defendants in the suit of Walkinshaw vs. Bolton and Barron, a copy of which had been procured during the pendency of that action, from defendants' attorneys, which copy was among the papers delivered to Mr. Parrott for Mr. Walkinshaw. The other paper was the original deposition of Don José Castro, and was subsequently delivered to Mr. Walkinshaw, at Mr. McAllister's office, on the occasion of his last call, May 19th, 1858, when it was added to the draft and engrossed copy of the receipt, and numbered "18."

"Exhibit McA. No. 1, W. H. C." I recognize as the draft receipt, which is in my handwriting, and was made out by me from an examination of the papers, in the possession of Mr. McAllister, in the before-mentioned suit. I made up the receipt by examining the papers in detail, so as to describe them sufficiently, in the event of any dispute about their delivery to Mr. Walkinshaw, who attached so much importance to the papers that I took the more pains to draw up the receipt with more particularity. As a general thing I am very particular in drawing up receipts for papers. There are a few words in this Exhibit which I recognize as being in the handwriting of Mr. Henry P. Tricou, then a clerk in Mr. McAllister's office; these words were added to make the draft correspond with the engrossed copy, in making which I made some verbal alterations and additions, and also because Mr. Walkinshaw desired to keep a receipt himself, and accordingly his name signed to the receipt on the draft is his original signature. He kept the engrossed copy, Mr. McAllister kept the draft. In the draft all of the subdivision No. 1, which is intended to describe and identify "Exhibit J. Y. No. 1, W.H.C.," is in my handwriting.

"Exhibit J. Y. No. 2, W. H. C." is the engrossed copy of the draft receipt of which I have been speaking; it was made on the same day with the draft, and down to the signature of Robert Walkinshaw is entirely in my handwriting.

On the back of "Exhibit J. Y. No. 1, W. H. C.," at the top, I recognize the words "Titles of Mine" in the handwriting of Mr. Robert Walkinshaw, which I had often remarked while said paper was in Mr. McAllister's office, and which I had never seen on any other paper.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, Cal., July 20, 1860.

Examination of William S. Reese resumed from the 18th instant.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

CROSS-EXAMINATION.

Q. 3. Please state by what means you identify the four and a half separate loose sheets of paper which constituted "Exhibit J. Y. No. 1, W. H. C."?

A. I have no means of positively identifying each separate sheet, but rather identify the paper as a whole, save that on the first page of the first sheet, the term "Año de 1845" seems very familiar to me, and on the back of the paper, which is the fourth page of the same sheet, I recognize at the top an endorsement in the handwriting of Robert Walkinshaw, of the words "Titles of Mine," and at the bottom the figure "(1)" in brackets, in lead pencil, in my handwriting, which are signs which enable me to identify the sheet.

I never examined the second sheet sufficiently to say that I positively identify it, although its general appearance is familiar to me, as having constituted part of the papers described in subdivision No. 1 of Walkinshaw's receipt; and the cross-lines and the word "Blanca" seem familiar to me, not meaning to say that I remember the handwriting. The same may be said of the third and fourth sheets.

In regard to the half-sheet, I would say that the character of the arrangement of the writing, and particularly the heavy mark in which the word and figures "Son \$25" and the dashes above and below, seem very familiar to me.

The document, as a whole, when folded, I saw more frequently than in any other way, and recognize it from its general appearance, and the above mentioned endorsement of "Titles of Mine."

Aided by the receipt of Mr. Walkinshaw, which was drafted and engrossed by me, I am also enabled to identify the paper by the descriptive words which were copied by me from the head of the first page of the first sheet of this paper, into subdivision 1 of said receipt, which are as follows: "Año de 1845. Expediente de denuncia, posesion y compañía de le Mina de Azogue, nombrada Santa Clara, Jurisdiccion de Sⁿ José Guadalupe en la Alta California;" and also by the statement in said subdivision of the number of pages of writing, and of there being a certificate, and that the whole was endorsed "Titles of Mine."

Q. 4. Did you, as Mr. McAllister's chief clerk, or in any other capacity, at any time, ever make any note or memorandum of the contents of each of these four and a half separate loose sheets of paper, which, when folded together, you speak of as "the document as a whole?"

A. The only memorandum I recollect ever having made, in any capacity, of this document, is contained in the draft and engrossed receipts, signed by Robert Walkinshaw.

Q. 6. Since you parted with the papers very different writings might have been put upon similar old sheets, and these be substituted in the place of those which you had, without your being now able to detect the change, except, perhaps, as to the first sheet, concerning the particular marks on which you have testified?

A. With the exception you mention, and provided the language was Spanish, and the number of pages the same, and the certificate on the half sheet being written across the paper lengthwise, and the appearance of age preserved, and the strongly marked writing which I have mentioned as appearing on said certificate, very different writings might have been substituted.

I recognize the caption on the first page of the first sheet, embracing the words which are above given, as forming a portion of subdivision 1 of Walkinshaw's receipt (Exhibit J. Y. No. 2, W. H. C.) as being the same character of handwriting, and the same words which I copied into said draft and engrossed receipt.

DIRECT EXAMINATION RESUMED.

Q. 6. The first sheet of "Exhibit J. Y. No. 1, W. H. C." is one entire piece of paper, is it not?

A. It is.

Q. 7. I understand you to say then, that from the words "Titles of Mine," in the handwriting of the late Robert Walkinshaw, and the numeral "(1)" in brackets, in your own handwriting, endorsed on that first sheet, you identify it positively as one of the sheets of "Exhibit J. Y. No. 1, W. H. C." which was delivered to Mr. Walkinshaw, in May, 1858: Am I correct?

A. I positively believe it to be the same sheet, from those marks and the general appearance, though there might be other dirty paper.

Q. 8. When you drafted the receipt before these papers were delivered to Walkinshaw, you copied the caption from the first page of the first sheet, beginning with the words "Año de 1845" as descriptive of the entire document, which

consisted of five pages of writing and certificate, and endorsed "Titles of Mine," did you not?

A. I did.

Q. 9. Now examine the first page of the first sheet, and state if all the writing therein is not in the same handwriting as the caption which you copied, and to all appearance written at the same time?

A. It appears to me to be the same handwriting, and to have been written at the same time.

Q. 10. In your receipt you state that the document described in subdivision No. 1, contained five pages of writing and certificate; please identify in "Exhibit J. Y. No. 1, W. H. C." the paper which in that receipt you described by the word certificate?

A. By the word certificate I intended to describe what has been spoken of as a "half-sheet," written across lengthwise, in "Exhibit J. Y. No. 1, W. H. C." and which purports to be a receipt for \$25.

Q. 11. Examine "Exhibit J. Y. No. 1, W. H. C.," and state whether or not it corresponds in every particular with your description, contained in subdivision No. 1, of the receipt composed and engrossed by yourself, and signed by Mr. Walkinshaw and Mr. Hall McAllister, 19th May, 1858?

A. It corresponds in every particular.

Examination closed.

WILLIAM S. REESE.

Sworn to and subscribed this 20th day of July, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed July 20, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF ANTONIO SUÑOL.

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 27, 1860.

On this day, before me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Antonio Suñol, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by a sworn interpreter, to wit: by Richard Tobin, Esq.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant. What is your name, age, and place of residence?

ANSWER. My name is Antonio Suñol, my age 64 years, and I reside at the Pueblo of San José.

Q. 2. In "Exhibit J. Y. No. 1, W. H. C.," annexed to the deposition of John Young in this case, is a document beginning with the words "No encontrandose," etc., purporting to be a testimonio of the act of possession of the mine of Santa Clara, given by Alcalde Pico to Castillero. This document is signed by Antonio Maria Pico, the Alcalde, by Antonio Suñol and José Noriega, assisting witnesses, and is dated 30th December, 1845; please examine it, say if you know in whose handwriting is the body of the instrument, whose the signature, and if they were subscribed on the day of its date.

A. I have examined it; the handwriting of the body of the instrument appears to me to be that of Gutierrez; the signatures are mine; that of Antonio Maria Pico and José Noriega—Messrs. Pico and Noriega signed it in my presence; we all signed at the same time. I presume the document was signed on the day of its date. I have no reason to suppose that it was signed on any other day.

Q. 3. Examine the certified copies of Castellero's two representations to the Alcalde of San José, each of which is signed by Pedro Chabolla, Pedro Sainsevain, and José Suñol, on the 13th January, 1846; say if you know in whose handwriting are each of these certified copies, whose the signatures, and are they genuine? these certified copies are part of the same "Exhibit J. Y. No. 1, W. H. C."

A. I am not certain in whose handwriting is the body of the instruments. The signatures are the genuine signatures of José Suñol, Pedro Chavolla and Pedro Sainsevain.

Q. 4. Who was José Suñol, and when did he die?

A. He was my son, and was killed in 1855; he was about 28 years of age when he died.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

SAN FRANCISCO, CAL., July 28, 1860.

Examination of Antonio Suñol resumed from yesterday.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

CROSS-EXAMINATION.

Questions by Mr. Randolph.

Q. 5. What was the name of the priest by whom your son was baptized?

A. José Viader.

Q. 6. Was he the officiating priest who had charge of the Catholic Church at the Pueblo of San José, at that time?

A. Yes, sir.

Q. 7. Your son was baptized a few days after his birth, was he not?

A. Yes, sir.

Q. 8. Have you any private register kept in your own family showing the day and year of the birth of your son José?

A. Yes, sir. I have in my possession a record of the date of the birth of my children, with a reference to the page of the baptismal record.

Q. 9. Have you looked at that recently, so as now to be able to state the day, or at least the month and year, of the birth of your son José?

A. I see it occasionally; it is probable I saw it a short time

ago. I can state the month and year, though I would not be certain about the day. I perceive that yesterday I made a mistake in stating his age. I stated yesterday that he was twenty-eight years of age; he was in reality thirty. I intended to make this correction before signing. He was born in the month of February, 1825, and if I am not mistaken, he was baptized on the sixth of that month.

Q. 10. What is the reason that, in answer to the last question, you twice said to the interpreter that you had yesterday made a mistake in saying that your son was thirty-eight years old when he was killed, whereas, you ought to have said he was thirty?

A. Because I thought I had stated yesterday that he was thirty-eight years of age, and upon reflection I found he was not as old, that he was only thirty.

11. Is your memory so very bad that you could not remember this morning that on yesterday you had testified that your son was only twenty-eight years of age, when he was killed, instead of thirty-eight, as you just now supposed you had said?

A. It must have been very bad when I did not remember that.

Q. 12. And it was from the same bad memory that, though you frequently see your family register, you yesterday made a mistake of two years in the age of your son, saying that he was twenty-eight years of age, when now it appears you ought to have said he was thirty at the time of his death?

A. It was because I was unexpectedly asked the question, and I replied at once, supposing that my statement was correct.

Q. 13. As you have alluded to the violent death of your son, you will permit me to ask you whether he was not killed by a man who had unlawfully taken possession of a part of your rancho, and disputed your title, which you had derived from the Mexican Government in California?

[Objected to by counsel for claimant as irrelevant.]

A. He was killed by a man who had taken possession of a part of my rancho as a squatter, and, as I understood, for reproving him for unnecessarily shooting so many cattle, because in order to kill one he would sometimes shoot and wound several. He would keep shooting at them until one dropped. My son told him, when he wanted meat to come to the house and he could have as much as he wanted, but not to shoot the cattle in that way. This was the origin of the difficulty, as I am informed.

Q. 14. Don't you think that the government of the United States has treated the old Californians very unjustly in these

land cases, in compelling them to sue for their titles at so much expense, and exposing them to the lawless inroads of squatters?

[Question objected to by counsel for claimant as irrelevant, for its object clearly is to establish the existence of a bias in the mind of the witness against the government of the U. S.; while in fact, whatever may be the technical relations between the United States and the claimant in this case, it is very well known in California, and by none better than by the inhabitants of Santa Clara County, that the Almaden mine is claimed by three parties—who are, first, the claimant in this case; second, certain persons claiming under the Berreyesa title; third, certain persons claiming under the Justo Larios title—whence it follows, that they are opposing each other's claim to this mine, while the United States nominally oppose all three, and really the Almaden claim alone.]

A. We certainly do consider that the government is to blame for all these things; the government of the State or the general government, we don't know which. Even to this day we are being robbed; the land is not ours, neither is the grass, nor are the cattle; the squatters hold all, and may even take our lives if we give them the least excuse.

Q. 15. When did you come to San Francisco, to testify on the present occasion?

A. Day before yesterday.

Q. 16. Where do you stay when here; at whose house?

A. I live in the house of my son-in-law, Don Pedro Sainsevain,—the same gentleman who was an assisting witness with my son José to the execution of the papers shown me here yesterday.

Q. 17. Have you not conversed with some of the claimants, or their agents, or their counsel, as to the extent of your knowledge of these documents, as to which you have testified?

A. No, sir.

Q. 18. Before you were sworn to testify on this last occasion, is it possible that none of the parties to whom I referred asked you anything as to your knowledge of the documents as to which you have testified, and that you said nothing to them in reply as to your knowledge of those papers?

A. I was not asked any questions about them.

Q. 19. Did none of the gentlemen referred to ask you anything about the age of your son, who appears as one of the witnesses with Mr. Pedro Sainsevain as aforesaid?

A. No, sir.

Q. 20. Nor anything about the time when you and the other parties signed the "Testimonio" of the act of possession, as you have stated?

A. No, sir.

Q. 21. How did you know that you were wanted as a witness; did not Mr. John Young or some other gentleman come after you?

A. Mr. Young came for me.

Q. 22. Did not Mr. Young speak to you about these papers?

A. No, sir.

Q. 23. Who first told you that the "Testimonio" of the act of possession was discovered?

A. It was when we were first called upon to give our testimony, that we were told they were found—about eight or ten days ago.

Q. 24. Who was it called on you at that time?

A. Mr. Young.

Q. 25. Did not Mr. Young have the papers with him, and show them to you?

A. I don't know whether he had them with him or not, but he did not show them to me.

Q. 26. But he must have described them to you, and told you what they contained, and talked with you generally about them at that time?

A. All that was said was, that we were to come and give our testimony.

Q. 27. Did he ask you then if you remembered anything about these papers?

A. No, sir.

Q. 28. Did he tell you that José Suñol and Pedro Sainsevain appeared as witnesses on some of them?

A. I don't remember that he did say so.

Q. 29. Tell me all that he did say about the papers at that time.

A. He said nothing about them.

Q. 30. When did you first see these papers, about which you have been examined on this occasion?

A. It was in the year 1845, I think, or 1846, when I signed them, and when they were signed by the other persons.

Q. 31. When did you first see them in the present year (1860), and where?

A. Here, yesterday.

Q. 32. Had you never seen these papers at any time during this year before they were produced and shown to you on this examination?

A. I saw them a few days ago, in the hands of José Fernandez, in Mr. Barron's office.

Q. 33. Did you not just now say that the first time you saw them this year was yesterday, when they were shown to you on this examination?

A. Because, when I saw them before that I did not examine them at all, I merely saw them in Fernandez' hands. This was at Mr. Barron's office.

Q. 34. You looked at them enough at that time to see that your signature, José Suñol's, Antonio Maria Pico's, José Noriega's and Pedro Sainsevain's, were on them, did you not?

A. No, sir.

Q. 35. Who was present at that time?

A. José Noriega and Fernandez; nobody else.

Q. 36. Were not Mr. Young, either of the Mr. Barron's, nor any of the attorneys in the case, there?

A. They were probably in the house; I only saw Mr. Young who was engaged in some other business.

Q. 37. This happened some days ago when you came up to be examined, and had to return before your testimony could be taken; did it not?

A. Yes, sir; I arrived about 10 o'clock in the morning.

Q. 38. Upon your arrival you went to the office of the Messrs. Barron immediately, I presume, and there saw some of the members of the house, and spoke to them; did you not?

A. Yes, sir; we went to the office when we arrived, saw some of the gentlemen of the house, wished them "good morning," and then went to breakfast. Mr. Young came to see when the testimony could be taken.

Q. 39. Whose do you mean when you say "we went to the office," "we went to breakfast;" who was with you?

A. Don José Noriega, Pedro Chavolla, Antonio Maria Pico, and Mr. John Young. We all came up together on the same steamer, and all went to the office together and there parted.

Q. 40. Fernandez was here at that time; was he not?

A. Yes, sir.

Q. 41. Was it immediately upon your arrival that Fernandez showed you the papers?

A. No, sir; nor did Fernandez show them at all, but it was on the day following that I saw them in his hands, and he was looking at them, not at the request of any of those gentlemen (of the house of Barron) but at the request of Mr. José Noriega.

Q. 42. Was not Mr. Chavolla there at that time?

A. I don't remember; but I don't think he was there.

Q. 43. Well, on that occasion were you not asked what you knew about those papers, and didn't you say what was the extent of your knowledge of them?

A. No, sir.

Q. 44. In San José, before you started, and on the way coming up on that first trip, didn't you speak fully and freely with Mr. Young about your knowledge of these papers; didn't

persons ask you questions, and didn't you answer the best you could about them?

A. I was not asked any questions about them by anybody.

Q. 45. Your statement that you had no conversation about these papers with any of the parties in interest, their agents or counsel, and had only once seen them casually in the hands of a third person at the office of the Messrs. Barron, without taking notice of their contents or the signatures, and without any questions asked you by any of the house, or by Mr. Young, or by anybody else present, and without any declaration on your part of what you knew about them,—and all this taken in connection with the fact that your object in coming to San Francisco was to give your testimony about these very papers,—seems to me so extraordinary, so remarkable, that I must ask you if you still persist in those statements?

A. I was not asked any questions about them, and I have no recollection of having stated to anybody what I knew of them.

Q. 46. What is the reason that in answer to the 2d question, direct examination, you say you *presume* that the document was signed on the day of its date?

A. I *presume* that it was signed on that day, because it is natural to suppose that it was so signed. If I were to state positively that it was signed on that day, I should probably not state the truth, for I am not positively certain that it was signed on that day.

Q. 47. Don't you know from what passed when you were examined about another exact copy of this paper, and from what you have heard and read, that the United States in this case disputed the fact that the paper was signed on the day it bears date, and the whole object of your testimony is to prove that it was signed at that time?

A. I know that the government does dispute that fact, but that they were signed at that time I have not the least doubt, whatever the government may say.

Q. 48. Please hear your last two answers read, and please explain to me how I can reconcile them?

[The interpreter reads the last two answers to the witness.]

A. Because my answers are not stated correctly. I said that I presumed that it was signed on that day, because I was not positively certain that it was, and because it might have been brought to us to sign the next day. I did not say that I had learned the government disputed this date, but that I had seen that the government contested something regarding the mine.

Q. 49. Then you allege that the interpreter rendered your

answer incorrectly to both the one and the other of those two questions?

A. I think so.

Q. 50. Mention some circumstance, if you can, that fixes in your memory the fact that you and the others signed that paper on the day which it bears date, although that day is not in the handwriting of any one of you who signed the paper.

A. I cannot remember any circumstance which enables me to say that it was on that day. It may have been signed the next day.

Q. 51. Mention any circumstance that fixes in your memory that it was signed on that day, the next day, or any other day about that period.

A. As it is so long ago, and is a matter in which I have no interest, I have forgotten it, and I can state no such circumstance.

Q. 52. Might you not make as wide a mistake as to the time when you signed that paper as you did yesterday, when you said your son was twenty-eight years of age at the time of his death, instead of thirty?

A. I think not; as to the mistake of yesterday it arose from my not making the calculation as I made it to-day, which I should have done.

Q. 53. Well, why might you not be two years out of the way in your recollection of the time when you signed the paper, just as you were two years out of the way about the other matter?

A. I can't say why I might not be mistaken. All I can say is, I believe I am not mistaken. If I am, it is unintentional.

Q. 54. Why may not the same bad memory, which made you think this morning that you yesterday said your son was thirty-eight years of age, at the time of his death, when you had actually said he was ten years younger, now deceive you in this other matter, and make you think that you had signed this paper about the beginning of the year 1846, when in fact you had signed it some two years later; that is to say, early in the year 1848?

A. The mistake I made about thirty-eight and twenty-eight arose from want of reflection; but as to this other matter, I believe I am not mistaken, although I may be.

Q. 55. Of course you are not able to swear from your present memory, that the words and figures expressing the date were written on the paper at the time that you signed it?

A. I couldn't recollect that after so many years, but it is in the same handwriting as the preceding part of the document to which our signatures are attached, and it must have been there when we signed.

Q. 56. Don't you see that that is making the paper prove itself, instead of your proving the paper?

A. I can only state what I know. If the document proves itself, so much the better.

Q. 57. Try and do this; imagine that the paper was explained to you, but the date concealed: under those circumstances tax your memory for anything that will make you believe confidently, and will enable you to swear, that your signature was written there, about the beginning of the year 1846, and not early in 1848, or some time later?

A. This question is a difficult one; if it has no date of course I would say nothing about its date; in such case, if I entertained any such doubt, I would examine the signatures and see if there was a space vacant between them and the body of the instrument to allow the date to be interlined. I cannot doubt that this date was written where it appears now, because our signatures are close under it, and it is not our custom to leave a blank above the signature.

Q. 58. I have before me here two papers, being parts of "Exhibit J. Y. No. 1,"—the Testimonio of the act of possession, as it is called, and the Alcalde's receipt for twenty-five dollars, the amount of his fees for giving it. Look at those papers and say whether there is not a blank space of a full line between "Antonio Maria Pico," the Alcalde's signature, and the body of the writing of the receipt, and whether Pico's signature to the Testimonio of the act of possession does not immediately adjoin the body of the writing, and on nearly the same line.

A. There is but a small space between Pico's signature on the receipt and the writing above, not enough for a full line of the same kind of writing; his signature is closer to the conclusion of the other document.

Q. 59. Can't you think of anything else that will enable you from your own memory to verify the fact stated in that document; to wit, that it was signed on the 30th day of December, 1845, or within a very short time after the day there mentioned?

A. I have no recollection at present of any fact that will enable me to do so.

Q. 60. I think you have stated in former examinations (which I have not now before me) that you were acquainted with Mr. Alexander Forbes when he was in California, early in 1848, and that he sometimes sojourned in your house as your guest; such was the fact, was it not?

A. He never lived in my house; he never staid there so much as a day; but he has called there frequently, and stopped a little while.

Q. 61. You were on sufficiently intimate terms with him for him to leave some of his papers with you, at one time, I think, were you not?

A. Yes, sir. My son José Suñol copied some of his papers, as an exercise to learn to write; he had been to college before that and had considerable instruction; he was about twenty years of age.

Q. 62. It seems to me a little contradictory that you should say in one place that your son was copying some of Mr. Forbes' private papers, merely as an exercise to learn to write—that is, with no intent of keeping the copy to make use of it in any way; and in another place, that he was a grown-up man of twenty years of age, who had been to college and had considerable instruction. Explain this, if you please.

A. He had some instruction but not enough, because he had only been a short time at college. The college was not long in existence.

Q. 63. Look now at these signatures which appear on the certified copies of the two representations of Andres Castellero and purport to have been affixed to the same by José Suñol, on the 13th January, 1846, and say whether they can possibly be the signatures of a young person, who two years later, *i. e.* 1848, was copying the private papers which a friend had left in your charge, in order that he might learn to write. Is it not as good, or better, than any other signatures in this paper?

A. There is nothing strange in that; for though his handwriting might have been good, I wished him to improve it.

Q. 64. You have also said formerly, have you not, that the Gutierrez in whose handwriting you say the Testimonio is, was at one time a schoolmaster in your family?

A. Gutierrez kept a school in my house, and a boy whom I had reared went to it, but not one of my children went there.

Q. 65. How long is it since Gutierrez left the Pueblo of San José?

A. He left in 1847 or 1848, I think.

Examination adjourned until Monday next, at 11 o'clock, A. M.

W. H. CHEVERS,

U. S. Commissioner.

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SAN FRANCISCO, CAL., July 30, 1860.

Examination of Antonio Suñol resumed from Saturday last.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

DIRECT EXAMINATION RESUMED.

Q. 66. Do you know when Castellero left California ?

A. He left in the year 1846.

Q. 67. In your former depositions, in this case, you have stated that you were present when the possession of the mine was given by Alcalde Pico to Don Andres Castellero, in the presence of sundry people ; among them, José Noriega with whom you acted as assisting witness to the act of possession. Was not that act of possession given before Castellero left California in 1846.

[Objected to by counsel for the United States as leading.]

A. Yes, sir ; it was before he left.

Q. 68. After Castellero left California in 1846, did he ever return ?

A. I have never seen him since ; I never heard of his having returned.

Q. 69. Were you acquainted with the retired sergeant, José Reyes Berreyesa, who lived on the rancho San Vincente, Cañada de los Capitancillos ?

A. Yes, sir. He was killed about the time the Americans took possession of the country, by Fremont's party, on their way down from the Sacramento valley.

[It is admitted by the counsel for the United States, that José Reyes Berreyesa was killed about the month of June, 1846.]

Q. 70. Are you acquainted with his handwriting ?

A. Yes, sir.

Q. 71. Is this document in his handwriting ?

[The witness examines the document handed to him.]

A. Yes, sir.

[Document offered in evidence by counsel for claimant.

Objected to by counsel for the United States as immaterial.
Document marked "Exhibit Suñol, W. H. C."]

Deposition closed.

ANTONIO SUÑOL.

Sworn to and subscribed this 30th July, 1860, before me,

W. H. CHEVERS,

U. S. Commissioner.

Filed July 30, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT SUÑOL No. 1, W. H. C.

El C^o Manuel Michelt^a, General de Brigada del Ejercito Mexicano Ayudante Grál. de la Plana Mayor del mismo, Gobernador, Comand^{te} Grál. é Inspector del Departam^{to} de las Californias.

Por cuanto D. José Reyes Berreyesa ha pretendido p^a su beneficio personal, y el de su familia el terreno nombrado Cañada de los Capitancillos, colindante con D. Justo Larios con el rincon q^e hace el arroyo conocido con el nombre de los Alamillos que confronta con una Loma baja que se haya en el sentro de dhā. Cañada; practicadas previam^{te} las diligencias y averiguaciones concernientes segun lo dispuesto por Leyes y Reglamentos; usando de las facultades que me son conferidas á nombre de la Nacion Mexicana, he benido en concederle el terreno mencionado declarandole la propiedad de él por las presentes letras, sugetandose a la aprobacion de la Exmā. Asamblea Departamental y bajo las condiciones siguientes:

1^a—No podra venderlo, enagenarlo, ni hipotecarlo imponer censo, vinculo, fianza ni otro gravamen alguno, aun no podrá donarlo.

2^a—Podra sercarlo sin perjudicar las travecias caminos y servidumbres: lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo q^e mas le acomode, pero dentro de un año fabricará casa y la havitará.

3^a—Solicitará del Juez Respectivo q^e. le dé la posecion juridica en virtud de este Despacho, por el cual se demarcarán los linderos en cuyos limites pondrá amas de sus majoneras algunos arboles, frutales ó silvestres de alguna utilidad.

4^a—El terreno de que se hace donacion es de dos sitios de ganado mayor, poco mas ó menos, segun esplica el Diccionario respectivo. El Juez que diere la posecion lo hará medir conforme ha ordenanza, quedando el sobrante que resulte á la nacion para los usos convenientes.

5^a—Si contraviniere á estos condiciones, perdera su derecho al terreno y será denunciabile por otro.

En coneeuencia mando que sirviendole de Titulo el presente y teniendose por firme y valedero se tome razon de el en el Libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á viente de Noviembre de mil ochocientos quarenta y cuatro.—Manuel Micheltorena.—Manuel Guimeno, Sriō.—Queda tomada razon de esta concecion en el Libro respectivo á fojas 13.—Jimeno.

TRANSLATION OF EXHIBIT SUÑOL No. 1.

The citizen Manuel Micheltoarena, General of Brigade of the Mexican Army, Adjutant-General of the Staff of the same, Governor, Commandant-General, and Inspector of the Department of Californias :

Whereas, Don José Reyes Berreyesa has solicited for his personal benefit, and that of his family, the land called "Cañada de los Capitancillos," adjoining Don Justo Larios, with the corner formed by the creek known by the name of the Alamillos, which is in front of a low hill, which is in the centre of said Cañada ; the proceedings and examinations concerning it being previously had according as is directed by the laws and regulations ; in exercise of the powers which are conferred on me in the name of the Mexican nation, I have granted to him the said land, declaring to him the ownership of it, subject to the approval of the Most Excellent Departmental Assembly, and under the following conditions :

1. He shall not have power to sell, alienate, nor mortgage the same, nor charge it with rents, entail, nor other encumbrance, and not even to donate it.

2. He may inclose it without prejudice to the crossings, roads and servitudes ; he will enjoy it freely and exclusively, dedicating it to the use or cultivation which may best suit him, but within one year he shall build a house and inhabit it.

3. He shall solicit the respective Justice to give him judicial possession in virtue of this dispatch, by whom the boundaries shall be marked out, in the limits of which he shall place, besides the monuments, some fruit trees or forest trees of some utility.

4. The land of which donation is made, is two square leagues, a little more or less, as is explained by the respective sketch. The Justice who may give the possession will cause the same to be measured conformably to the ordinance, the surplus which may result remaining to the nation for its convenient uses.

5. If he should contravene these conditions he shall lose his right to the land, and it shall be denounceable by another.

In consequence, I order that these presents, serving him as title, and being held as firm and valid, note be taken of it in the respective book, and it be delivered to the party interested, for his security and other purposes.

Given at Monterey, the twentieth of November, one thousand eight hundred and forty-four.—Manuel Micheltoarena.—Manuel Guimeno, Secretary.—Note has been taken of this grant in the respective book, on page 13.—Jimeno.

DEPOSITION OF ANTONIO MARIA PICO.

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DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 27, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, etc., etc., came Antonio Maria Pico, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by a sworn interpreter, to wit, by Richard Tobin, Esq.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., of counsel for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. Antonio Maria Pico; am 52 years of age; and reside in San José, Cal.

Q. 2. Examine the two documents now shown you, being parts of "Exhibit J. Y. No. 1, W. II. C.," annexed to the deposition of John Young in this case, the first of which, beginning with the words "No encontrandose," etc., purports to be a testimonio of the act of possession of the mine of Santa Clara, given to Don Andres Castillero on the 30th December, 1845, signed Antonio Maria Pico, Antonio Suñol, José Noriega, the last two acting as assistant witnesses; and the second of the said documents, beginning with the words "He recibido," etc., purports to be a receipt from Antonio Maria Pico to Andres Castillero, for the sum of twenty-five dollars, the fee for the act of possession. State if you know in whose handwriting are these two instruments, whose the signatures thereto, and when made and subscribed.

A. The first of these documents, that is to say, the testimonio of the act of possession, is in the handwriting of Gutierrez, and

signed by myself, Antonio Suñol, and José Noriega; these latter having signed in my presence as witnesses. The document was signed on the day of its date. I have no doubt that I delivered this document to Castellero, because I see my receipt thereto for \$25, my fee; this receipt is the second document referred to in the question; it is in the handwriting of Gutierrez, and bears my genuine signature, which was placed there on the day of its date.

Q. 3. In this "Exhibit J. Y. No. 1, W. H. C." there are two other documents, purporting to be copies of two representations made by Castellero to the Alcalde of San José Guadalupe, on the 22d November and 3rd December, 1845; each of these copies purports to be signed by Pedro Chabolla, with the assisting witnesses Pedro Sainsevain and José Suñol.

Examine these copies, and say whether you are acquainted with the signatures of those persons, and are they genuine?

A. I am acquainted with the signatures of those persons; the signatures referred to are their genuine signatures.

Q. 4. When did José Suñol die?

A. I don't remember exactly when he died. He was killed on his father's rancho in Amador valley, near the Mission of San José, by a squatter.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., July 30, 1860.

Examination of Antonio Maria Pico resumed from the 27th instant.

Present: A. C. Peachy, Esq., of counsel for claimant; and Edmund Randolph, Esq., for the United States.

Q. 5. In whose handwriting is "Exhibit Suñol, W. H. C.?"

A. It is in the handwriting of the sergeant José Reyes Berreyesa.

Q. 6. Do you know in what month of the year 1846 he was killed?

A. I don't remember the month.

CROSS EXAMINATION.

Questions by Mr. Randolph.

Q. 7. You know what that paper is?

[The counsel for the United States hands the witness a document in "Exhibit J. Y. No. 1, W. H. C." purporting to be the testimonio of the act of possession.]

A. Yes, sir; it is the act of possession of the Almaden mine.

Q. 8. When you were Alcalde, would you make official papers that recited facts which never had occurred?

A. I never made any document that was false.

Q. 9. Were you not examined as a witness, December 30th, 1854, before Judge Felch, one of the members of the Board of Land Commissioners, in the case of Maria Z. B. Berreyesa *et al.* v. The United States, No. 503, before said Board?

A. Yes, sir.

Q. 10. On that examination were you not asked this question, viz.:

"Did Castellero ever work the mine?" and did you not answer as follows, viz.:

"The company commenced to work it, but did not work to any extent; Castellero applied to me to go and give him possession of the mine, according to the Mexican custom. I went there with him and pointed out the boundaries which he should take, *but no fixed possession was given to him.*

"There was a question between Castellero and Berreyesa. Berreyesa would not consent that possession should be given to Castellero, unless he would admit that he (Berreyesa) should have an interest in the mine.

"In consequence of this I did not give any fixed possession of the land. At that time they were assaying the mineral"?

A. There are some expressions in that testimony that I do not remember. I did answer substantially what is stated there.

Q. 11. As you were under oath on that occasion, of course you told the truth, did you not?

A. Of course.

Q. 12. In your answer just referred to, and above written, you say "the company commenced to work it, but did not work it to any extent; Castellero applied to me to go and give him possession," etc., etc. In the testimonio of the act of possession, you say that you, accompanied by two witnesses, to wit, Suñol and Noriega, went to the mine, and found it "with abundance of "metales" dug out, the well made according to the rules of art, and the working of the mine producing an abundance of liquid quicksilver," etc.

How can these contradictory statements both be true?

[Question objected to by counsel for claimant, upon the ground that the statements are not contradictory.]

A. These statements cannot be contradictory. There was no very extensive working of the mine, but enough ore was taken out to show the public that the mine was being worked.

Q. 13. Don't you observe that in this testimonio of the act of possession, you allege in strong terms, and with much particularity, that Castellero or the company had wrought the mine to a very considerable extent, for they had dug out an abundance of ores, produced an abundance of liquid quicksilver, and completed a mining pit or well, according to all the rules of art. And that in your testimony given before the Land Commission you precisely contradict all this, saying, "The company commenced to work it, but did not work to any extent," etc. etc.?

A. I see no contradiction. It is true that there were no very great works done then, but enough was done to explore the mine, and it was worked extensively afterwards.

Q. 14. If there is no contradiction, I must of course take the recitals in the testimonio of the act of possession to mean nothing more than what is expressed in your said answer before the Land Commission, must I not?

A. Yes, sir. I only know that all that was done, and what appears over the signatures was correct and legal, and that there was nothing fraudulent or wrongful about it.

Q. 15. In the testimonio of the act of possession, you conclude, after all the recitals, "to grant three thousand varas in all directions," and you declare this document to be the "act of possession," and that the same remains in your office as a part of the expediente, etc.

In the answer above written which you gave as part of your testimony on that occasion, you say in one place, "but no fixed possession was given to him," and in another place, "I did not give any fixed possession of the land."

If your sworn answer in the Land Commission is true, how can the act of possession, which, with so much particularity, declares that you gave possession of three thousand varas in all directions from the mine, also be true; do you not see any contradiction there?

A. According to my understanding there is no contradiction between my answer before the Commission and the statement in the act of possession. What was signed by myself as Alcalde, and by the witnesses, I consider legal.

Q. 16. How could you, as an Alcalde, undertake to give three thousand varas in all directions of another man's land; what put such an idea as that into your head?

[Question objected to by counsel for claimant, because it does not grant, nor pretend to grant, three thousand varas in all directions of another man's land, but it grants three thousand

varas in all directions from the mouth of the mine, which mouth is said to be on another man's land, which mine is said in the act of possession to be on another man's rancho. The rancho referred to is that of Berreyesa, which is a colonization grant of one square league, within supposed general limits which contain more than two square leagues.]

A. I never intended to grant another man's land. I considered that it was public land up to what I considered the limit of Berreyesa's land.

Q. 17. Then you never intended to grant the mine, or any land immediately about the mining well, because you knew, did you not, that the mine and the tract immediately around the mining well was on the land of Berreyesa ?

[Question objected to by counsel for claimant, upon the ground that the intentions of a public officer in making a grant are to be ascertained from the words of the grant only.]

A. I knew it from hearing Berreyesa say so to Castellero. I intended only to grant what was intended by the ordinance around the mine, and the rest to be taken on public land.

[Answer objected to by counsel for claimant, for the same reason as to the question.]

Q. 18. The act of possession speaks of but one tract, to wit, three thousand varas in all directions ; where was that vast tract of land to be taken on the public lands ?

[Question objected to by counsel for claimant, upon the ground that what the act of possession speaks of, as stated by the counsel for the Government, is his own construction of it. The act of possession in fact states, that the Alcalde gives possession of the mine known by the name of Santa Clara, and grants three thousand varas in every direction, subject to what the mining ordinances provide, the mine being worked in company ; and for a further reason that what was granted in that instrument can be ascertained only from the instrument itself. The counsel for claimant insists that the witness shall read the document and see what it contains before answering.]

A. My intention was that the three thousand varas should be taken on public land. I had no intention whatever of injuring any private individual.

[Answer objected to by counsel for claimant, for the same reasons as to the question.]

Q. 19. You were familiar with the boundaries of the Berreyesa rancho as then understood, were you not ?

A. Yes, sir.

Q. 20. How far from the mine to the nearest body of public lands which you, as Alcalde, recognized as such at that time?

A. Four or five hundred varas, more or less.

Q. 21. In about what direction from the mine?

A. Southerly, and also in the direction of Justo Lario's, and in the direction of La Cuchilla, where the Guadalupe and other mines are situated. I can point it out on the map if it is desired.

Q. 22. Such being your understanding of the location of the three thousand varas in all directions tract, how was it possible for you to have made out and signed this act of possession which fixes this tract to be one measured in all directions from the mine, if it fixes it at all anywhere?

A. Because Berreyesa agreed with Castellero at the time, and told me that I might grant the land, provided I did not include the land needed for cultivation; and therefore I made the grant.

Q. 23. You have just said that you only granted the public land: What had Berreyesa's permission or refusal to do with the matter at all?

A. It was because Berreyesa objected to the possession being given of the mine; and I told him, that in any case, the ordenanzas authorized a certain quantity of land around the mine to be granted, whether the land was public or private; and as the hilly land was not cared for in those times, he said to me—"well, provided you do not grant the plain, the land which I require for cultivation, so that it would include only the broken land, you may make the grant."

Q. 24. So you did grant the private land of Berreyesa, at last, and with his consent, and the three thousand vara tract was not all on public land, as you have said?

A. Three thousand varas would include both public and private land. It would include that part of Berreyesa's land which he consented should be granted, and the rest would be public land.

Q. 25. What words in this act of possession describe the tract of land about the mine which the ordenanzas give, even on private land, as you have said, and distinguish it from the three thousand vara tract of which you have spoken?

[Question objected to by counsel for claimant, because the act of possession will speak for itself, and because it implies a distinction between the three thousand vara tract and the piece of land around the mine which the ordenanzas admit the discoverer to have granted to him, when in truth they may be the same land; and for the further reason that it, in substance, asks the witness' construction of the grant.]

A. The document refers to the ordenanzas, but does not make distinction referred to.

Q. 26. When Berreyesa consented that you might grant some portion of his land to Castellero, why did you not tell him that that was not the way to do it, but that he ought to come before you, and execute an act of sale, or gift, or something of that kind, to Castellero; that his consent would amount to nothing as a mere aauthority to you to make the concession?

[Question objected to by counsel for claimant, for the reason that it implies that the means suggested by the counsel for the Government were the only legal ones which could have been used; while the mining ordenanzas provide for the denouncement of waters, useful in machinery, and for lands to be used as haciendas, and for a grant of such by the same officer who is authorized to grant a mine on private lands.]

A. It was all done before me, and in good faith, and as I supposed fairly; Mr. Berreyesa being there as the owner of the adjacent land.

Q. 27. Why did you not tell Berreyesa that all the authority you had in the matter came from the laws, and that his consent could add nothing to it?

A. I did not say anything of that sort to him, because it did not occur to me; I made the act as it is, and I believe it is valid.

Q. 28. Did not Berreyesa refuse, absolutely, to give any consent at all?

A. I have already stated that when he first came he objected to possession being given upon his land; but after I had reasoned with him a good while, he consented that I might make the grant, so that it did not include his level, arable land.

Q. 29. Did you not swear in the Land Commission in the deposition above referred to, that Berreyesa would not consent, and that, therefore, you granted no possession?

I refer you to the question and answer copied above from your said deposition.

A. I did say that Berreyesa did not consent at first, but after a long debate with me, he did consent. As those matters happened such a long time ago, one may easily forget, or be mistaken about some particulars; but what is written and signed, and what passed before me as a judicial proceeding (*en justicia*), I recognize as having happened, and been correctly done.

Q. 30. In your deposition before the Land Commission, above referred to, did you not in effect swear that Berreyesa never consented,—consequently, that you never made the grant

to Andres Castellero ; that the land always continued to be the land of Berreyesa, and that Castellero was to pay him for the wood and lime taken from it? I refer you now to the following question in that deposition, viz. :

“5th Question. What was the connection of Andres Castellero with this mine, so far as you know?” And the answer to the same, viz. :

“José Reyes Berreyesa showed him the mine, and offered him a part of it. This was 1845. They had an understanding or agreement before me, but Castellero never complied with it. He went to Mexico. I am not very certain when he went ; but think it was in 1846. I have never seen him since he left. I think it was in the latter part of 1845 or early in 1846 that he left.”

And to the following questions and answers in the same deposition, being the whole of your cross-examination by Mr. Blanding, the law agent :

“1st Question. What was the character of the understanding or agreement mentioned in your answer to the 5th question?”

“Answer. The nature of it was that Berreyesa was to have shares in the mine, and that he was to be paid for the wood and limestone used in the establishment. After Castellero left Berreyesa told me he was going to claim of the agent of Castellero the fulfillment of the contract.

“He made the reclamation of Padre Real, who had charge of all the business (in connection with another person) in the mine.

“I saw the letter which Berreyesa wrote to the Padre and the other person having charge, demanding a compliance with the contract.

“The family of Berreyesa afterwards told me that the letter had been presented. This was about the time the American war broke out. Berreyesa, the grantee, was killed.

“2nd Question. Were the shares which Berreyesa was to have to be derived from Castellero, or from whom.

“Answer. A company was to be formed, and Berreyesa claimed that he should have a right as the owner of the land.

“3rd Question. Who formed the company, and were there any writings used in forming it?

“Answer. José Castro, Padre Real, Secundino Robles, Teodoro Robles and Andres Castellero formed the company.

“Berreyesa did not belong to the company, because they would not admit him.

“He was always opposed to it, because he was the owner of the rancho. I have seen one writing which expressed the

terms of the agreement in relation to the company; it was signed by the members of the company above named. Castellero always recognized the right of Berreyesa to the land.

"4th Question. How do you know that Castellero recognized Berreyesa's right to the land?"

"Answer. That matter is expressed in the contract which they had between them.

"5th Question. State all you know to show that the mine is on the land of Berreyesa.

"Answer. It is on the land of the Berreyesa's, because I have seen the land, and have seen the papers, and have been one of the authorities of the jurisdiction.

"6th Question. If Berreyesa had shares in the mine, how could Berreyesa refuse to allow you to give possession to Castellero on the ground that he had none?"

"Answer. He had no shares; they would not give him any."

[Question objected to by counsel for claimant, on the ground that the counsel for the Government has no right to inquire of a witness what is the effect of his testimony. He may ask the witness if he gave certain answers to certain questions on a former examination. What is the effect of his answers is to be learned from the answers themselves.]

Examination adjourned until 11 o'clock, A. M. to-morrow.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, Cal., July 31st, 1860.

Examination of Antonio Maria Pico resumed from yesterday.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

Examination adjourned, by consent, until to-morrow at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—
SAN FRANCISCO, CAL., August 1st, 1860.

Examination of Antonio Maria Pico resumed from yesterday.

Present: Mr. Peachy, of counsel for claimant, and Edmund Randolph, Esq., for the United States.

[Question 30 is withdrawn.]

Q. 31. In your examination before the Land Commission, were not the questions above written, as part of question 30, of the present examination, put to you, and did you not in reply to the same give the answers also above written?

A. Whatever I stated in my former deposition must be true, for I always stated truly what happened at that time; except that there is some confusion in my testimony on that occasion, in regard to giving possession, arising from its then having been badly interpreted. I stated that I went to the mine with the assisting witnesses, and gave possession of the three thousand varas in all directions; although I did not measure it with the line, because the ground was very uneven; and made the usual memorandum. It was all legally done.

Q. 32. If it was all legally done, if Berreyesa consented, and you thereupon made the grant to Andres Castellero, as you now say, how could it have been true, as you said before, that Berreyesa refused to consent, that you granted no possession, that Castellero promised to pay Berreyesa for wood and lime taken from the land; and that after Castellero left the country Berreyesa continued to demand a compliance with this contract from Father Real, as Castellero's agent?

[Questions objected to by counsel for claimant, on the ground that it does not state the witness' answers correctly; for the witness, so far from having stated that no possession was given, declared that Castellero applied to him to go and give him possession of the mine, according to the Mexican custom; that he went there with Castellero and pointed out the boundaries which he should take; but no fixed possession was given him.]

A. All that I stated was true; Berreyesa did, after Castellero's departure, demand payment for the wood and lime, in accordance with the conversation he had with Castellero; he also wrote that letter to Padre Real (I don't know whether it was received by the latter), but it was not a serious matter; it was after the possession had been given, etc.

[Counsel for the United States offers in evidence a certified copy from the office of the United States Surveyor General, of the depositions of Antonio Maria Pico, taken before Commissioners Harry J. Thornton and Alpheus Felch, in the case of "The United States v. Maria Z. B. Berreyesa, petition No. 503," dated December 30th, 1852, and December 30th, 1854.

Counsel for claimant objects to the filing of the depositions, as they were not taken in this case.

Documents marked "Exhibit Antonio Maria Pico, No. 1, Cross-Examination, W. H. C."]

Q. 33. Please look at the document "Exhibit Suñol, W. H. C. ; and say in whose handwriting it is.

A. It is in the handwriting of the Sergeant José Reyes Berreyesa.

Q. 34. Please look at the whole of it; and say if you recognize every word of it to be in his handwriting?

A. The handwriting of the whole document is his.

Q. 35. Of that you are positive?

A. Yes, sir; I don't suppose it could be imitated by another person.

Q. 36. How many times have you been examined in this case?

A. Several times, but I don't remember how many; the archives will show.

Q. 37. How many times have you been examined in these land cases before the Land Commission and the United States District Court, if you can remember?

A. I have been frequently called upon to testify in those cases, but I don't remember how often.

Q. 38. Has it not been uniformly your habit to accept of compensation for your time and trouble in attending to give your depositions?

A. I have been paid sometimes my expenses, and at other times I have not; I have also been called upon by the government as a witness to testify.

Q. 39. For your time and trouble in attending twice to give your present deposition, how much have you received, and how much are you to receive, and from whom?

A. I borrowed five dollars first of Mr. Noriega, and yesterday I borrowed twenty dollars of Mr. Barron; this is all that I have received since I came to town. I had some money of my own when I came to town, but spent it; when I came to town the other day to give this deposition, and went back without doing so, I received forty dollars for my expenses, and nothing more.

Q. 40. Do you intend to ask for a further fixed sum; and if so, how much; or leave it to Mr. Barron to give you what he thinks proper?

A. I have no intention asking for any sum; I have no understanding whatever with Mr. Barron about it.

Q. 41. Who composed or drafted the act of possession of the mine which you say is in the handwriting of Gutierrez?

A. I don't remember now, it is so long ago. It is true that Castellero, who is an intelligent man, sometimes wrote borradores (drafts) of instruments, but as I was the authority before whom this act was drawn, I presume that it was dictated by myself.

Q. 42. In what other matter can you recollect that Castellero wrote borradores or drafts?

A. I don't remember that he did so in any other matter, but as he was a competent person he assisted me at that time to compose the documents in relation to this matter.

Q. 43. In whose handwriting is the first page of document marked "Exhibit J. Y. No. 1, W. H. C.;" beginning with the words "Año de 1845?"

A. I think it is in the handwriting of Castellero, but I am not certain.

Q. 44. In whose handwriting are the certified copies of the two representations of Castellero, which appear on succeeding pages of the same Exhibit, dated respectively November 2d, and December 3d, 1845?

A. I believe them all to be in the handwriting of Gutierrez?

Q. 45. Did you have knowledge enough of the mining laws, and were you sufficiently instructed in the Spanish language, to dictate this act of possession in the year 1845?

A. Yes, sir; because I read what it was necessary to do in judicial proceedings; I did not do the business like a lawyer, but I did the best I knew how.

Q. 46. Where did you read that you had the authority to make out a document like this act of possession; can you refer me to any book for such authority?

A. Mr. Castellero assisted me, and referred me to a book which he had,—a book upon the subject of mining.

Q. 47. Would you have any objection to copy a part of this act of possession as it may be dictated to you now, by Mr. Tobin, the interpreter?

A. I don't like to write, because I do so with difficulty now, for my sight is weak, and my hand trembles: I don't wish to do it.

Q. 48. What do you know about the execution of the writing of partnership between Castellero, Padre Real, the Robles', and General Castro?

A. I remember that there was a contract of that sort, and I believe I signed with the Prefect, Manuel Castro.

Q. 49. What makes you think that you ever signed it with the Prefect, Manuel Castro?

A. Because that is my recollection; if I could see the document I could tell; I also testified about the document before.

Q. 50. Look at this document, say what it is, whose the handwriting and signatures, and what the date?

A. It is the contract of partnership, dated December 8, 1845; the handwriting I think is that of Gutierrez, and the signature is that of Manuel Castro.

Q. 51. Is that the same writing of partnership of which you spoke in your answer to question 49?

A. This is not the document which I meant to say I believed I had signed with Castro; I referred to copies of this document.

[Document offered in evidence by counsel for the United States, and it is marked "Exhibit Antonio Maria Pico, No. 2, Cross-Examination, W. H. C."]

Q. 52. How many copies of the writing of partnership did Manuel Castro make, at the Mission of Santa Clara, December 8, 1845; that you know of?

A. I don't remember; they must be in existence.

Q. 53. Can you give any reason why, you being the Alcalde, should join with the Prefect in signing the certificate to one of the copies of the writing of partnership made on that day, and should not join with the Prefect in certifying to another of those copies?

A. I cannot say why.

Q. 54. Can you give any reason, relating to the duties of your office and the Prefect's, which would require you to join with him in certifying one of these copies, and would not equally require you to join with him in certifying any and every other copy of the same paper?

A. I remember that at that time we did certify some papers, but I cannot state the rule which required us to do so.

Q. 55. How many copies, duplicates, triplicates or whatever they may be called, of the act of possession, did you make at the time that you say possession was given?

A. I don't remember how many, but I would be able to recognize by my signature those which were made.

Q. 56. Did you make two?

A. I can tell by seeing my signatures.

Q. 57. Can't you remember now clearly and positively, without looking at the signatures, that you did make two copies?

A. It is certain that I made two, for I have seen two here.

Q. 58. Have you no recollection of the fact, apart from seeing these papers now, that when you gave possession to Andres Castellero, you did sign the act of possession in duplicate?

A. By reflecting a good deal about it, I might have remembered that it was made in duplicate, but I was reminded of it at once by seeing my signatures.

Q. 59. I think that it did not occur to you on any of your former examinations in this case, and upon the subject of this act of possession, to mention the fact of which you now speak; to wit, that you did sign that document in duplicate, on the day that you executed the same?

A. So many things have occurred, that I do not remember whether I was ever asked a question about that matter before, or not.

Q. 60. If you were now shown still another copy of the act of possession with your signature to it, would you not just as readily believe that you had executed that document in triplicate?

A. I would examine it first and see if it were genuine; if it were, I would admit it to be so; if not, I would deny it.

Q. 61. Have you nothing but the genuineness of your signature by which to determine now, in your own mind, whether you signed one, two, three or more copies of the act of possession, on the day that you executed that document?

A. That, and the handwriting of the document.

Q. 62. Do you know whether or not there was any law which regulated the number of copies which it was proper for you to sign, of that act of possession?

A. My opinion is, that the Alcalde might make as many copies as were needed.

Q. 63. What do you understand by the "Testimonio of the act of possession;" what do those words mean?

A. I don't remember the meaning of those words; it would be necessary to look at the Dictionary to see.

Q. 64. If you made an original of the act of possession to be retained in the archives of your office, and a copy of the same to be delivered to Andres Castellero as his title, in what manner would the one be distinguished from the other?

A. In my opinion, I would distinguish the copy by saying that it was a copy, and certifying to it under my signature.

Q. 65. Would it not be very improper to give a copy without any such certificate on it, and just precisely like the original which was kept in the archives, so that no man by looking at the two papers would be able to say which belonged to the Alcalde's office, and which belonged to Castellero?

A. I don't think it would be wrong to do so.

Q. 66. Would it not be entirely contrary to the custom prevailing in all public offices under the government of Mexico, in which the originals of public acts were required to be kept, so far as you know?

A. No, sir; I don't consider it so.

Q. 67. How came you to make a grant of any land to Andres Castellero, since, as I read the documents in this case, it does not appear that he ever asked you to grant him any land?

A. I don't remember the motive or the reason, it is so long ago. I suppose it was because I thought it was proper for me to do so.

Q. 68. Don't you think it was proper that the expediente, showing that you had made this vast and extraordinary grant to Andres Castellero, should also show that he had asked for it?

A. I granted it to him because he was the first discoverer, and supposing the Mexican Government would confirm it.

Q. 69. You ceased to be Alcalde on the 31st day of December, 1845, I think, did you not, and Pedro Chaboya became Alcalde the 1st January, 1846?

A. I don't remember the date; the papers must show.

Q. 70. Did you not cease to be Alcalde on that day by law; did not the Alcalde commence on the 1st of January always?

A. Yes, sir, that was generally so, but it sometimes happened, especially in those times, that from some cause or other it happened otherwise.

Q. 71. Can't you remember, now that your attention is called to it, that Pebro Chaboya became Alcalde on the 1st of January, 1846?

A. It would be well to see the documents first, to be sure, for there may have been some delay in his entering upon his office.

Q. 72. Do you now remember how it happened that you did not give Andres Castellero possession of the mine, until just the day before you were going out of office?

A. I don't remember why it was.

Q. 73. In the act of possession, you say that the time which the ordenanzas prescribed to entitle Castellero to receive the possession had expired, that is, that legal notice had been duly given. Can you tell me for how many days that notice was required to be given, before you were authorized to put him in possession of the mine?

[Question objected to by counsel for claimant, in so far as it states that the ordenanzas require that any number of days should intervene between the register of a mine and the giving possession of it. They do require the *poso de posesion* to be made, and the possession to be given within a certain number of days after the registry of a mine.]

A. I remember that the necessary notices were posted up, but I cannot say how long; Castellero represented that the time had transpired, and possession was given him.

Q. 74. Can you explain to me why this testimonio of the act of possession, as it is called, bears date December 30, 1845, but the other copy, which is said to be the original that was kept in the archives of your office, mentions no day, but bears only the month and year, viz., December, 1845?

A. It must have been an oversight of the clerk (escribiente) who wrote it.

Q. 75. If you did not see this copy, called testimonio, would you be able to swear that you had not given this possession to Andres Castellero on the 4th or any subsequent day of December, 1845?

A. I would have considered the matter, and then I would say that on a certain day or month which I remembered, I had given the possession; I would be guided by the act of possession, knowing that it was valid.

Q. 76. How could you tell from the act of possession in the archives, whether it was or was not on the 4th, or on the 5th, or on the 6th, or on any subsequent day of December, 1845, that you had given the possession of the mine to Andres Castellero, seeing that the day of the month is left blank?

A. I would reflect upon the matter and see what answer I should give to such a question. I have already testified upon that subject in this case, but I don't now remember what I said.

Q. 77. Can you swear now, that the day was not left blank in the testimonio of the act of possession, just as in the original in the archives, and that it has not since been filled up by Castellero or somebody else to suit themselves?

A. I don't know.

Q. 78. You cannot of course say that the clerk might not as well have left a blank in one of these papers as the other?

A. Of course I cannot.

Q. 79. Nor can you say how it happened that you did not observe the difference between those papers, when, as it was your duty, and doubtless your custom, you read and examined them before signing?

A. Because in those times it was not usual to look into matters so critically, and it was all done fairly and without expecting any difficulty.

Q. 80. As this was the first and only time that you exercised the powers belonging to the mining tribunals, don't you suppose that you paid very particular attention to the making up of the papers, and looked to see that they were all right in every respect, and that the record which you were to keep in your office, at least, had the day of the month on it?

A. It must have escaped the attention of the writer, and I did not observe it; no doubt it was a fault.

Q. 81. Was not the Mission or Pueblo of San Francisco de Asis a Cabecera of the Second District in December, 1846, when you were Alcalde at San José?

A. Yes, sir. I believe so.

Q. 82. In the absence of a Judge of Letters, was it not the Alcalde of the Cabecera of the district who exercised the functions properly belonging to the Judge of Letters?

[This, and the preceding questions are objected to by counsel for claimant, because they inquire into matters of law.]

A. I don't remember whether that was the case in those times or not. I was also Judge of First Instance at one time. I don't remember whether I was so in December, 1845, or not.

Q. 83. Don't you know that in December, 1845, the Alcalde of San Francisco held the powers of the Judge of Letters, which is the act of possession you claim to exercise, and that at that time you had no such powers?

[Question objected to by counsel for claimant, for the same reason as the foregoing.]

A. Well, we did make the act of possession, I presume, because it was thought proper that it should be done so by the party in interest. Castellero made no remark about that, but as the matter is now brought to my mind, I remember that I was Judge of First Instance at that time, and perhaps Castellero availed himself of that.

Q. 84. Where were you during the months of November and December, 1845, and the month of January, 1846?

A. I cannot remember. I was Alcalde of San José; it was my residence. I may have been there. It was so long ago that I can't remember whether I was away from there or not, during that time,

Q. 85. Don't you know that you did not sign these papers in 1845, at all, and not until the year 1848, or later, and after you had made the acquaintance of Alexander Forbes?

A. No, sir. I signed the documents at their dates, because my signature shows that.

DIRECT RESUMED.

Questions by counsel for claimant.

Q. 86. You have been asked by the counsel for the United States, how many times you have appeared as a witness in this case; do you not remember, what the record shows to be the fact, that you were first called as a witness in this case on behalf of the Government?

A. Yes, sir.

Examination closed.

ANTONIO MA. PICO.

Sworn to and subscribed, August 2d, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 2, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT A. M. PICO No. 1.

SAN FRANCISCO, December 30th, 1852.

On this day, before Commissioner Harry J. Thornton, came Antonio Maria Pico, a witness in behalf of the claimants, Maria Z. B. Berreyesa, petition No. 503, and was duly sworn, his evidence being interpreted by the Secretary.

[The United States Associate Law Agent was present.]

Question by claimant's counsel, in claim No. —, on file before the Board of Land Commissioners.

QUESTION 1st: What is your name, age, and place of residence?

ANSWER. My name is Antonio Maria Pico; my age is 44 years, and place of residence is at San José.

Q. 2. Were you acquainted with the late José Reyes Berreyesa?

A. I was acquainted with him.

Q. 3. Do you know, or not, whether a grant of land was made to him by the Mexican Government; if so, where is said land situated?

A. I do know that a grant of land was made to him by Gov. Alvarado, which is situated about four leagues from the town of San José, and adjoins the Rancho de los Capitancillos on the South.

Q. 4. Do you know whether he built a house on said land and occupied it; and whether he made any improvements on it, and what were they?

A. He built a house on said land in 1837, and occupied it with his family. He made a corral on it; had a field in cultivation; also a garden, and different kinds of fruit trees. It has been constantly occupied and cultivated from 1837 to the present time.

Q. 5. Was judicial possession of said land solicited or given?

A. Judicial possession was not asked or given further than the settling of the boundary between him and Justo Larios, by order of Gov. Alvarado.

ANTONIO MA. PICO.

Service acknowledged,

R. GREENHOW, Asso. Law Agent.

Sworn to and subscribed before me, on this 30th Dec., 1852.

HARRY J. THORNTON,
Commissioner.

[Endorsed.]

“No. 503—Maria Z. B. Berreyesa et al. Near the Pueblo of San José. Deposition of Antonio Maria Pico, taken before Commissioner Harry J. Thornton. Filed in office, December 30th, 1852. George Fisher, Secretary. Recorded in Evidence B., Vol. 2, page 397. George Fisher, Secretary.”

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UNITED STATES LAND COMMISSION, }
San Francisco, December 30th, 1854. }

On this day, before Commissioner Alpheus Felch, came Antonio Maria Pico, a witness on behalf of the claimant, Maria Z. B. Berreyesa, in Case No. 503, who, after being duly sworn, deposed as follows, his evidence being interpreted by the Secretary:

Questions by Mr. Howard, attorney for claimants.

QUESTION 1st: Please state your name, age, and place of residence?

ANSWER. My name is Antonio Maria Pico; my age is forty-five years; and I reside at San José, in California.

Q. 2. Are you acquainted with the Rancho Cañada de los Capitancillos, claimed in the case by the heirs of José Reyes Berreyesa; if yea, state what you know in relation to the occupation of it.

A. I know the rancho mentioned in the question. Said Berreyesa himself occupied it with his family, and had houses and cattle on it, and cultivated it. I have seen eight houses of his there at the same time. This occupation has existed since the year 1835, when I was Alcalde, and was upon the rancho. Some of the houses were at the mouth of the Arroyo called Alamitos, which comes down from the mine of Almaden. The other houses were to the northwest of these and on another Arroyo. The cultivation was near the houses in both places, some on the Alamitos and some on the other Arroyo near the

houses. There was also cultivation at the junction of the Alamitos with the Arroyo Seco.

Q. 3. On whose land is the New Almaden Mine situated?

A. On Berreyesa's.

Q. 4. Do you know who first discovered and worked said mine?

A. Don Antonio Suñol and Don Luis Chavoya, and an old man named Robles, first discovered and worked the mine. Don Antonio Suñol has told me that he worked there in 1824.

Q. 5. What was the connection of Andres Castellero with this mine, so far as you know?

A. José Reyes Berreyesa showed him the mine, and offered him a part of it. This was in 1845. They had an understanding or agreement before me, but Castellero never complied with it. He went to Mexico. I am not very certain when he went, but think it was in 1846. I have never seen him since he left. I think it was in the latter part of 1845, or early in 1846, that he left. I live about three leagues from said mine.

Q. 6. Did Castellero ever work the mine?

A. The company commenced to work it, but did not work to any extent. Castellero applied to me to go and give him possession of the mine, according to the Mexican custom. I went there with him and pointed out the boundaries which he should take, but no fixed possession was given to him. There was a question between Castellero and Berreyesa. Berreyesa would not consent that possession should be given to Castellero unless he would admit that he (Berreyesa) should have an interest in the mine. In consequence of this, I did not give any fixed possession of the land. At that time they were assaying the mineral.

Questions by Mr. Blanding, Associate Law Agent.

Q. 1. What was the character of the understanding or agreement mentioned in your answer to the 5th question?

A. The nature of it was that Berreyesa was to have shares in the mine, and that he was to be paid for the wood and limestone used in the establishment. After Castellero left, Berreyesa told me he was going to claim of the agent of Castellero the fulfillment of the contract. He made the reclamation of Padre Real, who had charge of all the business (in connection with one other person) in the mine. I saw the letter which Berreyesa wrote to the Padre and the other person having charge there, demanding a compliance with the contract. The family of Berreyesa afterwards told me the letter had been presented. This was about the time the American war broke out. Berreyesa, the grantee, was killed.

Q. 2. Were the shares which Berreyesa was to have to be derived from Castellero, or from whom?

A. A company was to be formed, and Berreyesa claimed that he should have a right as the owner of the land.

Q. 3. Who formed the company; and were there any writings used in forming it?

A. José Castro, Padre Real, Secundino Robles, Teodoro Robles and Andres Castellero formed the company. Berreyesa did not belong to the company, because they would not admit him. He was always opposed to it, because he was the owner of the rancho. I have seen one writing which expressed the terms of the agreement in relation to the company. It was signed by the members of the company above named. Castellero always recognized the right of Berreyesa to the land.

Q. 4. How do you know that Castellero recognized Berreyesa's right to the land?

A. That matter is expressed in the contract that they had between them.

Q. 5. State all you know to show that the mine is on the land of Berreyesa.

A. It is on the land of the Berreyesa's, because I have seen the land and have seen the papers, and I have been one of the authorities of the jurisdiction.

Q. 6. If Berreyesa had shares in the mine, how could Berreyesa refuse to allow you to give possession to Castellero, on the ground that he had none?

A. He had no shares. They would not give him any.

Questions by Mr. Howard.

Q. 1. How long after the commencement of the war between Mexico and the United States was it, before the company commenced working the mine regularly by taking out cinnabar?

A. I cannot remember when it was that they commenced. Before the war they worked it a little, and after the war commenced they begun to sell shares, and the work was then increased.

ANTONIO MA. PICO.

Subscribed and sworn to before me, this 30th day of December, 1854.

ALPHEUS FELCH,
Commissioner.

[Endorsed as follows:]

No. 503—Maria Z. B. Berreyesa. Near the Pueblo of San José. Deposition of Antonio Maria Pico, taken before Commissioner Alpheus Felch. Filed in office, December 30, 1854.

George Fisher, Secretary. Recorded in Evidence B., Vol. 2, page 158. George Fisher, Secretary.

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OFFICE OF THE SURVEYOR GENERAL }
Of the United States for California. }

I, J. W. Mandeville, Surveyor General of the United States for the State of California, and as such having in my office, and in my charge and custody, the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify, that the eight preceding and hereunto annexed pages, numbered from one to eight inclusive, exhibit a true, full, and correct copy of the original depositions of Antonio Maria Pico, filed in Case No. 503 on the docket of said Board, as the same now appears on file among the Archives of my office, and in my charge and custody.

[SEAL.] In testimony whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this 30th day of July, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

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EXHIBIT A. M. PICO, No. 2.

Escritura de Compañia que el Sr D^a Andres Castellero Capitan de Cavalleria permanente, celebra con el Sr. Comandante Generral D^a José Castro, los Sr^{es} Secundino Robles Teodoro Robles, y una Sesion voluntaria que han hecho los Compañeros perpetuam^{te} al R. P. Fr. José M^a del Refugio Suares del Real, de una Mina de Plata Oro y Azogue en el Rancho de D^a José Reyes Berreyesa en la jurisdiccion de el Pueblo de San José de Guadalupe.

Art^o 1^o.—El Sr; D^a Andres Castellero arreglandose en un todo á la ordenanza de Minería hace formal compañia perpetuamente con los mencionados Sr^{es} en esta forma la mitad de la Mina que es de la que puede disponer se dividira en tres acciones en esta forma cuatro Barras al Sr Comandante General cuatro Barras á los Sr^{es}. Secundino y Teodoro Robles, y las otras cuatro al R. P. F. José M^a. del Refugio Z. del Real, en clase de donacion perpetua.

Artº. 2º.—Ninguno de los Compañeros podrá vender ó enagenar ninguna de sus acciones, de manera el que verificare dicha enagenacion perdera su drº. quedando resumida en los demas compa^s.

Artº. 3º.—Los gastos se haran en proporcion a las acciones llevandose una cuenta formal por un contador que se pagará del fondo comun.

Artº. 4º.—Arreglandose en un todo á lo que previene la Ordenanza de Minería, cualquier diferencia se resolverá por los mismos compañeros.

Artº. 5º.—Dirigira las labores gastos y trabajos de la Mina Dⁿ. Andres Castellero y en su defecto el R. P. Fr José M^a. Z. del Real.

Artº. 6º.—No se extraerá de los productos mas cantidades que las que se necesiten para el arreglo de la negociacion hasta que se arreglen los trabajos y cualquier cantidad que sea á hade ser con consentimiento de los compañeros hasta que este arreglada la negocⁿ.

Artº. 7º.—Estos convenios se autorizarán á presencia del Sr. Prefecto del 2º. Distrito Dⁿ. Manuel Castro, depositandose el documento original en el archivo del partido, y dandose una copia certificada por S. S^a a los interesados.

Mision de Santa Clara dos de Noviembre de mil ochocientos cuarenta y cinco.—Andres Castellero.—Por el Sr. Com^{te} General Dⁿ José Castro, Andres Castellero—Fr José M^a. del R. S. del Real—Por Secundino y Teodoro Robles. Francº. Arce.

Es copia fiel del Original a la que me remita. Mision de Santa Clara Diciembre ocho de mil ochocientos cuarenta y cinco.

MAN^L CASTRO.

TRANSLATION OF EXHIBIT A. M. PICO, No. 2.

Writing of Partnership which the Señor Don Andres Castellero, Captain of permanent cavalry, enters into with the Commanding General, Don José Castro, the Messrs. Secundino Robles, Theodore Robles, and a voluntary cession, which the partners have made, forever, to the Rev. Father Friar José Maria del Refugio Suares del Real, in a mine of silver, gold and quicksilver, in the Rancho of Don José Reyes Berreyesa, in the jurisdiction of the Pueblo de San José of Guadalupe.

Article First.—The Señor Don Andres Castellero, conforming strictly to the mining ordinance, forms a regular company forever, with the aforesaid gentlemen, in this form: The half of

the mine, which is what he can dispose of, shall be divided into three shares in this manner : four barras to the Señor Commanding General, four barras to the Messrs. Secundino and Theodore Robles, and the other four to the Rev. Father Friar José Maria del Refugio Suares del Real, as a perpetual gift.

Article Second.—None of the partners shall be able to sell, or alienate any of their shares, so that he who should verify said alienation, shall lose his right, the same reverting to the remaining partners.

Article Third.—The expenses shall be borne in proportion to the shares, an accountant keeping a just account of the same, who shall be paid from the common fund.

Article Fourth.—In strict conformity with the provisions of the mining ordinance, whatever difficulty may arise shall be settled by the partners.

Article Fifth.—Don Andres Castellero shall direct the operations, expenses, and works of the mine, and in his absence the Rev. Father Friar José Maria del Refugio Suares del Real.

Article Sixth.—There shall not be extracted of the products a greater quantity than what is needed for the arrangement of the business, until the operations are regulated, and whatever quantity that is extracted, has to be with consent of all the partners, until the final arrangement of the business.

Article Seventh.—This contract shall be ratified in the presence of the Prefect of the Second District, Don Manuel Castro, depositing the original document in the archives of that place, and giving a certified copy of the same for security to the parties interested.

Mission of Santa Clara, second of November, one thousand eight hundred and forty-five.—Andres Castellero.—For the Commanding General, Don José Castro, Andres Castellero.—Friar José Maria del Refugio Suares del Real.—For Secundino and Theodore Robles, Francisco Arce.

This is a true copy of the original, to which I refer. Mission of Santa Clara, December eighth, one thousand eight hundred and forty-five.

MANUEL CASTRO.

DEPOSITION OF DANIEL SMALL.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Daniel Small, a witness on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is Daniel Small, my age is 44 years, and I reside in La Fayette, Contra Costa county.

Q. 2. What is your occupation, and what offices, if any, have you held in that county?

A. I am a farmer by occupation. I have been county surveyor of Contra Costa county from 1853 or 1854 to 1859.

Q. 3. Do you know Robert Birnie, who now lives in Oakland, and who once lived in Contra Costa county?

A. I do. I have known him since the fall of 1851 or beginning of 1852. He lived in my neighborhood in Contra Costa county for some years, and then removed.

Q. 4. Do you know what was, and is, his reputation in the community in which he lived?

A. I do.

Q. 5. What was, and is, his reputation for truth and veracity in that community?

A. It was bad.

Q. 6. Judging of his character by his reputation, would you believe him on his oath?

A. I would not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Birnie, by which your interest and his have been brought in conflict?

A. None at all.

Q. 8. How soon did Birnie's reputation commence to be bad?

A. I don't know when it commenced.

Q. 9. Has not Birnie a great many enemies in the community of which you have spoken, who have become so through lawsuits, which have arisen from his connection with the Welsh family?

A. I do not know; in fact, I don't know of any lawsuits which he has had with regard to the Welsh family.

Q. 10. State some specific act, if you can, which has served as a basis for this reputation.

A. I was present at the trial of a case where there were many witnesses called to impeach the character of Birnie. Mr. Birnie called one witness, Judge Brown, to the stand, to sustain his character; and as nearly as I recollect the Judge's testimony, he declared that he knew Birnie in Oregon, where his reputation was good, but since he came here it was bad. His reputation in the community is, that he is a professional witness, and will testify on the side for which he is paid.

Q. 11. Do you know of your own knowledge, or have you ever heard of Birnie ever having been a witness in favor of the settlers; but has he not, on the contrary, frequently been a witness on the part of the grant-holders, and thereby aroused the enmity of a large portion of the community with whose interests he came in conflict?

A. I never knew him on the stand but twice, and neither of those cases involved a title to land. I have heard other people speak of his giving testimony.

Q. 12. Who asked you to come here and testify?

A. Mr. Highton, in company with Mr. Mills, served a subpoena on me, and requested me to come.

Deposition closed.

DANIEL SMALL.

Sworn to and subscribed, this 2d day of August, A. D. 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 2, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF ELAM BROWN.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. } No. 420.
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Elam Brown, a witness produced on behalf on the claimant Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is Elam Brown; my age is 63 years, and I reside in Lafayette, Contra Costa county.

Q. 2. What is your occupation, and what offices, if any, have you held in this State?

A. I am a farmer, stock-raiser, and miller. In 1849, I was a member of the Convention that framed the Constitution of this State; in 1850, I represented the district of San José in the Assembly; in 1851, I represented the county of Contra Costa; previous to the organization of the government I had a commission from Governor Mason, as Alcalde.

Q. 3. Do you know one Robert Birnie, who formerly lived in your county, and now in Oakland?

A. I do; I first knew him, I think, in the fall of 1849; about 1850, he married in Contra Costa county, and resided there until three or four years ago.

Q. 4. Do you know what was his reputation in the community in which he then lived?

A. I do.

Q. 5. What was his reputation there for truth and veracity?

A. It was not good.

Q. 6. Judging of his character by his reputation, would you believe him on his oath?

A. I should not rely on his oath.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. When did Birnie's reputation commence to be bad?

A. I had known him two or three years before anything occurred to cause me to lose confidence in him; his reputation became bad by degrees; he was charged with doing one bad thing here, and one bad thing there, until finally people began to say that they would not believe him under oath; this is what I have heard, not what I know of my own knowledge; I am on no unfriendly relations; nothing has ever occurred between us; I am sorry to be here to-day testifying against him.

Q. 8. Were not these charges made by persons who had become unfriendly to Mr. Birnie, in consequence of the litigation of land titles, and because he was connected by marriage with the Welsh family, who claimed a ranch in that part of the country?

A. I have heard of no litigation in titles to land that he had; he has had suits about debts; I do not attribute his reputation to any land difficulties.

Q. 9. Were these charges then made by persons to whom he was indebted, and who became unfriendly towards him because they were unable to collect what was due them?

A. His character became notorious because he attempted to shift himself out of debt; I have heard of several transactions where he put his property out of his hands to avoid payment of his debts; but I don't know the particulars.

Q. 10. Would you yourself believe Mr. Birnie on oath?

A. I consider him a dangerous man; and I believe him deficient in those principles of honesty which would make him a reliable witness.

Q. 11. And yet you are unable to state any transaction between you and Mr. Birnie, or between Mr. Birnie and any other person, of your own knowledge, upon which you base your opinion that he is a dangerous man; is not your opinion founded upon a common prejudice which seems to exist against Mr. Birnie, which cannot be traced to any just cause?

A. I should regret very much to permit myself to harbor a prejudice against any person on common report; I would not come into court to testify against a man's reputation, unless that reputation had grown out of things that actually occurred.

Q. Who asked you to come here and testify in this case?

A. Mr. Highton and Mr. Mills.

Examination closed.

ELAM BROWN.

Sworn to and subscribed, this 2d August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 2d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF ANDREW J. COFFEE.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, CAL., August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Andrew J. Coffee, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of said Board of Commissioners, and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and E. Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

A. My name is Andrew J. Coffee; my age is 41 years, and I reside in Alameda county, near Oakland, where I have resided since the spring of 1855.

Q. 2. Do you know one Robert Birnie, who lives in Oakland?

A. I do.

Q. 3. Do you know what is his reputation in the community in which he lives?

A. I do.

Q. 4. What is his reputation for truth and veracity in that community?

A. I don't think it is very good, where his interest might be concerned.

Q. 5. Judging of his character by his reputation, would you believe him on oath?

A. That would depend upon the surroundings altogether. If he had any interest in telling a falsehood, I would not believe him on oath.

Q. 6. You were once an officer in the United States army, were you not?

A. Yes; I was Paymaster in the army from 1846 to 1859, when I resigned.

CROSS-EXAMINATION.

Questions by counsel for United States.

Q. 7. Have you ever had any legal or other controversy with Mr. Birnie, by which your interests and his have been brought in conflict?

A. I never had any controversy with Mr. Birnie on his own account; he acted as the agent of Mr. Francisco Galindo, with whom I had a controversy about a title to property. The circumstances were these: Mr. Galindo and myself compromised our conflicting claims to certain lands in Oakland; the attorneys in making out the deeds neglected to include a block of ten lots of land; when that omission was discovered I refused to fulfill the contract unless these lots were included in the deed. Mr. Birnie, who was attending to the business of Mr. Galindo, promised, if I would have the compromise deeds signed by the attorney who was acting for the interest I represented, that he would have a conveyance made for the ten lots at the same rate of compensation. He subsequently refused to make the conveyance. I think this occurred in the fall of 1858.

A man that would deceive me in a business transaction, I would not believe on his oath; and besides that, I have heard his reputation very frequently attacked in conversation.

Q. 8. Would you have believed Mr. Birnie on oath prior to that time?

A. I never heard him questioned until about that time; since then he has been an object of public attention in connection with defective titles.

Q. 9. You state in your answer to question 5th, that you would not believe Mr. Birnie on oath if he had any interest in telling a falsehood. Is not this declaration based upon the controversy which you have described, and on similar controversies respecting land titles in and about Oakland, in which the interest of yourself and that portion of the community with which you hold friendly relations, have been brought into contact with Mr. Birnie and that portion of the community with which he holds friendly relations?

A. I think that those controversies brought him more prominently before the public, made his character better known, and extended his reputation to a greater degree than would have been the case had those controversies not occurred.

Q. 10. Do you not mean by your last answer, that those controversies and his action therein, brought him more prominently

before that portion of the public who were affected by these controversies, and that the general reputation which you have described is among that part of the community, and not among the community as a whole?

A. His controversy was with all the people in Oakland. He professed, as agent, to represent the title of the whole city.

ANDREW J. COFFEE.

Sworn to and subscribed, this 2d August, 1860, before me,

W. H. CHEVERS,

U. S. Commissioner.

Filed August 2d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF FRANCIS M. WARMCASTLE.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Francis M. Warmcastle, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Francis M. Warmcastle; my age is 42 years, and I reside in Contra Costa county, within two miles of the village of Pacheco. I have resided in the county since February, 1850, and on my present farm since 1855.

Q. 2. Please state your occupation, and what offices, if any, you have held in that county?

A. I am by profession a lawyer. I practised my profession until the spring of 1850, when I was elected County Judge of Contra Costa county, which office I held until near the 1st of January, when I resigned for the purpose of taking my seat in the Assembly of this State, to which place I had been elected in 1853. I served again as a member of the Assembly in the session of 1858.

Q. 3. Do you know a man named Robert Birnie, who now resides in Oakland; if yea, how long have you known him?

A. I do. I have known him since the spring or summer of 1850. He lived in Contra Costa county, in my neighborhood, from the summer of 1850 until about the year 1856.

Q. 4. Do you know Robert Birnie's reputation in the community in which he lived?

A. I know what his reputation was, and is, in the community in which he lived during the years I have named.

Q. 5. What was, and is, his reputation for truth and veracity in that community?

A. It is bad.

Q. 6. Judging of his character from his reputation, would you believe him on his oath?

A. I would not, unless I was satisfied he had no motive for telling a falsehood.

CROSS-EXAMINATION.

Questions by counsel for United States.

Q. 7. Have you ever had any legal or other controversy with Mr. Birnie, by which your interest and his have been brought into conflict?

A. No, sir. I never had any controversy of any character with him.

Q. 8. In your answer to question 6th you state that you would not believe Mr. Birnie on oath, unless satisfied that he had no motive for telling a falsehood. Does this apply to Mr. Birnie more particularly than to people generally; and if so, why?

A. From his reputation in the community, and my acquaintance with that reputation, I could not believe him unless I was satisfied that he had no motive for misrepresentation.

Q. 9. Does this rule apply to every person; and please state why particularly to Mr. Birnie?

A. No, sir; there are many persons in my community whom I would believe on oath, when it would be for their interest to testify falsely; but Mr. Birnie is not one of that class of men, from my knowledge of his reputation. My impression is derived from my acquaintance with Mr. Birnie through public rumour for a number of years,

Q. 10. Is not that impression also derived from some specific act of Mr. Birnie's? and if so, please state it.

A. No, sir, I could not mention any specific act.

Q. 11. Do you not know that the community from whom you derived these impressions, have been, as a body, in direct conflict with Mr. Birnie, with regard to land titles?

A. No, sir; I am not aware that Mr. Birnie had any conflict with the community in which he lived about his interest in land titles.

Examination closed.

FRANCIS M. WARMCASTLE.

Sworn to and subscribed this 2d day of August, 1860, before
me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 2, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF DAVID BOSS.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came David Boss, a witness produced on behalf of the claimant in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is David Boss; my age is 62 years; I live in Contra Costa county, about five miles south of Martinez, where I have lived since 1850.

Q. 2. What is your occupation?

A. I am a farmer.

Q. 3. Do you know a certain Robert Birnie, who resides at present in Oakland; if yea, how long have you known him?

A. I do. I have known him ever since the spring of 1850. He resided in my neighborhood for about six years; he then went to live in Oakland.

Q. 4. Do you know his reputation in the community in which he lived, for those six years?

A. I do.

Q. 5. What was and what is his reputation in that community for truth and veracity?

A. It is bad.

Q. 6. Judging of his character by his reputation, would you believe him on oath?

A. No, sir; I could not believe him on oath.

CROSS EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Mr. Birnie, by which your interest and his have been brought into conflict?

A. No, sir.

Q. 8. What was Mr. Birnie's occupation during the six years you knew him?

A. He sometimes farmed it a little, and sometimes run about a good deal from place to place.

Q. 9. What act did Mr. Birnie commit during those six years, which forbids your believing him on oath?

A. Just by the way he conducted himself generally.

Q. 10. Cannot you state some particular act, by which his reputation became bad in the community in which he lived, as expressed in your answer to question 5th?

A. When I find that a man whose word is not good, whose note is not good, I would not believe him on oath. I regard Mr. Birnie as a dangerous man, who would take all sorts of advantages. I would not trust him out of my sight. He is a worthless man, who lives on the labor of other people. For my part, I have made my money by hard work.

Q. 11. State by what means you came here to testify in this case?

A. Because I was subpoenaed to come here.

Q. 12. Before you were subpoenaed, were you not questioned with regard to your knowledge of Mr. Birnie by a Mr. Highton?

A. He asked me how long I had known him, that is about all. He stopped only a few moments.

Q. 13. Did he not tell you that his business in that part of the country was to collect testimony tending to show the bad character of Mr. Birnie?

A. No, he did not tell me anything about that particularly. Mr. Mills told me that Mr. Highton was about that business.

Q. 14. Since the year 1850, have you ever before been called to testify with regard to Mr. Birnie's character?

A. No, nothing about his character. I was called once to testify that he had taken some lumber from my son. I should call it stealing. I don't know what they called it, but he was acquitted by the judge. This was, I think, in 1852 or 1853.

Q. 15. Have you not personally had a bad opinion of Mr. Birnie since this transaction?

A. I had it before and since.

Q. 16. Can you state any similar transaction before the one mentioned, which induced you to have a bad opinion of Mr. Birnie before that time?

Q. 17. His brother-in-law, William Welch, told me that he stole his name and put it down on a piece of paper without his (Welch's) leave. I understood him to say that Birnie had forged his name, and I believe that Welch told the truth about it at the time.

Examination closed.

DAVID ^{his} ~~X~~ BOSS.
mark

Sworn to and subscribed, this 2d August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 2d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF NATHANIEL JONES. .

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2d, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Nathaniel Jones, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present: Mr. Peachy, of counsel for claimant, and Mr. Randolph, for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Nathaniel Jones; my age is 40 years, and I reside in the town of La Fayette, Contra Costa County, where I have resided in that county since 1848, excepting two years when I lived in Martinez.

Q. 2. What is your occupation, and what offices, if any, have you held in the county?

A. My occupation is that of a farmer. I held the office of Sheriff in 1850 and 1851. I was Public Administrator a short time after. I was then elected a Supervisor of the County. I am the Corresponding Secretary of the Contra Costa Agricultural Society, and Vice President of the Bay District Agricultural Society, representing Contra Costa County.

Q. 3. Do you know one Robert Birnie, who is at present residing in Oakland; if so, how long have you known him?

A. I do. I have known him since 1850. He lived in my neighborhood in that county, some four or five years.

Q. 4. Do you know what was and is his reputation in that community?

A. I do.

Q. 5. What was and what is his reputation for truth and veracity?

A. It is bad.

Q. 6. Judging of his character by his reputation, would you believe him on oath?

A. I would not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Mr. Birnie, by which your interest and his have been brought into conflict?

A. I have not.

Q. 8. What was Mr. Birnie's occupation, while you were acquainted with him?

A. I have never known of his having any occupation. I never knew him to do anything for a livelihood.

Q. 9. Who asked you to come and testify as a witness in this case?

A. I was subpoenaed by Mr. Highton, who, with Mr. Mills, asked me to come.

Q. 10. What was said to you about coming, before you were subpoenaed?

A. There was not much said to me, anyway. Mr. Highton asked me my opinion of Birnie's general character. I told him it was bad.

Q. 11. Did not Mr. Highton say he was looking for testimony to impeach Mr. Birnie's character, and was it not after he said this, if he did say so, your reply was, that it was bad?

A. There was something said about impeaching Mr. Birnie's character, but I cannot say positively whether it was before or after. Mr. Mills also inquired of me relative to my neighbors, and my reply was, that I thought any of the old settlers would testify the same as I would. By "old settlers" I don't mean squatters, but I mean the old residents of the county.

Q. 12. State whether or not Mr. Birnie, at the time you knew him, was interested in the Welch ranch, and how?

A. When I first knew him, he was not. He afterwards acquired an interest, by marriage with one of the heirs, in 1850 or 1851.

Q. 13. In your answer to question 6th, you state that, judging of Mr. Birnie's character by his reputation, you would not believe him on oath. Is not the reputation which you speak of, amongst persons who have settled upon the Welch ranch, or

upon what is claimed as the Welch ranch, and who have come in conflict with the owners?

A. It is not, no more than among other citizens of the county.

Q. 14. State some act of Mr. Birnie's which has caused the bad reputation you speak of, among the community in which you knew him?

A. It is not from any single act of his, but it is from his want of occupation, and the universal belief among people that he swears falsely and procures false evidence in land cases; he is utterly worthless, and he is a loafer. If I were to start out to find a man who thought well of his character, I should not know where to go to find him.

Q. 15. What land cases do you refer to?

A. Anywhere where he could get a fee for swearing falsely, and procuring false evidence.

Q. 16. Please be more definite in your answer to the last question.

A. My impression is, that he was or is employed in the New Almaden case. I cannot state them particularly; I refer to cases in San Francisco and Contra Costa, and to the general reputation that he is engaged in that kind of business.

Q. 17. Was it through Mr. Highton that the general impression prevails in your mind, that Mr. Birnie is employed in the Almaden case?

A. It is not.

Q. 18. Did you ever know Mr. Birnie, of your own knowledge, to give testimony in any other case than that of New Almaden?

A. I cannot state of my own knowledge.

DIRECT EXAMINATION RESUMED.

Questions by counsel for claimant.

Q. 19. As the counsel for the United States has thought proper to inquire into particular acts of rascality committed by Mr. Birnie, as the foundation of the general opinion entertained by the community that he will swear falsely, and endeavor to procure false testimony for money, I will take the liberty of asking you, if it was not generally believed in Contra Costa county, by all persons acquainted with Birnie's character, that when he swore in this case to the existence of an important letter in possession of James Alexander Forbes, which the latter swore had been stolen from him, he, Birnie, swore falsely?

A. I do not know that the particular testimony of Birnie, in that instance, was ever known or discussed in our county. I

never had any personal dealings with Mr. Birnie, and on account of his character never desired any.

Examination closed.

NATHANIEL JONES.

Sworn to and subscribed this 2d August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 2, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF BEVERLY R. HOLLIDAY.

—

DISTRICT COURT OF THE UNITED STATES. }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Beverly R. Holliday, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is Beverly R. Holliday; my age is 36 years, and my residence is about three miles south of Martinez, Contra Costa county; I have resided in the county since 1850, at Martinez until 1854, since then at my present residence.

Q. 2. What is your occupation, and what offices, if any, have you held in your county?

A. I am a farmer by occupation; I was deputy sheriff in 1850; in the fall of 1850 I was appointed deputy treasurer, and held that office until I was appointed treasurer in 1852, to fill a vacancy; I was twice a member of the Court of Sessions; I am now public administrator; last year I was deputy assessor.

Q. Do you know a man named Robert Birnie, who now lives in Oakland?

A. I do.

Q. 4. How long have you known him?

A. Nearly ten years; he lived in my neighborhood in Contra Costa county several years.

Q. 5. Do you know his reputation in the community in which he lived?

A. Yes, sir.

Q. 6. What is his reputation for truth and veracity in the community in which he lived?

A. At the present time it is not good; when he first came there (from Oregon, I believe) his reputation stood as fair as that of any other stranger, but as he became known his reputation got to be bad.

Q. 7. Judging of Birnie's character from his reputation in that community, would you believe him on oath?

A. From what I know of him I could not believe him under oath, where he had any pecuniary interest in testifying falsely; in a matter entirely foreign to his interest, I can't say I would not believe him.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 8. Have you ever had any legal or other controversy with Mr. Birnie, by which your interests have been brought in conflict?

A. I have; I bought his property for taxes at one time, and brought suit for the possession, which the Court decided against me; this was in the spring of 1853; our relations are friendly, I never had any difficulty with him in any other way.

Q. 9. In your answer to question 6, you state Birnie's reputation stood fair when he first came there; was it before or after his marriage in the Welch family that his reputation commenced to be bad?

A. So far as I know, it was after.

Q. 10. Did not this reputation to which you have testified, arise from certain lawsuits in which he became concerned by his connection with the Welch ranch?

A. Perhaps they did in part, not all; shortly after his marriage his pecuniary credit became bad, and in the community he got such a reputation that anything that was stated as coming from Birnie would not be believed.

Q. 11. Has not Birnie from his connection with the Welch family many enemies in the community of which you have spoken, who have given a tone to that community, which has resulted in the bad reputation you speak of?

A. I think that it is not altogether the result of his connection with the Welch family, though that might have helped to make his reputation bad.

Q. 12. Prior to Birnie's marriage do you know of any specific act of his which produced a reputation in the community unfavorable to his character for veracity?

A. I don't remember of any.

Q. 13. Who asked you to come here and testify?

A. Mr. Highton, in company with Mr. Mills, served a subpoena on me, and requested me to come.

DIRECT RESUMED.

Questions by counsel for claimant.

Q. 14. Is not Birnie a half breed Indian?

A. It is so reported; I always understood that he was; I have heard that he has so stated it.

Q. 15. Was not Mr. Birnie regarded by the community in which he lived as a low, mean man, devoid of principle and truth?

A. So far as I know, he was?

B. R. HOLLIDAY.

Sworn to and subscribed, this 2d August, 1860, before me,

W. H. CHEVERS,

U. S. Commissioner.

Filed August 2d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF NICHOLAS HUNSAKER.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Nicholas Hunsaker, a witness produced on behalf of the claimant Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows :

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age and place of residence?

ANSWER. My name is Nicholas Hunsaker; my age is thirty-five years, and I reside in La Fayette, Contra Costa county.

Q. 2. What is your occupation, and what offices, if any, have you held in the county?

A. My occupation is that of farming and stock-raising; I have been sheriff of the county two terms, from 1851 to 1853, and from 1855 to 1857.

Q. 3. Do you know a man named Robert Birnie, who now lives in Oakland?

A. I do.

Q. 4. How long have you known him, and where?

A. My first acquaintance with him was in the spring of 1850; he lived from that time until 1856 in Contra Costa county, in my neighborhood.

Q. 5. Do you know what was and is his reputation in the community in which he lived?

A. I do; when I first knew him nobody knew anything about him, he was a stranger; when he became known, after he resided there some time, his reputation was not good. He had a good many lawsuits.

Q. 6. What is his reputation for truth and veracity?

A. It is not good—bad.

Q. 7. Judging of his character from his reputation, would you believe him on oath?

A. That is a hard question: judging from his reputation, I could not believe him on oath.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 8. You state that your occupation is that of farming: please state under what title you hold your land.

A. My father holds a conditional deed for the land from Romero, on whose ranch it was supposed to be. It is now claimed by the owners of the Moraga and San Ramon titles. It is not claimed to be on the Welch ranch.

Q. 9. Is not the community of which you speak, among whom the reputation of Birnie is bad, composed nearly altogether of persons who have settled upon land claimed under a Spanish grant?

A. The community of which I speak is composed generally of persons who have purchased their lands from the holders of Mexican grants. Many other persons in that community reside in Martinez, and own either no land or merely town lots.

Q. 10. What was Mr. Birnie's occupation from 1850 to 1856?

A. I think one year Mr. Birnie farmed, I don't know to what extent. Since that time I don't know that he has had any particular occupation.

Q. 11. Did not Mr. Birnie, soon after you knew him, marry one of the heirs of the Welch ranch, and did not his reputation then commence to be bad?

A. Yes, sir; it was about a year after his marriage that I first heard his character spoken of as being bad.

Q. 12. Did not this arise from the fact that after his marriage into the Welch family, he had, as you express in your answer to question 5, a good many lawsuits?

A. I think that was the cause of his character being first spoken of as bad.

Q. 13. Can you state any specific act of Mr. Birnie's, outside of these lawsuits, which caused his reputation to be bad in the community in which he lived?

A. Not to my knowledge.

Q. 14. Then may not what is called in the direct examination his bad reputation, be nothing more than the prejudices of

the people with whom he has been brought in contact in those lawsuits?

A. Outside of lawsuits, it was said he employed a man to steal barley, which was in the custody of the sheriff. This is the only act outside of litigation, that I remember. With regard to those lawsuits, I have heard a great many people state that they would not believe him under oath.

Q. 15. Were not these people, who said they would not believe him under oath, some way interested in those lawsuits?

A. Some were, and some were not.

Q. 16. Who asked you to come here to testify?

A. Mr. Highton.

NICHOLAS HUNSAKER.

Sworn to and subscribed this 2nd August, 1860, before me,

W. H. CHEVERS,

U. S. Commissioner.

Filed August 2nd, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JAMES L. SWANEY.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 3d, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came James L. Swaney, a witness produced on behalf of the claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

A. My name is James L. Swaney; my age is 30 years; and I reside in Martinez, Contra Costa county.

Q. 2. What is your occupation, and how long have you lived in Martinez?

A. My occupation is that of butcher. I have lived in Martinez and its vicinity since 1853.

Q. 3. Do you know Robert Birnie; if so, how long have you known him?

A. I do. I have known him since the spring of 1854.

Q. 4. Do you know his reputation in the community in which he lived?

A. I do.

Q. 5. What was, and is, his reputation for truth and veracity in the community in which he lived?

A. It was, and is, bad.

Q. 6. From what you know of his reputation in the respect just mentioned, would you believe him on oath?

A. Not if he had any interest in the matter. In a matter in which he had no interest I don't know but what I would believe him,—I am not sure I would then.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Birnie, by which your interests and his have come in conflict?

A. No, sir.

Q. 8. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify, by a Mr. Highton?

A. Mr. Highton and Mr. Mills came and asked me if I knew Mr. Birnie,—if I knew his character; I said he had a bad character in the community; they then asked me to come here, and served a subpoena on me. At the time they asked the question I did not know what they wanted.

Q. 9. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation?

A. No, sir.

Examination closed.

JAMES L. SWANEY.

Sworn to and subscribed, this 3d day of August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed, August 3, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF NAPOLEON B. SMITH.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 3, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Napoleon B. Smith, a witness produced on behalf of the claimant, Andres Castellero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Napoleon B. Smith; my age is 42 years, and I reside about two miles from Martinez, in Contra Costa county. I have lived in the county since 1849.

Q. 2. What is your occupation, and what offices, if any, have you held in the county or State?

A. I am a farmer and stock-raiser at present; I represented my county in the Assembly in 1852, and was county assessor in 1850, or 1851.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, and who now lives in Oakland?

A. I do; I have known him since 1849; he lived in my neighborhood, in Contra Costa county, up to the time he removed to Oakland.

Q. 4. Are you acquainted with his reputation in the community in which he lived all that time?

A. I am.

Q. 5. What is his reputation for truth and veracity in that community?

A. It is not very good.

Q. 6. Judging from that reputation would you believe him on his oath?

A. I would not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Mr. Birnie, by which your interests and his have been brought in conflict?

A. I have; I formerly dealt in merchandise in Martinez, where he dealt with me considerably; I have credited him with a small amount; he put his property out of his hands, and I could not get my pay; I believe that is all the controversy I had with him. My impression is that I had these dealings with him about the year 1853 or 1854.

Q. 8. Prior to these transactions was his reputation bad, to your knowledge?

A. It was not very good. As soon as I became acquainted with him I found out that he was not a very reliable man.

Q. 9. Is not your declaration, that you would not believe him upon oath, based upon those transactions, and upon the knowledge acquired, as expressed in your last answer?

A. It is not altogether; but from his general reputation and those transactions I would not believe him on oath.

Q. 10. Supposing his general reputation to be good, and the transactions mentioned in your answer to question 7, to have happened, by which you obtained a knowledge of his character, would you still believe him on oath?

A. I have no particular feeling against the man; I would believe him on oath if I could, but I can't do it.

Q. 11. Were you, like the witnesses heretofore examined relative to Mr. Birnie's reputation, asked to come here and testify by a Mr. Highton?

A. Him and Mr. Mills both asked me, and served me with a subpoena.

Q. 12. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. I have not.

Q. 13. State, if you can recollect, how long before Mr. Highton's investigations was the reputation of Mr. Birnie discussed in the community of which you have spoken?

A. I don't know anything about this case; this case never was discussed that I know of.

Q. 14. You have testified that, judging from the reputation of

Mr. Birnie in the community in which he lived, you would not believe him upon oath. State, if you can recollect, when his reputation was discussed in that community prior to the time when Mr. Highton commenced his investigations?

A. I don't know when Mr. Highton commenced his investigation; Birnie's character was discussed from the time I first knew him up to the time he left the county.

DIRECT RESUMED.

Questions by counsel for the claimant.

Q. 15. Is not Birnie a half-breed Indian?

A. He is said to be a half-breed or a quarter.

Examination closed.

N. B. SMITH.

Sworn to and subscribed before me, this 3d day of August,
A. D. 1860.

W. H. CHEVERS,
U. S. Commissioner.

Filed August 3d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF EDWARD LEE.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 3d, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Edward Lee, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

A. My name is Edward Lee; my age is 39 years, and I reside in Oakland, Alameda county, and have resided there nearly five years.

Q. 2. What is your occupation?

A. I am a carpenter.

Q. 3. Did you ever live in Contra Costa county; if so, how long?

A. I lived in Martinez, in Contra Costa county, from 1850 to 1856.

Q. 4. Do you know a man by the name of Robert Birnie, who lived in and near by Martinez during the time that you resided there, and who removed to Oakland about the year 1856, where he is now living?

A. I do.

Q. 5. Do you know his reputation?

A. I do. Since I have been in Oakland I have not heard much about him. While I lived in Martinez I knew his reputation there.

Q. 6. What was his reputation in the community in and about Martinez, for truth and veracity?

A. It was very bad.

Q. 7. Judging from his reputation for truth and veracity in that community, would you believe him on oath?

A. I would not believe him on oath.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 8. Have you ever had any legal or other controversy with Birnie, by which your interests and his have been brought in conflict?

A. No, sir, I have not.

Q. 9. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify by Mr. Highton?

A. Yes, sir.

Q. 10. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. No sir, never.

Examination closed.

EDWARD LEE.

Sworn to and subscribed, this 3d day of August, A. D. 1860,
before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 3d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF MATTHEW R. BARBER.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, CAL., August 3, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Matthew R. Barber, a witness produced on behalf of the claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Matthew R. Barber, my age 44 years, and I reside about two miles south of Martinez, Contra Costa county.

Q. 2. What is your occupation, and what offices, if any, have you held in the county of Contra Costa?

A. My occupation is that of farmer and stock-raiser, and I held the office of Public Administrator from 1847 to 1849.

Q. 3. Do you know a man named Robert Birnie, who formerly lived in Contra Costa county, and who now lives in Oakland?

A. I do; I have known him since the summer of 1850. During two years of that time, from the spring of 1851 to the fall of 1852, I was in the Atlantic States. Birnie lived in my neighborhood all the time until the fall of 1856, when he left the county.

Q. 4. Do you know what was his reputation in the community in which he lived?

A. I do.

Q. 5. What was his reputation for truth and veracity in that community?

A. When I first knew him, that is, before I went to the States in 1851, nothing was said against his character. After I returned from the States in 1852, up to the time that Birnie left the county in 1856, his reputation for truth and veracity was bad.

Q. 6. From your knowledge of his character, derived from his general reputation in that community, would you believe him on his oath?

A. Where he had any pecuniary interest, I could not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Birnie, by which your interests and his have been brought in conflict?

A. I have not.

Q. 8. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come and testify by a Mr. Highton?

A. I was spoken to by Mr. Mills, in the presence of Mr. Highton. I was subpoenaed by Mr. Highton. It was entirely against my wish that I came here.

Q. 9. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. No, sir; never.

DIRECT EXAMINATION RESUMED.

Questions by counsel for claimant.

Q. 10. Is not Birnie a half-breed Indian?

A. I have understood so.

Examination closed.

M. R. BARBER.

Sworn to and subscribed, this 3d of August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 3d, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF WILLIAM V. HIGGINS.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 3, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came William V. Higgins, a witness produced on behalf of the claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is William V. Higgins; my age is 22 years; and I live in Martinez, Contra Costa county.

Q. 2. What is your occupation?

A. I am a carpenter.

Q. 3. Do you know Robert Birnie, who now lives in Oakland?

A. I do.

Q. 4. How long, and where did you know him?

A. I have known him in Martinez and its vicinity from about 1850 until he left, somewhere about 1856?

Q. 5. Do you know his reputation at the time that he lived in that community?

A. I do.

Q. 6. What was his reputation for truth and veracity in that community?

A. It was bad. He had a bad name for truth and veracity among all.

Q. 7. Judging from his reputation for truth and veracity in that community, would you believe him on his oath?

A. I would not under oath, nor in any other way.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 8. Have you ever had any legal or other controversy with Mr. Birnie, by which your interests and his have been brought in conflict?

A. No, sir.

Q. 9. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify by a Mr. Highton?

A. I was subpoenaed by Mr. Highton to come here and testify.

Q. 10. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. This is the first time.

Examination closed.

W. V. HIGGINS.

Sworn to and subscribed, this 3d day of August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 3, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF EDWIN BALDWIN.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 3, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Edwin Baldwin, a witness produced on behalf of the claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows :

Present : A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by the counsel for the claimant. What is your name, age and place of residence ?

ANSWER. My name is Edwin Baldwin ; my age is 45 years, and my residence is in San Pablo, Contra Costa county.

Q. 2. What is your occupation ?

A. I keep a hotel at San Pablo.

Q. 3. How long have you lived in Contra Costa county, and how far is San Pablo from Martinez and Oakland ?

A. From 1850 to 1854, I lived in Martinez ; I then left the county, and returned a year ago. San Pablo is about 18 miles from Martinez, and about 12 miles from Oakland.

Q. 4. Do you know one Robert Birnie, who formerly lived in Martinez, and who now resides in Oakland ?

A. I do.

Q. 5. Do you know his reputation in both communities ?

A. I know his reputation in and about Martinez.

Q. 6. What was, and is, that reputation for truth and veracity ?

A. It was not good in Martinez while I lived there.

Q. 7. Judging of the man's character by his reputation, would you believe him under oath ?

A. No, sir. I would not where there was any papers relating

to land cases or land claims to be signed. I could not conscientiously believe him under oath, where he had any pecuniary interest in testifying falsely. I have no confidence in the man.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 9. Have you ever had any legal or other controversy, with Birnie, by which your interests and his have been brought in conflict?

A. No, sir.

Q. 10. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify by a Mr. Highton?

A. Mr. Highton subpoenaed me.

Q. 11. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. No, sir.

Examination closed.

EDWIN BALDWIN.

Sworn to and subscribed, this 3d day of August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 3, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF DANIEL HUNSAKER.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, CAL., August 3d, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc. etc., came Daniel Hunsaker, a witness produced on behalf of the claimant, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Daniel Hunsaker; my age is 56 years, and I reside near La Fayette, in Contra Costa county.

Q. 2. What is your occupation, and what offices, if any, have you held in that county?

A. My occupation is that of farming and stock-raising. I held the office of County Treasurer twice, once in 1850, and again in 1852.

Q. 3. Do you know Robert Birnie, who lives in Oakland?

A. Yes, sir.

Q. 4. Where and how long did you know him?

A. I knew him in Martinez, and have known him since 1850.

Q. Do you know his reputation in the community in which he then lived?

A. I do.

Q. 6. What was his reputation in that community for truth and veracity?

A. When I first knew him, it appeared to be as good as that of any other stranger; afterwards his reputation for truth and veracity was not good.

Q. 7. Judging of his character by his reputation, would you believe him on oath?

A. I would not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 8. Have you ever had any legal or other controversy with Birnie, by which your interests and his have been brought into conflict?

A. No, sir; not that I know of.

Q. 9. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify by a Mr. Highton?

A. I was asked by Mr. Mills and Mr. Highton; the latter served a subpoena on me.

Q. 10. Since you have known Mr. Birnie have you ever before been called upon to testify as to his reputation for truth and veracity?

A. I have not.

Examination closed.

DANIEL HUNSAKER.

Sworn to and subscribed, this 3d August, 1860, before me,

W. II. CHEVERS,
U. S. Commissioner.

Filed August 3d, 1860.

W. II. CHEVERS, Clerk.

DÉPOSITION OF WILLIAM FORD.

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 3, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came William Ford, a witness on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is William Ford; my age is 46 years; and I am now living in Martinez; I have lived there for the last five months, and I lived there formerly in the years 1853 and 1854.

Q. 2. Do you know Robert Birnie; where did you know him, and how long?

A. I do; I knew him in Martinez in 1853 and 1854, and I have known him ever since.

Q. 3. Did you know his reputation while he lived in Martinez?

A. I did.

Q. 4. What was his reputation for truth and veracity in that community?

A. It was bad.

Q. 5. Judging of his character from his reputation, would you believe him under oath?

A. I would not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 6. Have you ever had any legal or other controversy

with Birnie, by which your interests and his have been brought in conflict?

A. I have not.

Q. 7. What was Mr. Birnie's occupation while he lived in Martinez?

A. I could not tell you.

Q. 8. What was your occupation?

A. I was in the land business. I owned lands under the Welch title.

Q. 9. When you first knew Mr. Birnie, was he not interested in the Welch ranch by marriage, and was not his interest in that ranch opposed to yours?

A. I understand that he was so interested. His interest was not opposed to mine that I know of.

Q. 10. When you went to reside at Martinez, was not Mr. Birnie already a resident of that place; and, if so, state how soon after your location there you heard that his reputation in that community was bad?

A. I cannot tell the time; it was of course when I was living there.

Q. 11. Was it before or after you settled upon the lands you owned under the Welch title?

A. It was after, in 1853 and 1854.

Q. 12. State any act committed by Birnie in the community of which you have spoken, which caused his alleged bad reputation.

A. I don't recollect.

Q. 13. Did not Mr. Birnie take some action with respect to the partition of the Welch ranch, which threatened to disturb the people under that title in and about Martinez, and was not that the cause of ill feeling on their part against him?

A. I don't know; I never had a word with Mr. Birnie; he always treated me well; they called me down here, but I did not want to come. All that I have said is based upon his general reputation.

Q. 14. Aside from his general reputation, would you believe him on oath?

A. I don't like to answer such a question, because I don't understand it.

Q. 15. You have testified that, judging from Mr. Birnie's reputation in the community of which you have spoken, you would not believe him on oath. From your own knowledge of Mr. Birnie, and in a case in which that community was not interested, would you, or not, believe him on oath?

A. I would not, as matters stand up there. I have had no dealings with Mr. Birnie; I only know him through his repu-

tation up there; I have no feeling against Mr. Birnie. I was brought down here against my wishes.

Q. 16. Do I understand that because Mr. Birnie happens to be unpopular at Martinez, you would refuse to believe him on oath without knowing anything yourself against him?

A. There is such a strong current running against him that I could not do otherwise.

Q. 17. Cannot you state any reason why so strong a current should run against him in Martinez and its vicinity?

A. Something about law matters and land fixings.

Q. 18. Try and recollect of any other cause for the enmity existing against Mr. Birnie, in Martinez and its vicinity, than these law matters and land fixings that you have spoken of.

[Question objected to by counsel for claimant, on the ground that it does not appear that any enmity does exist against Mr. Birnie, but a general and deep-seated distrust of his truthfulness.]

A. I don't recollect of anything more than that.

Q. 19. Who asked you to come here and testify in this case?

A. Mr. Mills came and asked me; he was in company with Mr. Highton.

Q. 20. Were you ever before required to testify with regard to Mr. Birnie's reputation?

A. Never.

Q. 21. How long before Mr. Highton appeared in your neighborhood do you recollect last hearing Mr. Birnie's reputation discussed by the community of which you have spoken?

A. I heard it discussed last May, when the District Court was sitting. I remember remarking to a whole crowd who were discussing Birnie's character, that I was sorry he did not stand any better then than he had before. What I said was in a jocular manner. I don't recollect what kind of a suit it was, nor what it was about.

Examination closed.

WM. FORD.

Sworn to and subscribed, this third day of August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed Aug. 3, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF CALVIN BOSS.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 vs. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 2, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Calvin Boss, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows :

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is Calvin Boss; my age is 30 years, and I reside in Pacheco Valley, about five miles from Martinez, Contra Costa county.

Q. 2. What is your occupation?

A. Farmer and stock-raiser.

Q. 3. Do you know Robert Birnie, who now lives in Oakland; if so, how long have you known him, and where?

A. I do know him. I first became acquainted with him about 1851, and I have known him ever since. He lived about three or four years after I first knew him in my neighborhood, in Contra Costa county.

Q. 4. Do you know his reputation in the community in which he lived?

A. I do.

Q. 5. What is his reputation for truth and veracity in the community in which he lived, and what was it while he lived there?

A. It was not good, and it is not any better now.

Q. 6. Judging of his character from what his reputation was and is in that community, would you believe him under oath?

A. I would not, if he was testifying in his own favor.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

—

SAN FRANCISCO, CAL., August 3, 1860.

Examination of Calvin Boss resumed from yesterday.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Birnie, by which your interests and his have been brought into conflict?

A. I don't know that I have. I worked for him about a month. He owed me ten dollars, but I never tried to get it, thinking it would be more trouble than it was worth.

Q. 8. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify by a Mr. Highton?

A. No, sir; a subpoena was left at my father's house.

Q. 9. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. No, sir.

Examination closed.

CALVIN BOSS.

Sworn to and subscribed this 3d of August, 1860, before me,

W. H. CHEVERS,

U. S. Commissioner.

Filed August 3, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF HENRY MATTHEWS.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 4, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, etc., etc., came Henry Matthews, a witness produced on behalf of the claimant, Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows:

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., of counsel for the United States.

QUESTION 1st, by counsel for claimant: What is your name, age, and place of residence?

ANSWER. My name is Henry Matthews; my age is 36 years, and I reside in San Francisco.

Q. 2. What is your occupation?

A. I am a retired merchant.

Q. 3. Do you know Robert Birnie?

A. I first became acquainted with him in 1848. I knew him in Martinez.

Q. 4. Do you know his reputation in the community in and about Martinez?

A. I do.

Q. What is his reputation for truth and veracity in that community?

A. It is very bad.

Q. 6. From what you know of his character, derived from his general reputation, would you believe him on his oath?

A. Judging from what I know of his reputation in and about Martinez, I would not believe him on his oath.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 7. Have you ever had any legal or other controversy with Birnie, by which your interest and his have been brought in conflict?

A. No, sir.

Q. 8. Were you, like the witnesses heretofore examined, to Mr. Birnie's character, asked to come here and testify by a Mr. Highton?

A. I was subpoenaed by Mr. Highton. Before that, Mr. Highton came to me and asked me if I knew the man Birnie; I told him I did. He asked me if I knew his reputation for truth and veracity. I told him yes, that it was bad, so far as I knew about him. He then said, I shall want you as a witness.

Q. 9. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. No, sir.

Direct examination closed.

H. MATTHEWS.

Sworn to and subscribed, this 4th day of August, 1860, before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 4th, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JOHN STURGIS.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, CAL., August 4, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came John Sturgis, a witness produced on behalf of the claimant, Andres Castellero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of said Board of Commissioners, and testified as follows:—

Present: A. C. Peachy, Esq., of counsel for claimant, and E. Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is John Sturgis, my age is 52 years, and I reside in Martinez, Contra Costa county, and have resided there most of the time since 1850.

Q. 2. What is your occupation?

A. That of hotel-keeper.

Q. 3. Do you know Robert Birnie?

A. I do.

Q. 4. From 1850 to about 1856, he lived in Martinez township, did he not?

A. He did.

Q. 5. Do you know what his reputation was in the community during that time?

A. Yes, sir.

Q. 6. What was his reputation for truth and veracity in that community?

A. It was bad.

Q. 7. From what you know of his character, derived from his general reputation in that community, would you believe him under oath?

A. If he had any interest in testifying falsely, I would not.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 8. Have you had any legal or other controversy with Birnie by which your interest and his have been brought into conflict?

A. None whatever.

Q. 9. Were you, like the witnesses heretofore examined as to Mr. Birnie's character, asked to come here and testify by a Mr. Highton?

A. Mr. Highton merely asked me some time ago if I knew Mr. Birnie. I replied that I did. That was all that passed between us then. He afterwards served a subpoena on me.

Q. 10. Since you have known Mr. Birnie, have you ever before been required to testify as to his reputation for truth and veracity?

A. No, sir.

Examination closed.

JOHN STURGIS.

Sworn to and subscribed before me, this 4th day of August, A D. 1860.

W. H. CHEVERS,
U. S. Commissioner.

Filed August 4, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JOSÉ NORIEGA.

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 27th, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came José Noriega, a witness produced on behalf of the claimant Andres Castellero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by a sworn interpreter; to wit, by Richard Tobin, Esq.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is José Noriega, my age is 60 years, and I reside in San José. I was born in Asturias, Spain.

Q. 2. In "Exhibit J. Y. No. 1, W. H. C." annexed to the deposition of John Young in this case, is a document beginning with the words "No encontrandose," etc., purporting to be a testimonio of the act of possession of the Mine of Santa Clara, given by Alcalde Pico to Castellero. This document is signed by Antonio Maria Pico, the Alcalde, by Antonio Suñol and José Noriega, assisting witnesses, and is dated 30th December, 1845. Please examine it—say if you know in whose handwriting is the body of the instrument, whose the signatures; and if they were subscribed on the day of its date.

A. The handwriting of the body of the document is that of Gutierrez; it bears the genuine signatures of Antonio Maria Pico, Antonio Suñol, and myself; we all signed it at the same time, and in each others' presence; I presume it was signed on the date of its date; I have no reason to suppose it was not.

Q. 3. In whose handwriting is the receipt from Antonio

Maria Pico to Castillero, for twenty-five dollars, appearing in the same Exhibit?

A. It is in the handwriting of the same Gutierrez.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

—

SAN FRANCISCO, Cal., July 28, 1860.

Examination of José Noriega resumed from yesterday.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

W. H. CHEVERS,
U. S. Commissioner.

—

SAN FRANCISCO, August 6, 1860.

Examination of José Noriega resumed from July 28, 1860.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

CROSS-EXAMINATION.

Q. 24. What makes you say you *presume* that you signed the paper (in "Exhibit J. Y. No. 1, W. H. C." commencing with the words "No encontrandose," etc., purporting to be a Testimonio of the act of possession of the Mine of Santa Clara, given by Alcalde Pico to Castillero); why did you not swear positively that you signed it on that day?

A. I don't remember when I signed it; but I presume I signed it on that day; I have no doubt I did.

Q. 5. Before you signed that paper, had you not seen old Mr. Alexander Forbes in California?

A. I never knew him before I signed the paper; I knew him long after that.

Q. 6. Will you positively swear that Mr. Alexander Forbes had not arrived in California at the time you signed that document?

A. I had never seen him; this I can positively swear.

Q. 7. Have you come twice to San Francisco to give this deposition?

A. Yes, sir; Mr. Randolph was not ready the first time.

Q. 8. Did you not come with Suñol, Chavoya, Pico and Mr. Young?

A. Yes, sir ; Mr. Chavoya did not come up with us the first time.

Q. 9. Did you, Suñol and the rest, talk together about this new paper that had been found, and also about the evidence, and what you knew about it, etc ?

A. No, sir ; we were only told that some new papers had been found, and that they wanted us to see them, to see our signatures to them, etc.

Q. 10. When you signed this paper, how many more just like it did you sign ?

A. I remember that I signed the document for the possession of the mine ; but I don't know whether I signed any other similar one or not.

Q. 11. What is the reason that you did not say anything about signing two papers just alike, when you were examined before in this case ?

A. I was not asked.

Q. 12. What compensation have you received, and what do you expect to receive, for your trouble in giving your testimony in this case ?

A. My expenses.

Q. 13. What sum will they amount to, perhaps ?

A. Some four or five dollars a day.

Examination closed.

JOSÉ NORIEGA.

Sworn to and subscribed, this 6th day of August, A. D. 1860,
before me,

W. H. CHEVERS,
U. S. Commissioner.

Filed August 6, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF PEDRO CHAVOYA.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, July 27, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Pedro Chavoya, a witness produced on behalf of the claimant in case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in case No. 366, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows: his evidence being interpreted by a sworn interpreter; to wit, by Richard Tobin, Esq.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What is your name, age, and place of residence?

ANSWER. My name is Pedro Chavoya; I was born in May, 1790; I live about three miles from the Pueblo of San José.

Q. 2. In "Exhibit J. Y. No. 1, W. H. C.," annexed to the deposition of John Young in this case, there are two documents, purporting to be copies of two representations by Andres Castillero to the Alcalde of the Pueblo of San José, dated respectively the 22d November and 3d December, 1845. These copies purport to be certified by you as Alcalde, with P. Sainsevain and José Suñol, assisting witnesses, on the 13th January, 1846. Examine them, state whether your name thereto subscribed is your genuine signature, and whether the signatures of the subscribing witnesses are also genuine.

A. I have examined those documents, and I know the signatures; one of them is my own, the others are the genuine signatures of P. Sainsevain and José Suñol. The signature of each of us appears twice, that is to say, on each of those documents. I was Alcalde at that date, January, 1846. I signed those documents at their respective dates.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS, U. S. Commissioner.

SAN FRANCISCO, CAL., August 6, 1860.

Examination of Pedro Chavoya resumed from July 27th.

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

CROSS EXAMINATION.

Questions by counsel for the United States.

Q. 5. What day, month and year was it that you signed the two documents in "Exhibit J. Y. No. 1, W. H. C.," purporting to be copies of two representations by Andres Castellero to the Alcalde of the Pueblo of San José, dated respectively the 22d November and 3d December, 1845?

A. I don't remember the day, but it must appear on the papers. I think it was on the 13th February, 1846.

Q. 4. What is it that fixes that date in your mind?

A. Because I have been shown the papers here.

Q. 5. What else makes you remember that date?

A. Nothing else; if I had not seen them, perhaps I should not have remembered them, it was so long ago.

Q. 6. Who showed you the papers?

A. I was shown them the other day on my examination. I was not shown them before.

Q. 7. Are you not mistaken; were they not shown to you in Mr. Barron's office by somebody?

A. No, sir. I was shown them here, also the signatures of Sainsevain, Noriega, Suñol and my own.

Q. 8. Who asked you to sign your name on that paper?

A. A person named Gutierrez, or a name very like that.

Q. 9. What had Gutierrez to do with it; what is the reason he asked you?

A. They were papers relating to the mine. I was in authority at that time. I was asked to sign them, and I signed. I don't know what Gutierrez had to do with them. I only remember that he brought them, and I signed with the other witnesses.

Q. 10. Where did he get them from?

A. I don't know, but he probably got them from the mine?

Q. 11. Who had them at the mine, perhaps?

A. I can't say.

Q. 12. How did you know the papers were correct when you signed them?

A. I supposed they were correct, as they were brought by those people. I did not examine them at all; it was not for me to do that.

Q. 13. What do the papers purport to be, in your opinion, and according to your present recollection?

A. They are papers.

Q. 14. Look at these papers and read them; say what they are?

A. I can't read writing well; I can only read it with great difficulty.

Q. 15. Don't you know how to write?

A. It is with difficulty I can paint my signature. I never learned to write.

Q. 16. When did you learn to paint out your signature; who taught you?

A. I learned alone, I had no teaching. I had a liking for writing, and learned by my own efforts alone.

Q. 17. What compensation have you received, or are you to receive, for giving your testimony in this case?

A. I don't know what I am to receive; I have only received my expenses. I have never been offered any payment for my testimony.

Q. 18. As you were only Second Alcalde, what had you to do with the keeping of the documents, or the certifying to copies?

A. It was my duty as Judge to keep the records. The First Alcalde was sick and I acted for him. Dolores Pacheco was First Alcalde.

Q. 19. How do you happen to remember now that he was sick at that time; it was a very long time ago?

A. Because we were named Judges together, and I remember that when he took sick I had to notify the Prefect, who required that I should act during his sickness.

Q. 20. Who was the Prefect?

A. Manuel Castro. I got an order from him to act as First Alcalde during the sickness of the incumbent, otherwise I should not have done so.

Examination closed.

PEDRO CHABOYA.

Sworn to and subscribed this 6th day of August, A. D. 1860, before me.

W. H. CHEVERS,

U. S. Commissioner.

Filed August 6th, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF PEDRO SAINSEVAIN.

—

DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
 v. }
ANDRES CASTILLERO. }

SAN FRANCISCO, August 7, 1860.

On this day, before me, William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, etc., etc., came Pedro Sainsevain, a witness produced on behalf of the claimant Andres Castillero, in Case No. 420, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 366 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by a sworn interpreter, to wit; by Richard Tobin:

Present: A. C. Peachy, Esq., of counsel for claimant, and Edmund Randolph, Esq., for the United States.

QUESTION 1st, by counsel for the claimant: What' is your name, age, and place of residence?

ANSWER. My name is Pedro Sainsevain, my age is 41 years, and I reside in San Francisco.

Q. 2. Where were you born, when did you come to California, and what relatives did you have living in this country when you came here?

A. I was born in Bordeaux in France; I came to California in 1839; I had an uncle, Don Jean Louis Vignes, who was then living at Los Angeles. I came out here as the agent of his family, they supposing that he was dead.

Q. 3. Is your uncle the same person who was generally known in California as Don Luis Vignes, the owner of the large and celebrated vineyard at Los Angeles?

A. Yes, sir. It is the same person.

Q. 4. What is your occupation?

A. I am the proprietor of the vineyard above mentioned, and I am occupied in making and selling California wines.

Q. 5. Did you ever live in the Pueblo of San José?

A. I did. I lived there from 1844 to 1855. I own another vineyard near that place now.

Q. 6. While you were residing in the Pueblo of San José, you married the daughter of Don Antonio Suñol, did you not?

A. Yes, sir. In the month of October, 1845.

Q. 7. Were you acquainted with Don Andres Castellero: Do you remember to have heard anything about the discovery of the quicksilver mine, now called New Almaden, at the time it occurred?

A. Yes, sir, I know him; and I heard of that event when it occurred.

Q. 8. When did you hear of it, and what? and please state all you remember on the subject.

A. It was towards the close of the year 1845, that I heard of the discovery. Mr. Castellero was then at Santa Clara, assaying some specimens of the ore, and I learned from himself that at first he supposed it contained gold and silver. After making several experiments, he found that it contained quicksilver. At first he used the barrel of a gun, to fuse the ore, and afterwards he employed two large boilers, which answered the purpose better. His experiments ceased with this.

Q. 9. Did you ever hear of the possession of this mine being given to Castellero?

[Question objected to by counsel for the United States, as leading.]

A. Yes, sir; I did. I heard from my father-in-law, that he and some others, with the Alcalde, amongst whom was Mr. Noriega, I believe, had gone there to give possession, and that it had been given.

[Answer objected to by counsel for the United States, as hearsay.]

Q. 10. Where were you living in December, 1845, and January, 1846; in what house?

A. At the house of my father-in-law, Mr. Suñol.

Q. 11. In "Exhibit J. Y. No. 1, W. H. C." are copies of Castellero's two representations to the Alcalde, dated the 23d November, and 3d December, 1845, purporting to be certified on the 13th January, 1846, by Pedro Chaboya, Alcalde, with yourself and José Suñol, assisting witnesses. Please examine these papers; say if you know in whose handwriting they are, and whether the signatures are genuine, and whether they were signed on the day of their date, and whatever you may remember about them.

A. I don't know the handwriting of the body of these documents. The signatures are that of my brother-in-law, José Suñol, that of Pedro Chaboya, and my own. I believe these

papers were signed on the day of their date, because I have no knowledge of having signed them at any other time, and because I recollect that I did sign them about that time. Mr. Chaboya brought these papers to the house of my father-in-law, Mr. Suñol, and my brother-in-law, José Suñol and I signed them there, Mr. Chaboya being present.

Q. 12. In the year 1846, did you visit your uncle in Los Angeles, and what time in the year?

A. I was in Los Angeles in March, 1846. I returned to San José early in May, the same year.

Q. 13. Was Castellero in California at the time you started for Los Angeles on that visit?

A. I believe that he was in Santa Clara at the time that I started to go to Los Angeles; and when I returned to San José I did not see him, nor have I seen him since. I have heard he had gone to Mexico; I think I heard it when I came back.

CROSS-EXAMINATION.

Questions by counsel for the United States.

Q. 14. Your father-in-law is the same Antonio Suñol who testified in this case?

A. Yes, sir.

Q. 15. Did you never see Mr. Alexander Forbes, of Tepic, at your father-in-law's house, in San José?

A. I think I saw that gentleman a couple of times at San José, but I am not certain whether at my father-in-law's house or elsewhere.

Q. 16. You saw him more than twice, very often heard him spoken of, and remember very well the fact of his being in California, do you not?

A. I don't know that I saw him more than twice. I don't remember how often I saw him; and if I were to see him again I would not recognize him. I heard him spoken of pretty often, and I know that he has been in California.

Q. 17. Will you now swear that you did not sign those papers, of which you have just testified, after Mr. Alexander Forbes, of Tepic, came to California?

A. I certainly did not; it was long before. I remember the fact of signing those papers well, because I signed them two or three months after my marriage, and two or three months before I went to Los Angeles, and I believe I was the bearer of the first news of the discovery to that place.

Q. 18. When you signed those papers, did you compare them with any other papers to see that they were correct copies, and if so, with what other papers; in whose possession were those other papers, and at what place did you make the comparison?

A. I did not compare them with any other papers.

Q. 19. Do you remember to have seen at or about that time, originals, corresponding precisely with these copies, with the exception of the certificate and the signatures of Pedro Chaboya, yourself and José Suñol thereto attached?

A. I remember having seen on the door of the court-room a notice of denouncement, but I cannot say whether it was a copy of any of these or not.

Q. 20. Have you not seen in print, in this city, within a few years past, copies of these papers as to which you have just testified, which copies included the certificates to these papers, with the signatures of Pedro Chaboya, yourself and José Suñol thereto attached?

A. I saw the other day for the first time, in the Alta California newspaper, copies of these papers.

Q. 21. Have you not seen printed in a book, in this city, certain documents in the Spanish language, containing the same words, and the same signatures thereto attached, and in all respects of precisely the same import with these two certified copies of the representations of Andres Castellero, concerning which you have just now testified on your direct examination?

A. I have not the slightest recollection of any such thing. I have seen some pamphlets relating to the Berreyesa rancho claim, in opposition to the Almaden mine, but I don't know whether it contained copies of these documents or not.

Q. 22. Have you not seen printed in a book, in this city, certain documents in the English language, purporting to be translations of certain documents in the Spanish language, and that were altogether the same as those that I have described to you in the preceding question?

A. No, sir. The only place where I have seen copies is in the Alta California; nowhere else.

Q. 23. Have you not seen at the office of Mr. E. W. F. Sloan, in this city, the documents I have described above, printed in a book both in the English and Spanish languages, or in either of those languages?

A. It was there that I saw the pamphlet I spoke of before, but I have not the least knowledge of having seen, either in the English or Spanish, copies of these documents.

Q. 24. You understand, of course, that a pamphlet is a book?

A. Yes, sir.

Q. 25. Have you not seen at the office of Mr. E. W. F. Sloan, in this city, a book or pamphlet which purported to be, in whole or in part, a copy of the record in this case of Andres Castellero v. The United States, as it existed before the Board of U.

S. Land Commissioners, and which book or pamphlet contained in print, in the English and Spanish languages, or in either of those languages, the documents which I have described in question 21 and question 22?

A. I had some books in my possession some three weeks, which related to the contest between the Berreyesa family and the owners of Almaden; they had been sent to me by Mr. Sloan. I read portions of them, but I have no knowledge at all of having read these documents there. I then had charge of the interests of a portion of the Berreyesa family, and Mr. Sloan lent me these books, so that I might inform myself about the controversy.

Q. 26. Do you not distinctly remember that you were shown, at the office of Mr. A. P. Crittenden, in this city, some time in the year 1857, a book or pamphlet purporting to be a copy of the record of this case when pending before the Board of U. S. Land Commissioners, and which contained in the English and Spanish languages, or in one of those languages, copies of these documents, to wit,—the representations of Andres Castillero, etc., above referred to,—and that your attention was at that time drawn to the fact that you appeared on the same to be an assisting witness; that is, that your name was printed on the same as such a witness?

A. I don't remember having been shown such a book at that office, but I remember distinctly that Mr. Crittenden spoke to me about that. He wanted me to attend court as a witness in that matter; he told me that my name appeared as that of an assisting witness. I stated to him that it was true I had signed, as assisting witness, some document relating to the denouncement of the Almaden mine, but that I could not remember when I had done so, nor even what the document was, without seeing it. About the same time I was called upon by Mr. Young, for the Almaden Company, to testify in the same matter, and I gave him the same answer.

Q. 27. Is it only the sight of the paper that now enables you to recollect so much more precisely the date when you signed it,—that recalls to your mind that it was so many months after your marriage, and so many months before you went down to Los Angeles, and that you probably carried to that city the first news of the discovery of quicksilver, etc., etc.?

A. It is because I remember that it was between those two events; and if it had been ante-dated, or did not bear the true date, I should have noticed it when I signed.

Q. 28. You have since made many other journeys to Los Angeles?

A. Yes, sir; many of them.

Q. 29. Now, do you not remember that Mr. Domingo Marks, the gentleman now present, at the office of Mr. E. W. F. Sloan, in this city, and some time during the present year (A. D. 1860), and more than four months ago, showed you in a printed book, copies of these documents, to wit,—the representations of Andres Castellero, etc., as described in the foregoing questions, the same being in the Spanish and English language, or in one of those languages,—that Mr. Marks called your attention to the fact, that your name appeared on the same as an assisting witness, and that you then said to him in substance, “these are only copies, let them produce the originals; it is true I did sign them, but it was only in the year 1848, and not before”—did you not make this declaration to Mr. Marks, both in the English and Spanish languages; and did you not at the same time and place make the same declaration, in the English language, to Mr. E. W. F. Sloan, aforesaid?

A. No, sir. It is true that, about five or six months ago, I called at the office of Mr. Sloan frequently to speak to him about the affairs of the Berreyesa family. These gentlemen had there several pamphlets concerning this same business of the Berreyesa rancho. I don't remember that they ever read copies of these papers to me, or that anything was said about my signature, but I am certain that I never stated that I had signed them in 1848, either to Mr. Sloan, Mr. Marks, or anybody else. I could not state a falsehood.

Q. 30. Do you now swear that you did not make to Messrs. Marks and Sloan, or either of them, the declarations mentioned in question 29, or any of the same, at the office of Mr. Sloan in this city, neither on any of the occasions which you have mentioned above in your last answer, nor at any other time during the present year (A. D. 1860), nor at any other time whatsoever?

A. I cannot swear as to their ever having read to me those papers, or whether there was anything said about their being copies; I remember nothing of this, but I do swear that I never did say that I had signed the papers in 1848.

Q. 31. When did you cease to be the agent for a portion of the interest of the Berreyesa family, which you say you represented; and what disposition, if any, did you make of that interest?

A. I sold the interests which were confided to me, except the interest of José S. Berreyesa, to Mr. Billings, in February last. I mean Mr. Frederick Billings, of the firm of Halleck, Peachy and Billings.

Q. 32. It was before the sale to Mr. Billings, that Mr. Sloan lent you the books concerning the controversy between the Berreyesa family and the Almaden company?

A. Yes, sir.

Q. 33. At the same time Mr. Sloan was counsel for the Berreyesa family, or some of them, representing their interests in the controversy with the New Almaden Company, and maintaining and defending generally their rights in the Berreyesa rancho, and had been for some time before so retained and employed by or in behalf of the Berreyesa family or some of them; and Mr. Domingo Marks was also known to you at that time as a friend of the Berreyesa family or some of them, who concerned himself very much about their interest in the rancho,—I mean the Mr. Marks and Mr. Sloan above referred to in this examination?

A. I don't believe that Mr. Sloan was acting for the family particularly. I think he was employed by a number of persons who hold shares in the mines on the Berreyesa rancho. Mr. Marks was known to be interested in the mine, under the Berreyesa title.

Q. 34. Do you know of any reason, other than the sight of the papers which have been shown you with your signature to them, which makes you more able or more willing to testify in this cause now, after you have made the sale of the Berreyesa interest to Mr. Billings, than you were before you made that sale?

A. Long before I had made that sale, I was asked to testify by Mr. Crittenden, Mr. Laurencel and Mr. Young, but they said the papers were lost, and I answered them as I have before stated. Moreover, I thought of the matter since I have seen the paper, and I recollect that it happened about that time.

Examination adjourned until to-morrow, at 11 o'clock, A. M.

W. H. CHEVERS,
U. S. Commissioner.

SAN FRANCISCO, CAL., August 8th, 1860.

Examination of Pedro Sainsevain resumed from yesterday.

Present: A. C. Peachy, Esq., of counsel for claimant; and Edmund Randolph, Esq., for the United States.

Q. 35. I now repeat to you question 29th, with this further specification of the time: Did you not make the declarations in that question mentioned,—to wit, the declarations to Mr. Domingo Marks and Mr. E. W. F. Sloan,—in the month of January of the present year, A. D. 1860, some short time after Mr. Sloan had drafted a deed of trust to you from some members of the Berreyesa family, and also a certain contract to be

executed by himself (said Mr. Sloan) on one part, and some members of the Berreyesa family on the other part, both of which papers were handed to you at the same time by Mr. Domingo Marks, and which contract aforesaid the members of the Berreyesa family referred to refused to execute?

A. With regard to those statements of mine, I can only repeat what I stated yesterday; and as to the documents spoken of, they were delivered to me by Mr. Sloan or Mr. Marks not in January of this year but in December of last year. José Santos Berreyesa was present when I received them. He had them translated for his mother. She refused to sign them because there was a clause in them which authorized Mr. Sloan to continue to manage the affairs, that he should have the control, whereas it was desired that it should be given to me. We had another drawn by Mr. Samuel Hermann, which they signed. The object of the other document, I believe, was to give Mr. Sloan ten per cent. of the proceeds of the mine. They also refused to sign this document, because they said they had already given away too much, without any consideration.

Q. 36. Do you say positively now, that you did not at the time mentioned in the last question make the declarations set out in question 29, to Messrs. Domingo Marks and E. W. F. Sloan, at the office of the said Mr. Sloan, in this city?

A. No, sir; I did not.

DIRECT EXAMINATION RESUMED.

Questions by counsel for claimant.

Q. 37. Who first spoke to you about your having signed as assisting witness certain papers connected with the title to the Almaden mine?

A. I am not certain whether it was Mr. A. P. Crittenden or Mr. John Young, but it was one or the other of them. It was about the year 1857, I believe.

Q. 38. What induced these gentlemen to speak to you on the subject?

A. I suppose they wanted me to testify in court. They asked me if I recollected having signed the document as witness, and I said yes; but that I supposed my testimony would be of but little use, inasmuch as I did not remember when I had signed it, nor what the document was. They both spoke to me about the same time, and I gave substantially the same reply to each.

Q. 39. What interest had those gentlemen in making the inquiry of you?

A. I believe Mr. Crittenden was employed as counsel for Mr.

Laurencel in the matter of the Capitancillos rancho, and Mr. Young was acting on behalf of the Almaden company.

Q. 40. Do you remember when you were next asked any question about these papers by any person acting on behalf of the New Almaden Company?

A. About that time, 1857, I don't remember whether I had more than one conversation on that subject with each of those gentlemen; but from that time until about a month ago, I have no recollection of having been spoken to on the subject at all. I was called upon by Mr. Young about a month ago, and accompanied him to the office of Messrs. Peachy & Billings, where I was shown these documents and questioned about my signature. I was told that those documents had been found among Mr. Walkinshaw's papers. I was asked if I recognized my signature; I said I did, and I also recognized that of my brother-in-law. I said I remembered having signed, and seeing him sign.

Q. 41. Do you remember what you stated to me at my office at that time about the circumstances of your marriage in October, 1845, and your trip to Los Angeles in March, 1846, enabling you to fix two epochs, between which you remembered that you signed those papers as assisting witness?

A. Yes, sir.

Q. 42. Did any person ever ask you if you signed these papers in the year 1848?

A. No, sir. I believe yesterday was the first time that I was asked that.

Q. 43. Did E. W. F. Sloan, Esq., or Don Domingo Marks, ever say to you that they desired you to give your testimony in this case, to prove that certain papers which they showed you, purporting to be copies of papers signed by yourself as assisting witness on the 13th January, 1846, were false, for the reason that although you might remember to have signed papers of a similar import, they were not signed until 1848?

A. No, sir.

Q. 44. Did they, or either of them, ever tell you that they would require your testimony in this case for any purpose?

A. I have no recollection of their having done so.

Q. 45. Were you ever called upon by any person at any time to testify in this case on behalf of the Government: I mean were you ever subpoenaed or requested to appear as a witness in this case on behalf of the Government?

A. No, sir. I was never spoken to on the subject, except by the persons I have already named.

Q. 46. How long have you known A. P. Crittenden, Esq.?

A. Since 1849, when he was a member of the Assembly at San José. He has been my lawyer ever since, and is now.

Q. 47. Then I suppose that your relations with Mr. Crittenden have been friendly, have they not?

A. Yes, sir.

Q. 48. I suppose further, that your business and social relations with Mr. Crittenden have been such as to have given him full opportunity to inquire of you about the discovery of the mine, and any matter relating to its history; and that the same circumstances would naturally induce you to make known to him any fact within your knowledge tending to advance his interest, and that of his clients, in their claim to the mine?

A. Mr. Crittenden had those opportunities, but very seldom spoke to me about matters of the mine; and if I had known anything that would be useful or agreeable to him, of course I would have informed him of it.

Examination closed.

P. SAINSEVAIN.

Sworn to and subscribed, this 8th August, 1860, before me,

W. H. CHEVERS,

U. S. Commissioner.

Filed August 8, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF ISAAC D. MARKS.

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DISTRICT COURT OF THE UNITED STATES, }
Northern District of California. }

THE UNITED STATES }
v. } In Land Cases; District Court No. 420,
ANDRES CASTILLERO. } Land Com. No. 366.

SAN FRANCISCO, August 8, 1860.

On this day, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil cases depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared I. D. Marks, a witness produced in behalf of the United States in the above entitled cause, who, being duly sworn, testified as follows:

Present: Edmund Randolph, Esq., for the United States, and A. C. Peachy, Esq., for claimant.

[Witness is asked, by counsel for claimant, what form of oath he considers most binding, to which he replies upon the Holy Bible. The witness is then asked what he means by "upon the Holy Bible," to which he replies, on the Old Testament only.]

WITNESS SWORN ON HIS VOIR DIRE.

Questions by counsel for claimant.

QUESTION 1. Are you not interested in the Berreyesa rancho, meaning the rancho called "San Vicente," alleged to have been granted to José Reyes Berreyesa by Governor Alvarado in the year 1842?

ANSWER. Yes, I am interested in part of it, which is occupied by Andres Castillero, or those who claim under him; I mean the New Almaden Company.

Q. 2. Then by virtue of your interest in the Berreyesa rancho, you claim title to a part of the New Almaden Mine and hacienda?

A. I do.

Q. 3. That is, the mine and the land claimed by Andres Castillero against the Government in this case; am I correct?

A. It is the same mine, and part of the same land.

Q. 4. Berreyesa's title has been confirmed by the Supreme Court of the United States, has it not?

A. I am so advised and believe.

Q. 5. What is the amount of your interest in that part of the Berreyesa rancho which you say is in the possession of the New Almaden Company?

A. My interest was one-eighth; it is now one-twelfth.

Q. 6. What did you pay for your interest, either in money or in services agreed to be rendered, or both?

A. I paid nothing in money. The services I agreed to render, was to put them in possession of the property they claimed, and to use my best endeavors to do so.

Q. 7. Your agreement with them embraced an undertaking on your part to institute all necessary legal proceedings for the recovery of the property, the payment of all law expenses, the conduct of such suits in procuring testimony, taking the depositions of witnesses, etc., did it not?

A. I think it stated correctly; but for a better understanding, I desire to file a copy of the original agreement.

Q. 8. What is your interest worth now; and what would it be worth in the event that the present claim of Castellero, or the New Almaden Company, be defeated in this suit?

A. It is impossible for me to say what its value is at present, it being involved in litigation. In the event mentioned in the question, it would be worth perhaps \$50,000. It is impossible to state with any degree of certainty.

Q. 9. Can you not appreciate the difference between its present value and what it would be worth if this claim shall be rejected?

A. I cannot; it being involved in a law suit, it is impossible to say what value it has at present.

Q. 10. Can you not state with certainty that the difference would be at least as much as \$10,000?

A. It would, I think.

Q. 11. You claim then that the Berreyesa rancho, a part of which you own, embraces the Almaden Mine and the hacienda?

A. I do.

Q. 12. You regard, also, the title to the Almaden Mine and to the lands claimed in this case as a cloud on the Berreyesa title, affecting an interest in one-twelfth of the mine and land which you claim, to the extent at least of ten thousand dollars; is it not so?

A. Most assuredly I regard the claim of Andres Castellero and the New Almaden Mine as a cloud upon the Berreyesa title, more or less; I cannot fix any sum.

Q. 13. Do you claim title to the Almaden Mine and to part of the lands, to procure the confirmation of which by the Government this claim was filed before the Land Commissioners, from any other source than that you have named?

A. I do not.

Q. 14. Then you have no interest, I presume, in the Justo Larios claim?

A. I have not.

[The testimony of the witness is objected to by the counsel for claimant as incompetent, on the ground of interest, who desires the ruling of the Court upon this objection.]

Adjourned until to-morrow morning, at 11 o'clock.

JNO. B. WILLIAMS,
U. S. Commissioner.

—
SAN FRANCISCO, August 9th, 1860.

Examination of J. D. Marks, a witness produced in behalf of the United States, continued.

Present: E. Randolph, Esq., for United States, and A. C. Peachy, Esq., for claimant.

[The Court having overruled the objection made by the counsel for claimant, the latter desires his exception to such ruling to be noted by the Commissioner.]

Questions in behalf of United States.

Q. 15. State your name, age, nativity, present residence, and occupation.

A. Isaac D. Marks; age, 40; born in Richmond, Va.; residence, San Francisco; and occupation at present the prosecution of claims for lands against the United States.

Q. 16. Have you at any time held any employment under the Government of the United States; and, if so, what?

A. I have; as Vice Consul of the United States at Matamoras, in the years 1842, 1843, and part of 1844. I was also attached to the Legation of the United States at Mexico, in 1850, 1851, and 1852, as private secretary of the Minister, Mr. Letcher.

Q. 17. Do you know Pedro Sainsevain, a witness examined in behalf of the claimant in this case on the 7th and 8th days of the present month?

A. I do. I have known him since December last, and before that by sight.

Q. 18. Look at the papers now shown you, purporting to be copies of two representations addressed by Andres Castellero to the Alcalde of the 1st Nominacion of the pueblo of San José Guadalupe, bearing date, respectively, the one on the 22d day of November, 1845, and the other one the 3d day of December, 1846; and which said copies bear a certificate of the 13th day of January, A. D. 1846, and which said certificate is signed "Pedro Chabolla," "De asā. P. Sainsevain," "De asā. José Suñol." Please say if you have ever seen any printed documents in this city in the same words and figures, and bearing the same signatures as in the papers now shown you.

A. I have frequently seen printed documents bearing the same signatures, and purporting to be the same documents, but I have never compared them with the papers now shown me.

Q. 19. Mention in what book or publication you have seen the printed documents to which you refer.

A. In a pamphlet entitled "Before the U. S. Board of Commissioners to ascertain and settle Private Land Claims in California. No. 366. Claim of Andres Castellero to the Mine and Land of New Almaden." It was published and circulated in this State. On pages 6 and 7 of this pamphlet there are two documents in the Spanish language; and on pages 10 and 11 appear their translations. To these I refer, and file herewith a copy, marked by the Commissioner "Exhibit A," to this deposition.

Q. 20. Have you at any time had any communications with the witness to whom you have referred, Pedro Sainsevain, on the subject of his signature which appears printed as that of a witness "De asā." on those printed documents?

A. I have.

Q. 21. At what time did you have such conversation; did Pedro Sainsevain say anything to you as to the fact whether he had or had not ever signed his name as a witness "De asā." to any papers of which the printed documents to which you refer were copies; if yea, what did he say?

[Objected to as leading.]

A. I think it was some time in the month of last January, during one of Mr. Sainsevain's visits to the office of E. W. F. Sloan, Esq., that he mentioned the fact of his having signed those papers. He did say that he had signed such papers.

Q. 22. Did he say when; and if yea, please mention at what time he said he had signed the papers of which the printed documents you refer to were copies?

A. He did; he said he signed them in the year 1848.

Q. 23. Please state fully all that passed between yourself and

Mr. Sainsevain at the time that he made this declaration to you.

A. I observed to Mr. Sainsevain that he had signed some of the denouncement documents, or copies, in regard to the Mine of New Ahnaden; he said he did not recollect having done so. I then took a pamphlet like the one I have spoken of, of which there were several in Mr. Sloan's office, and showed him his name signed as an assisting witness. He turned it over and looked at it, and observed that they were copies which had been filed. He said that he did not think that they would file the originals. I asked him why; he replied, because he had signed them in 1848. This conversation was in the Spanish language. Mr. Sloan was present. I then observed in English to Mr. Sloan, that Mr. Sainsevain had said that he had signed those papers in 1848. Mr. Sainsevain then spoke in English, addressing Mr. Sloan, and said,—Yes, I signed those papers in 1848.

CROSS-EXAMINATION.

Questions by counsel for claimant.

Q. 24. How long have you been in California?

A. I arrived in California on the 19th day of Nov. 1852.

Q. 25. Have you been here ever since?

A. In the State I have been ever since.

Q. 26. Are you certain that it was in the month of January of this year that you had the conversation with Mr. Sainsevain you refer to?

A. I have had so many conversations with Mr. Sainsevain respecting the Berreyesa claim, that I cannot state positively that the one referred to took place in January last, although I think it did.

Q. 27. Was this the only conversation you had with Mr. Sainsevain with regard to these papers?

A. It was.

Q. 28. Who was present during this conversation?

A. Mr. Sloan, Sainsevain and myself; no one else.

Q. 29. Who was present while you held the conversation with Mr. Sainsevain in Spanish?

A. The same parties.

Q. 30. Whom did you inform of the particulars of this conversation shortly after it occurred?

A. I don't recollect of having informed any one shortly afterwards.

Q. 31. Did you and Mr. Sloan have any conversation shortly afterwards with respect to that declaration of Mr. Sainsevain?

A. Mr. Sloan, on one occasion, said that it would be as well to take Mr. Sainsevain's deposition.

Q. 32. When was that?

A. A month or two months afterwards; I do not recollect the exact time.

Q. 33. Who was the first person that you informed of this declaration of Mr. Sainsevain, and when?

A. I think it was Mr. Randolph, the counsel in this case; and after the documents "Exhibit J. Y. No. 1," of which these papers are a part, were filed in this case, or after it was known that the papers had been discovered. Mr. Brodie gave me the first information I had as to their discovery.

Q. 34. How long after the deposition of Mr. Young was taken was it that you informed Mr. Randolph of Mr. Sainsevain's declaration?

A. It was before, a week or ten days.

Q. 35. Mr. Young's deposition was taken on the 20th July, 1860; therefore it must have been about the 10th of July, 1860, when you gave the information; must it not?

A. I cannot state positively the day; it was a short time after I heard the papers had been found. It may have been about the 10th of July.

Q. 36. Who has represented the Government of the United States in this claim since the 1st January, 1860?

A. Mr. Edmund Randolph.

Q. 37. What has been your occupation since you have been in California; and what is it now?

A. My occupation is familiar to the gentleman who propounds the question,—that of prosecuting land claims against the Government of the United States.

Q. 38. What claims have you prosecuted?

A. The Yturvide claim; the Berreyesa claim for the same mine; the claim of the Rancho Santa Teresa, in which Mrs. Berreyesa was interested, and the Rancho Quito; also the Fuentes claim. The Rancho Quito is near the town of Santa Clara, and was presented in the names of Fernandez and Alviso. The Fuentes claim was for the potrero of the Mission of San José, and presented in the name of Fuentes to the commission. These are all the land claims.

Q. 39. Are you a lawyer by profession?

A. I am not.

Q. 40. Then I suppose you have not a license to practice law in the Courts of this State, nor in those of the United States?

A. I have none.

Q. 41. In the prosecution of these claims did you employ associate counsel or did you conduct the prosecution yourself?

A. I employed attorneys as counsel in them.

Q. 42. How long have you been employed by the Ber-

reyesa's, and endeavored to dispossess the New Almaden Company of the mine and hacienda?

A. Since November, 1853, I have been employed to recover this property, which in my opinion justly belongs to the Berreyesa family.

Q. 43. What legal proceedings was first taken by the Berreyesa family, or their assigns, to recover possession of the mine after you were employed, and what was the character of that proceeding?

A. An action was brought in the Circuit Court of the United States for the Districts of California in ejectment; also a bill was filed on the equity side of the Court for an injunction restraining the working of the mine. I don't recollect when the action was commenced; I think in 1856.

Q. 44. In the action of ejectment the plaintiffs contended, did they not, that the boundary line between the ranchos of Justo Larios and Berreyesa had been fixed by agreement between the original grantees of said tracts of land a short time after the dates of their respective grants, and ran from the junction of the Arroyos Seco and Alamitos *across* the lomita in the middle of the Cañada to the Sierra? This was called the conventional line in that suit, and the plaintiff attempted to establish it by the testimony of Justo Larios and his wife, did they not?

A. I think the plaintiff filed a copy of the expediente in the Berreyesa case from the archives, to show that the line between the two ranchos was judicially settled in 1842, before the grants were issued to the parties. It is true that Justo Larios and his wife did give their testimony in relation to this line.

Q. 45. Do you not know that Justo Larios and his wife in that suit swore to the fact that, a short time after Berreyesa and Larios returned from Monterey with their titles, they went upon the ground, and fixed the line between them by marking trees?

A. I think they did.

Q. 46. Are you not perfectly sure that they did?

A. It is very possible. I was not present all the time that the witnesses were examined on that trial. I was not present when the wife of Larios gave her testimony.

Q. 47. Do you not know that Larios and his wife were made witnesses in that case for the principal, if not the sole, purpose of proving that such a line had been agreed upon between Larios and Berreyesa on the ground, and fixed by marked trees—marked after they returned from Monterey with their title papers in their hands?

A. With respect to Larios and his wife, and to all witnesses

in that suit, I know nothing whatever. I paid very little attention at the time to the suit, because my opinion was that the suit was brought prematurely, and before the Berreyesa title was finally confirmed.

Q. 48. Justo Larios testified on that occasion that, before he came on the stand to testify, you had spoken to him with reference to these marked trees; that you had visited him to learn something about them; did he not tell the truth?

A. Not exactly. I had a conversation with Larios with regard to his testimony before the Land Commission in the Berreyesa claim about that boundary line and marked trees.

Q. 49. You have been a very regular attendant, have you not, at the taking of all the depositions which have been filed in this case since your employment by the Berreyesa's?

A. I have been in constant attendance at the taking of the depositions in this case, and have devoted much of my time in that way.

Q. 50. Among other witnesses who have been called in this case, are Señores Bassoco, Balcareel, Castillo, Yrisarri, Miranda, Velasco, Castillo y Lanzas, Negrete and Villalon. Their examination occupied about eighty-five days of hard work; between 3000 and 4000 questions were propounded to them. You were present, were you not, during the whole examination of each of them, or very nearly so?

A. I was present the greater part of the time—all the time with the exception of perhaps a few days.

Q. 51. You were also present during the examination of every other witness whose testimony has been taken in this case, were you not?

A. It is very probable, but I cannot be certain.

Q. 52. You heard the arguments of the counsel for the United States—I mean Messrs. Randolph and Stanton—on the motion for an injunction and receiver in the case of *The United States vs. John Parrott and others*, did you not?

A. I was present.

Q. 53. You know Mr. Randolph contended on that occasion that all the papers alleged by the claimants to have emanated from the Supreme Government of Mexico, and to constitute a part of their title to the mine and land of New Almaden, were made in or after the year 1849, in consequence of the suggestions and advice of James Alexander Forbes, and were simulated and ante-dated, do you not?

A. I think he did, but I cannot say positively that he contended they were made in 1849, or afterwards.

Q. 54. If you are not certain that that was Mr. Randolph's theory of the time in which our title papers were made, what did you understand to be his view of the matter?

A. That the papers were ante-dated ; but I really cannot say whether he contended they were made in 1849 or 1850. I think in 1849, but will not be positive.

Q. 55. However that may be, I presume you must be certain of the theory of Mr. Randolph in his argument of that case, in regard to the time at which the papers in this case offered as evidence of the discovery and registry of the mine, and of juridical possession of the same, were made. Do you not know for certain that he contended in argument upon that motion that all the papers offered in evidence by the claimant to prove the registry of the mine in November and December, 1845, and the act of juridical possession given by the Alcalde to Castellero in December, 1845, were made in the year 1848, during Alexander Forbes' visit to California, and are ante-dated and fraudulent ?

A. I heard Mr. Randolph in his argument so state.

Q. 56. Do you not know, moreover, that what was called in that argument the Weekes copy of the expediente of title papers, contains a copy of these two certified copies of Castellero's representations ; the said Weekes copy being in the handwriting of James Alexander Forbes, and certified by Alcalde Weekes, on the 20th January, 1848, to be a faithful copy of the original expediente in his office ?

A. I have never seen the original of the Weekes copy. I have seen a traced copy. I have no doubt but the original is in the handwriting of James Alexander Forbes.

Q. 57. You know further, do you not, that this Weekes copy, as it was called, is the document which contains the printed copy of these two representations of Castellero's, concerning which Sainsevain made the alleged declaration to you ; when I speak of the Weekes copy, I refer to the documents printed in the pamphlet which you have exhibited ?

A. I do.

Q. 58. You know further, do you not, that Mr. Randolph, in his argument upon that motion, laid great stress on the fact that this Weekes copy had been filed by the claimants with their petition before the Board of Land Commissioners, as tending to establish his theory that all the papers relative to the registry and possession of this mine, offered in evidence by the claimant in this case, were made in 1848 ?

A. I cannot recollect distinctly that Mr. Randolph laid any very great stress on this point.

Q. 59. You are thoroughly posted up in all the testimony which has been taken in this case, are you not ?

A. I think I am with respect to the greater part, perhaps not the whole.

Q. 60. With what part of the testimony are you unacquainted?

A. Perhaps with some of the testimony of the witnesses from Mexico I am not acquainted. I was not present at the depositions of the Professors of the Mining College of Mexico; at any rate, but part of the time, if at all.

Q. 61. You are pretty well posted up, are you not, in the testimony of Benito Diaz, James Alexander Forbes, and Robt. Birnie?

A. I must say that I was not present when the testimony of Benito Diaz was taken; but part of the time when that of Forbes was taken, although I know its substance pretty well; and I also know the substance of Birnie's testimony, which I have read in print.

Q. 62. Knowing as you did the view taken by the counsel for the Government of the time at which the papers relating to the registry and possession of the mine were made; knowing as you did that he contended that those papers were made while Alexander Forbes was in California, in 1848: is it not strange, and in fact unaccountable, that you, the agent of the Berreyesa's, and yourself deeply interested in the defeat of this claim, should have been informed, as far back as the month of January of this year, by Mr. Sainsevain, that he signed the papers in 1848, being copies of the registry of the mine—which copies purport to have been made and certified on the 13th of January, 1846—without having informed the counsel of the United States of what Sainsevain had said, and without taking a single step towards calling him as a witness in behalf of the government in this claim?

A. It certainly was not strange on my part that I did not inform the counsel for the United States, as we, Mr. Sloan and myself, have always taken a different view of the case. We consider the documents which have been filed in this case, supposing them all genuine, to be utterly worthless as conferring any title on Castillero, legally considered. Hence, when Mr. Sainsevain mentioned the fact, I said that whether the papers were signed in 1846, 1847 or 1848, I considered them valueless; consequently I did not take any pains to inform the counsel for the United States.

Q. 63. It is a common practice among lawyers to take advantage of all fair means for attack or defense, and as a general thing, however confident a lawyer may be of the legal insufficiency of a title-paper of an adverse party, yet if he knows he has the means of proving that title paper to be ante-dated, fraudulent, and therefore void, he would hardly consider himself justified in failing to introduce proof of the fraud. Do you

mean to say that yourself and Mr. Sloan are an exception to that general rule, or rather, that your neglect to take the deposition of Mr. Sainsevain is an instance of such an exception?

A. I cannot answer for Mr. Sloan; I may be such an exception. Mr. Sloan said it would be proper to take Mr. Sainsevain's deposition.

Q. 64. Did you ever say to Mr. Sainsevain that you desired to have his deposition taken on behalf of the government in this case?

A. I never did.

Q. 65. Did Mr. Sloan ever request you to see Mr. Sainsevain on the subject of having his deposition taken in this case?

A. I think he did, but cannot be certain; if he did it was after I heard that the papers had been found, and before there had been any deposition taken about them.

Q. 66. Did you ever see Mr. Sainsevain in compliance with Mr. Sloan's request?

A. I did not.

Q. 67. Did Mr. Sloan ask you if you had seen him?

A. He did not.

Q. 68. You and Mr. Sloan, then, must have regarded the declaration of Mr. Sainsevain as of very little moment, did you not?

A. We did,—that is, we thought very little of it.

Q. 69. So little of it, that you never thought of mentioning it to a human being until the papers were discovered, and you had reason to suppose that Mr. Sainsevain would be called upon as a witness on behalf of the claimant; is that so?

A. It is.

Q. 70. Does not Mr. Sainsevain bear the reputation of a man of property, industry, and substance in this community?

[Objected to by counsel for the United States, as incompetent testimony.]

A. He does, as far as I know.

Q. 71. Then your neglect to call him as a witness on behalf of the United States in this case, to prove that what purports to be copies of title papers, certified on the 13th of January, 1846, and signed by him as an assisting witness, were not signed by him as such until 1848, was not owing to any supposed want of credibility of Mr. Sainsevain?

A. It was not.

Q. 72. Is it not rather singular, and did you not so consider it at the time, that Mr. Sainsevain, a gentleman of good character, of business habits, and of considerable property, should volunteer to you the statement, in the year 1860, that in the

year 1848 he had lent himself as the instrument of a gross fraud; that as an assisting witness he had signed a paper in 1848, the date of which was the 13th of January, 1846?

A. I did consider it strange and singular.

Q. 73. You have said you were so well satisfied of the legal inefficiency of the papers in this case, supposing them all genuine, that you regarded all proof of fraud as a matter of no moment; entertaining those views, I presume you did not state to Mr. Sainsevain at any time before he made his alleged declaration to you, the importance of proving that he signed those certified copies in 1848; am I correct?

A. You are correct.

Q. 74. Being surprised at this degrading confession of Mr. Sainsevain, thus voluntarily and uselessly made, did you ask Mr. Sainsevain, after he had made that alleged declaration, if you understood him aright; did you ask him if he really intended to say that in 1848 he signed as assisting witness a certified copy of certain title papers, bearing date the 13th of January, 1846?

A. I did not.

Q. 75. Mr. Marks, are you sure that Mr. Sainsevain meant as you understood him?

A. It is possible that he was mistaken.

Q. 76. Did Mr. Sainsevain examine carefully the papers to which you directed his attention?

A. I don't think he did.

Q. 77. Did you read them aloud to him?

A. I did not.

Q. 78. Does not Mr. Sainsevain know that both you and Mr. Sloan have an interest in defeating the Almaden claim?

A. He does.

Q. 79. Is it not again very singular, that knowing that fact, he should have given the testimony he has in this case, and in your presence?

A. It does appear to me very strange.

Adjourned until to-morrow morning at 10 o'clock.

JNO. B. WILLIAMS,

U. S. Commissioner.

—
SAN FRANCISCO, August 10, 1860.

Present: Edmund Randolph, Esq., for the United States, and Mr. Peachy, of counsel for claimant.

CROSS EXAMINATION RESUMED.

Q. 80. Have you brought with you the conveyance from the Berreyesa's to yourself and others, under which you derive title to a part of the rancho, of which you have spoken?

A. I have, and now produce it.

[The witness produces a conveyance from certain members of the Berreyesa family to C. K. Garrison, J. M. Moss, H. I. Thornton, V. E. Howard, and I. D. Marks, the latter being the witness now under examination. The deed is dated November 3, 1853, and purports to convey to C. K. Garrison and J. M. Moss one-sixth of the mine; to H. I. Thornton one-twelfth of the mine; to V. E. Howard one-twelfth of the mine, and to I. D. Marks, the witness, one-eighth of the mine; in all, eleven-twelfths of the mine, the consideration being that the grantees undertake by their money and personal services to conduct all suits against the New Almaden Company for the purpose of recovering possession of the mine, there being no other consideration.]

Q. 81. I wish to file a copy of this deed as an Exhibit to your deposition: will you permit me to take a copy of it to be used for that purpose?

A. I have no objection.

[The copy will be marked as Exhibit B. to this deposition.]

Q. 82. Is the pamphlet which you have produced the identical one you showed Mr. Sainsevain?

A. I am not certain that it is, as there were several copies of the same book in Mr. Sloan's office.

Q. 83. Why did you not, while Mr. Sainsevain was under examination, you being present the whole time, except when you absented yourself for a short time at my request, produce this pamphlet and hand it to the counsel for the United States, that he might show it to Mr. Sainsevain and ask him whether he had ever seen it before, or had examined the documents therein which you have said you showed him, and on which he made the alleged declaration?

A. My intention was to have done so. I called at the office of Mr. Sloan, but found it locked, and therefore could not get in.

Q. 84. Why did you hold your conversation with Mr. Sainsevain in Spanish?

A. It is the language in which Mr. Sainsevain and myself always converse.

Q. 85. Does not Mr. Sainsevain speak English very poorly?

A. I think he speaks English very well.

Q. 86. Why then should you have selected the Spanish language to converse in, especially as Mr. Sloan was present, who, I believe, does not speak Spanish, nor understand a conversation conducted in that language, and especially also while you were conversing on a matter affecting the interests of the Berreyesa's, whose counsel Mr. Sloan was?

A. I must again repeat that Mr. Sainsevain and myself always conversed together in the Spanish language in Mr. Sloan's office.

Q. 87. Even in Mr. Sloan's presence, when you were conversing on a subject concerning which it was proper for him, as the counsel for the Berreyesa's, to receive all possible information?

A. Yes, sir.

Q. 88. Then I suppose you were in the habit of rendering such conversations into English for Mr. Sloan's benefit; were you not?

A. Yes, sir; when I considered it material or interesting.

Q. 89. Would it not have been better and the more natural way of doing business to have carried on these conversations in English; would not Mr. Sloan by that means have received information in the very words of Mr. Sainsevain, and would he not have been enabled to judge for himself of the importance or materiality of anything Mr. Sainsevain might say, instead of your being the judge of those matters?

A. Mr. Sainsevain preferred to converse with me in Spanish; I presume because he spoke the Spanish language more fluently.

Q. 90. When Mr. Sainsevain told you that in 1848, as an assisting witness, he signed a certified copy of an important title paper, purporting to be dated the 13th of January, 1846, did you ask him at whose instance he signed it?

A. I did not.

Q. 91. Did you ask him where he signed it?

A. I did not.

Q. 92. Did you ask him in whose presence he signed it?

A. I did not.

Q. 93. Did you ask him whether it was signed by Chabolla, the Alcalde, when he signed it?

A. I did not.

Q. 94. Did you ask him whether it had been signed by the other assisting witness, José Suñol, at the time he signed it?

A. I did not.

Q. 95. Did you ask him whether Chabolla, the Alcalde, José Suñol, the one assisting witness, and himself the other, signed it at the same time or at different times?

A. I did not.

Q. 96. Did you ask him if he knew at what time it was

signed by Chabolla, the Alcalde, and José Suñol, one of the assisting witnesses?

A. I did not.

Q. 97. Did you ask him whether Mr. Alexander Forbes, of Tepic, or Mr. James Alexander Forbes, of Santa Clara, or Mr. Robert Walkinshaw, or Padre Real, or either of the Robles', or General José Castro, or anybody acting on behalf of any one of these, brought him that paper in 1848, and requested him to sign it?

A. I did not.

Q. 98. Did you ask him whether at the time he signed it in 1848, he knew that it bore date the 13th January, 1846?

A. I did not.

Q. 99. Did you ask him whether the difference between the date of the paper and the time he actually signed it was the result of oversight or of fraud?

A. I did not.

Q. 100. Did you ask him what object he had in signing in 1848 a paper purporting to be dated and signed on the 13th of January, 1846?

A. I did not.

Q. 101. Did you tell him that the fact stated by him to you of his having signed this paper in 1848, accorded marvelously well with the theory of the counsel for the United States as to the time at which the papers relating to the registry of the mine were really made?

A. I did not.

Q. 102. Did you tell him that he had communicated to you a fact which, in the opinion of the counsel for the United States in this case, whatever might be your own opinion, it was of great importance to establish in evidence?

A. I did not.

Q. 103. When did you and Mr. Sloan begin to converse about this declaration of Sainsevain's, preparatory to giving your testimony in this case, if any such conversation occurred?

A. I have had no conversation with Mr. Sloan about it, except to mention to him that I had received a subpoena to testify.

Q. 104. And you have seen no written statement, and heard no verbal account from a third person, of Mr. Sloan's recollection of what Sainsevain said, to which he would testify?

A. I have not.

DIRECT RESUMED.

Q. 105. In what language did Mr. Sainsevain speak when he conversed directly with Mr. Sloan, if he ever did?

A. I have heard Mr. Sainsevain speak in English to Mr. Sloan.

Q. 106. In what language did Mr. Sainsevain speak when you and he and Mr. Sloan conversed together, if you ever did?

A. In English.

Q. 107. During your cross-examination has anything further occurred to you which happened at the time and place at which Mr. Sainsevain made the declaration to which you have testified; if so, state what?

[Objected to by counsel for claimant, so far as anything the witness may allege Mr. Sainsevain said, other than the alleged declaration concerning which Mr. Sainsevain was interrogated.

The counsel for the United States declines to press the question under the objection.

The counsel for the claimant states he made the objection to furnish a ground for recalling Mr. Sainsevain.]

Examination closed.

I. D. MARKS.

Sworn to and subscribed before me, this 11th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 13, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT MARKS A., J. B. W.

Señor Alcalde de 1a Nominacion :

Andres Castellero, Capitan de Caballeria permanente, y residente hoy en este Departamento ante la notoria justificacion de Vd. hace presente, que habiendo descubierto una veta de plata con ley de oro, en terreno del rancho perteneciente al Sargento retirado de la compañía presidial de San Francisco, José Reyes Berreyesa, y queriendo trabajarla en compañía suplico á Vd., que arreglado á la ordenanza de mineria, se sirva de fijar rotulones en los parajes publicos de la jurisdiccion para que llegado el tiempo de la posesion juridica, asegure mi derecho, segun las leyes de la materia, á Vd. suplico provea de conformidad, en lo que recibiré merced y justicia : admitiendo este en papel comun por falta del sellado correspondiente. Pueblo de San José Guadalupe, Noviembre veinte y dos de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Es copia á la que me remito, firmandola con dos testigos de asistencia en la pueblo de San José Guadalupe á 13 de Enero de 1846.

PEDRO CHABOLLA.

De asistencia—P. SAINSEVAIN : de asã. JOSE SUNOL.

—

Señor Alcalde de 1ª Nominacion del Pueblo de San José Guadalupe :

Andres Castellero, Capitan permanente de Caballeria, ante la notoria justificacion de Vd. comparezco y digo : entablado el mineral que con anterioridad denuncié á ese juzgado, he sacado, á mas de plata con ley de oro, azogue liquido, en presencia de algunos concurentes que podré citar en caso oportuno. Y por convenir mi derecho le he de merecer á Vd. que unido al escrito del denunciado, se archive esta presentacion, no yendo en papel del sello por no haberlo.

Á Vd. suplico provea de conformidad ; en lo que recibiré merced y justicia.

Santa Clara, Decembre 3 de 1845.

ANDRES CASTILLERO.

Es copia á la que me remito, firmandolo con los testigos de mi asistencia en el pueblo de San José Guadalupe á 13 de Enero de 1846.

PEDRO CHABOLLA.

De asistencia—P. SAINSEVAIN : de asã. JOSE SUNOL.

TRANSLATION.

Señor Alcalde of 1st Nomination :

Andres Castellero, Captain of permanent cavalry, and at present resident in this Department, before your notorious justification, makes representation: that having discovered a vein of silver, with a ley of gold, on the land of the rancho pertaining to José Reyes Berreyesa, retired Sergeant of the Presidial company of San Francisco, and wishing to work it in company, I request that, in conformity with the ordinance on mining, you will be pleased to fix up notices, in public places of the jurisdiction, in order to make sure of my right when the time of the juridical possession may arrive, according to the laws on the matter. I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

Pueblo of San José Guadalupe, November twenty-second, eighteen hundred and forty-five.

ANDRES CASTILLERO.

This is a copy of the original to which I refer, signing it with two assisting witnesses, in the pueblo de San José, on the 13th of January, 1846.

PEDRO CHABOLLA.

Assisting witnesses: P. SAINSEVAIN, JOSE SUNOL.

—

Señor Alcalde of First Nomination :

I, Andres Castellero, permanent Captain of Cavalry, before your well known justification, appear and say: That on opening the mine which I previously denounced in this Court, I have taken out, besides silver with a ley of gold, liquid quick-silver, in the presence of several bystanders, whom I may summon on the proper occasion. And, considering it necessary for the security of my right so to do, I have to request you, that, uniting this representation to the denouncement, it may be placed on file, it not going on stamped paper, because there is none. I pray you to take measures to this effect, in which I will receive favor and grace.

Santa Clara, December 3, 1845.

ANDRES CASTILLERO.

This is a copy of the original to which I refer, signing it with the witnesses of my assistance, in the pueblo of San José Guadalupe, on the 13th of January, 1846.

PEDRO CHABOLLA.

Assisting witnesses: P. SAINSEVAIN, JOSE SUNOL.

EXHIBIT MARKS B., J. B. W.

Sean todos por el presente, que nosotros, Maria Z. Bernal de Berreyesa, Ygnacio Berreyesa, Santiago Berreyesa, José S. Berreyesa, Nemecio Berreyesa, M. Carmen Berreyesa, Francisco Berreyesa, Loreto Berreyesa, y su esposa Juan Bojorquez, Magdalena Berreyesa, y su esposa M. Fernandez, Fernando Berreyesa y Encarnacion Berreyesa, de las primeras partes del condado de Santa Clara y Estado de California, Celebramos, el contrato contenido en los articulos siguientes con los Señores C. K. Garrison, J. M. Moss, H. I. Thornton, V. E. Howard y I. D. Marks, de la segunda parte, del condado de San Francisco y Estado dicho. Artículo primero—Las primeras partes, de la primera parte, como dueños al presente del Rancho de San Vicente (en el Condado de Santa Clara) y sus pertenencias, y al mismo tiempo, reconociendo como porcion íntegra de dicho Rancho, la Mina de Nuevo Almaden y sus pertenencias, tratamos y enagenamos, una porcion de dicha Mina conforme sigue. Artículo segundo—Las primeras partes de la primera parte, comprometen, ceden y traspasan, para siempre, á favor de las segundas partes y sus herederos ó sucesores, once barras (de la veinte y cuatro en que se considera divídédla una Mina) de la Mina de Nuevo Almaden, como del mismo modo Once partes, de veinte y cuatro, sobre sus maquinas y demas mejoras pertenecientes a dicha Mina, y la distribución entre las segundas partes en las barras y mejoras, se hará como mas adelante se dirá. Artículo tercero—Las primeras partes en esta contrata, ceden y traspasan en la mejor forma, como queda dicho in el Artículo segundo de esta contrata, bajo estas condiciones y son, que las segundas partes, compromiten sus bienes y servicios personales, para el mantenimiento de todos los pleitos, tramites y apelaciones, que fuesen necesarios en las Cortes de esta Estado y en las de cualquier otra de los Estados Unidos, y sus pertenencias, hasta obtener una final decision, y recibir, una pacífica posesion, de todas las propiedades arriba mencionades. Artículo cuarto—Las segundas partes se comprométen á no vender, traspasar, ni enajénar ninguna de los derechos adquiridos en esta contrata, hasta despues de obtener una total y final favorable decíision en dichos pleitos y apelaciones, y si lo podran hacer en algun caso urgente, para proteger en adelanto de las mismos tramites.

Artículo quinto—Las partes que corresponden á cada una de las partes de la segunda parte, seran como sigue, C. K. Garrison y J. M. Moss cuatro barras y sus pertenencias, H. I. Thornton dos barras y sus pertenencias, V. E. Howard dos bar-

ras y sus pertenencias, aquí distribuidas se entenderá de las once partes de las veinte y cuatro como arriba queda dicho. Artículo sexto—Las segundas partes, tendran derecho á once partes de veinte y cuatro, sobre cualquier suma ó cantidad que alcancen á recobrar contra la compañía que ilegalmente ocupa y ha ocupado la referida Mina de Nuevo Almaden, por razon de perjuicios y metales estraidos en proporecion a las partes que les corresponda; mas, queda entendido que todo lo que sea recobrado, por valor de leñas, pastos y cales de San Vicente, pertenecieran esclusivamente á las partes de la primera parte. Artículo septimo—Ambas partes estan conformes, en que, obtenida una final y favorable decisión, y tomada una pacífica posecion de la Mina de Nuevo Almaden y sus pertenencias, entre las mismas partes interesadas, convendran y arreglaran de la manera mas conveniente, el modo de administrar la negociacion de la manera mas favorable, como tambien, queda entendida, que cada una de las partes interesadas pagaran sus *taxes* respectivos, y demas gastos consequentes, al beneficio y demas trabajos de las metales. Artículo octavo—Las primeras partes no contraeran responsabilidad directa ni indirecta para con las segundas partes en el último caso de un mal resultado, en las cortes y apelaciones al recobro de las propiedades mencionadas.

Artículo noveno—Las primeras partes de la primera parte, declaran y convienen, que en el último caso de un mal resultado en los pleitos y apelaciones relativos al recobro de la Mina de Nuevo Almaden y sus pertenencias, cederan la misma cantidad de barras, a cada una de las personas arriba mencionada, en cualquiera otra Mina, que primero se abra en el referido Rancho de San Vicente y el fé de lo cual lo firmamos con nuestros propias manos y sellos en el referido Rancho de San Vicente á los veinte y tres dias de Noviembre de mil ocho cientos y tres años.

MAGDALENA † FERNANDEZ,	[s.]
MAXIMO Z. FERNANDEZ,	[s.]
LORETO B. DE † BOJORQUEZ,	[s.]
JUAN † BOJORQUEZ,	[s.]
M ^A DEL CARMEN † BERREYESA,	[s.]
MARIA Z. B. † BERREYESA,	[s.]
YG. BERREYESA,	[s.]
JOSE S. BERREYESA,	[s.]
NEMECIO BERREYESA,	[s.]
FERNANDO † BERREYESA,	[s.]
ENCARNACION † BERREYESA,	[s.]
SANTIAGO BERREYESA.	[s.]

Testigo : L. ARCHER, CUBAS FERNANDEZ.

STATE OF CALIFORNIA, }
 County of Santa Clara. } ss :

On the twenty-third day of November, A.D. 1853, personally appeared before me, a Notary Public in and for said county Maria Z. Bernal de Berreyesa, Ygnacio Berreyesa, José S. Berreyesa, Nemecio Berreyesa, Fernando Berreyesa, Encarnacion Berreyesa, Santiago Berreyesa, Magdalena Fernandez, and Maximo Fernandez, known to me to be the persons described in, and who executed the foregoing instrument, who each acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Magdalena Fernandez, wife of the said Maximo Fernandez, being personally known to me to be the person whose name is subscribed thereto as a party, and who, having been made acquainted with contents of said instrument, acknowledged on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she did not wish to retract the execution of the same. Given under my hand and Notarial Seal at the said county of Santa Clara, this November 23d, A. D. 1853.

L. ARCHER,

Notary Public.

[SEAL]

STATE OF CALIFORNIA, }
 County of Santa Clara. }

Be it remembered, that on this 23d day of November, A. D. 1853, personally appeared before me, Caswell Davis, a Notary Public within and for the County and State aforesaid, Loreto B. de Bojorquez, Juan Bojorquez, Maria del Carmen Berreyesa, all personally known to me to be the identical persons whose names are subscribed to the foregoing instrument of writing, who executed the same in my presence, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; that they executed the same freely, voluntarily, and of their own good will. Given under my hand and Seal this the day and year above written.

CASWELL DAVIS. [SEAL.]

Aceptamos el contrato que precede, y en fé de lo cual firmamos esta escritura con nuestras propias manos y ponemos nuestros sellos, en la ciudad de San Francisco á los 26° dias de Noviembre de 1853 años.

C. K. GARRISON, [S.]
 HARRY I. THORNTON, [S.]
 J. MORA MOSS, [S.]
 V. E. HOWARD, [S.]
 I. D. MARKS, [S.]

Testigos, JAS. TOBIN.

STATE OF CALIFORNIA, }
 County of San Francisco, } ss :

On this thirtieth day of November, A. D. one thousand eight hundred and fifty three before me, Erastus V. Joice, a Notary Public in and for said County, personally appeared James Tobin, to me personally known, who being duly sworn says, that he was present and saw C. K. Garrison, Harry I. Thornton, V. E. Howard, I. D. Marks and J. M. Moss execute the annexed instrument; that he, the witness, subscribed his name as a witness at the time; that the said parties are to him known to be the individuals described in and who executed the annexed instrument, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned. In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

E. V. JOICE,
 Notary Public.

Filed for record at 9 o'clock A. M., Dec. 3d, A. D. 1853.

S. A. CLARK, Recorder.

Recorded at request of J. B. Hewson.

S. A. CLARK, Recorder.

(Certificate of Record in Book of Deeds "F," pages 490, 491, 492, and 493.)

TRANSLATION OF EXHIBIT MARKS B.

Know all men by these presents : That we, Maria Z. Bernal de Berreyesa, Ygnacio Berreyesa, Santiago Berreyesa, Nemeicio Berreyesa, M. Carmen Berreyesa, Francisco Berreyesa, Loreto Berreyesa, and her husband Juan Bojorquez, Magdalena Berreyesa, and her husband M. Fernandez, Fernandez Berreyesa, and Encarnacion Berreyesa, parties of the first part, of the county of Santa Clara, and State of California, do make the contract contained in the following articles, with Messrs. C. K. Garrison, J. M. Moss, H. I. Thornton, V. E. Howard, and I. D. Marks, of the second part, of the county of San Francisco, and State aforesaid :

Art. 1.—The parties of the first part, as owners at present of the Rancho San Vicente (in the county of Santa Clara) and its appurtenances, and at the same time recognizing as an integral part of said rancho the mine of New Almaden and its appurtenances, do bargain and convey a part of said mine as follows :

Art. 2.—The parties of the first part do bind, grant and transfer forever in favor of the parties of the second part, and their heirs or successors, eleven barras (of the twenty-four into which a mine is supposed to be divided) of the mine of New Almaden, as also, in like manner, eleven twenty-fourths of its machinery, and other improvements belonging to said mine ; and the distribution of the barras and improvements among the parties of the second part shall be made as hereinafter stated.

Art. 3.—The parties of the first part in this contract do grant and transfer, in the best form, as stated in Art. 2d of this contract, under these conditions,—to wit, that the parties of the second part pledge their property and personal services, to maintain all suits, proceedings and appeals which may be necessary in the courts of this State, and in those of any other of the United States, and its dependencies, until a final decision is had, and peaceable possession received of all the property above mentioned.

Art. 4. The parties of the first part bind themselves not to sell, transfer, or convey any of the rights acquired by this contract, until after they shall have obtained a full and final favorable decision in said suits and appeals ; but they may do so in case of necessity to sustain and advance said proceedings.

Art. 5.—The parts which belong to each one of the parties of the second part, shall be as follows : C. K. Garrison and J. M. Moss, four barras and their appurtenances ; H. I. Thornton, two barras and their appurtenances ; V. E. Howard, two

barras and their appurtenances; I. D. Marks, three barras and their appurtenances—this distribution being understood to refer to eleven out of the twenty-four parts as above stated.

Art. 6.—The parties of the second part shall be entitled to eleven twenty-fourths of any sum or amount which they may be able to recover from the company which illegally occupies and has occupied the said New Almaden Mine, on account of damages and ores extracted, in proportion to the parts which they own; but it is understood that whatever may be recovered for the value of the timber, pasture, and lime of San Vicente, shall belong exclusively to the parties of the first part.

Art. 7.—It is agreed between both parties that—a final and favorable decision having been obtained, and peaceable possession of the mine of New Almaden and its appurtenances having been taken—the said parties in interest will agree to, and regulate, in the most convenient manner, the mode of administering the “negociacion” in the most favorable manner; and it is also understood, that each one of the parties interested shall pay his respective taxes, and other necessary expenses, for the smelting and other working of the ores.

Art. 8.—The parties of the first part shall not contract, directly nor indirectly, any responsibility to the parties of the second part, in case of a final bad result in the Courts, and appeals for the recovery of said property.

Art. 9.—The parties of the first part declare and agree that, in case of a final bad result in the suits and appeals relating to the recovery of the mine of New Almaden, and its appurtenances, they will grant the same number of barras to each one of the persons above mentioned in any other mine which may be first opened on the said rancho of San Vicente: and in witness whereof we sign the same with our hands and seals at the said rancho of San Vicente, on the twenty-third day of November, of the year eighteen hundred and fifty-three.

MAGDALENA † FERNANDEZ,	[s.]
MAXIMO Z. FERNANDEZ,	[s.]
LORETO B. DE † BOJORQUEZ,	[s.]
JUAN † BOJORQUEZ,	[s.]
M ^A DEL CARMEN † BERREYESA,	[s.]
MARIA Z. B. † BERREYESA,	[s.]
YG. BERREYESA,	[s.]
JOSE S. BERREYESA,	[s.]
NEMECIO BERREYESA,	[s.]
FERNANDO † BERREYESA,	[s.]
ENCARNACION † BERREYESA,	[s.]
SANTIAGO BERREYESA.	[s.]

Witness: L. ARCHER, CUBAS FERNANDEZ.

STATE OF CALIFORNIA, }
 County of Santa Clara. } ss:

On the twenty-third day of November, A. D. 1853, personally appeared before me, a Notary Public in and for said county, Maria Z. Bernal de Berreyesa, Ygnacio Berreyesa, José S. Berreyesa, Nemecio Berreyesa, Fernando Berreyesa, Encarnacion Berreyesa, Santiago Berreyesa, Magdalena Fernandez, and Maximo Fernandez, known to me to be the persons described in, and who executed the foregoing instrument, who each acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned; and the said Magdalena Fernandez, wife of the said Maximo Fernandez, being personally known to me to be the person whose name is subscribed thereto as a party, and who, having been made acquainted with contents of said instrument, acknowledged on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she did not wish to retract the execution of the same.

Given under my hand and notarial seal, at the said County of Santa Clara, this November 23d, A. D. 1853.

[SEAL.]

L. ARCHER,
 Notary Public.

STATE OF CALIFORNIA, }
 County of Santa Clara. }

Be it remembered, that on this twenty-third day of November, A. D. 1853, personally appeared before me, Caswell Davis, a Notary Public within and for the county and State aforesaid, Loreto B. de Bojorquez, Juan Bojorquez, Maria del Carmen Berreyesa, all personally known to me to be the identical persons whose names are subscribed to the foregoing instrument in writing, who executed the same in my presence, and severally acknowledged the same to be their act and deed, for the purposes therein mentioned, that they executed the same freely, voluntarily, and of their own good will.

Given under my hand and seal, this the day and year above written.

CASWELL DAVIS. [SEAL.]

We accept the preceding contract, and in witness thereof we sign this writing with our hands, and affix our seals, at the city of San Francisco, on the 26th day of November, in the year 1853.

C. K. GARRISON, [L. S.]
 HARRY I. THORNTON, [L. S.]
 J. MORA MOSS, [L. S.]
 V. E. HOWARD, [L. S.]
 I. D. MARKS. [L. S.]

Witness: JAS. TOBIN.

STATE OF CALIFORNIA, }
 County of San Francisco, } ss:

On this thirtieth day of November, A. D. one thousand eight hundred and fifty-three, before me, Erastus V. Joice, a Notary Public in and for said city and county, personally appeared James Tobin, to me personally known, who, being duly sworn, says that he was present, and saw C. K. Garrison, Harry I. Thornton, V. E. Howard, I. D. Marks, and J. M. Moss execute the annexed instrument; that he, the witness, subscribed his name, as a witness, at the time; that the said parties are to him known to be the individuals described in, and who executed the annexed instrument, and executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above written.

[SEAL.]

E. V. JOICE,
 Notary Public.

Filed for record at 9 o'clock, A. M., December 3d, A. D. 1853.

S. A. CLARK, Recorder.

Recorded at the request of J. B. Hewson.

S. A. CLARK, Recorder.

(Certificate of record in Book of Deeds "F," pages 490, 491, 492 and 493.)

DEPOSITION OF E. W. F. SLOAN.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
 v. } In Land Cases: District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 10th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared E. W. F. Sloan, a witness produced in behalf of the United States in the above entitled cause, now pending in the said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Edmund Randolph, Esq., for the United States, and A. C. Peachy, Esq., for claimant.

Witness sworn on his voir dire.

Questions in behalf of the claimant.

QUESTION 1st. You know very well the issues involved in this suit, and the property claimed: Do you own an interest, or do you claim an interest, in the lands and mine of New Almaden adverse to the title of the claimant in this case?

A. I do; the interest I claim is under the Berreyesa's.

Q. 2. You have been counsel for the Berreyesa's a long time, have you not?

A. I have, since 1852.

Q. 3. You have conducted various suits at common law and equity against the New Almaden Company, claiming under Andres Castillero, to recover possession of the mine and part of the lands claimed in this case, and to obtain an injunction restraining the New Almaden Company from working the mine, and to have a receiver appointed to take charge of and conduct the operations of the mine, and for a decree ordering an account, etc., have you not?

A. I have.

Q. 4. In all this litigation you have claimed, have you not, that the direction of the dividing line between the rancho of Berreyesa and that of Justo Larios, as described in their titles, is such as to throw the Almaden mine and hacienda, or reducing establishment, within the general limits of the Berreyesa rancho?

A. I have, and do so claim still.

Q. 5. Do you not consider that the defeat of the title or claim, for the establishment of which against the government of the United States this suit is prosecuted, will greatly add to the value of the Berreyesa rancho?

A. I do.

[The competency of the witness to testify, is objected to by the counsel for claimant.]

Questions in behalf of the United States.

Q. 6. State your name, age, place of birth, present residence, and occupation.

A. E. W. F. Sloan; age, 43; place of birth, South Carolina; present residence in San Francisco, and since 1851; am a lawyer by profession.

Q. 9. Are you acquainted with Pedro Sainsevain, the witness who testified in this case on the 7th and 8th instant?

A. I am, and have been since some time last winter.

Q. 8. Have you ever conversed with him on the subject of any papers, or copies of papers, in evidence in this case? If yea, describe the papers concerning which you held such conversation with him.

A. I have had conversations with him in my office concerning the claim of Castellero, or those who hold under him, to the New Almaden mine; and of the claim of the Berreyesa's to the tract of land mentioned in the questions which have been asked me by counsel for claimant, which I contend embraces the mine. Most of the conversations I have had with Mr. Sainsevain concerned the boundary line between the Berreyesa and Justo Larios ranchos. I have had some general conversations with Mr. Sainsevain, in which I briefly expressed my views touching the legal validity of the claimant Castellero's title to the mine; but, according to my present recollection, my conversations with him were mostly directed to the other question, to wit, the dividing line between Berreyesa and Larios.

Mr. Sainsevain called from time to time whilst I was in the office, I think during the month of January last, as near as I can recollect without reference to a deed of trust which I drew from some of the members of the Berreyesa family to himself, as often as ten or twelve times at least; once or twice before

the deed was drawn, perhaps oftener, and several times afterwards. At every call we interchanged some little conversation in regard to these claims, sometimes more protracted. The greater part of the time, however, whilst he was in my office, he and Mr. Marks conversed with each other, while I was writing at the table, to which I would pay no attention. Sometimes one or the other would address an observation to me directly, at which time I would participate in the conversation for a minute or two, and then resume my business.

During all this time Mr. Marks and Mr. Sainsevain were frequently engaged in looking at various documents and papers connected with these claims, and occasionally I was asked regarding my opinion and views upon some matter about which they seemed to have been conversing. The only printed pamphlet that I remember to have opened and examined with Mr. Sainsevain during his calls at the office, was one which contains copies of the diseños in the Berreyesa case and in the Larios case, and a copy of the record as printed in Washington city in the case of *Tobin v. Walkinshaw et al.*, containing the testimony of witnesses in the bill of exceptions touching the dividing line between the two ranchos; and our conversation with regard to those two was directed almost entirely to the question of boundary.

When I was first introduced to Mr. Sainsevain, and for some time afterwards, I had either forgotten that there were any papers in the Castellero case signed by him as an assisting witness, or it never occurred to me that he was the same person, until it was suggested to me in the office by Mr. Marks one evening, that certified copies of the two representations signed by Castellero and the certificate of possession, usually called the denouncement papers, had been signed by Pedro Sainsevain, and that the time he signed them was in 1848. That was the first time I had ever wakened up to the fact, since my introduction to him, that the Mr. Sainsevain I knew had ever signed any papers in the case. Mr. Marks simply turned to me and made that observation. Mr. Sainsevain was present at the time, I think, because I turned to him at the time or soon afterwards, while the occurrence was fresh in my memory, and observed to him, "You, I understand, are the same Sainsevain who signed those papers as an assisting witness." He said he was.

In regard to the time he signed it, I don't now remember whether I put any question directly at the moment, or whether Mr. Marks repeated the observation he had made before with regard to the time. What I understood Mr. Sainsevain to say was, that it was in 1848. I did not at the moment know or

remember that that was a different date from that borne by the papers themselves, but I afterwards noticed the variance. If I had, at the moment, realized the discrepancy between his statement and the date inserted in the papers, I should have had a full and protracted conversation with him on the subject, for though I never attached a great deal of value to the date of those documents, or to the time of certifying the copies, yet I regarded any statement showing either a mistake in dates or contradicting dates as worthy of being noticed in connection with the general question of the genuineness of the papers.

Q. 9. In what language did you always converse with Mr. Sainsevain on the occasions referred to?

A. Always in English; though he and Marks were in the habit of conversing together in Spanish.

Q. 10. In what language did you transact business with him on those occasions?

A. In English. The only business I transacted in writing, was the drafting of a deed of trust, and also a conveyance from the Berreyesa's to myself of an interest of ten per cent., according to our original contract, some of the family having as yet not signed any conveyance. That was never executed. The deed of trust was, with some alterations made from my draft, as Mr. Sainsevain informed me. He consulted with me at the same time in regard to my views about the interests of the family, and in that connection, also in reference to a conveyance which Bojorquez and wife had made, which was deemed a very improvident one. All this was in the English language. However, I must say I think Mr. Sainsevain expresses himself with some difficulty in English. He may understand it pretty well, but does not speak it fluently.

Q. 11. Is your recollection and present impression of what passed between Mr. Sainsevain and yourself on the subject of the date on which he signed the papers in question, clear and distinct?

[Objected to by counsel for claimant as leading.]

A. My recollection of the impression is clear and distinct.

Q. 12. Is there anything further which you now recall on the subject of that interview between Mr. Sainsevain and yourself, and particularly, relating to the time when he signed those papers?

A. I cannot think of anything more that occurred at that time. It was not, as I before remarked, until some time afterwards that I observed particularly that the time mentioned did not correspond with the date in the papers. Since that I have had no conversation with Mr. Sainsevain, and no opportunity

to call his attention again to it. Some time afterwards, when I discovered that further testimony was being taken in this case, I mentioned to Mr. Randolph what I understood Mr. Sainsevain to say, suggesting to him that unless he was examined on that subject in behalf of the claimant, it would be as well to examine him in behalf of the United States.

CROSS-EXAMINATION.

Questions by counsel for claimant.

Q. 13. What time of day did this conversation occur between yourself, Mr. Marks and Mr. Sainsevain?

A. I think it was at night, as most of Mr. Sainsevain's visits were made after candle-light.

Q. 14. What were you doing at the time Mr. Sainsevain and Mr. Marks were conversing?

A. It would be impossible for me to state more particularly than that I was occupied in reading or writing.

Q. 15. Did you listen to the conversation at that time between Mr. Marks and Mr. Sainsevain, so as to understand it?

A. It may have been the eighth or ninth time that my attention was called by Mr. Marks to something they had been conversing about, but I paid no attention to their conversation as a general thing, unless my attention was specially called by one or the other to it.

Q. 16. Did you hear and attend to the conversation between Mr. Marks and Mr. Sainsevain that night, which preceded Mr. Marks' report to you of what Sainsevain had told him?

A. I do not recollect that I did. I worked in one room, where there was a fire-place; sometimes Mr. Marks and Mr. Sainsevain were engaged in conversation when I came to my office, and would continue it, mostly in the Spanish language, while I was at work at my table. Sometimes they would call my attention by putting a question or making an observation. On these occasions I sometimes made but a remark or two, and then resumed my reading or writing, and sometimes I would continue the conversation with them for several minutes.

Q. 17. I understand you to say that you have no recollection of having attended to the conversation between Mr. Sainsevain and Mr. Marks on the occasion referred to in the last question, which preceded Mr. Marks' report to you of what Mr. Sainsevain stated to him, and that this conversation between Mr. Marks and Mr. Sainsevain was one of those to which your attention was first called by something which Mr. Marks addressed to you?

A. I cannot from memory say that my attention was called

to anything previous to Mr. Marks' report to me of Mr. Sainsevain's statement, nor can I from memory state the contrary.

Q. 18. Do you remember now whether on that occasion Mr. Sainsevain and Mr. Marks conversed in Spanish or English?

A. I do not. I can only say that according to my recollection they always spoke to each other in the Spanish language, except when they seemed desirous that I should participate in the conversation.

Q. 19. Do you remember the particulars of that conversation which preceded Mr. Marks' report to you?

A. I do not. I don't know that I understood it even.

Q. 20. The printed copies of the certified copies of Castellero's two representations, signed by Mr. Sainsevain as an assisting witness on the 13th of January, 1846, are parts of an espediente of papers relating to the denouncement and possession of the Almaden Mine, which espediente was copied in the year 1848, and certified by James W. Weekes, Alcalde, on the 20th of January in that year;—in other words, the two papers signed by Mr. Sainsevain are those from which were copied the instrument certified by Weekes, and known in this case as the Weekes copy; I ask you are they not?

A. They purport to be copies of parts of an espediente, as it appears in the pamphlet referred to by Mr. Marks, on pages 6, 7, 8 and 9, certified by James W. Weekes, Alcalde, on the 20th January, 1848.

Q. 21. The pamphlet to which you have referred is the same which was produced by Mr. Marks when he was examined yesterday, and the documents concerning which Mr. Sainsevain testified are found copied on pages 6 and 7 of that pamphlet; and it was with reference to these printed copies that Mr. Marks says he had the conversation with Mr. Sainsevain: Now are not the printed copies on pages 6 and 7 of that pamphlet parts of the Weekes copy which is there printed?

A. They seem to be so.

Q. 22. On what page of this pamphlet is Weekes' certificate, dated 20th January, 1848?

A. On page 9.

Q. 23. When Mr. Marks made his statement to you of what Sainsevain had told him, do you remember the precise words he used?

A. I do not.

Q. 24. Did you ask Mr. Sainsevain any question in consequence of what Mr. Marks had told you?

A. I can't, from memory, say that I did. My impression is, I did; though it may have been another observation made by Mr. Marks in my hearing.

Q. 25. Did Mr. Sainsevain then say anything, either in reply to a question from you or to an observation made by Mr. Marks?

A. He did; he made some observation after my attention had been called to what Mr. Marks stated his former observation to have been, which I supposed was a brief repetition of what he just before observed to Mr. Marks, although I was not certain, for I did not know what he had said to Mr. Marks.

Q. 26. Do you remember the words of Mr. Sainsevain in that observation?

A. I would not undertake to repeat precisely those words, but I think I can substantially. According to my recollection he said substantially this, "Yes, it was in 1848."

Q. 27. From those words, I presume you inferred that Mr. Sainsevain had signed himself certain papers in 1848?

A. I did.

Q. 28. What induced you to make that inference?—the words themselves do not contain such a declaration.

A. It was the observation of Mr. Marks, calling my attention to what I understood him to say Mr. Sainsevain had just observed in regard to the time he signed those papers.

Q. 29. Then if Mr. Marks had been mistaken in his report to you of what Sainsevain said, if Mr. Sainsevain had really remarked to Mr. Marks that this Weekes copy was made in 1848, the words in which he confirmed Mr. Marks' statement, he supposing Mr. Marks had reported to you what he had himself really told him—to wit, "Yes, it was in 1848," would have produced the same impression on your mind which they appear to have done, would they not?

A. I suppose they would.

Q. 30. Did you ask Mr. Sainsevain what papers were made in 1848?

A. I did not, that I now remember.

Q. 31. Was the pamphlet here produced by Marks, or any other copy of it, handed to you on that occasion, and certain printed documents therein shown you as copies of certain originals which Sainsevain then declared he made in 1848?

A. I don't think I looked at any documents, written or printed, at the time or in connection with that particular conversation.

Q. 32. Is your recollection of the words used by Mr. Sainsevain on that occasion so vivid as to enable you to repeat them? Can you say the words were "Yes, it was in 1848," or "Yes, it was made in 1848," or "Yes, I signed them in 1848," or "Yes, it was signed in 1848?" I call your attention to this particularly, because you must perceive that what Mr. Sainsevain said was intended as a confirmation, as you understood it,

of what Mr. Marks had reported him to have said. I desire to know if the form of words used by Mr. Sainsevain in confirming what Mr. Marks had said, was such as to convey an express assertion that in the year 1848 he had signed papers purporting to be dated 13th January, 1846.

A. I cannot undertake to repeat the words with more accuracy than I have done. He may have used either of those expressions. I can only say that the impression made on my mind, which I may confound with the language he used, was that he had signed those papers in 1848.

Q. 33. But it is very obvious, is it not, that if Mr. Marks had told you, or if you had inferred from what Mr. Marks said, that Mr. Sainsevain had signed certain papers in 1848; and if, on turning to Mr. Sainsevain for a confirmation of Mr. Marks' statement, Mr. Sainsevain had merely said "Yes," you would have drawn the same inference, would you not?

A. I would.

Q. 34. You say that at the time you inferred from Marks' statement, confirmed as it was by Mr. Sainsevain, that Mr. Sainsevain had signed some papers in 1848, you did not reflect that those papers purport to have been signed by him on the 13th of January, 1846: what papers did you understand Mr. Sainsevain to say he had signed in 1848?

A. I understood them to be copies of what are called the "denouncement" papers in this case, and I supposed them to be the copies put in evidence in this case.

Q. 35. You are very familiar with the title papers of the claimant in this case, are you not?

A. I have been. I cannot at this moment call to memory all the documents and papers put in evidence as well as I could two or three years ago, when I had occasion to examine them. My present recollection is, that the first copy filed in the case was the Weekes copy, purporting to be certified by him in 1848, and containing copies of the documents on pages 6 and 7 of the printed pamphlet referred to by Mr. Marks in his testimony, and that afterwards, since the cause has been pending in the District Court, that a copy was made out from certain papers brought here from the office of the County Recorder of Santa Clara county, which were claimed to be, as I understood, the original expediente, but to which was not attached the articles of partnership appearing in the Weekes copy.

Q. 35. You are correct in saying that the first copy of the title papers filed in the Land Commission was the Weekes copy, or a copy of that copy, but you are mistaken in supposing that the original papers in the archives at San José were first introduced in evidence in the District Court; they were first

offered and proved before the Land Commission, and copies of them filed. However that may be, you have for a long time been familiar with the facts that this mine is claimed to have been discovered by Castellero in 1845, to have been registered by him before the Alcalde in that year, and to have been delivered into his possession by the same officer in December of that year, have you not?

A. I have.

Q. 36. Before your conversation with Mr. Marks and Mr. Sainsevain on the occasion referred to, you had heard Mr. Randolph's argument before the Circuit Court of the United States for this district, on a motion for injunction and receiver in the case of the United States v. John Parrott *et al.*, had you not?

A. I heard part of his argument only.

Q. 37. Did you hear that part of it in which he contended that all the papers offered in evidence by the claimant in this case, of the registry and possession of the mine, were made in 1848, while Mr. Alexander Forbes, of Tepic, was in California, and, being ante-dated and fraudulent, were void?

A. I heard that part of his argument in which he undertook to show that the documents and papers introduced in evidence in the case from the city of Mexico had been ante-dated; and I knew that he entertained similar views in regard to what purports to be the expediente of the denouncement and possession of the mine, and that these last mentioned papers were really written in 1848.

Q. 38. When Mr. Marks called your attention to what he said Mr. Sainsevain told him in regard to the time when he signed, as assisting witness, the certified copies of the denouncement papers, to wit, in 1848, you say you did not recollect that this copy purports to have been signed by Mr. Sainsevain on the 13th January, 1846, but that some time after that conversation the discrepancy occurred to you, and you determined to have a very full and particular conversation with Mr. Sainsevain on the subject; or rather, as you now correct me in regard to what you said, you stated that if the discrepancy had occurred to you at the time you certainly would have conversed with him fully, or at any subsequent time if you had seen him: of what importance, then, did you regard the communication which Mr. Marks made to you as to the time when Sainsevain signed these papers?

A. I did not at the moment attach any particular importance to it, and only directed my attention to it for the moment because my attention was called to it by Mr. Marks; nor did the discrepancy ever occur to me until Sainsevain ceased to come to the office, which was soon afterwards. In looking over

some of the copies I had there, I discovered the fact that his signature appeared to have been affixed in January, 1846; I then recalled to mind what had occurred that evening.

Q. 39. Considering your familiarity with the claimant's title papers in this case, and with the copies of them which have been filed, and with the alleged dates of the various facts connected with the history of the mine; and considering further your intimate knowledge of all the charges made against the title papers in the case by the Government, of fraud, forgery and ante-dating; and considering further, that you knew the Government counsel contended that the papers relating to the registry and possession of the mine were made as late as 1848, and are ante-dated,—I presume that your mind must have been very much engaged on other subjects, when you paid so little attention to Mr. Marks' report of Mr. Sainsevain's statements: is it not so?

A. Yes, I was engaged every time he called there. Almost all these calls were interruptions to other business which I had before me.

Q. 40. After Mr. Sainsevain had used certain words in confirmation, as you understood them, of what Mr. Marks had reported him to have said, did you ask Mr. Sainsevain any further questions about the matter?

A. I don't know that I asked him any second question. I don't know that the first was a question, or whether it was a mere observation made by me or Mr. Marks.

Q. 41. Then I understand the sum and substance of the matter to be this: That on a certain evening in your office, while you were engaged in your business, Mr. Marks and Mr. Sainsevain were conversing; that you paid no attention to what they were saying, and can recollect none of the particulars of the conversation; that Mr. Marks, interrupting you in your engagements, called your attention to a statement just made to him by Mr. Sainsevain, to the effect that he, Sainsevain, had signed certain copies of the denouncement papers in 1848, as you understood Mr. Marks' relation to you; that thereupon, and in reply to what was either a question or an observation, you do not remember which, uttered by Mr. Marks or by yourself, you cannot remember by whom, Mr. Sainsevain used words which you regarded as a confirmation of what Mr. Marks reported him to have said; that at that time you considered Sainsevain's statement, as reported to you by Mr. Marks, as of but little or no importance—of so little importance that you asked Mr. Sainsevain no further question about it; and that since that time you have never interrogated him on the subject: is not this the sum and substance of what you have said?

A. That is substantially it. I cannot express myself more clearly than I have already. It is the case with myself, and I presume with other lawyers also, that a client calls my attention to a fact or circumstance connected with his case, when I am engaged upon other cases, and which I listen to for the moment because I discover that it appears to him to be of importance, but which I immediately discard from my mind until I afterwards take up or recur to his case, when the observation will be revived in my memory. I mean to say that this was the case with this conversation.

Q. 42. Is not the constitution of your mind such, and are not your habits of study and reflection such, that you become absorbed in the particular case you are engaged upon, and that it occupies your attention to the exclusion of every thing else, so as to make interruptions disagreeable; and frequently, when these interruptions apparently occur, are you not all the while thinking of the business on hand when the attempt was made to distract your attention from it?

A. I have experienced all you have suggested in your question. I cannot say whether I am more absorbed in matters than other men. I have been in Court, managing ejection cases that have occupied several days, and have discovered that my recollection, without taking notes of particular facts proven, was often better than those who took notes of the testimony. On such occasions the case monopolizes my whole attention.

DIRECT RESUMED.

Q. 43. State, if you please, the words or the substance of Mr. Marks, when he reported to you—or, more correctly, when he called your attention to what Mr. Sainsevain was saying on the occasion you have testified to.

[Objected to by counsel for claimant, on the ground that it does not appear that Mr. Marks called Mr. Sloan's attention to what Mr. Sainsevain *was saying*; on the contrary, it appears that Mr. Marks stated to Mr. Sloan what Mr. Sainsevain *had said*.]

A. It is utterly impossible for me to repeat his language. His observation was substantially this: I don't know whether Mr. Marks reported to me what Mr. Sainsevain had *said* or what Mr. Sainsevain had *done*—but calling me by name, to direct my attention, he either said, "those copies of the denouncement papers filed in evidence in the Castillero case were signed by Mr. Sainsevain in 1848," or, "Mr. Sainsevain says they were either signed or written in 1848."

Q. 44. State the language or the substance of the question or

observation which thereupon you think you addressed to Mr. Sainsevain, but which nevertheless you say might possibly have been addressed to him by Mr. Marks.

A. The observation, whether made by Mr. Marks or myself, was substantially a repetition of the same language in an interrogative form, running something like this: "What, you say that was in 1848?"—a mere repetition of what Mr. Marks had said.

Q. 45. Repeat in this connection the response which Mr. Sainsevain thereupon made.

A. He assented to the statement something like this: "Yes, in 1848," or equivalently. I know he assented to it, whether we all understood each other or not. I admit the possibility that we might not.

CROSS-EXAMINATION RESUMED.

Q. 46. It is very much to be desired, when one witness is called upon the stand to discredit another, on the ground of former statements inconsistent with those made under oath and now denied under oath, for the impeaching witness to state *verbatim* the former conversation. For this reason I call your attention particularly to the words of the observation which you think you addressed to Mr. Sainsevain; they are these: "What, you say that was in 1848?" Are not these, as nearly as you can recollect, the very words you addressed to Mr. Sainsevain?

A. They are, as nearly as I can recollect.

Examination closed.

[The counsel for claimant desires that a copy of the documents referred to in this deposition, as they appear in the printed pamphlet testified to, shall be, with the translation, attached to this deposition as Exhibit A.]

E. W. F. SLOAN.

Sworn to and subscribed before me, this 10th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 13, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT SLOAN A., J. B. W.

[Page 6.]

Copy of expediente of denouncement, possession and partnership.

Exhibit "A" to petition. Exhibit "A" (P. L.) to depositions of Lewis, Suñol and Noriega.

AÑO DE 1845.

Espediente del denuncia, posesion y compañía, de la mina de azogue, nombrada "Santa Clara," en la Alta California.

Señor Alcalde de 1a Nominacion:

Andres Castellero, Capitan de Caballeria permanente, y residente hoy en este Departamento ante la notoria justificacion de Vd. hace presente, que habiendo descubierto una veta de plata con ley de oro, en terreno del rancho perteneciente al Sargento retirado de la compañía presidial de San Francisco, José Reyes Berreyesa, y queriendo trabajarla en compañía suplico á Vd., que arreglado á la ordenanza de mineria, se sirva de fijar rotulones en los parajes publicos de la jurisdiccion para que llegado el tiempo de la posesion juridica, asegure mi derecho, segun las leyes de la materia, á Vd. suplico provea de conformidad, en lo que recibiré merced y justicia: admitiendo este en papel comun por falta del sellado correspondiente. Pueblo de San José Guadalupe, Noviembre veinte y dos de mil ochocientos cuarenta y cinco.

ANDRES CASTILLERO.

Es copia á la que me remito, firmandola con dos testigos de asistencia en la pueblo de San José Guadalupe á 13 de Enero de 1846.

PEDRO CHABOLLA.

De asistencia—P. SANSEVAIN: de asā. JOSE SUÑOL.

SEÑOR ALCALDE DE 1a NOMINACION DEL PUEBLO DE SAN JOSE GUADALUPE:

Andres Castellero, Capitan permanente de Caballeria, ante la notoria justificacion de Vd. comparezco y digo: entablado el mineral que con anterioridad denuncié á ese juzgado, he

sacado, á mas de plata con ley de oro, Azogue liquido, en presencia de algunos concurentes que podré citar en caso oportuno. Y por convenir asi á ^[Page 7] mi derecho le he de merecer á Vd. que unido al escrito del denunció, se archive esta presentacion, no yendo en papel del sello por no haberlo.

A Vd. suplico provea de conformidad; en lo que recibiré merced y justicia.

Santa Clara, Diciembre 3 de 1845.

ANDRES CASTILLERO.

Es copia á la que me remito, firmandolo con los testigos de mi asistencia en el pueblo de San José Guadalupe á 13 de Enero de 1846.

PEDRO CHABOLLA.

De asistencia—P. SANSEVAIN : de asã. JOSE SUÑOL.

—

No encontrandose en el Departamento de California, Diputacion de Minería: y siendo esta la unica vez desde la poblacion de Alta California, que se trabaja, con arreglo á las leyes, un mineral; y careciendo ademas de Juez de Letras el 2o distrito, Yo, el Alcalde de la Nominacion, C. Antonio Maria Pico, he venido, acompañado de dos testigos, para actuar por receptoria ã falta de escribano publico que no lo hay, para dar posesion jurídica de la mina conocida con el nombre de Santa Clara, en este jurisdiccion, situada en el rancho del Sargento retirado, José Reyes Berreyesa; porque habiendo fenecido el tiempo que señala la ordenanza de minería para deducir su accion el C. D. Andres Castillero, y que otras pudieran algar mejor derecho, desde el tiempo del denunció á la fecha. Y encontrandose dicha mineral con abundancia de metales explotados, el pozo hecho con las reglas del arte, y produciendo la elaboracion de la mina, abundancia de Azogue liquido, segun las muestras que tiene el juzgado; y estando tan recomendado, por leyes vigentes, la proteccion de un articulo tan necesario para la amalgamacion de oro y plata en la Republica, he venido en conceder tres mil varas de terreno por todos rumbos, á reserva de lo que señale la Ordenanza General de minería, por ser trabajada en compañía, de lo que doy fé, firmando conmigo los testigos, quedando agregado este acto de posesion al cumulo del expediente que queda depositado en esta archivo de mi cargo no yendo en papel sellado porque no lo hay en los terminos de la ley.

Juzgado de San José de Guadalupe y Diciembre 30, de 1845.

ANTONIO MARIA PICO.

De asa—ANTONIO SUÑOL. De asa JOSE NORIEGA.

[Page 8.]

He recibido del Señor D. Andres Castellero la cantidad de veinte y cinco pesos por cuenta de los derechos de posesion de la mina de Azogue, que está en la jurisdiccion de mi cargo, nombrada de Santa Clara.

Juzgado de San José Guadalupe, Diciembre 30, de 1845.

ANTONIO MARIA PICO.

Son 25 pesos.

—

Escritura de compañía que el Sr. Dn. Andres Castellero capn. de caballeria permanente celebra con el Sor. Comdte. Gral. Dn. José Castro, los Sr̄s. Secundino Robles y Teodoro Robles, y una cesion voluntaria que hacen los compañeros perpetualmente al R. P. F. José Ma del Refugio Suares del Real, de una mina de plata, oro, y azogue en el Rancho de D José Reyes Berreyesa, en la jurisdiccion del pueblo de San José Guadalupe.

Art. 1. El Snr, Dn Andres Castellero, arreglandose en un todo á la ordenanza de mineria, hace formal compañía perpetualmente con los mencionadas Señores en esta forma. La mitad de la mina que es de la que puede disponer, se dividira en tres acciones en esta forma. Cuatro barras al Sor Don José Castro; cuatro barras a los Sres. Secundino y Teodoro Robles; y las otras cuatro al R. P. F. José Maria R. S. del Real en close de donacion perpetua.

Art. 2. Ninguno de los compañeros podrá vender ó enagenar ninguna de sus acciones—de manera que el que lo verificare, perderá su derecho, quedando reunido en los demas compañeros.

Art. 3. Los gastos se haran en proporcion a las acciones llevando una cuenta formal por un contador, que se pagará del fondo comun.

Art. 4. Arreglandose en un todo á lo que previene las ordenanzas de mineria, cualquiera diferencia se resolverá por los mismos compañeros.

Art. 5. Dirigirá las labores, gastos y trabajos Dn. Andres Castellero; y en su defecto, el R. P. F. José Ma. R. S. del Real.

Art. 6. No se extracrá de los productos, mas cantidades que las que necesitan para el arreglo de la negociacion, hasta que se arreglen los trabajos; y cualquiera cantidad que sea, ha de ser con consentimiento de todos los compañeros hasta que este arreglada la negociacion.

Art. 7. Estos convenios se autorizaran per el señor Prefecto del 2o. distrito D. Manuel Castro, depositandose el documento

original en el archive del partido; quedando una copia certificada por S. S. á los interesados.

[Page 9.]

Mision de Santa Clara dos de Noviembre de mil ochocientos cuarenta y cinco.

“ANDRES CASTILLERO,

“Por el Señor Comd'te Gral. Don José Castro, Andres Castellero.

“FR. JOSE MA. DEL R. S. DEL REAL,

“Por los Sres. Secundiño Robles y Teodoro Robles, Franco Arce.

“Es copia fiel del original al que me remito, Sta. Clara, Diciembre ocho del mil ochocientos cuarenta y cinco.

“MAN'L CASTRO.

“ANTONIO M. PICO.

Juzgado de Paz del Pueblo }
de San José Guadalupe, Alta }
California.

Certifico en todo forma lo que antecede es copia fiel sacada á la letra de su original expediente de la mina de Sta Clara ó Nuevo Almaden, que obra en el archivo de mi cargo, á que me remito. Y para su debida constancia he firmado este hoy, viente de Enero del mil echo cientos cuarenta yocho.

JAMES W. WEEKS.

Alcalde.

[Page 10.]

Translation of Expediente of denouncement, possession, and partnership.

Exhibit "B," to petition being translation of exhibit "A."

YEAR, 1845.

Expediente of the denouncement, possession, and partnership of the Quicksilver Mine, called "Santa Clara," in Upper California.

SEÑOR ALCALDE Ó 1ST NOMINATION.

Andres Castellero, Captain of permanent cavalry, and at present resident in this Department, before your notorious justification, makes representation: that having discovered a vein of silver, with a ley of gold, on the land of the rancho pertaining to José Reyes Berreyesa, retired sergeant of the presidial company of San Francisco, and wishing to work it in company, I request that, in conformity with the ordinance on mining, you will be pleased to fix up notices, in public places of the jurisdiction, in order to make sure of my right when the time of the juridical possession may arrive, according to the laws on the matter. I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper, there being none of the corresponding stamp.

Pueblo of San José Guadalupe, November twenty-second, eighteen hundred and forty-five.

ANDRES CASTILLERO.

This is a copy of the original, to which I refer, signing it with two assisting witnesses, in the pueblo de San José Guadalupe, on the 13th of January, 1846.

Assisting witnesses:

PEDRO CHABOLLA.

P. SANSEVAIN,
JOSE SUÑOL.

SEÑOR ALCALDE OF 1ST NOMINATION.

I, Andres Castellero, permanent captain of cavalry, before your well known justification, appear and say: that on open-

ing the mine which I previously denounced in this Court, I have taken out, besides silver with a ley of gold, liquid quicksilver, in the ^[Page 11] presence of several bystanders, whom I may summon on the proper occasion. And, considering it necessary for the security of my right so to do, I have to request of you, that uniting this representation to the denouncement, it may be placed on file, it not going on stamped paper because there is none. I pray you to take measures to this effect, in which I will receive favor and grace.

Santa Clara, December 3d, 1845.

ANDRES CASTILLERO.

This is a copy of the original, to which I refer, signing it with the witnesses of my assistance, in the pueblo of San José Guadalupe, on the 13th of January, 1846.

Assisting witnesses,

PEDRO CHABOLLA.

P. SANSEVAIN,
JOSE SUÑOL.

There being no deputation on mining in the Department of California, and this being the only time since the settlement of Upper California, that a mine has been worked in conformity with the laws, and there being no "Juez de Letras," (professional Judge,) in the second district, I, the Alcalde of First Nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office, for want of a Notary Public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the rancho of the retired sergeant, José Reyes Berreyesa, the time having expired which is designated in the ordinance of mining, for citizen Don Andres Castellero to show his right, and also for others to allege a better right, between the time of denouncement and this date, and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this court has; and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have granted three thousand varas of land in all directions, subject to what the General Ordinance of Mines may direct, it being worked in company, to which I certify, the witnesses signing with me; this act of possession being attached to the rest of the expediente, deposited in the

archives under my charge; this not going on stamped paper, because there is none, as prescribed by law.

Juzgado of San José Guadalupe, December 30, 1845.

(Signed) ANTONIO MARIA PICO.

Assisting witnesses:

ANTONIO SUÑOL.

JOSE NORIEGA.

[Page 12.]

I have received of Don Andres Castellero the sum of twenty-five dollars, on account of the fees for the possession of the quicksilver mine, which is in this jurisdiction, under my charge, named Santa Clara.

Court House of San José Guadalupe, December 30, 1845.
\$25.

ANTONIO MARIA PICO.

Writing of partnership executed by Don Andres Castellero, Captain of permanent cavalry, with the Commanding General, Don José Castro, and the Señores Secundino Robles and Teodoro Robles, and a voluntary grant which the partners make perpetually to the Rev. Father Friar José Maria del Refugio Suarz del Real, in a mine of silver, gold and quicksilver, in the rancho of Don José Reyes Berreyesa, in the jurisdiction of the Pueblo de San José Guadalupe.

Art. 1. Don Andres Castellero, conforming in all respects to the ordinance of mining, forms a regular, perpetual partnership with the said persons in this form. The half of the mine, which is that of which he can dispose, will be divided into three parts, in this manner: four shares to Don José Castro, four shares to Señores Secundino and Teodoro Robles, and the other four shares to the Rev. Father José Maria R. S. del Real, as a perpetual donation.

Art. 2. Neither of the partners can sell or alienate any of his shares, so that he who may do so shall lose his right, which shall revert to the other partners.

Art 3. The expenses shall be borne in proportion to the shares, a formal account being kept by an accountant, who will be paid from the common fund.

Art. 4. That prescribed by the ordinance of mining being complied with in everything, whatever deficiency may arise shall be decided by the partners themselves.

Art. 5. Don Andres Castellero shall direct the labors, expenses and works, and in his absence the Rev. Father Friar José Maria R. S. del Real.

Art. 6. Of the products, no larger quantities will be taken out than are necessary for the arrangement of the negotiation, until the works shall be regulated; and whatever the quantity may be, it must be with the consent of all the partners until the negotiation may be arranged.

Art. 7. These agreements shall be authenticated by the Prefect of the Second District, Don Manuel Castro, the original document being deposited in the archives of the district, (*partido*) a copy certified by his Honor being left with the persons interested.

[Page 13.]

Mission of Santa Clara, November 2d, one thousand eight hundred and forty-five.

For the Comdg. Gen.	ANDRES CASTILLERO, DON JOSE CASTRO, ANDRES CASTILLERO, FR. JOSE MARIA DEL R. S. DEL REAL,
For the Señores	SECUNDINO ROBLES and TEODORO ROBLES, FRANCISCO ARCE.

It is a copy of the original, to which I refer.
SANTA CLARA, December 8, 1845.

MANUEL CASTRO.

ANTONIO MARIA PICO.

—

Court of the Justice of the Peace, }
San José Guadalupe, Upper California, }

I certify in due form, that the foregoing is a faithful copy, made to the letter from its original, the "espediente" of the mine of Santa Clara or New Almaden, which exists in the Archives under my charge, to which I refer.

And in testimony thereof, I have signed it this twentieth day of January, one thousand eight hundred and forty-eight.

JAMES W. WEEKS, *Alcalde*.

DEPOSITION OF MICHAEL O'GRADY.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases. District Court No. 420.
 ANDRES CASTILLERO. } Land Commission No. 366.

Be it remembered, that on this 14th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Michael O'Grady, a witness produced in behalf of the United States, in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:—

Present: E. Randolph, Esq., for United States; A. C. Peachy, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, and residence.

ANSWER. Michael O'Grady, age 39, and residence at Oakland, Alameda county.

Q. 2. How long have you lived in that vicinity, and what has been your occupation during that time?

A. About eight years; my occupation has been that of keeping a livery stable.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, and now resides in Alameda, and who is now present?

A. I do.

Q. 4. Do you know his reputation generally in the community where he lives?

A. I have never heard much about him, one way or the other, until the last week or so.

Q. 5. Do you know his general reputation in that community for truth and veracity—is it good or bad?

A. I have never heard it doubted.

Q. 6. Judging from his reputation for truth and veracity in that community, would you believe him on his oath?

A. I can assign no reason why I should not believe him on oath, and would just as soon as that of any other man in Oakland.

CROSS-EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 7. How long have you known Birnie?

A. From a year to two years.

Q. 8. Do you know anything about his history?

A. Nothing before I knew him.

Q. 9. What is his occupation?

A. I don't know of any, except that he acts as agent for that sort of fictitious title of Galindo's.

Q. 10. As a general thing, do the inhabitants of Oakland know anything more about Mr. Birnie than you do?

A. I cannot say; I don't come in contact with his dealings as much as others.

Q. 11. Do you know where he was born; where he came from to Oakland; what his business was before he came there?

A. I know none of these things.

Examination closed.

MICHAEL O'GRADY.

Sworn to and subscribed before me this 14th day of August, A. D. 1860.

JOHN B. WILLIAMS,
U. S. Commissioner.

Filed August 16, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF WILLIAM HOSKINS.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 14th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared William Hoskins, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present: Edmund Randolph, Esq., for the United States, and A. C. Peachy, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1. Please state your name, age, and residence.

ANSWER. William Hoskins, age 48, and residence at Oakland.

Q. 2. How long have you resided in that vicinity, and what has been your occupation during that time?

A. Five years and over; my occupation, constable of Oakland township, and City Marshal of Oakland.

Q. 3. Are you acquainted with Robert Birnie, who formerly resided in Contra Costa county and who now lives in Alameda county, who is now present?

A. I am.

Q. 4. Do you know his general reputation in the community where he lives?

A. I do.

Q. 5. What is his general reputation in that community for truth and veracity; is it good or bad?

A. Good.

Q. 6. Judging from his general reputation for truth and veracity in that community, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 7. How long have you known Mr. Birnie?

A. Between three and four years.

Q. 8. Where has he been living during that time?

A. He has lived about three years in the limits of the city of Oakland, about three quarters of a mile from the landing.

Q. 9. What has been his occupation there during that time, and what was it before he came there?

A. In Oakland he has acted as interpreter in the lower and the upper courts. Before he came to Oakland I don't know what he did. At his residence at Oakland I have seen him at work.

Q. 10. At what kind of work?

A. In his garden, which consisted of an acre or an acre and a half of land, and had fruit trees, etc., in it.

Q. 11. Do you regard Mr. Birnie as a very industrious gardener?

A. So far as keeping his own property in order and genteel. He may do it for recreation or amusement, as many families do.

Q. 12. Has he any means of livelihood besides gardening and interpreting in courts?

A. He has been acting as the business manager of Francisco Galindo's interest in his claim to the title to the city of Oakland,—attending to the property of Galindo generally, redeeming tax sales, etc.

Q. 13. Do you know when Galindo bought from Vicente Peralta?

A. I cannot recollect the time. There was a suit brought against Peralta by J. Black, who claimed under Hays and Caperton, to whom Vicente Peralta had previously sold the site of the city of Oakland, for selling that site twice; and I made the arrest of Vicente Peralta in that suit. This suit was brought about two years ago, and I think that Peralta had sold to Galindo prior to the commencement of that suit.

Q. 14. Was Robert Birnie living at Vicente Peralta's when you made that arrest?

A. I think not.

Q. 15. How long before Vicente Peralta's sale to Galindo was it, that he had sold the same property to Hays and Caperton?

A. I think Hays and Caperton purchased in 1853.

Q. 16. When Galindo made this purchase everybody in Oakland knew that Hays and Caperton had purchased a long time before, did they not?

A. They did.

Q. 17. Do you know to what extent Robert Birnie is interested in that Galindo purchase?

A. I do not.

Q. 18. Did you ever hear Birnie's character for truth and veracity discussed in Oakland?

A. I never heard Mr. Birnie's character for truth and veracity discussed in Oakland. I have heard casual remarks made, arising out of his connection with the Galindo title.

Q. 19. How much per annum do you suppose Birnie's fees for interpreting in justices and other courts would amount to?

A. To very little. Most of his labor is given gratuitously, owing to the refusal of the Board of Supervisors to allow such bills.

Q. 20. Does Birnie sell vegetables?

A. He does not.

Q. 21. Then, so far as you know, his whole pecuniary resources consists in what he can make out of this speculative purchase of Galindo's?

A. I don't know of anything else.

Examination closed.

WM. HOSKINS.

Sworn to and subscribed before me this 14th day of August,
A. D. 1860.

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 16th, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JAMES LENTELL.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Commission No. 366.

Be it remembered, that on this 14th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Willians, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared James Lentell, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: E. Randolph, Esq., for the United States, and A. C. Peachy, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, residence and occupation?

ANSWER. James Lentell; age 39; residence at Oakland; occupation, carriage builder.

Q. 2. How long have you resided at Oakland and in that vicinity?

A. Since the spring of 1854; I was Justice of the Peace at Oakland in 1856.

Q. 3. Are you acquainted with Robert Birnie, who formerly resided in Contra Costa county, and who now lives in Alameda county, and who is now present?

A. I am. I have known him about two years.

Q. 4. Do you know his general reputation for truth and veracity in the community where he lives?

A. I think I do.

Q. 5. What is his general reputation for truth and veracity in the community where he lives; is it good or bad?

A. It is good.

Q. 6. Judging from his general reputation for truth and veracity in the community where he lives, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 7. How intimately have you known Mr. Birnie?

A. Both of us being residents of Oakland, we see each other nearly every day; I have had no business transactions with him.

Q. 8. What does Mr. Birnie do for a living?

A. For the last year I think he has been agent for the Galindo title to Oakland. I do not know what his occupation was previous to that time. I think he then resided in the township, out at Mr. Peralta's.

Q. 9. Did you know him when he resided at Peralta's?

A. I had no intimate acquaintance with him—only as one gentleman knows another on meeting. During the past year, or perhaps more, I have seen a great deal of him.

Q. 10. How long has he been living in Alameda county?

A. I cannot tell exactly. I have known him in Alameda county about two years.

Q. 11. Did you ever know him to have any other business or occupation except as the agent of Mr. Galindo?

A. Before he came to reside in the city of Oakland, I did not know what his occupation was.

Q. 12. What Galindo is that?

A. I mean the one who purchased of Vicente Peralta the title to the city of Oakland, now in dispute. He resides in Contra Costa county.

Q. 13. Before Galindo purchased from Vicente Peralta, the latter had already sold the land upon which Oakland is situated, had he not?

A. As that is a matter for the courts to determine, I cannot say; it is asserted that he had.

Q. 14. Do you know when the Galindo purchase was made?

A. A little more than a year ago, as near as I know—perhaps a year and a half.

Q. 15. Was it at Vicente Peralta's that Mr. Birnie was living, which you have mentioned?

A. It was either at Domingo or Vicente Peralta's house. I never knew. When his residence was spoken of, it was said that he lived at "Peralta's," and my impression is that he lived at Vicente's

Q. 16. Did you ever hear any discussions upon the subject of Mr. Birnie's veracity?

A. I never did until lately, since the testimony taken in this case was spoken of.

Q. 17. Who asked you to come here and testify in this case?

A. No one. I was subpoenaed yesterday by a person representing himself to be an officer. This was the first I knew of it.

Q. 18. Before that time, had you had no conversation with Mr. Birnie on the subject?

A. I had. It was immediately after a gentleman had called on me—who was a stranger. He had my name on a memorandum book and showed it to me. This gentleman called on me and asked if I knew Birnie. I answered I did. He said he wished to impeach his character. I answered that I had a favorable opinion of him; that I had never heard nor seen anything to the contrary. Birnie came along soon afterward, and I asked him what he had been doing. He asked why? He then told me he supposed he knew what I alluded to. He said some parties were trying to impeach his testimony. I then related to him what had passed between myself and the gentleman who had just left me. I suppose this is why I was subpoenaed.

Q. 19. Do you know anything about Birnie's history?

A. Personally, I do not.

Q. 20. Do you know anything about his reputation, except as it is in Oakland?

A. I do not.

Q. 21. That you have known for one year, I believe?

A. It is only a little more than a year since I have known him much in Oakland, and after he became agent for Galindo. Before that, he was not known prominently, more than other people generally.

Q. 22. Do you own any land in Oakland?

A. I do not.

Examination closed.

JAS. LENTELL.

Sworn to and subscribed before me this 14th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 16th, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF CIPRIANO THURN.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases ; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 15th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Cipriano Thurn, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court, under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present: Edmund Randolph, Esq., for the United States ; and A. C. Peachy, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age and residence.

ANSWER. Cipriano Thurn ; age 27 ; and residence, San Francisco.

Q. 2. How long have you resided in San Francisco, and where did you live before you came here to reside ?

A. I have lived here about 3½ years ; before that, I lived at Martinez, Contra Costa county, where I lived from the end of 1852 until I came to San Francisco.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, and who now lives in Alameda county, and who is now present ?

A. I do.

Q. 4. Do you know his general reputation in the community where he lives ?

A. I do.

Q. 5. Do you know his general reputation for truth and veracity in the community where he lives ?

A. I do.

Q. 6. What is his general reputation for truth and veracity in the community where he lives?

A. It is good.

Q. 7. Judging from his general reputation for truth and veracity in the community where he lives, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 8. Did you ever hear Mr. Birnie's reputation for truth and veracity spoken of in your community?

A. No, sir.

Q. 9. How long has he been living in Oakland, and what is he doing there?

A. About two years; he has been employed by Mr. Galindo as agent, in the determination of Galindo's claim to the city of Oakland.

Q. 10. Do you mean to say that he attends to the conduct of the litigation in that claim?

A. He assists Galindo's attorneys, and serves Galindo himself as an interpreter, and assists Galindo in the settlement and sales with those who wish to purchase Galindo's title.

Q. 11. How do you know that this is Birnie's occupation?

A. I know, because I saw him act, and by Galindo's stating it to me.

Q. 12. Besides being Galindo's agent, has not Birnie been in some case or cases as a witness for him?

A. I do not know.

Q. 13. How long did you live in Oakland while Birnie resided there?

A. I never did live in Oakland.

Q. 14. It appears from your second answer that you lived in Martinez, Contra Costa county, from the end of 1852 until some time in 1856. Do you mean to say that during the time you lived in Martinez, Mr. Birnie bore a good reputation for truth and veracity in that community?

A. Yes, sir, so far as my knowledge goes.

Q. 15. Do you mean to say, that during the 4½ years of your residence in Martinez, you never heard Robert Birnie's character for truth and veracity discussed, questioned, or spoken of?

A. I don't recollect of having heard his reputation questioned for truth and veracity.

Q. 16. Did you never hear of his testimony being impeached during that time, in any case, in any Court in Contra Costa county?

A. I never did.

Q. 17. What was your occupation in Contra Costa county?

A. Most of the time that I resided there I was clerk in Hiram Fogg's store.

Q. 18. Are you a particular friend of Mr. Birnie's?

A. I am.

Q. 19. Of what country are you a native?

A. Of Chilé.

Q. 20. You and Birnie both speak Spanish, do you not?

A. Yes, sir.

Q. 21. Have you any interest in the Galindo claim, or anything to do with it?

A. No interest, nor anything to do with it.

Q. 22. What is your occupation in San Francisco?

A. A broker; selling real estate, grain, etc., and procuring money.

Q. 23. Have you, or have you had, or do you expect to have, the sale of Galindo's title to the town lots in Oakland?

A. Neither.

Examination closed.

CIPRIANO THURN.

Sworn to and subscribed, this 15th day of August, A. D. 1860,
before me,

JOHN B. WILLIAMS,
U. S. Commissioner.

Filed August 16, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF SAMUEL H. ROBINSON.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
 v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 14th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Samuel H. Robinson, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: E. Randolph, Esq., for the United States, and A. C. Peachy, Esq., of counsel for claimant.

Questions in behalf of the United States.

QUESTION 1st: State your name, age, and residence.

A. Samuel H. Robinson; age, 35; residence Oakland, Alameda county.

Q. 2. How long have you resided in that vicinity, and what has been your occupation during that time?

A. Since 1851, my occupation for most of the time has been that of justice of the peace, and all the time a notary public. At present I am a merchant.

Q. 3. Do you know Robert Birnie, who formerly resided in Contra Costa county, and now lives in Alameda, who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where he lives?

A. I think I do.

Q. 5. Do you know his general reputation for truth and veracity in that community; is it good or bad?

A. I will state that I have seen considerable of Mr. Birnie. His reputation for truth and veracity, that I know of, was never questioned until I heard Col. Coffee speak of him in relation to a business transaction concerning real estate.

Q. 6. Judging from his general reputation in that community for truth and veracity, would you believe him on his oath?

A. I would believe him on his oath, judging from his general reputation. I think he could be believed.

CROSS-EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 7. Do you know what Robert Birnie's means of livelihood are?

A. He has a small piece of ground under cultivation as a garden. He has acted as an interpreter in the Courts and before me. He has been and I believe still is acting as an agent for Mr. Galindo.

Q. 8. Does he sell vegetables? How much would his fees as interpreter amount to in a year?

A. I do not know—never heard of it. He may have received in my Court \$5, and he may have received \$100 as interpreter; I cannot say. When we have had occasion for an interpreter I have generally sent for him, as I had confidence in his interpretation.

Q. 9. Is not his agency, or his interest in that speculative purchase of Galindo's, his principal source of support?

A. I think not; I have known of his attending to business for Vicente and Antonio Peralta, but to what extent I know not, nor whether he derived any compensation for it.

Q. 10. Vicente Peralta is the man from whom Galindo purchased a year or two ago the site of the City of Oakland, is he not?

A. He is.

Q. 11. Do you know where Robert Birnie was born?

A. I do not.

Q. 12. Anything of his history since he has been in this State, besides what you know of him at Oakland?

A. I do not.

Q. 13. Do the inhabitants of Oakland, as a general thing, know anything of him more than they have learned since he has lived there?

A. Not that I am aware of.

Examination closed.

SAMUEL H. ROBINSON.

Sworn to and subscribed, before me, this 14th day of August, A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed Aug. 16, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF GEORGE M. BLAKE.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Commission No. 366.

Be it remembered, that on this 14th day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared George M. Blake, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the Private Land Claims in the State of California, who, being duly sworn, testified as follows:—

Present: E. Randolph, Esq., for United States, and A. C. Peachy, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1. Please state your name, age, and residence?

ANSWER. George M. Blake; age 38, and residence at Oakland city.

Q. 2. How long have you resided in that vicinity, and what has been your occupation during that time?

A. Since the last part of 1851; my profession is that of attorney-at-law, and two years of the time I have carried on a farm.

Q. 3. Are you acquainted with Robert Birnie, who formerly resided in Contra Costa county, and now lives in Alameda, who is now present?

A. I am.

Q. 4. Do you know his general reputation in the community where he lives?

A. I have known him several years; I don't know that I ever heard him much spoken of—good, bad or indifferent,—until within a short time. I know him as well as I know any man in Oakland.

Q. 5. Do you know his general reputation in that community for truth and veracity; is it good or bad?

A. I never heard Mr. Birnie's character questioned for truth and veracity, until a very short time since, when I saw some depositions impeaching him; in the Alta, I think.

Q. 6. Judging from his reputation, as you know it, would you believe him on his oath?

A. I would believe him as soon as I would any man in town, unless his interest was at stake in the controversy; and then I don't know but I would believe him as soon as any other.

CROSS-EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 7. Do you know much about Birnie's reputation one way or the other?

A. I have already stated that I never heard his reputation questioned for truth and veracity until lately. I don't think it was ever talked of before the publication in the Alta.

Examination closed.

GEO. M. BLAKE.

Sworn to and subscribed before me, this 14th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 16, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JOHN R. ROGERS.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases ; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 15th day of August, A. D. 1860, at San Francisco, in the district aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared John R. Rogers, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present: Edmund Randolph, Esq., for the United States, and A. C. Peachy, Esq., of counsel for claimant,

QUESTION 1. State your name, age, and residence.

ANSWER. John R. Rogers; age 48; residence, Oakland, Alameda county.

Q. 2. How long have you resided in that vicinity, and what has been your occupation during that time?

A. Between seven and eight years; and during that time my occupation has been and is that of a builder.

Q. 3. Are you acquainted with Robert Birnie, who formerly resided in Contra Costa county, and now lives in Alameda county, and who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where he lives?

A. I do.

Q. 5. What is his general reputation for truth and veracity in the community where he lives; is it good or bad?

A. It is good.

Q. 6. Judging from his general reputation for truth and

veracity in the community where he lives, would you believe him on his oath?

A. I would.

CROSS - EXAMINATION.

Questions by A. C. Peachy, Esq.

Q. 7. How long have you known Mr. Birnie in Oakland?

A. About three years.

Q. 8. What is his business there?

A. Interpreting in the courts, and attending to some outside business for Galindo—such as compromising and settling up his claim to town lots in Oakland.

Q. 9. Does Mr. Birnie hang around the courts much?

A. I do not know. It is very seldom that I go to court.

Q. 10. How long since Birnie became Galindo's agent?

A. I could not name any specific time; perhaps a year and a half. I have seen him with Col. Coffee and others, relative to that business.

Q. 11. Do you own lots in Oakland?

A. Yes, sir.

Q. 12. Under the Hays and Caperton title?

A. Yes, sir.

Q. 14. If it's a fair question, about what per-centage did you pay for that you hold under Galindo?

A. I did not buy from Galindo, but from persons who had bought from Galindo, and who gave me a warranty deed. The per-centage they paid was seven per cent. as a compromise, so I understood.

Q. 15. Is that about the general rate at which Robert Birnie is willing and does compromise the Galindo title to lots in Oakland, with those who are willing to purchase?

A. No. About ten times that amount.

A. 16. Did you ever know any one to pay that?

A. Yes. Mr. Hurlburt. I saw the deeds about two months ago.

Q. 17. State what the property was worth which was compromised?

A. Seventy-five dollars per lot, for five lots.

Q. 18. How much money did he pay Mr. Birnie?

A. Hurlburt gave Birnie the Peralta sister's title to a number of lots, and Birnie gave him the Galindo title to others. It was an exchange; no money passed that I knew of.

Q. 19. Then there was an interchange of speculative titles, was there not?

A. I can't say they are speculative titles—or that they are

not. I have paid for them myself. They are regarded in Oakland as speculative titles.

Examination closed.

JOHN R. ROGERS.

Sworn to and subscribed before me, this 15th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 16, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF GEORGE F. WORTH.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
 v. } In Land Cases: Dist. Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared, George F. Worth, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present: E. Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, and residence.

ANSWER. George F. Worth; age, 50; and residence in Martinez, Contra Costa county.

Q. 2. How long have you lived in that county, and what has been your occupation during that time?

A. I have lived there since July, 1852, with an interval of five months, when I lived in San Francisco; I was Justice of the Peace, County Judge, Notary Public, and hotel-keeper; I am now acting as Notary Public.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, who now resides in Alameda county, and who is now here?

A. I do.

Q. 4. Do you know his general reputation for truth and veracity in the community where you both lived?

A. I do.

Q. 5. What was his general reputation in that community for truth and veracity—good or bad?

A. Generally good.

Q. 6. Judging from his reputation for truth and veracity in that community, would you believe him on his oath?

A. I would.

Q. 7. Do you know anything of a charge of larceny preferred against Mr. Birnie by a Mr. Boss, of Contra Costa county? and if so, state what you know about it.

A. I think, some time in March, 1854, a complaint was brought before me by Alexander Boss, charging Birnie with larceny. A jury was called, who brought in a verdict against Birnie. A new trial was granted. At that trial the jury disagreed. Birnie was finally acquitted, but whether by a jury or by the Court, I don't remember. Mr. Alex. Boss complained that Birnie had stolen some lumber from a piece of land claimed by Boss. Birnie brought evidence to show that the land was supposed to belong to his wife, Maria Birnie; that he supposed Boss was about to fence the land, and he removed the lumber and piled it up away from the land, in broad daylight, and in the presence of witnesses. One of the witnesses for Birnie was a brother of the man who made the complaint. The other members of the family were witnesses against Birnie. It was one of the innumerable quarrels going on in the county about land.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 8. When did Birnie move away from Contra Costa county?

A. I think in 1856.

Q. 9. Have you known much about him since he moved away?

A. Very little,—have met him occasionally.

Q. 10. Are you acquainted with his reputation for truth and veracity in Alameda county?

A. I am not.

Q. 11. Your acquaintance, then, with his reputation refers back to the time when he lived in Contra Costa county?

A. It does. I know nothing of him since, one way or the other.

Q. 12. Did you never hear his character for truth and veracity called in question?

A. I have heard some complaint as to his being rather poor pay at one time; nothing more than that.

Q. 13. Are you quite sure that his character for truth and veracity was never called in question before you, as a judge?

A. I have no recollection of anything of the kind before me.

It might have been, but I have no recollection of any such thing.

Q. 14. Were you intimate with Birnie, and did you have any business with him?

A. Never was what can be called intimate; had dealings with him in a small way; had the run of him as is usual with respect to most every one in a small village like Martinez; he lived part of the time in the village, and part of the time four or five miles out.

Q. 15. Did you never hear his character for truth and veracity questioned by anybody?

A. I never did, that I can remember.

Q. 16. Never heard it discussed?

A. Never, until this proceeding commenced, (I first read in the "Alta" about it); with this exception,—some two or three years ago I met Birnie on Clay street; he requested me to go to the Fourth District Court Room to testify concerning his reputation at Martinez. I went there. I was asked questions concerning his truth and veracity, also concerning the trial for larceny before me as a justice, to which I have before referred to, about the lumber: and before I read the proceedings published in the "Alta," I was called upon by Mr. Mills and a Mr. Highton. Mr. Mills asked me if I would believe Birnie on oath; I told him that I certainly would, that I knew nothing against him.

Q. 17. Do you recollect the title of the case in the Fourth District Court?

A. I don't; it was about some lots on Montgomery street.

Q. 18. You were called then, as now, to sustain Birnie's reputation for truth and veracity, were you not, after witnesses were introduced to impeach him?

A. I was called to sustain his reputation, but don't know whether he had been impeached.

Examination closed.

GEO. F. WORTH.

Sworn to and subscribed before me this 22d day of August,
A. D. 1860.

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed Aug. 3, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF JOHN H. LIVINGSTON.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases: District Court No. 420,
 ANDRES CASTILLERO. } Land Commission, No. 366.

Be it remembered, that on this 22nd day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared John H. Livingston, a witness produced in behalf of the United States, in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:—

Present: E. Randolph, Esq., for the United States, and Frederick Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, and residence.

ANSWER. John H. Livingston, age 35, and reside in Martinez, Contra Costa County.

Q. 2. How long have you lived in Contra Costa County, and what has been your occupation during that time?

A. I have lived there over ten years. I am a carpenter, and have worked at that business the principal portion of that time. I have held the office of Justice of the Peace, and have been chairman of the Board of Supervisors of that county. I was also one of the Commissioners appointed to adjust the debt between Alameda and Contra Costa counties. I have also acted as Under Sheriff.

Q. 3. Are you acquainted with Robert Birnie, who formerly lived in Contra Costa County, and now resides in Alameda, and who is now present?

A. I am.

Q. 4. Do you know his general reputation in the community where he lives?

A. Mr. Birnie has not lived in Martinez for the past two or three years, and I have very little acquaintance with the community where he now resides, or his reputation in that community. I knew his general reputation when he lived in Martinez, in the community there.

Q. 5. What was his general reputation in that community where you knew him, for truth and veracity—good or bad?

A. It was good—so far as I knew.

Q. 6. Judging from that reputation, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 7. How well did you know Birnie.

A. I had more or less business with him; have known him since the Spring of 1850, and lived in the same community with him.

Q. 8. Did you know where he came from, or anything of his history?

A. I did not, previous to his residence in Martinez.

Q. 9. What is Birnie's business?

A. I do not know what it is now; when I knew him he was farming a portion of the time—the balance of the time he was engaged in matters connected with the Welch ranch—Las Juntas. He married one of the heirs. He sometimes acted as interpreter in the courts.

Q. 10. What business transactions have you had with him?

A. My transactions have been limited to small matters, except once, when I had some litigation with him respecting a tax title.

Q. 11. How did you settle that litigation?

A. We had a suit—after its termination, which was in favor of Mr. Birnie, he paid me back the taxes and per-centage.

Q. 12. Have you any business relations now, or are you in any way connected with him by marriage or otherwise?

A. I have no business relations with him, nor am I connected with him in any way.

Q. 13. When was your attention first called to Birnie's reputation for truth and veracity?

A. I don't know that I ever heard it called in question, until within the last two or three months.

Q. 14. Did you never hear his character discussed previous to that time?

A. Not as a general thing by the community. I have heard

individuals, who may have had some difficulty with him, call his character for truth and veracity in question; but never heard it discussud as a general thing.

Q. 15. How far back have you heard individuals call his character for truth and veracity in question?

A. I cannot recollect when I first heard any individual speak ill of him—probably as far back as 1852 or 1851, when he first became connected with the Welch ranch.

Q. 16. Did you ever hear that he was accused of larceny?

A. I heard of such an accusation being made.

Q. 17. Do I understand you then to say, that the reputation of Birnie in the county where you reside was as clear and fair as that of men in general?

A. So far as my knowledge goes it was and is.

Q. 18. And you think that is the general sentiment of the community?

A. So far as I know it is.

DIRECT EXAMINATION RESUMED.

Q. 19. In your answer to the 17th question, you state you heard of an accusation being made against Birnie of larceny. Please explain.

A. The nature of it was this: that there were some persons hauled some lumber on land claimed by him, which he hauled off—this was the ground. Whether he was indicted or not I don't know. Mr. Boss, I think, was the complainant.

Examination closed.

JOHN H. LIVINGSTON.

Sworn to and subscribed before me this 22d day of August,
A. D. 1860.

JOHN B. WILLIAMS,
U. S. Commissioner.

Filed August 22, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF PHILANDER FISHER.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Philander Fisher, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present: Edmund Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1. State your name, age, and residence.

ANSWER. Philander Fisher, age 54, and residence in Contra Costa county.

Q. 2. How long have you lived in that vicinity, and what has been your occupation during that time?

A. I have lived in that county about four years. I first kept a store in Martinez, in 1853; then moved to San Francisco in November, 1853; then back to Contra Costa county three years ago; and since then have been raising stock at a place about twelve miles from Martinez, and three and a half miles from San Pablo.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, who now lives in Alameda county, and who is now present.

A. I do.

Q. 4. Do you know his general reputation in the community where you both lived?

A. I did at that time.

Q. 5. What was his general reputation in that community, at that time, for truth and veracity; good or bad?

A. It was good.

Q. 6. Judging from his general reputation in that community for truth and veracity, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 7. When did you first know Birnie?

A. I think in January, 1853.

Q. 8. When did Birnie move away from Contra Costa county?

A. I don't know; he was there all the time I was there in 1853.

Q. 9. What is the time to which you refer in your answer to the 4th question, when you say you know his general reputation?

A. From January, 1853, to November, 1853.

Q. 10. Have you known anything particular about him since, or been acquainted with his general reputation since that time?

A. I have not.

Q. 11. Do you know his general reputation in Alameda county, where he now lives.

A. I do not.

Q. 12. How near did he live to you in 1853?

A. Some three or four miles. He traded with me at my store, and I hired a house of him.

Q. 13. Did you in 1853 ever have your attention called to his reputation for truth and veracity?

A. I did not. He traded with me, and I was glad to sell him what goods he wanted, and he always paid me.

Examination closed.

PHILANDER FISHER.

Sworn to and subscribed before me, this 22d day of August, A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 31, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF F. A. WALLEY.

IN THE DISTRICT COURT OF THE UNITED STATES. }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases ; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 22d of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared F. A. Walley, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Edmund Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age and residence.

ANSWER. F. A. Walley, age 42, and residence Martinez, Contra Costa county.

Q. 2. How long have you lived in that county, and what has been your occupation during that time?

A. I have lived there since 1849, and my occupation has been stock-raising.

Q. 3. Do you know Robert Birnie, who used to live in that county, who now lives in Alameda, and who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where you both lived?

A. I do.

Q. 5. What is his general reputation for truth and veracity in that community; good or bad?

A. Never heard anything but good, until lately; some two or three months since, there were some two or three parties that came here from Martinez to testify against him; those parties told me he was a standing witness. This is the worst thing I ever heard against him.

Q. 6. Judging from his general reputation for truth and veracity in the community where you both lived, would you believe him on his oath?

A. I certainly would. I have no reason to disbelieve him.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 7. Do you know anything about Birnie's history?

A. I know he has lived in and about Contra Costa county since 1849. I think he was farming during 1852 and 1853. I was frequently at his farm. I knew him living in Martinez with his family. I always presumed he was an agent for the Welch family.

Q. 8. Do you know when he moved away from the county?

A. I don't know. It is very frequently the case that a man may leave the county to live in another, without another knowing it. I can't say now that Birnie does not live in Contra Costa county, as I frequently see him in Martinez.

Q. 9. Did you never have business dealings with him?

A. Never. I never had occasion to buy any land from him. I know he has sold land there.

Q. 10. Do you know what his business has been since he left off farming?

A. I do not.

Q. 11. Do you know where his family is now?

A. I do not.

Q. 12. You say the worst thing you heard against him was, that he was a standing witness.

A. I never heard anything else against him.

Q. 13. Did you never hear that his character had been impeached?

A. Only in this case.

Q. 14. Did you never hear his character for truth and veracity discussed?

A. There was a case in which he was charged with larceny, but as I knew the circumstances I did not consider the charge anything against him. It was decided in his favor.

Examination closed.

F. A. WALLEY.

Sworn to and subscribed before me, this 22d day August,
A. D. 1860,

JOHN B. WILLIAMS,
U. S. Commissioner.

Filed August 31, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF SALVIO PACHECO.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Commission No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Salvio Pacheco, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the Private Land Claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Thomas Jewett, a sworn interpreter.

Present: E. Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1. State your name, age, and residence.

ANSWER. Salvio Pacheco; age 54 and upwards; residence at Martinez.

Q. 2. How long have you lived in that vicinity, and what has been your occupation during that time?

A. I have lived there about 20 years; my occupation is that of ranhero.

Q. 3. Do you know Robert Birnie, who lived in Contra Costa county, now lives in Alameda county, and who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where he lived for truth and veracity; and if so, what is it—good or bad?

A. He is a gentleman, I believe, in his truth and veracity; never heard that he had any difficulties; know him as an upright man, and know nothing bad about him.

Q. 5. Judging from his general reputation for truth and veracity in the community where he lived, would you believe him on his oath?

A. Yes, sir; because I never have heard him tell any falsehoods. I have never heard anything said about him, and don't know anything.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 6. Are you a Californian by birth?

A. I am.

Q. 7. Did you ever hear anybody say anything about the truth and veracity of Robert Birnie, one way or the other?

A. No, sir.

Q. 8. Can you speak or understand English when spoken?

A. No, sir; I don't understand it.

Examination closed.

SALVIO PACHECO.

Sworn to and subscribed before me this 22d day of August,
A. D. 1860,

JNO. B. WILLIAMS,

U. S. Commissioner.

Filed August 31, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF MARSHALL S. CHASE.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Commission No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Marshall S. Chase, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present: E. Randolph, Esq., for United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, and residence.

ANSWER. Marshall S. Chase, age 37, and residence in Contra Costa county.

Q. 2. How long have you lived in that county, and what has been your occupation during that time?

A. I have lived there for the last five years and upwards—and profession, attorney-at-law.

Q. 3. Do you know Robert Birnie, who once lived in Contra Costa county, who now lives in Alameda county, and who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where you both lived?

A. I think I do.

Q. 5. What is his general reputation for truth and veracity in that community—good or bad?

A. So far as I have heard, I have not heard it questioned, though I have heard it discussed.

Q. 6. Judging from his general reputation in that community for truth and veracity, would you believe him on his oath?

A. I should, when a competent witness.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 7 Have you ever had any business relations with Mr. Birnie?

A. None whatever.

Q. 8. What is the extent of your acquaintance with him?

A. My personal acquaintance with him commenced about four years since, and has continued hitherto with casual interviews as acquaintances merely.

Q. 9. Did you ever hear that his character for truth and veracity had been impeached in any case?

A. I have heard it was attempted to be in this case, but never heard that it was in any other, or attempted to be.

Q. 10. Did you never hear that it was attempted to be impeached in the Gulnac case, in this city, several years ago?

A. I never did; nor until this moment was I ever advised that he was a witness in that case.

Q. 11. What has been Birnie's business since you knew him?

A. I think at the commencement of my personal acquaintance with him he was engaged in ranching on the Welch ranch in Contra Costa county; and subsequently he has been occupied as the agent of Francisco Galindo, for Galindo's property in and about the city of Oakland.

Q. 12. Are you professionally connected in any way with the Welch ranch?

A. Only as attorney in an application, by three minor heirs of Wm. Welch, before the Probate Court.

Q. 13. Are you not interested in the said Welch ranch?

A. I hold a deed for two or three town lots in Martinez, claimed under what is called the Welch survey of that town; and I represent a Sheriff's certificate of sale of some 70 or 80 other lots in that town, which I regard as nearly worthless.

Q. 14. Are you acquainted in Alameda county?

A. I am.

Q. 15. Do you know Birnie's reputation for truth and veracity in that county?

A. I should say I do not, except that what few persons there I have heard speak of his reputation, have spoken favorably of it.

Q. 16. When was the first time you heard his character discussed for truth and veracity?

A. About three weeks since, at the time when publication was made of the testimony given by some witnesses from Contra Costa county in this case, and upon this question.

Q. 17. Please explain what you mean when you say you have heard his character for truth and veracity discussed, but never questioned?

A. I mean that on this occasion I heard several remarks made by several individuals of the testimony as published—that these remarks in no wise questioned Birnie's truth, though his character and acts were discussed.

Examination closed.

M. S. CHASE.

Sworn to and subscribed before me this 22d day of August,
A. D. 1860,

JNO. B. WILLIAMS.

U. S. Commissioner.

Filed August 31, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF BÉNITO VASSEROT MERLE.

IN THE DISTRICT COURT OF THE UNITED STATES }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases: Dist. Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Benito Vasserot Merle, a witness produced in behalf of the United States in the above entitled cause, now pending in the said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows,—his evidence being interpreted by Thomas Jewett, a sworn interpreter.

Present: E. Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age and residence.

ANSWER. Benito V. Merle; age, 41; and residence at Martinez.

Q. 2. How long have you lived in that vicinity, and what has been your occupation?

A. Seven years; two years I kept a grocery, liquor, and provision store in Pinole, about eight miles from Martinez, and five years I have kept a ranch, about half-a-mile from Martinez.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, who now lives in Alameda county, and who is now present?

A. I do.

Q. 4. Do you know his reputation for truth and veracity in the community where he lived; and if so, what is it, good or bad?

A. I have known Mr. Birnie since 1854, and since 1855 I have been well acquainted with him up to this time. As for myself, he is a gentleman. I never heard the public say anything about him one way or the other.

Q. 5. From your knowledge of his reputation for truth and veracity, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by Mr. Peachy.

Q. 6. What are you by birth?

A. French.

Q. 7. Why do you give your testimony though an interpreter?

A. Because I don't understand the English language well enough to answer words which I do not know.

Q. 8. Is it simply your own opinion that you have given of Birnie's truth and veracity?

A. It is my opinion, because I have known him as an upright man. I have never heard anything against him since I have known him.

Q. 9. Do you pretend to know what other people in Contra Costa county think of him?

A. I don't know what other people think or say about him, because I don't understand English well enough. I never heard anything against him.

Q. 10. Did you ever hear anybody that speaks French and Spanish say anything about his truth and veracity one way or the other?

A. Never; always heard that he was an upright man, and those who could understand me in Spanish and in English said the same thing.

Q. 11. Are you not interested in the same title to land in which Birnie is interested?

A. No, sir. My interest is in the Martinez, not the Welch grant.

Examination closed.

BÉNOIT VASSEROT MERLE.

Sworn to and subscribed before me, this 22d day of August,
A. D. 1860.

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed Aug. 31, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF TOMAS PASTOR.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Tomas Pastor, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Edmund Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, and residence.

ANSWER. Tomas Pastor, age 34, and reside at Monte Diablo, Contra Costa county.

Q. 2. How long have you lived in that vicinity, and what has been your occupation during that time?

A. From six to seven years I have been acting as agent for Mr. Pacheco, who owns the Monte Diablo ranch. I keep a billiard saloon in Martinez.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, who now lives in Alameda county, and who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where he lives and where you both lived.

A. I do.

Q. 5. What is his general reputation for truth and veracity in the community where he lives; good or bad?

A. Good.

Q. 6. Judging from his general reputation for truth and veracity in the community where he lives, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 7. Where were you born?

A. In Cadiz, Spain.

Q. 8. When did you come to California?

A. In 1853.

Q. 9. How long have you been keeping a billiard saloon in Martinez?

A. Some three months. I own the business.

Q. 10. Where does Birnie now live?

A. In Oakland.

Q. 11. Did you ever live in Oakland?

A. No, sir.

Q. 12. Are you acquainted with that community, in Oakland?

A. No; I only know Mr. Peralta and a few others; Mr. Castro, etc.

Q. 13. What do you know about Birnie's reputation in Oakland and Alameda county?

A. I never heard anything good or bad about it there.

Q. 14. How many people do you know in Alameda county?

A. Very few, except the old Californians, of whom I know nearly all.

Q. 15. When did Birnie move to Oakland?

A. I think in 1856 or 1857 he left Contra Costa county. I don't know when he went to live in Oakland.

Q. 16. How long after you went to Contra Costa county was it before Mr. Birnie left?

A. Two or three years.

Q. 17. Since Birnie left the county, have you known anything about him?

A. I know he has been farming, and that he has been acting as agent for Mr. Galindo in selling lands in Oakland. He has also acted as an interpreter when employed.

Q. 18. Did you ever hear his character for truth and veracity discussed?

A. No, sir; he always had a good character among good people.

Examination closed.

TOMAS PASTOR.

Sworn to and subscribed before me, this 22d August, 1860,

JNO. B. WILLIAMS,

U. S. Commissioner.

Filed August 31, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF A. R. MELONY.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
 v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Commissioner No. 366.

Be it remembered, that on this 22d day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared A. R. Melony, a witness produced in behalf of the United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:—

Present: E. Randolph, Esq., for the United States, and F. Billings, Esq., for claimant.

Questions in behalf of the United States.

QUESTION 1st. State your name, age, and residence.

ANSWER. A. R. Melony; age, 48; residence, Contra Costa county.

Q. 2. How long have you lived in Contra Costa county and vicinity, and what has been your occupation during that time?

A. Since 1850. Farming has been my principal occupation. I was Justice of the Peace for two or three years, and was associated with the Court of Sessions. I was a member of the Assembly from that county in 1856, and a member of the Senate of the State from the district which includes that county in 1857-'58. I was elected State Comptroller in 1858.

Q. 3. Do you know Robert Birnie, who formerly lived in Contra Costa county, and who now lives in Alameda, and who is now present?

A. I do.

Q. 4. Do you know his general reputation in the community where he lives?

A. I do not.

Q. 5. Do you know what it was when he lived in Contra Costa county?

A. I did.

Q. 6. What was his general reputation for truth and veracity in the community where he lived when you knew him?

A. I knew nothing against it; thought it was fair.

Q. 7. Judging from his general reputation for truth and veracity in the community where he lived, would you believe him on his oath?

A. I would.

CROSS-EXAMINATION.

Questions by Mr. Billings.

Q. 8. Have you been intimate with Birnie?

A. I have been acquainted with him. I lived within three miles of where he resided most of the time when he was in Contra Costa county.

Q. 9. When did Birnie come into that county?

A. He was there when I went there in 1850.

Q. 10. When did he move away?

A. I cannot say whether in 1856 or 1857; my impression is, in 1857.

Q. 11. Have you known anything particularly of him since he left?

A. I have not; have seen him occasionally here and in Alameda county, and sometimes in Contra Costa county.

Q. 12. But you don't know anything particularly about his reputation since then?

A. No, sir.

Q. 13. Did you ever hear his character called in question for truth and veracity?

A. I have not, except what I have seen in the papers.

Q. 14. Did you ever have any particular occasion for knowing anything about his reputation one way or the other?

A. Nothing more than I would have had about any other neighbor. We met frequently together in 1854, and until he left the country. He married one of the heirs to the Welch ranch, and I was guardian for the minor heirs, and am still.

Q. 15. Are you interested in the Welch estate?

A. I am not. I was formerly a settler on some land claimed by that ranch, but have sold out.

Examination closed.

A. R. MELONY.

Sworn to and subscribed before me this 22d day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed August 31, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT CASTILLERO NO. 1, J. B. W.

Ministerio De Fomento Colonizacion }
 Industria y Comercio De La Re- }
 publica Mexicana. }

Seccion 2^a. Habiendose recibido en esta Sria. el ocurso de V., en que solicita se le libre una constancia para acreditar, que despues de extinguido el Träl. general de mineria la practica que se ha seguido y continua observandose para las concesiones escepcionales á los registradores ó denunciantes de minas, es que el Supremo Gobierno de la Nacion concede ó niega, oyendo á la junta de mineria, las peticiones de mayor extension de terreno ó pertenencias que se solicitan; digo á V. en contestacion, que en efecto esa ha sido la práctica, pues á dicho Sup^o. Gobierno es á quien corresponde y ha correspondido la concesion de las prerogativas y privilegios de que habla el art^o. 17 del tit^o. 6^o. de las Ordenanzas, habiendo varios hechos ejecutoriados de esta naturaleza y uno especialmente, que fué resultado por esta Secretario.

Dios y Libertad, Mejico, Marzo 14 de 1856.

SILICEO.

[Rubric.]

Sr. D. Eustaquio Barron.

El Infrascrito Oficial mayor 1^o. del Ministerio de Relaciones
 47 Exteriores Certifico : que el Sr. Siliceo es Ministro
 [SELLO.] de Fomento de la Republica y su firma que antecede
 la misma que usa en los actos que autoriza.

México, Marzo 28, del 1856.

LUCAS DE PALACIO Y MAGAROLA.

[Rubric.]

Dros. 4 p^{as}.

No. 93. CONSULATE OF THE U. S. OF AMERICA, }
 MEXICO, March 28th, 1856. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of Lucas de Palacio y Magarola, subscribed to the foregoing certificate, is the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same, chief clerk of the Departamento of Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

Register II, fo- In testimony whereof, I have hereunto set my
lio 126. hand, and affixed the Consular Seal, the day and
Fees, §2. year first before written.

[SELLO.]

JOHN BLACK,
U. S. Consul.

Ministerio de Fomento, Colonizacion }
Industria y Comercio De La Re- }
publica Mexicana. }

Seccion 2^a. Habiendo ocurrido á este Ministerio el Sr. Lic. D. Rafael Martinez de la Torre manifestando que esa Diputacion territorial no le admitio el denuncia que hizo de la mina de Moran y otras que menciona porque se creyó incompetente para conceder todo cuanto pedia porque segun previenen las ordenanzas de mineria, debe ocurrirse en los casos como el de que se trata al Tribunal general; no existiendo este y hallandose los interesados en el caso del articulo 17 del titulo 10 de las ordenanzas se hace dirigido á este Ministerio para que se resuelva lo conveniente; y en vista de lo expuesto asi como de las razones ómitidas por la mesa respectiva de esta secretaria puede esa Diputacion admitir en su forma y terminos el denuncia de que se trata si no existiere otro impedimento legal, en cuyo caso dará U. cuenta á este Ministerio.

Dios y Libertad, Mexico, Julio 23, 1856

(Firmado.)

SILICEO.

[Rubric.]

Sr. Presidente del Tribunal de Minería de 1^o. Ynst^a. del
Real del Monte.

No. 170. CONSULATE OF THE U. S. OF AMERICA, }
MEXICO, August 9th, 1856. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that I have this day carefully examined and compared the foregoing copy with the original document presented in this Consulate by Eustace Barron, and that it is a true and faithful copy of said original.

Register II, In testimony whereof, I have hereunto set my hand
folio, 160. and affixed the Consulate Seal the day and year first
above written.

[SELLO.]

JOHN BLACK,
U. S. Consul.

Ministerio de Fomento, Colonization }
 Industria y Comercio De La Re- }
 publica Mexicana.

República Mejicana.—Tribunal general de minería.—E. S.—Este Tribunal tiene el honor de elevar á V. E. la solicitud que ha presentado D. Antº Garay á nombre de la Compañía Mejicana de minas del Departamento de Oajaca relativa á que se le concedan á la mina de San Baltazar una pertenencia de mil varas á cada viento sin incluir las que tiene medidas cuando se le dio posesion.—El Tribunal no encuentra el menor inconveniente en conceder esta gracia supuesto que se vé por el certificado que igualmente acompaña, no resulta perjuicio de tercero y tiene en su apoyo para concederla los artículos 17 del título 6 y 1º del 11º de los ordenanzas del ramo con tanta mas razon que en el Departamento de que se trata de establecer, esta grande empresa, la minería está en abandono y los terreno desierto de manera que en conceder esta gracia puede despertar en aquel Departamento el espíritu minero, dar trabajo á multitud de gente ociosa y resultar grandes beneficios al Erario nacional.—Por lo que al ratificar este Tribunal su citada opinion y si á V. E. le parece conveniente la concesion de que se trata esto se paga siempre que no sea de perjuicio de tercero, fijandose los hregones para que en caso de que alguno se crea con derechos los deduzca ante quien corresponda.—Dios y Libertad Mejico, Agosto 11 de 1855.—T. Manuel Herrera Presidente sustituto.—Manuel Couto secretario.—Exmo. Sr. Ministro de Fomento.—2º—Agosto 17 de 1855.—Examínese pº la seccion y con su opinion, teniendo presente las disposiciones vigentes, vuelva al acuerdo.

Sello tercero.—Cuatro reales.—Años de mil ochocientos cincuenta y cuatro y cincuenta y cinco.—Antonio Garay, como Director de la Compañía mejicana de minas en el Departamento de Oajaca, por si y á nombre de la Compañía que dirijo, ante este Tribunal general hago presente; que en el mes de Mayo ultimo los socios de la misma Compañía denunciaron ante la Diputacion territorial de dicho Departamento, la mina nombrada Baltazar situada en el Distrito y jurisdiccion de Villa Alta en terreno del Pueblo de Zayacatepec.—La mina y sus labores adyacentes pertenecen á un mineral decaido desierto y abandonado que existió en tiempos muy remotos y del que ni hay memoria de quien lo trabajo ni ha habido quien se ocupe de nuevo en explotarlo. Por lo mismo la compañía que dirijo obró en este denunció como restan radora del antiguo mineral desierto y despoblado.—El lugar en que se halla la mina de San Baltazar, es una serrania escarpada distante como sesenta

leguas de Oajaca. Las poblaciones, cercanas al mineral están reducidas á un corto numero de habitantes infelices indigenas proletarios, y los caminos que conducen al mismo mineral no merecen ese nombre pues son estrechas veredas practicadas en elevadas montañas y derrumbaderos y ensolvadas con la maleza que en ellas ha crecido despues del largo tiempo en que han dejado de ser transitadas.—Por tales razones, claro está, que para poder explotar la compañía el mineral denunciado necesariamente debe invertir y está ya invirtiendo considerables candaes tanto en llevar barreteros y operarios para las labores de las minas, cuanto en abrir caminos por donde transitar sin riezgo ni embarazos, y cuanto en levantar las haciendas de beneficio, habitaciones y oficinas que son tan precisas para llevar á efecto una negociacion de esta magnitud enteramente nueva, situada en un páramo y tan distante de los pueblos en que hay viveres y pobladores, que puede considerarse verdaderamente aislada y falta de todo recurso.—La compañía se ha resuelto á emprender todos esos gastos y á hacer los sacrificios que demanda tan deficital negocio ; pero como al aceptar semejante resolucion en tiende que va á impulsar considerablemente el ramo de mineria en el Departamento de Oajaca y á sembrar en los pueblos del Distrito de Villalta bienes incalculables, dando trabajo productivo á sus habitantes y activando su comercio y su industria que en esa demarcacion son ahora nulos y desconocidos, quiere la compañía por su parte y por un principio de equidad y justicia asegurarse y obtener alguna recompensa. Esta la vé eifrada en el mayor grado que pueda adquirir de esperanza en sacar buenos y cuantiosos frutos de las minas que va á explotar.—En la de San Baltazar se encuentran circunstancias excepcionales de que es necesario dar alguna idea para fundar mas aun la que voy á solicitar.—La veta de esa mina es de dimensiones extraordinárias ; y tanto que por su caracter mas bien parece un manto prolongado que una veta ordinaria. Ella se estiende de Nor-oeste á sur Este por un espacio de mas de dos mil varas apareciendo y ocultandose alternativamente en la superficie del terreno por cuyo motivo son muchas las vocas ó labores que están abiertas de tiempo inmemorial sobre ese tramo y la mayor parte de ellas se encuentran ensolvadas, arruinadas y en Estado de muy dificil y costosa reparacion. Poco ó nada lograria pues la compañía dedicandose á desensol var y trabajar una ó dos de esay vocas. Para tener fundadas esperanzas de buen exito necesita ampliar sus exploraciones y trabajos á todas las vocas que estan aviertas y aun debe abrir otras nuevas para examinar por sus diversas faces la veta del mineral, pero como que la posesion dada de orden de la Diputacion territorial de Oajaca se limita á una area de ochocientas varas de lon-

gitud y cincuenta de cuadra, como consta de la copia adjunta, no puede la compañía pasar de esos estrechos límites, su esperanza está señada á ellos y por lo mismo es poco lisongera y nada remuneratoria de los cuantiosos gastos y grandes sacrificios que tiene que impender, ni de los inmensos bienes que los pueblos inmediatos van á recibir; siendo de temer por otra parte que despues de que halla desarrollado sus proyectos, gastado su dinero y puesto en claro con sus afanes lo que pueda ser esa negociación se aprovechan de ella personas estrañas sin que les cueste otra cosa que dar un simple denunció de pertenencias que estén fuera de los estrechos límites señalados á la compañía.—Por tales consideraciones; siéndo como es la compañía por quien represente descubridora y restauradora de un mineral destréndo y abandonado y estando prevenido por el artículo 17 título 6.º de las Ordenanzas del ramo que en este caso se concedan á tales descubridores muchas pertenencias y cuantos privilegios, exenciones y auxilios fueren de dispensar.—A ese Tribunal general pido y suplico se sirva conceder á la compañía espresada, que en terreno sobre el cual están situada las vetas de la mina de San Baltazar se le mida una pertenencia que comprenda mil varas por cada veinte de los de la longitud y latitud de la veta partiéndo las medidas como punto centrico desde la voca de San Baltazar, en la inteligencia de que á nadie se perjudica con esa medida por que en mas de veinte leguas en contorno no existe otro mineral, y de que solo de este modo podra costearse la compañía en sus trabajos y desarrollarlos en toda su plenitud.—Antonio Garay.—Otro si digo: que acompaño tambien un certificado del Sr. Presidente de la Diputacion de Oajaca y suplico se tenga presente que en mi petición de mil varas por cada rumbo no se incluyen las de las medidas por que se dio la posesion.—Antonio Garay.

Sello tercero—cuatro reales.—Años de mil ochocientos cincuenta y cuatro y cincuenta y cinco.—El Lic. Francisco Saenz de Enciso Presidente de la Diputacion territorial de mineria en el Departamento de Oajaca.—Certifico en legal forma: que en el expediente que existe en el archivo de la Secretaria de esta Disputacion de mineria, instruído sobre denunció y posesion de la mina de San Baltazar, situada en el Distrito de Villa alta en terreno del pueblo de Zayacastepec, consta que dicha mina fué denunciada por D. Ygn.º Megia y D. Tomas Franco, como interesados en la compañía mejicana de minas dirigida por el Sr. D.º Antonio Garay: que en consecuencia de ese denunció que fué admitido en tiempo y forma se dio posesion de la espresada mina en 2º de Marzo de este año por el diputado suplente, D. Miguel Castro comisionado al efecto por esta Diputacion, que de la diligencia posesoria, aparece que la veta de

la mina de San Baltazar es de grandes dimensiones: que esa mina está situada en un mineral antiguo desierto y despoblado; que la posesion se dió con cuatro pertenencias legales como de denuncia hecho en compañía, partiendo la medida desde la boca de la mina de San Baltazar en adelante y dandosele la estension de ochenta varas al rumbo del sur-este y 720 varas al del Norioeste, y que la medida de la cuadra solo fué de 50 varas laterales sobre norte y sur. Asi mismo certifico; que por los informes que tiene esta Diputation territorial, y por el conocimiento practico que poseo del terreno en qué está situada la mina de Baltazar, por haber estado en él repetidas veces, me consta que dicha mina se halla situada en las distancia de mas de sesenta leguas de la Capital de Oajaca sobre el rumbo del nor-oeste; que no existe otro mineral en mas de veinte leguas en contorno de Zayacastepec; que los caminos que conducen á este punto y á la mina de San Baltazar son sumamente dificiles y peliográficos, por estar practicados en veredas y derrumbaderos cubiertos de maleza: que los pueblos de esa comarca son de pocos habitantes y muy miserables y escasos de recursos; por todo lo cual opino que la compañía Mejicana para explotar el mineral de Zayacastepec, con algun fruto, necesita hacer gastos de mucha consideracion, por cuanto á que tiene necesidad de abrir caminos, llevar desde largas distancias barretero, operarios y viveres, edificar habitaciones, hacienda de beneficio y sus oficinas anexas conducir maquinarias y herramientas y darles vida y movimiento á esos lugares, que son enteramente desierto, pues en algunos de ellos ni la planta del hombre ha transitado todavia.—Y á pedemiento que me ha hecho el Sr. Garay como Director de la Compañía espresada doy el presente en Oajaca á 22 de Junio de 1855, tachado, jurisdiccion.—Fran^{co}. Enciso.

Ministerio de Fomento.—Seccion 2^a.—Señor.—En cumplimiento del anterior acuerdo de VE. ha examinado esta seccion el expediente promovido por D. Ant^o. Garay ante el Tribunal general de mineria pidiendo, á nombre de la compañía Mejicana de minas del Departamento de Oajaca, que se conceda á la mina de San Baltazar una pertenencia de mil varas á cada viento, sin incluir las que tenia ya medidas.—Al remitir esta solicitud el referido Tribunal manifiesta que no hay inconveniente en conceder esta gracia porque no resulta perjuicio de tercero y tiene en su apoyo los articulos 17^o. del titulo 6^o. y 1^o. del 11^o. de las ordenanzas de mineria alegando otras razones de conveniencia para el progreso del ramo en el mencionado Departamento.—La mesa cree igualmente que no hay disposicion ninguna, contraria á lo que se solicita y siguiendo en un todo la opinion respetable del Tribunal, opina porque se haga la

concesion en los terminos propuestos.—Mejico 18 de Agosto de 1855.—Agustin S. de Tagle.—

—Agosto 18 de 1855.—De conformidad con lo que opina la seccion y el tribunal general de mineria, concedase el aumento de pertenencia que se solicita y dése la orden respectiva á la Diputacion territorial de mineria de Oajaca para que proceda á dar posesion á la compañía, siempre que no haya perjuicio de tercero, para lo cual de fijará previamente los pregones á fin de que los que tengan algunos derechos los hagan valer.

Ministerio de Fomento.—Seccion 2ª.—De conformidad con lo que han opinado el Tribunal general de mineria y la seccion 2ª. de este Ministerio en la exposicion que presentó U. á dicho Tribunal á nombre de la compañía Mejicana de minas del Departamento de Oajaca, pidiendo se conceda á la de San Baltazar una pertenencia de mil varas á cada viento, el E. S. Presidente interino de la Republica se ha servido desponer se otorgue á U. dicha gracia en los términos propuestos por el repetido Tribunal; á cuyo efecto con esta fecha, se dá la orden correspondiente á la Dípucion de mineria de Oajaca para que se practique un el asunto el trámite correspondiente.—Comunico lo á U. para su satisfaccion é inteligencia y como resultado de la repetida exposicion.—Dios y Libertad.—Mejico Agosto 18 de 1855.—Lerdo de Tejada.—Sr. D. Antonio Garay.—

Ministerio de Fomento.—Seccion 2ª.—Con esta fecha digo al Sr. D. Antº. Garay lo que sigue:

(Aquí la comunicacion anterior) y lo trascribo á U. para su inteligencia y con el fin de que proceda á dar posesion á la Compañía, siempre que no resulte perjuicio de tercero, á cuyo efecto se fijarán previamente los pregones, para que los que se crean con algunos derechos puedan hacer los valer.—Dios y Libertad, Méjico Agosto 18 de 1855.—Lerdo de Tejada.—Sr. Presidente de la Diputacion territorial de mineria de Oajaca.

Son copias Méjico Julio 29 de 1856.

MAN. OROZCO.

[Rubric.]

El infrascripto oficial Mayor 1º. del Ministerio Relaciones Exteriores.

Certifico: que D. Manuel Orozco es oficial Mayor interino del Ministº. de Fomento; y en firma que antecede lo que esta en los documentos que autoriza. Méjico [SELLO.] del Ministº. de Fomento; y su firma que antecede Agosto 9 de 1856.

Dros. 4 pº.

LUCAS DE PALACIO Y
MAGAROLA.

[Rubric.]

No. 172. CONSULATE OF THE U. S. OF AMERICA, }
 MEXICO, August 9th, 1856. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of Lucas de Palacio y Magarola, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same Chief Clerk of the Department of Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

Register H. In testimony whereof, I have hereunto set my
 folio 161. hand, and affixed the Consular Seal, the day and
 year first before written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



U. S. DISTRICT COURT.

THE UNITED STATES }
v. } No. 420.
 ANDRES CASTILLERO. }

It is hereby stipulated and agreed that the within and annexed "Exhibit Castellero No. 1, J. B. W." be filed on behalf of the claimant, subject to all legal objections.

San Francisco, Sept. 12, 1860.

EDMUND RANDOLPH.
 Asst. Counsel for U. S.

REVERDY JOHNSON.
 For Claimants.

Filed Sept. 13, 1860.

W. H. CHEVERS, Clerk.

TRANSLATION OF EXHIBIT CASTILLERO No. 1

Ministry of Encouragement, Colonization, }
 Industry and Commerce of the Mex- }
 ican Republic.

Section 2d. Your communication having been received in this office (secretaria), in which you ask that a document may be issued to you to prove that the practice which has been followed and continues to be observed since the extinguishment of the Tribunal General of Mining for exceptional concessions to the registerers or denouncers of mines, is that the Supreme Government (Gobierno) of the Nation grants or denies, after consulting the Mining Junta, the petitions for a greater extent of land or pertenencias which are asked for. I state to you in reply, that in fact such has been the practice, for it is and has been the right of said Supreme Government (Gobierno) to grant the prerogatives and privileges spoken of by Art. 17 of Title 6 of the Ordenanzas, there being various executive acts of this nature and one especially which was ordered by this office.

God and Liberty. Mexico, March 14, 1856.

SILICEO.
 [Rubric.]

Sör. Don Eustaquio Barron.

The undersigned, First Chief Clerk of the Ministry of Exterior Relations, Do certify: that Señor Siliceo is
 47 Minister of Encouragement (Fomento) of the Re-
 [SEAL.] public, and that his foregoing signature is the same
 which he uses in documents authenticated by him.

Mexico, March 28, 1856.

LUCAS DE PALACIO Y MAGAROLA.
 [Rubric.]

Dues, \$4.

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No. 93.

CONSULATE OF THE U. S. OF AMERICA,
 MEXICO, March 28, 1856.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify, that the signature of Lucas de Palacio y Magarola, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his Official acts, who is well known to me, and was at the time of subscribing the same, Chief Clerk of the Departamento of Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

Register H, fo- In testimony whereof, I have hereunto set my
lio 126. hand and affixed the Consular Seal, the day and
Fees, \$2. year first above written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



Ministry of Encouragement, Colonization, }
Industry and Commerce of the Mex- }
ican Republic.

Section 2d. The Sör Licenciado Don Rafael Martinez de la Torre, having applied to this Ministry representing that that territorial deputation did not admit the denouncement which he made of the mine of Moran and others which he mentioned, because it deemed itself incompetent to grant all he asked, because according to the provisions of the Ordenanzas de Minería recourse should be had, in cases like the one under consideration, to the Tribunal General; this (the Tribunal General) not existing, and the parties entered being within the provisions of Art. 17, Title 10 of the Ordenanzas, they have addressed themselves to this Ministry to have decided what may be proper; and in view of the matters aforesaid, and of the reasons stated by the respective bureau of this office, that deputation may admit in its form and terms the denouncement referred to, if there should exist no other legal impediment; if there should, you will inform this Ministry.

God and Liberty. Mexico, July 23, 1856.

(Signed)

SILICEO.

Sör. President of the Mining Tribunal of Santa Ynsta of Real del Monte.

No. 170.

CONSULATE OF THE U. S. OF AMERICA,
MEXICO, August 9th, 1856.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that I have this day carefully examined and compared the foregoing copy with the original document presented in this Consulate by Eustace Barron, and that it is a true and faithful copy of said original.

Register H, fo- In testimony whereof, I have hereunto set my
lio 160. hand and affixed the Consulate Seal the day and
year first above written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



Ministry of Encouragement, Coloniza- }
 tion, Industry and Commerce of }
 the Mexican Republic.

Mexican Republic, Tribunal General of Mining.—Most Excellent Señor: This Tribunal has the honor to send up to Your Excellency the petition which Don Antonio Garay has presented, in the name of the Mexican Company of Mines of the Department of Oajaca, asking that there may be granted to the mine of San Baltazar a pertenencia of a thousand varas in all directions, without including those which were measured off when possession was given to him.

The Tribunal does not find the least objection to granting this favor, since it appears from the certificate which he also annexes, that no injury will result to a third party, and as there is in support of granting it Art. 17., Title VI., and Art. 1, Title XI, of the Ordenanzas of the branch, with the still stronger reason that in the Department where it is proposed to establish this grand undertaking (empresa), mining is abandoned, and the land deserted, so that by granting this favor it may wake up in that Department a mining spirit, give work to a multitude of idle people, and great benefits may result to the national treasury.

Therefore, this Tribunal on ratifying its said opinion, and if Your Excellency deems it proper, the concession spoken of, this may be done, provided that it may not prejudice a third party, fixing up notices in order that if any one thinks he has rights, he may allege them before the proper authority. God and Liberty. Mexico, August 11th, 1855. I, Manuel Herrera, President substitute. Manuel Couto, Secretary. To the Most Excellent Señor Minister of Encouragement. 2d. August 17th, 1855.—Let this be examined by the section, and with its opinions having in view the laws in force, let it return for decision.

Stamp third. Four reals. Years 1854 and '55.—Antonio Garay, as Director of the Mexican Company of mines in the Department of Oajaca, for himself and in the name of the Company which I direct, before this Tribunal General do represent: That in the month of May last the members of this same company denounced, before the Territorial Deputation of said Department, the Mine called San Baltazar, situated in the district and jurisdiction of Villa Alta, in the land of the pueblo of Zoyacatepec. The Mine and its adjacent workings belong to a decayed, deserted, and abandoned (*mineral*) mining district, which existed in very remote times, neither is there any record of who worked it, nor has any one been willing to undertake to work it anew. Therefore, the company which I direct

acts in this denouncement as restorer of an ancient (*mineral*) mining district, deserted and depopulated. The place where the mine of San Baltazar is situate, is a range of steep mountains, distant about seventy leagues from Oajaca. The population near the (*mineral*) mining district is reduced to a small number of inhabitants, poor, miserable natives, and the roads which lead to the same (*mineral*) mining district do not deserve the name, as they are merely narrow paths formed in high mountains and precipices, and filled up with underbrush which has been growing up for the great length of time during which they have not been traveled over. For these reasons it is clear that for the company to be able to work the mine which is denounced, it must necessarily invest, and is now investing, a large capital in transporting laborers and operatives for the works of the mines, both in opening roads over which they may pass without trouble or risk, and in constructing reducing haciendas, houses and offices which are so necessary for carrying into effect a negotiation of this magnitude, entirely new, situated in a desert, and so distant from the towns where there are provisions and inhabitants, that it may be considered as truly isolated and destitute of all resources. The company has resolved to incur all those expenses, and to make the sacrifices which so difficult a matter demands; but as on adopting such a resolution it expects to give a considerable impulse to the branch of mining in the Department of Oajaca, and to disseminate incalculable benefits among the towns of the district of Villa Alta, giving productive labor to its inhabitants, and stimulating their trade and industry, which in that demarcation is now null and unknown, the company desires, on its part, and upon a principle of equity and justice, to secure itself and obtain some recompense. It sees indication of this in the higher hope it may be inspired with of obtaining good and abundant proceeds from the mine which it is going to work. In the mine of San Baltazar there are encountered peculiar circumstances, of which it is necessary to give some idea in order to give a better foundation for what I am going to solicit. The vein of this mine is of extraordinary dimensions, so that its character seems to be a prolonged manto rather than an ordinary veta. It extends from northwest to southeast more than two thousand varas, alternately appearing on and disappearing in the surface of the ground, so that there are many mouths or works which have been open from time immemorial on this piece of land, and in the greater part of them are found caved in, in ruins, and in a condition difficult and expensive to be repaired. The company might obtain little or nothing by dedicating itself to the reopening and working one or two

of these mouths. In order to have well founded hopes of a good result it is necessary to extend its explorations and works to all the mouths which are open, and even to open other and new ones, in order to examine the vein of the ore in its different faces ; but as the possession given by order of the Territorial Deputation of Oajaca is limited to an area of eight hundred varas in length, and fifty in width, as shown by the annexed copy, the company cannot pass those narrow limits, its hope is limited to them, and therefore is little flattering and not at all remunerative for the large expenses and great sacrifices which are to be made, nor for the immense benefits which the people in the vicinity are to receive ; while on the other it is to be feared that after its projects are unfolded, its money expended, and it has made clear by its toils what this business may become, other persons may enjoy its advantages without any other expense than a simple denouncement of the pertenencias which are outside of the narrow limits which are marked out to the company. For such considerations the company which I represent being, as it is, the discoverer and restorer of a mine destroyed and abandoned, and it being provided by Article 17, Title 6, of the ordenanzas of the branch, that in such case there be granted to such discoverers many pertenencias, and such privileges, exemptions, and assistance as could be granted. Of this Tribunal General I ask and petition that it be pleased to grant to the said company that, in the land on which the veins of the mine of San Baltazar are situated, there be measured to it a pertenencia which will include a thousand varas in all directions, of length and width of the vein, the measurement starting from the mouth of San Baltazar, as a central point, with the understanding that no one will be prejudiced by this measurement, for in more than twenty leagues around there exists no other mine, and that in this way only can the company sustain the expenses of its works, and develop them to their full extent.—Antonio Garay. Moreover, I accompany herewith a certificate of the Señor, the President of the Deputation of Oajaca, and I pray that it may be remembered that in my petition for a thousand varas in each direction, the measurements by which the possession was given are not to be included.—Antonio Garay.

Stamp third.—Years 1854 and 1855.—Four reales.—I, the Licentiate Francisco Saenz de Encisco, President of the Territorial Deputation of Mining of the Department of Oajaca, do certify in legal form that in the expediente which exists in the archives of the Secretary's office of this Mining Deputation, formed on the denouncement and possession of the mine of San

Baltazar, situate in the district of Villa Alta, on the land of the pueblo of Zayacastepec, it appears that said mine was denounced by Don Ygnacio Megia and Don Tomas Franco, as parties interested in the Mexican Company of Mines, under the direction of Señor Don Antonio Garay; that in consequence of this denouncement, which was admitted in time and form, the possession of said mine was given on the 20th March, of this year, by the Substitute Deputy Don Miguel Castro, appointed for that purpose by this Deputation; that from the possessory proceedings it appears that the vein of the mine of San Baltazar is of large dimensions; that this mine is situated in an old, deserted, and depopulated mining district; that possession was given for four legal pertenencias, as of a denouncement made in company, the measurements running from the mouth of the mine of San Baltazar forward, and there being given it an extent of eighty varas in the direction to the southeast, and seven hundred and twenty varas to the northwest, and that the measurement of the width was only fifty lateral varas north and south. I certify in like manner, that by the reports which this Deputation has, and by the practical knowledge which I have of the country where the mine of San Baltazar is situated, having been in it repeatedly, I know that said mine is situate at the distance of more than seventy leagues from the capital of Oajaca, in a northwest direction; that there is no other mining district within more than twenty leagues about Zayacastepec; that the roads which lead to this point and to the mine of San Baltazar are exceedingly difficult and perilous from being made in footpaths and precipices covered with brambles; that the towns of that vicinity have few inhabitants, very poor, and destitute of resources; wherefore, I am of opinion that the Mexican Company, in order to work the mining district of Zayacastepec with any success, must make very considerable expenditures, as it will have to open roads, to transport from a great distance laborers, operatives, and provisions, to build dwellings, a hacienda for reduction, and its necessary offices, to transport machinery and ironwork, and to give life and motion to those places which are entirely deserted, for in some of them the foot of man has never yet passed. And at the request made of me by the Señor Garay, as Director of the said company, I give this present in Oajaca the 22d of June, 1855.—Francisco Enciso.

Ministry of Encouragement.—Section 2d.—Señor: In compliance with the foregoing decree of Your Excellency, this section has examined the expediente presented by Don Antonio Garay before the Tribunal General of Mining, in the

name of the Mexican Company of Mining of the Department of Oajaca, that there may be conceded to the mine of San Baltazar a pertenencia of a thousand varas in all directions (a cada viento), without including those it has already measured.—Upon remitting this petition the said Tribunal states that there is no objection to granting this favor, as no prejudice would result to a third party, and it has in its support Article 17 of Title 6, and Article 1 of Title 11, of the Ordenanzas de Minería, alleging other reasons of fitness for the progress of the branch in the said Department.—The Board also believes that there is no provision opposed to what is asked for, and following in all respects the respectable opinion of the Tribunal, it is of opinion that the concession should be made in the terms proposed.—Mexico, August 18th, 1855.—Agustin S. de Tagle.

August 18th, 1855.—In conformity with the opinion of the section, and of the Tribunal General of Mining, let there be conceded the increase of pertenencias which is asked for, let the proper order begin to the Territorial Deputation of Mining for Oajaca, so that it may proceed to give possession to the Company, provided no injury be done to third parties, for which purpose notices will be previously posted up in order that those who may have any rights may establish them.

Ministry of Encouragement.—Section 2d.—In conformity with the opinion of the Tribunal General of Mining, and of the 2d section of this Ministry, upon the exposition which you presented to the said Tribunal in the name of the Mexican Company of Mining of the Department of Oajaca, asking that there be conceded to the mine of San Baltazar a pertenencia of one thousand varas in all directions, the Most Excellent Señor President *ad interim* of the Republic, has been pleased to determine that said favor be granted to you in the terms proposed by the said Tribunal, for which purpose on this date the corresponding order is given to the Mining Deputation of Oajaca to have performed in the matter the corresponding proceeding.—I communicate it to you for your satisfaction and information, and as the result of the said exposition.—God and Liberty.—Mexico, August 18th, 1855.—Lerdo de Tejada.—Señor Don Antonio Garay.

Ministry of Encouragement.—Section 2d.—On this date I say to the Señor Don Antonio Garay what follows :

[Here insert the foregoing communication] and I transcribe it to you for your information, and to the end that you proceed to give possession to the Company, provided no injury be done to third parties, for which purpose the notices will be previously

posted up, in order that those who think they have any rights may establish them.—God and Liberty.—Mexico, August 18th, 1855.—Lerdo de Tejara.—To the President of the Territorial Deputation of Mining of Oajaca.

These are copies.—Mexico, July 29th, 1856.

MANUEL OROZCO.

[Rubric.]

The undersigned, 1st Chief Clerk of the Ministry of Exterior Relations, do certify :

[SEAL.] That Don Manuel Orozco is Chief Clerk *ad interim* of the Ministry of Encouragement ; and that his signature, which precedes, is that which he uses in documents authenticated by him. Mexico, August 9th, 1856.

Dues, \$4. LUCAS DE PALACIO Y MAGAROLA.

[Rubric.]

No. 172. CONSULATE OF THE U. S. OF AMERICA, }
MEXICO, August 9th, 1856. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of Lucas de Palacio y Magarola, subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same Chief Clerk of the Department of Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first before written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



EXHIBIT CASTILLERO No. 2, J. B. W.

—

IN THE UNITED STATES DISTRICT COURT, }
Northern District of California. }

Between THE UNITED STATES }
and }
ANDRES CASTILLERO. }

I, Alexander Forbes, now resident at 12 Old Burlington street, in the county of Middlesex, in the United Kingdom of Great Britain and Ireland, being duly sworn, say as follows:—

1. In the year one thousand eight hundred and forty-seven, and for some years previously, I was carrying on business as a merchant at Tepic and San Blas in the Republic of Mexico, and in the course of the year above mentioned I also was the “habilitador” of the mine of New Almaden, in California.

2. During the year one thousand eight hundred and forty-eight, being desirous of purchasing certain “barras,” or shares, in the said mine, over which James Alexander Forbes held a power of disposition, I entered into negotiations with him for that purpose, and in the course of these negotiations some correspondence passed between us.

3. In conducting a correspondence when absent from my place of business at Tepic, it was my custom to make and keep rough drafts of all business letters; and all such drafts were, previously to my retirement from business, and my return to England in the year one thousand eight hundred and fifty-one, transferred by me, with other documents relating to the mine of New Almaden, to the firm of Barron, Forbes & Co., at Tepic.

4. I distinctly declare that at no time have I entertained, nor do I now entertain any belief or apprehension that the documents procured in Mexico by Castillero (of whom I purchased my interest in the mine) as his title to the mine and lands, were obtained after the occupation of California by the Americans, but on the contrary, I always have entertained and do now entertain every confidence in the goodness and regularity of such documents.

6. I therefore positively deny that during the course of the negotiations aforesaid with James Alexander Forbes, I ever wrote or sent to him any letter in the words and figures, or to the effect following:—“Monterey, March 28, 1848. James A. Forbes, Esquire, Santa Clara. My dear sir: I have to

apologize for not writing you before this, as I promised I would, respecting the purchase of your shares in the mines of New Almaden, but really as your opinion of their value is so widely different from mine, I considered it almost hopeless to make you any further proposals. I do not, however, leave this without making the necessary arrangements to effect that object, and have therefore authorized Mr. Walkinshaw and Manuel Diaz to wait on you with my final offer for the purchase of these shares. Were I not already so deeply interested in this negotiation, I would never think of investing another dollar in it, but this interest renders it necessary for me to have the control of all the shares, in order that I may dispose of the whole whenever an opportunity may offer, and save myself from the heavy loss that would ensue should it unluckily leak out that in fact the documents procured by Castillero in Mexico, as his title to the mine and lands, were all obtained long after the occupation of Mexico by the Americans. This unfortunate irregularity cannot be easily repaired, and serious objections might be made even to the legality of the new act of possession. I need scarcely remind you of the importance of preserving profound secrecy in all these matters, and in case you don't accept my offer, I hope you will not fail to send me your power to act for you in any arrangement I may make. I send you three vols. of the Mechanics' and Engineers' Magazine, which I beg your acceptance of, and I hope you will continue your correspondence as usual, and inform me of what is passing in California. I am, my dear sir, yours very truly, —Alex. Forbes." And more particularly do I deny that I ever made any such representation as that contained in the said alleged letter, beginning with the words "were I not" and ending with the words "act of possession."

ALEX. FORBES.

Sworn at the Mansion House, in the city of London, this 23d day of September, 1858, before me,

ROBT. W. CARDEN, Mayor.

CONSULATE OF THE UNITED STATES }
OF AMERICA, LONDON. }

I, Robert B. Campbell, Consul of the United States of America for London and the dependencies thereof, do hereby certify that the Right Honorable Sir Robert Walter Carden, Knight, before whom the foregoing affidavit was made, as appears by his signature thereto, is Lord Mayor and Chief Magistrate of the city of London aforesaid, duly authorized to receive affidavits, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand, and affixed my seal of office, at London, this
[SEAL.] twenty-third day of September, A. D. 1858, and in the eighty-third year of the Independence of the said United States.

ROBERT B. CAMPBELL.

U. S. DISTRICT COURT,

—

THE UNITED STATES }
 vs. } No. 420.
ANDRES CASTILLERO. }

San Francisco, Sept. 12, 1860.

It is hereby stipulated and agreed that the signature of Alex. Forbes to the within affidavit be considered as proved by the testimony of Domingo Danglada, and that this paper be filed as Exhibit Castillero No. 2, J. B. W. by the claimant, subject to all legal objections by the United States.

EDMUND RANDOLPH,
Asst. Counsel of the U. S.

PEACHY & BILLINGS,
Claimant's Attorneys.

Filed Sept. 13, 1860.

W. H. CHEEVERS, Clerk.

EXHIBIT CASTILLERO No. 3, J. B. W.

—

UNITED STATES OF AMERICA, }
DEPARTMENT OF STATE. }

To all to whom these presents shall come, Greeting:

I certify, that the papers hereinafter mentioned have been collated with the originals on file in this Department, and, as corrected, are true and faithful copies of the same.

LIST.

Gen. Cass to Mr. Johnson,	August 8, 1859.
Messrs. Johnson & Rockwell, to Gen. Cass,	Sept. 26, 1859.
Same to same,	“ “ “
Same to same,	Nov. 10, “
Gen. Cass to Mr. Johnson,	Nov. 19, “
Mr. Appleton to Mr. Johnson,	Sept. 27, “
Messrs. Johnson & Rockwell to Gen. Cass,	Dec. 2, “
Gen. Cass to Messrs. Johnson & Rockwell,	Dec. 7, “
Mr. Johnson to Gen. Cass,	Aug. 2, 1859.
Attorney General to Gen. Cass,	April 23, 1859.
Messrs. Johnson & Rockwell to the Attorney General,	April 19, 1859.
Messrs. Crittenden, Johnson, Rockwell and Benjamin, to Gen. Cass,	Dec. 17, 1858.
Messrs. Peachy & Billings to Gen. Cass,	Nov. 19, 1858.
Attorney General to the President,	March 28, 1859.
Gen. Cass to Messrs. Johnson & Rockwell,	Oct. 26, 1859.

—

In testimony whereof, I, Wm. Henry Trescot, acting Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this 20th day of July, A. D, 1860, and of the Independence of the United States of America the 85th.

[SEAL.]

WM. HENRY TRECOT,
Acting Secretary.

CORRESPONDENCE

*In relation to the New Almaden Quicksilver Mine of California,
between the Counsel for the Proprietors and the Government.*

—
WASHINGTON, 17th December, 1858.

HON. LEWIS CASS,
Secretary of State.

SIR: The undersigned, counsel of the claimants of the New Almaden mine, have the honor to enclose herewith a memorial, soliciting your intervention in obtaining from Mexico, at as early a date as possible, the originals of the documents referred to in said memorial, or copies thereof, duly authenticated under the great seal of that republic. May we ask your acknowledgment of the receipt of this communication, accompanied with the assurance that it will meet your prompt and favorable action?

We are, respectfully, your ob't serv'ts,

J. J. CRITTENDEN,
REVERDY JOHNSON,
JOHN A. ROCKWELL,
J. P. BENJAMIN.

P. S. To prevent mistakes, we send you a printed copy of the documents referred to.

—
SAN FRANCISCO, CALIFORNIA,
Nov. 19th, 1858.

To the HON. LEWIS CASS,
Secretary of State.

SIR: On the 3d of March, 1851, Congress passed a law entitled "An act to ascertain and settle the private land claims in California." This law required all persons claiming any right or title to land derived from the Spanish or Mexican authorities in California to present the same to a Board of Commissioners for adjudication within two years from the date of the law; and failure to do so, subjected all lands held by such titles to be considered and treated as the public land of the United States.

In obedience to this law, Andres Castellero, a Mexican, presented to the Board of Commissioners his claim to the lands and mine of New Almaden. His claim was grounded, 1st. On his discovery of the mine in 1845; on his registry of that discovery, and on the juridical possession of the mine and *pertenencias* given by the proper local authority of California, in the same month and year. 2dly. On a contract with the Mexican Government, made in May, 1846, in the city of Mexico, by which the government agreed to advance him the sum of five thousand dollars, and other aid, for the development of his mine, and also confirmed his mining possession as it had been given him by the authorities of the Department of California, and further granted to him two square leagues on his mining possession, as a colonist.

The Board of Land Commissioners confirmed his mining claim, and rejected the claim for the two leagues in colonization, upon the ground that the documentary evidence of the last named title did not, in the opinion of the Board, contain words of grant.

From the confirming portion of this decree the United States appealed; and the claimant from that part of it which rejected his colonization grant.

The case is now pending before the United States District Court on these appeals.

Pending this litigation, and as auxiliary thereto, the United States recently filed a bill in equity against Messrs. Young, Halleck, Parrott, Bolton and Barron, to restrain the working of the mine during the contest over the title, and for a receiver to take charge of the premises and work, or lease the mine.

In their answer, the defendants, Parrott, Bolton, and Barron, set up in defence the title of Castellero, under whom, through his grantee, they claim. They denied the allegations of fraud in the bill, on their information and belief; having no *personal knowledge* of the matters charged, they could not, of course, in any other manner make the denial. The defendants, Young and Halleck, disclaimed title, being merely employes of the company.

The Court, while stating that it was impossible for the defendants to have made any other denial, held that a denial on information and belief, although the sources of such information and grounds of such belief were fully set forth, (and we will add, were of the most authentic character,) did not meet the allegations of the bill, and that the injunction must be granted. The motion for a receiver was denied. The bill was not sworn to. There was no party to the suit who had any *personal knowledge* of the matters charged.

The defendants filed with their answer, as evidence of their title, copies of *espedientes* existing in several of the Ministries of the Mexican Government. These copies are authenticated in the only mode which is permitted by the Mexican laws, and they have appended a certificate to that effect by our Minister, Mr. Forsyth. They were also proven as examined copies by several witnesses, who had compared them with their originals in the city of Mexico. Mr. Forsyth, who was kind enough to attend while these comparisons were made, has certified to the accuracy of the copies. But their admissibility was opposed by one of the counsel for the government, (Mr. Randolph,) on the ground that when the United States acquired California, they derived a right to the possession of all documents relative to the rights of property in land; and that before the treaty stipulation for the protection of private property can be enforced at the suit of an individual, under the Act of 3d of March, 1851, the Executive Department of the United States must be in possession of the public documents on which the private claim depends. The other counsel for the government, (Mr. Stanton,) while adopting Mr. Randolph's views to some extent, insisted that the authenticity of the copies of public documents existing in the archives of the Mexican Government relating to lands in California must be established by the great seal of Mexico.

The District Judge, in his opinion in the case, seemed to lay much stress on these objections, and a few days ago expressed himself very strongly on the propriety of an application by the Executive to the Mexican Government for either the original documents or copies authenticated by the great seal of State of Mexico.

By the laws of Mexico, the uses to which the great seal is to be put are specified, and it cannot be used to authenticate a copy of any document. Another law of that Republic, providing for the authentication of documents to be used in foreign countries, directs that it shall be done in a case like this by the Chief Clerk of the Ministry of Foreign Relations, and gives full faith and credit in Mexico to documents made in foreign countries, and authenticated according to the laws of those countries.

The Act of 3d March, 1851, does not provide for taking depositions in foreign countries. Among other witnesses who have proved the accuracy of these copies, and the genuineness of their originals, is Mr. Lafragua, late Minister at Madrid, concerning whom it is useless for us to say, that he is a statesman of distinguished ability, who bears a high reputation for purity of character. Mr. Lafragua was Minister of Relations in 1846.

In December, of that year, he read a report to the Mexican Congress, giving a full account of the discovery of the New Almaden mine, and of the steps taken by the government to aid the discoverer in the development of its supposed resources. This account contained, substantially, a history of the title under which Castellero and his associates claim the mine. Mr. Lafragua gave his testimony in San Francisco in 1855, when Santa Anna, to whose government he was opposed, was in power.

The defendants have done all in their power to prove these documents; their copies are authenticated in the only manner permitted by the laws of Mexico. At a great expense they have procured the attendance of witnesses to prove the copies by comparison. They can do no more.

If, as one branch of the Executive of our Government by their counsel in California contend, the possession and custody of the original papers in Mexico belong of right to our government, and should be in its possession, and while in the possession of Mexico cannot be evidence of a private claim to land, then we are persuaded that you will take such steps in this matter as to right and justice pertain.

We therefore most respectfully request that the Government of the United States shall solicit of the Government of Mexico either the original papers relating to Castellero's transactions with the latter concerning this mine of New Almaden, or shall ask of that government a copy of all such papers, authenticated by the great seal of Mexico. If our government is entitled to the possession of the originals, it is its duty to secure them; and if our courts require authentication of copies of the same under the sanction of the great seal of Mexico, we are persuaded that the Executive of the United States, in fulfillment of the treaty stipulations with Mexico for the protection of private property, will make known to that government the necessity of authenticating these papers, so as to meet the peculiar requisitions of our municipal code.

We are aware, sir, that certain private parties, who claim this mine by title adverse to that of the company which we represent, are deeply interested, and have been for a long time sedulously engaged, in Washington City, in circulating charges of fraud against the title of our clients, and in presenting garbled and false statements of the testimony which has been taken in the case. We have of late been made fully to appreciate the success of this effort of our adversaries, and to know the extent to which this system of poisoning the ear has been carried.

But we rely with perfect confidence upon the genuineness of every paper which we have offered in support of our title; and

we feel assured that no outside influence will prevent our government from taking such steps as the exigencies of this case demand, for the honorable fulfillment of its treaty stipulations, for the protection of its own rights, and for the protection of the rights of our clients.

And here we beg to be permitted to say, there is no form in which our government can request or exact from that of Mexico the assurance of the latter concerning the genuineness of these papers which we will not cheerfully acquiesce in.

We have the honor to enclose a pamphlet containing the certified copies of the public documents in Mexico which were exhibited by the defendants in their above mentioned answer.

ARCIB'D C. PEACHY,
FRED. BILLINGS,
Attorneys for Andres Castillero.

—
WASHINGTON, January 15, 1859.

TO THE PRESIDENT:

SIR: The undersigned, counsel for the parties in possession and claiming to be the owners of the Quicksilver Mine and land of New Almaden, in California, beg leave, respectfully, to ask your early attention to a matter of very great importance, not only to those whom we represent, but to the State of California, and to the whole country.

On the 17th ultimo we addressed a letter to the Secretary of State, enclosing a communication from our associates in California, Messrs. Peachy and Billings, to that officer, and asked the acknowledgment of the receipt of that communication, and the prompt and favorable action of the Department. We have received no reply; and as this delay is productive of very serious injury, we beg leave, most respectfully, to present the subject to the consideration of the President.

The communication of Messrs. Peachy and Billings was as follows:

[Here follows a copy of the foregoing communication of Messrs. Peachy and Billings.]

We forward herewith, in addition to the copy which we transmitted to the Secretary of State, a printed copy of the documents obtained in Mexico, and of the various certificates attached to them; and in order to present the subject more distinctly to the consideration of the President, give the following brief statement of the character of these documents, and

the certificates attached to the copies of them, as they appear in said printed copy of the documents.

Andres Castillero, under whom we claim, having discovered the quicksilver mine, since called the New Almaden mine, in California, came to Mexico in the months of April and May, 1846, bringing with him specimens of ore from the mine. He made application through one of its members to the Mining Board of Mexico, "Junta de Minería." The member to whom he applied transmitted two letters of Castillero, with the application. The Junta communicated this matter to the Mining College for an assay of the ore, which assay was made and a report transmitted to the Junta. The Junta, through their President, on the 5th May, 1846, sent a communication to the Minister of Justice, embodying and quoting the communication of the Director of the College to him, in which that director embodies a communication from the Junta Facultativa, giving the results of the assay. On the 9th May, the Minister of Justice replies to the communication of the Junta in a letter addressed to its President, Vicente Segura. On the 14th May, the Junta, through their President, Vicente Segura, sends a long communication to the Minister of Justice, embodying the petition of Castillero, and his formal propositions, the seventh of which is that "the Junta shall represent to the supreme government the necessity of approving the possession which has been given me of the mine by the local authorities of California, on the same terms as those which I now hold it;" and the eighth, that "it shall also represent the advantage of there being granted to me, as a colonist, two square leagues upon the land of my mining possession, with the object of being able to use the wood for my burnings." This petition and propositions, the Junta recommend in the strongest terms. On the 20th May the Minister of Justice acknowledges the receipt of the previous communication, and after stating that he had reported it to the President *ad interim* of the Republic, says: "His Excellency has been pleased to approve in all its parts the agreement made with that individual (Castillero) in order to commence the working of said mine, and on this day the corresponding communication is made to the Minister of Exterior Relations and Government, to issue the proper orders respecting that which is contained in the eighth proposition for the grant of land in that department." On the 23d of May, the Minister of Foreign Relations, Castillo Lanzas, sends a dispatch addressed to the Governor of California, in which, after reciting the foregoing communication from the Minister of Justice, he adds: "and I transcribe it to your Excellency in order that, in conformity with what is prescribed by the laws and dispositions

upon colonization, you may put Señor Castellero in possession of the two sitios which are mentioned."

The copy of this despatch is in the archives of the Minister of Exterior Relations. The original was offered in evidence, and the genuineness of the document proved before the Land Commissioners in 1855, and is now on file in the office of the Surveyor General of California.

Copies of papers of the foregoing documents are furnished as evidence from the public offices in Mexico. Portions of them exist in four different offices. In the Archives of the Junta de Minería all these documents, except the last, are found, either as originals or copies, in the expediente in that office.

In the archives of the Mining College are the original communication from the Junta, with copies of the letters from Castellero, office copies of which are in the archives of the Junta. In the archives of the Minister of Justice are all the original communications from the Junta, copies of which are found in the archives of the Junta, including the original petition and propositions of Castellero, with an office copy of the communication of the 20th May to Vicente Segura, President of the Junta; also, an office copy of the communication to the Minister of Exterior Relations of the same date; and in the archives of the Minister of Exterior Relations are found the original communication of the 20th May from the Minister of Justice, and an office copy of the dispatch of the 23d May from Castillo Lanzas to the Governor of California, which embodies within it the communication from the Minister of Justice of the 20th, and in that the communication to Vicente Segura by the Minister of Justice. These papers, being twenty-two in number, either as originals or copies, are all found in their appropriate places in their several offices, the originals in the office to which they were sent, and the copies in the office from which they were sent. In some cases the dispatch of one officer embodies that received from another, and in all cases there is a reference to the previous transactions and documents, so as to connect intimately, either directly or indirectly, each paper with all that preceded it. Copies of these documents thus found in their appropriate offices are certified in each office by the proper officers under the Mexican laws, and the only ones by that law authorized to make the certificate and affix the seals. The copies in each office are examined by the American Minister, Mr. Forsyth, the British Consul, and two witnesses. Mr. Forsyth and the British Consul both certify that they assisted in the examinations, and that the copies now furnished are correct in every respect. The two persons present at the ex-

amination returned to California, and have both made oath to the correctness of the copies. And this testimony as to the correctness of the copies is confirmed by the testimony of Lafragua, at one time Minister of Foreign Relations in Mexico, and now Minister at Madrid, before the Land Commissioners in 1855, who also swore as to the genuineness of the original documents in the archives of Mexico.

Among the papers in the printed copy are extracts from a report of Lafragua, Minister of Foreign and Interior Relations, made to the Mexican Congress in December, 1846, and which included a long report from Vicente Segura, of the 17th November, 1846, and which, after stating the discovery of this mine of Castellero, describes the most important portion of the documents now furnished, particularly the petition and propositions of Castellero, and the despatch of the 20th May, 1846, of the Minister of Justice, stating the approval of the President *ad interim* of the Republic. These reports, extracts from which are found in the pamphlet which is sent, are contained in a large printed volume, being a full history of all the transactions of the department and of the Junta de Minería for the previous year. This volume was printed in 1847, as one of the public documents of Mexico, and a copy of the volume is in our possession at Washington, and will be subjected to the examination of the President if he shall desire it.

In the same printed copy forwarded herewith are two documents of a public character, which have been authenticated in the form of the Mexican law in each case.

One of them is an instrument of ratification by Castellero, of a contract of *avío*, which had been made by Alexander Forbes, and the other a contract of sale of a portion of the mine. These instruments were made by public act before a Notary Public in the city of Mexico, on the 17th December, 1846, and embodied in the first is an exact copy of the despatch or decree of the 23d May, 1846, the original of which is in the Surveyor General's office in California, and the office copy in the office of Foreign Relations in Mexico.

The public document before the Notary is found in the collection of documents for the year 1846, stitched together, and that Notary, Nazario Fuentes, being since deceased, a duly certified copy, in accordance with the laws of Mexico, is in evidence. This, too, was examined by the Minister of the United States, and the British Consul also; both certify to the correctness of the copy, and it is sworn to by two witnesses present at the examination.

We do not refer to the other evidence in this case as having no bearing on the question of the proper authentication of them.

As the foregoing documents have been assailed as being fraudulent and ante-dated, and the most extraordinary measures have been adopted by interested parties to prejudice the public mind and to affect the action of the officers of the Government of the United States, in the various stages of the contests connected with this valuable property, we deem it proper to state that we have carefully examined all the evidence and other papers in these cases, and entertain no doubt whatever that said documents are genuine, and that the charges in relation to them of fraud, or forgery, or ante-dating, are untrue.

We feel the more constrained to make these statements from the fact that heretofore the interests of our clients, and of the United States itself, have been seriously endangered, if not actually injured, by the measures which persons representing adverse interests have deemed themselves justified in taking.

By the decision of the United States District Court in California, granting an injunction against the working of these mines, which have been so many years in their possession, and conducted in a manner as advantageous to the public as to themselves, not only are they suffering a very serious injury, but, by being deprived of the comparatively cheap and abundant supply of quicksilver, the production of gold in California will be seriously diminished, to the great injury not only of that State, but of the whole country. The injunction is granted without any decision as to the title—that is to be determined in the claim pending before the District Court of California. In view of the opinion of that court in relation to the authentication of the copies of the foregoing papers, our clients cannot proceed to trial until such further authentication is obtained as it is possible to obtain. They have obtained such authentication as by the laws of Mexico can alone be furnished. The Minister of the United States in Mexico has officially, under seal, so certified. He has further certified that he personally assisted in the examination, and that the copies now furnished are correct. They have been sworn to be so by witnesses who were present, and made the comparison. All that now remains to us is for the United States, satisfied (as it is thought every one must be) that the copies are correctly made, either to direct that the counsel of the United States consent that these copies be admitted, or to adopt some measure to satisfy themselves that these copies are correctly taken, or to procure others of the same papers, in such mode and by such agents as they may themselves select.

As delay in this matter can in no way promote the course of justice, and is productive of such serious and wide-spread mischief, the undersigned most respectfully and earnestly ask of

the President the earliest possible consideration and decision of this application.

Very respectfully, your obedient servants,

REVERDY JOHNSON,
J. J. CRITTENDEN,
JOHN A. ROCKWELL,
J. P. BENJAMIN.

—
WASHINGTON, 15th February, 1859.

SIR: On the 17th of December last Messrs. Crittenden, Benjamin, Rockwell, and myself addressed a communication to the Secretary of State in relation to the authentication of the documentary title of the present possessors of the Almaden quick-silver mine in California, whose counsel we are, with a request that its receipt be acknowledged, and as early a reply to it be given us as the convenience of the Secretary would permit. We are, however, to this moment without either answer.

On the 15th January, we had also the honor to address you, sir, on the same subject. It is important to our clients, and to the truth and justice of the controversy now existing in the courts of California between the United States and them, that the decision of the Executive on the subject of our two communications should be made known to us without further delay, It is one, from its nature, capable of being readily understood and adjudged without difficulty. We therefore hope that we shall not be esteemed importunate in respectfully again soliciting an early answer.

I have the honor to be your ob't serv't,

REVERDY JOHNSON,
For Messrs. Crittenden, Benjamin, Rockwell, and himself.

TO THE PRESIDENT OF THE UNITED STATES.

—
WASHINGTON, March 18th, 1859.

SIR: The undersigned beg leave again respectfully to call your attention to the suits pending in California, in relation to the mine of New Almaden.

It is claimed on the part of the United States that the documents received from Mexico, on which our title rests, are forged and fraudulent.

A technical difficulty also has arisen as to the mode of authenticating the copies of the documents by the great seal of Mexico, in relation to which we had the honor to forward, on the 17th December last, to the Secretary of State, a communication addressed to him by our associates in California, Messrs. Peachy & Billings; and on the 15th day of January, 1859, ourselves addressed a letter to the President on the subject.

Our sole object is to have the exact state of the facts, as they exist, ascertained and properly presented and proved before the courts in California, before which these suits are pending; and we are persuaded that neither yourself nor any other high officer of the Government of the United States can have any desire to suppress or prevent the production of any testimony tending to throw light on the subject.

We are authorized by the parties whom we represent, who are now in possession of and claim to be the owners of the New Almaden mine, to propose that the United States shall cause a full examination to be made in the city of Mexico, of all the facts in relation to the title to this mine, and the documents connected with it.

We are willing that our present Minister and Consul at Mexico, and any other disinterested and respectable public officer of the United States, shall act as commissioners, not only to take testimony in the city of Mexico, of witnesses residing there, but that they shall themselves examine all the documents and archives in the public offices of Mexico, and that their certificate of the facts, as found by them, shall be received as evidence before the courts in these cases. If, however, from the importance of the official duties devolving on these gentlemen, or from any other cause, it shall be deemed improper or undesirable for them to undertake this duty, we propose that the United States themselves select two or three respectable gentlemen, citizens of the United States, who shall act as commissioners for the discharge of this trust, and after having performed this duty, and taken the depositions of witnesses in the city of Mexico, shall proceed to California to give their testimony, not only in relation to the correctness of the copies of these documents, but to any facts tending to show the fairness or unfairness of the transaction.

If the United States should decline to pay the whole or a portion of the expenses of such a commission, we are authorized to say that the expense will be borne entirely by the parties whom we represent.

All that we shall ask will be that the persons selected shall be of undoubted integrity, and be disinterested.

In relation to the subjects with regard to which testimony is

desired, we have no desire at all to limit the inquiry on the part of the United States. One important part of the duty of such a commission would be to examine in the archives of Mexico the documents there found, and to procure copies of them. The nature and character of these documents are fully set forth in the communication above referred to, addressed by us to the President, and to which we beg leave to refer.

In addition to these, there are bound volumes in the archives of the Junta de Minería and the Ministry of Justice, containing the journals of the entire proceedings respectively of those two departments, and in which all the transactions connected with the application of Castillero, and the various documents in relation to the same, are distinctly stated at the dates of the transaction, and in their appropriate places. There are, also, prior to, at the time, and subsequent to these transactions, regular lists or inventories kept of all the expedientes issued in the Junta de Minería, the Ministry of Relations, and the Ministry of Justice, and in which all expedientes were numbered as they were issued. These inventories or lists extend over a series of years, and were regularly kept. The numbers in these lists or inventories correspond with those that are attached to the expedientes offered in evidence in this case.

There are numerous other documents showing conclusively that the papers offered in evidence were all executed at the time when they purport to have been executed, and were what they now appear to be.

In addition to these documents there are numerous witnesses now living, some of whom themselves issued a portion of these documents, and others, who were conversant at the time with the application of Castillero, and the transactions connected with it on the part of the government.

If, on the part of the United States, you will accede to either of the propositions above named, it will afford us great pleasure to give you all the information we possess as to the foregoing documents, and the names of such of the witnesses to be examined, as far as they are in our possession, in order that the commissioners may have the means of making the fullest investigations as to the character of the witnesses and as to the genuineness of the documents found in the Mexican archives.

After a careful examination of all the proofs and papers connected with this case, we have not the shadow of a doubt as to the perfect genuineness of all the documents offered in evidence in support of the title of our clients, and that the most abundant evidence exists conclusively to show such to be the case. Our wish is to have that evidence submitted to the consideration of the courts which are to pass upon that title, and

that it may be procured through such agency and in such manner as may be satisfactory not only to the court, but to the United States and its officers.

The purposes of justice certainly cannot be promoted by withholding any proof in relation to the facts in this case, leaving to the courts before which it may be presented to give such weight to the evidence as they may consider it entitled to.

Mr. Eustace W. Barron, of the city of Mexico, one of the firm of Messrs. Barron, Forbes & Co., and the son of Eustace Barron, Esq., one of the principal proprietors of the New Almaden mine, is now in this city, designing to leave New Orleans by the steamer of the first of April. We must, therefore, earnestly request that you will give this matter your early consideration, and favor us with an early reply.

Respectfully, your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

To the PRESIDENT.

—
WASHINGTON, March 30, 1859.

SIR: On the 15th of February last, I had the honor to address you on the subject of the several communications of myself and my associate counsel, of the present possessors of the New Almaden mine, in relation to the justice, as between the United States and those parties, of an agreement as to the proper mode of some fair and impartial way of proving or disproving the documentary title to the mine now alleged to be amongst the archives of the Mexican Government. The subject was again and more recently brought to your notice, and propositions looking to the same end were made by Messrs. Rockwell and myself in a communication to you. You told me that the matter would be referred to the Attorney General, and we have since, with all becoming patience, awaited his opinion. I see by a telegraphic despatch, in the several Baltimore morning papers (and it is my first information, and since confirmed by him in a personal interview) that he has decided, and that he has made his decision known to the President. I write, therefore, in my own behalf and in behalf of my colleagues, Messrs. Crittenden, Benjamin, and Rockwell, to inquire if the fact be so; and if it is, that you will direct a copy of the decision to be furnished us. And in the meantime I request that you delay your own final action until we shall have had an opportunity to reply to what, from the same in-

formation, the telegraph, we understood are the grounds on which that officer places the propriety of rejecting our several propositions.

I have the honor to be, sir, very respectfully,

Your obedient servant,

REVERDY JOHNSON.

To the PRESIDENT.

MARCH 31, 1859.—Referred to the Attorney General, who will furnish Mr. Johnson with a copy of his opinion on the case herein referred to. In his absence a copy of the opinion will be furnished by Mr. McCalmant or the person in charge.

JAMES BUCHANAN.

—
ATTORNEY GENERAL'S OFFICE, March 28, 1859.

SIR: The counsel of Andres Castellero and his associates have invoked your interference in the case pending between them and the United States in the District Court for California. You ask what answer, in my opinion, should be given them.

The land in dispute consists of two leagues, which include the New Almaden quicksilver mine, surpassing in richness every other mine on the globe. Its present possessors have taken ore out of it worth a million of dollars per annum for the eight years they have had it. It is probably capable of yielding a much larger product.

Castillero is a Mexican citizen; his associates are chiefly Mexican and British. The claim to this land and mine was set up and conducted in the name of Castellero before the Land Commissioners. The case is now pending in the District Court upon the appeals of both parties.

In June last the District Attorney, in pursuance of instructions from this office, filed a bill on the equity side of the Circuit Court of the United States for California, charging that the pretended title of the parties in possession under Castellero was fabricated and fraudulent, and praying an injunction against any further working of the mine until the termination of the pending cause. The Court patiently examined the case, heard the arguments of counsel, and awarded the injunction as prayed for. It only remains to bring the claim to a final hearing in the District Court, where, I have no reason to doubt, it will be rejected.

The counsel employed by the claimants against the United States now ask that you will do one of the five things following:

1. Direct the counsel of the United States to *consent* that the copies of certain papers in the claimants' possession shall be admitted in evidence.

2. Order them to adopt some measure which will satisfy themselves that these copies are correctly taken.

3. Order them to procure other copies of the same papers, in such manner and by such agent as they may select.

4. Solicit of the Mexican Government the original papers relating to Castellero's transaction with it concerning this grant; or,

5. Ask of Mexico a copy of all such papers, authenticated by the Great Seal of the Republic.

It will be proper to consider these demands in their consecutive order.

I. The counsel of the United States cannot possibly consent to the admission of evidence which they believe to be corrupt and false. In this case they do believe that the copies of the papers produced by the claimants before the Land Commissioners, and in the Circuit Court, are not satisfactorily authenticated; and they further believe that the originals are themselves fraudulent fabrications. Of course we make it a point of conscience and principle to oppose evidence of that kind.

II. The counsel of the United States *have* adopted very careful measures to *satisfy* themselves concerning these copies, as well as the originals from which they purport to be taken. Their objections have not been made with a blind and reckless disregard of the truth. They *are satisfied*, and on the hearing of the motion for an injunction the Circuit Court seemed to be satisfied also.

III. You are requested by those gentlemen to get other copies of the same papers. In answer to this, I have nothing to say of the unprecedented and singular attitude which the government would take in sending its own counsel to hunt up the evidence of a hostile claim in favor of Mexican citizens at the seat of the Mexican Government. Let that pass. But there is another reason which cannot be got over. It is not of the copies alone that we complain. The originals, or some of them at least, may be among the Mexican archives; and what we assert is, that they were not honestly placed there by the Mexican officers. Of such documents we desire no copies, will not bring them into court ourselves, and will resist their admission as evidence, if brought by the opposite party.

IV. The next proposition is, that you *solicit* the Mexican Government to furnish the *original* papers relating to the claim of Castellero. I concede it to be true, as a rule of public law, that a document which belongs to the Mexican archives cannot

properly reach our judicial tribunals, so as to be noticed by them, except through that department of our government which manages its foreign affairs. But this being true, why does not the Republic of Mexico offer the documents in question to the Department of State? Why should we take the initiative in reference to the claim of Mexican citizens against ourselves? Or why should we expose the truth to the danger of being perverted by the diplomatic manœuvres which might be resorted to by our opponents? My opinion is, that the Government of the United States should wait until that of Mexico shall make a voluntary tender of the papers which support this title, and then examine into their character with great care, holding Mexico to the full measure of the responsibility she will incur by any aid she may wilfully give in the support of a false claim against the United States.

V. The last measure proposed is, that you ask of Mexico copies of these papers authenticated under the great seal. To this, as a diplomatic move, the objections are the same as soliciting the originals. The great seal of Mexico is needed for the proper authentication of these documents, or else it is not. If not, it is vanity to ask that it be affixed. If, on the other hand, it be necessary, then Mexico knows it as well as we, and may place it there or not according to her own good pleasure. But it is urged that the Mexican law forbids such a use to be made of the great seal of the Republic. This is not believed to be the true interpretation of the law. At best, it is but a presidential decree, and may be altered at the will of the Executive. At all events, the existence of such a law is no reason why we should make the request desired.

My opinion upon all these points would not be different even if I believed Castillero's title to be honest. But I cannot resist the conviction that it is morally and legally destitute of all claim to our respect. Such I suppose to have been the opinion of my immediate predecessor when he took his appeal from the decree of the Land Commissioners. It is fully concurred in by our able and learned District Attorney in California, and by the special counsel of the United States, who have carefully and thoroughly examined it. Moreover, the Judges of the Circuit Court could not have awarded the injunction without believing the title to be unsound.

The counsel on the other side very confidently believe us to be mistaken. We must be governed by our own opinions, not by theirs. But after the assertions which they have made and recorded in favor of the title, it is no more than right to state some of the grounds on which we differ from them.

The indemnity which this country received for the expenses

of the war, for the injuries which provoked it, and for the large sum paid to Mexico at its close, consisted altogether in the cession of territory. When we agreed to accept satisfaction in that shape, it became important to fix the latest date at which Mexican titles were to be recognized, and express instructions not to leave that question in any doubt were given by the Secretary of State to the commissioner. In the project drawn up by Mr. Buchanan, a formal proviso was inserted declaring all grants after the 13th of May, 1846, to be null and void. The Mexican Commissioners objected to the proviso on a point of national decorum, but they *affirmed* that no grant had been made after the day mentioned, "and this they knew." They were requested by the American Commissioner to make sure of the fact stated by them; and they did so in a manner which left, as they said, no shade of doubt; and then a formal declaration was inserted in the treaty, at the conclusion of the 10th article, to the effect following: "The Mexican Government declares that no grant whatever of land in any of the territories aforesaid, (including California,) has been made since the 13th day of May, 1846." Upon the faith of this declaration the treaty was negotiated. The 10th section was stricken out by the Senate on account of the unauthorized provision it contained with respect to Texas grants; but the affirmation of the facts above mentioned was not thereby affected. Subsequently, upon the exchange of ratifications at Queretaro, on the 26th of May, 1848, in order to remove any doubt that might arise in consequence of the elimination of the 10th article, a protocol was made and signed by the commissioners on both sides, which is in the following terms:

"These concessions, notwithstanding the suppression of the 10th article of the treaty, shall preserve the value which they have in law, and the grantees may avail themselves of their lawful titles before the American tribunals. According to the law of the United States those are lawful titles to property of every kind, movable or immovable, existing in the ceded territories, which may have been lawful titles under the Mexican law up to the 13th of May, 1846."

Now, let it be remembered, that the recommendation alleged to have been made by the Junta de Minería of Castillero's denouncement is not alleged to be earlier than the 13th of May. The ratification is dated on the 20th, and the pretended grant of two leagues, according to the admission of parties, was on the 23d of May, 1846. The Mexican Government, after strict inquiry and examination, having in the most solemn manner, and under the most impressive circumstances, affirmed to the Government of the United States that no grant whatever of

lands in the territory of California had been made after the 13th of May, 1846, with what face can that government now assert the contrary? with what regard to common propriety can the United States ask the Republic of Mexico to do this thing—to violate her own honor, to falsify her own declaration, and to break her solemn pledge after procuring an advantageous treaty of peace upon the faith of it? If it be said that the declaration of the Mexican Commissioners was a mistake, and that a private person should not be compelled to suffer by it, the answer is very plain. He should seek redress from the nation which inflicted the injury. Let him look to his own government, which pledged its honor that no such grant existed, and not to the United States, who took the pledge as true. Castillero, like every other Mexican citizen, was bound by the affirmation which his Government made.

But, whatever may be thought of the legal effect of this affirmation made by the Mexican Government, it is highly important in another point of view. Is it not overwhelming evidence that no grant, such as that now alleged, was in existence among the Mexican archives at the date of the treaty? Does it not prove beyond a doubt, that the papers which you are asked to solicit were the fabrications of a later period? It is almost impossible that such an affirmation could have been made if these papers had been in the possession of the Mexican Government in May, 1848. The declaration related to a point which was material in the negotiation, to which the attention of the Mexican Government was specially directed, upon which they had full means of knowledge, about which they made careful and repeated examinations, and on which they declared they had not a shade of doubt in their minds.

That the present existence of Castillero's papers in certain offices of the Mexican Government has been established by the certificates of American officials, and their genuine character proved by the oaths of Mexican witnesses, may be all true, and the counsel of Castillero no doubt think this fact amply sufficient to silence the opposition of the government to their claim; but I am not of their mind. The inference they draw is not consistent with our past experience in similar cases. Other claims have been equally well attested, and yet wholly false. Limantour's title to the city of San Francisco, and the islands and military points on which the naval hospital, fortifications, and national defenses of the United States are erected, was better authenticated than this one of Castillero pretends to be. Its genuineness was attested by the signature of a Mexican Secretary of State, who had previously been a Foreign Minister, and is now a Judge of the Supreme Court. It was sworn

to by a Mexican statesman, who had a reputation as high as any of his class; and it was certified under the hand of the President of the Republic in a communication addressed from the National Palace at Mexico to the Land Commissioners. But all those seeming marks of authenticity were placed there to cheat and defraud. It was afterwards demonstrated and solemnly adjudged that Bocanegra's attestation was a shameless falsehood; Castanares was perjured, and Arista, the President, was engaged with the others in a scandalous conspiracy to impose upon the courts of the United States. Blank grants, bearing the signature of a distinguished Comandante General and Governor of the Californias, purporting to be dated before the war, and ready to be filled up afterwards with lands and mines belonging to the United States, have been found in the hands of miscreants who were in close correspondence with high officers of the Mexican Government.

In this very case, certain startling disclosures have already been made. The correspondence of the parties in possession has been discovered and produced in court. It proves that long after the conquest, designs were formed, plans discussed, and measures adopted to place such papers as these in the Mexican archives. It shows that in 1847, 1848, and 1849, it was proposed among them to procure documents of title to this land and mine, "with dates arranged," to be placed "in proper governmental custody" to be duly copied and certified by Mexican, American and British officials. It also appears that after many months of delay and discussion concerning the form of the papers to be procured, Castellero and Barron set out for the city of Mexico to *find such papers*, and within a few weeks afterwards the copies filed with Castellero's petition to the Land Commissioners appear to have been found and certified according to previous arrangement.

That the Castellero party, or some of them, have been tempted to use the reckless venality of Mexican officers for their own supposed advantage, seems to have been regarded by the court as an established proposition. Mexican certificates made at their instance were produced in court, and filed of record, and were afterwards admitted to be false from beginning to end. The Circuit Court very justly said that: "When a certificate of this character is procured from a Mexican notary by some of the defendants in this case, and by them filed as an exhibit, the court is surely justified in regarding with suspicion, not only all documents which are authenticated in a similar manner, but also those of which the genuineness is assailed by other proofs."

It appears further, that in December, 1849, there were two

documents of nearly the same import among the archives of Monterey, and of such a character as to make it certain that one was a forgery. One has disappeared, and another has been authenticated by the certificate of a Mexican notary at the instance of the defendants, and that certificate demonstrated to be in nearly every word of it untrue.

The land was not formally taken possession of under this title until long after the occupation of California by the American forces. It was then done clandestinely, and accompanied with a written statement by the chief partner in the concern to the authorities of Monterey that there was no ore there. The statement was of course known to be false; and the person who made it simultaneously wrote to his partner and told him of the trick he had played.

I will not weary you with any discussion upon the details of the evidence. I have probably said enough to show that the facts and the law of the case are in favor of the government. The mine belongs to the public. We are trustees of the public, and will surrender it to no one, and least of all to men who claim it after such a fashion, and under such title as Castillero and his confederates produce.

There is another claim under *Justo Larios* carried on in the name of Charles Fossatt, which is also pending in the District Court. The genuineness of this grant has not been denied; but its location is disputed, and we have good reason to believe that we will finally defeat the efforts of the claimants to locate it upon the quicksilver mine. The Castillero and the Fossatt party are both of them keenly conscious that the success of one may be ruin to the hopes of the other. Each has, therefore, been willing to furnish documents, produce evidence, and make arguments against the other. They have both been permitted to do so. It would have been grossly unjust to exclude a party interested to the amount of millions from all participation in the proceeding on the mere technical ground that he may not be named in the record. But while this privilege of being fairly heard was conceded to both, and was largely used by the Castillero party, the United States has dealt with all the claimants at arm's length, and shown partiality to none. The mine, (I say it again) belongs to the public, and the public right should be maintained by all proper and just means.

It is urged that the price of quicksilver has risen since the injunction, and may rise still higher, unless these claimants are restored to the unrestricted privilege of working the mines. This argument has no weight. The cause is to be determined by the rule of law, and not by the principles of political economy. The condition of the quicksilver market, whether good

or bad, will not make it proper to confirm a spurious claim, or to reject an honest one. It may be a misfortune that the supply of a necessary article is diminished for a short while, but we cannot for that reason let the claimants back unless they show us a good title.

Neither is this proceeding a departure from the liberal policy heretofore pursued by the United States towards the working of mines in general.

Miners who go upon the public land acknowledging the title of the government, and claiming nothing but what the government is willing to concede them, are in a condition wholly different from these parties. What I assert is simply the right and the duty of the government to protect itself and its citizens against foreigners who come with fabricated titles from Mexico in their hands to monopolize large quantities of the richest mineral land on the globe, excluding therefrom and driving away the honest persons who otherwise would have wrought them.

In conclusion, I have only to say that this cause ought to be treated like other important causes in which the United States are a party. Let us yield everything that law and justice demand. Sift doubtful claims to the bottom, and show no quarter to those which appear to be corrupt.

Very respectfully, yours, &c.,

J. S. BLACK.

TO THE PRESIDENT.

—

WASHINGTON, April 18, 1859.

SIR: We have received the copy of the communication addressed to the President by the Attorney General, furnished in obedience to the direction of the President, and beg leave, respectfully, to present the following considerations in relation to it.

On the 17th December last, Messrs. Crittenden, Benjamin, and ourselves, as counsel for the parties in possession of the New Almaden quicksilver mine, addressed a brief letter to the Secretary of State, inclosing a longer one of Messrs. Peachy & Billings, our associate counsel in California, in which they asked, for the reasons fully set forth in it, that the United States Government would solicit from the Government of Mexico, either the originals, or copies under the great seal of that Government, of the papers in the archives of Mexico, necessary to support the title of our clients. In that letter we requested an "acknowledgment of the receipt of the communi-

cation, accompanied with the assurance that it would meet with prompt and favorable action."

Receiving no reply to this letter, or the inclosed communication, on the 15th of January we had the honor to address a more extended letter to the President, embodying the one of Messrs. Peachy & Billings, and concluded by saying, "As delay in this matter can in no way promote the cause of justice, and is productive of such serious and widespread mischief, the undersigned most respectfully and earnestly ask of the President the earliest possible consideration and decision of this application."

Still receiving no reply, on the 15th of February, one of the counsel, on behalf of himself and his associates, again addressed the President, and said: "It is important to our clients, and to the truth and justice of the controversy now existing in the Court of California, between the United States and them, that the decision of the Executive on the subject of our two communications should be made known without further delay. It is one, from its nature, capable of being readily understood and adjudged without difficulty. We therefore hope that we shall not be esteemed importunate in respectfully again soliciting an early answer."

On the 18th day of March, 1859, we again addressed a letter to the President, and stated that "our sole object is to have the exact state of the facts, as they exist, ascertained and properly presented and proved before the courts in California, before which these suits are pending; and we are persuaded, that neither yourself nor any other high official of the Government of the United States can have any desire to suppress or prevent the production of any testimony tending to throw light on the subject," and proposed "that the United States should cause a full examination to be made, in the city of Mexico, of all the facts in relation to the title to this mine and the documents connected with it;" and "that our present Minister and Consul, and any other disinterested and respectable public officer of the United States, shall act as Commissioners, not only to take testimony in the city of Mexico of persons residing there, but that they should themselves examine all the documents and archives in the public offices of Mexico, and that their certificate of the facts, as found by them, shall be received as evidence before the courts in these cases;" or, if preferred, "that the United States themselves select two or three respectable gentlemen, citizens of the United States, who shall act as Commissioners for the discharge of this trust; and after having performed their duty and taken the deposition of witnesses in the city of Mexico, shall proceed to Cali-

fornia to give their testimony, not only in relation to the correctness of the copies of these documents, but of any facts tending to show the fairness or unfairness of the transaction;” and the expense of this commission, if desired, we proposed should be paid by our clients.

To all these communications we received not only no answer, but not even an acknowledgment of their receipt, nor any information of what was the opinion of the Attorney General or any of the high officers addressed on the subject, until we saw a telegraphic notice sent to the Associated Press and distributed through the country, stating the fact and nature of the opinion of the Attorney General.

The course which has thus been pursued, and the delay of more than four months in giving an answer to our application, to say nothing of the apparent want of courtesy it involves, is a ground of serious complaint, and highly injurious to our clients.

Whichever party shall finally succeed, it is of the utmost importance that there should be a speedy decision as to their rights; and waste and damage to the property in controversy, to a very large amount, already has been sustained by the long delay in giving an answer to our application, and it may occasion great pecuniary loss to the United States.

In relation to the reasons assigned by the Attorney General, in his report to the President, we beg leave respectfully to present our views somewhat at length.

Long before the treaty of Guadalupe Hidalgo was entered into between the United States and Mexico, our clients, and the parties under whom they claim, had been in the possession of the New Almaden quicksilver mine, had expended money in its development, and had made arrangements for the more extended working of it. They claimed to be entitled to the mine under the Mexican law.

In the 8th article of the treaty with Mexico, it is provided that “Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof and removing the proceeds wherever they please, without their being subjected on this account to any contribution, tax, or charge whatever.”

And again, in the same article :

“In the said territories, property of every kind now belonging to Mexicans not established there, shall be inviolably re-

spected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample, as if the same belonged to citizens of the United States."

By the 8th section of the Act of Congress of the 3d March, 1851, entitled "An Act to ascertain and settle the private land claims in the State of California," it is provided "*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,*" etc.

By the 13th section it is 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.*"

It thus appears that by the act of Congress every owner of land in California at the time of the cession to the United States was required to prove anew his title before the Courts of the United States; and upon failure to do so, his land became a part of the public domain of the United States.

The result has been, that all claimants to land in California, derived from Spain or Mexico, have been obliged to come into court as suitors, and more than eight hundred of these claims have been presented and acted upon by the commissioners appointed under this act; and it also appears that they were to present to the commissioners with their claim "*such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim.*"

In pursuance of this act, the parties whom we represent, deriving their title from Andres Castillero, presented their claim in his name before the commissioners, being two-fold—first, a mining right, acquired by denouncement and possession, to the quicksilver mine, and three thousand varas of land; and, second, a grant of two square leagues of land around the mine. No question whatever arose as to the genuineness of the documentary evidence of title. The right to the mine was confirmed by the commissioners. The claim to the two square leagues of land was denied, upon the ground that, by a true construction of the documents received from the Supreme Government of Mexico, they did not furnish evidence of a grant.

From these decisions the parties respectively appealed to the District Court.

Subsequently a claim was made on the part of the United States, that the evidence of titles derived from the Supreme Government of Mexico were not genuine, but had been antedated.

In order to repel those charges, of the entire groundlessness of which we have no doubt, an application was made to the United States District Court to issue a commission to examine witnesses in the city of Mexico, in relation to all matters connected with the title, being fully confident of being able to show the entire genuineness of all the papers evidencing the title, and the perfect fairness of the whole transaction. This application, upon the objection of the United States District Attorney, the District Court denied, on the ground that the court, under the provisions of the act of 1851, were not authorized to issue such a commission.

Our associates in California then made application to Congress to remedy this supposed defect in the law, and to extend the general provisions of law, so as to allow testimony to be taken in these cases in the same manner as in all other cases before the Circuit and District Courts of the United States. The law officers of the government opposed the application.

The United States District Attorney, Mr. Della Torre, in a letter dated the 15th of February, 1858, addressed to the Attorney General, objected to the granting of the application, upon the ground that the parties possessed great influence in Mexico; that they would use that influence corruptly, etc.; and stated, as to the application, that "its success can only be injurious to the interests of the government."

The Attorney General, on the 21st March, 1858, addressed a letter to the Hon. Geo. S. Houston, chairman of the Judiciary Committee of the House of Representatives, and to Hon. Jas. A. Bayard, chairman of the Senate Judiciary Committee, inclosing to each a copy of the letter of the District Attorney, and said: "I concur with him in the opinion that said act should not be changed. It cannot now be done without seriously hazarding the interests of the United States in two or three remaining cases."

In the opinion given by one of the judges in the case of the United States vs. Parrott et al., it is also intimated that the copies of the various documents offered in evidence, and certified to be true copies, according to the laws of Mexico, could not be admitted in evidence; or, if admitted, would receive less weight with the court, and that such documents should be authenticated under the great seal of Mexico. The Mexican Gov-

ernment declared that the great seal of Mexico is appropriated by law to a specific purpose, and is never used, and cannot legally be used, to authenticate copies of documents, and declining, upon the application of individuals, to apply the seal to any such purpose.

The parties, then, were placed in this position: When California became by treaty the territory of the United States, such parties were in the possession of property which they claimed to hold under titles derived from Mexico; their rights were guaranteed by the treaty; they, in common with every other person holding lands in California, were obliged to furnish the documentary evidence of their title and proof of its genuineness. As a portion of the papers purport to be issued by the Supreme Government, the evidence can alone be found in the archives of that government, viz., in the city of Mexico. The court say that the usual and appropriate means of taking testimony in a foreign country must be denied. The Attorney General successfully opposed the application to Congress to remedy this supposed defect. The court intimate an opinion that documents duly certified according to the laws of Mexico, but without the government seal, are either not admissible, or, if received, are to be received without their full weight.

It is under this extraordinary state of things that we and our associates deemed it our clear duty to address ourselves to the Secretary of State and the President.

We respectfully requested that application should be made to the Government of Mexico to direct that the papers in question should be authenticated under their great seal, or, if satisfied that the copies furnished and certified by our own Minister were true copies, that you should cause them to be admitted in evidence, or should take such other mode as might be satisfactory to the President to ascertain the correctness of the copies.

And in our letter of the 19th day of March, 1857, we made the propositions which we have already stated.

We and all our associates have no doubt of the genuineness of all the papers offered in support of our title. The Attorney General is of a different opinion. The question is one of great importance, and is the main question in dispute. Our desire is that all the testimony on the subject shall be obtained and placed before the proper tribunals. They alone are finally to decide the question; and the only proper and just mode of deciding that question is to obtain all the proof bearing on the subject. As our title in part rests upon documents which purport to have been issued by the Supreme Government, the proof can only be obtained from the archives of that government. We ask that that proof should be obtained. The effort

of the law officers of the United States has thus far been successful in preventing it. They deny that any such documents exist in Mexico; and if they exist, that they are genuine. We propose to prove the existence and genuineness of these documents. They assume to determine in advance the question in dispute, and prevent the introduction of evidence to show their opinions and assertions to be unfounded, and decline to leave the case, with all its proof, to the adjudication of the courts of the United States. The effort is to have the case heard by the Court without the most important evidence in the case, and, if possible, to gain it by the absence of proof known to exist. We regard the claim of fraud in the title as wholly untenable, and the grounds of that claim as susceptible of easy explanation by proof. They will not allow the proof to be presented to the Court. If they consider the evidence of fraud strong, and, if unexplained, sufficient, a still stronger reason exists for allowing the whole proof to be presented, and to give the party the most ample opportunity of proving his case to be just and honest.

The decision of the matter in this instance, as in all others, rests not with the counsel, but with the Court, and may safely rest there.

The object which we have in view is to have the whole matter thoroughly investigated, and to have the whole question of the fairness or unfairness of these documents examined by impartial persons. We have forwarded to the President the copies of the documents which we offer in evidence—have described where they are to be found—and the documentary evidence showing their genuineness. We have given the names of a portion of the witnesses whom we propose to examine in the city of Mexico, and have offered to furnish in advance all the information we possess in relation to the subject, and in relation to the witnesses to be called.

We have proposed that that investigation be made by our present Minister in Mexico, the American Consul, and such other public officer as the President may select; or, if it should be preferred, that he may select two or three Commissioners, citizens of the United States, to make the examination and proof of the documents, and take the testimony of witnesses; that our clients shall, if desired, bear the expense of the commission, and that these Commissioners shall proceed to California and give their testimony in the case.

But the Attorney General decides that the United States not only should not join in any measure to ascertain the fairness or unfairness of these documents, but that they should take no measures to secure the original documents, or authenticated copies of them under the great seal of Mexico.

1. His opinion proceeds on the ground, that in a contest between the United States and an individual, there is no obligation on the part of the government, or its officers, to pursue that course which, we submit, is dictated by the plainest principles of justice; virtually that no duty exists on the part of the law officers of the government to do justice as well to the claimant as to the United States; that the fullest investigation is to be avoided, and testimony is, if possible, to be excluded if it is feared that the result of the investigation and proof will be to show the claim to be good against the government; and that, if possible, a party is to be deprived of his property by the government by adopting means of suppressing evidence which he deemed essential to sustain his rights.

Such, however, are not the views of the Supreme Court of the United States in relation to the obligations of the government and the rights of individuals, especially in cases of this character.

Mr. Justice Campbell, in giving the opinion of the Supreme Court on the motion to dismiss the appeal in the case of Fossat, during the recent term of that Court, says:

"The United States did not appear in the courts as a contentious litigant, but as a great nation, acknowledging their obligations to recognize as valid every authentic title, and soliciting exact information to direct their Executive Government to comply with that obligation.

"They had instrumentalities adequate to the fulfillment of their engagements without delay whenever their existence was duly ascertained. There was no occasion for the strict rules of proceeding that experience has suggested to secure a speedy and exact administration between suitors of a different character," etc.

2. The peculiar circumstances of these California grants render the course now pursued peculiarly oppressive and unjust.

The treaty guarantees that "in the said territories, property of every kind now belonging to Mexicans not established there shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States."

The Act of 3d March, 1851, forced these claimants, and all others, to submit their titles to the decision of the courts of the United States, "with such documentary evidence and testimony of witnesses as said claimant relies upon in support of such claim." The Mexican Government refuses to give such authentication of the "documentary evidence" as these courts

consider necessary, and they, the courts, have refused to issue a commission to procure the "testimony of witnesses," which the "claimant relies upon in support of his claim."

The Attorney General speaks of some of our clients as Mexican citizens and British subjects. A portion of them are so, but a portion are citizens of the United States. But whether citizens of the United States or not, they were in the actual and peaceable possession of the mine at the time of the treaty, claiming title under the Mexican Government, and their rights are protected by the treaty, with "guaranties equally ample as if the same belonged to citizens of the United States."

If, then, this were a contest between individuals, it is perfectly apparent that any citizens of the United States could justly call upon his government to interpose and seek to obtain from the Government of Mexico either the original evidence of title, or copies of them, authenticated in such form as would be received in the courts of the United States. Some of our clients are citizens of the United States, and have important interests at stake. Those that are not such are equally protected by the treaty, and are equally entitled to the benefits of its provisions.

If such would be the duty of the government in a case between individuals, it surely is no less so in a case where the government is itself a party.

It is because the government is a party to the suit, that we have considered it appropriate to make the several propositions in our various communications.

In a suit between individuals the application would have only been to secure the aid of the United States, either in procuring the originals or authenticated copies under the great seal of Mexico; but in the present case copies have already been obtained, not only authenticated according to the laws of Mexico, but examined by our own Minister, and proved by the testimony of witnesses. The objection to their admission is a technical objection. It surely cannot be doubted that these copies are what they purport to be. The evidence is quite as satisfactory to the mind, of the paper having been correctly copied, as if the great seal had been affixed.

In order, however, to obviate all objection on this account, we have asked that the United States should adopt any measure which they deem proper to satisfy themselves on this subject.

If the Government is bound, not only by the principles of justice, but by its duty to its citizens, and by the obligations of a treaty, to aid in procuring documents from Mexico, it is certainly bound to adopt the course which will occasion least

delay and expense; and if satisfied that the copies offered are true copies of the papers, it is grossly unjust to refuse to admit them on the ground of technical objections, or to refuse to satisfy themselves on that subject in the readiest manner possible.

3. The course pursued in this case by the Attorney General is believed to have no precedent in the history of the Government. The Court have been ever ready and anxious to obtain the best and fullest information, not only in relation to the laws which prevailed in territories acquired from foreign countries, and their usages, but especially as to the documentary evidences of titles to lands, the examination of archives, and the testimony of witnesses. For these purposes Commissioners have been sent by our Government to Madrid, Mexico, Havana, and Paris. Cases have been postponed from term to term in the Supreme Court, in order to obtain information from Spain, bearing upon the titles to land included in territory formerly belonging to that power.

In cases where the United States supposed that the claim presented was fraudulent, and that the evidence of that fraud existed in a foreign country, their course has been to send to that country persons commissioned to investigate the fraud, and ascertain the truth.

They have sent to Mexico for that purpose, and uniformly received the most cordial aid in their efforts of investigating fraudulent claims. In the case of Gardiner, a Special Commissioner was sent to Mexico to make the examination into the frauds committed by that person. The Mexican Government furnished every facility for the investigation, and the most ample testimony was obtained.

In the case of Limantour, in order to establish the alleged fraud, resort was had to the Mexican archives, and the Mexican officers readily furnished to our Government every information in their power.

In addition to other evidence obtained by the United States in the city of Mexico, to prove the alleged fraudulent character of Limantour's case, application was made on behalf of our own Government for evidence from the Mexican archives, which was supplied.

Judge Hoffman, in his opinion in that case, says (p. 45):

"It appears that on the 4th March, 1854, Mr. Cripps, the American Chargé d' Affaires of that city, addressed an official note to Bonilla, the Mexican Minister of the Exterior Relations, requesting to be informed whether any record or evidence of titles granted to José Y. Limantour existed in the archives of Mexico. To this note Bonilla replies by inclosing to Mr.

Cripps communications received by himself from the heads of Departments, to whom he had applied for the information required. In the communication received from the Minister of Fomento, it is said: "I have searched with the greatest care the documents to which the note of the Señor Chargé d' Affaires *ad interim* of the United States refers, and I have not found any evidence whatever of the grant which might have been made to Mr. J. Yves Limantour by General Micheltorena of four square leagues of land to the west of the Bay of San Francisco, Upper California. Nor is there any minute or evidence whatever of the approval of said grant by the Supreme Government, which, as it is said, has been authorized by Señor Bocanegra. Nor are there any titles to any land which might have been granted to said Limantour in Upper California; and it is remarkable that there is not a single communication of Señor Micheltorena, in which notice is given of grants of lands which he had made, whereby knowledge might be obtained in relation to those of the said Limantour."

"The communications from the Ministry of War and Marine, and from that of the general and public archives of the nation, are to the same effect; and in the communication of the Minister of Foreign Affairs to Mr. Cripps, of the 6th December, 1855, he informs the latter that the three offices of Fomento, of War, and of the General Archives, are the only ones where the evidences of the alleged grants could be found in the city of Mexico. He therefore refers Mr. Cripps to the archives of the public offices of California. How unproductive the search in these latter has been we have already seen."

The "search," to which the Judge here refers, is stated and commented upon at length in a previous part of his opinion, and the result of the examination of Mr. Hopkins, in the archives of California, given at length. In those archives he found no fraudulent grants, nor any fraudulent papers supporting such grants. He says: "I have searched for the original confirmation of these grants, but I have found none, nor any mention of or allusion to it. I found no original communication from any Department of the Supreme Government of Mexico, referring or alluding to these grants."

The Judge says, in another part of his opinion: "With reference to the marginal memoranda or certificates, it is to be observed, that they do not on their face purport to be the official act of any Mexican functionary. They do not profess to come from any Minister or Department of that government. They are authenticated by no seal, nor are they signed by Bocanegra as Minister of any Department of the Mexican Administration."

Again the Judge says: "If there were no other circumstan-

ces in the cause to prove the spuriousness of this document, I cannot but consider the *negative testimony of the archives as almost sufficient of itself to lead us to that conclusion.*"

Again: "It is of course impossible justly to appreciate the force of the negative testimony as furnished by the entire absence of any mention or allusion to the grants in the archives, *unless the number, the character, and the apparent completeness of those records, as they now exist, be considered.*"

The Judge then proceeds to examine and comment upon the internal evidence furnished by the archives themselves, the existence of an index of grants, in which those of Limantour were not to be found, the different transactions noticed in the archives at and near the time, etc. All these he urges with great force, as showing the highest evidence of want of genuineness in the documents. The President will observe that in this case we rely (and only ask the Government to aid us in placing the evidence beyond every supposed technical objection) upon precisely the same kind of proof, it being, however, the more full and complete, to establish the authenticity and genuineness of our grants that the government so successfully relied upon to disprove the authenticity and genuineness of the grants in Limantour's case. What is then to prevent our Government making the same investigation in this case as they did in that? Can the United States avail themselves of the documents in the Mexican archives to defeat a claim? And is all access to them to be prevented in support of a claim? Is it just or honest for the Government to resort to its power, and use its diplomacy to procure evidence from the Mexican archives against a claim, and at the same time to refuse its aid to sustain the rights of individuals secured by treaty?

It will be seen that whenever the United States law officers *believed* that a claim presented was founded in fraud, they have always sought for proof of that fraud at the place where it was alleged to have been committed. It can scarcely be supposed that they have made no inquiries or investigations in the present case in the city of Mexico. If they have not done so, is it because they believe that no proof whatever will be found of any fraud or ante-dating? If they have done so, and find in the evidence there the most convincing and conclusive proofs of entire genuineness which we know to exist, and yet have withheld the proof which they have obtained, and seek to prevent our obtaining it ourselves from Mexico, the act is manifestly one of gross wrong and injustice.

The foregoing views are presented on the hypothesis that the Attorney General has reasons, which are at least satisfactory to himself, that there is ground to believe that the evidences of

our title are not genuine. He has, however, deemed it proper to present to the President the grounds of his opinion, and to them we would respectfully ask the attention of the President.

He says: "My opinion upon all these points would not be different even if I believed Castellero's title to be honest; but I cannot resist the conviction that it is morally and legally destitute of all claim to our respect. Such, I suppose to have been the opinion of my immediate predecessor when he took his appeal from the decision of the Land Commissioners. It is fully concurred in by our able and learned District Attorney in California, and by the special counsel of the United States, who have carefully and thoroughly examined it. Moreover, the Judges of the Circuit Court could not have awarded the injunction without believing the title to be unsound."

These grounds, which we shall have occasion further to notice, proceed entirely upon the avowed respect for the opinions of the persons named, and are to be valued so far as they are sustained by the facts in the case, and no further; and as all the facts are equally within the knowledge of the Attorney General and are accessible to any one who will examine the question, such facts furnish a far more reliable foundation for a correct opinion than the opinions of those gentlemen.

But we are happy to see that the Attorney General does not rest alone on the opinions of the court and counsel in California, but considers it "no more than right to state some of the grounds" on which he relies to sustain his opinion as to the want of genuineness in the title.

The first of these grounds is founded on a statement in the tenth article in the original treaty, and which was stricken out of the treaty by the Senate, and constitutes no part of it, and in connection with it the protocol which was subsequently signed by the Commissioners. As this is put prominently forward by the Attorney General as one of the reasons, if not the main reason, for assailing the genuineness of these title-papers, and was urged by the Circuit Court in the injunction case, we deem it proper to examine it fully.

The tenth article originally introduced was as follows:

"Art. 10. All grants of land made by the Mexican Government, or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid if the said territories had remained within the limits of Mexico. But the grantees of lands in Texas, put in possession thereof, who, by reason of the circumstances of the country since the beginning of the troubles between Texas and the Mexican Government,

may have been prevented from fulfilling all the conditions of their grants, shall be under the obligation to fulfil the said conditions within the periods limited in the same respectively, such periods to be now counted from the date of the exchange of ratifications of this treaty; in default of which, the said grants shall not be obligatory upon the State of Texas in virtue of the stipulations contained in this article.

“The foregoing stipulation, in regard to grantees of land in Texas, is extended to all grantees of land in the territories aforesaid, elsewhere than in Texas, put in possession under such grants; and in default of the fulfilment of the conditions of any such grant within the new period, which, as is above stipulated, begins with the day of the exchange of ratification of this treaty, the same shall be null and void.

“The Mexican Government declares that no grant whatever of lands in Texas has been made since the second day of March, one thousand eight hundred and thirty-six; and that no grant whatever of lands in any of the territories aforesaid has been made since the 13th day of May, 1846.”

The latter clause of this article is the one on which much stress is laid. The date referred to was that of the act of Congress recognizing the existence of war with Mexico. The Secretary of State, Mr. Buchanan, in the instructions to Mr. Trist of the 15th April, 1847, forwards to him the form of a treaty, with full directions on the various provisions to be inserted in the treaty. On this subject he says:

“The rights of the persons and property of the inhabitants of the territory over which the boundaries of the United States shall be extended, will be amply protected by the Constitution and laws of the United States. An article, therefore, to secure these rights has not been inserted in the projet; but should this be deemed necessary by the Mexican Government, no strong objection exists against inserting in the treaty an article similar to the third article of the Louisiana treaty. It might read as follows; ‘The inhabitants of the territory over which the jurisdiction of the United States has been extended by the fourth article of this treaty, shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.’”

“In the event of the insertion of this article, it would be proper to add to it the following: ‘Provided that all grants or concessions whatever of any lands, made or issued by the Mexi-

can Government since the 13th day of May, 1846, within the said territory, shall be absolutely null and void.' The date might, if necessary, be changed from the day when Congress recognized the existence of the war, to the month of September, 1846, when the American forces took possession of California."

In a long communication from Mr. Trist to Mr. Buchanan, January 25, 1848, (Doc. 52, 7th Sen. Doc. 1st sess. 30th Cong., p. 292), he says: "With respect to grants of land made by the Mexican authorities, the *proviso* contained in my instructions was strenuously objected to upon a point of national honor and decorum. No such grant had been made since the 13th May, 1846. This they knew, and consequently the proviso could have no practical effect. But it implied that they had been made or might have been made, and that nevertheless the government committed the injustice of revoking them, which, in fact, it had (no) authority to do. Moreover, it involved an acknowledgment that, from the day when hostilities broke out on the north of the Rio Bravo, the Mexican Government had lost the right to make grants of land in any part of its territory subsequently occupied by us. Feeling the force of these objections, I requested (them) to make sure of the facts stated by them, and also in regard to no grants having been made in Texas since the revolution, which had been incidentally mentioned by one of them; and this having been done in a manner which left no shade of doubt on their minds, the declaration which will be found at the end of article 10 was agreed upon in lieu of the proviso."

When the treaty came before the Senate for ratification, the separate paragraphs in the 10th article were struck out by separate votes by yeas and nays.

This last paragraph was stricken out by a vote of 32 to 17. (See p. 10, Doc. 52.)

From the foregoing it appears that the date specified, of 13th May, 1846, was a date suggested by Mr. Trist, under instructions from Mr. Buchanan, and was named because it was the date of the declaration of the existence of war by Congress, and was not regarded as material by him, but might be changed to September, 1846, if necessary.

2. That the Mexican commissioners declined to insert any such proviso, because if such a grant had been made, Mexico had no authority to revoke it, and because it involved an acknowledgment that from the day when hostilities broke out on the north of the Rio Bravo, the Mexican Government had lost the right to make grants in any parts of its territory subsequently occupied by the United States, but simply declared

the fact, and that they believed the fact to be that no grants had been made subsequently to the 13th of May, 1846.

3. That by the act of our own government this entire article was stricken out, and never became a part of the treaty at all.

4. That having been stricken out, it could in no way bind either government, much less affect the rights of individuals; and the ex-parte statements of Mr. Trist could scarcely bind our own government, much less could they affect the Mexican Government, and still less the rights of individuals.

The then Secretary of State, Mr. Buchanan, accompanied the treaty, as amended by the Senate, with a communication addressed to the Minister of Foreign Relations of the Mexican Republic, in which, after commenting at length on the amendment striking out the 10th section, he says :

“The present treaty provides amply and specifically in its 8th and 9th articles for the security of property of every kind belonging to Mexicans, whether held under Mexican grants or otherwise, in the acquired territory. The property of foreigners under our Constitution and laws will be equally secure without any treaty stipulation.”

The tenth article could have no effect upon such grantees as had forfeited their claims, but that of involving them in endless litigation, under the vain hope that a treaty might cure the defects in their titles against honest purchasers and owners of the soil.

And here it may be worthy of observation, that if no stipulations whatever were contained in the treaty to secure to the Mexican inhabitants, and all others, protection in the free enjoyment of their liberty, property, and the religion which they profess, these would be amply guaranteed by the Constitution and laws of the United States. These invaluable blessings, under our forms of government, do not result from treaty stipulations, but from the very nature and character of our institutions.”

But some importance is attached to the protocol signed by the American and Mexican Commissioners, dated on the 26th of May, 1848, and a portion of this protocol is quoted by the Attorney General.

That these Commissioners had no authority to bind either government, nor in any manner to add to or construe the treaty between the two governments, is perfectly apparent. This has been so held by the successive administrations of the government in the most positive and distinct terms, and this construction has been submitted to by the Mexican Government, and all claims to the contrary abandoned.

Mr. Polk, in a special message to the House of Representa-

tives, February 8, 1849, discusses the question of the protocol at length, and shows conclusively that it could in no way vary the treaty, and could have no force or effect whatever.

He says (Ex. Doc. 50, 2d sess. 30th Cong., p. 4): "Had the protocol varied the treaty as amended by the Senate of the United States, it would have had no binding effect."

Again (p. 5): "The conversations embodied in the paper called a protocol, took place after the action of the Mexican Congress was complete; and there is no reason to suppose that the Government of Mexico ever submitted the protocol to the Congress, or ever treated or regarded it as in any sense a new negotiation, or as operating any modification or change of the amended treaty. If such had been its effect, it was a nullity until approved by the Mexican Congress; and such approval was never made or intimated to the United States," etc.

Again (p. 4): "It was obvious that the Commissioners of the United States did not regard the protocol as in any degree a part of the treaty, nor as modifying or altering the treaty as amended by the Senate. They communicated it as the substance of conversations held after the Mexican Congress had ratified the treaty, and they knew that the approval of the Mexican Congress was as essential to the validity of a treaty in all its parts as the advice and consent of the Senate of the United States."

In an elaborate communication addressed by Mr. Clayton, Secretary of State, to the Mexican Minister, on the 11th April, 1849, (Sen. Doc. 1, 1st sess. 31st Cong., p. 81), he discusses at length the question as to this protocol, (p. 84.) He says: "It is clear, therefore, that the protocol must be regarded merely as an instrument stating the opinions of the Commissioners of the United States upon the amendments of the Senate, and utterly void if not approved by that body," etc.

It thus clearly appears, that the 10th article having been stricken out by the treaty, at the instance of our own government, and constituting no part of the treaty, could have had no force whatever, as to either government. Still less would the Government of Mexico be bound by any statements in the dispatches of the American Minister to his own government, and least of all could the rights of third persons be affected. And in relation to the protocol, the document having been declared by our government to be a nullity, and binding neither government, still less can it affect the rights of individuals.

It is clear, then, that this declaration in the 10th article, and the provision in the protocol, cannot either legally or properly be urged against the validity of our titles.

"But," says the Attorney General, "whatever may be

thought of the legal effect of this affirmation made by the Mexican Government, it is highly important in another point of view," etc.

Although it is manifest that this declaration could not be admitted as evidence in the case, and could not, and ought not, to have any effect upon the legal rights of our clients, we deem it proper to present some considerations to show that the inferences which are deduced from this declaration of the Commissioners adverse to their integrity are wholly unfounded.

The original proceedings of registry and possession of the New Almaden mine, with three thousand varas of land, were in the month of December, 1845, in California, and were proved before the Land Commissioners by the two subscribing witnesses, who are unimpeached.

On the 10th of December, 1845, Castellero addressed a letter to the Governor of California, Pio Pico, sending him a sample of the quicksilver which he had taken out of the mine, which mine he says had been denounced by him.

This letter on the 13th February, 1846, the Governor forwards to the Minister of Exterior Relations, together with the specimens of quicksilver. Both these *original* letters are now on file in the office of the Minister of Exterior Relations in Mexico.

In February, 1846, Castellero also addressed letters to officers connected with the mining college. These are forwarded to the mining Junta; and on the 21st April, the President of the Junta sends the specimens of cinnabar to the director of the mining college; an assay is made, and the result given in a letter of the 29th April. On the 5th May, a letter is addressed on the subject to the Minister of Justice by the President of the Junta, who replies on the 9th May. On the 12th May, Castellero makes his propositions for aid in his enterprise, the seventh of which is, that "the Junta shall represent to the Supreme Government the necessity of approving the possession, which has been given me of the mine by the local authorities of California, on the same terms as those on which I now hold it."

And the 8th proposition, that "It shall also represent the advantage of there being granted to him, as a colonist, two square leagues upon the land of my mining possession, with the object of being able to use the wood for my burnings." On the 14th May, the Junta recommend to the Minister of Justice the assent to the proposition of Castellero. On the 20th May, the Minister of Justice communicates that the President approved in all its parts the agreement made with Castellero; "and on this day the corresponding communication is made to

the Minister of Exterior Relations and Government to issue the proper orders respecting that which is contained in the 8th proposition of the grant of land in that department." That communication was made, as therein stated, on the 20th May, and on the 23d May, 1846, the Minister of Exterior Relations addressed the communication to the Governor of California which is the last in date of our title papers.

It thus appears that the important matter in view of all the parties was the encouragement of the working of the mine of quicksilver. In connection with this was the confirmation by the supreme government of the act of the local authorities of California as to the registry and possession of the mine, and three thousand varas of land. Another and distinct proposition was the granting of two square leagues around the mine for firewood. This last was comparatively unimportant, both because the mine was in itself by far the most important, and because the three thousand varas covered a tract nearly as large as the area of two leagues, and because the land itself was then comparatively valueless. The title to the mine which was the most important originated in December, 1845, and was confirmed in the manner above mentioned, and the negotiation in which this grant of two leagues was included commenced some weeks before, and terminated just ten days after the 13th May, 1846, to which date so much importance is attached.

It will be perceived, too, that this was not a *formal* grant of land, but made as an incident to, and in connection with a far more important matter. That it is in fact a grant, we think is clear; but the Land Commissioners who confirmed the claim to the mine decided that the documents (their genuineness was not disputed) above referred to did not furnish evidence of a grant. Now, as the Commissioners for Mexico were none of them connected with any of these departments of the government, it is not at all surprising that a grant of the character above named should have escaped their notice. It is believed that at the time of these negotiations, the capital was in possession of the United States troops, and the high officers of the government were at Queretaro. The date was one not fixed by themselves, but named by the American Commissioners, as being that of the declaration of war.

The Mexican Commissioners were men of known character. Two of them at least are now living, and one of these two, Sr. Couto, is the most eminent lawyer, and in all respects the most distinguished man in Mexico. If there is really any importance in this matter, of which so much parade is made, it is proper that their testimony should be taken, and it would seem, if the purpose be to arrive at the real facts and merits of the

case, there could be no objection to a commission for that purpose.

2. Another ground assumed by the Attorney General, for objecting to the *proof of documents*, and to taking testimony in Mexico, is, because the claim of Limatour was a fraud, and certain officers in Mexico were parties to it. The Attorney General is aware that there is no similarity whatever between the two cases. If he means, because the case of Limantour was a fraudulent one, that the documentary evidence from the archives of Mexico and the testimony of Mexican witnesses are to be rejected, the argument is most inconclusive and unjust. It is a gross and groundless charge against a whole nation, and is the more unwarrantable from the course pursued in this very case of Limantour. It was by investigations in Mexico, in part at least, that the counsel of the United States and the court arrived at the results that they did in that case. Our government applied through its Minister, to the officers of the Mexican Government, to inspect their archives, in order to ascertain as to certain grants. The request was readily complied with, the information given used in court, and relied upon by the judges. In view of this experience of the law officers of the United States, and their application to the Mexican Government, and the result of that application, they should be more guarded in their sweeping imputations upon the Mexican nation. A case has not been, and cannot, we believe, be mentioned, in which the Mexican Government, on the application of our own government, has shown the least reluctance to aid in the exposure of any fraud committed in Mexico or elsewhere, or any disposition to screen the offenders.

Unfortunate indeed would it have been for the citizens of California, if documentary evidence from the archives of the preceding government and Mexican witnesses had been discredited in a body.

Every title in California, without an exception, was derived from Mexico or Spain, and every one of them was required to be proved anew before our courts; and if not, were forfeited. They all rested on documents derived from those governments, and were to be proved by Mexican witnesses. The inhabitants or the officials in California at the date of the treaty were certainly no more worthy of credit than those in the capital. Eight hundred or more of these cases have been presented before the Commissioners, based on Mexican documents, and proved by Mexican witnesses. The great mass of them have been honest and just claims. A few have been fraudulent. If any are found to be fraudulent, it may require greater caution as to others; but it is a most extraordinary idea that the

official documents and personal character of the whole nation are to be discredited.

3. The Attorney General speaks more than once of the decision of the Circuit Court in the injunction case, and seems to place much stress upon the opinion of one of the judges. While the case is pending before that court it is manifestly improper, in a communication to the President, to comment freely on that decision. It may, however, be said that the opinion is entitled to consideration, so far as it is sustained by facts and arguments; and as all those facts and arguments are in possession of the Attorney General, it would be far more satisfactory if the reasons for his decision were based upon the evidence in the case, and not on the authority of any one.

But the Attorney General is mistaken in stating that the question of title was involved or decided by the Circuit Court.

Judge McAllister says, (p. 5 of pamphlet,) "The first question, then, is the *admissibility of affidavits* as to title presented by complainants."

Again, (pp. 6, 7): "In the case of *Tobin vs. Walkinshaw*, decided by this Court, it went into a full consideration of the case of *Poor vs. Carlton*; and inasmuch as the point was not directly before the court in that case, and the learned judge in that case admitted that affidavits to title were only to be looked to for a qualified purpose; considering, too, as well settled, that on a motion for an injunction, a court of equity is not to look into title, this court came to the conclusion it would be better to adhere to the ancient rule until qualified by some authoritative decision directly on the point. The court, therefore, decided that affidavits to title could not be read. The law announced in that case must be applied to the present, and so much of the affidavits of plaintiff in this case as goes to title must be discarded by the court in the adjudication of this motion. *The affidavits of the defendants, which were admitted to be read as responsive to plaintiffs' affidavits, must be also rejected.* As the court excludes the plaintiffs', on a consideration of the question of their admissibility, which, by consent of parties, when they were read, was reserved for its decision, *the affidavits of defendants must share the same fate.* The only ground on which they could be received was, that they were responsive to the affidavits of complainants as to title."

Again, (p. 18): "The protection of the mine is the object contemplated by this bill; the preservation of its substance, *until the title to it is ascertained by the tribunal to which the question is exclusively confided*, is the prayer of the bill."

Again, (p. 39): "We have discussed this motion on the allegations of the bill and the denials of the answer, as *all affi-*

davits as to title have, in my opinion, been excluded by the well-settled rules of courts of equity."

But although the affidavits were "excluded," and decided not to be "admissible," and "discarded by the court," and it was decided "they could not be used," one of the judges proceeded to "look" to the affidavits, and to examine at some length the charges of fraud made against our title. But it is due to the learned judge to say that he did not profess to give a full examination of the case, much less to decide any question of title, which was by both the judges expressly excluded from their consideration.

Although propriety requires us to abstain, in the present state of the case, from any strictures upon the opinion of Judge Hoffman, we may be allowed to express our confident opinion, that if the President will examine the whole correspondence referred to, and the entire evidence in the case, he will agree with us in saying that the genuineness of the documents evidencing our title is entirely free from doubt.

We have now considered the prominent grounds of the opinion of the Attorney General. We will reply in a few words to some other statements made by him.

He places great reliance upon a certificate of a notary public, which he says contains many falsehoods. This certificate was a matter wholly unimportant. It was attached to the letter of Castillo Lanzas, but furnished no evidence whatever of any fact, and could, in its nature, afford no evidence before any court of any fact necessary to be proved; was not offered to prove any; and was not relied upon or referred to by either party in the trial before the Commissioners. The letter of Lanzas was proved by Lafragua, and the original letter has been since on file in a public office in California, and no attempt has been made to show it not to be genuine, although, in relation to a person of the public character and position of Castillo Lanzas, if not genuine, the fact could easily be shown.

The Attorney General, in his views which he entertains on the subject, refers to the opinion of his predecessor. He says: "But I cannot resist the conviction that it is nominally and legally destitute of all claim to our respect. *Such I suppose to have been the opinion of my immediate predecessor, when he took his appeal from the decree of the Land Commissioners.*"

This is certainly a most remarkable statement. When this case was tried and decided before the Land Commissioners, no question whatever was made as to the genuineness of all the documents of title. The Attorney General has in his office the entire proofs before the Board, the arguments of counsel on both sides, and the elaborate opinion of the Commissioners.

The claim was earnestly resisted on legal grounds by the United States law agent, but not one word was said by the counsel or court casting the least suspicion on the genuineness of the documentary proofs.

The implication that this opinion of his predecessor is to be inferred from the fact of the appeal from the Land Commissioners to the District Court, is still more extraordinary. *In every case* decided by the Land Commissioners in favor of the claimant the *United States took an appeal*, and the conclusive evidence of that fact is found in the office of the Attorney General himself. There are the transcripts of all the records on the appeals from the Commissioners. The whole number is about eight hundred, including those of both parties. The Attorney General, of course, when he made his statement, was not aware of these facts. But if such a statement had been made by a Mexican Attorney General, under similar circumstances, what would have been the language of the law officers of the United States? What has been their language, and how great has been the importance attached to the declaration of the Mexican Commissioners in relation to grants prior to the 13th May, persons not connected with the departments of the government, and at the time having no access to its offices?

The following is another erroneous statement of the Attorney General:

“The land was not formally taken possession of under title until long after the occupation of California by the American forces. It was then done clandestinely, and accompanied with a written statement by the chief partner in the concern, to the authorities at Monterey, that there was no ore there. The statement was of course known to be false, and the person who made it simultaneously wrote to his partner and told him of the trick he had played.”

The statement as to the time of possession is disproved by the testimony in the case. As to the rest of the statement, it is based on the following extract from a letter of Alexander Forbes, of 19th January, 1848: “I am very much obliged to you for your prompt attention to the business in hand, and return the expediente immediately. I am much surprised at the result of the assay, and shall try what I have. It will of course be better to say nothing about it, particularly as I have already written to Monterey that there is no mine, nor does there appear to be any quantity of this kind of stuff. I hope soon to see the Alcalde.” That any letter was written “to the authorities of California,” is therefore a statement entirely gratuitous, and it is that alone which would give to this letter what little importance it is supposed to possess.

The language which in this case the law officers of the government have deemed themselves justified in using in reference to the Mexican officers and the whole Mexican nation, is as undeserved as it is unjust, and the reasons, expressed or implied, for refusing the means of obtaining proof in Mexico, that the entire nation is unworthy of trust, are in the highest degree offensive to that nation. In this communication the Attorney General speaks of "the reckless venality of Mexican officers." He refers to a claim which he alleges to be fraudulent, and to its having been fraudulently sustained by Mexican officials, and gives this as a reason for impeaching the character of the whole nation, and doubting the trustworthiness of its public archives, although in that very case not a single forged document was found in those archives.

If these are the views of this government, it is somewhat strange that they should hold any diplomatic intercourse with such a people. We have just sent a Minister to Mexico. While he is informing the Mexican nation of the friendly disposition of the Government of the United States and their desire to maintain such relations, and the confidence the President has in the honor of the Mexican nation, the Attorney General, in an official communication, in addressing the President, is making the most sweeping charges of fraud and corruption against the whole nation.

If it be true that the officers named were guilty of fraud in the case of Limantour referred to, of which we know nothing, it is conceded that the Mexican Government and Mexican officials not only did not sustain the fraud, but at once offered their aid in detecting it; and further, that there was no fraudulent document whatever found in the Mexican archives. It may also, we believe, be added with truth, that in relation to all the titles to land in the United States, in territory derived from Mexico, there is not an instance where a single false or forged document, purporting to be an official document of the Supreme Government, has been found in the archives of Mexico.

It should be remembered, when such imputations are made upon the honor of a whole nation for the alleged offenses of a few, that the reply is a very obvious one. In every nation there are dishonest and perjured men, in official as well as in private stations. In every period of our history there have been charges publicly made, believed, and in some cases proved, of dishonesty and corruption in persons holding offices in the State and Federal Governments. And within a few years past, in one of the States of this Union, it has been publicly charged, and said to be proved in an investigation before the Legisla-

ture, that the Governor, Lieutenant Governor, and a majority of each branch of the Legislature, were bribed in enormous sums by a railroad company. Nothing so monstrous as this was ever alleged by the law officers of the United States, who are, it must be allowed, not very scrupulous in their statements against Mexico, or any of the States of Mexico. If the Mexican nation on this account should pronounce the people of this country a "nation of liars," and refuse to trust either its officers, or its people, or its archives, we should not consider the argument a very sound one, or the statement of it very complimentary.

If our Minister to Mexico should make a treaty with that nation, and should acquire territory, some provision would be expected in relation to the present owners of land in such territory. After the course already taken in relation to the treaty of Guadalupe Hidalgo, and with the views now expressed by the law officers of the government, our Minister, who is a man of honor, if he should suppose that such course would be continued, would doubtless feel bound either to insert an article in the treaty, or to sign a "protocol," stating that if all the titles to the land held by individuals in the territory acquired should be required to be brought before the courts and proved anew, the parties must not expect that the United States would admit any evidence from the archives of Mexico, from which these titles were derived, or from Mexican citizens, because neither the archives, nor the officers, nor the citizens, were considered as worthy of any confidence.

The Attorney General says:

"There is another claim under *Justo Larios* carried on in the name of Charles Fossatt, which is also pending in the District Court. The genuineness of this grant has not been denied; but its location is disputed, and we have good reason to believe that we will finally defeat the efforts of the claimants to locate it upon the quicksilver mine. The Castillero and the Fossatt party are both of them keenly conscious that the success of one may be ruin to the hopes of the other. Each has, therefore, been willing to furnish documents, produce evidence, and make arguments against the other. They have both been permitted to do so. It would have been grossly unjust to exclude a party interested to the amount of millions from all participation in the proceeding on the mere technical ground that he may not be named in the record. But while this privilege of being fairly heard was conceded to both, and was largely used by the Castillero party, the United States has dealt with all the claimants at arm's length, and shown partiality to none. The mine, I say again, belongs to the public, and the public right should be maintained by all proper and just means."

The undersigned forbear to comment on these statements of the Attorney General. We are anxious that the measures resorted to, both on behalf of our clients and on behalf of the parties claiming under Charles Fossatt, shall be fully examined by the President, and we would particularly request of the President to make the fullest investigation in relation to the character of the measures adopted, the fairness and honesty of those measures, and how far they have tended to promote, or otherwise, the interests of the United States; and in this view would respectfully ask that he would examine all the communications by all parties in relation to the controversies connected with this issue in the office of the Attorney General.

And in this connection it is due to ourselves to add, what is, we believe, well known to the President, that at one time the Attorney General had determined to dismiss the appeal in the case of Fossatt, and thus forever to relinquish the claim of the United States in the land covering this mine in favor of Fossatt and his associates, and that it is mainly owing to the efforts of the undersigned that that course was not pursued.

The Attorney General towards the close of the communication says: "I will not weary you with any discussion upon the details of the evidence. I have probably said enough to show that the facts and the law of the case are in favor of the government."

It is true that the Attorney General has not discussed the evidence, and has entirely avoided any notice whatever of the great mass of evidence in the case. This is the more noticeable from the fact that in the communication heretofore submitted by us, and referred to him, some of that evidence was alluded to. His report is occupied in part with matters that are not, and cannot be, any evidence; and by a highly colored and distorted account of portions of the evidence, separated from the rest on points entirely incidental and fitted to produce prejudice, but not to develop the truth. If upon an application of this kind the merits of the case were to be considered, it would have seemed to be the fit and proper course to have examined the real merits of the case, and not to have avoided the main facts in dispute. If the course of discussion of the Attorney General is considered by the President pertinent to the application which has been made by us, and when our application is to obtain the aid of the government in procuring testimony from Mexico in order to determine the merits of the case before the courts, these merits are to be determined in advance, and the case to be prejudged, we most respectfully ask of the President to examine the whole case, and to determine the matter upon all the proof which has thus far been obtained,

including the copies of documents from Mexico authenticated by our Minister. After this examination of the documents and all the proof now produced, we are persuaded that the President will be satisfied that the harsh language of the Attorney General is uncalled for, and the charge of fraud unfounded, and that means should be adopted to take further proof in Mexico, which will show fully and clearly the nature of the whole transaction.

Believing that the President will not allow his mind to be prejudiced by a very partial and imperfect examination of the case, but will look at the whole evidence, which is all in print, we beg leave respectfully to present some facts which will, we think, be fully sustained by the evidence.

1. The original denouncement and possession of the mine by Castillero, under whom we claim, was in December, 1845, in the presence of two assisting and subscribing witnesses, both of whom have testified to the regularity of the proceeding, and are unimpeached.

2. That on the 10th December, 1845, Castillero addressed a letter on the subject to the Governor of California, sending specimens of cinnabar; and on the 13th February, 1846, the Governor encloses that letter, with the specimens, to the Minister of Exterior Relations in Mexico. Both these letters purport to be originals, and are on file in the proper office in Mexico, and certified copies are in the printed volumes in the possession of the President. There is no attempt to show that these letters are not genuine.

3. In the months of April and May, 1846, Castillero was in Mexico, and a correspondence ensued between him and the Junta de Minería, and various communications passed between the officers of the different departments and bureaus, which are referred to in a previous communication to the President. These resulted in a confirmation of the possession of the mine granted by the local authorities of California, and a grant of two leagues of land. All these documents, twenty-two in number, are found in their appropriate places respectively, either as originals or office copies, in four different offices. In every case the originals are now found in the offices to which they were sent, and the office copies or *minutes* in the offices from which they were sent. The originals are open to inspection; and if fraudulent, could easily be shown to be so, as they bear the signature of many well known public officers; but their genuineness is unassailed by any proof.

4. The transactions detailed in this arrangement with and grant to Castillero are distinctly and specifically referred to in a report made to the Minister of Exterior Relations, Lafragua,

in November, 1846, by Vicente Segura, the President of the Mining Board, and embodied in Lafragua's report to the Mexican Congress, and that with a portion of its contents are referred to in the report of Lafragua read before the Mexican Congress on the 14th, 15th, and 16th December, 1846. This report of Lafragua is a voluminous document, giving an account of the entire transactions of his department for the year 1846, and constitutes a large printed volume, printed in 1847 in pursuance of the order of the Mexican Congress of 16th December, 1846. This document contains various letters and dispatches in connection with the war with the United States, and other letters to and from our own officers. Some of them are as follows, viz: 1. A copy of a letter from President Polk, signed by himself and Mr. Buchanan, Secretary of State, to Gen. Herrera, President of Mexico, 10th November, 1845. 2. Mr. Buchanan to the Mexican Minister of Foreign Affairs of same date. 3. The Minister of Foreign Relations of Mexico, Peña y Peña, to Mr. Buchanan, 20th December, 1845. 4. The same Minister to Hon John Slidell, etc., etc., 20th December, 1845. 5. A long letter of Mr. Slidell to Peña y Peña, 24th December, 1845. 6. Mr. Buchanan to the Mexican Minister of Foreign Relations, 27th July, 1846. 7. Same to the same, 26th September, 1846; and other letters to and from the high officers of the two governments.

This document is in our possession, obtained long since without reference to this case by one of the counsel at Washington, and if desired, will be submitted to the examination of the President.

A complete series of the copies of the official newspaper of Mexico for the year 1846, (*Diario del Gobierno*), is in our own Department of State, forwarded to this government, from time to time, by our own Minister in Mexico, and in a bound volume. In an official report of the doings of the Mexican Congress in this journal, given from day to day, it appears that the reading of this document was commenced by Lafragua, Minister of Foreign Affairs, on the 14th December, 1846, continued on the 15th, and closed on the 16th, and ordered to be printed.

5. In December, 1846, a ratification of a contract of *avío* was executed before a notary in the city of Mexico, now deceased, which embodied verbatim the dispatch of Castillo Lanzas to the Governor of California of the 23d May, 1846. Copies of this document are obtained, and duly certified by our Minister. This letter is the closing document in the correspondence, the most important in the evidence of our title, and refers to all the previous documents, either directly or indirectly.

6. There is not one witness introduced who testifies that any of these documents have been forged, or are not in every respect genuine.

7. James Alexander Forbes, who had an interest in the mine, but was not related to any of the firm of Barron, Forbes & Co., and not connected in the general business, was superseded in his agency in the mine in the year 1850, which had continued from October, 1849, to May, 1850. He subsequently claimed to have in his possession some letters which, if made public, would, as he pretended, tend to call in question the title to the mine. He made sale of them, with his testimony in support of them, to persons holding an adverse interest, for \$20,000. These letters were then offered in evidence on the part of the United States, and subsequently other letters were introduced on the part of our clients, which are agreed to be genuine. This whole correspondence shows most clearly that James A. Forbes wished to procure from Mexico false papers, and urged that they should be obtained. He considered the papers which they then had, and which are the same now offered in evidence, and the only ones ever offered in evidence, as ambiguous and imperfect, although genuine, and urged the procuring papers more full and formal. Such were never obtained; none such exist, and no attempt whatever was made to obtain them. The correspondence shows conclusively the entire genuineness of all the papers evidencing our title.

We ask of the President a careful examination of all these letters in the order of their dates.

Such is a portion of the proof as it is now presented. There is existing in Mexico documentary and other evidence which sustains the claim and demonstrates the genuineness of these documents. Some of these we have referred to in our communication to the President of the 18th of March, from which we make the following brief extract:

“In addition to these there are bound volumes in the archives of the Junta de Minería and the Ministry of Justice containing the journals of the entire proceedings respectively of those two departments, and in which all the transactions connected with the application of Castillero, and the various documents in relation to the same, are distinctly stated at the dates of the transaction, and in their appropriate places. There are also, prior to, at the time, and subsequent to these transactions, regular lists or inventories kept of all the expedientes issued in the Junta de Minería, the Ministry of Relations and the Ministry of Justice, and in which all expedientes were numbered as they were issued. These inventories or lists extend over a series of years, and were regularly kept. The numbers in these lists or

inventories correspond with those that are attached to the expedientes offered in evidence in this case.

“There are numerous other documents showing conclusively that the papers offered in evidence were all executed at the time when they purport to have been executed, and were what they now appear to be.”

We presume that all the printed documents containing the proof above referred to are in possession of the Attorney General. If not, it will afford us great pleasure to place them in the hands of the President.

In view of the course which has been adopted by the law officers of the United States in relation to the controversy concerning this mine, we feel constrained to say, in conclusion, that the parties whom we represent have ground of serious complaint :

And these we recapitulate :

1. After having guarantied by treaty to the residents in Mexico, protection and security to their property, and provided by law that all titles acquired from Mexico should be submitted to the courts of the United States, who were to determine as to the titles by documentary proof and the testimony of witnesses, every possible impediment has been thrown in the way of obtaining that “documentary evidence” and testimony by the law officers of the Government.

2. When the Court in California had decided that, in their opinion, the act of 1851 did not authorize the issuing a commission to take testimony in a foreign country, and in accordance with the opinion of the Judge, application was made to Congress to pass a declaratory law extending to these cases the general law on that subject, the District Attorney in California and the Attorney General interposed to prevent this act of obvious justice, by addressing letters to the chairmen of the Judiciary Committees of the Senate and House of Representatives.

3. The ground taken in these communications against the application was that “its success can only be injurious to the interests of the Government,” and that “it cannot now be done without seriously hazarding the interests of the United States in two or three remaining cases.” In one of those cases, which is mentioned, the Government of the United States, through its diplomatic representative, obtained from the Government of Mexico important evidence to prove fraud in the title, which was received in evidence and commented on by the Judge, thus availing itself of its superior power of obtaining testimony in Mexico against a claimant, which was denied to the opposite party, and, by their own act, showing the groundlessness of the charges against Mexico.

4. The adopting measures by a government in its own case to prevent the taking of testimony to be submitted to the decision of its own courts, while it avails itself of its power to procure such testimony for itself, is in any case unjust; but when a party is forced to establish anew his title to land acquired from a foreign government, to deprive him of the means of obtaining the proof, which alone exists in the limits of that government, is the extreme of wrong and oppression.

5. When the courts in California had intimated an opinion that copies of the documentary evidences of the title obtained in Mexico, in order to receive full faith, must be authenticated under the great seal, and Mexico had declined to adopt this unusual mode of authentication on the application of the undersigned and our associates, in view of the provisions of the treaty and the Act of Congress to the Government, the Attorney General decides that no aid should be afforded in obtaining this authentication.

6. When it was of the utmost importance that a speedy answer should be given to this application, and in the first letter addressed to the Secretary of State by Messrs. Crittenden, Benjamin, and ourselves, on the 17th December last, an acknowledgment of the receipt of the letter and an early decision was earnestly requested, and when in repeated communications subsequently we earnestly asked for an immediate decision, it was a serious injury and gross wrong for the Attorney General, to whom the papers were referred, to postpone a reply for more than four months, and that we should be to the present moment without any acknowledgment even that any one of these communications had been received, except so far as they are referred to in the Report of the Attorney General to the President, of which, by his order, a copy has just been furnished us.

7. In order to obviate any unnecessary delay in procuring copies of documents from Mexico under the great seal, we proposed to our government to examine the copies already obtained from Mexico authenticated according to the law of Mexico, and so certified under seal by our own Minister in Mexico, who also certified to having himself compared the copies with the originals, and that they were correct; and if they believed the papers to have been correctly copied, to admit or in some other mode satisfactory to themselves to ascertain the fact of the correctness of the copies, and to admit them as such. This proposition is rejected.

8. In order to obtain the testimony of witnesses and copies of the documents in Mexico and an impartial examination as to the genuineness of our title-papers, we addressed a coun-

munication to the President, proposing that the present Minister to Mexico, the United States Consul there, and any other officer of the United States, should take testimony of witnesses, examine into the genuineness of the documents in Mexico, and that their certificate should be received as evidence before the Court; and if this should be declined, that this duty should be performed by two or three Commissioners, citizens of the United States, who should be selected by the President, and the expense paid by our clients, and who should from Mexico proceed to California and give testimony in the cause.

This proposition, too, is declined.

9. The result is, that at the present moment, under the decision of the court in California, and the action of the Government, parties in possession of land in California, claiming to hold it under a grant from Mexico, are forced into court to prove their titles, and yet are deprived by the Government of the means of procuring the documentary evidence and testimony of witnesses at the places where they must necessarily be found.

10. What adds to the enormity of this wrong is, that the law officers of the Government, here and in California, in the most offensive terms, make the most wholesale charges of fraud and forgery against persons who sustain as fair a character for integrity and honor as the Attorney General, or any of the counsel of either party; and this vituperation is indulged in at the same time that they not only prevent the taking of testimony by our clients, but themselves refuse to investigate by their own officers, or by Commissioners selected by themselves and paid by us.

11. In cases which have heretofore arisen where fraud was supposed actually to exist connected with Mexican titles or claims, in which the Government was interested, they have caused an investigation to be made in Mexico, and in all cases have received the cordial support of the Mexican Government. Why is it that in this case these officers prefer to make the charges, instead of seeking the proof of fraud? We ask for the most rigid and thorough examination. Truth and justice never feared such examination, and never suffered by it. Why is it that in every other case where the Government *believed* that frauds existed affecting titles purporting to be derived from Mexico, investigations were made and proofs taken in Mexico by the Government, and yet it is refused in this case? It is scarcely credible that the Government should not have set on foot examinations in the city of Mexico, if they believed the documents in this case to be forged; and if they have done so, and found the fact to be, as it is, that the papers are all genuine,

and yet withhold that evidence, and continue their offensive charges, and not only withhold the proof, but prevent its being obtained by us, no language is too strong to characterize the grossness of the wrong.

12. Why is it that the Attorney General has so often referred, on this and other occasions, to these parties as, a portion of them, foreigners—British and Mexican citizens? Is there a different law for them? Are the rules of justice any less to be regarded? They did not come to our country; we went to theirs, and when it became ours, agreed to protect them in their rights. If the attempt be to raise any prejudice, in order more readily to deprive them of those rights, it is but an additional wrong.

We need not be reminded of the unequal contest in which we are engaged. We know and have been made to feel the *power* of the government—its *justice* has not been quite as manifest. We are fully aware that while we have nothing to rely upon except the integrity and justice of our cause, and, being remote and having no influence, can be injured with impunity, there are numerous persons in different portions of the country who are interested as owners in the claim pursued in the name of Charles Fossatt, and who we can truly say are exceedingly powerful and influential. Their ability also cannot be doubted, when it was such as at one time to induce a gentleman of the undoubted purity and learning of the present Attorney General almost to determine to dismiss the appeal in the case of Fossatt, and thus forever to abandon in their favor all right of the United States to the land covering this valuable mine.

13. The Attorney General says that this mine is worth many millions of dollars. This certainly does not affect the rights of the parties, and it should be no argument against these gentlemen if they, by their enterprise and large expenditures, have developed the hidden treasures of the earth, of which now the government and numerous other parties seek to deprive them. If there is value in this property, it has been given to it by those whose rights and character are so pertinaciously assailed, and who expended hundreds of thousands of dollars before receiving one in return.

14. Finally, we have reason to complain that the proceedings for an injunction were ever instituted at all by the Government of the United States. It is a solitary instance in California of any such proceeding. The gold mines of California are worked now, and have been since we acquired the territory, on lands acknowledged to be the public lands of the United States, by persons having no claim to any title. Companies have been

formed, extensive works have been erected, canals have been opened, and the gold extracted in large quantities, an average of about fifty millions of dollars a year. Although this "waste of the substance" of the property has been going on by natives and foreigners from every nation, the extraordinary power of the government has never been interposed.

The excuse assigned by the Attorney General for this course is this: "Neither is this proceeding a departure from the liberal policy heretofore pursued by the United States towards the working of the mines in general.

"Miners who go upon lands acknowledging the title of the government, and claiming nothing but what the government is willing to concede them, are in a condition wholly different from these parties. What I assert is simply the right and duty of the government to protect itself and its citizens against foreigners who come with fabricated titles from Mexico in their hands, to monopolize large quantities of the richest mineral land on the globe, excluding therefrom and driving away the honest persons who would otherwise have wrought them."

The reasons, then, for this different course of policy and proceeding are four-fold: 1st, that the parties claim to hold by title; 2d, that they are foreigners; 3d, that the Attorney General believes their title to be fabricated; and, 4th, that they have a monopoly.

It is certainly no offense in claiming to hold by title. If the title is a good one, their rights are at least equal to those of persons who have none and claim to have none. That they are all foreigners is not true; and if so, their rights are equally to be protected, both on principles of justice and by the provisions of the treaty. They were in the country, occupying the property and claiming it as their own, when we acquired the territory. Large numbers of foreigners, with no such guaranties, are allowed undisturbed to occupy the lands of the United States, and to withdraw treasure to the amount of millions of dollars annually; and whether they are "honest" or not, does not appear. The question whether our titles are "fabricated" or honest, is the question still pending. We have no doubt that they are honest. The Attorney General thinks otherwise. It is a question which the courts, and not the parties or the counsel, are to determine. The only ground of the injunction suit was to stay waste whilst the title was in dispute. It did not, and could not, and does not, purport to decide any question of title. The court expressly so decides. The difference of the two cases, then, is only that between the commission of waste by parties who have no title, and the

same act by parties who claim a legal and valid title which is in dispute.

We hold no monopoly of quicksilver. The tract of land we claim, including the mine, is small as compared with other grants in California. There are two other such mines—the Ydria and Guadalupe. If these are not as extensively worked, or as profitably, it is because less capital has been expended or enterprise displayed in their development.

When this unjust discrimination in the cases is adopted, and these parties, alone, in California, are selected for attack by the law officers of the government, and for such reasons, it is a ground of serious complaint; and it is further a very fit subject of inquiry and of animadversion, when the material interests of the State and the country are so seriously injured by withholding their accustomed supply of quicksilver, and may well lead unfriendly persons to charge the government with partiality.

We deem it our duty to say that the course which has been pursued in this case by the authorities of the United States, so far as the damage has been one of a pecuniary character, furnishes ground for a claim for indemnification against the government in favor of the parties whom we represent. That the amount of damage sustained is not small, will be readily conceded by the United States in view of the estimate of the value which the Attorney General has attached to the mine, and of the profit attending the working of it.

We acquit the Attorney General of any design to do a wanton wrong to the parties in this case. We believe that he would not do so knowingly, but the pressure of numerous and important engagements must necessarily require of him to rely upon the aid and investigation of others; and so persevering and unscrupulous have been the assaults of interested persons, that it is not surprising if he is affected by them. He has been misled and deceived by the misrepresentations of others.

In view of the facts above stated, if we do not greatly deceive ourselves, justice to the parties whom we represent, as well as to all others, including the United States, and to save these last from the contingency of heavy pecuniary loss, requires that the government should cause the bill in equity for an injunction pending in the Circuit Court of California to be withdrawn and all proceedings under it to be abandoned; and in order to bring the controversy in relation to this mine to an early and just decision, to co-operate with us in procuring from Mexico all the evidence by documents and witnesses which will tend to show the real character of this transaction.

If we are right in saying, as we believe, that this is the

course which justice requires to be pursued, we cannot doubt that the President, after a full examination of the case, will so direct; and we shall respectfully await the decision of the President.

Messrs. Crittenden and Benjamin not being in the city, we do not feel at liberty to affix their names to this communication.

We have the honor to be, with high regard,
Your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

To the PRESIDENT.

FURTHER CORRESPONDENCE

*In relation to the New Almaden Quicksilver Mine of California,
between the Counsel for the Proprietors and the Government.*

WASHINGTON, November 29th, 1859.

SIR: The undersigned, as counsel for the persons in possession and claiming to be the owners of the New Almaden quicksilver mine in California, have the honor to send herewith copies of sundry papers, including a correspondence between the undersigned and the Secretary of State, to which we would respectfully ask the early attention of the President. A list of these papers also accompanies this communication.

They will be found to disclose two grounds of complaint for the course pursued by the Secretary of State and the Attorney General, by which our clients have already suffered serious pecuniary injury, and are apprehensive of still greater.

1. On the 19th of April, 1859, the undersigned addressed a communication to the Attorney General, informing him of the intention of our clients to take the depositions of witnesses in the two cases pending in California, the titles to which were given, in which we say: "As the United States District Court in California has heretofore decided against issuing a commission in one of the above causes, the claimants whom we represent have, at great expense, undertaken to transport witnesses to California. Some of the witnesses are prevented from at-

tending by age and infirmity, others decline going, and a number of important witnesses who have agreed to go are now prevented by the political disturbance in the country.

“Under these peculiar circumstances, we have determined to take the deposition of witnesses before the Secretary of Legation, or the consular officers of the United States, in the City of Mexico. Instructions to this effect will be sent to our clients in Mexico by the steamer which leaves New Orleans on the 1st of May next, with directions to cause notice of the time and place of taking the depositions to be given to the diplomatic representative of the United States in Mexico.

“We give this notice in order to enable the United States to cause an appearance to be made in their behalf to put interrogatories and cross-examine the witnesses when the depositions are taken, if they desire to do so. We annex the names of a portion of the witnesses which we propose to examine, and the points which we expect to establish by their testimony.”

On the 23d of the same month, without notice to us, or replying to our notice to him, the Attorney General addressed a communication to the Secretary of State, with a copy of the foregoing letter from the undersigned, in which he says: “No officer of the United States can, consistently with his duty, take or have any lot or part in the proposed proceeding. It is not only illegal and unauthorized, but it is wrong and unjust to the Government.”

Again: “For these reasons I have to request that you will instruct the diplomatic representatives and consular officers of the United States, in Mexico, not to let themselves, or the functions of their offices, be used for the unauthorized and illegal purposes mentioned in this notice, but to abstain altogether from any participation therein.”

In pursuance of this request of the Attorney General, instructions were accordingly given to the Consul by the Secretary of State.

The Consul, Mr. Black, in a letter dated the 21st June, 1859, addressed to Mr. Barron, one of our clients says: “I have to inform you that, under present circumstances, I shall not be able to take the testimony required by you, as I have received an official communication from the Hon. Robert M. McLane, E. E. and Minister Plenipotentiary of the United States of America near the Constitutional Government, in which he is pleased to state (in reference to the taking of testimony in certain suits between the United States and Andres Castillero and John Parrott and others) as follows: “I am instructed to advise you that the government does not authorize such a proceeding.”

In answer to a letter addressed by one of us to the Secretary of State, in which the language above quoted was also quoted, the Secretary, under date of 8th August, replied as follows: "Your letter of the 2d instant, relative to an alleged refusal of John Black, Esq., United States Consul to the city of Mexico, to take depositions of witnesses in behalf of defendants in the cases of the United States vs. The New Almaden Mining Company, has been received. In reply, I have to inform you, that in this proceeding it is presumed Mr. Black acted pursuant to the opinion of the Attorney General of the 23d of April last, a copy of which is herewith inclosed. In conformity with the request contained in that opinion, an instruction was addressed to Mr. McLane, who wrote to Mr. Black in the terms referred to in your letter."

The 24th section of the Act of 18th August, 1856, (11 Stat., p. 61,) is as follows: "Every Secretary of Legation and consular officer is hereby authorized, whenever he shall be required, or may deem it necessary or proper so to do, at the post, port, place, or within the limits of his legation, consulate, or commercial agency, to administer to, or take from any person, an oath, affirmation, affidavit, or deposition, and also to perform any notarial act or acts, such as any Notary Public is required or authorized by law to do or perform within the United States; and every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as good, valid, effectual, and of like force and effect within the United States, to all intents and purposes, as if such oath, affirmation, affidavit, deposition or notarial act had been administered, sworn, affirmed, taken, had, or done, by or before any other person within the United States duly authorized and competent thereto; and if any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury, in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, and convicted, and dealt with, in any district of the United States, in the same manner in all respects as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or

taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine, or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction, shall be imprisoned not exceeding three years, nor less than one year and fined in a sum not to exceed three thousand dollars, and may be charged, proceeded against, tried, and convicted, and dealt with therefor, in the district where he may be arrested or in custody."

By referring to the Act of July 29th, 1854, 10 Stat. 315, and Act of March 1, 1817, 3 Stat. 350, in connection with the above Act of 1856, it will be seen that the same authority is given, and the same duties are imposed upon Notaries Public and Consuls relative to the taking of depositions, as in relation to Judges or Justices of courts of the United States under the provisions of the 30th section of the Judiciary Act.

It thus appears, beyond controversy, that, at the request of the Attorney General of the United States, the Secretary of State has instructed a public officer not to discharge a duty imposed upon him by law in a matter pertaining to private right of great importance, and necessary for the due administration of justice in a suit pending in court in which the United States is a party. And as the Consul and Secretary of Legation are by the foregoing Acts of Congress the only persons before whom the depositions can be taken, they have thus effectually prevented the taking of the depositions of any and all witnesses in the Republic of Mexico by the defendants in these cases.

When, too, it is understood that this act, which at the same time both violates a positive statute and arrests the impartial administration of justice, has been done deliberately and understandingly, and is persisted in against the most earnest remonstrance, the matter presents itself in a very serious aspect.

The wrong is manifest, and the injury which our clients have already sustained, and which they may further sustain, by these acts of the Secretary of State and Attorney General, will be estimated by the immense value of the property, as well as the importance of the rights in controversy.

In the course of the correspondence, copies of which we send, the undersigned addressed a communication to the Secretary of State, under date of 14th October, 1859. This communication was received on the next day, the 5th October, and on the 26th October, after an interval of twenty-one days, it was returned to the undersigned, with a note, declining to place it on the files

of the Department, because, as he alleges, "it contains offensive imputations against the Attorney General;" and further states, that should we think it proper to address to him "an application free from objectionable remarks," he will consider it immediately, and give "such an answer as it may seem to require."

Our letter of the 4th of October was prepared with great deliberation, and after a careful re-perusal of it, we can discover no "offensive imputations" against the Attorney General; on the contrary, we considered that it is marked with great moderation and forbearance on our part. If it is "offensive" to the Attorney General, it is, as we respectfully submit, because the facts and the law were offensive; and we confidently believe that the President, and every other person of intelligence and fairness, will consider our comments in that letter upon the extraordinary proceedings disclosed by this correspondence not only as deserved and appropriate, but far within the limits prescribed to fair and courteous discussions; and we would respectfully say, that by the return of this letter, the wrong previously committed, instead of being alleviated, has been aggravated.

2. It further appears by a portion of the correspondence, copies of which we also send herewith, that on the 26th September, 1859, the undersigned addressed two letters to the Secretary of State, in both of which we asked for certified copies of certain papers on file in the Department of State, in order that the same might be used as evidence in the cases pending in the District and Circuit Courts in California. In one of the letters the copies of the correspondence with the government by the undersigned and their associate counsel were requested; and in the other, copies were asked for of letters from Mr. Larkin, the Consul of the United States in Monterey, in California, to the Department of State, in relation to the quicksilver mine of New Almaden; also of an article in the *Polynesian* newspaper containing the letters of Mr. Larkin on the same subject, and published in July, 1846, the numbers of which newspapers for 1846 had been transmitted to the department, and were in a bound volume, and on file in that department.

Having received no answer to these letters, on the 10th of November, instant, we addressed a letter to the Secretary of State, respectfully requesting a reply to them at his earliest convenience. We have received no answer of any kind to any of these letters.

It appears from the communication of the Attorney General, that by his construction of the Act of Congress of 1851, in relation to California land titles, no depositions can be received in cases arising under said Act unless the same be taken be-

fore a Judge or Commissioner in California. If such be the construction of that Act, the only other mode of obtaining the proofs of the documents on file in the Department of State, in such form as to render them admissible in court, is by copies duly certified in pursuance of the Act of Congress. It is of great importance to our clients that these copies should be furnished at the earliest possible moment, as otherwise the evidence in the cause may be closed before they can be received in California.

There are several Acts of Congress bearing on this subject, and which show that parties are legally entitled to avail themselves of this mode of procuring papers on file in the several departments. To some of these Acts, and to a few of the decisions of the courts having a bearing on both points, we would respectfully refer the President:

Sect. 5, of Act of 15th September, 1789 ; 1 Stat. p. 69.

Sect. 1, Act 23d January, 1823 ; 3 Stat. 721.

Sect. 1, Act 8th August, 1846 ; 9 Stat. 80.

2d and 3d sect. Act 22d February, 1849 ; 9 Stat. 347.

2d sect. Act 31st May, 1854 ; 10 Stat. 297.

Marbury vs. Madison, 1 Cranch, 137.

Kendall vs. The United States, 12 Peters, 524.

Kendall vs. Stokes, 3 Howard, 789.

Mitchell vs. Harmony, 13 Howard, 175.

Boyd vs. Burke, 14 Howard, 575.

Ferguson vs. Earl of Kinnoul, 9 Clark & Fennely Reports, 279.

That in both the above instances there has been a clear violation of law, and of the rights of individuals secured by law, must, we think, be manifest, and we respectfully ask of the President, as the responsible head of the Executive Branch of the Government, in pursuance of the provisions of the Constitution, which confers on him the power and the duty to "take care that the laws be faithfully executed," to afford to our clients, as far as it can still be done, a remedy for the wrong that that has been committed.

We therefore most respectfully ask of the President, in behalf of our clients, and as their legal right, that he will cause the instructions to the Consul in Mexico to be countermanded, and will also cause the copies which we have asked for at the State Department to be furnished.

It is to be feared, that as to one if not both of them, an order now issued might come too late to repair, even in part, the injury that has been committed ; but possibly it may not, and we respectfully request that such an order be issued at the earliest possible moment.

It must, however, be manifest to the President that a compliance with this request will furnish but very inadequate redress for the injuries which our clients have sustained at the hand of the Government, as well those to which we heretofore called his attention, as those now presented; and in closing this final appeal to the President, our duty to our clients requires us to say, in order to prevent misconception in future, that for the injuries which they have already sustained or may hereafter sustain, by the acts and omissions of the officers of the United States, they are clearly entitled to such redress as justice and the laws of the land afford to every person.

We would respectfully ask an acknowledgment by the President of the receipt of this communication.

We have the honor to be, very respectfully,
Your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

To the PRESIDENT OF THE UNITED STATES.

LIST OF PAPERS

Accompanying the communication of Messrs. Johnson and Rockwell to the President, of the 29th November, 1859.

1. Letter from Eustace W. Barron to John Black, United States Consul, Mexico, dated June 22 (21), 1859.
2. Letter from John Black to Eustace W. Barron, dated 21st June, 1859.
3. Letter from Eustace W. Barron to John Black, United States Consul, dated June 22, 1859.
4. Reverdy Johnson to Hon. Lewis Cass, dated August 2d, 1859.
5. Hon. Lewis Cass to Reverdy Johnson, dated August 8th, 1859.
6. Reverdy Johnson and John A. Rockwell to Hon. Lewis Cass, dated October 4th, 1859.
7. Hon. Lewis Cass to Reverdy Johnson and John A. Rockwell, dated October 26th, 1859.
- 8 and 9. Reverdy Johnson and John A. Rockwell to Hon. Lewis Cass, two letters dated 26th September, 1859.
10. Same to same, dated 10th November, 1859.

No. 1.

MEXICO, June 22 (21) 1859.

SIR: You are fully aware of the lawsuits the Company of New Almaden have pending in the courts of justice of Upper California, defending the property and possession of the quick-silver mine of New Almaden. In furtherance of that defense, and in consequence of the great importance which those tribunals appear to attach to certain classes of proofs, I had determined to take before you, as United States Consul, the testimony of witnesses—which we consider necessary to establish our rights, preferring this course to that which is usually followed in Mexico—with the object of facilitating its admission in the American tribunals.

Under these circumstances, I am informed that you refuse to take that testimony, and as this determination on your part seriously affects the interests, and may occasion heavy losses to said company, I most respectfully beg you will be pleased to make known to me your resolution, in order that I may still take such steps as may be open to me, and endeavor to ward off the serious consequences which may ensue to those concerned.

I am, &c.,

EUSTACE W. BARRON.

JOHN BLACK, Esq.,

U. S. Consul, Mexico.

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No. 2.

CONSULATE OF THE U. S. OF AMERICA,

Mexico, June 21, 1859.

SIR: In answer to your letter of this date, I have to inform you that, under present circumstances, I shall not be able to take the testimony required by you, as I have received an official communication from the Hon. Robert M. McLane, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, near the Constitutional Government, in which he is pleased to state, in reference to the taking of testimony in certain suits pending between the United States and Andres Castellero and John Parrott and others, as follows: "I am instructed to advise you that the government does not authorize such a proceeding;" and therefore consider it my duty to suspend the taking of said testimony until I am to consult

with said Minister on the subject, and receive from him further instructions in reference thereto, as it may be that the former instructions are not intended to embrace your case; but this I do not consider myself, for want of the necessary data, competent to decide, and will therefore await further instructions, to enable me to decide for or against in a more positive manner.

Very respectfully, your obedient servant,

JOHN BLACK.

EUSTACE W. BARRON, Esq.,
Mexico.

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No. 3.

MEXICO, June 22, 1859.

SIR: I have received your letter of yesterday's date, and am not surprised at its contents.

The very cases to which you inform me that your instructions specially refer, named United States vs. Andres Castellero and United States vs. John Parrott and others, are the same upon which I am desirous of obtaining testimony, with a view of divesting them of all shade of doubt. The witnesses I present are men of high standing, acknowledged position, and untarnished character.

In applying to you as United States Consul in this city to swear those witnesses and take their depositions, which testimony I consider highly conclusive, and, to a certain extent, necessary in establishing our rights, I have acted under advice of the most eminent counsel I could obtain in your country, founded on your own published laws, and guided by precedents of a singularly exact and like nature.

All my efforts and those of the learned gentlemen who have undertaken the defense of our rights, to obtain from the Government of the United States some assistance in clearing the question of doubts, and ascertaining the real side on which truth and justice resided, proved, I regret to say, utterly fruitless; and not content with disdaining my proposals in Washington, the Government even follows me here in the name of a great people, and through the official channel, to suspend a law of the United States, promulgated and authorized by the Congress of the Union.

Happily for myself and those interested with me in the lawsuits pending before the tribunals of the United States, it is not the Executive Department of the Government of that country that has to decide on the justice of the case.

Nevertheless, it is bounden duty, in the meantime, to strengthen in every possible manner our case, and as you, sir, consider yourself justified, acting under instructions from the representative of the United States in this country, to suspend a law of the Congress of the American Union, the course which is open to me is to take that testimony before a magistrate of this country, and according to Mexican law.

Of the time and place in which this testimony will be taken you will be duly notified, should you desire to attend.

With sentiments of personal regard and esteem,

I am, sir, very respectfully, your obedient servant,

EUSTACE W. BARRON.

Hon. JOHN BLACK,
U. S. Consul.

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No. 4.

SARATOGA SPRINGS, NEW YORK,
August 2d, 1859.

SIR: I have just been advised by one of my clients in the cases of the United States and the New Almaden Mining Company, now pending in the courts of the United States for the District of California, that our Consul in Mexico, John Black, Esq., who was about to take the depositions of witnesses in our behalf, declined doing so, because, as he says in an official letter, (a copy of which is now before me,) dated the 21st June last, "I have received an official communication from the Hon. Robert M. McLane, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, near the Constitutional Government, in which he is pleased to state, (in reference to the taking of testimony in certain suits pending between the United States and Andres Castellero, and John Parrott and others) as follows: "I am instructed to advise you that the Government does not authorize such a proceeding."

As the Consul's duty in these matters is clearly prescribed by Act of Congress, leaving him no discretion, or submitting him to the slightest Executive control or interference, (as you will see on consulting it,) I cannot but think that Mr. McLane has misunderstood his instructions. If he has not, I respectfully submit that they have been inadvertently issued, and should, therefore, be canceled at the earliest moment.

That a statute of the United States passed to promote the administration of justice in their courts should be considered subject to Executive suspension, in any individual case, is a

proposition so obviously unsound, that it is only necessary to state it to have it instantly repudiated by your Department.

Respectfully requesting a reply, at this place, where I shall be for two weeks,

I remain, with high regard, your ob't serv't,

REVERDY JOHNSON.

Hon. LEWIS CASS, &c., &c.

Washington.

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No. 5.

DEPARTMENT OF STATE,

Washington, 8th August, 1859.

TO REVERDY JOHNSON, Esq.,

Saratoga Springs, New York.

SIR: Your letter of the 2d instant, relative to an alleged refusal of John Black, Esq., United States Consul at the City of Mexico, to take depositions of witnesses in behalf of defendants in the cases of the United States vs. The New Almaden Mining Company, has been received.

In reply, I have to inform you that, in this proceeding, it is presumed Mr. Black acted pursuant to the opinion of the Attorney General of the 23d of April last, a copy of which is herewith inclosed. In conformity with the request contained in that opinion, an instruction was addressed to Mr. McLane, who wrote to Mr. Black in the terms referred to in your letter.

I am, sir, your obedient servant,

LEW. CASS.

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ATTORNEY GENERAL'S OFFICE, April 23, 1859.

SIR: The counsel for the claimants in the case of Andres Castillero vs. the United States, a private land claim pending in the District Court for the Northern District of California, have addressed to me a paper, of which I send you a copy. It is, as you will perceive, a notice of their intention to take depositions in the city of Mexico, to be read as evidence in the cause referred to. This testimony, they say, is to be taken before the Secretary of our Legation, or the Consular Officer of the United States at Mexico, and they promise that further notice shall be given to the diplomatic representative of the United States in that country.

No officer of the United States can consistently with his duty take, or have any lot or part in the proposed proceeding. It is not only illegal and unauthorized, but it is wrong and unjust to the Government. The intent of the opposing party may be fair enough, but the effect of any sanction which your department might give to it would be most injurious. I will give you a few of the reasons for this opinion :

1. This paper, which was sent to my office on the 20th instant, informs me that instructions will be sent out to have the depositions taken by the mail which leaves New Orleans on the 1st of May. If the Government intends to take any part in the business, our instructions must be ready to go out by the same steamer. The length of the notice is therefore equivalent to about five days. Within this time the departments at Washington must become acquainted with the present condition of a cause pending on the other side of the continent, concerning which we can get no report in less than two months, and be armed with the knowledge necessary to detect the falsehoods of twenty Mexican witnesses, swearing their utmost for an association of men who have fifteen millions of dollars staked on their oaths.

2. The proper officer to be served with this notice is the Attorney of the United States for that district in which the cause is pending. It is his duty, and not mine, expressly made so by the Act of 1851, to attend to the taking of depositions in these private land claims. The fact that he performs his functions to a certain extent under the supervision of this office, does not make it proper to serve rules and notices upon me. This notice is, therefore, served upon the wrong person entirely.

3. The notice names the witnesses, and mentions very copiously what is intended to be proved by each one. To give it the merit of even a regular shape, it was necessary to notify us of the interrogatories intended to be put, so that fitting cross-interrogatories might have been filed, if necessary.

4. Our legation has not arrived at the city of Mexico, and is not likely to be there any time soon. These depositions could not, therefore, be taken before the Secretary. There may be an American Consul there, but neither he nor the diplomatic representative of the United States, has any authority to take depositions for such a purpose as this, without a commission from the court in which the cause is pending.

5. Testimony in a cause of this kind can be taken only in California, before a Commissioner or Judge of the District Court. Our law will not accept depositions taken in Mexico in support of these Mexican claims. If the mere fact that such

is the law were not enough, many reasons might be given which would sufficiently prove the wisdom of the Legislature. All our experience shows how perilous are the oaths of the witnesses usually relied upon by these land claimants, and how ineffectual sometimes are the most careful restrictions that can be imposed. We have been beaten more than once, and made many narrow escapes where the contest was carried on within the limits of our own country, and with all the terror of our own laws to aid the truth. If we agree to transfer the scene of operations to Mexico, we would give them an advantage to which they are not entitled, and which they would use with dangerous effect. No matter what might be the extent or grossness of their perjury, it would be impossible to punish them, and in most cases almost as difficult to contradict them. The Act of Congress confines courts to such testimony as may be taken within the district where the cause is pending before a Judge or Commissioner of that district, and after notice to the United States Attorney of the district. These parties made application to the court, as they admit in their notice, for a commission to take depositions, which was refused. They also applied to Congress for a statute which would give them the right to have such a commission. That also was refused. Now, they are about to do without a commission, or any other authority, that which the court and Congress have declared that they should not be permitted to do.

For these reasons I have to request that you will instruct the diplomatic representatives and consular officers of the United States in Mexico, not to let themselves, or the functions of their offices, be used for the unauthorized and illegal purposes mentioned in this notice, but to abstain altogether from any participation therein.

I inclose herewith a copy of a letter I addressed to the President in reference to this case, which you may transmit to Mr. McLane, if you think proper.

Very respectfully, yours, &c.,

J. S. BLACK.

Hon. LEWIS CASS,
Secretary of State.

District Court of the United States for the Northern District of California.

On appeal from U. S. Board of Commissioners to ascertain and settle private land claims in California, numbered in the docket of said Board 366.

ANDRES CASTILLERO }
 vs. }
 THE UNITED STATES. }

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In the Circuit Court of the United States for the District of California, in and for the Northern District.

THE UNITED STATES OF AMERICA }
 vs. }
 JOHN PARROTT, HENRY W. HAL- } In Equity.
 leck, James R. Bolton, William }
 E. Barron, John Young, and }
 Robert Walkinshaw. }

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To the Honorable J. S. BLACK,
Attorney General of the United States.

SIR: As the United States District Court in California has heretofore decided against issuing a commission in one of the above causes, the claimants, whom we represent, have, at great expense, undertaken to transport witnesses to California. Some of the witnesses are prevented from attending by age and infirmity; others decline going, and a number of important witnesses who have agreed to go are now prevented by the political disturbance in the country. Under these peculiar circumstances, we have determined to take the depositions of witnesses before the Secretary of Legation, or the consular officer of the United States, in the city of Mexico. Instructions to this effect will be sent to our clients in Mexico by the steamer which leaves New Orleans on the 1st of May next, with directions to cause notice of the time and place of taking the depositions to be given to the diplomatic representatives of the United States in Mexico. We give this notice in order to enable the United States to cause an appearance to be made on their behalf, to put interrogatories and cross-examine the witnesses when the depositions are taken, if the[y] desire to do so. We annex the names of a portion of the witnesses which we propose to examine, and the points which we expect to establish by their testimony.

We propose to prove by *D. Vincente Segura*, that he signed and dispatched every one of the documents which purport to be written by him, and that they were signed on the days they are dated, and are in all respects true and genuine. We further propose to prove by him that all the letters which purport to have been addressed to him by *Becerra*, Minister of Justice and Public Instruction, were received by him in due course of official correspondence, and bear the genuine signature and rubric of said Minister. We further propose to prove by him that he knew Castellero in the City of Mexico, in April and May, 1846, and that to his knowledge all the matters and things recited in said documents did really take place as they are related.

We propose to prove by *Castillo Lanzas*, Minister of Foreign Relations, Government and Police, that in April, 1846, he received a letter from Governor Pico, with its enclosed letter from Castellero, that these letters and the sample of quicksilver were brought to Mexico by Mr. Covarrubias, who was sent from California to the capital of the Republic as a Commissioner on public business. We further propose to prove by Señor *Lanzas*, that the letter from *Becerra*, Minister of Justice and Public Instruction, to the Minister of Relations, dated May 20th, 1846, was received in the due course of official correspondence, and bears the genuine signature and rubric of said *Becerra*. And we further propose to prove by him, that on the 23d of May, 1846, he signed and delivered to Andres Castellero the order or dispatch to the Governor of the Department of Californias, directing him to put Castellero into the possession of the two square leagues which had been granted him by the Supreme Government of the Republic. And we propose to prove by *Isidro Rafael Gondra*, a clerk in the Junta de Minería, and by *Jose Maria Duran*, and *Theodore Sotomayer* and *Mariano Miranda*, clerks in the various Ministries above mentioned, that they wrote many of the official communications which passed between the several Departments, which were signed and dispatched by the several Ministers. And we propose to prove by *D. Francisco Martinez Negrete*, that, as the agent of Mr. Alexander Forbes, he obtained from Castellero the ratification of the lease which McNamara had made with Mr. Forbes in Tepic, in November, 1846; that this ratification was signed by himself and Castellero, in the office of *Nazario Fuentes*, on the 17th December, 1846; that at the time it was signed, there was appended to it the copy of the grant of two leagues of land which Castellero had received from the Supreme Government, and that he saw the original from which the copy was made; and we propose to prove by him further, that the *testimonio* or copy of said act of ratification, which issued on

the 19th December, 1846, certified by Romulo de Zalvallos, Francisco Villalon, and Andres Vellio Mejia, Notaries Public, and having affixed the seal of the National College of Notaries, was delivered to him on or about the day of its date, and by him delivered or sent to Mr. Alexander Forbes; and we propose to prove by the said *Zalvallos*, *Villalon* and *Mejia*, that their signatures and rubrics to the said copy are genuine, and were signed on the day the certificate purports to bear date, and that the seal of the National College of Notaries affixed to their certificate is a genuine seal, and was affixed to the certificate on the 19th December, 1846; and we propose to prove by *Manuel Cabera de Vaca* and *Miguel Austique* and *Francisco Villalon*, Notaries Public, that their certificate, and the other copy of said act of ratification, containing a copy of the grant to Castillero, was written and signed by them on the 6th February, 1847, and that on that day they affixed to the certificate the seal of the National College of Notaries, which it now bears; and we propose to prove that *Becerra*, Minister of Justice and Public Instruction, who was Bishop of Puebla, died some three or four years ago.

We propose to prove by *Bernado Couto*, *Luis G. Cuevas* and *Miguel Atristain*, who were the Mexican Commissioners for negotiating the treaty with the United States, the facts in relation to that negotiation.

REVERDY JOHNSON,
JOHN A. ROCKWELL,
For the Claimants.

WASHINGTON, 19th April, 1859.

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No. 6.

WASHINGTON, October 4, 1859.

SIR: It is with the utmost astonishment that we have read the communication of the Hon. J. S. Black, Attorney General, addressed to you, under date of April 23, 1859, and inclosed in your letter of the 8th August, 1859, in which he urges that an officer of the United States should be instructed by the Secretary of State to abstain from the discharge of a duty prescribed by law, in a matter of private right, secured by positive statute; and it is with no less astonishment and regret that we learn that this unexampled request has been complied with by the Department, and subsequently obeyed by the officer to whom it was addressed.

We deem it proper, for a full understanding of the subject,

to refer, very briefly, to a few facts bearing upon this case in its present aspect, as you may possibly not be familiar with them. The parties whom we represent, in the controversy now pending in the courts of California, were found by our Government, when the treaty with Mexico, ceding California, was signed, in the actual peaceable possession of a very valuable quicksilver mine, claiming it by titles derived under Mexican law. The claim to the mine was confirmed by the Commissioners of the United States appointed to determine land claims in California. Subsequently, however, a claim was interposed, by persons holding adverse interests, and by the Attorney General, who alleged that various documentary evidences of title, purporting to have been issued by the Supreme Government of Mexico, were fabricated, at a period long subsequent to their dates, and were false and fraudulent.

In order to repel this charge, which they knew to be unfounded, the parties whom we represent procured copies to be made of various documents, twenty-two in number, either as originals or office copies, in four different Departments or offices in the city of Mexico; and to authenticate these copies they obtained the certificate of the Mexican officers, who were by law alone authorized to authenticate papers to be used abroad, accompanied by the certificate of our Minister, the Hon. John Forsyth, that such was the fact, under his seal of office; and that he had himself compared the copies and found them to be correct.

One of the Judges of the Circuit Court in California having intimated an opinion that the proper mode of authentication was under the great seal of Mexico, and that if the copies offered were admitted at all in evidence without authentication under the great seal, it would be with diminished weight, the undersigned, together with Messrs. Crittenden and Benjamin, addressed a letter to the Department of State, under date of 17th December, 1858, inclosing a communication of our associates in California, asking that, in pursuance of the treaty with Mexico, it would procure from the Government of that country the originals or copies of the documents in the archives of Mexico. This communication was referred to the Attorney General, and after repeatedly and in vain asking an early reply, at the end of four months our request was denied.

We also respectfully addressed the President, proposing, that in order to ascertain the genuineness or falsity of these documents, our Minister in Mexico, Mr. McLane, our Consul at Mexico, and any other disinterested public officer of the United States, should personally examine these documents, and that their certificate should be evidence of the facts stated by them. This, too, was refused.

We also proposed that our Government should themselves select any three citizens of the United States, disinterested, and of high character, who should proceed to the city of Mexico, examine the documents and the proofs for and against their genuineness, and should then proceed to California and give testimony in the cause, and offering, if the Government should desire it, that our clients should pay the expense of the Commission. These propositions were also declined.

The court in California having decided that the general provisions of the Judiciary Act, in relation to the taking of testimony by commission in foreign countries, did not apply to cases arising under the Act of 1851 for adjudicating these claims, in accordance with the views of the Judge giving this opinion, we made application to Congress to extend these general provisions of law, so as to embrace this class of cases, and to enable us to take the testimony of witnesses in the city of Mexico. The law officers of the Government opposed this application on the ground that the success could "only be injurious to the interests of the United States;" and by the influence of the Attorney General and the co-operation of persons representing adverse interests, the application was defeated in the Senate.

The tendency of the course thus pursued by the Attorney General, if not the purpose of that officer, was to defeat a title to valuable property, by the most offensive charges of fraud, and at the same time to prevent the parties thus accused from having the benefit of the testimony which they and their counsel deemed appropriate and fully adequate to show the utter falsity of the imputations.

Two courses only remained to our clients. One was to procure the attendance in California, for the purpose of giving their testimony, of witnesses residing in Mexico, at very great expense, inconvenience and delay. Some of the witnesses to important facts have gone from Mexico to California, and are now in San Francisco, giving their testimony in the cause; others, from age, sickness, or their positive refusal to leave the country for the purpose, still remained in Mexico. In relation to these witnesses, adopting the only other alternative, the undersigned determined to avail themselves of the provisions of the Act of Congress of the 18th August, 1856, in relation to Consuls. The 24th section of that Act provides: "Every Secretary of Legation and consular officer is hereby authorized, whenever he shall be required, or may deem it necessary or proper so to do, at the post, port, place, or within the limits of his legation, consulate, or commercial agency, to administer to or take from any person an oath, affirmation, affidavit, or depo-

sition, and also to perform any notarial act or acts, such as any Notary Public is required or authorized by law to do or perform within the United States, and every such oath, affirmation, affidavit, deposition and notarial act, administered, sworn, affirmed, taken, had or done, by or before any such officer, when certified under his hand and seal of office, shall be as good, valid, effectual, and of like force and effect within the United States, to all intents and purposes, as if such oath, affirmation, affidavit, deposition, or notarial act had been administered, sworn, affirmed, taken, had, or done by or before any other person within the United States, duly authorized and competent thereto."

The Act in the same section also provides that false swearing in such cases shall be punished as perjury, in the same manner as if the oath or deposition was taken in the United States; that the seal of office and signature of the Consul, etc., "shall be admitted in evidence without proof of any such seal or signature being genuine, or of the official character of such person." And the forging of the seal or signature, or offering any document under such forged seal or signature in evidence, is punished by fine and imprisonment. (Sec. 11, Stat. 61.)

It will be seen that this Act, in the most positive terms, confers upon Consuls, etc., the power, and makes it their duty to take depositions, and gives to such depositions, and all other notarial acts, the same force in the United States as if taken before a Notary in this country.

In pursuance of this very Act of Congress, the President, on the 10th of November, 1856, issued a volume of "Regulations and Instructions" to the consular officers of the United States, in which no other instructions are given as to those notarial duties, except in the very language of this section, which is copied at length, (p. 153.) In the summary of the duties pertaining to the office of Consuls, (p. 16,) it is said "they act as Notaries."

The second section of the Act of July 29, 1854, (1st sess. 33d Cong., ch. 159, 10 Stat., p. 315,) is as follows: "That Notaries Public be, and they are hereby authorized to take depositions, and do such other acts in relation to evidence to be used in the Courts of the United States in the same manner and with the same effect as Commissioners to take acknowledgments of bail and affidavits may now lawfully take or do."

The Act of 1st March, 1817, (ch. 30, 2d sess. 14th Cong., 3 Stat., 350,) provides, "That the Commissioners who now are, or hereafter may be appointed by virtue of the Act entitled 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,

are hereby authorized to take affidavits and bail in civil causes, to be used in the several District Courts of the United States, and shall and may exercise all the powers that a justice or judge of any of the Courts of the United States may exercise by virtue of the thirtieth section of the Act entitled 'An Act to establish the judicial Courts of the United States.'" This section of the Judiciary Act of 1789 is the one, as you are aware, which prescribes the mode of taking depositions to be used in the Courts of the United States. Among other provisions of this Act, it is enacted that "when the testimony of any person shall be necessary in any civil cause depending in any district in any Court of the United States, *who shall live at a greater distance from the place of trial than one hundred miles,*" etc., "the deposition of such person may be taken *de bene esse* before any justice or judge of any of the Courts of the United States," etc., "provided that a notification from the magistrate before whom the deposition is to be taken, to the adverse party, to be present at the taking of the same, and to put interrogatories if he think fit, be first made out and served on the adverse party, or his attorney, as either may be nearest, *if either is within one hundred miles of the place of such caption.*" (1 Stat. at Large, 88.)

This Act of 1856 was, of course, of general application, and equally for the benefit of all, and by its terms it was designed to furnish a magistrate or a notary in a foreign country, before whom not only affidavits but *depositions* were to be taken, which the party might "tender in evidence" in the Courts of the United States in the same manner, and the Consul was invested with the same powers that pertained to Notaries Public in the United States. Neither this Act, nor any other Act of Congress, required of us to give any notice in such case to the Attorney General, or to the District Attorney in California, of the time and place of taking the depositions of the witnesses in Mexico, neither being within the hundred miles named in the Act. It was but in the spirit of fairness and courtesy that this notice was volunteered by us. We were aware, too, that the depositions of witnesses would be entitled to and receive greater consideration if taken in the presence of the opposite party and cross-examined, than if taken *ex parte*.

It had not entered into our minds that any person, lawyer or otherwise, would for a moment suppose that it was necessary for us to ask permission of any one in the exercise of our obvious and undoubted right under an Act of Congress; still less that any Attorney General would suppose that a Notary Public, or a Consul acting as a Notary Public, could be instructed by any one as to the case or cases in which he should or should not receive the oath of a witness or take a deposition;

and least of all, that he should advise such a course in a case in which the United States was a party. We therefore supposed that our Minister and Consul in Mexico must have misunderstood the instructions of the Department when we first received information from Mexico on this subject.

The subject is one so plain, not only to any professional man, but to any one of ordinary intelligence, that we should despair of making it clearer by anything that we can say; but respect for the high office of Attorney General of the United States, as well as for the incumbent of that office, requires that we should notice more in detail his unparalleled communication. After referring to the notice which we had given of our intention to take depositions in the two suits in California—one a suit in chancery by the United States, and the other under the Act of 1851, a copy of which he transmitted to the Department of the State—the Attorney General says:

“No officer of the United States can, consistently with his duty, take or have any lot or part in the proposed proceedings. It is not only *illegal and unauthorized*, but it is *wrong and unjust* to the Government. The intent of the opposing party may be fair enough, but the effect of any *sanction* which your Department might give to it would be most injurious.”

Why is it not *consistent with his duty* to perform this notarial act? It is in the very line of his duty as prescribed by law. Is a Consul acting as notary, or any other Notary Public, to sit in judgment as to the parties or subject-matter of a suit, when called upon to take a deposition of a witness to be offered in evidence in such suit, or as to the character of the witnesses, or as to the course which the Court will or ought to pursue as to the admission in evidence of the deposition itself? Does the United States, when a party to a suit in its own courts, occupy any higher or different position as to the taking of testimony than any other suitor? Is it of any importance to a Notary Public, when called upon to administer an oath, or take a deposition, what the opinion of the counsel of the other party may be as to the character of the cause, or of the witnesses, or the future action of the Court; and can such counsel instruct a magistrate or notary, either as to the mode of performing his duties, or wholly to abstain from their performance in a given case? Does the fact that the Government is the opposite party give either it or its counsel any peculiar privileges in such cases? If not, then in this very case, if the counsel opposed to the Attorney General should so far forget themselves as to charge a conspiracy to defraud their clients, and ask the Secretary of State to instruct the Consul not to allow the United States to take any depositions to disprove it, equal justice

would require of him to comply with the request. And in any case where the United States might be a plaintiff in a suit, and respectable opposing counsel should give their *opinion* that the claim was unjust or fraudulent, and that it would not be safe to trust the matter to the courts, in view of the course asked for and pursued in this case, it is very clear that justice would require of the Secretary of State to adopt the same course in order that it should be equal and impartial.

That which is expressly authorized by positive law cannot be "*illegal and unauthorized.*"

Why is it "*wrong and unjust to the Government*" to take the depositions of witnesses to be used in its courts? Are not their courts fully competent in this case, as well as in every other, to determine as to the admissibility and weight of evidence?

If the Government can impeach the witnesses or disprove the facts, which they state they have the same right to do so, in this case, as in any other, the Court will give all the weight to which they are entitled, even to the bold and reckless attacks upon the character of a whole nation from the lips of the Attorney General and his associates. The facts which we propose to prove by each witness are briefly stated. The depositions, when given, will be before the Attorney General; if he can disprove or discredit their statements, he has the same power and the same right in this case as in any other. Should he ask any more? Is it not, on the contrary, "*wrong and unjust*" for the Attorney General to seek to keep from the proper tribunal, which alone is to decide the questions before it, the determination as to the admissibility as well as the weight of evidence which the party may legally present?

What "*sanction*" is given by the Department to depositions taken in the course of official duty by consular officers acting as notaries? Most obviously none whatever.

Why would it "*be most injurious*" to permit the law to take its course, and depositions to be taken? The testimony thus taken would either be admissible or not before the Court. If excluded by the Court it could be "*injurious*" only to those offering it. If decided by the Court to be admissible it would only be injurious to a party, because the truth and facts of the case would be injurious, and because legal and proper evidence is injurious. It may be a *loss* to a party to have the evidence in a case submitted to a Court: it is certainly not an *injury*. If the testimony is improperly excluded from the consideration of the Court, the other party is the one that can justly complain of *injury* and *injustice*.

The Attorney General then proceeds to state the reasons

why the Consul should not perform his notarial duties: that the notice given to him was not in sufficient time; that it should have been to the District Attorney in California; that the compendious statements of the points upon which the witnesses will be called to testify is insufficient; that the Secretary of Legation will not be in Mexico, and the Consul has no authority to take the depositions, and that the depositions can only be taken in California before a Commissioner or Judge of the District Court.

Assuming, which we deny, that there is any weight in these objections, they are, at most, matters of argument to the Court before whom the depositions may be offered in evidence. They are not at all within the cognizance of a Consul acting as a notary. If the objections were made before the Court, they would admit, as we think, of a very ready and satisfactory answer. It would be a waste of time to discuss these propositions before the notary. We do not submit to his jurisdiction over them, nor to that of the counsel of the opposite party, or the Secretary of State. A decision in our favor would not aid us before the Court if the question was there made; a decision against us would not at all effect us when the depositions were offered in evidence. We cannot ask as a favor of the Attorney General for that which is our right, but shall very willingly join him in argument of these or any other matter to the Court before which we may both appear, as the tribunal alone competent to entertain them.

It is quite sufficient for us to say in this stage of the proceedings, that the reasons that led us to advise the taking these depositions, and to present them as admissible evidence before the court, after very careful consideration, are quite satisfactory to ourselves, and to our clients. It is much less important to us whether they are so or not to the Attorney General or his associates.

The Attorney General says: "*We have been beaten* more than once, and *made many narrow escapes* when the contest was carried on within the limits of our own country," etc. He means, we presume, that the Courts of the United States have decided adversely to his own views. It is not a rare occurrence for counsel to complain of the decisions of a court adverse to their clients, but it is certainly quite possible that the court may have been right, and the counsel wrong; at all events it is a very poor reason for this attempt to supersede the functions of a court and illegally to prevent a party from presenting before it the evidence in support of his case. Even if we were satisfied that he was a far more competent and impartial judge of these questions than the highest court in the land, it would furnish no excuse

for attempting to assume their functions. Nor is it only in relation to California titles that the Attorney General has been "beaten" before the courts. If this reason is a good one in relation to one class of cases, it must be as to all; and the necessary result would be, that in all controversies between the Government and an individual, in order to prevent the Attorney General from being "beaten," or subjected to "*many narrow escapes*," the *preliminary* measures as to testimony should be adopted which distinguish the present proceeding. Again: if the *opinion* of the Attorney General is to exercise such controlling influence in this case, that opinion should not only be of superior weight to the opinion of the opposing counsel, but should be infallible. We would, with all humility, respectfully contest both these assumptions.

That it is not infallible, may be inferred from the fact that the claim of the United States to the land, including the mine, which he now considers so plain as not to admit any proof against it, he at one time considered so utterly groundless that he had determined, after many weeks' deliberation, to abandon it without trial, and to relinquish it forever. His experience in that instance should certainly admonish him that, if his opinion was to determine the question, it would be the safest and best course to hear all the proof on both sides, and might well lead him to doubt whether there is any wiser or more just or better mode of forming a correct judgment than by the old-fashioned mode of hearing all the facts and arguments of both parties.

In relation also to the facts in these cases, our opinion is directly opposed to that of the Attorney General, and with greater means of knowledge, because we are informed of important facts which exist, and of which the Attorney General must, we presume, be uninformed; and these we propose to prove, unless that officer and his associates shall succeed in preventing us.

In relation to the gross and offensive charge that the witnesses, whose testimony we seek to obtain, said by him to be twenty in number, are ready to commit deliberate perjury, and that the parties whom we represent are prepared to purchase their false testimony, it is so utterly reckless and gratuitous that we cannot allow it to pass without a few words of comment.

The high personal regard which we entertain for yourself, sir, and for the high office which you hold, as well as feelings of self-respect, will not allow us to characterize these imputations as they deserve. They are made at random, in relation to persons to be called as witnesses, whom the Attorney General has never personally known, and as to a portion of them he had probably, when his letter was written, for the first time heard

their names. We will add, that we are informed and believe their characters for uprightness and integrity are equal to that of any of the high functionaries of this or any other government; and in those courtesies and that high sense of honor and fairness which characterize a gentleman, not their inferiors. Some of these gentlemen are doubtless well known by reputation to yourself, and might have been known by the Attorney General. One of them has been twice Prime Minister of Mexico, and Diplomatic Representative of that nation to the United States and Great Britain; and another occupies the position of the leader of the Mexican bar, and is well known both at home and abroad as a person of the highest reputation, not only for talent, but for integrity and honor. Such vituperation is quite novel in the official communications of our public officers, and most unfit and inexcusable in one from the Attorney General of the United States to the Secretary of State.

The Attorney General closes his communication as follows: "For these reasons, I have to request that you will instruct the diplomatic representatives and consular officers of the United States in Mexico, not to let themselves nor the functions of their offices be used for the unauthorized and illegal purposes mentioned in this notice, but to abstain altogether from any participation therein."

It is scarcely necessary for us to add to what we have already said as to this strange request—so strangely, and, we doubt not, inadvertently complied with by the Department.

If this instruction can be legally given to a Consul in the exercise of his notarial duties under an Act of Congress, it can, with equal propriety, be given to every Notary Public and Magistrate in the District of Columbia, and to every Commissioner of the United States or other public officer authorized by Act of Congress to administer oaths and take depositions, either within or out of the United States. It would be no more clearly a violation of law for the Government, at the instance of the Attorney General, to instruct the Judges of the courts of the United States as to their official duties. This, indeed, could not be done with safety in view of the power exercised by the courts of committing for contempt, nor would it be necessary for the purposes of injustice that the attempt should be made with the courts and judges. That purpose might be as effectually though circuitously attained by depriving the party of one very important means of bringing his testimony before the court.

We are not informed whether this power of dispensing with a positive law or *instructions* to "abstain" from the discharge of the "functions of their offices" is confined to suits in which

the United States is a party. If the power exists, there seems to be no very good reason why any citizen should not have the benefit of it. If it is proper to be exercised for the United States to protect them from the danger attending the submission of their rights to courts of justice, and to prevent those courts from being deceived and misled in their decisions by false testimony in support of fraudulent claims, why should this new and healthful remedy be confined to the Government?

Serious as is the injury which our clients have sustained by this wrongful act committed at the instance of the Attorney General, yet, as a manifest breach of official duty, an assumption of an authority to violate the provisions and render void an Act of Congress, as an open and bold attempt to bring the power of the Government, in violation of law, to defeat the rights of individuals, the matter becomes one of much graver moment. It is, however, with the *private injury* to our clients, and not with these public wrongs, that we are called upon to deal.

We have said that this formal public assertion and exercise of a power in the Executive to dispense with an Act of Congress is without example. We should perhaps modify this statement. It is certainly true, so far as relates to this country. In England, from which we derive much of our law, the power of *dispensing* with Acts of Parliament, and suspending the operation of penal laws, was exercised by Charles the Second. This was the last instance of the exercise of that power in England, and it is not regarded in that country as a precedent to be followed. Macauley says, "It was clear that if this prerogative were without limit, the English Government could scarcely be distinguished from a pure despotism." Again he says, that "it would, if left unchecked, turn the English Government from a limited into an absolute monarchy."

It should be observed, also, that this power was exercised by the British King only in relation to *penal* laws. Even his action did not extend to a law of the nature of the one in question, and cannot therefore be considered as a case in point. Also, that in the case of Charles the suspension was general, and applied to all persons, and the Act, although *arbitrary*, was *equal* in its operation; in the present instance, the power is to be exercised in individual cases, at the discretion of the Attorney General, and only for the benefit of the Government. Macauley also says, "There was an orator who gave it as his opinion that the King might conscientiously dispense with bad laws, but not with good laws. The absurdity of such a distinction it is needless to expose."

The Attorney General does not seem to think that there is any absurdity in allowing *him* to dispense with a good law in

bad cases, the *bad cases* being such according to his *opinion*, and always those in which the Government should be a party, and would in his opinion be *injured* by the execution of the law.

Again the historian says, "Some opponents of the Government complained that the declaration suspended not less than forty statutes. But why not forty as well as one?" The same question may, with the same force, be asked in this instance.

Inasmuch as the Executive Government of England in the time of Charles the Second was obliged to abandon the exercise of this branch of the royal prerogative, and no King has since ventured to claim, much less to exercise it, we apprehend that this precedent will scarcely be relied on, and that it will be neither wise nor safe for the Executive of the United States, at this late day, to attempt the exercise of this power.

In relation to the course which justice to our clients requires should be pursued, we would respectfully say, that it is due to them as their legal right that the instructions given to the Consul should be countermanded, and that he be left at liberty in these cases as in all others, to discharge his duty according to law; and this we respectfully, in their behalf, ask may be done. We very much fear that if such order were now issued, it may come too late to furnish even a partial remedy for the injury that they have sustained, and we deem it proper to say in their behalf, that our clients will hold the Government responsible for any damage which they have already sustained or may sustain from these as well as the other unlawful acts of its officers.

We would also respectfully request that you will cause us to be furnished with a copy of the instructions to, and correspondence with our Minister and Consul in Mexico, so far as they relate to this subject.

The delay in making this communication has been owing to the continued indisposition of one of the undersigned, from the period when you did him the honor to place him in possession of the Attorney General's papers to within the past few days.

We have the honor to be, with high regard,

Your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

Hon. LEWIS CASS,

Secretary of State.

No. 7.

DEPARTMENT OF STATE,
Washington, October 26, 1859.

Hon. REVERDY JOHNSON and
JOHN A. ROCKWELL, *Washington*.

GENTLEMEN: It is with regret that I feel it my duty to return herewith your letter of the 4th instant.

Upon reflection, I think you will agree with me that it ought not to be placed upon the files of this Department.

It contains offensive imputations against the Attorney General in consequence of the course he deemed it proper to pursue in a pending case for the protection of the public interest, and to which his attention had been called by a communication you had sent him.

Should you think it proper to address me an application free from objectionable remarks, I shall consider it immediately, and give you such an answer as it may seem to me to require.

I am, gentlemen, your obedient servant,
LEWIS CASS.

—
No. 8.

WASHINGTON, Sept. 26, 1859.

Hon. LEWIS CASS,
Secretary of State.

SIR: We are desirous of using as evidence before the District and Circuit Courts of the United States in California, in suits depending before those courts in relation to the title and possession of the New Almaden quicksilver mines, the copies, duly certified according to law, of the correspondence which we and our associate counsel, on behalf of parties in possession and claiming to be the owners of the mine, have had with the Secretary of State and the President, including the communication of the Attorney General to the President. The following are the dates and description of the documents of which we ask copies, viz.:

Letter to Hon. Lewis Cass, Secretary of State, dated Washington, 17th December, 1858, signed J. J. Crittenden, Reverdy Johnson, John A. Rockwell, and J. P. Benjamin.

Letter to the Hon. Lewis Cass, Secretary of State, dated San Francisco, California, Nov. 19, 1858, signed Arch'd C. Peachy, Fred. Billings, attorneys for Andres Castillero.

Letter to the President, dated Washington, Jan'y 15, 1859, signed Reverdy Johnson, J. J. Crittenden, John A. Rockwell, J. P. Benjamin.

Letter to the President of the United States, dated Washington, 15th Feb'y, 1859, signed Reverdy Johnson, for Messrs. Crittenden, Benjamin, Rockwell, and himself.

Letter to the President, dated Washington, March 18, 1859, signed Reverdy Johnson and John A. Rockwell.

Letter to the President, dated Washington, March 30, 1859, signed Reverdy Johnson.

Referred to the Attorney General March 31, 1859, signed James Buchanan.

Letter to the President, dated Attorney General's office, March 28, 1859, signed J. S. Black, Attorney General.

Letter to the President, dated Washington, 18th April, 1859, signed Reverdy Johnson, John A. Rockwell.

We inclose a printed copy of a portion of these documents, and if upon examination the printed documents shall be found to contain true copies of these documents, it would equally answer our purpose, if that was certified, instead of the manuscript copy, if it should be more convenient to the Department.

If any fees of office for said copies are usually charged, we shall most cheerfully pay the usual fees.

An early attention to this matter will oblige,

Very respectfully, your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

—
No. 9.

WASHINGTON, Sept. 26, 1859.

The Hon. LEWIS CASS,

Secretary of State.

SIR: We are informed by Messrs. Peachy & Billings, with whom we are associated as counsel in suits pending in California affecting the title and possession of the New Almaden quick-

silver mine, that in the years 1846, 1847, and 1848, Thomas O. Larkin, Esq., who was at the time United States Consul at Monterey, in California, addressed some communication to the Department of State at Washington in relation to the discovery and development of that mine. It has become important for the parties whom we represent, in a controversy in relation to the title to the mine, to avail ourselves, as evidence before the courts, of copies of some of those letters. We would therefore respectfully request that you will cause to be furnished to us copies, duly certified, of the letters of Mr. Larkin to the Department, dated on the 4th May, 1846, and 28th March, 1848, and of any other letters of Mr. Larkin on the subject in the State Department. We shall of course cheerfully pay the usual office fees for such copies, if any are charged.

We would also respectfully request that you will cause to be furnished to us for the same purpose a copy, duly certified, of an article in the number, dated July 25, 1846, of the newspaper "Polynesian," published at Honolulu, in the Sandwich Islands, which contains a letter from Mr. Larkin to Mr. Judd in relation to the quicksilver mine. The copy of the "Polynesian" to which we refer, is contained in a volume in the Department of State, containing the files of the "Polynesian" for 1846, transmitted to and bound up by the order of the Department. We desire a copy of all the papers which constitute the entire article above referred to.

If more convenient to the Department to be relieved from the mechanical labor of making the foregoing copies, we will cause the copies to be made and submitted to the examination of the Department for the appropriate certificate, the documents being furnished to us for that purpose.

Very respectfully, your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

—
No. 10.

WASHINGTON, 10th November, 1859.

HON. LEWIS CASS,
Secretary of State,

SIR: Before answering your official note to us of the 26th of October, returning ours to you of the 4th of that month, we respectfully request a reply to our two notes of the 26th September, 1859, at your earliest convenience. This request is

made at the first moment after both of the undersigned have received yours of the 26th ultimo.

We remain, with great regard, your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL

—
WASHINGTON, December 15, 1859.

SIR: The undersigned, in addition to the correspondence in relation to the New Almaden quicksilver mine of California, which we have had the honor heretofore to communicate to the President, send herewith copies of three letters from the Department of State, under dates respectively of the 27th September, 19th November, and 7th December, 1859; also a copy of a letter from ourselves to the Secretary of State of the 2d December, 1859.

From these letters, in connection with those the copies of which we have heretofore forwarded to the President, it will appear that we asked for certified copies of the correspondence which we have heretofore had with the officers of the Government in relation to the New Almaden mine, in such form as the law prescribes, in order that they be admissible as evidence in court. It will also appear by the reply of the Secretary of State, of the 7th December, and the accompanying certified copies of papers, that copies only have been furnished of three of the letters asked for, viz.: a letter to Hon. Lewis Cass, Secretary of State, dated November 19, 1858, signed by Messrs. Peachy and Billings; a letter to the Secretary of State, of the 17th December, 1858, and signed by ourselves, and Messrs. Crittenden and Benjamin; and a letter to the President, by J. S. Black, Attorney General, dated March 28, 1859.

These three are stated in the Secretary's letter of the 7th December, to be all the letters on file in the Department of State.

As it is important for us to have the whole correspondence properly authenticated, in order to use the same in evidence in the courts of California, we would respectfully ask of the President to cause copies, duly certified, to be furnished us of the following letters addressed to him, viz:

Letter to the President, dated Washington, January 15, 1859, signed Reverdy Johnson, J. J. Crittenden, John A. Rockwell, J. P. Benjamin.

Same, dated Washington, 15th February, 1859, signed Reverdy Johnson, for Messrs. Crittenden, Benjamin, Rockwell, and himself.

Same, dated Washington, March 18, 1859, signed Reverdy Johnson and John A. Rockwell.

Same, dated Washington, March 30, 1859, signed Reverdy Johnson. Referred to the Attorney General, March 31, 1859, signed James Buchanan.

Same, dated April 18, 1859, signed by Reverdy Johnson and John A. Rockwell.

We regret the necessity of troubling the President in relation to these copies, and should not have done so if the letters addressed to the President had been found in the Department of State; and if instead of certified copies of these letters from the Department, where they are deposited, the President will, in a letter under his hand, acknowledge the receipt of these letters at or about their dates, and that the copies are correct, it will be quite satisfactory, as we doubt not that such statement will be by the court deemed quite sufficient evidence to authenticate the copies.

It is the more important for us to have this evidence in one form or the other, as we have received from the President no acknowledgment of the receipt of any of these communications.

In order to avoid the mechanical labor of making copies we send herewith a printed pamphlet, containing, we believe, correct copies of the letters above referred to.

We have the honor to be, very respectfully, your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

To the PRESIDENT OF THE UNITED STATES.

—

DEPARTMENT OF STATE,

Washington, 19th Nov., 1859.

To the HON. REVERDY JOHNSON,

Washington.

SIR: I have received your letter of the 10th instant, and am surprised to learn from it that an answer to neither of your communications of the 26th September had reached you. A copy of the reply which was sent to one of them, bearing date the 27th of that month, is herewith inclosed. If you will send a copy of the pamphlet, the omission of which is referred to, the Department will then take the subject into consideration, and decide upon your request. The letter of the 26th of Sep-

tember, which asks extracts from certain communications from Mr. Larkin, formerly United States Consul at Monterey, in California, was laid by for consideration until the clerk who had charge of those letters could return from a leave of absence. The correspondence of that Consul has now been carefully examined, and I inclose an authenticated extract from all that part of it which refers to the subject of your letter. You are at liberty to copy the publication in the newspaper called the "Polynesian," to which you refer, but this Department cannot with propriety authenticate the transcript.

I have the honor to be, sir,

Your obedient servant,

LEW. CASS.

—

DEPARTMENT OF STATE,

Washington, Sept. 27, 1859.

Hon. REVERDY JOHNSON,

Washington.

SIR: Your communication of yesterday, asking for copies of the correspondence had with the President and Secretary of State by parties in possession and claiming to be owners of the New Almaden quicksilver mines, has been received; but the pamphlet therein referred to does not accompany it.

The legal charge of this Department for copies is at the rate of ten cents per hundred words; but as you suggest that the contents of the printed pamphlet embrace all or nearly all the correspondence you require, if the same be duly certified, it is deemed proper to await further advices from you.

I am, &c.,

JOHN APPLETON,

Assistant Secretary.

—

WASHINGTON, 2d December, 1859.

SIR: Your communication dated the 19th ult., addressed to one of the undersigned, post-marked the 29th, was received on the 30th, together with a copy of a letter dated the 27th September, and certified copies of extracts from letters of Consul Larkin to the Department of State in the year 1846. For these, we are obliged to you; but we regret, because of the delay it occasioned in their receipt, that your letters of the 27th Sep-

tember and 19th November, being answers to joint letters from us, were not, as in previous instances, addressed to both of us, especially as the one to whom they were addressed at Washington was in Baltimore.

And we further regret, that when the Department was informed, by our letter of the 10th November, that we had received no reply to ours of the 26th September, that we should have been subjected to the further delay of being informed only on the 19th November, that ours of the 26th September had been answered on the following day.

In that letter of the 19th November, but, as above stated, post-marked on the 29th, and in the copy now sent us of yours of the 27th September, it is stated that the pamphlet referred to did not accompany our letter of the 26th of the latter month. This is certainly a mistake; the pamphlet, we know, was handed in to the Department with our note, in *one package*, and must have been mislaid since its receipt.

In compliance, however, with your suggestions, we send herewith another copy, and add, that we are ready at any moment, either in advance or otherwise, to pay the fees for the copies we request, on being advised of their amount.

We are informed by a letter received by us yesterday, from our associates in California, Messrs. Peachy and Billings, dated the 4th ult., of Mr. Consul Black having refused "to take the acknowledgment of the widow Barron and others to a letter of attorney, in favor of Mr. William E. Barron," of San Francisco, upon the ground "of executive instructions."

The statutes of California, relative to such instruments, authorize their acknowledgment in foreign countries, before a resident Consul of the United States.

We beg leave to inquire, if this refusal is in obedience to the original instructions, of which you have heretofore obligingly advised us, or of new ones since issued by the Department.

We would also request, that the answer to this note, and the answers to any further communications, may be addressed to us jointly, and at Washington, in order to their receipt at the earliest moment.

We have the honor to be, with great regard,

Your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWEELL.

HON. LEWIS CASS, &c., &c.,

Washington.

DEPARTMENT OF STATE,

Washington, 7th Dec'r, 1859

To Messrs. REVERDY JOHNSON and
JOHN A. ROCKWELL,

Washington.

GENTLEMEN : I have to acknowledge the receipt of your letter of the 2d instant, with the accompanying pamphlet. There is no recollection here that the previous copy to which you refer accompanied your letter of the 26th September. Diligent search was made for it at the time, which having proved fruitless, you were so informed in the letter of the Department of the 27th of that month. All the letters on file in this Department, contained in the pamphlet, have been compared with the originals, and the certificate of the Department authenticating them, and attached to the pamphlet itself, is herewith inclosed.

No instruction, respecting testimony in the case to which you refer, has been given to any United States officer in Mexico, except the one to Mr. McLane, of which you have already been apprised.

I am, Gentlemen,

Your most obedient servant,

LEW. CASS.

—

WASHINGTON, 17th December, 1859.

GENTLEMEN : I have received your favor of the 15th instant, requesting me to furnish you copies of certain letters addressed to myself concerning the New Almaden quicksilver mine of California. After a thorough and careful search by my private secretary, he has not found any of these letters among my papers. The letter of the 15th January, 1859, was, on the 18th January, 1859, according to the register kept by Mr. Magill, my former acting private secretary, referred to the Attorney General, and the words "Attorney General" are indorsed upon it in his handwriting.

I regret that there should have been any apparent want of courtesy towards gentlemen whom I so highly esteem, in not answering your letters ; but having determined from the beginning not to interfere with the Attorney General in the performance of his professional duties, either in the New Almaden or any other case, I deemed it proper to send your communica-

tions to his office for his consideration. If in the novel and unfounded claim of converting the President into an appellate jurisdiction, from the decisions of the heads of departments in all cases where interested parties consider themselves aggrieved, I should undertake to direct the Attorney General in what manner he shall conduct suits in which the interests of the United States are involved, I should have no time left to devote to the important business of my office.

I doubt not but that I have referred your other letters to the Attorney General, though I have no recollection of the fact, nor is any notice taken of them on the register. I shall have a very careful search made for them in his office; and if found, I shall immediately cause you to be informed of it.

Yours, very respectfully,

JAMES BUCHANAN.

REVERDY JOHNSON and
JOHN A. ROCKWELL, Esqs.

P. S. Since writing the above, the letter of the 15th February has been found in the Attorney General's office.

—

WASHINGTON, December 23d, 1859.

SIR: We have the honor to acknowledge the receipt of the letter of the President of the 17th instant, and would express to him our thanks for the kind and courteous terms of that letter in relation to ourselves personally.

With regard to the communications which we have heretofore made to the President on this subject, we beg leave to say that by referring to the correspondence, it will appear that the object of the letter of ourselves and Messrs. Crittenden and Benjamin, of the 17th December, 1858, to the Secretary of State, and of the inclosed letter of Messrs. Peachy and Billings, of the 19th November, 1858, to that officer, was to obtain through our Government, from Mexico, the execution of the treaty of Guadalupe Hidalgo, so far as it related to the rights and interests of our clients; and as the application, if granted, would involve diplomatic correspondence with Mexico, it was, as we supposed, for that reason, as well as from the very nature of the communication, appropriately addressed to the Secretary of State.

In relation to the instructions which were given by the Secretary of State through Mr. McLane to Mr. Consul Black in Mexico, not to take the depositions of witnesses in these cases,

although those instructions were given at the request of the Attorney General, they were issued by the Secretary himself.

With regard to the foregoing and various other matters shown by the correspondence which pertain to the Department of State, the undersigned supposed, not only that the letters were very appropriately addressed to that Department, but that it was eminently proper for us to ask the interposition of the President, especially where questions were presented of so very grave a character.

In addition to these considerations, which, we submit, involved no interference by the President with the Attorney General, in the ordinary discharge of his official duties, the undersigned were aware that the President had in another branch of the controversy growing out of the title to this mine, in which the United States was a party, interposed, to secure at the same time the rights of the United States and justice to all parties, and we had no reason to doubt that he would do so in the present case, not only in view of the large amount in controversy, but of the seriousness and public nature of the questions involved.

As, however, we are now informed by the President, for the first time, that we are in error in these views, and that he regards our appeal to him as irregular, we shall of course yield to his opinion on this point, and no further trouble him by communications in behalf of our clients. We only regret that we should not have been informed of these views of the President when we forwarded to him our first letter of the 15th January, 1859, as it would have saved the President from the annoyance of our subsequent letters, ourselves from the trouble of writing them, and our clients from the serious pecuniary damage arising from delay.

We have not received (doubtless through inadvertence) an acknowledgment of the receipt of our letter to the President of the 29th November, 1859, and would respectfully request of him, that he would cause such acknowledgment to be forwarded to us.

Sincerely reciprocating the sentiments of esteem expressed for us by the President,

We are, very respectfully, your obedient servants,

REVERDY JOHNSON,
JOHN A. ROCKWELL.

To the PRESIDENT OF THE UNITED STATES.

U. S. DISTRICT COURT.

THE UNITED STATES }
 v. } No. 420.
 ANDRES CASTILLERO. }

It is hereby stipulated and agreed that the within "Exhibit Castillero No. 3, J. B. W." (Correspondence with the United States Government), be filed on behalf of the claimant, subject to all legal exceptions.

San Francisco, Sept. 12, 1860.

EDMUND RANDOPH,
 Asst. Counsel for U. S.

REVERDY JOHNSON,
 For Claimants.

Filed Sept. 13th, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF FREDERIC H. LARKIN.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 14th day of August, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Frederic H. Larkin, a witness produced in behalf of the claimant in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: A. C. Peachy, Esq., of counsel for claimant; E. Randolph, Esq., for the United States.

Questions in behalf of the claimant.

QUESTION 1st. State your name, age, and residence.

ANSWER. Frederic H. Larkin; age 23; residence San Francisco.

Q. 2. You are the son of the late Thomas O. Larkin, of San Francisco, who was formerly United States Consul at Monterey, are you not?

A. I am. I am one of the executors of my late father.

Q. 3. Examine the book now shown you; state in whose custody it is, and what it relates.

A. It is in my custody; it belonged to my father. I brought it here, and it appears to be an account and memorandum book, containing, among other things, the arrival and departure of certain vessels at and from Monterey.

Q. 4. Please examine the memorandum in this book of the 12th February, 1846, and state what you find opposite to that date.

A. I find the words "Brig Hannah, from Mazatlan."

Q. 5. Now examine the memorandum or note opposite the date of 7th March, 1846, and state what it is.

A. I find the words, "Brig Hannah, for Mazatlan."

Q. 6. You find in this book also, do you not, various memoranda of the arrival and departure of vessels at and from Monterey?

A. I do.

Q. 7. Here is a letter produced by yourself, dated "Treasury Office, Honolulu, Oahu, 20th July, 1846," signed "G. P. Judd," and addressed to "Thomas O. Larkin, Esq., U. S. Consul, &c., &c., &c., Monterey." Where did you obtain this letter?

A. I found it filed away among my father's papers.

Q. 8. Will you permit me to file this letter as an Exhibit to your deposition in this case?

A. I will.

[The letter is thereupon filed as "Exhibit Larkin No. 1," to this deposition.]

Q. 9. And here is another letter which you have produced, dated "U. S. Portsmouth, Port of Mazatlan, 1st April, 1846," addressed to "T. O. Larkin, Esq., Monterey," and signed Mott, Talbot & Co.; where did you obtain this letter, and will you permit me to file it also as an exhibit to your deposition?

A. I obtained this letter from the same file as the former. I permit it to be filed as an Exhibit.

[The letter is thereupon filed as "Exhibit Larkin, No. 2," to this deposition.]

Examination adjourned.

JNO. B. WILLIAMS,
U. S. Commissioner.

—
SAN FRANCISCO, Sept. 18th, 1860.

Examination closed.

FREDERIC H. LARKIN.

Sworn to and subscribed before me this 18th day of Sept., A. D. 1860.

JOHN B. WILLIAMS,
U. S. Commissioner.

Filed Sept. 18, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT LARKIN No. 1, J. B. W.

TREASURY OFFICE, HONOLULU, }
 OAHU, 20th July, 1846. }

SIR: I have the honor to acknowledge receipt of your letter per bark "Angola," of the 24th ulto., together with a specimen of California quicksilver ore.

I thank you sincerely for your kind attention in sending me the specimen, as well as the very interesting particulars relative to the mine.

I am happy in thinking that this is but the beginning of discoveries which will tend to make California a valuable country.

My onerous duties as His Majesty's Minister of Finance, will not permit me to assay the ore in order to test its quality, as I might do if still in practice as a medical man.

I have sent your letter to the editor of the "Polynesian" for insertion, and have no doubt it will be found as interesting to others as it has been to me.

I beg to assure you that I shall always be happy to receive information on any subject of interest connected with California, whenever it may suit your convenience to favor me.

I am, sir, your obedient servant,

G. P. JUDD.

Thomas O. Larkin, Esq.,

U. S. Consul, &c., &c., &c., Monterey.

[Endorsed.]

G. P. Judd, July 20th, 1846, S. Islands.

EXHIBIT LARKIN No. 2, J. B. W.

U. S. PORTSMOUTH, }
 Port of Mazatlan, 1st April, 1846. }

T. O. LARKIN, Esq.,

Monterey.

DEAR SIR: It has been hinted to us that this ship is bound to Monterey, and although the fact is doubtful, we avail of the chance to acknowledge receipt of your much valued favors of the 2d, 4th and 5th ult., the former enclosing a remittance of a Russian Bill for \$2000 for account of Mr. A. B. Thompson.

Your letters have this moment reached us per "Hannah," and we are much obliged for their contents. You were correct in supposing that the destination of this vessel when she sailed from this, was not known to us. We have only time to return you our sincere thanks for your kindness in collecting the debt of Mr. Thompson, which we frankly confess we had written off as lost. We are also much obliged for the fruit, which however, as the Hannah has just anchored, we have not yet received.

The expedition for California will never land, as the government are entirely without resources; but of this and other news we refer you to our good friends of the "Portsmouth," and trusting to find soon a more certain opportunity to write more at length, we remain,

Dear sir, your most obd't servant,

MOTT, TALBOT & CO.

[Endorsed.]

Messrs. Mott, Talbot & Co., April 1st, 1846.

DEPOSITION OF WILLIAM HOOPER.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 24th day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared William Hooper, a witness produced in behalf of the claimant in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present : A. C. Peachy, Esq., for claimant, and Edmund Randolph, Esq., for the United States.

Questions in behalf of the claimant.

QUESTION 1. State your name, age, residence and occupation.

ANSWER. William Hooper, age 50, residence San Francisco; occupation, one of the Commissioners of the Funded Debt.

Q. 2. Please examine "Exhibit Larkin No. 2," attached to the deposition of Frederic H. Larkin, heretofore taken in this case, purporting to be a letter from Mott, Talbot & Co., to T. O. Larkin Esq., Monterey, dated April 1, 1846, and state if you know in whose handwriting is the body of and signature to said letter?

A. In my opinion, this letter was written by Capt. Mott, of the house of Mott, Talbot & Co. of Mazatlan, Mexico.

Q. 3. Please state your means of knowledge upon which you found the opinion expressed in your last answer.

A. As U. S. Consul and a merchant at the Sandwich Islands, from 1840 to 1845, I was in the habit of occasionally receiving letters from the house of Mott, Talbot & Co.; and I also had a personal and intimate acquaintance with Capt. Mott, at the

Islands, about the year 1840, and in San Francisco from 1849 to 1856-7.

I have frequently seen him write, and have received letters from him. He and myself roomed together in San Francisco for some months.

CROSS-EXAMINATION.

Questions by Mr. Randolph.

Q. 4. Did you ever see Capt. Mott write the firm name?

A. I have no recollection of ever having seen him write the firm name.

Examination closed.

WM. HOOPER.

Sworn to and subscribed before me this 24th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed Sept. 18th, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF C. E. HITCHCOCK.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
v. } In Land Cases: Dist. Court No. 420,
 ANDRES CASTILLERO. } Land Com. No. 366.

Be it remembered, that on this 24th day of August, A. D. 1860, at San Francisco in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Charles E. Hitchcock, a witness produced in behalf of the claimant in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Frederick Billings, Esq., for claimant, and E. Randolph, Esq., for United States.

Questions in behalf of the claimant.

QUESTION 1. Are you the same Mr. Hitchcock who has heretofore been examined in this case?

ANSWER. I am.

Q. 2. Please examine "Exhibit Larkin No. 1," attached to the deposition of Frederic H. Larkin, heretofore taken in this case, purporting to be a letter from G. P. Judd, dated Treasury Office, Honolulu, Oahu, 20th July, 1846, to Thomas O. Larkin, Esq., U. S. Consul, etc., etc., Monterey, and state if you know in whose handwriting is the body of and signature to said letter.

A. I do. The body of the letter is in the handwriting of G. M. Robertson, at the date of the letter clerk in the Treasury Office, and now a Judge of one of the courts in Honolulu. The signature to the letter is the genuine signature of G. P. Judd, the Minister of Finance of the Hawaiian Government, and now agent of the American Guano Company at Honolulu.

Q. 3. State your means of knowledge on which you found the opinion expressed in your last answer.

A. I lived in Honolulu from 1845 to 1848, and was then well acquainted with Mr. Robertson, and have frequently seen him write. I have received many letters from him, and am well acquainted with his handwriting. During the same period I was intimately acquainted with Dr. Judd, and in the habit of receiving frequent communications from him in writing. I have letters from him in my possession, and have seen him write his name frequently.

Examination closed.

CHARLES E. HITCHCOCK.

Sworn to and subscribed before me, this 24th day of August,
A. D. 1860,

JNO. B. WILLIAMS,
U. S. Commissioner.

Filed Sept. 18, 1860.

W. H. CHEVERS, Clerk.

DEPOSITION OF J. P. BENJAMIN.

IN THE DISTRICT COURT OF THE UNITED STATES, }
 For the Northern District of California. }

THE UNITED STATES }
vs. } In Land Cases; District Court No. 420,
 ANDRES CASTILLERO. } Land Commission No. 366.

Be it remembered, that on this 12th day of September, A. D. 1860, at San Francisco, in the District aforesaid, before me, John B. Williams, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared J. P. Benjamin, a witness produced in behalf of the claimant in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Fred'k Billings, Esq., and Reverdy Johnson, Esq., for claimant; and Edmund Randolph, Esq., for the United States.

Questions in behalf of the claimant.

QUESTION 1st. State your name, age, and residence.

ANSWER. J. P. Benjamin, forty-nine years, residence New Orleans.

Q. 2. Examine "Exhibit Bassoco No. 3, O. II," on file in this case, purporting to be a printed copy of the Report of Lafragua, Minister of Relations, to the Mexican Congress, from which extracts appear in the printed transcript of the record in this case, on pages 1356, 1357, and 1358, and state if you have a duplicate of said Exhibit; and if you have, please produce it and state when it first came into your possession, under what circumstances you received it, and from whom; and when, if ever, you parted with it, and to whom and for what.

A. I have looked at the said Exhibit, and state in reply that some time in the fall of the year 1849 I was in possession of the volume now produced (Lafragua's Report, printed in Mexico at the office of Vicente Garcia Torres), which on examination I find to be a duplicate of "Exhibit Bassoco No. 3," and which

had been forwarded from the City of Mexico to Don José Garay, and was by him delivered to me, with marginal ink marks at pages 6, 81, and 82. The pages thus marked had reference to the Garay grant of the right of way across the Isthmus of Tehuantepec. It was furnished me for the purpose of proving the legality and validity of that grant, about which doubts had been raised in the United States. I was chairman of a sub-committee of the citizens of New Orleans, who had held a public meeting for the purpose of devising means of securing possession of that grant, and of diverting the trade and travel between the Atlantic and Pacific coasts from New York to New Orleans. I was charged with the duty of investigating the title. I cannot recollect at what date the volume was given me by Mr. Garay. I had an impression, a strong impression, that I received it early in 1848, but subsequent reflection, and reference to the date of the meeting in New Orleans, has shaken that impression, and I am not certain that I received it before 1849, nor earlier than the fall of 1849. I received at the same time from Mr. Garay a number of other pamphlets and books in reference to the Tehuantepec grant.

About two years ago, Mr. Rockwell, one of the counsel of the claimants of the New Almaden mine, called on me in Washington for the purpose of explaining their case, and of engaging my services as associate counsel. I had received a letter from Messrs. Goodhue & Co., of New York, proposing to engage me, and informing me that Mr. Rockwell would call on me for the purpose above mentioned. In the course of Mr. Rockwell's explanations he spoke of an official report of Mr. Lafragua, made to the Mexican Congress, as containing in his opinion conclusive proof of the validity of the claimant's title. I thought from his description that I recognized the volume in my possession as the one referred to, and stepped into an adjoining room and brought out the volume. We examined it together, and found that it contained the passages about the discovery of the mine and the grants to Castillero of which Mr. Rockwell had been speaking. I had not at that time opened the volume for several years, nor was I aware that there was any thing in it on the subject of the mine, having previously looked through it solely in search of such historical and political facts as had any bearing on the Isthmus of Tehuantepec and the validity of the Garay grant. At Mr. Rockwell's request I allowed him to keep the volume, and he subsequently had a certificate attached to the book, signed by Mr. Mata, the Mexican Minister in Washington.

Prior to the delivery of the volume to Mr. Rockwell, I had, on one and perhaps on two occasions, lent the volume for a

few days to Hon. Wm. M. Burwell, of Virginia, who was engaged also in forwarding the success of the Tehuantepec enterprise, for the purpose of reference in writing articles and pamphlets on that subject. Some of the pencil marginal notes are, I think, in the handwriting of Mr. Burwell.

When I reached New York last July, on my way to San Francisco, Mr. William E. Barron, of whom I inquired what Mr. Rockwell had done with the volume, told me he had it in his trunk; that Mr. Rockwell had given it to him to be returned to me; and on arrival at San Francisco Mr. Barron took it from his trunk and delivered it to me.

Mr. Rockwell lives in Washington. Mr. Wm. E. Barron lives in San Francisco, and is the same person who is agent of the claimants, and one of the members of the New Almaden Company.

Q. 3. Your attention is called to the passages in said "Exhibit Bassoco No. 3, O. H.," copies of which appear in the printed record of this case on pages 1356-7-8; are these passages also to be found in the volume you have produced, referred to in your preceding answer, in the same words, on the same pages, and exactly in the same position and connection?

A. The passages referred to in "Exhibit Bassoco No. 3, O. H." and in the volume produced by me, I have just examined, and find them to be identical in every respect; but in the printed record of this cause, on pages 1357-8, where those passages appear, there are two or three errors, which, however, do not vary the sense from that of the original.

[The volume produced by the witness is now offered in evidence by the attorney for the claimant, and is marked by the commissioner, "Exhibit J. P. Benjamin No. 1, J. B. W."]

The attorney for the United States objects to the admission of said Exhibit as evidence, on the ground that it has not been duly proved.

It is agreed by the attorneys for the respective parties, that the passages from "Exhibit Bassoco No. 3, O. H." as the same appear in the printed record, on pages 1356-7-8, shall also be printed in that record as the passages referred to in "Exhibit J. P. Benjamin No. 1, J. B. W.;" but that the entire Exhibits may be read at the hearing in the District Court, and the original Exhibits used as a whole in the Supreme Court of the United States should the cause be appealed.

JNO. B. WILLIAMS,
U. S. Commissioner.]

CROSS-EXAMINATION.

Questions by Mr. Randolph.

Q. 4. Can you fix the date of that meeting in New Orleans?

A. It was in the fall of 1849, I think.

Q. 5. You say that you have referred to the date of that meeting; have you referred to any contemporaneous writing?

A. I have refreshed my memory by referring to a publication written by Mr. Ramirez in defense of the Mexican Government in relation to the Garay grant, in which he refers to this meeting as having taken place in 1849. Mr. Ramirez, I believe, was acting as Minister of Foreign Relations. It is that publication which has shaken the impression I previously had that I had received the book in 1848. It was just before or just after that meeting that I got the book, I cannot say which.

Q. 6. How do you satisfy yourself that that meeting was in 1849; that the date mentioned by Ramirez is correct; and might it not have been in 1850?

A. It could not have been in 1850, because I corresponded with General Taylor when he was President, for the purpose of obtaining a leave of absence for Major Barnard of the Engineer corps, in order that he might make the survey of the Isthmus for us. This correspondence took place after the meeting, and in furtherance of its objects. I was one of the citizens of Louisiana who escorted General Taylor to Washington, at his inauguration. The correspondence took place after the inauguration, and after I had returned from Washington to New Orleans. The meeting was held in the fall of the year, and General Taylor was not living in the fall of 1850.

Q. 7. In what month did that meeting take place?

A. I cannot remember; but Mr. Ramirez' book says in October, 1849. My memory for dates is not good.

Q. 8. Do you know how long after the meeting the correspondence referred to was commenced, and how long it continued?

A. It began in the spring of 1850, some months after the meeting, and continued for a few months.

Q. 9. Are you absolutely certain that you had received this volume from Mexico before you commenced this correspondence?

A. I am; for we made the examination of the title, as far as the means in our power would extend, before we took steps for having the survey made, and I know that this volume was one of the first evidences of title placed in my hands. The first step we took towards a survey was the correspondence referred to, which was commenced for the purpose of securing the services of Major Barnard.

Q. 10. From the whole of your statement it seems to me to result, that you got this volume between the date of the public meeting at which you were appointed chairman of a sub-committee, and the commencement of that correspondence?

A. It is impossible for me to say now whether I received the volume just before or just after that meeting. I had gone to Mobile, where Mr. Garay had just arrived on a steamer belonging to a line which then connected with New Orleans *via* Mobile, and there had a conversation with him and obtained from him a great deal of the information which I afterwards used at that public meeting; and I think it was on that visit I received this volume, together with some other publications. Still, I am not certain but I may have received the volume a day or two after that meeting.

Q. 11. Is it at all possible for you to swear that you received this volume at any particular date during the time you were considering the Garay title?

A. It is; for I know this volume was one of my main reliances from the beginning.

Q. 12. Are you at all certain that you got this book from Garay?

A. I am certain of it. I had no other source to get it from. It was handed to me by him, and when I received it it had in it the ink marks referred to in my direct examination.

Q. 12. *a.* Of course you mean that there were marks at those passages, and not that you identify the marks themselves?

A. I cannot identify the marks, of course. If a duplicate volume were presented to me similarly marked I could not identify them.

Q. 13. About what time were you done with the book for the purposes you have mentioned; what did you then do with it, and what became of it?

A. I continued to use the book for some years in the correspondence which ensued in relation to the treaties between the United States and Mexico on the subject of the Garay grant and right of way. I wrote arguments and pamphlets in support of the title, corresponded with Mr. Webster and Mr. Conrad—then members of our cabinet—and with Mr. Letcher, our Minister at Mexico; and was in constant use of this volume for references on that subject. The volume was kept in a paper-case, in my office in New Orleans, exclusively devoted to Tehuantepec business, and I took it, with all important Tehuantepec business, with me to Washington, where it was kept in a paper-case in a room adjoining my library. On my election to the United States Senate, I carried a portion of my law-library and a number of documents and papers, including the Tehuan-

tepec papers, with me to Washington. This removal took place in November, 1853. Whilst in Washington the volume remained in that paper-case, with the exception of one or more occasions before referred to, when loaned to Mr. Burwell, who borrowed it, as before stated, during the first two or three years following the removal of the book to Washington. When Mr. Burwell borrowed the book he always returned it to me within a few days. The book then remained in my office until I delivered it, as before mentioned, to Mr. Rockwell.

Q. 14. Was not the room adjoining your library, where that paper-case was kept, a part of your business or law office in Washington, or accessible at all times to your friends, clients, and visitors; and was not the paper-case kept unlocked?

A. It was. The room was in the second story of my house, and was always accessible to those who called on me. Neither the room nor the paper-case were kept locked.

Q. 15. When Mr. Burwell had the book, I suppose you don't know, of course, where he kept it, and whether it was not circulated about Washington in the hands of any persons who might feel an interest in its contents?

A. Certainly not; I know nothing on that subject.

Q. 16. During the time you were studying the Garay title did you pay any serious attention to this volume; did you study it?

A. I studied carefully those parts of it which in my judgment could be at all useful in vindicating the validity of the Garay grant; especially those portions which gave a history of the successive changes of the different administrations and revolutions in Mexico.

Q. 17. Did it not strike you with a great deal of surprise that you should find conclusive proof of the New Almaden titles—as Mr. Rockwell considered it—in the same volume on which you mainly relied to establish the Garay title, and that all this while you had not observed anything on that subject?

A. It did not, because Mr. Rockwell had previously told me what was in Lafragua's volume, and we only looked at it to see if it was the same volume we had been speaking of; and it is not at all surprising that I had never seen anything in it in relation to the quicksilver mine, for I would be unable even now to say what the volume contains on any given subject, except those of the New Almaden and Tehuantepec. At the time Mr. Rockwell and myself first looked at the volume, I had not read it for years, and knew little or nothing with regard to the controversy respecting New Almaden.

Q. 18. At the time Mr. Rockwell called your attention to it, and upon examination, you for the first time discovered that it

contained passages on the subject of the quicksilver mine; did you copy those passages, or take any other means of impressing them on your recollection?

A. I did not. Mr. Rockwell seemed pleased that I had a copy of the book, and begged me to let him take it, and I let him do so, as it might be useful to his clients. I had then not been retained, but was immediately afterwards.

Q. 19. Fix, if you please, as exactly as you can, the date when this happened.

A. This occurred a few weeks before Mr. Rockwell, Mr. Crittenden, Mr. Johnson and myself gave a written opinion to Messrs. Goodhue & Co. relative to the title, which opinion was published in the newspapers almost immediately afterwards.

Q. 20. When did you next see this book?

A. In Washington, after I gave it to Mr. Rockwell—I can't remember when—he showed it to me one day with the certificate annexed to it, and not again until I saw it in San Francisco, as before stated.

Q. 21. It was then nearly two years after the book went out of your possession, that you received it again in San Francisco from Mr. William E. Barron?

A. About eighteen months, as near as I can judge.

Q. 22. At the moment that you delivered the book to Mr. Rockwell, I understand you were not yet retained as counsel in the case?

A. Not yet. An offer had been made to me, but no agreement concluded.

Q. 23. You were not then as well informed of the points most contested on the validity of this title as you are now?

A. By no means. I only knew generally that the title was attacked as fraudulent and ante-dated.

Q. 24. Did you make any list of the number of passages in the book which went to prove this title, and the pages on which they are to be found?

A. I made no memorandum whatever in relation to it.

Q. 25. How would it be possible, under these circumstances, for you now to identify the words, the tenor, and the effect of the passages which were in the book at the time when you gave it to Mr. Rockwell, and be enabled to exclude the possibility of any substitution or change during the eighteen months which elapsed before the volume was returned to you by Mr. William E. Barron in this city?

A. If the passages referred to were presented me in writing or print, or in any other volume than the one now produced by me, I would be unable to say anything further than that they corresponded generally with my recollection; but the

general appearance of the volume itself, my frequent use of it, satisfy me beyond all reasonable doubt that it is the same volume I had so long in my possession; yet I will not state that a substitution or change is an absolute impossibility.

Q. 26. Will you please look at the volume produced by you, and refer to the passages which have been offered in evidence in this case by the claimant, viz., those parts of the Lafragua Report and Appendix which are relied upon as supporting the Castellero title, and say whether on these pages there are any marks upon the margin, or elsewhere, made by yourself; and if yea, at what time made?

A. At page 65 there is a pencil mark on the margin; another at page 136; another at page 146: of these three passages the first only is pencil-marked by me, but cannot recollect when I did it; I think recently, since I have been in San Francisco.

Q. 27. Refer to the same papers in the same book, and say whether there are any marks made by yourself, before you delivered the volume to Mr. Rockwell, to be found on any of the pages comprised in the same signatures (which are the marks used by printers to show the number of pages printed on any single sheet of paper, and which marks are always placed at the bottom of the first page) which contain those passages respectively.

A. There are none.

Q. 28. Can you tell me what difficulty there would have been during the eighteen months which elapsed, after you delivered the volume to Mr. Rockwell, and before it was returned to you by Mr. William E. Barron, in taking out of that volume any one or all of the signatures containing those passages and substituting other signatures in their places; and if such a thing had been done, what means you would now have to detect the change.

A. I only say on this subject, that without knowing anything of the printer's or binder's art, it appears to me to be almost an impossible feat: from the color of the paper which has become yellowed by age, and of which the tinge appears to be exactly the same throughout, the texture of the paper and the looks of the print, I don't believe anybody could do it.

Q. 29. As to the color of this paper, you are of course unable to say to what extent it is the color, etc., it had when manufactured, and to what extent it derives it from age?

A. I have no knowledge on this subject, except that derived from my familiarity with old books.

Q. 30. Further than such circumstances as these of the color, texture, etc., of the paper, and the difficulties in the way of

printers and bookbinders taking out signatures from volumes, and putting other signatures in their places, do you know of any guaranty other than the mere integrity of the persons who had this book in their hands since it went out of your possession, that there has been neither substitution nor change in these passages, considered so important by the persons who have been keeping the volume?

A. I cannot be supposed to know the extent to which the art of the forger and counterfeiter has gone; what I mean to say is, that I have no other means of ascertaining the impossibility of such substitution than the appearance of the book itself, whilst at the same time I have full confidence in the integrity of both Mr. Rockwell and Mr. Barron.

Q. 31. If all this book had been in manuscript at the time you gave it to Mr. Rockwell, and when eighteen months afterwards returned to you by Mr. Barron, and you had no more knowledge of the words, tenor and effect of the passages relied on than you have testified to, and no recollection of the handwriting, would it not in that case come with as much conviction to your mind as this book comes now, that there has been neither substitution nor alteration during the time it was out of your possession?

A. I don't think the state of facts supposed by this question is possible. I could not have a manuscript volume in my possession a number of years, and refer to it frequently and study it, without becoming familiar with the handwriting. If it were composed of different parts in different handwritings, I would become familiar, of course, only with that part to which I was in the habit of referring, and would recognize that part alone; but this seems to me to be printed throughout with the same kind of type, with variations of course in size, according to the nature of its contents; and those portions to which my attention has been directed present to me, unlearned in the art, no appreciable difference from the pages which precede and follow. All I can say is, in general terms, that the volume appears to me to be the same, in all its parts, as the one I delivered to Mr. Rockwell; that I have no doubt of it myself; but cannot undertake to say that a substitution by an artful forger could not have been made, nor that there was not time enough to have done so.

Q. 32. Do you not observe that as you cannot swear to the words, tenor or effect of the passages which went out of your possession eighteen months ago, that your conviction that they are the same passages which now come back into your possession, depends entirely on your opinion (unlearned in such matters) of the difficulties in the way of printers and book-binders,

and on your full belief in the integrity of the interested parties who have had the custody of the volume?

A. Certainly.

DIRECT EXAMINATION RESUMED.

Q. 33. Do you not recognize in the extracts from the book, substantially in tenor and effect, the passages to which your attention was directed at the time you first brought out the book to Mr. Rockwell; and if so, is not that another ground of identification?

A. What I remember is this—that in the volume, as Mr. Rockwell and I saw it together, there was a relation of the discovery of the mine of Castellero, its richness, and of some arrangements having been made between him and some government officers about it, and of course the fact that this relation and these papers are found in this volume is one of the grounds of my recognition; but my recollection of the contents of the volume on that subject would never suffice of itself to enable me to identify it with any certainty, unless accompanied by my familiarity with its general appearance, with those parts especially referring to the Tehuantepec grant, and with the other considerations mentioned in question 32d.

CROSS-EXAMINATION RESUMED.

Q. 34. Are you able clearly to distinguish at this day between the impressions which you may retain of what you and Mr. Rockwell saw in the volume together, when you gave it to him eighteen months ago, and those impressions which you may have received more recently?

And at the same time, as you have spoken of book-binders, please say whether this volume is not and always has been an unbound volume, a collection of sheets stitched together after the fashion of a pamphlet?

A. I am able to distinguish those impressions to this extent: I remember being exceedingly struck with the richness of the ore, and remember coming to the conclusion that the passages contained in the book were totally irreconcilable with a theory which I was told was the theory of attack on the titles: to wit, that they had been forged and ante-dated. Further than this, I will not undertake to distinguish my impressions.

As regards the question whether the book is a bound volume or not, it would be usually termed unbound. It is stitched together, and the backs of the sheets glued together, but it had no other cover than a paper one, of which cover nothing now remains but a portion on the back.

Q. 35. You speak of coming to a conclusion as to the incom-

patibility of what you saw, and what was represented to you by Mr. Rockwell; you mean of course a mere first impression which a man gathers from the statement of a third person upon an entirely new subject?

A. I mean this: Mr. Rockwell told me that the titles produced by the owners of the mine corresponded exactly in dates and contents with the statements in that book. The passages in the book therefore were utterly irreconcilable with the theory of fraud and ante-dating. Mr. Rockwell did not produce the titles before me, and consequently I made no comparison.

J. P. BENJAMIN.

Sworn to and subscribed before me, this 13th day of September, A. D. 1860,

JOHN B. WILLIAMS,
U. S. Commissioner.

Filed Sept. 18, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT J. P. BENJAMIN, No. 1, J. B. W.

EXTRACTOS de Memoria de la primera Secretaria de Estado y del despacho de Relaciones Interiores y Exteriores de los Estados Unidos-Mexicanos, leida al soberano congreso constituyente en los dias 14, 15, y 16 de Diciembre de 1846, por el ministro del ramo, C. Jose Maria Lafragua. Mexico: 1847. Imprenta de Vicente G. Torres. 1847.

[Page 65.]

* * “En el Estado de San Luis Potosi, se hallen en proporcion los metales que se benefician, y el azogue que se extrae, y en la alta California se ha descubierto un criadero, cuya ley sobrepaja á la de la mejor mina que se conoce, la de Almaden, la cual no produce mas de un trece por ciento, cuando la nuestra, en los ensayos practicados en el Colegio de Minería de esta Capital, sube á un treinta y cinco y medio por ciento.” *

[Page 66.]

* * “Yo recomiendo al soberano congreso que fije su atencion en este ramo, haciendo de la explotacion de nuestro azogue, una verdadera empresa nacional, cuya importancia no se puede encarecer demasiado, bien sea creando un fondo, ó bien dictando otras medidas oportunas.” * *

Num. 52.

(Page 64.)

“SECRETARIA DE LA JUNTA DE
FOMENTO ADMINISTRATIVA DE MINERIA. } ”

Exmo. Señor:—En cumplimiento de la superior orden de V. E. de 3 del presente, contraida á que esta Junta le dé cuenta de los asuntos confiados á su cuidado desde la época en que lo hizo en el año de 1845, y del estado que guardan actualmente, con el objeto de tenerlos á la vista, al hacer la Memoria que debe presentar al congreso general de la nacion, tan luego como se instale, ella tiene el honor de elevar á V. E. una sencilla relacion histórica del giro de los negocios mas importantes, de que se ha ocupado en estos dos últimos años, y de la situacion en que hoy se encuentran, con las reflexiones é indicaciones que ha creído convenientes al mejor desempeño y mas fiel cumplimiento de sus deberes;” * *

[Page 136.]

* * * “La Junta en 21 de abril, próximo pasado, pasó á la facultativa del colegio unas muestras de cinabrio que presentó D. Tomas Ramon del Moral á nombre de D. Andres Castellero, vecino de la Alta California, con una esposicion en que pide se le auxilie para trabajar una mina que ha descubierto en la mision de Santa Clara, conocida por los antiguos indios, quienes sacaban de ella el bermellon para pintarse el cuerpo. Hecho el ensaye por el profesor de química, resulta que los metales en comun produjeron la estraordinaria ley de $35\frac{1}{2}$ por 100, lo que se participó al gobierno en 5 de mayo, manifestándole que se habia preguntado al Sr. Castellero cuales eran los auxilios que necesitaba de la Junta.

Este Señor presentó su solicitud en forma, y examinada muy detenidamente por la Junta, hizo sus proposiciones, en que esta convino, reducida á que se le franqueasen por entonces cinco mil pesos en numerario, ocho retortas de fierro, de las que mandó hacer la Junta para que sirviesen en los reconocimientos hechos anteriormente, y todos los frascos para azogue que tiene en el negociacion de Taseo. El Sr. Castellero se obligó por su parte á entregar dicha anticipacion en azogue, á razon de cien pesos quintal dentro de seis meses de su salida en el puerto de Mazatlan. Este convenio fué aprobado por el supremo gobierno en 20 del mismo; pero á virtud de la declaration hecha por los Estados-Unidos del Norte, cuando iba ya á recibir la libranza sobre Mazatlan, el ministerio pasó la orden de 19 de setiembre de este año, mandando suspender todo pago del ramo de azogues, á escepcion de los gastos alimenticios del colegio y la oficina.” * * *

[Page 146.]

* * * “No es la ocasion de presentar reunidos todos los trabajos de la Junta, para corresponder á la alta confianza con que la honró el gobierno. Una parte de ellos van especificados en la presente nota, y las demas se hallan consignados en las memorias, informes, y multitud de comunicaciones que obran en ese ministerio. Por ahora únicamente se reducirá á asegurar lo que consta de esos documentos, á saber: que el espíritu de la empresa se llegó á estimular en terminos de estarse explotando minas de azogue en los principales Departamentos de la República, ya por companias, y ya tambien por particulares; que en el de San Luis Potosi, el azogue que se estrae está en proporcion de la plata que se beneficia, en términos de no necesitarse del estrangero; que en la Alta California, en el presidio de Santa Rosa, ha llegado á descubrirse un gran criadero, por el Sr. D. Andres Castellero, cuyas leyes son verdaderamente sorprendentes; pues resulta de los ensayos practicados en el colegio de Minería que la que dan los frutos comunes sube á un $35\frac{1}{4}$ por 100, cuando los de la mejor mina que se conoce, que es la de Almaden, no pasa de un 13 por 100; y en fin, que por todos los datos que se han reunido, se puede esperar descansando en muy buenos fundamentos, que nuestros criaderos de azogues son mas que suficientes para habilitarnos de todo el que se necesita para el beneficio de nuestras platas.

Esta gran empresa nacional, la Junta no ha podido llevarla á cabo, porque se le privó de uno de sus fondos del 1 por 100 de la circulacion de la moneda sin sustituirle otro, y porque del que le restaba, solo ha podido disponer de menos de una tercera parte, pues el gobierno en los apuros del erario, ha usado de los restantes. El mal se ha agravó hasta el extremo lamentable de quedarse sin ninguno, por la órden de 10 de mayo ultimo, que mandó suspender todos los pagos que se hacian por la hacienda pública. Los resultados funestos de tales determinaciones, la Junta no se detendrá á pormenorizarlos; ellos se hacen patentes por lo hasta aqui manifestado.” * * *

TRANSLATION OF EXHIBIT J. P. BENJAMIN No. 1.

EXTRACTS from the report which Don José Maria Lafragua, Minister of Interior and Exterior Relations, read to Congress on the 14th, 15th and 16th of December, 1846, and of the report by Vicente Segura, President of the Junta de Fomento de Minería, addressed to said Minister on the 17th November, 1846.

[Page 65.]

* * * "In the State of San Luis Potosi, the metals reduced, and the Quicksilver extracted, are in proportion; and in Upper California a mine (*criadero*) has been discovered, whose *ley* surpasses that of the best mine known, that of Alma den, which does not produce more than thirteen per cent., while ours, by the assays made in the College of Mining, of this capital, exceeds thirty-five and a half per cent." * *

[Page 66.]

* * * "I recommend the sovereign Congress to direct its attention to this subject, making the production of our quicksilver a truly national enterprise, the importance of which cannot be overrated; either by creating a fund, or dictating other suitable measures." * *

[Page 118.]

Number 52.

"SECRETARY'S OFFICE OF THE JUNTA DE FOMENTO Y }
ADMINISTRATIVA OF MINING. }

"Most Excellent Sir:—In compliance with your Excellency's superior order of the 3d inst., directing this Junta to give you an account of the matters confided to its care since the time of its report in 1845, and of their present condition, with the object of having them in view when forming the *Memoria* which you are to present to the general Congress of the nation as soon as it shall be installed, the Junta has the honor to submit to your Excellency a simple historical relation of the management of the most important matters with which it has been occupied for the last two years, and their present situation, with the reflections and recommendations which it has been deemed suitable for the better and more faithful performance of its duties."

[Page 136.]

* * * "The Junta, on the 21st of April last, sent to the professional Board (*Junta Facultativa*) of the College some specimens of cinnabar which Don Tomas Ramon del Moral pre-

sented, in the name of Don Andres Castellero, a resident of Upper California, with a representation in which he asked for assistance to work a mine which he has discovered at the Mission of Santa Clara, known by the old Indians, who got out of it vermilion to paint their bodies. The assay having been made by the Professor of Chemistry, it resulted that the ores in common produced the extraordinary ley of thirty-five and a half per cent, which was communicated to the Government on the 5th May, representing to it that Señor Castellero had been asked what assistance he required of the Junta.

“This Señor presented his petition in due form, and it having been very attentively examined by the Junta, he made his propositions, to which this (Junta) agreed, to wit, that there should then be delivered to him five thousand dollars in money, eight iron retorts, of those which the Junta ordered to be made for the examinations previously made, and all the quicksilver flasks it has in the negociation of Tasco. Señor Castellero obligated himself, on his part, to repay said advance in quicksilver, at the rate of one hundred dollars a quintal, within six months from his leaving the port of Mazatlan. This agreement was approved by the Supreme Government on the 20th of the same month; but on account of the declaration of the blockade made by the United States of the North, when he was about to receive the draft on Mazatlan, the Ministry issued the order of September 19th of this year, directing the suspension of all payments of the branch of quicksilver, except some for the support of the College, and the expenses of the office.”

* * *

[Page 146.]

* * * “This is not the occasion to present together all the labors of the Junta, to correspond to the high confidence with which the Government has honored it. A part of them are expressed in this note, and the others may be found in the memorials, reports, and multitude of communications which are in the Ministry. For the present it will merely assure what is shown in these documents, to wit, that the spirit of enterprise has been so stimulated that the quicksilver mines in the principal Departments of the Republic are being worked, both by companies and also by individuals; that in that of San Luis Potosi, the quicksilver extracted is in proportion to the silver reduced, so that no foreign quicksilver is required; that in that of Upper California, in the Presidio of Santa Rosa, there has been discovered by Señor Don Andres Castellero a great mine, the *leys* of which are truly surprising, since it results from the assays made in the College of Mining that the common fruits

show a ley of over thirty-five and a half per cent., while that of the best mine which is known, that of Almaden, does not exceed thirteen per cent. ; and finally, that, from all the data collected, it may be hoped, on good grounds, that our mines of quicksilver are more than sufficient to supply all that is required for the reduction of our silver.

“This grand national enterprise the Junta has not been able to carry out, because it was deprived of one of its funds, of one per cent. of the circulation of money, without substituting any other, and because of the remaining fund it could only dispose of one-third part, since the Government, in the distress of its treasury, has used the rest. The evil was increased to the lamentable extremity of leaving it (the Junta) without any, by the order of the 10th of May last, which directed the suspension of all the payments which were made by the public treasury. The sad results of such determinations the Junta will not stop to detail ; they are manifest from what has already been here shown.” * * * * *

STIPULATION ADMITTING EVIDENCE.

U. S. DISTRICT COURT.

THE UNITED STATES }
v. } No. 420.
 ANDRES CASTILLERO. }

It is hereby stipulated and agreed that the following named Exhibits be filed on the part of the claimant, subject to all legal objections except such as are provided for by this stipulation:

Exhibit Castillero No. 4, J. B. W.—Certificate of Lic. Fran^{co}. Enciso, Mexico March 11, 1856.

Exhibit Castillero No. 5, J. B. W.—Letter: Andres Castillero to Alexander Forbes, January 14, 1847.

Exhibit Castillero No. 6, J. B. W.—Letter: James A. Forbes to Alexander Forbes, January 13, 1849.

Exhibit Castillero No. 7, J. B. W.—Letter: James A. Forbes to Barron, Forbes & Co., October 27, 1849.

Exhibit Castillero No. 8, J. B. W.—Letter: James A. Forbes to Barron, Forbes & Co., October 31, 1849.

Exhibit Castillero No. 9, J. B. W.—Certified copy of denouncement of Pedro Mesa and others, January 31, 1848.

Exhibit Castillero No. 10, J. B. W.—Certified copy of denouncement of José Suñol, February 5, 1848.

Exhibit Castillero No. 11, J. B. W.—Certified copy of denouncement of Ygnacio Soto, February 7th, 1848.

Exhibit Castillero No. 12, J. B. W.—Certified copy of denouncement of Ygnacio Soto, February 13, 1848.

Exhibit Castillero No. 13, J. B. W.—Certificate of R. C. Hopkins, September 27, 1860.

Exhibit Castillero No. 14, J. B. W.—Testimony of D. Teodoro Sotomayer and others, taken in Mexico.

It is further stipulated and agreed that M. G. Vallejo will prove the handwriting of and the signature to Exhibit Castillero No 5, and that John Young will prove the indorsement on same Exhibit to be in the handwriting of Robert Walkinshaw, deceased, and that B. Davidson will prove the signatures to Exhibits Castillero, 6, 7 and 8.

Dated at San Francisco, October 1, 1860.

And, it is further stipulated that General M. G. Vallejo will prove the handwriting of Castellero in the parts of Exhibit J. Y. No. 1, W. H. C., which in the written statement of R. C. Hopkins, he says he believes to be in the handwriting of said Castellero.

October 1, 1860.

PEACHY & BILLINGS,
Claimant's Atty's.

EDMUND RANDOLPH,
Asst. Counsel U. S.

Filed October 4, 1860.

W. H. CHEVERS, Clerk.

EXHIBIT CASTILLERO No. 4, J. B. W.

SELLO CUARTO

[SELLO.]

UN REAL.

Años de mil ochocientos cincuenta y seis y cincuenta y siete.

El C. Lic Francisco S. de Enciso, minero matriculado y Presidente de la Diputacion territorial de mineria en el Estado de Oajaca.

Certifico: Que durante el tiempo que he sido presidente del tribunal espresado, y con anterioridad á ese periodo, en los diversos en que he servido en el mismo tribunal como uno de sus miembros, he visto que por una practica constante y no interrumpida, los habitantes de los pueblos lejanos de la Capital han presentado varios denuncios de minas de oro, plata y otros metales ante los Alcaldes ó justicias ordinarios de dichos pueblos, ó de los mas inmediatos, cuyos denuncios les han sido admitidos por dichos funcionarios, y en virtud de este titulo han entrado los denunciante en posesion de sus minas, en la que han sido mantenidos hasta hoy sin haber sido inquietados, ni perturbados por persona alguna. Y igualmente certifico: que esta practica há sido aprobado tacita y espresamente por el tribunal de mineria, y que ella se há observado á vista ciencia y paciencia de las autoridades todas del Estado.

Y para la debida constancia, á pedimento de los Señores Barron, Forbes y compania, firmo la presente.

MEJICO 11 de Marzo de 1856.

LIC. F^{co}. ENCISO.

[Rubric.]

El Ciudo^o. Simon Negreiros Escrib^o. Pub^{co}. de Grrã. y de Estado Mayor Gra^l.

Certifico y doy fé que la firma que antesede es la que husa y acostumbra el S. L. D. Fran^{co}. Enciso veciño de Oajaca y diputado presidente de la Diputacion de Mineria. Y para constancia pongo la presente en Mej^{co}. á veinte y seis de Marzo de mil ochocientos cincuenta y seis.

†
SIMON NEGREIROS.

[Rubric.]

Los Ynfrascriptos Escribanos publicos del Numero.

Certificamos y damos fee : que el signo y firmo con que esta autorizada la anterior certificacion, son de nuestro compañero Don Simon Negreiros, Escribano publico como se titula, por lo que, á lo que apere autorizado con su signo y firma, se há dado y dá entera fee y crédito asi en juicio como fuera de él. En cuya comprobacion ponemos la presente, quedando agregado el Sello de nuestro Nacional Colegio, en Mejico á veinte y ocho de Marzo de mil ochientos cincuenta y seis.

[SELLO.]

JOAQN. VIGUERAS,
Escribano Pub^{co}.
[Rubric.]

FRAN^{co}. VILLALON.
[Rubric.]

AG^{to}. VERA.
[Rubric.]

No. 94.

CONSULATE OF THE U. S. OF AMERICA,
MEXICO, March 28th, 1856.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signatures of Joaqn. Vigueras, Ag^{to} Vera and Fran^{co}. Villalon, subscribed to the foregoing certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their official acts, who are all well known to me, and were at the time of subscribing their respective names duly authorized Notaries Public of this city, and that all their official acts are entitled to full faith and credit as such, jointly and separately.

Register H, fo- In testimony whereof, I have hereunto set my
lio 126. hand, and affixed the Consular Seal, the day and
Fees \$2. year first before written.

[SEAL.]



JOHN BLACK,
U. S. Consul.



TRANSLATION EXHIBIT CASTILLERO No. 4.

FOURTH STAMP. [SEAL.] ONE REAL.

The citizen Licentiate Francisco S. de Enciso, matriculated Miner and President of the Territorial Mining Deputation of the State of Oajaca, do certify that during the time I have been President of said Tribunal, and previous to that period, at the different times at which I have acted as member of that Tribunal, I have seen that as a constant and uninterrupted practice, the inhabitants of the towns remote from the Capital, have presented denouncements of mines of gold, silver, and other metals, before the Alcaldes and ordinary judicial authorities of said towns, or to those of the nearest towns, which denouncements have been accepted from them by said functionaries, and by virtue of this title the denouncers have gone into possession of their mines, in which they have been maintained to this day without having been troubled or disturbed by any one. I certify in like manner, that this practice has been tacitly and expressly approved by the Mining Tribunal, and that it has been observed under the eyes of and with the knowledge and acquaintance of all the authorities of the State.

And for due proof thereof, at the request of Messrs. Barron, Forbes & Co., I sign the present.

Mexico, 11th March, 1856.

LICENT. F^{CO}. ENCISO.
[Rubric.]

The citizen, Simon Negreiros, Notary Public of War and the General Staff, do certify and give faith that the preceding signature is that which is used and commonly made by the S^{OR}. Licen't Don Francisco Enciso, a citizen of Oajaca, and Deputy President of the Mining Deputation. And in proof thereof, I give the present at Mexico the twenty-third day of March, eighteen hundred and fifty-six.

(Signo.)
SIMON NEGREIROS.
[Rubric.]

The undersigned Notaries Public, we do certify and give faith, that the signo and signature whereby the foregoing certificate is authenticated, are of our associate, Don Simon Negrei-

ros, Notary Public, as he entitles himself, wherefore to all that appears authenticated by his signo and signature, there has been and is given entire faith and credit, as well in judicial proceedings as elsewhere. In proof whereof, we give the present, the Seal of our National College being affixed at Mexico the twenty-eighth March, eighteen hundred and fifty-six.

(Signo.)

JOAQUIN VIGUERAS.

[Rubric.]

(Signo.)

AGUSTIN VERA.

[Rubric.]

(Signo.)

FRANCISCO VILLALON.

[Rubric.]

—

No. 94.

CONSULATE OF THE U. S. OF AMERICA,
MEXICO, March 28th, 1856.

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signatures of Joaquin Vigueras, Agustin Vera and Francisco Villalon, subscribed to the foregoing certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their official acts, who are all well known to me, and were at the time of subscribing their respective names duly authorized Notaries Public of this city, and that all their official acts are entitled to full faith and credit as such, jointly and separately.

Register II, fo- In testimony whereof, I have hereunto set my
lio 126. hand, and affixed the Consular Seal, the day and
Fees \$2. year first before written.

[SEAL.]

JOHN BLACK,
U. S. Consul.

EXHIBIT CASTILLERO No. 5, J. B. W.

S. D. ALEJANDRO FORBES,

MEJ^{co}. 14 de En^o de 1847.

Muy Sr. mio de mi estimacion :

El Sr. D. Francisco Martinez Negrete me ha manifestado la buena disposicion q. V. tiene para poner mi Ysla de Sta. Cruz el amparo del Gobierno de S. M. B. Yo agradezco á V. lo mismo que al Sr. Negrete este favor, y al efecto acompaño una carta p^a el Sr. D. José Ant^o Aguirre vecino de California, el q. tiene mi poder y un documento que acredita mi propiedad.

Me ha parecido oportuno acompañar á V. cópia del título de posesion de D. José Reyes Berreyza en donde está la Mina de azogue: en mi concepto no ocupa la posesion del mencionado Berreyza, sino que se haya situada en terreno baldio: digole á V. esto porque así se me informó por varios coolindantes: la cópia que acompaño á V. es dada por él mismo y incluye en si una falsedad; porque el Gobernador Michiltorena solo le dió un sitio de tierra, segun á mi me ha informado el mismo Sr. Hago á V. esta Refleccion para que V. por un apoderado suyo registre el título del Berreyza en el archivo de los Angeles, para que V. pueda tomar posesion de los otros dos que pertenecen á la compañía, y que ha concedido el Gobierno de Méjico.

He puesto en manos del Sr. D. Francisco Martinez Negrete una Memoria de la Junta de fomento, en la que hace relacion de varios concesiones particulares q. dá el Gob^o. á los Mineros de azogue. Puede q. alguna vez se necesite p^a la introduccion de dicho metal, y aun p^a mandarlo á las minas.

Esta ocasion me proporciona ofrecirme á su disposicion p^a q. mande lo q. guste á su afmō. y S. S. que at^o.

B. L. M.

ANDRES CASTILLERO.

[Rubric.]

P. L.—Acabo de recibir la favorecida de V. fecha dos del presente, y me reserbo p^a contestarla hata que demas lectura á otras q. me quiere comunicar el S^r Dⁿ Fran^{co} Martinez Negrete.

[Addressed.]

Al Sr. Dⁿ Alejandro Forbes,
Consul de S. M. B., Tepic.

[Endorsed.]

Dⁿ. Andres Castillero to Mr. Forbes, Jan'y 14, 1847.

TRANSLATION EXHIBIT CASTILLERO No. 5.

Sör Don Alexander Forbes,

MEXICO, 14th January, 1847.

Esteemed Sir: The Sör Don Francisco Martinez Negrete has informed of your willingness to place my Island of Santa Cruz under the protection of H. B. Majesty's Government. I thank you as well as Mr. Negrete for this favor, and to that end I enclose a letter for Sör Don Antonio Aguirre, a citizen of California, who holds my power of attorney and a document which proves my property.

It has seemed to me proper to enclose you a copy of the title of possession of Don José Reyes Berreyesa, in which is situate the Quicksilver mine; in my opinion it is not within the possession of said Berreyesa, but is situate on vacant land. I state this to you because I was so informed by several adjacent proprietors (colindantes). The copy which I send you herewith is given by himself, and bears a falsehood on its face; for Governor Michelorena gave him only one league (sitio) of land, as that gentleman himself has informed me. I remark this to you, so that you, by an agent of yours, may examine Berreyesa's title in the Archives office at Los Angeles, so that you may take possession of the other two which belong to the company and which the Government of Mexico has granted.

I have placed in the hands of Sör Don Francisco Martinez Negrete a Report by the Junta of Encouragement, in which it mentions several special concessions which the Supreme Government makes to quicksilver miners. Perhaps it may sometimes be required for the introduction of said metal and even for sending it to the mines. This occasion allows me to place myself at your disposal, that you may command as you please your affectionate friend and servant who kisses your hand.

ANDRES CASTILLERO.

[Rubric.]

Addressed—To Sör. Don Alexander Forbes, British Consul, Tepic.

EXHIBIT CASTILLERO NO. 6, J. B. W.

—

SANTA CLARA, 13th January, 1849.

Alexander Forbes, Esquire.

My Dear Sir:—I take advantage of a conveyance afforded to me by Mr. Frederic Probst to write you, in the hope that my letter may reach you before you shall have left for this coast.

I have already said to you in a separate communication how much I am pleased to receive your friendly letters. Those letters have been solacing to my feelings, inasmuch as they are the missives of friendship from one whom I have been anxious to serve, and toward whom I never entertained any feelings than those of veneration, respect and friendship. Perhaps over-sensitiveness has made me feel injured. I confess my spirit to be *fier*, and impatient under coercion, and who of my name is not? But enough of this. I hope your health is completely restored, and that we shall meet again soon in California. You will find me ready to renew our relations of friendship and good offices. Meanwhile be assured that your interests will be most cheerfully attended to by me, and in the event of it becoming necessary for me to assume the charge of the mine in the absence, or illness, of Mr. Walkinshaw, I shall do so.

The present winter has been so far very severe. We have had no rain of any consequence until the 6th of this month. It rained and blew from the south-east seven days. On the 11th it commenced snowing, and continued up to the present moment. The whole country is entirely covered with snow, an event which had not occurred for the last thirty-five years. The hills in the vicinity of the mine appear as if they were doomed to be bound up in ice for months. In fact, at the door of my house in the Mission the snow is three inches deep! You may judge what will be the fate of those poor wretches who are exposed to four feet of snow in the gold region, which as you know is at a much greater elevation than any inhabited part of California. The operations of the diggers will be suspended as long as this inclement weather shall continue. The major part of those who are still remaining in the mountains have been obliged to build log houses for their shelter, but they cannot travel about the country to obtain any supplies of food, and I should not be surprised to hear of starvation among them.

The price of gold has risen, that is to say, for cash. It can-

not be obtained in any quantity for less than thirteen dollars. This is owing to the purchase made by your old friend, Com. Jones, who having surplus funds, has been purchasing at 12 dollars per ounce (troy of course), to which is to be added the purchases of other speculators.

I have to thank you for the tables and account of assays you caused to be made of the placer gold, and sent to me by the Cayuga.

With respect to the mine of Almaden, I think you will regret not having ordered retorts long since. I never could doubt the efficacy of some apparatus similar to those used for the extraction of gas. The work of the operatives you sent up in the first voyage of the Cayuga will always be useful. Those people will doubtless wish to go to the placer in the spring. Your information respecting Alden is incorrect, he has *not* been instrumental in detaining the people at the mine. I myself had great trouble by persuasion and threatening to keep the barreteros from going, and at the request of Mr. Walkinshaw was present at their new agreement with him to work by the "carga." But Alden is an efficient man if he be properly governed. He has no reason of complaint, for you have done more for him than any other man would have done; and if he studies his own true interest, he will not abandon your service. The foreign workmen left the mine by advice of Alden, and he himself would have left had he not been awaiting the arrival of his family.

I have received proposals from the house of Jecker, Torre & Co. for purchasing "barras" in the mine of Almaden. I have declined entering in any negotiation of this nature, but I have made proposals for them to take the habilitacion of the mine of Guadalupe, which is still in the state in which you saw it. Herewith I accompany a copy of my letter to D. Ysidro de la Torre upon that subject, for your government, and if he should not feel disposed to take the habilitacion, it would be more agreeable to me for you to include this mine in the negotiation of Almaden, upon terms which may be advantageous to both parties. I may add that it is possible to obtain the major part of the shares in the mine of Guadalupe by judicious management.

I do not feel any satisfaction at the suppression of the 9th article of the treaty of peace between Mexico and the United States, nor at the substitution of the ambiguous phrase contained in the present 10th article of that treaty, as a great latitude is given for injustice towards the holders of land in California. I beg to impress upon your mind the importance of *suggestions* made by me to you in my letter to you by Mr. Walkin-

shaw, May 1847, relative to such matters. I have not the whole of the treaty, but those articles have come to my hands by accident. It is also important to me, and perhaps to you, to obtain a clear and accurate statement of the authority under which the Missions of California were founded; whether they were considered in justice to belong to the Government of Spain or Mexico; whether there exists any record of any title or titles of those Missions in Mexico, or in the possession of the Pious fund of California, I should say in the hands of Syndic of those funds; or whether, in fine, there exist any document of a positive grant by the Spanish Government to the lands in and about the precincts of each Mission. This is very essential in order to render valid the sales of Mission lands by the curators thereof to private individuals. It would be doing me a great favor if you could obtain authentic information upon these points. I have much to say to you upon other points, but I cannot write too much upon the subject to which I have alluded, contained in my letter above mentioned, and which I fear has escaped your memory. Please bear in mind that times have changed in California, and that there are more than two men of the stamp of *the Hon. John Ricord!* and that I may not be able to beat them off so easily as I did that rascal in the affair of Guadalupe and San Antonio. I expect to have another bout in relation to the latter mine.

I have not been at the placer since it *or they* were discovered, but in former times I have not only been over that country, but there have been men under my charge who were daily in all those tributaries of those rivers putting in from twelve to twenty beaver traps every night, and without stumbling upon a lump of gold!! The doctrine of *egalité et liberte* is most amply verified now in California. I cannot add the fraternity, for demoralization has increased very much since gold has become so plentiful!

This wonderful discovery will doubtless produce great detriment to California in general, but when the augmented population shall have exhausted the abundance of this precious metal, when intellectual labor and capital shall be required for the extraction of the gold from sands, then matters will resume their former channel, and doubtless before that time there will be a correspondent fall in the prices of merchandise of all kinds. For such prices as \$75 for beef per bbl. and \$90 for pork, 97 cents per lb. for ham, and \$30 each for English blankets, must rouse the attention of merchants in all parts of the world. Even within the last two months there has been a great fall in the prices of provisions, which is an article of first necessity. Hence the policy of disposing of cargoes immediately.

It is a great pity that a large amount of cash could not have been sent by the first voyage of the Cayuga, or before, for the purchase of gold-dust for cash. It would then have been a brilliant negociation. There may be something done in the spring.

I have carefully perused all your communications to me by the Cayuga, and shall give them all attention.

My Consular duties continue uninterrupted. I have had a great deal of courtesy shown me by Com. Jones and Col. Mason. I was saluted the other day by the Commodore on a visit to his ship. A noisy compliment, but an acknowledgment of my official station and character.

I have already sent you my life certificate up to the 31st of December.

I remain, my dear sir,

Yours in all sincerity,

JAS. ALEX. FORBES.

EXHIBIT CASTILLERO No. 7, J. B. W.

—

SAN FRANCISCO, 27th October 1849.

Messrs. BARRON, FORBES & Co., Tepic.

Gentlemen: Herewith I accompany a certified copy of the proceedings had in the court of the first instance of the district of San José, and before the Judge of the Supreme Court of California, in relation to the villainous transactions of Robert Walkinshaw and his colleagues to retain the possession of the mine of New Almaden.

This nefarious transaction has so far advanced towards its maturity that I am compelled to use every effort within my reach to frustrate the same; and so far, I am happy to say that I have been successful.

The principal dangerous points which I have most feared, is the abduction of some of the papers from the records of the Alcalde's office in San José, and the destruction of the title or order given by the Mexican Government to Castellero of the two leagues of land on the mining possession. In which view the denunciation of the mine was made, and that together with the purchase of the land of Berreyesa (which I so earnestly advised you to purchase), is the foundation for annulling the title to the mine on the part of the original proprietors.

This deep and villainous conspiracy had its origin in Walkinshaw, whom you may rest assured is the prime mover and agitator of all and every part of these proceedings, and he is aided by some other persons here, of whom I know only one. This is a Mr. Shillaber, who has come forward as the purchaser of that land which I pointed out to you on the map of New Almaden, in Tepic, and which you authorized me to purchase under certain restrictions.

It now becomes my duty to use my own discretion in the discharge of the great trust deposited by yourselves and Mr. Alexander Forbes in me, and which you shall find is not misplaced.

In order to strike a decisive blow at the iniquitous proceedings of Walkinshaw and his associates, it becomes of the most vital importance for me to purchase the aforesaid land, in which the mine and hacienda are comprised, and which the aforesaid Shillaber has endeavored to purchase for twenty thousand dollars. The contract entered into by the heirs of Berreyesa, the owner of the land, was a fraudulent contract

made out by Antonio Games, the brother-in-law of Walkinshaw, but upon which no consideration has been received at the stipulated time by the Berreyesa's, who consequently, (that is to say the two younger brothers who signed a contract to sell), in co-operation with their mother, declared the contract null and void. They were offered twenty-five thousand dollars by Shillaber on Sunday morning last, after I had frustrated the sale of the land to him, and refused.

My object in coming here now, is to obtain the money for the payment of that land which I have purchased for account of the negociation, and for which *I must pay* the sum of thirty thousand dollars. I leave this to-night to secure the title deed, which you may rest assured shall be executed with all the formalities and precise designation of boundaries, as shall admit of no future difficulty.

In these arduous and harrassing proceedings, I am consoled by the reflection that I am performing my duty towards those interested, in the confidence that I shall be sustained by yourselves and your colleagues in this most important business, and if it shall be supposed that I have made sacrifices, all I can say is, that in the first place I have not been able to accomplish the purchase of that land before this, by reason of the injudicious proceedings of Walkinshaw, and that now when it comes to this stage, I am bound to save you all and myself from ruin, in the loss of this invaluable property.

All I require is your backing, your support and your belief that you shall be defended by me until the last gasp.

I remain, gentlemen,

Yours most sincerely,

JAS. ALEX. FORBES.

P. S.—I shall endeavor to write you by this packet, advising the result of my proceedings.

EXHIBIT CASTILLERO No. 8, J. B. W.

—
SANTA CLARA, 31st Octr. 1849.

Messrs. BARRON, FORBES & Co.

Gentlemen:—Herewith I accompany a copy of a letter that I addressed to the Secretary of State of California, accompanying to him a copy of the proceedings of the Tribunal of First Instance of the District of San José, in relation to the mine of New Almaden.

I have the pleasure to inform you that the lawyer employed by me was heard in Monterey, before the Supreme Court in open session, on the 29th inst., (the members of which court had just been appointed by reason of the resignation of the former judges) and obtained the following decision from that court, viz.: That I am to be replaced in possession of the mine and its appurtenances as before; and in conformity to the order of Judge Burnett, and by the order of Governor Riley, the rascal judge May is suspended, and another person appointed in his place, and whose commission is already at the Pueblo.

I wrote to Mr. Alex. Forbes to send me certain law books from Tepic, which not having arrived, have been of the greatest necessity to me. Pray send them, and direct all my letters to Probst, Smith & Co., to whom I am much indebted for their active co-operation with me.

I remain, gentlemen,

Your obt. servt.,

JAS. ALEX. FORBES.

EXHIBIT CASTILLERO No. 9, J. B. W.

Sor. Alcalde del Pueblo de San José de Guadalupe.

Pedro Mesa, José Suñol y Pedro Sansevain todos vecinos de esta poblacion ante la notoria justificacion de V. hacemos presente, que habiendo descubierto una Mina de Azogue hallandose situado a distancia de tres ó cuatro mil varas al Norte de la Casa de Don Juan Higuerra en Pala siguiendo asi al Nor-este á la misma casa cuyo metal y piedras acompañamos á V. y queriendola trabajan en compania. Suplicamos á V. que arreglado á la ordenanza de mineria se sirva fijar rotulones en los parages publicos de la jurisdiccion para que llegando el tiempo de la posesion juridica aseguro nuestro derecho segun las leyes que tratan la materia.

Por tanto á V. suplicamos provee de conformidad de lo que resiberemos gracia y justicia admitiendo esta en papel comun por falta del sello correspondiente. Pueblo de San José de Guadalupe Enero 31 de 1848.

(Firmado) PEDRO SANSEVAIN,
 JOSÉ SUÑOL,
 PEDRO MESA.

Jusgado del Pueblo de San José de Guad. el dia 31 de Enero á las 8 A. M. de 1848. Certifico que esta denuncia fue recibido la fecha y la hora: juntamente con especimens del mismo metal liquida y en piedra lo que queda depositado en este Jusgado de mi cargo.

JAMES W. WEEKES, Alcalde.

Esta denuncia ha sido retirado par solicitasion de los interesados esta 3 dia de Febrero de 1848.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing on pages 1 and 2 of this contains a true, full and correct copy of an instrument now on file, and of record in this office, and recorded in Book II. of Deeds, on page 47 thereof.

Witness my hand and official seal hereto affixed at office, [SEAL.] in the city of San José, the day and date in this certificate first above written.

JNO. R. WILSON, County Recorder.
 By GEO. M. YÖELL, Deputy.

TRANSLATION EXHIBIT CASTILLERO No. 9.

Sōr. Alcalde of the town of San José Guadalupe.

Peter Mesa, Joseph Suñol and Peter Sainsevain, all citizens of this town, before your notorious justification show, that having discovered a quicksilver mine situate at three or four thousand varas north of the house of Don Juan Higuera at the fig trees, running north-easterly from said house, the metal and ores of which we send you herewith, we pray you that according to the requirements of the mining *ordenanzas*, you be pleased to post notice in the public places of the jurisdiction, so that when the time for juridical possession arrives, our right may be secured according to the laws which treat of the subject.

Wherefore, we pray you to ordain in conformity, by which we will receive favor and justice, admitting this on common paper, there being none of the corresponding seal.

Town of San José Guadalupe, January 31, 1848.

(Signed) PEDRO SAINSEVAIN,
 JOSÉ SUÑOL,
 PEDRO MESA.

Tribunal of the town of San José Guadalupe, 31st January, 1848, at 8 o'clock, A. M., I certify that this denouncement was received at the date and hour, together with specimens of the same metal liquid and in ore, which remain deposited in this Tribunal in my charge.

JAMES W. WEEKES, Alcalde.

This denouncement has been withdrawn at the request of the parties interested, this 3d day of February, 1848.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing on pages 1 and 2 of this contains a true, full and correct copy of an Instrument now on record in this office, and recorded in Book 2 of Deeds on page 48 thereof.

[SEAL.] Witness my hand and official seal hereunto affixed at office in the City of San José, the day and date in this Certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÖELL, Deputy.

EXHIBIT CASTILLERO No. 10, J. B. W.

—

José Suñol originario de esta Departamento Residente en este Jurisdiccion comerciante de profesion ante de V. como mas halla lugar en derecho se presente y dice que haviendo descubierto una veta de azogue en un rebosadero en el Cerro ó Cuchillo en que esta ubicado la mina de Nuevo Almaden y á la distancia de una legua poco mas ó menos desta acia al Noroeste y contigua á la Arroyo de las Capitancillos siendo al rumbo de la veta segun indica á la superficie entre Norte y Oeste muestra de cuya metal se presenta haciendo formal y legal registro de dicha beta y declara ser sus compañeros en esta registro Dn. Miguel Narbaes labrador originario de este departamento, Dn. Pedro Sansevain originario de Francia Ciudadano Mejicano naturalizado maquenista de profesion ambos residentes en esta Jurisdiccion y Dn. Gil Sanches natural de Mexico. Herrero de profesion residente en Monterey=y en virtud de que el ha de trabajar en compania tiene derecho de los cuatro pertenencias consedidas por la ordenanza=Por tanto á V. suplico se sirva de proveer este pedimento conforme á ley mandando fijar carteles y de habrier el correspondiente registro promitiendo el que pide abrir pozo de pozescion conforme á ordenanza y asi proveido que si devuelve al interesado para los fines que le convenga. Pueblo de San José, 5 de Febrero de 1848.

(Firmado) JOSÉ SUÑOL.

—

Jusgado del Pueblo de San José, 5 de Febrero de 1848. Certifico que esta denuncia fue presentado en esta Jusgado de mi cargo en la fecha arriba mencionado á las cuatro de la tarde, con los metales de muestra que espresa esta denuncia y jurado ser sacado de dicho mineral.

JAMES W. WEEKES,
Alcalde.

Archibado esta 7 dia del Febrero del año de 1848.

JAMES W. WEEKES,
Alcalde.

Recorder's Office, Santa Clara county, California September, 21, A. D. 1860. I hereby certify that the foregoing on pages 1 and 2 of this contains a true, full, and correct copy of an in-

strument now of record in this office, and recorded in Book II. of Deeds, on page 51 thereof.

Witness my hand and official seal hereto affixed at office, [SEAL.] in the City of San José, the day and year in this certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÖELL, Deputy.

TRANSLATION EXHIBIT CASTILLERO No. 10.

José Suñol, native of this Department, resident of this jurisdiction, merchant by profession, presents himself before you as best he may in law, and says, that having discovered a vein of quicksilver in a pocket in the hill or divide (*cuchilla*), in which the New Almaden mine is situate, and at the distance of a league more or less from the latter towards the north-west, and contiguous to the Capitancillos creek, the direction of the vein, as indicated on the surface, being between north and west, specimens of the ore of which are presented, making formal and legal registry of said vein, and he declares that his partners in this registry are Don Miguel Narbaes, cultivator, native of this Department, Don Pedro Sainsevain, a native of France, naturalized Mexican citizen, machinist by profession, both residents of this jurisdiction, and Don Gil Sanchez, native of Mexico, blacksmith by profession, resident at Monterey—and as he is to work in company, he is entitled to the four *pertenencias* granted by the *ordenanza*. Wherefore I pray you to be pleased to deal with this petition according to law, ordering notices to be posted, and the corresponding registry to be made, the petitioner promising to open a possessory pit according to the *ordenanza*, and being thus dealt with it be returned to the party interested, for the ends which may suit him. Town of San José, February, 5th, 1848.

(Signed.) JOSÉ SUÑOL.

Tribunal of the Town of San José, February 5th, 1848.

I certify that this denouncement was presented in this Court under my charge, at the date above stated at four o'clock in the

afternoon, with the sample ores mentioned in this denouncement, and sworn to as having been taken from said mine.

JAMES W. WEEKES, Alcalde.

Recorded this 7th day of February, 1848.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing on page 1 and 2 of this contains a true, full, and correct copy of an instrument now of record in this office, and recorded in Book II. of Deeds, on page 51 thereof.

[SEAL.] Witness my hand and official seal hereto affixed at office in the City of San José, the day and year in this certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÖELL, Deputy.

EXHIBIT CASTILLERO No. 11, J. B. W.

Sor. Alcalde 1º

Ygnacio Soto originario de este Departamento labrador de profesion y residente en esta Jurisdiccion. Ante V^a como mas haya lugar en derecho se presenta y dice que haviendo descubierto una veta de Azogue, en el cerro en que esta ubicado la Mina de Nuevo Almaden y a la distancia de cuatro mil y poco de varas mas o menos de la misma hacia el Noroeste, siendo el rumbo de la veta (segun se indica en la superficie) entre los dichos puntos, y muestra de cuyo metal se presenta con este: haciendo formal y legal registro de dicha veta declarando el que hab'a ser su intencion trabajar dicha veta, en compaña de los ciudadanos Andres Martines y Domingo Soto naturales y vecinos de esta Jurisdiccion en cuya virtud promete verificarlo conforme á ordenanza para obtener los premios correspondientes. Por tanto, A. V. Suplica se sirva de mandar proveer este pedimento conforme a la ley, mandando fijar carteles y de abrir el correspondiente registro, y asi proveido que se devuelva al interesado para los fines que convenga. Pueblo de San José Guadalupe Siete de Febrero de un mil ochocientos cuarenta y ocho.

(Fermado) YGNACIO SOTO.

Jugado del Pueblo de San José, Guad^e 7 de Febrero de 1848. Ha se presentado este pidimento hoy siete de Febrero de mil ochocientos cuarenta y ocho a los diez de la mañana ante mi el infrascrito Alcalde 1º de este Jurisdiccion, y ordene a la parte con el arreglo del Art. 4º del Titulo 6º de la Ordenanza Abilita su pozo de posesion mazde fijar los carteles tomandose razon de toda el espresado en el correspondiente Libro de Registro y debuelvose a la parte asi le ordené mande y probei yo el citado Juez de que doy fé.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing on pages 1 and 2 of this contains a true, full and correct copy of an Instrument now on record in this office, and recorded in Book 2 of Deeds on page 48 thereof.

[SEAL.] Witness my hand and official seal hereto affixed at office in the City of San José, the day and date in this Certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÓELL, Deputy.

TRANSLATION EXHIBIT CASTILLERO No. 11.

Sōr. 1st. Alcalde.

Ygnacio Soto, native of this Department, cultivator by profession, and resident of this jurisdiction, presents himself before you as best he may in law, and says, that having discovered a vein of quicksilver in the hill in which is situate the mine of New Almaden, and at the distance of four thousand and odd varas more or less from the same towards the north-east, the direction of the vein (as shown on the surface) being between the said two points (north and east), and specimens of the ores of which are herewith presented, making formal and legal registry of said vein, the speaker declaring it to be his intention to work said vein in company with citizens Andres Martinez and Domingo Soto, natives and residents of this jurisdiction, in virtue whereof he promises to do so according to the ordenanza to obtain the corresponding rewards.

Wherefore, he prays you to be pleased to order that this petition be dealt with according to law, ordering notices to be posted, the corresponding registry to be made, and having been so dealt with that it be returned to the party interested for the ends which may be proper.

Town of San José Guadalupe, February 7th, eighteen hundred and forty-eight.

(Signed) YGNACIO SOTO.

Tribunal of the town of San José Guadalupe, 7th February, 1848.

This petition was presented to-day, 7th February, eighteen hundred and forty-eight, at ten o'clock in the forenoon, before me, the undersigned, 1st Alcalde of this jurisdiction, and I ordered the party, in conformity with Art. 4, Title 6th of the Ordenanza, to habilitate his possessory pit; I ordered the notices

to be posted, note being taken of all the foregoing in the corresponding Book of Registry, and let it be returned to the party. Thus I, the said Judge, ordered, commanded, and provided, of which I give faith.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing on pages 1 and 2 of this contains a true, full and correct copy of an Instrument now on record in this office, and recorded in Book 2 of Deeds on page 48 thereof.

Witness my hand and official seal hereto affixed
[SEAL.] at office in the City of San José, the day and date in this certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÓELL, Daputy.

EXHIBIT CASTILLERO N^o. 12, J. B. W.

—

Sõr Juez de Paz: Ygnacio Soto Ciudadano Mexicano de profesion labrador y nativo en Está departamento ante vd. con el respeto devido y como mas haya lugar en derecho me presenta y digo. Que haviendo descubierto una veta de Azogue en un parage perteneciente a esta Jurisdiccion hago presente a V. que con arreglo al Art^o 4^o del Titulo 6^o de la Ordenanza de Minería vigente en esta Departamento declaro que dicha veta se halla uvicado en la Sierra Azul a la orilla ezquierda de una Arroyo nombrado los Capitancillos y al O N O del Mineral de Almaden, distante una legua poco mas ó menos por cuyo virtud hago ante vd. el presente escrito depositando en ese Juscgado de su cargo dos piedras arrancadas de la beta y el metal correspondiente declarando igualmente que trabajaré dicho mineral en Compañia de los Sõres Dn. Pedro Sansevain, Dn. Jose Suñol, Dn. Andres Martinez y Dn. Domingo Soto, por lo que suplico se sirva vd. decretar el dia y la hora en que le entregue este demencio y pregonarlo si vd. lo tiene a bien en los parages acostumbrados para que el tiempo que señala la referida ordenanza se sirva vd. adjudicarme la posecion como primier descubridor y denunciante. Suplico a vd. se sirva acceder a me pedido de lo que recibire favor y justicia y admiter esta denuncia en papel comun por no haver del sello correspondiente. Pueblo de San Jose, Feb^o 13 de 1848.

(Fermado)

YGNACIO SOTO.

—

Juscgado del Pueblo de San Jose de Guad^o, 14 de Febrero 1848. Certifico que este denuncia me fue representado en esta Juscgado demi cargo en el fecha ariba mencionado en el hora de los diez de la mañana juntamente con una piedra se muestra del Mineral de Azogue, jurado de ser sacado del mismo lugar que espreso el denuncia, y en cumplimiento del ordenanza de Minería adverto el denunciante, que se hayo una mina denunciado por el Sõr Dn. Maximo Fernandes en dicha rumbo y no contraveniendose con esto ó otro que tiene mejor reclamo es valido este denuncia y el mismo tiempo reclamo que presenta el azogue liquido en el mas pronto que sea posible de dicho mineral para ser depositado en este Juscgado.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing, on pages 1, 2 and 3 of this, contains a true, full and correct copy of an Instrument now of record in this office, and recorded in Book 2 of Deeds, on page 54 thereof. Witness my hand and official seal hereto affixed, at office in the City of San [SEAL.] José the day and year in this certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÖELL, Deputy.

TRANSLATION EXHIBIT CASTILLERO No. 12.

Sōr. Justice of the Peace :

Ygnacio Soto, a Mexican citizen, by profession a cultivator, and a native of this Department, with due respect, and as best I may in law, present myself before you and say, that having discovered a vein of quicksilver at a place belonging to this jurisdiction, I show to you that, in accordance with Art. 4th of Title 6th of the Mining Ordenanza, in force in this Department, I declare that said vein is situate in the Sierra Azul (blue mountains), on the left bank of a creek called the Capitancillos, and a league more or less north-west from the Almaden mine, wherefore I make before you the present writing, depositing in that Tribunal under your charge two pieces of ore taken from the vein, and the corresponding metal, declaring likewise that I will work said mine in company with Messrs. Don Pedro Sainsevain, Don José Suñol, Don Andres Martinez and Don Domingo Soto. Wherefore I pray that you be pleased to order the day and hour at which I shall deliver you this denouncement, and post notices thereof if you deem it proper to do so at the usual places, so that at the time indicated by said Ordenanza, you may be pleased to adjudge to me the possession as first discoverer and denouncer. I pray you to be pleased to grant my petition whereby I will receive favor and justice, and to admit the denouncement on common paper as there is none of the corresponding seal. Town of San José, 13th February, 1848.

(Signed.) YGNACIO SOTO.

Tribunal of the town of San José Guadalupe, February 14th, 1848.

I certify that this denouncement was presented to me in this Court under my charge, at the date above mentioned, at the hour of ten o'clock in the forenoon, together with a sample piece of quicksilver ore, sworn to as being taken from the same place mentioned in the denouncement, and in compliance with the Mining Ordenanzas. I informed the denouncer that a mine has been denounced in that direction by Don Maximo Fernandez; and not conflicting with this or any other better claim, this denouncement is valid, and at the same time I demanded that he should present the liquid quicksilver from said mine as soon as possible, to be deposited in this Court.

JAMES W. WEEKES, Alcalde.

Recorder's Office, Santa Clara County, California, September 21, A. D. 1860. I hereby certify that the foregoing on pages 1, 2 and 3 of this contains a true, full and correct copy of an Instrument now on record in this office, and recorded in Book 2 of Deeds on page 54 thereof.

Witness my hand and official seal hereto affixed at [SEAL.] office in the City of San José, the day and date in this certificate first above written.

JNO. R. WILSON, County Recorder.

By GEO. M. YÖELL, Deputy.

EXHIBIT CASTILLERO, No. 13, J. B. W.

I hereby certify, that I am, and have been for the last five years, in charge of the Spanish Archives in the office of the U. S. Surveyor General for California; that during this time, I have, from time to time, been employed by Messrs. Halleck, Peachy and Billings, to search said Archives for any document in relation to the discovery and development, by one Andres Castellero, of the Quicksilver mine of New Almaden, and generally to search for any evidence, tending directly or indirectly to sustain the title of said Castellero to said Quicksilver mine; that in the prosecution of said searches I have found,—

First, A letter from Andres Castellero to Governor Pio Pico, dated Monterey, December 15th, 1845, saying: that at the distance of thirty leagues from Monterey he had discovered a mineral of Azogue of the best quality, &c., &c. This letter was first seen by me about the month of May, 1856.

Second, The *borrador* of a letter from Governor Pio Pico to the Minister of Exterior Relations in Mexico, dated February 13th, 1846 (Angeles), in relation to the discovery by Andres Castellero of a Quicksilver mine, forwarding at the same time a letter of Castellero in relation to the matter, together with a sample of the ore, which he asks may be presented to the President; the *borrador* is in the handwriting of Agustin Olvera, and was first discovered by me in the early part of 1859.

Third, A letter from Manuel Castro, Prefect of the Second District, to the Secretary of State, dated Monterey, December 31st, 1845; in relation to the denouncement and working by Andres Castellero of a Quicksilver mine in the Jurisdiction of San José, and saying that he has made a petition for two square leagues of land in the immediate neighborhood of the same. This document was also discovered by me about the beginning of the year 1859.

Fourth, The *Borrador* of a letter from José Ma. Covarrubias, Secretary of State, to the Prefect of the Second District, being a *reply* to the letter of the Prefect of the 31st of December, above set forth; saying that he has informed the Governor of the contents of his letter of the 31st of December. This document was discovered by me some time in the summer of 1859.

The documents described in the foregoing statement are all that I have been able to find, in any way relating to the discovery and denouncement by Castellero of the Quicksilver mine of New Almaden.

I further certify that the latest official communication from the Supreme Government of Mexico, to the Department of California, as shown by the Archives, is a Circular from the Office of the Minister of Exterior Relations, signed by Castillo Lanzas, dated Mexico, March 24th, 1846. And I further certify, that I have examined a document filed in the case of the U. S. vs. Andres Castellero in the U. S. Dist. Court, marked "Exhibit J. Y., No. 1, W. H. C.," commencing "Año de 1845; Expediente de denuncia posesion y Compañia de la mina de Azogue, nombrada Santa Clara, Jurisdiccion de S^a. José Guadalupe en la Alta California." And that I think the first page of said document is in the handwriting of Andres Castellero; and that the following interlined words, to wit: "*Noviembre veinte y dos de mil ochocientos cuarenta y cinco, Andres Castellero,*" found on the second page of said document, between the sixth and seventh lines, counting from the bottom of the page, I think are also in the handwriting of said Andres Castellero."

R. C. HOPKINS.

San Francisco, September 27th, 1860.

EXHIBIT CASTILLERO N^o. 14, J. B. W.

[SELLO.]

YNTERROGATORIO á cuyo tenor se ha de ecsaminar D. Teodoro Sotomayor.

1^a Diga su nombre, edad, residencia y demas generales.

2^a Diga que empleos ha desempeñado en el Gobierno Mejicano, desde cuando y cual el q sirve actualmente.

3^a Diga si tuvo noticia del descubrim^{to}. que hizo D. Andres Castellero de una mina de azogue en la Alta California, cuando lo supo y como.

4^a Diga si sabe que desde entonces haya habido sobre este asunto alguno ó algunos documentos escritos sobre esto, en donde los vio por primera vez y en donde ecsisten actualmente.

5^a Diga si sabe que en 1846 ecsistiera en el Ministerio de Justicia algun memorandum de los negocios del Ministerio, como se formaba, si ecsiste ahora, en donde lo ha visto y si lo cree legitimo y verdadero.

6^a Diga si conoció á D. Jose Luciano Becerra desde cuando y en donde, si sabe cuando murió y en que parte.

7^a Diga si conoce á los Señores D. Jose Maria Duran, D. Mariano Rodriguez y D. José Maria Yrisarri y D. Mariano Miranda, desde cuando, en donde y es teman algun empleo en el año de 1846, y cual fue ese.

8^a Diga si sabe que en la Junta de fomento y administrativa de mineria ecsistan algunos documentos sobre esto y si conoce y ha visto la letra de los que alli ecsisten.

9^a Diga si ha visto el espediente que sobre este asunto ecsiste en el Ministerio de Relaciones y si en los documentos relativos á este asunto conoce las letras con que estan escritos.

10^a Si es cierto que por parte del S. D. Guillermo Barron se le invito para que fuera á California á atestiguar la verdad de los hechos que en este interrogatorio se refieren, y si lo es tambien que se negó á ello, diga por que motivos.

Mexico, 7 de Julio de 1859.

EUSTAQUIO W. BARRON.

L. EMILIO PARDO.

[Rubric.]

[SELLO.]

YNTERROGATORIO á cuyo tenor se ha de examinar á D. Mariano Rodriguez.

1^a Diga su nombre, edad, residencia y demas generales.

2ª Diga que empleos ha desempeñado en el Gobierno mejicano desde cuando y cual el que sirve actualmente.

3ª Diga si tuvo noticia del descubrimiento que hizo D. Andres Castellero de una mina de azogue en la Alta California cuando lo supo y como.

4ª Diga si sabe que desde entonces haya habido sobre este asunto alguno ò algunos documentos escritos, en donde los vio por primera vez y en donde ecsisten actualm^{te}.

5ª Diga si sabe que en 1846, existiera en el Ministerio de Justicia algun memorandum de los negocios del Ministerio, como se formaba, si ecsiste ahora, en donde lo ha visto y si lo cree legitimo y verdadero.

6ª Diga si conoció á D. José Luciano Becerra, desde cuando y en donde, si sabe cuando murió y en que fecha.

7ª Diga si conoce á los Señores D. José M^a. Duran, D. José María Yrisarri, Don Mariano Miranda, D. Teodoro Sotomayor y D. Joaquin Romanos, desde cuando en donde y si tenian algun empleo en el año de 1846, espresese cual.

Méjico, siete de Julio de 1859.

EUSTAQUIO W. BARRON.

L. EMILIO PARDO.

[Rubric.]

Mexico, Julio 7 de 1859.

Por presentados los documentos que acompaña : recíbase á esta parte la informacion que ofrece previa citacion del Sr. Black por medio de atento oficio, librándose igualmente á las personas que conforme á la ley disfrutar el privilegio de declarar en esta forma, y obre dicha informacion los efectos que haya lugar en derecho. Lo proveyó el Sr. Lic. Dn. Antonio Madrid, Juez 1º de lo civil y firmó doy fé.

MADRID.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

Eustaquio W. Barron por la Compañia de Nuevo Almaden en la Alta California ante V. con las protestas de mi respeto y como mejor haya lugar en derecho digo : que teniendo necesidad de practicar una informacion para probar algunos hechos ante los Tribunales de California y apegándome á las reglas establecidas por las leyes americanas para asegurar en su territorio la fee probatoria en ciertos casos especiales, ocurrí á la persona que el Gobierno de los Estados Unidos tenia acreditada en esta Ciudad, como Consul pidiéndole recibiera dicha infor-

macion ; pero este funcionario ha rehusado su intervencion, manifestándome que tiene órdenes del Ministro Americano en Veracruz para no autorizar ningun procedimiento que tenga coneccion con el pleito que los Estados Unidos siguen contra D. Andrés Castillero y los que de él han habido derecho sobre la mina de Azogue que este Sr. descubrió en la Alta California, y de que le dió título bastante el Supremo Gobierno en el mes de Mayo de 1846. Esta singular prohibicion, que ha paralizado mis gestiones por aquella vía, me deja espedita la que franquea el derecho público de las Naciones; en tal virtud ocurro á V. suplicándole se sirva examinar á los testigos que presentaré al tenor de los interrogatorios que acompaño, sirviéndose librar atento oficio al Señor D. Juan Black Cónsul nombrado por los Estados Unidos en esta Ciudad, invitandolo para que concurra á conocer y vér jurar á los testigos; y practicada que sea dicha informacion V. se ha de servir mandar que se me entregue original para los usos que me convengan.

A. V. suplico provea de conformidad por ser justicia que pido y juro con lo necesario &a.

Mexico, Julio 7 de 1859.

EUSTAQUIO W. BARRON.

L. EMILIO PARDO.

[Rubric.]

Otrosí digo, que acompaño debidamente certificada la edicion oficial de la Memoria que presentó el Exmo Señor D. José María Lafragua, Ministro de Relaciones en el año de 1846 para los usos que en los interrogatorios respectivos se espresan; pidiendo que rubricadas por el actuario las fojas que designaré, se me devuelva como parte de las diligencias promovidas, así como tambien pido que se libren á los Sres. D. Bernardo Couto, D. Luis G. Cuevas, D. Miguel Atristain y D. José María Duran los oficios correspondientes para que evacuen por informe las preguntas de que se trata conforme á derecho.

Fecha ut supra.

Otrosí digo: que no se ha legalizado por el Cónsul americano la firma del S. Arroyo, por haberse negado á hacerlo este funcionario.

L. EMILIO PARDO.

[Rubric.]

EUSTAQUIO W. BARRON.

Se recibió á las nueve de la mañana del día siete de Julio.

[Rubric.]

En la fecha de celebró oficio al Sr. Consul en la forma que espresa el auto anterior: doy fe.

VILLELA.

[Rubric.]

En la fecha y en cumplimiento del auto anterior a libró oficio acompañando los interrogatorios respectivos, á los Sres. Lic Dn Bernardo Couto, Lic Dn Miguel Atristain, D Luis Gonzaga Cuevas, Dn José Maria Duran, Don Juan Ma. Flores, y Dn. Vicente Segura. Lo asiento para constancia: doy fe.

VILLELA.

[Rubric.]

Mexico Julio 9 de 1859.

Agréguese el oficio que se ha recibido del Sr. Black, el cual se pasará para su traduccion al Lic Dn Francisco Bonilla, a quien se hará saber para que previa su aceptacion y juramento desempeñe su encargo. Lo proveyó el S Juez: doy fe.

Y de que tambien mando agregar el oficio del Sr Couto.

MADRID.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

En doce del mismo, presente D. Eustaquio W. Barron, le leí íntegro y no pidió copia del auto anterior y dijo: que exhibe unas cartas pidiendo al Sr Juez que ahora que se va á pasar el oficio del S. Black al Sr. Lic. Bonilla, se pasen tambien las cartas referidas para su traduccion; y firmó doy fé. 1º. sirva mandar no vale, que no vale.

EUSTAQUIO W. BARRON.

[Rubric.]

JOSÉ VILLELA.

[Rubric.]

México Julio 13 de 1859.

Como lo pide. Lo proveyó el S. Juez doy fé.

MADRID.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

En la misma fecha presente en su casa el Lic. Don Francisco Bonilla, le notifiqué el auto anterior, y dijo: que acepta el cargo y jura en toda forma de derecho desempeñarlo bien y fielmente para lo cual pide se le entreguen los documentos; y firmó doy fé.

LIC. F. D. BONILLA.

[Rubric.]

JOSÉ VILLELA.

[Rubric.]

En seguida presente Dn. Eustaquio W. Barron, le hice saber el auto que antecedes, (leyendolo integro y no pidio copia) del que quedo enterado y firmó doy fe.

EUSTAQUIO W. BARRON.

JOSÉ VILLELA.

[Rubric.]

MEXICO, July 9th, 1859.

Sir:—I had the honor last evening to receive an official communication under date of the 7th instant, addressed to me by his Honor Judge of the First Civil Court, D. Antonio Madrid, advising me that D. Eustaquio W. Barron had presented himself in his Court for the Company of New Almaden in Upper California, manifesting the necessity of taking testimony to prove some facts before the tribunals of Upper California, and at the same time stating that I had refused my intervention, stating that I had orders from the American Minister in Vera Cruz not to authorize any proceedings in relation to the affair mentioned. I must here state that said Minister has given me no such orders in the case, as the correspondence on the subject between myself and D. Eustaquio W. Barron will show, the subject in reference to the case, being fully explained in my letter of the 25th ultimo in answer to that of Mr. Barron of the 22d of the same, all which correspondence I presume he has attached to and included in his escrito, as it should be, in order that the case may be fairly stated and understood.

His Honor the Judge also knows that I am not considered by the authorities established in this city as in the exercise of consular functions.

I have the honor to be,

Your obedient servant,

JOHN BLACK.



To His Honor Antonio Madrid,
First Judge of the Civil Court, Mexico.

Evacuaria yo inmediatamente la declaracion que se sirve V. pedirme en su oficio de ayer, conforme al interrogatorio q. ha presentado la parte de D. Eustaquio Barron en el negocio del Nuevo Almaden en la Alta California, si dicho interrogatorio no versara sobre puntos relativo a la mision diplomática, que en union de los Sres. D. Luis Cuevas y Don Miguel Atristain

seguí con el plenipotenciario americano Mr. Nicolas P. Trist para ajustar el tratado de paz entre la República y los Estados Unidos, que firmamos en la Ciudad de Guadalupe el 2 de Febrero de 1848. Como lo que entonces hicimos, fué con el carácter de representantes del Gobierno nacional, creo que sin mandamiento suyo no puedo prestarme á hacer las manifestaciones que en el interrogatorio se piden. El mismo Gob^o ha ordenado que sobre algun artículo del tratado que tiene conexión con el negocio del Nuevo Almaden, demos un informe oficial, que va á extenderse, y que pasarémos oportunamente al Ministerio de relaciones.

Es cuanto puedo decir á V. en contestacion á su citado oficio, devolviéndole el interrogatorio que me acompaña, y protestándole mi particular atencion.

Dios y Libertad. Mexico Julio 9 de 1859.

BERNARDO COUTO.

[Rubric.]

Sör. Juez 1^o del ramo civil, Lic. D. Antonio Madrid.

En seguida, ante el señor juez compareció D. Teodoro Soto, y juramentado en debida forma, fué examinado con arreglo al interrogatorio que le corresponde y—A la primera dijo, llamarse como va dicho, natural de Leon de los Aldamas, vecino de México, de cincuenta y cinco años de edad, casado, empleado, y no le tocan las generales de la ley.—A la segunda: que entro á ser empleado en el Ministerio de Justicia y Negocios Eclesiásticos, el año de mil ochocientos siete y nueve en la plaza de portero; y en mil ochocientos treinta y nueve, en una promocion que hubo, ascendió á escribiente cuarto, de allí á tercero, y despues á primero: luego tuvo despacho de oficial segundo del Archivo, y en seguida de primero del mismo. En mil ochocientos cuarenta y nueve, hubo una vacante que provecer despues de la muerte del Sr. D. Joaquin Romanos, y en el ascenso consiguiente entró de oficial octavo; y como esta plaza se suprimió el año de mil ochocientos cincuenta y tres, quedó de segundo escribiente con los goces de oficial, que es el empleo que actualmente ocupa.—A la tercera: que supo de este negocio, porque en el mes de Mayo de mil ochocientos cuarenta y seis vió en el Ministerio de Justicia, de que era empleado como tiene dicho, la solicitud del Sr. Castellero, y el oficio de Junta de fomento y administrativa de Minería con que la remitió.—A la cuarta: que desde que remitió la Junta de fomento y administrativa de Minería, la instancia de Castellero, tuvo conocimiento de este negocio por la razon referida de ser escri-

biente del Ministerio, y en ejercicio de su empleo, escribió en limpio uno de los oficios relativos á este asunto: que hoy existe el espediente que entonces se formó, en el Ministerio de Relaciones Exteriores, y que hace poco mas de un año vió otras comunicaciones relativas á este negocio en el Ministerio de Gobernacion y en la Administracion del fondo de Minería.—A la quinta; que en el Ministerio que actualmente está, habia en aquella fecha un libro que se llamaba de partes, que comprende varios años, en el cual está asentado, entre otros muchos de la época, el extracto de este negocio, y del acuerdo que la recayó, escrito de letra de D. José María Yrisarri: que el libro referido está todavia en el Archivo del Ministerio de Justicia.—A la sesta: que conoció al Sr. D. José Luciano Becerra desde que se le nombró Obispo de Chiapas, y lo trató luego cuando fué nombrado Ministro de Justicia y Negocios Eclesiásticos: que despues pasó á la ciudad de Puebla donde murió, no recuerda en qué fecha.—A la séptima: que conoció al Sr. D. José María Durán, que era oficial mayor del Ministerio en aquella fecha y funcionó algunas veces como encargado de su despacho: á D. Mariano Rodriguez como empleado que era de la Secretaría, á D. José María Yrisarri que era entonces oficial octavo, y á D. Mariano Miranda que entró de meritorio, quien duró algunos años en el empleo hasta el de mil ochocientos cincuenta y tres que se separó por un nuevo arreglo de la planta de la Secretaría.—A la octava: que en el mes de Julio del año próximo pasado, á petición del Lic. D. Emilio Pardo, concurrió á la oficina del fondo de Minería, en union del Señor Ministro que era de los Estados-Unidos, del cónsul inglés, y de otras personas, en donde vió el espediente que allí existe sobre este asunto, y en él una comunicacion del Ministerio de Justicia firmada por el Sr. Becerra en veinte de Mayo de mil ochocientos cuarenta y seis, accediendo en todas sus partes á la solicitud de Castellero, la cual fué escrita de letra del declarante, en aquella fecha, como lo dijo entonces despues de haberla examinando detenidamente.—A la novena: que tambien con los mismos Sr̄s. y en los mismos dias de que habla en su respuesta anterior, vió el espediente de que se trata en la oficina de que habla la pregunta, y despues de haberlo examinando conoció las etras de D. José María Durán, quien escribió en él un acuerdo; la de D. Joaquin Romanos que escribió otro acuerdo, y la de D. Mariano Rodriguez, oficial de la mesa en que se giró el negocio, de cuyo letra son, la carátula y minutas del espediente: que a todos estos señores los conoció sin recordar la fecha precisa en el mismo Ministerio de Justicia de que eran todos empleados.—A la décima: que es cierto que se le invitó como espresa la pregunta, y lo es igualmente que el que responde se negó por evitar los graves per-

juicios que se le seguian de su separacion de su familia y la de su pais.—Que lo espuesto es la verdad mediante el juramento que ha interpuesto; y firmó doy fé.

MADRID.

[Rubric.]

TEODORO SOTOMAYER.

[Rubric.]

JOSÉ VILLELA.

[Rubric.]

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En seguida ante el señor juez compareció D. Mariano Rodriguez, y juramentado en debida forma fué interrogado conforme al documento que le corresponde y—A la primera dijo: llamarse como va dicho, natural y vecino de Mexico, casado, oficial segundo primero jubilado del Ministerio de Justicia, de sesenta y un años de edad, y no le tocan las generales de la ley.—A la segunda: que sirvió en el Ministerio de Justicia desde el dia veintidos de Noviembre del año de mil ochocientos veintiuno, hasta el primero de Junio de mil ochocientos cincuenta y dos en que se jubiló; y que en el transcurso de esos años desempeñó las plazas de escribiente segundo, oficial octavo ó de partes, archivero, oficial sexto, quinto, tercero, segundo segundo, y segundo primero.—A la tercera: que tuvo noticia del descubrimiento de D. Andrés Castellero por la comunicacion con que en cinco de Mayo de mil ochocientos cuarenta y seis la Junta de fomento y administrativa de Minería dió parte al Ministerio de Justicia é Instruccion pública del descubrimiento mencionado; y que esto lo supo el que responde, por correr á su cargo la mesa de la Secretaria en que se despachó este asunto.—A la cuarta: que poco despues de la fecha referida, es decir, en los primeros dias de Mayo de mil ochocientos cuarenta y seis, vió el documento de que habla su respuesta anterior que sirvió de principio al expediente que entonces se formó, y que ahora existe el expediente referido en el Ministerio de Relaciones exteriores, adonde lo ha visto y examinado detenidamente en estos mismos dias.—A la quinta: que desde la creacion del Ministerio debia existir un libro en que uno de los empleados de la Secretaria, que se llamaba oficial de partes, tenia orden de hacer un asiento de los negocios del Ministerio, y de tomar nota de los acuerdos relativos: que uno de esos volumenes que se comenzó en mil ochocientos cuarenta y uno, lo vió el que responde desde su formacion, y ahora lo ha registrado con detenimiento y ha encontrado en él el acuerdo relativo al negocio de D. Andrés Castellero, de letra de D. José María Yrisarri, empleado del Ministerio de Justicia, en cuyo archivo existe el libro referido, que lo crée legítimo y verdadero, porque muchas fojas de él se escribieron á su presencia; y que en la parte relativa al asunto

de que trata este interrogatorio, lo crée tanto mas verdadero, cuanto que la carátula y minutas de que habla en su respuesta cuarta, están todas escritas de su letra en las fechas que en ellas se mencionan.—A la sesta: que con motivo de haber tomado á su cargo el Ilmo. Sr. D. José Luciano Becerra, la cartera del Ministerio de Justicia é Instruccion pública, en el año de mil ochocientos cuarenta y seis, lo conoció y trató el que habla, como oficial del espresado Ministerio, y que sabe que murió en su obispado de Puebla en el año de mil ochocientos cincuenta y cuatro.—A la séptima: que conoce á todas las personas por quienes se le pregunta, empleados todos en la fecha de que se trata en el Ministerio de Justicia é Instruccion pública: que recuerda que los dos primeros eran empleados superiores de la oficina, y los otros eran inferiores, pero que despues de tanto tiempo no recuerda por menor los funciones que desempeñaba cada uno. Que todos estos detalles se los ha referido varias veces a los interesados, en el año pasado y en el presente, cuando le instaron con empeño que fuera á dar su declaracion sobre esto á los Tribunales de California, lo cual no pudo hacer por el muy quebrantado estado de su salud. Que lo espuesto es la verdad mediante el juramento que ha interpuesto; y firmo doy fé. tatº formado no vale.

MADRID.
[Rubric.]

MARº. RODRIGUEZ OSIO.
[Rubric.]

JOSÉ VILLELA.
[Rubric.]

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MEXICO, Julio 13, de 1859.

Agreguese el oficio que se ha resibido del Sr. Segura. Lo provoyó el S. Juez: doy fé.

MADRID.
[Rubric.]

PABLO SANCHEZ.
[Rubric.]

Se agrega el interrogatorio, y contestacion que dio el Sr. Dⁿ. Vicente Segura. Lo asiento para constanensa.

VILLELA.
[Rubric.]

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YNTERROGATORIO á cuyo teñor será examinando el Sr. D. José Vicente Segura.—1^a. Sírvase vd. decir su nombre, edad y lugar de residencia.—2^a. Diga vd. qué empleos ha desempeñado bajo el Gobierno mexicano y en qué épocas, y cuál el que desempeña vd. actualmente.—3^o. Si era vd. en el año de 1846 presidente de la Junta de Fomento y administrativa de Minería, sírvase decir si tuvo ó no conocimiento del desubrimiento que

habia hecho D. Andres Castellero de una mina de azogue en la Alta California, y cómo tuvo vd. esa noticia.—4^a. Diga vd. si en virtud de esas noticias la Junta de Fomento y administrativa de Minería acordó alguna medida, cuál fué ésta, y si se conserva algun documento relativo á ella, diga á donde está y desde cuándo lo ha visto.—5^a. Diga vd. si la medida de que habla la pregunta anterior produjo algun resultado, cuál fué éste y si existiere alguna comunicacion relativa á este punto, diga lo mismo que en la anterior.—6^a. Sírvase vd. decir si hechos los ensayes de las muestras de cinabrio remitidas de California acordó ó nó la junta que se diera despues la noticia correspondiente, á quién, y si sabe que exista algun documento escrito sobre esto.—7^a. Dada la noticia al Supremo Gobierno, diga vd. si la dió al descubridor de la mina D. Andres Castellero, y si la junta recibió ó no contestacion de uno y otro cuándo la recibió, dónde estan los documentos, desde qué fecha los vió y tuvo noticia de ellos.—8^a. Diga si á los documentos de que habla la pregunta anterior recayó algun acuerdo de la junta, cuál fué éste, si se pasó alguna nota en consecuencia y á quién, por quién fué suscrita la nota, si se conserva algun borrador de ella y en donde, y si considera la nota y el borrador legítimos, diga por qué y espresé desde cuándo ha visto los documentos mencionados.—9^a. Diga vd. por conducto de qué Ministerio se pasaron al Supremo Gobierno los documentos de que habla la pregunta anterior, y si recibió la junta contestacion, en dónde está ésta, y qué medidas se acordaron despues de recibida.—10^a. Sírvase vd. decir qué resultado tuvieron las medidas de que habla su respuesta anterior.—11^a. Diga si todos los documentos de que se hace mencion en las preguntas anteriores están reunidos, en dónde existen, si ha dado recientemente copia de ellos, en qué forma y á quién.—12^a. Diga si las medidas de que hablan las anteriores preguntas se tomaron por acuerdo de la junta, y si de ellas existen borradores ú originales, espresé en dónde, si ha dado copia de ellos, á quién y en qué forma.—13^a. Diga si sabe que las actas de la junta se copiaban en algun libro siguiéndose unas á otras, y que ese libro estaba sellado por la oficina respectiva, si el libro existiere, diga si lo considera legitimo y por qué.—14^a. Diga quiénes formaban la Junta de fomento y administrativa de Minería en el año de 1846, si esas personas firmaron los acuerdos en la junta, cuándo lo hicieron y si los vió firmar el mismo declarante.—15^a. Diga si en los últimos meses del año de 1846 el Ministerio de Relaciones pidió á la Junta de fomento y administrativa de Minería una memoria sobre los negocios de su ramo, quién hizo ese documento, quién lo suscribió, si en él se hizo relacion de la mina y concesion de Castellero ; y leida que le sea la parte

relativa de la memoria del Ministerio de Relaciones que se acompaña á estas diligencias, espresese si es la misma que él remitió y que aparece publicada en aquella fecha.—16^a. Diga si conoce á D. Manuel Couto, si ha ocupado algunos empleos en la Junta de fomento y administrativa de Minería desde 1846, euáles han sido estos y desde qué fecha desempeña el último.—17^a. Diga si conoce á D. Ysidro R. Gondra, desde cuándo, que empleo desempeñaba en 1846 en la Junta de fomento y administrativa de Minería, y si recuerda cuándo se separó de este empleo.—18^a. Diga si conoce á D. Andres Castellero, desde cuándo, si lo vió en México en el mes de Mayo de 1846, y en dónde.—19^a. Diga si por el conocimiento que tiene de los negocios de Minería, cree que conforme á las leyes mexicanas la concesion de la mina de azogue que hizo el Supremo Gobierno á Castellero, previo informe de la junta, le dió un título legítimo para poseer la mina y pertenencias que se le concedieron.

Méjico, Julio 7 de 1859.

EUSTAQUIO W. BARRON.

L. EMILIO PARDO.

[Rubric.]

A la 1^a. Digo llamarme Vicente Segura, de setenta años de edad, y rerido en la ciudad de México desde 1836.—A la 2^a. Que en el año de 1814 fuí electo alcalde primero y presidente del muy ilustre Ayuntamiento de la ciudad de Córdoba, lugar de mi nacimiento. En 1824 fuí nombrado gefe del Departamento de Orizaba, y serví este cargo hasta fines del año de 1827. En el año de 1828 se me nombró y desempeñé el cargo de contador general de las rentas del Estado de Veracruz, se me ascendió al empleo de administrador general de las rentas del mismo Estado, y desde el año de 1833 hasta el de 1835, desempeñé en la ciudad de Puebla el cargo de interventor por el Estado de Veracruz en la grueza decimal. En el año de 1835 fuí nombrado ministro de Estado y del despacho de la Secretaría de Hacienda. Posteriormente se me designó, en virtud de la constitucion de 1837, consejero de Estado. He servido tambien los cargos de diputado y senador en el Congreso de la Union. En 1836 se me nombró contador por el Gobierno, del establecimiento de Minería, y desde esta fecha hasta la presente, en su oficina, he seguido prestando mis servicios, ya con el carácter de contador hasta el año de 1842 y despues como individuo de la Junta de fomento y administrativa de Minería, vocal del tribunal de Minería y últimamente administrador general del fondo dotal de Minería. En la actualidad tambien se me ha honrado con el nombramiento de consejero de Estado.—A

la 3^a. Que en el año de 1846, como miembro que era yo de la Junta administrativa de fomento y Minería, me tocó en turno funcionar de presidente de la misma corporacion, y en el mes de Abril de aquel año D. Tomas Ramon del Moral presentó á la junta mencionada una carta de D. Andrés Castellero, en que le participaba haber descubierto una mina de azogue cerca de la mision de Santa Clara en la Alta California, remitiendo al presidente de la República unas muestras de cinabrio, y suplicándole que lo mandara ensayar para que despues de esto pidiera á la Junta la proteccion que ésta debia dar por ley á los explotadores del azogue nacional.—A la 4^a. Que en virtud de la noticia de que he hablado en la respuesta anterior, la Junta acordó que se pasara una nota al director del colegio nacional de Minería, encargandole que en el establecimiento se hiciera un ensaye de las muestras que se le acompañaban, en union de copias de las cartas de Castellero al Presidente D. José Joaquin de Herrera y D. Tomas Ramon del Moral, y que avisara el resultado. El borrador ó minuta de esa comunicacion existe en el archivo de lo que entonces era Junta administrativa de fomento y hoy es Administracion del fondo de Minería, y yo la he visto en la oficina desde que la escribió D. Ysidro R. Gandra, oficial primero que entonces hacia de secretario, de cuya letra está escrita desde su fecha que es 21 de Abril de 1846, y es la 1^a foja del espediente que se formó, siendo la 2^a y 3^a las copias de las cartas de que ha hablado.—A la 5^a. Que el resultado que produjo la medida anterior fué que el dia 29 de Abril, el director del colegio de Minería D. José M. Tornel participase á la Junta que la facultativa de profesores del colegio, se habia impuesto del negocio, y le decia que las muestras de cinabrio estaban ya depositadas en el gabinete de Mineralogía, unas, y otras ensayadas por el profesor de Química D. Manuel Herrera, dando una ley de $35\frac{1}{2}$ por 100. El documento que existe sobre esto es la misma comunicacion original del Sr. Tornel que se recibió en 3 de Mayo, segun nota puesta por mí mismo, y esa nota se guarda en el mismo archivo de la oficina que es á mi cargo, desde la misma fecha en que la recibí que fué cuando la ví por primera vez y son las fojas 4 y 5 del espediente referido.—A la 6^a. Que hechos los ensayes con tan satisfactorios resultados como he dicho, la Junta acordó que se hiciera saber al Supremo Gobierno, como se hizo en efecto en 5 de Mayo por conducto del Ministerio de Justicia, por cuya Secretaría como ramo de lo interior se giraban entonces los negocios de Minería. La minuta de esa comunicacion existe tambien en el archivo de la oficina donde la he visto desde su fecha, y el original firmado por mí se remitió al Ministerio de Justicia como he dicho, y forma la foja 5 vuelta y 6 frente del

espediente á que me he referido.—A la 7^a. Que como se decia en la nota de que he hablado en la respuesta anterior, se preguntó á D. Andrés Castellero la clase de auxilios que necesitaba para fomento de su brillante empresa, y contestó en 12 de Mayo haciendo una solicitud cuya copia existe autorizada por el Sr. D. Ysidro R. Gondra. El Gobierno á su vez acusó recibo en 9 de Mayo de la comunicacion de 5 del mismo, y tanto uno como otro documento se encuentran tambien en el archivo de la oficina de mi cargo, el uno desde su fecha y el otro debe haberse recibido acaso en el mismo dia ó poco despues. Este último es la foja 7^a del espediente y el 1^o comprende las 13 y 14 del mismo.—A la 8^a. Que la Junta acordó que se recomendara al Supremo Gobierno la solicitud de Castellero, porque siendo un cuerpo meramente administrativo, no tenia facultades para acceder por sí sola á los deseos del solicitante, en consecuencia se pasó al Exmo. Sr. D. Luciano Becerra, entonces ministro de Justicia, la comunicacion de 14 de Mayo, firmada por mí como presidente entonces de la Junta, y cuyo borrador ó minuta existe en la oficina de mi cargo. Estos documentos los he visto en mi oficina desde su fecha y los considero tan legítimos y verdaderos como que de la solicitud de Castellero se me dió cuenta á mí y á la Junta, la minuta se redactó por mi orden y la comunicacion original se suscribió y firmó por mí como lo he dicho, siendo hoy esa minuta las fojas 8, 9, 10, 11 y 12 del repetido espediente.—A la 9^a. Que ya en una de las respuestas anteriores dije que estas comunicaciones se pasaron al Supremo Gobierno por conducto del Ministerio de Justicia. La Junta recibió contestacion á su nota de 14 de Mayo en 20 del mismo, accediendo en todas sus partes á la solicitud de Castellero: la comunicacion original dirigida á la Junta, existe en la oficina de mi cargo, y como la solicitud de Castellero era que se otorgase un contrato con la Junta para que se le facilitaran cinco mil pesos, que se le entregaran los frascos de fierro existentes en Tasco y demás cosas que se ven en su solicitud, se dió orden á un escribano para que otorgara la escritura respectiva, se dispuso el dinero para entregarlo al solicitante, y se acordó dar la orden para que se pusieran á su disposicion los frascos vacíos que habia en Tasco, propios de la Junta. La comunicacion que se recibió del Supremo Gobierno forma la foja 15^a del espediente.—A la 10^a. Que estas medidas no tuvieron resultado alguno, porque desde 2 de Mayo del mismo año de 1846 se suspendieron todos los pagos de las oficinas del erario: se dudó por la Junta con posterioridad si se comprendia en esa suspension la de los gastos del fondo de azogues, y como en 23 de Mayo llegó á la Junta la declaracion en que se mandaba suspender todo pago de este ramo, ya no se pudo entregar á Cas-

tillero la cantidad que se tenia preparada para el efecto, y que aun llegó á estar contada para su entrega.—A la 11^a. Que todos los documentos de que he hablado se encuentran reunidos y cosidos en el expediente á que me he referido en la mayor parte de las preguntas anteriores. De él se han dado en el año pasado dos calcos certificados á petición de la casa del Sr. Barron en el mes de Mayo del año pasado de 1858. Se dió un tercero á petición del mismo señor, en 20 de Abril del corriente año, y por último se ha dado otro calco para el Ministerio de Relaciones exteriores por órden que se recibió del de Fomento en 30 del último Abril.—A la 12^a. Que todas las medidas de que he hablado se tomaron por acuerdo de la Junta en la parte en que toca á los procedimientos de ésta, y esos acuerdos constan en las actas respectivas de las cuales existen en el archivo de esta oficina cuadernos en que están los borradores y libros en que se ponen en limpio. La parte conducente de unos y otros que pidieron los interesados, se les dió tambien en calco certificado en el mes de Abril pasado.—A la 13^a. Que he dicho que las actas de la junta se copiaban en un libro, y que de la parte conducente dió calco certificado á los interesados: en él espresé que las actas se seguian unas á otras, que estaba sellado por la oficina que conforme á nuestras leyes debe hacerlo, y lo considero legítimo por haberse hecho conforme á lo que previene el reglamento de la oficina, y verdadero, porque lo he visto escribir por mi órden y por empleados de la misma oficina.—A la 14^a. Que en el año de 1846 éramos vocales de la Junta de Minería el Sr. D. José Maria Bassoco, el Sr. D. Juan Maria Flores y yo mismo; y suplentes, los Sres. D. José Joaquin de Rosas y D. Atilano Sanchez: los acuerdos de la Junta se firmaban por ellos, segun concurrían á las sesiones, y yo mismo los ví firmar varias ocasiones.—A la 15^a. Que en 5 de Noviembre de 1846, segun consta del libro de Actas de la Junta, se dió cuenta con un oficio del Ministerio de Relaciones de 3 del mismo mes, pidiendo noticias exactas de los trabajos de la Junta desde 1845, con las indicaciones que creyese oportunas: que en virtud de esta comunicacion, la Junta mandó extractar la Memoria formada el Sr. secretario Castera, agregándole las noticias posteriores, lo cual hice redactando yo mismo la conclusion que abraza desde la página 142 hasta el fin, que es la 147: que ese documento lo firmé como presidente de la Junta en 17 del mismo mes y año, y se insertó en el Apéndice de la Memoria de Relaciones del referido año de 1846, bajo el número 52; y en la foja 136 de la edicion oficial de la Memoria del Sr. Lafragua, se hace referencia de todo lo sucedido con Castillero: que en el mes de Abril del presente año vi la Memoria original de la Junta en poder del Sr. Bassoco, y es la misma que corre im-

presa.—A la 16^a. Que conozco á D. Manuel Couto desde su infancia, por las íntimas relaciones de amistad que tuve con el señor su padre. En 1846 era escribiente de la Junta de fomento y administrativa de Minería, hasta 1848 que ascendió á oficial segundo de la Secretaria de la Junta de fomento de Minería, cuyo empelo desempeñó hasta 1852. En 28 de Junio del mismo año se espidió un decreto, organizando de nuevo la oficina, y fué nombrado secretario de la Administracion del fondo y encargado de los archivos de la misma, que es el empleo que desempeña hasta la fecha.—A la 17^a. Que conozco á D. Ysidro R. Gondra muchos años antes de que fuera empleado en la oficina de la Junta de fomento de Minería: en 1846 era oficial primero de la Secretaría de la Junta administrativa y de fomento de Minería, y encargado de la misma Secretaría por ausencia con licencia del secretario, que lo era entonces D. José María Castera.—A la 18^a. Que conozco á D. Andrés Castillero desde el año de 1846, y lo ví en México, en el mes que refiere la pregunta, en la misma oficina á donde se presento varias veces á agitar su negocio pendiente.—A la 19^a. Que creo que conforme á las leyes mexicanas, en los lugares donde no hay diputacion de minas dentro del partido que abraza su jurisdiccion, la primera autoridad política del lugar ó del contorno mas inmediato á él, ejerce las atribuciones de la Diputacion de Minería, esto és, admite los denuncios y dá legítimamente las posesiones mineras como se ha acostumbrado y se acostumbra todavía en tales casos; y creo ademas, que investido el Gobierno del general Paredes, como lo estaba en 1846, de facultades extraordinarias, cabia dentro de ellas el aprobar las pertenencias y posesion de la mina de azogue descubierta por el Sr. Castillero, en los términos que lo hizo el juez de San José y consultó al Gobierno la Junta administrativa de fomento de Minería, como consta en el oficio que se elevó al Supremo Gobierno con fecha 14 de Mayo y obra en el espediente á fojas 14; y así en mi concepto, la concesion hecha á D. Andrés Castillero por el Supremo Gobierno, le dá un título legítimo á poseer la mina y pertenencias que la Junta acordó se le concediera como premio de su descubrimiento. Que lo espuesto lo ha repetido muchas veces á los interesados que le instaron empeñosamente para irlo á declarar á los tribunales de California, lo cual no pudo hacer el que responde por su avanzada edad y enfermedades.

VICENTE SEGURA.

[Rubric.]

En contestacion á la atenta comunicacion de V. S. de 8 del presente, tengo el honor de remitirle en pliego separado las respuestas al interrogatorio presentado por D. Eustaquio Barron, conforme á las constancias que obran en esta oficina en el negocio relativo á la mina de azogue que descubrió D. Andrés Castellero en la mision de Santa Clara de la Alta California en el año de 1846.

Dios y L. Julio 9 de 1859. VICENTE SEGURA.
 Sor. Juez 1° de la Civil, Lic. D. Antonio Madrid. [Rubric.]

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 Mexico, Julio 15 de 1859.

Agreguese á la informacion el oficio que ha remitido el Sr. Dⁿ. Luis G. Cuevas. Lo proveyó el S. Juez: doy fe.

MADRID. PABLO SANCHEZ.
[Rubric.] [Rubric.]

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 Se agrega á este cuaderno el oficio del Sr. Cuevas, en cumplimiento de lo mandado en el auto anterior: doy fé.

VILLELA.
[Rubric.]

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 Mexico, Julio 26 de 1859.

Agreguese el oficio y diligencias con que se da cuenta. Lo proveyó el Sr. Juez doy fe.

MADRID. PABLO SANCHEZ.
[Rubric.] [Rubric.]

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 Se agrega el oficio que refiere el auto anterior y es el que remitió el Sr. Dⁿ. José M^a Duran. Lo asiento para constancia.

VILLELA.
[Rubric.]

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 México, Setiembre 5 de 1859.

Agreguese al espediente el oficio que se ha recibido del Sr. Flores. Lo proveyó y firmó el Sr. Juez interino 1° de lo civil, Lic. Dn. Ygn° Solares: doy fé.

SOLARES. PABLO SANCHEZ.
[Rubric.] [Rubric.]

En cumplimiento del auto anterior queda agregado el oficio que se refiere, doy fe.

VILLELA.

[Rubric.]

En seis del mismo compareció Dⁿ Eustaquio W. Barron y dijo: que estando yá traducidas las cartas que exhibió, pide al Juzgado se sirva mandar se le devuelvan quedando razon en este expediente; y firmó doy fé.

EUSTAQUIO W. BARRON.

JOSÉ VILLELA.

[Rubric.]

México, Setiembre 6 de 1859.

Como lo pide. Lo proveyó el Sr. Juez doy fé.

SOLARES.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

En la misma fecha se devolvieron á Dⁿ Eustaquio W. Barron, las tres cartas que exhibió el dia doce de Julio anterior y son las mismas que se tradujeron por el Lic. Dⁿ Francisco Bonilla, y se hallan agregadas á este cuaderno; y como recibido de ellas firma la presente: doy fé.

JOSÉ VILLELA.

[Rubric.]

EUSTAQUIO W. BARRON.

YNTERROGATORIO á cuyo tenor se ha de examinar á los señores Licenciados D. Bernardo Couto, D. Luis G. Cuevas y D. Miguel Atristain.—1^a. Sirvase vd. decir su nombre, edad, residencia y demas generales.—2^a. Sirvase vd. decir si fué comisionado por el Supremo Gobierno en 1847 para la redaccion del tratado de paz que se firmó en 2 de Febrero de 1848 con el Sr. Trist, comisionado de los Estados-Unidos de América.—3^a. Sírvase vd. decir qué razones hubo para fijar en el art. 10^o. del Tratado de Guadalupe el dia 13 de Mayo de 1846 como la última fecha de las concesiones de tierras hechas por el Supremo Gobierno en el Departamento de la Alta California, pormenorizando todas las especies que sobre este punto le sea á vd. posible recordar. Mejico, Julio 7 de 1859.

L. EMILIO PARDO.

[Rubric.]

EUSTAQUIO W. BARRON.

El Sr. Dr. D. Bernardo Couto ha recibido una comunicacion del Ministerio de Relaciones para que los plenipotenciarios que firmamos el Tratado de Guadalupe, informemos sobre el negocio á que se contrae el interrogatorio presentado en ese juzgado por el Sr. D. Eustaquio W. Barron, que V. S. se ha servido acompañarme con su oficio de 8 del presente, que se me entregó ayer; y así por esta circunstancia, como porque no me seria permitido decir nada sobre aquella negociacion sin el previo permiso ú órden del Supremo Gobierno, no pueda dar la declaracion que desea el mismo Sr. Barron.—Tengo el honor de decirlo á V. S. en debida contestacion con las protestas de mi respeto y consideracion.

Dios y libertad. México, 15 de Julio de 1859.

LUIS G. CUEVAS.

[Rubric.]

Sr. Juez 1º de lo Civil, Dⁿ Antonio Madrid.

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YNTERROGATORIO á cuyo tenor será examinado D. José Maria Duran.—1^a. Sírvase vd. decir su nombre, edad, lugar de su residencia y demas generales.—2^a. Diga qué empleos ha desempeñado bajo el gobierno mexicano, desde cuándo y cuál el que sirve actualmente.—3^a. Diga si tuvo noticia del descubrimiento que hizo D. Andrés Castellero de una mina de azogue en la Alta California, desde cuándo y cómo.—4^a. Diga si sabe que desde entonces haya habido alguno ó algunos documentos escritos sobre esto, en dónde los vió por primera vez, y en dónde existen actualmente.—5^a. Diga si ha visto recientemente esos documentos, si los ha examinado con atencion, de letra de quién están escritos, y si los cree legítimos y verdaderos.—6^a. Diga si sabe que en 1846 existiera en el Ministerio de Justicia algun memorandum de los negocios del mismo Ministerio, cómo se formaba éste, si sabe que existe ahora, en dónde lo ha visto y si lo cree legítimo y verdadero.—7^a. Diga si conoció al Ilmo. Sr. D. José Luciano Becerra, cuándo y en dónde, que empleo público ocupaba en Mayo de 1846: si sabe que haya muesto, desde cuándo y en dónde.—8^a. Diga si sabe que cada año se presentaba á las cámaras por los Ministerios respectivos una memoria de los negocios de su ramo, si sabe que en fines de 1846 presentó documento de esta especie el señor ministro de relaciones D. José Maria Lafragua, si esa memoria es la misma que se le presenta impresa, y si la cree legítima y verdadera.—9^a. Leidos que le sean los documentos relativos á la mina de azogue de Castellero, diga si la parte de hechos que se refiere al Ministerio de Justicia es exacta y le consta su certidumbre.—10^a. Diga si

la concesion que hizo el Supremo Gobierno á Castellero en 1846, cabia en su concepto en las facultades de que estaba investido entonces el ejecutivo, y si los negocios de Minería corrian en aquella fecha á cargo del Ministerio de Justicia.—11^a. Diga si conoce á los Sres. D. Teodoro Soto-Mayor, D. Mariano Rodriguez, D. José María Yrisarri, D. Mariano Miranda y D. Joaquín Romanos, desde cuándo, y si en Mayo de 1846 desempeñaban algun empleo, espese cuál fué éste.

L. EMILIO PARDO. EUSTAQUIO W. BARRON.

[Rubric.]

Contestacion al interrogatorio que me acompaña el señor juez 1^o. de lo civil D. Antonio Madrid con oficio de 8 del presente mes, relativo al negocio del Nuevo Almaden en la Alta California.—A la 1^a. pregunta digo: que mi nombre es José María Duran, que soy viudo, de setenta años cumplidos de edad, vecino de esta ciudad, capital de la República mexicana.—A la 2^a. Que despues de haber desempeñado varios empleos en tiempo del gobierno español desde el año de 1811, continué mis servicios bajo el gobierno mexicano independiente al instalarse por primera vez las Secretarías de Estado, entrando en la titulada de Justicia y Negocios Eclesiásticos con el nombramiento de archivero, y que en ella fuí ascendiendo sucesivamente hasta ocupar la plaza de oficial mayor primero en 19 de Mayo de 1847; pero que aun siendo mayor segundo me habilitó el Supremo Gobierno desde 1^o. de Agosto de 1840 con el ejercicio de Decretos, con cuyo carácter desempeñé el Ministerio quince ocasiones, cubriendo las faltas de los señores ministros por su ausencia, enfermedad y renuncia. Que serví la mayoría hasta 7 de Enero de 1854 que por mi edad, enfermedad y dilatados servicios se me concedió mi jubilacion ó retiro con los honores, fuero, prerogativas y excenciones de los secretarios de Estado, por lo que actualmente no sirvo ningun empleo de desempeño obligatorio, sino el de consiliario de la Academia nacional de Nobles Artes de San Carlos, y el de socio de número de la Sociedad Mexicana de Geografía y Estadística.—A la 3^a. Que desde el mes de Mayo de 1846 tuve noticia del descubrimiento que hizo D. Andrés Castellero de una mina de azogue en la Mision de Santa Clara de la Alta California, porque ví la comunicacion oficial que con fecha 5 del mismo dirigió al Ministerio de Justicia (que en aquella época tenia tambien á su cargo los ramos de instruccion pública), el presidente de la Junta de fomento y administrativa de Minería, poniendo en conocimiento del Supremo Gobierno el descubrimiento mencionado.—A la 4^a. Que desde entonces comenzaron á entrar al

Ministerio citado otros escritos sobre este negocio, que allí mismo ví por primera vez, y con todos se dió principio al expediente que actualmente existe en el Ministerio de Relaciones exteriores, donde los he visto recientemente con el motivo que diré despues.—A la 5^a. Que hace poco mas de un año que con motivo de no encontrar los interesados el paradero de esos documentos, á ruego suyo fuí en persona á procurar que se buscaran en la parte donde creí que debian existir, y en efecto fueron encontrados en una mesa del Ministerio de Relaciones exteriores, los cuales conocí recordando el asunto y mirando en ellos letra de mi mano y pluma, como lo es de un acuerdo de 9 de Mayo puesto al márgen de la primera comunicacion, y minutas ó borradores de letra de D. Mariano Rodriguez, así como el acuerdo de 20 del mismo Mayo en la segunda comunicacion de letra de D. Joaquin Romanos ya difunto, cosas todas que puedo declarar en verdad por haberlo examinado detenidamente, y creo tan legítimos y verdaderos esos documentos como que, fuera del ministro, yo era el gefe inmediato de la Secretaría, donde comenzó el negocio.—A la 6^a. Que conforme al primer reglamento de las Secretarías de Estado, habia en la de Justicia una mesa con un oficial encargado de poner en un libro de á folio paginado, extractos del contenido de los negocios que entraban al Ministerio y de las resoluciones que se dictaban sobre ellos: que existe allí archivado, y lo he visto hace pocos dias, uno que comenzó el año de 1841 y concluyó el de 1846 inclusive, del cual no puedo dudar su legitimidad.—A la 7^a. Que conocí al Ilmo. Sr. D. José Luciano Becerra hace muchos años, y lo traté muy de cerca en el tiempo que fué ministro de Justicia, negocios eclesiásticos ó instruccion pública, cuyo empleo desempeñó desde los primeros dias de Enero hasta mediados de Junio de 1846: es bien sabido que dicho señor murió en la ciudad de Puebla, siendo obispo de aquella diócesis en el año de 1854.—A la 8^a. Que tan cierto es que cada año se presentaba á las Cámaras del Congreso general una Memoria de los negocios de cada Ministerio, por su gefe respectivo, que no puede dudarlo ninguno de los que asistian á las galerías ó leian los periódicos en que se publicaban las actas de las sesiones; y ademas esas Memorias se circulaban impresas á todas las autoridades y funcionarios: que el Sr. D. José María Lafragua presentó la suya en Diciembre de 1846 y es la misma que ahora se me presenta en un ejemplar impreso y certificado por el señor oficial mayor del Ministerio de Relaciones D. Mignel Arroyo; y que no puedo dudar de su legitimidad y verdad por haberla visto circular, y recibido yo ejemplares de mano de dicho Sr. Ministro Lafragua en la ciudad de Querétaro donde me hallaba con el Supremo Gobierno en el año de 1847.—

A la 9^a. Que vistos y leídos los documentos relativos á la mina de azogue de Castellero, veo que la parte de hechos que se refiere al Ministerio de Justicia es esacta, y no puedo dudar de su certidumbre.—A la 10^a. Que en 1846, desde 7 de Enero hasta 6 de Agosto, todos los negocios de Minería corrian por el Ministerio de Justicia, porque se tituló tambien de instruccion pública, y por tal motivo tenia á su cargo el Colegio y la Junta de fomento y administrativa del ramo.—A la 11^a. Que conozco bien á los Sres. D. Teodoro Soto-Mayor, D. Mariano Rodriguez, D. José María Yrisarri, D. Mariano Miranda y conocí tambien á D. Joaquin Romanos, ya difunto: al 1^o. desde el año de 1828, al 2^o. desde la instalacion de los ministerios en 1821, al 3^o. desde el año de 1834, al 4^o. desde el de 184 , y al 5^o. tambien desde la instalacion de los Ministerios. En el año de 1846 desempeñaba Romanos la plaza de oficial segundo primero del Ministerio de Justicia. Rodriguez la de quinto, Yrisarri la de octavo y Soto-Mayor y Miranda la de escribientes.—Lo que dejo referido es cuanto puedo declarar en verdad añadiendo, que por causa de mi avanzada edad y enfermedades no me presté á ir personalmente á California á hacer esta declaracion ante aquellos Tribunales, dos veces que he sido invitado empeñosamente para ello.

Méjico, Julio 26 de 1859.

JOSE M^A. DURAN.

[Rubric.]

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Devuelvo á V. el interrogatorio que se sirvió remitirme con su atento oficio de 8 del presente mes, relativo al negocio del Nuevo Almaden, acompañándole en pliego separado las respuestas correspondientes, siguiendo el órden en que se halla formado dicho interrogatorio.—Con este motivo tengo el honor de renovar á vd. las protestas de mi aprecio y respeto.

Dios y L. Méjico, Julio 26 de 1859.

JOSE M^A. DURAN.

[Rubric.]

S. Juez 1^o. de lo Civil, Lic. D. Antonio Madrid.

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México, Junio 17 de 1859.—Estimado Señor.—Siento poner en conocimiento de vd. que en las presentes circunstancias me es imposible espedir el testimonio que me pide.—Soy de vd. con el mayor respeto su obediente servidor.

JUAN BLACK.

Sr. Lic. D. Emilio Pardo.—Núm. 9, calle del Esclavo.

Consulado de los Estados-Unidos de América.—México, Junio 21 de 1859.—Señor.—En contestacion á la carta de vd., fecha de hoy, debo decirle: que en las actuales circunstancias no puedo expedir el testimonio que vd. solicita; pues he recibido una comunicacion del honorable Roberto M. Mac-Lane, enviado extraordinario y ministro plenipotenciario de los Estados-Unidos de América, cerca del Gobierno constitucional, en que me dice (al tratar de un testimonio sobre cierto negocio pendiente entre los Estados-Unidos, D. Andrés Castellero, Juan Parrott y otros) lo que copio: “Tengo instrucciones para avisar á vd. que el Gobierno no autoriza tal procedimiento.”—Por tanto, considero deber suspender la expedicion de dicho testimonio hasta que pueda consultar con el espresado Ministro sobre el negocio, y recibir de él nuevas instrucciones acerca de ello; pues tal vez las primeras no comprendan al caso de vd. Mas en esto no puedo yo considerarme (por carecer de los datos necesarios) competente para decidir; y por lo mismo esperaré nuevas instrucciones para obrar de una manera mas positiva.—Soy con el mayor respeto vuestro obediente servidor.

JUAN BLACK.

Sr. D. Eustaquio W. Barron.—México.

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Consulado de los Estados-Unidos de América.—México, Junio 25 de 1859.—Señor:—Anoche he recibido la carta de vd., fecha 22 del presente; y en respuesta debo decirle: que no tiene vd. razon al sorprenderse del contenido de mi carta de 21 del corriente, cuando parece que estaba vd. bien informado en la materia, y sabia de antemano lo que habia pasado; y ahora se muestra vd. altamente disgustado de que sus propios “esfuerzos, y los de los ilustrados caballeros que han emprendido la defensa de vuestros derechos (como V. dice), con el objeto de conseguir del Gobierno de los Estados-Unidos algun auxilio para aclarar la cuestion de dudas y asegurar el verdadero lado en que debe hallarse y probarse la verdad; lo cual vd. siente decir que es enteramente infructuoso;” y que “no contento con desdeñar vuestras proposiciones en Washington, tambien persigue á vd. el Gobierno aquí, en nombre de un Gran Pueblo, y por conductos oficiales, para suspender una ley de los Estados-Unidos, promulgada y autorizada por el Congreso de la Union.” Mas adelante dice vd.: “Felizmente para vd. mismo y los interesados con vd. en los juicios pendientes ante los tribunales de los Estados-Unidos, no es el departamento ejecutivo del Gobierno de aquel país el que tiene que decidir

sobre la justicia del caso." Esto lo debia vd. haber considerado y reservado, y no pedir la intervencion en negocios pendientes en los tribunales judiciales.—Ahora parece, segun lo que precede, que vd. y sus ilustrados calleros, en lugar de atenerse á lo que los tribunales que conocen de vuestros negocios han determinado ó puedan determinar, se han salido de la esfera legal, pidiendo la intervencion ejecutiva de los Estados-Unidos para detener y alterar el curso regular de los procedimientos en vuestro caso; y porque ella rehusa colocarse sobre la ley para acomodarse á vos, lo acusais como un acto de suspender una ley de los Estados Unidos. Otra cosa de que tambien la acusais es de ser obstinada en rehusarse á obrar con su no autorizacion de procedimientos que vd. exige se le permita practicar, independientemente de los tribunales que única y legalmente tienen jurisdiccion en el caso; y el simple acto de anunciárase tal no autorizacion, es declarado por vd. "un acto de perseguiros aquí, en nombre de un Gran Pueblo, y por medios oficiales, para suspender una ley de los Estados-Unidos, promulgada y autorizada por el Congreso de la Union."—Nada hay en las instrucciones sobre suspender ley alguna ni prohibir la espedicion de testimonio; es simplemente un aviso, manifestando que para poder proceder legalmente no se requiere la intervencion y autorizacion de la autoridad ejecutiva; y que su sancion no es requisito previo para continuar procedimientos legalmente conducidos que emanan de la propia autoridad judicial; y finalmente, que no se puede, ni se autorizará ninguno.—Soy de vd., señor, con el mas profundo respeto, su obediente servidor.

JUAN BLACK.

Señor D. Eustaquio W. Barron.—México.

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México, Julio 9 de 1859.—Señor:—Tuve el honor de recibir anoche una communication oficial de fecha 7 del presente, dirigida á mí por el honorable juez 1º. de lo civil D. Antonio Madrid, avisándome que D. Eustaquio Barron se habia presentado en su juzgado por la Compañia del Nuevo Almaden en la Alta California, manifestando la necesidad de espedírsele un testimonio para probar algunos hechos ante los tribunales de la Alta California; asegurando al mismo tiempo que yo habia rehusado mi intervencion, y agregando que yo tenia ordenes del Ministro Americano en Veracruz para no autorizar procedimiento alguno relativo al asunto mencionado. Debo protestar aquí que el ministro no me ha dado tales órdenes en el caso, como puede verse en la correspondencia que sobre la materia

ha mediado entre mí y D. Eustaquio W. Barron; habiendo sido estensivamente explicado el asunto relativo al caso en mi carta de 25 del pasado, en respuesta á la del Sr. Barron de 22 del mismo; cuya correspondencia supongo que toda él la habrá acompañado á su escrito, como debe ser para la perfecta inteligencia del caso.—El honorable señor juez sabe ademas que yo no estoy considerado por las autoridades establecidas en esta ciudad con capacidad de ejercer las funciones consulares.—Tengo el honor de ser vuestro obediente servidor.

JUAN BLACK.

Honorable Antonio Madrid, 1^{er}. juez de lo civil.—México.

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Es traduccion fiel del original que se me ha pasado.—México, Agosto 24 de 1859.

F^{co}. DIEZ DE BONILLA.

[Rubric.]

Dr^{os}. conforme al art^o 35 del }
cap^o 9 del arancel, 7 p^s. 4 r^s. }

[Una Rubrica.]

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YNTERROGATORIO á cuyo tenor será examinado el Sr. D. Juan Maria Flores.—1^a. Diga su nombre, edad, residencia y demas generales.—2^a. Sírvase vd. decir qué empleos ha desempeñado bajo el Gobierno mexicano, en qué épocas, cuál el que servia en 1846, y cuál el que desempeña actualmente.—3^a. Diga si en los meses de Abril y Mayo de aquel año de 1846, como vocal que era de la Junta de fomento y administrativa de Minería, tuvo conocimiento de haberse descubierto una mina de azogue en la Alta California por D. Andrés Castellero.—4^a. Diga si es cierto, como lo es, que las muestras del metal remitidas por Castellero á D. Tomas Ramon del Moral, fueron ensayadas en el Colegio Nacional de Minería por acuerdo de la Junta, y con el resultado de esta operacion se dió cuenta al Supremo Gobierno.—5^a. Diga si conoce á D. Andrés Castellero, y si recuerda que en los meses referidos del año citado de 1846 lo vio en México y en donde.—6^a. Diga si es cierto que Castellero hizo una solicitud pretendiendo que la Junta le facilitara ciertos fondos para la explotacion de la empresa, y le pidio su recomendacion para que el Supremo Gobierno accediera á su pretension en los términos de su solicitud.—7^a. Diga si sabe y le consta que el Gobierno accedió á lo pedido por Castellero, y si en consecuencia la Junta se disponia á entregar la suma necesaria.—8^a. Diga si sabe y le consta que este arreglo se frustró por la orden que el Supremo Gobierno espidió en Mayo de 1846, previni-

endo la suspension de toda especie de pagos.—9^a. Diga si sabe, que sobre este asunto de Castellero haya habido algunos documentos escritos, cuándo y en dónde los vió por primera vez, si sabe que existen ahora y en dónde.—10^a. Diga si sabe quién fué Presidente de la Junta de fomento y administrativa de Minería en 1846, y quiénes vocales y suplentes de la misma corporacion.—11^a. Diga cuál era la forma en que se daban los acuerdos de la Junta, si de ellos ha quedado algun documento escrito, dónde, cuándo lo ha visto, en dónde y si sabe que exista ahora.—12^a. Diga si sabe que las Secretarias de Estado de la República tenían obligacion de dar cada año el soberano Congreso una Memoria de los negocios de su ramo; si sabe que en 1846 la Secretaría de Relaciones cumplió con ese requisito, y si la Memoria que se le presenta es la edicion oficial de la que se leyó en el mencionado año de 1846.—13^a. Diga si en el año referido se pidió por el Ministerio de Relaciones alguna Memoria á la Junta de fomento y administrativa de Minería, y si esta es la misma que corre impresa en el apéndice de la Memoria del Sr. Lafragua bajo el núm. 52.—14^a. Diga, impuesto que sea de las págs. 136 y 146 de la Memoria que se le acompaña, si el extracto que en ella se hace de los procedimientos de la Junta de Minería en el negocio de Castellero, es exacto y le consta su certidumbre.—15^a. Diga en que forma se celebraban los acuerdos de la Junta de fomento y administrativa de Minería; si se conservaban en alguna parte, si existen ahora y en dónde.—16^a. Si es cierto que por parte del Sr. D. Guillermo E. Barron se le suplicó que fuera á California á atestiguar la verdad de los hechos que en esta interrogatorio se refieren, y si lo es tambien que se negó á ello, por los motivos que se le suplica espresé.

Méjico, siete de Julio de 1859.

L. EMILIO PARDO.

[Rubric.]

EUSTAQUIO W. BARRON.

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Es en mi poder el oficio de vd. de 8 de Julio último, que no he contestado hasta ahora por haber estado enfermo y fuera de la capital. A él se sirve vd. acompañarme el interrogatorio presentado por el apoderado del Sr. D. Eustaquio Barron, y en debida respuesta debe decirle.—A la primera pregunta: que mi nombre es Juan María Florez Gutierrez de Teran, natural de esta capital, de sesenta y ocho años de edad: mi residencia fué en Europa hasta el año de 1832 que volví á la República, viviendo desde entónces en México, y en la actualidad en una hacienda nombrada “San José,” jurisdiccion del pueblo de Mixcoac, á dos leguas de la misma ciudad, y no me tocan las ge-

nerales de la ley.—A la segunda, que por los años de 1834 á 35 fuí alcalde primero del Ayuntamiento de México, en los de 45 y 46 diputado al congreso general. En el de 1847 alcalde segundo del Ayuntamiento de México, y en el de 1848 gobernador del Distrito Federal y actualmente consejero de Gobierno.—A la tercera, que es cierta.—A la cuarta, que lo es igualmente.—A la quinta, que es cierto que en los referidos meses del año de 1846 ví en México á D. Andrés Castellero, y hablé con él en el local en que celebraba sus sesiones la Junta de fomento administrativa de Minería, á donde fué el espresado Castellero con el objeto que espresa la 6.^a pregunta, que es tambien cierta.—A la sétima, que es cierta.—A la octava, cierta.—A la novena, que habiendo convenido la Junta con Castellero los términos en que habia de facilitarle la suma estipulada para el laborio de la mina de azogue, se estendió la escritura correspondiente, la cual no llegó á firmarse, por haber recibido la Junta la órden del Supremo Gobierno de que habla la pregunta 8.^a; que esa escritura la vió en la sala referida en que celebraba la Junta de Minería sus sesiones, por haber intervenido en todo ese negocio como miembro de la espresada Junta.—A la décima: que en el año de 1846 era Presidente de la Junta el Sr. D. Vicente Segura como comisionado del Gobierno: y vocales lo eran por los acreedores, D. José María Bassoco, y por los mineros el que habla; y suplentes por los acreedores D. Joaquin Rozas, y D. Atilano Sanchez por los mineros.—A la undécima: que los acuerdos de la Junta se daban por mayoría de votos y se asentaban en el libro de actas de la Junta en donde al que contesta los ha visto, y créo existen en la Secretaría de la misma.—A la décima-segunda, que es cierta, y que la Memoria que se me presente y devuelvo, es la edicion oficial de la que se leyó en el congreso.—A la décima-tercera, que es cierto su contenido, y que la Memoria de la Junta es la misma que corre impresa en el apéndice de la Memoria del Sr. ministro de Relaciones Lafragua ya citada.—A la décima-cuarta: que es cierto todo lo que en ella se pregunta, y me consta por haber intervenido, como ya tengo dicho, en todo ese negocio como vocal que era de la Junta de Minería.—A la décima-quinta: creo contestada esta pregunta con la respuesta que di á la undécima.—Décima-sesta: que es cierto fuí solicitado para ir á Californias á atestiguar la verdad de los hechos que en este interrogatorio se refieren, y con bastante sentimiento no pude prestar este servicio al Sr. Barron, porque ni mi edad ni mi quebrantada salud me permitian hacer tan largo viaje.—San José, Setiembre 5 de 1859.

JUAN MA. FLOREZ.

[Rubric.]

Sñr. Juez 1.^o de lo civil.

Mariano Dominguez, Magistrado del Supremo Tribunal de Justicia de la Nacion, y actual Ministro Semanero de su primera Sala.

Certifico: que el Lic. D. Antonio Madrid es Juez primero de lo civil de esta Capital; que por enfermedad de este está en el desempeño del Juzgado el suplente Lic. D. Ygnacio Solares y que las firmas de dichos individuos que se hallan en el anterior documento son las mismas que usan en todos los instrumentos públicos que autorizan. Yguualmente certifico: que D. José Villela y D. Pablo Sanchez son Escribanos públicos de la Nacion y suyas asimismo las firmas que se hallan en las actuaciones anteriores. Méjico, Agosto veinticinco de mil ochocientos sesenta.

MAR^o. DOMINGUEZ.

[Rubric.]

[SEAL.]

L. JOSE M. RODRIGUEZ
VILLANUEVA, Srio.
[Rubric.]

José Miguel Arroyo, Yntendente honorario de Ejercito y Oficial Mayor 1^o del Ministerio de Relaciones exteriores.

Certifico que D. Mariano Dominguez es Magistrado de la Suprema Corte de Justicia y la anterior firma es la suya que usa en los documentos que autoriza. Mejico Agosto 25 de 1860.

Drō. 4 p^s.

J. MIGUEL ARROYO.

[Rubric.]

I, Frederick Glennie, Her Britannic Majesty's Consul at Mexico, do hereby certify, that D. José Miguel Arroyo, whose usual signature, well known to me, appears at the foot of the foregoing attestation, is, as he styles himself, Chief Clerk in the Department of the Ministry for Foreign Affairs of the Mexican Republic, and that to all Acts and Deeds thus attested by him, full faith and credit are and ought to be given in Judicature and thereout.

No. 57.
[SEAL.]
4 rs.

In testimony whereof, I have hereunto set my Hand and Consular Seal in the City of Mexico, this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty.

F. GLENNIE, H. B. M's Consul.

TRANSLATION EXHIBIT CASTILLERO No. 14.

INTERROGATORY, to the tenor of which D. Teodoro Sotomayor is to be examined.

1st. Declare your name, residence, age, and other formal generalities. 2d. Declare what offices you have filled in the Mexican Government, since when, and what is your present official capacity. 3d. Declare if you had knowledge of the discovery of a mine of quicksilver by D. Andres Castellero, in Upper California, and when, and how you knew of it. 4th. Declare, if you know, whether, since that time there have been any written document or documents upon this matter, where you first saw them, and where they now are. 5th. Declare if you know whether in 1846 there existed in the Ministry of Justice any memorandum of the transactions of the Ministry, how it was formed, if it now exists, where you saw it, and if you believe it lawful and true. 6th. Declare if you knew D. José Luciano Becerra, since when, and where, and if you know when and where he died. 7th. Declare if you know Señores D. José Maria Duran, D. Mariano Rodriguez, and D. José Maria Yrisarri, and D. Mariano Miranda, since when, where, and if they held any office in the year 1846, and what it was. 8th. Declare if you know that in the Junta for the Encouragement and Administration of Mining, there exist any documents in relation to this matter, and if you know, and have seen the handwriting of those which exist there. 9th. Declare if you have seen the collection of documents (*expediente*) in relation to this matter, which exists in the Ministry of Relations, and if in the said documents upon this matter you know the handwriting in which they are written. 10th. Declare if it be true that you were invited on the part of Mr. William Barron to proceed to California to testify orally to the truth of the facts referred to in this interrogatory; and if you declined to do so, state upon what reasons.

Mexico, 7th July, 1859.

EUSTACE W. BARRON.

L. EMILIO PARDO.

[Rubric].

[SEAL.]

INTERROGATORY, to the tenor of which D. Mariano Rodriguez is to be examined.

1st. Declare your name, age, residence, and the other formal generalities.

2d. Declare what offices you have filled in the Mexican Government, since when, and in what capacity you now serve.

3d. Declare if you had notice of the discovery by D. Andres Castellero of a mine of quicksilver in Upper California, and where and how you learned it.

4th. Declare, if you know, whether, since what time there have been any written document or documents relating to that matter, where you saw them for the first time, and where they now are.

5th. Declare if you know whether in 1846 there existed in the Ministry of Justice any memorandum of the transactions of the Ministry, how it was formed, whether it now exists, where you have seen it, and whether you believe it to be true and lawful.

6th. Declare whether you knew D. José Luciano Becerra; since when, and where; if you know when he died, and at what date.

7th. Declare if you know Señores D. José Maria Duran, D. José Maria Yrisarri, D. Mariana Miranda, D. Teodoro Soto Mayor, and D. Joaquin Romanos; since when, and where; and if they held any office in the year 1846, tell what it was.

EUSTACE W. BARRON.

L. EMILIO PARDO.

[Rubric].

Mexico, 7th July, 1859.

The documents annexed having been presented, let the testimony be now taken. Mr. Black being first duly cited by means of an attentive despatch, citing also the persons who, according to law, enjoy the privilege of giving evidence in this form, and let the said testimony have due lawful effect. This decreed the Señor Lic. D. Antonio Madrid, first Civil Judge, and signed. I certify.

PABLO SANCHEZ.

[Rubric.]

MADRID.

[Rubric.]

I, Eustace W. Barron, for the New Almaden Company, in Upper California, before you, protesting my respect, and in the most due form of law, do say, that having a necessity to take testimony in order to prove certain facts before the courts of California, and conforming to the rules established by American laws to assure in their territory the faith and credit of proofs in certain special cases, I appeared before the person

whom the Government of the United States held accredited as Consul in this city, soliciting that such testimony might be taken before him; but this functionary has refused his intervention, manifesting to me that he is ordered by the American Minister at Vera Cruz not to authorize any procedure connected with the suit now in prosecution by the United States against D. Andres Castellero, and those who from him have derived rights in the mine of quicksilver discovered by him in Upper California, and to which the Supreme Government granted him sufficient title in the month of May, 1846. This singular prohibition, which has paralyzed my proceedings in that mode, leaves open to me the mode furnished by the public law of nations; and, in virtue thereof, I appear before you, soliciting that you will please to examine, according to the tenor of the interrogatories hereto annexed, the witnesses whom I shall present, giving due official notice to Mr. John Black, Consul for the United States in this city, inviting him to be present to know the witnesses, and see them sworn; and when the said evidence shall have been taken, that you will please to order that it shall be delivered to me in original, for the uses which may suit me; and I petition you to make decree accordingly, because that is just which I ask and swear, with the necessary, etc.

Mexico, 7th July, 1859.

EUSTACE W. BARRON.

L. EMILIO PARDO.

[Rubric.]

Item.—I say that I offer herewith the official edition, duly certified, of the Report presented by his Excellency, D. José Maria Lafragua, Minister of Relations, in the year 1846, for the uses expressed in the interrogatories relating thereto, soliciting that the folios thereof which I shall designate being signed by the rubric of the actuary, may be returned to me as part of the Judicial procedure sought; and I also solicit, that the proper official directions be issued to Señores Bernardo Couto, D. Luis G. Cuevas, D. Miguel Atristain, and D. José Maria Duran, that they make due and formal answers to the said interrogatories according to law.

Dated *ut supra*.

Item.—I say that the signature of Señor Arroyo has not been authenticated by the American Consul, because that functionary has refused so to do.

EUSTACE W. BARRON.

L. EMILIO PARDO.

[Rubric.]

Received at nine o'clock, A. M., on the 7th July.
[Rubric.]

On the same date a despatch was directed to the Sor. Consul in the form required by the foregoing decree. I give faith.

VILLELA.
[Rubric.]

On the same date, and in compliance with the foregoing decree, despatches were addressed to the Señores Licentiate Don Bernardo Couto, Licentiate Don Miguel Atristain, Don Luis Gonzaga Cuevas, Don José Maria Duran, Don Juan M. Flores, and Don Vicente Segura. I make this entry in proof thereof. I give faith.

VILLELA.
[Rubric.]

Mexico, July 9, 1859.

Let the despatch received from Mr. Black be annexed and passed for translation to Lic. D. Francisco Bonilla, to whom it shall be made known, so that having first accepted and been sworn, he may discharge this duty. Thus decreed the Señor Judge. I certify. And also, that he ordered the despatch from Sor. Couto to be annexed.

MADRID.
[Rubric.]

JOSÉ VILLELA.
[Rubric.]

On the twelfth of the same month, Mr. Eustace W. Barron being present, I read it to him in full, and asked for no copy of the foregoing decree, and he said that he presents certain letters soliciting the Judge, that now that the despatch of Mr. Black is to be passed to Señor Lic. Bonilla, there also be passed to him the said letters for translation; and signed. I certify.

JOSEPH VILLELA.
[Rubric.]

EUSTACE W. BARRON.

Mexico, 13th July, 1859.

Petition granted. Thus decreed the Señor Judge.

PABLO SANCHEZ.
[Rubric.]

MADRID.
[Rubric.]

On the same date, the Lic. D. Francisco Bonilla being present in his house, I notified him of the foregoing decree, and he said that he accepts the duty, and swears in due form of law to discharge the same well and truly, in order to which he prays that the documents be delivered to him; and signed.

LIC. F. D. BONILLA.
[Rubric.]

JOSÉ VILLELA.
[Rubric.]

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Afterwards, Don Eustacio W. Barron being present, I informed him of the foregoing decree, (reading it in full), and he asked (no copy), of which he took cognizance and signed. I give faith.

EUSTAQUIO W. BARRON.

JOSÉ VILLELA.
[Rubric.]

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MEXICO, July 9th, 1859.

SIR:—I had the honor last evening to receive an official communication under date of the 7th instant, addressed to me by his Honor, Judge of the First Civil Court, D. Antonio Madrid, advising me that D. Eustaquio W. Barron had presented himself in his Court for the Company of New Almaden in Upper California, manifesting the necessity of taking testimony to prove some facts before the tribunals of Upper California, and at the same time stating that I had refused my intervention, stating that I had orders from the American Minister in Vera Cruz not to authorize any proceedings in relation to the affair mentioned. I must here state that said Minister has given me no such orders in the case, as the correspondence on the subject between myself and D. Eustaquio W. Barron will show, the subject in reference to the case being fully explained in my letter of the 25th ultimo in answer to that of Mr. Barron of the 22d of the same; all which correspondence I presume he has attached to and included in his escrito, as it should be, in order that the case may be fairly stated and understood.

His Honor, the Judge, also knows that I am not considered by the authorities established in this city as in the exercise of consular functions.

I have the honor to be,

Your obedient servant,

JOHN BLACK. 

To His Honor Antonio Madrid,
First Judge of the Civil Court, Mexico.



I would immediately give the deposition which you are pleased to require of me in your official communication of yesterday, according to the interrogatory presented by Mr. Eustace Barron's party, in the New Almaden business in Upper California, if said interrogatory did not turn upon points relating to the diplomatic mission, which, in conjunction with Señores D. Luis Cuevas and D. Miguel Atristain, I discharged with the American Plenipotentiary, Mr. Nicholas P. Trist, to conclude the treaty of peace between the republic and the United States, which we signed in the city of Guadalupe on the 2d of February, 1848. As what we then did was done in the character of representatives of the National Government, I believe that, without its order, I cannot permit myself to make the statements required in the interrogatory. The Government itself has ordered, that in relation to an article of the treaty having connection with the New Almaden business, we shall make an official report, which is about to be drawn up, and which we shall duly forward to the Ministry of Relations.

This is all that I can state to you in answer to your said official communication, returning to you the accompanying interrogatory, and assuring you of my special consideration.

God and liberty. Mexico, July 9th, 1859.

BERNARDO COUTO.

[Rubric.]

To the Sör. First Civil Judge, Lic. D. Antonio Madrid.

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In continuation, D. Teodoro Soto appeared before the Sör. judge, and being sworn in due form, was examined in conformity with the interrogatory addressed to him; and to the 1st, said that his name is as aforesaid; that he is a native of Leon de los Aldamos; citizen of Mexico; fifty-five years of age; married; in office; and that the general rules of law as to incompetency of witnesses do not apply to him. To the 2d, that he commenced to be an employé in the Ministry of Justice and Ecclesiastical Affairs in the year 1829, in the situation of door-keeper, and in 1839, in a promotion which took place, he rose to be fourth clerk, then to be third, and afterwards to be first; then he held the office of second "oficial" of the archives, and afterwards of first "oficial" of the same. In 1849 there was a vacancy to fill after the death of Señor D. Joaquin Romanos, and in the consequent promotion he became eighth "oficial," and as this office was suppressed in the year 1853, he remained second writer, with the emoluments of "oficial," which is the office he now holds. To the 3d, that he knew

about this business, because in the month of May, 1856, he saw in the Ministry of Justice, of which he was then, as he has said, an employé, the petition of Señor Castellero and the despatch of the Junta for the Encouragement and Administration of Mining, with which it was transmitted. To the 4th, that from the time that the Junta for the Encouragement and Administration of Mining transmitted the petition of Castellero, deponent had knowledge of that business by the reason aforesaid of his being a clerk of the Ministry, and in the course of his employment he made a fair copy of one of the despatches relating to this matter; that the collection of documents (*expediente*) which was then formed now exists in the Ministry of Foreign Relations, and that little more than one year ago deponent saw other communications relative to this business in the Ministry of Gobernacion and in the Administration of the Mining fund. To the 5th, that in the Ministry in which it now exists, there was at that date a book entitled of *partes*, which comprehends several years, in which is recorded, among many other transactions of that time, the abstract of this business, and of the resolution taken upon it, written in the handwriting of D. José Maria Yrisarri; that the aforesaid book is yet in the archives of the Ministry of Justice. To the 6th, that he knew D. José Luciano Becerra from the time that he was appointed Bishop of Chiapas, and conversed with him shortly after he was appointed Minister of Justice and Ecclesiastical affairs; that afterwards he went to the city of Puebla, where he died; at what date deponent does not recollect. To the 7th, that he knew D. José Maria Duran; that he was first "oficial" of the Ministry at that date, and sometimes acted as chief of the bureau; that he knew D. Mariano Rodriguez as an employé, as he then was of the office; D. José Maria Yrisarri, who was then eighth "oficial," and D. Mariano Miranda, who entered on probation, and so remained some years until 1853, when he left it by reason of a new arrangement of the staff of the office. To the 8th, that in the month of July of last year, upon request of the Licentiate D. Emilio Pardo, he went to the office of the Mining Fund, together with the then minister of the United States, the British consul, and other persons, where he saw the collection of documents (*expediente*) which exists there in relation to this matter, and in it a communication from the Ministry of Justice, signed by Señor Becerra on the 20th of May, 1846, acceding in all its parts to the petition of Castellero, which was written in the handwriting of the deponent at that date, as he then declared after careful examination of it. To the 9th, that also with the same gentlemen, and about the same time of which he speaks in his previous answer, he saw the

collection of documents (*espediente*) in the office spoken of in the question, and after having examined it, he knew the handwriting of D. José Maria Duran, who wrote in it a resolution (*acuerdo*); that of D. Joaquin Romanos, who wrote another resolution; and that of D. Mariano Rodriguez, "oficial" of the desk in which the business was transacted, in whose handwriting are the title-page and minute of the collection of documents (*espediente*); that he knew all these gentlemen without recollection of the precise date, in the same Ministry of Justice of which they were all employés. To the 10th, that it is true that he was invited as is expressed in the question, and that it is also true that in reply he declined, in order to avoid grave injuries which would result to him from his separation from his family and his country; and that what is aforesaid, is the truth under the oath which he has taken, and he signed.

MADRID.

[Rubric.]

TEODORO SOTOMAYOR.

[Rubric.]

JOSE VILLELA.

[Rubric.]

In continuation appeared before the Judge, D. Mariano Rodriguez, and being sworn in due form of law, was interrogated in conformity with the document corresponding to him; and to the first interrogatory he said, that his name is as aforesaid; that he is a native and citizen of Mexico—married; that he is second official—first pensioner of the Ministry of Justice—seventy-one years of age, and the general rules of law as to incompetency of witnesses do not apply to him. To the 2d, that he served in the Ministry of Justice from the 22d day of November, of the year 1821, to the first of June, 1852, when he was pensioned off; and that, in the course of those years, he filled the offices of second writer, "oficial" eighth, or of despatches, keeper of records, "oficial" sixth, fifth, third, second second, and second first. To the 3d, that he had knowledge of Don Andres Castellero's discovery by the communication in which, on the fifth of May, 1846, the Junta for the Encouragement and Administration of Mining advised the Ministry of Justice and Public Instruction of the said discovery, and that deponent knew of this, because the desk of the bureau in which the subject was despatched was in his charge. To the 4th, that a little after the date aforesaid—that is to say, in the first days of May, 1846—he saw the document referred to in his foregoing answer, which served as the beginning of the collection of documents (*espediente*) which was then formed, and that the said collection (*espediente*) now exists in the Ministry of Relations, where deponent has seen it and examined it

carefully within the past few days. To the 5th, that since the creation of the Ministry there has had to be in existence a book, in which one of the clerks of the Department, called the *Oficial de partes* was ordered to make record of the transactions of the Ministry, and to take note of its resolutions in relation thereto; that deponent has seen one of these books since its commencement, which was in 1841, and that now he has examined it with care, and has found in it the resolution (*acuerdo*) relative to the business of D. Andres Castellero in the handwriting of D. José Maria Yrisarri, an employé of the Ministry of Justice, in the archives of which exists the said book, that he believes to be true and lawful, because many folios of it were written in his presence; and that, in the part referring to the matter mentioned in this interrogatory, he so much the more believes it to be true, inasmuch as the title-page and minutes, (*minutas*), mentioned in deponent's fourth answer, are all written in his own handwriting at the dates therein mentioned. To the 6th, that by reason of the Most Illustrious Señor D. José Luciano Becerra having taken into his charge the portfolio of the Ministry of Justice and Public Instruction in the year 1846, deponent knew him, and conversed with him, as an "Oficial" of the said Ministry, and knows that he died in his bishopric of Puebla in the year 1854. To the 7th, that he knows all the persons inquired of, all being employés at the date in question in the Ministry of Justice and Public Instruction; that he remembers that the two first were superior employés in the bureau, and the others were inferior; but that, after the lapse of so much time, he does not remember exactly the duties performed by each of them. That all these particulars deponent has, at various times during the past and present year, related to the parties in interest, when they urgently pressed him that he should go to give his evidence in relation thereto before the courts of California, which he could not do by reason of the very feeble state of his health; and that the aforesaid is the truth under the oath which he has taken. And he signed. I give faith.

MARIANO RODRIGUEZ OSIO.

[Rubric.]

MADRID,
[Rubric.]

JOSE VILLELA.
[Rubric.]

Mexico, 13th July, 1859.

Let this be added to the despatch which has been received from Señor Segura. So decreed by the Señor Judge. I give faith.

PABLO SANCHEZ.

[Rubric.]

MADRID.
[Rubric.]

It is added to the interrogatory and answer given by Señor Don Vicente Segura. In testimony whereof, I make this entry.

VILLELA.

[Rubric].

INTERROGATORY, to the tenor of which D. José Vicente Segura shall be examined.—1st. Please to tell your name, age, and place of residence.—2d. Declare what offices you have filled under the Mexican Government, and at what periods, and that which you now fill.—3d. If, in the year 1846 you were President of the Junta for the Encouragement and Administration of Mining, please to declare whether you had or not knowledge of the discovery which D. Andres Castellero had made of a quicksilver mine in Upper California, and how you had that knowledge.—4th. Declare if, in virtue of this knowledge, the Junta for, &c., resolved upon any measure, what this was; and if any document is preserved in relation to it, tell where it is, and at what time you saw it.—5th. Declare, if the measure spoken of in the preceding question produced any result, what this was; and if any communication relative to this point be in existence, tell the same of it as of the preceding.—6th. Please to declare if, after the assays of the specimens of quicksilver ore transmitted from California had been made, the Junta did or did not resolve that the appropriate notice should be given; to whom, and whether you know if there be any written document on this point in existence.—7th. The notice having been given to the Supreme Government, declare if you gave it to the discoverer of the mine, D. Andres Castellero, and if the board received or not an answer from one and the other; when it was received; where are the documents; at what date you saw them, and had knowledge of them.—8th. Declare, if upon the documents spoken of in the preceding question any resolution of the Junta was adopted, what this was; if any note passed in consequence, and to whom; by whom the note was subscribed; whether any first draught of it is preserved, and where; and if you consider the note and the first draught authentic, declare why, and tell when you saw the documents aforesaid.—9th. Declare through which Ministry the documents spoken of in the preceding question were passed to the Supreme Government; and if the Junta received an answer; and if the Junta received an answer, where it is, and what measures were adopted after the receipt of it.—10th. Please to declare what result the measures spoken of in your preceding answer had.—11th. Declare if all the documents mentioned in the preceding questions are collected together, where they are; if you have

recently given a copy of them, in form, and to whom.—12th. Declare if the measures spoken of in the preceding questions were taken by the resolution of the Junta; and if first draughts or originals of them be in existence, say where; whether you have given copy of them, to whom, and in what form.—13th. Declare if you know that the proceedings of the Junta were copied in any book one after the other in series, and that this book was sealed by the proper office; if the book be in existence, say whether you consider it authentic, and why.—14th. Declare who composed the Junta for the Encouragement and Administration of Mining in the year 1846; if those persons signed the resolutions of the board, when did they do so, and if you, the deponent, saw them sign.—15th. Declare if in the last months of the year 1846, the Ministry of Relations required from the Junta for the Encouragement and Administration of Mining a report (*memoria*) upon the business under its charge; who made that document, who subscribed it; if in it was made report of the mine and grant of Castellero; and after reading the relative portion of the report of the Ministry of Relations which is annexed to these papers, declare if it be the same which that Ministry transmitted, and which appears as published at that date.—16th. Declare if you know D. Manuel Couto; whether he held any offices in the Junta for the Encouragement and Administration of Mining since 1846, what they have been, and since what date he has filled the last of them.—17th. Declare if you know D. Isidro R. Gondra; since when; what office he filled in 1846 in the Junta for the Encouragement and Administration of Mining, and if you remember when he left that office.—18th. Declare if you know D. Andres Castellero; since when; whether you saw him in Mexico in May, 1846, and where.—19th. Declare whether, from your knowledge of mining affairs, you believe that in conformity to Mexican laws the grant of the mine of quicksilver made by the Supreme Government to Castellero, upon a previous report of the Junta, gave him a lawful title to possess the mine and its appurtenances as granted to him.

Mexico, 7th July, 1856.

EUSTACE W. BARRON.

L. EMILIO PARDO.

[Rubric].

To the 1st, I say that my name is Vicente Segura; I am 70 years of age; and since 1836 I reside in the City of Mexico. To the 2d, that in the year 1814 I was elected first alcalde and president of the very illustrious corporation (ayuntamiento) of

the city of Cordova, my native place. In 1824 I was appointed chief of the department of Orizaba, and filled that office till the end of the year 1827. In the year 1828 I was appointed to and filled the office of controller general of the revenues of the State of Vera Cruz—was promoted to the office of Administrator General of the revenues of the same State, and from the year 1833 to 1835 I filled in the city of Puebla the office of supervisor for the State of Vera Cruz in the gross tithe rents. In the year 1835 I was appointed Minister of State, and discharge of the duties of Minister of Hacienda. Afterwards, in virtue of the Constitution of 1837, I was designated Counselor of State.—I have also filled the offices of deputy and Senator in the Congress of the Union. In 1836 I was appointed controller for the government of the Mining Establishment, and since that date up to the present time I have given my services continuously in its office, both in the capacity of controller to the year 1842, and since as member of the Junta for the Encouragement and Administration of Mining; member of the Tribunal of Mining; and, finally, general administrator of the Mining Dotal Fund. At the present time, also, I have been honored with the appointment of Counselor of State. To the 3d, that in the year 1846, as member as I then was of the Junta for the Encouragement and Administration of Mining, it belonged to me in turn to discharge the duty of president of that Junta; and in the month of April of that year, D. Tomas Ramon del Moral presented to the said Junta a letter of D. Andres Castellero, in which he informed him that he had discovered a mine of quicksilver near the Mission of Santa Clara, in Upper California, transmitting to the President of the Republic several specimens of the quicksilver ore, and petitioning him to order the same to be assayed, in order that after this he might solicit from the Junta the protection which it, according to law, had to give to extractors of national quicksilver. To the 4th, that in virtue of the information spoken of in the preceding answer, the Junta resolved that a note should be passed to the Director of the National College of Mining, directing him to have an assay in that establishment of the specimens which were transmitted to him, together with copies of the letters of Castellero to the president, D. José Joaquin Herrera, and D. Tomas Ramon del Moral, and that he should report the result. The first draught or minute of that communication exists in the archives of what was then the Junta for Encouragement and Administration of Mining, and now is the Administration of the Mining fund; and I have seen it in the office since it was written by D. Isidro R. Gondra, first "oficial," then acting as secretary, in whose handwriting it is written from its date,

which is the 21st of April, 1846, and it is the first leaf of the collection of documents (*expediente*) which was formed, the second and third leaves being copies of the letters of which I have spoken. To the 5th, that the result produced by the preceding measure was, that on the 29th of April the College of Mining, D. José M. Tornel, informed the Junta that the faculty of professors of the College had taken cognizance of the business, and reported to him that some of the specimens of quick-silver were already deposited in the mineralogical cabinet, and that others had been assayed by the professor of chemistry, D. Manuel Herrera, yielding a "ley" $35\frac{1}{2}$ per cent. The document which exists in regard to this same original communication of Señor Tornel, which was received on the 3d of May, according to a note made by myself, and this note is preserved in the same archives of the office which is in my charge, since the same date in which I received it, which was the first time I saw it, and it is the leaves 4 and 5 of the above mentioned collection of documents, (*expediente*). To the 6th, that when the assays had been made with the satisfactory results which I have described, the Junta resolved that the fact should be made known to the Supreme Government; which was, in fact, done on the 5th of May, through the Ministry of Justice, through which department, as being of the branch of the interior, the affairs of mining were then managed. The minute of this communication also exists in the archives of the office, where I have seen it ever since its date, and the original signed by me was, as I have said, forwarded to the Ministry of Justice, and forms the reverse of leaf 5 and the front of leaf 6, of the collection of documents (*expediente*) to which I have referred. To the 7th, that, as was said in the note of which I have spoken in the preceding answer, D. Andres Castellero was inquired of as to what kind of aid he needed for the carrying on of his brilliant enterprise, and he answered on the 12th of May, making a petition, of which a copy exists, authenticated by Señor D. Isidro R. Gondra. The Government in its turn acknowledged receipt, on the 9th of May, of the communication of the 5th of that month, and both the one and the other of these documents are found in the archives of my office, the one since its date, and the other must have been received on the day of its date, perhaps, or a little after. This last is the 7th leaf of the collection of the documents (*expediente*), and the former comprises the 13th and 14th leaves of the same. To the 8th, that the Junta resolved that Castellero's petition should be recommended to the Supreme Government, because, being merely an administrative body, it did not possess authority of itself alone to accede to the requests of the petitioner, and in consequence there was passed to his Excel-

lency D. Luciano Becerra, then Minister of Justice, the communication of the 14th of May, signed by myself as then President of the Junta, and the first draught or minute of which exists in the office under my charge. These documents I have seen in my office ever since their date, and I consider them as authentic and true, as that the petition of Castellero was laid before me and the Junta. The minute was drawn up by my order, and the original communication was subscribed and signed by me, as I have said, that minute being now leaves 8, 9, 10, 11 and 12, of the aforesaid collection of documents (*espedientes*). To the 9th, that I have already said in one of the preceding answers, that these communications were passed to the Supreme Government through the Ministry of Justice. The Junta received an answer to its note of the 14th of May, on the 20th of the same, acceding to the petition of Castellero in all its parts. The original communication addressed to the Junta exists in the office under my charge; and as the petition of Castellero was that there should be executed a contract with the Junta to advance him five thousand dollars, to deliver him the iron flasks which were at Tasco, and other matters which appear in his petition, order was given to a notary to draw up the proper instrument, the money was appropriated to be delivered to the petitioner, and it was resolved to issue the order to place at his disposal the empty flasks which were at Tasco, belonging to the Junta. The communication received from the Supreme Government forms folio 15 of the collection of documents (*espediente*). To the 10th, that these measures had no result, because, from and after the 2d of May of this same year, 1846, all payments from the offices of the public treasury were suspended. The Junta subsequently entertained a doubt whether the payments of the quicksilver fund were included in that suspension; and as, on the 23d of May, the declaration reached the Junta, in which order was given to suspend all payments of this description, then the sum which was held ready for the purpose could not be handed over to Castellero, although it had even been counted out for delivery. To the 11th, that all the documents of which I have spoken are found collected and stitched together in the collection of documents (*espediente*) to which I have made reference in the greater part of the preceding questions. Of it have been given, in the past year, two certified traced copies, upon the petition of the house of Mr. Barron, in the month of May of last year, 1858. A third was given upon the petition of the same gentleman on the 20th of April of this year; and finally, another traced copy has been given to the Ministry of Foreign Relations by order received from the Ministry of Fomento on the 30th of April

last. To the 12th, that all the measures of which I have spoken, in so far as they are based upon proceedings of the Junta, were adopted by resolution of the Junta, and those resolutions are of record in the appropriate minutes, stitched manuscript pamphlets of which containing the rough draughts and books in which they are fairly copied exist in the archives of this office. The material part, both of the one and the other, which the parties in interest requested, was also given to them in certified traced copy in the month of April last past. To the 13th, that I have said that the minutes of the Junta were copied in a book, and that I gave to the parties in interest a certified traced copy of the material portion; in it I expressed that the acts follow one another in a series; that it was sealed by the office which, according to our law, ought so to do; and I consider it to be authentic, because it has been made in conformity with the provisions of the rules of the office; and true, because I have seen it written under my orders, and by officers of the same office. To the 14th, that in the year 1846, Señor D. José Maria Bassoco, Señor D. Juan Maria Flores and myself, were members of the Mining Junta; and the substitutes were Señores D. José Joaquin de Rosas and D. Atilano Sanchez. The resolutions of the Junta were signed by such of them as were present at the sessions, and I myself saw them sign several times. To the 15th, that on the 5th of November, 1846, as appears of record in the book of the minutes of the proceedings of the Junta, report was made of a dispatch from the Ministry of Relations of the 3d of the same month asking exact returns of the doings of the Junta since 1845, with observations it might deem proper; that by virtue of this communication, the Junta ordered to be drawn up from the record the report formed by the Secretary Castera, adding to it the subsequent memoranda which I did myself, dictating the conclusion, which comprises from page 142 to 147, which is the end; that I signed that document as President of the Junta, on the 17th of the same month and year, and it was inserted in the appendix of the Report of the Minister of Relations of the said year, 1846, under No. 52; and on leaf 136 of the official edition of the report of Señor Lafragua, reference is made to all that occurred with Castellero; that in the month of April of the present year, I saw the original report of the board in the possession of Señor Bassoco, and it is the same which is printed and circulated. To the 16th, that I know D. Manuel Couto, since his infancy, by reason of my intimate relations of friendship with his father. In 1846, he was writer in the Junta for the Encouragement and Administration of Mining, and so continued until 1848, when he rose to be second oficial of the office of the Junta for the Encourage-

ment of Mining, which office he filled till 1852; on the 28th of June of the same year, a decree was issued organizing anew the office, and he was appointed Secretary of the Administration of the Fund, and charged with the archives of the same, which is the office that he fills up to this time. To the 17th, that I knew D. Isidro Gondra, many years before he became an employé in the office of the Junta for the Encouragement of Mining; in 1846, he was first official of the Junta for the Encouragement and Administration of Mining, and charged with that department by the absence on leave of its then Secretary, D. José Maria Castera. To the 18th, that I know D. Andres Castellero since the year 1846, and saw him in Mexico in the month referred to in the question, in the same office where he several times presented himself to press on his business then pending. To the 19th, that I believe that, according to Mexican laws, in those places where there is no mining deputation within the district embraced in its jurisdiction, the first political authority of the place, or of the precinct nearest to it, exercises the power of the mining deputation,—that is, receives denouncements, and lawfully grants mining possessions, as has been, and still is the custom in such cases; and I further believe that the government of General Paredes being invested as it was, in 1846, with extraordinary powers, there was included within them that of approving the *pertenencias* and possession of the quicksilver mine discovered by Señor Casillero, in the terms in which they were given by the Judge of San José, and as recommended to the Government by the Junta for the Encouragement and Administration of Mining, as shown by the dispatch transmitted to the Supreme Government under date of 14th of May, which appears in the collection of documents (*espediente*) at leaf 14, and thus, in my judgment, the grant made to D. Andres Castellero by the Supreme Government confers upon him a lawful title to possess the mine and “*pertenencias*” which the Junta resolved should be granted to him as a reward of his discovery. That deponent has many times repeated what is above stated to the parties in interest, who urged him pressingly to go and testify to it before the tribunals of California, which he could not do by reason of his advanced age and infirmities.

VICENTE SEGURA.

[Rubric.]

In answer to the courteous communication of your honor of the 8th inst., I have the honor to transmit to you on a separate sheet the answers to the interrogatory presented by Mr. Eustace Barron, according to the records which appear in this office, in

the matter relating to the mine of quicksilver which D. Andres Castellero discovered at the Mission of Santa Clara of Upper California, in the year 1846.

God and liberty. July 9th, 1859.

VICENTE SEGURA.

[Rubric.]

To the Sōr. 1st Civil Judge,

Licentiate D. ANTONIO MADRID.

Mexico, 15th July, 1859.

Let the despatch sent by Sōr. Don Luis G. Cuevas be added to the record of proceedings. So decreed by the Sōr. Judge. I give faith.

MADRID.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

The despatch of Sōr. Cuevas is added to this record in compliance with the foregoing decree. I give faith.

VILLELA.

[Rubric.]

Mexico, 26th July, 1859.

Let it be added to the despatch and proceedings of which report is made. So decreed by the Sōr. Judge. I give faith.

MADRID.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

The despatch referred to in the foregoing decree is added, and it is that which was sent by the Sōr. Don José Maria Duran. For proof thereof I make this entry.

VILLELA.

[Rubric.]

Mexico, 5th September, 1859.

Let the despatch which has been received from Sōr. Flores be added to the "*espediente*." So decreed and signed by the Sōr. First Civil Judge *ad interim*, Licentiate Don Ignacio Solares. I give faith.

SOLARES.

[Rubric.]

PABLO SANCHEZ.

[Rubric.]

In compliance with the foregoing decree the despatch referred to is so added. I give faith.

VILLELA.

[Rubric.]

On the sixth of the same month Don Eustace W. Barron appeared and said: that the letters which he exhibited being now translated, he asks the Court to be pleased to order that they be returned to him, note of them being kept in this "*espediente*;" and he signed. I give faith.

EUSTACE W. BARRON.
[Rubric.]

JOSÉ VILLELA.
[Rubric.]

Mexico, September 6th, 1859.

Granted as asked. So decreed by the Sor. Judge. I give faith.

SOLARES.
[Rubric.]

PABLO SANCHEZ.
[Rubric.]

On the same day there were returned to Don Eustace W. Barron the three letters which he exhibited on the twelfth day of last July, and they are the same which were translated by the Licentiate Don Francisco Bonilla, and they are added to this "*cuaderno*," (unbound book); and as an acknowledgment of the receipt thereof he signs the present. I give faith.

EUSTACE W. BARRON.

JOSÉ VILLELA.
[Rubric.]

INTERROGATORY, to the tenor of which shall be examined the Señores Licentiate D. Bernardo Couto, D. Luis G. Cuevas, and D. Miguel Atristain.—1st. Please to declare your name, age, residence, and the other generalities of law.—2d. Please to say if you were commissioned by the Supreme Government in 1847, to draw up the treaty of peace which was signed on the 2d of February, 1848, with Mr. Trist, commissioner of the United States of America.—3d. Please to state what reasons there were to fix in the 10th article of the treaty of Guadalupe, the 12th day of May, 1846, as the latest date of grants of lands made by the Supreme Government in the Department of Upper California, detailing all the facts upon this point which it is possible for you to recollect. Mexico, July 7th, 1859.

L. EMILIO PARDO.
[Rubric.]

EUSTACE W. BARRON.

The S^{or}. Dr. D. Bernardo Couto has received a communication from the Ministry of Relations, to the effect that we, the plenipotentiaries, who signed the treaty of Guadalupe, shall report upon the matter referred to in the interrogatory presented

in your Tribunal by Mr. Eustace W. Barron, which your honor has been pleased to forward to me with your despatch of the 8th instant, which reached me yesterday; and thus, owing to this circumstance, as well as because it would not be proper for me to say anything in relation to that negotiation, without the previous permission or order of the Supreme Government, I cannot give the deposition which said Mr. Barron desires. I have the honor to say this to your honor in due reply, with the assurance of my respect and consideration.

God and liberty. Mexico, July 15th, 1859.

LUIS G. CUEVAS.

[Rubric.]

To the S^{or}. First Civil Judge, D. Antonio Madrid.

INTERROGATORY, to the tenor of which shall be examined D. José Maria Duran.—1st. Please to declare your name, age, place of residence, and other formal generalities.—2d. Declare what offices you have filled under the Mexican Government, since when, and what office you now hold.—3d. Declare if you had knowledge of the discovery by D. Andres Castellero of a quicksilver mine in Upper California; since when, and how.—4th. Declare if you know that from that date there have existed some written document or documents upon this matter, where you saw them for the first time, and where they now are.—5th. Say whether you have recently seen those documents, whether you have examined them with attention, in whose handwriting they are written, and whether you believe them to be authentic and true.—6. Declare whether you know that in 1846 there existed in the Ministry of Justice any memorandum of the transactions of the said Ministry; how it was made up; whether you know that it is now in existence, where you have seen it, and whether you believe it authentic and true.—7th. Declare if you knew the illustrious S^{or}. D. José Luciano Becerra; when and where; what public office he held in May, 1846; whether you know that he is dead; since when, and where.—8th. Declare whether you know that every year there was presented to the Houses of Congress, by the respective Ministries, a report of the affairs of their branch; whether you know that the latter part of 1846, the S^{or}. Minister of Relations, D. José Maria Lafragua, presented a document of this character; if that report is the same which is presented to you in print, and if you believe it authentic and true.—9th. After having had read to you the documents relating to Castellero's quicksilver mine, declare whether that part which states the

facts touching the Ministry of Justice is exact, and whether you know it to be true.—10th. Say whether the grant which the Supreme Government made to Castellero in 1846 was, in your judgment, within the powers with which the Executive was then invested, and whether mining affairs at that date were in the charge of the Ministry of Justice.—11th. Declare whether you know Señores D. Teodoro Sotomayor, D. Mariano Rodriguez, D. José Maria Yrisarri, D. Mariano Miranda, and D. Joaquin Romanos; since when; and if in May, 1846, they filled any office, declare what it was.

L. EMILIO PARDO.

[Rubric.]

EUSTACE W. BARRON.

—

Answer to the interrogatory which the first civil judge, Sor. D. Antonio Madrid, transmits to me, with the despatch of the 8th of this month, relating to the New Almaden business, in Upper California.

To the 1st question I say, that my name is José Maria Duran; that I am a widower—over seventy-five years of age—a citizen of this city, the capital of the Mexican Republic. To the 2d, that after having filled several offices in the time of the Spanish government from the year 1811, I continued my services under the independent Mexican Government at the first establishment of the departments of State—entering into that entitled of “Justice and ecclesiastical affairs,” with the appointment of keeper of the records; and that, in it, I was successively promoted until I filled the office of first chief clerk on the 19th of May, 1847; but that, while I was yet second chief clerk, the Supreme Government, from the 1st of August, 1840, clothed me with the exercise of decrees, in which character I filled the office of Minister upon fifteen occasions, acting in place of the Ministers by reason of their absence, illness, or resignation; that I served as chief clerk to the 7th of January, 1854, when, by reason of my age, infirm health, and long services, there was granted to me my pensioned discharge, or retirement, with the honors, privileges, prerogatives, and exemptions of Secretaries of State, in virtue of which I now fill no office of obligatory duty, except of councillor of the National Academy of Noble Arts of San Carlos, and that of enumerated associate of the Mexican Society of Geography and Statistics. To the 3d, that since the month of May, 1846, I had knowledge of the discovery made by D. Andres Castellero of a quicksilver mine at the mission of Santa Clara, of Upper California, because I saw the official communication which, under date of the 5th of the same month, the President of the

Junta for the Encouragement and Administration of Mining, addressed to the Ministry of Justice, (which, at that time, had also in its charge the branches of public instruction,) bringing to the knowledge of the Supreme Government the said discovery. To the 4th, that, from that date, other writings in relation to this business began to come into the said Ministry, which I there saw for the first time, and with them all commencement was made of the collection of documents (*espediente*) which now exists in the Ministry of Foreign Relations, where I have recently seen them with the purpose which I will hereafter state. To the 5th, that little more than one year ago, by reason of the fact that parties in interest did not find the place of deposit of these documents, I, at their request, went in person to have them searched for at a bureau in the place where I thought they must be, and in fact they were found (*en una mesa*) at a bureau of the Ministry of Foreign Relations, and I knew them, recollecting the subject, and seeing in them the writing of my hand and pen as it is in a resolution of the 9th of May, placed on the margin of the first communication, and minutes or first draughts, in the handwriting of D. Mariano Rodriguez, as also the resolution of the 20th of the same May, in the second communication, in the handwriting of D. Joaquin Romanos, now deceased; all which things I can truly testify, by reason of having carefully examined them, and I believe those documents to be authentic and true, inasmuch as, excepting the minister, I was the immediate chief of the department in which the business began. To the 6th, that in pursuance of the first regulation of the departments of State, there was in that of Justice a Bureau, with an "oficial" charged with the duty of recording in a book of regularly numbered pages, abstracts of the matter of the affairs which came into the ministry, and of the resolutions which were adopted in relation thereto; that there exists in the archives there, and I have seen it within a few days, a book, which commenced with the year 1841, and concluded with the year 1846, inclusive, the authenticity of which I cannot doubt. To the 7th, that I knew the illustrious Sr. D. José Luciano Becerra many years ago, and had much intercourse with him at the time when he was Minister of Justice, Ecclesiastical affairs, and Public Instruction, which office he filled from the first days of January to about the middle of June, 1846; that it is well known that said gentleman died in the city of Puebla, being the bishop of that diocese, in the year 1854. To the 8th, that it is so true that there was every year presented to the Houses of the General Congress a Report of the affairs of each Ministry by its respective Chief, that no one of those who were present in the galleries, or who read the

newspapers in which were published the acts of the sessions, can doubt it; and, besides, those reports were circulated in print to all the authorities and public functionaries; that Sōr. D. José Maria Lafragua presented his Report in December, 1846, and it is the same which is now presented to me in a printed copy, and certified by the chief "oficial" of the Ministry of Relations, D. Miguel Arroyo, and that I cannot doubt its authenticity and truth because I have seen it in circulation, and having myself received copies from the hand of the said Señor Minister Lafragua, in the city of Queretaro, where I was with the Supreme Government in the year 1847. To the 9th, that having seen and read the documents relating to Castellero's mine, I see that the part which relates to the Ministry of Justice is exact, and I cannot doubt its authenticity. To the 10th, that in 1846, from the 7th January to the 6th of August, all mining affairs passed through the Ministry of Justice, because it was also entitled "of Public Instruction," and for that reason had under charge the college and the Junta for the Encouragement and Administration of that branch. To the 11th, that I well know Señores D. Teodoro Sotomayor, D. Mariano Rodriguez, D. José Maria Yrisarri, D. Mariano Miranda; and I also know D. Joaquin Romanos, now deceased. The first since the year 1828; the second, since the establishment of the Ministries in 1821; the third, since the year 1834; the fourth, since the year 1840; the fifth since the establishment of the Ministries. In the year 1846 Romanos filled the office of second first "oficial" of the Ministry of Justice; Rodriguez that of fifth; Yrisarri that of eighth; and Sotomayor and Miranda, that of writers. What I have related is all I can declare in truth, adding that, by reason of my advanced age and infirmities, I did not consent to proceed in person to California to give this testimony before those tribunals when twice earnestly invited so to do.

Mexico, July 26th, 1859.

JOSÉ M. DURAN.

—

I return to you the interrogatory which you were pleased to transmit to me with your attentive despatch of the 8th of the present month, in relation to the New Almaden business, inclosing with it in separate sheets the corresponding answers, following the order in which the interrogatory is drawn up. With this motive I have the honor to renew to you the assurances of my appreciation and respect.

God and Liberty. Mexico, July 26th, 1859.

JOSÉ M. DURAN.

To the Sōr. First Civil Judge, Lic. D. Antonio Madrid.

Mexico, June 17th, 1859.—Esteemed Sir.—I am sorry to inform you that under the present circumstances it is impossible for me to take the depositions which you request.

I remain, with the greatest respect, your obedient servant,

JOHN BLACK.

Sör. Lic. Don Emilio Pardo.—No. 9, Calle del Esclavo.

—

Consulate of the United States of America.—Mexico, 21st June, 1859.—Sir: In answer to your letter dated to-day, I have to inform you, that under present circumstances I cannot issue the certificate which you solicit; for I have received a communication from the Hon. Robert M. McLane, Esq., Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Constitutional Government, in which he states to me (relative to certain business pending between the United States, Don Andres Castellero, John Parrott, and others), what I copy: "I am instructed to inform you that the Government does not authorize such a proceeding."—Therefore, I consider myself bound to suspend the issuance of said certificate until I can consult with the said Minister about the matter, and receive from him new instructions in relation to it, as the former may not perhaps cover your case. But as to this I cannot (for want of the necessary information) consider myself competent to decide, and I shall therefore wait for new instructions to enable me to act in a more positive manner. I remain, with the greatest respect, your obedient servant.

JOHN BLACK.

Mr. Eustace W. Barron.—Mexico.

—

Consulate of the United States of America.—Mexico, 25th June, 1859.—Sir:—I received last night your letter of the 22d inst., and in reply, I have to inform you, that you have no reason to be surprised at the contents of my letter of the 21st inst., as it seems that you were well informed about the matter, and knew before that what had happened, and you now appear to be highly indignant because your own "efforts and those of the distinguished gentleman who have undertaken the defense of your rights, (as you say,) to obtain from the Government of the United States some assistance to relieve the case from doubt, and ascertain on which side the truth is and can be proven to be, you regret to say have been wholly unavailing;" and that "not content with scorning your propositions at Washington,

the Government also persecutes you here, in the name of a great people and through official channels to suspend a law of the United States passed and sanctioned by the Congress of the Union." You further say that "fortunately for yourself and those interested with you in the litigation pending before the tribunals of the United States, it is not the Executive Department of the Government of that country that has to decide upon the justice of the case." You should have considered this and refrained, and not ask for intervention in business pending before the judicial tribunals.

It appears now that you and your distinguished gentlemen, instead of submitting to what has been, or may be decided by the Courts which take cognizance of your affairs, have gone beyond the limits of the law, asking for the Executive interference of the United States to obstruct and alter the regular course of proceedings in your case, and because it refuses to trample on the law for your accommodation, you accuse it of suspending a law of the United States. You also complain of it for persisting in its refusal to authenticate proceedings which you claim the right to take, independently of the only tribunals lawfully invested with jurisdiction in the case, and the mere act of announcing to me such non-authentication is declared by you to be a persecution of you here, in the name of a great people, and through official channels to suspend a law of the United States, passed and sanctioned by the Congress of the Union.

There is nothing in the instructions about suspending any law or prohibiting the issuance of certified copies; it is simply a notice showing, that in order to proceed according to law, it is not necessary that there should be any authentication or interference by the Executive power, and that its prior sanction is not necessary for the continuance of proceedings, legally conducted, which emanate from the judiciary itself; and finally, that none of them can, nor will be authenticated.

I remain sir, with most profound respect,

Your ob't. serv't,

JOHN BLACK.

Mr. EUSTACE W. BARRON, Mexico.

MEXICO, July 9th, 1859.


SIR:—I had the honor last evening to receive an official communication under date of the 7th instant, addressed to me by his Honor, Judge of the First Civil Court, D. Antonio Madrid, advising me that D. Eustaquio W. Barron had presented him-

self in his Court for the Company of New Almaden in Upper California, manifesting the necessity of taking testimony to prove some facts before the tribunals of Upper California, and at the same time stating that I had refused my intervention, stating that I had orders from the American Minister in Vera Cruz not to authorize any proceedings in relation to the affair mentioned. I must here state that said Minister has given me no such orders in the case, as the correspondence on the subject between myself and D. Eustaquio W. Barron will show, the subject in reference to the case being fully explained in my letter of the 25th ultimo in answer to that of Mr. Barron of the 22d of the same; all which correspondence I presume he has attached to and included in his escrito, as it should be, in order that the case may be fairly stated and understood.

His Honor, the Judge, also knows that I am not considered by the authorities established in this city as in the exercise of consular functions.

I have the honor to be,
Your obedient servant,

JOHN BLACK. 

To His Honor Antonio Madrid,
First Judge of the Civil Court, Mexico. 

—

INTERROGATORY, to the tenor of which shall be examined D. Juan Maria Flores.—1st. Declare your name, age, residence, and other generalities of law.—2d. Please to state what offices you have filled under the Mexican Government; at what periods; what was that which you filled in 1846, and what is that which you now fill.—3d. Declare whether in the months of April and May of that year, 1846, as member (*vocal*), as you were, of the Junta for the Encouragement and Administration of Mining, you had knowledge that a quicksilver mine had been discovered in Upper California by D. Andres Castellero.—4th. Declare whether it be true, as it is, that the specimens of the metal transmitted by Castellero to D. Tomas Ramon del Moral, were assayed in the National College of Mining by resolution of the Junta, and that the result of this operation was reported to the Supreme Government.—5th. Declare whether you know Don Andres Castellero; and whether you remember that, in the aforesaid months of the said year 1846, you saw him in Mexico, and where.—6th. Declare if it is true that Castellero presented a petition soliciting that the Junta should advance to him certain funds for the carrying on of the enterprise, and asked from it its recommendation in order that the Supreme Government should accede to his petition according to his

terms.—7th. Declare whether you know that the government acceded to Castellero's request, and whether, in consequence, the Junta came to a resolution to hand over the necessary sum.—8th. Declare whether you know that this arrangement was frustrated by an order of the Supreme Government issued in May, 1846, ordaining the suspension of payments of every description. 9th. Declare whether you know that, in relation to this matter of Castellero, there have existed any documents in writing, when and where you saw them for the first time; whether you know that they are now in existence, and where they are. 10th. Declare whether you know who was President of the Junta for the Encouragement and Administration of Mining in 1846, and who were members (*vocales*) and substitutes (*suplentes*) of that corporation. 11th. Declare what was the form in which the resolutions of the Junta were given; whether there remains any written document of them, where, when you saw it, where, and whether you know if it now exists. 12th. Declare whether you know that the Departments of State of the Republic were under obligation to present every year to the Sovereign Congress a report of the affairs of their branch; whether you know that in 1846 the Department of Relations complied with this obligation, and whether the report now presented to you is the official edition of that which was read in the said year 1846. 13th. Declare whether in the said year any report was requested by the Ministry of Relations from the Junta for the Encouragement and Administration of Mining, and whether this is the same which appears printed in the appendix of the report of Señor Lafragua under number 52. 14th. Declare, after informing yourself of pages 136 and 146 of the report herewith presented to you, whether the extract which it contains of the proceedings of the Mining Junta in the business of Castellero, is exact, and whether its certainty is known to you. 15th. Declare in what form the resolutions of the Junta for the Encouragement and Administration of Mining were adopted; whether they were anywhere preserved of record; whether they exist now, and where. Whether it is true that, in behalf of Señor William E. Barron, you were requested to proceed to California to testify to the truth of the facts mentioned in this interrogatory; and whether it is also true that you declined doing so, for the reasons which you are requested to make known.

Mexico, 17 July 1859.

EUSTACE W. BARRON.

L. EMILIO PARDO.

[Rubric.]

Your dispatch of the 8th of last July is at hand, which I have not answered until now, by reason of having been sick and absent from the capital. With it you are pleased to inclose to me the interrogatory presented by the attorney of Mr. Eustace Barron, and in due answer you may state to him: To the first question, that my name is Juan Maria Flores Gutierrez de Teran; a native of this capital; sixty-eight years of age; my residence was in Europe till the year 1832, when I returned to the Republic, living after that time in Mexico, and now at a *hacienda* named San José in the jurisdiction of the town of Mixcoac, two leagues from the same city, and that the general disqualifications of the law do not apply to me. To the second, that during the years 1834 and 1835, I was first Alcalde of the Ayuntamiento of the city of Mexico; in the years 1845 and 1846, Deputy to the General Congress; in the year 1847, second Alcalde of the Ayuntamiento of Mexico; and in the year 1848 Governor of the Federal District; and now, Counselor of Government. To the third, that it is true. To the fourth, that it is also true. To the fifth, that it is certain that in the said months of the year 1846, I saw D. Andres Castellero in Mexico, and conversed with him in the place where the Junta for the Encouragement and Administration of Mining held its sessions, where the said Castellero went for the purpose expressed in the sixth question, which is likewise true. To the seventh, that it is true. To the eighth, true. To the ninth, that the Junta having agreed with Castellero as to the terms on which it should advance to him the stipulated sum for the working of the quicksilver mine, the appropriate writing was drawn up, which did not come to be signed, because the Junta had received from the Supreme Government the order spoken of in the eighth question. That that writing I saw in the above named room, in which the Mining Junta held its sessions, I having participated in all that business as member of said Junta. To the tenth, that in the year 1846, D. Vicente Segura, as Commissioner of the Government, was President of the Junta; and the members (*vocales*) were for the creditors D. José Maria Bassoco, and for the miners this deponent; and the substitutes were, for the creditors D. Joaquin Rozas, and for the miners D. Atilano Sanchez. To the eleventh, that the resolutions of the Junta were adopted by a majority of votes, and were recorded in the book of the minutes of the Junta, in which this deponent has seen them, and believes that they exist in the Secretary's office of the same. To the twelfth, that it is true, and that the report presented to me, and which I herewith return, is the official edition of that which was read in the Congress. To the thirteenth, that its contents are true,

and that the report of the Junta is the same which appears printed in the appendix of the report aforesaid of S̄r. Lafragua, the Minister of Relations. To the fourteenth, that all that is asked in it is true, and I know it, because I participated, as I have already said, in all that business as member (*vocal*) which I was, of the Mining Junta. To the fifteenth, I believe that this question is answered in the answer which I gave to the eleventh. To the sixteenth, that it is true that I was solicited to proceed to California to testify to the truth of the facts stated in this interrogatory, and that, with great regret, I was unable to render this service to Mr. Barron, because neither my age nor my broken health permitted me to make so long a journey.

San José, September 5th, 1859.

JUAN MARIA FLORES.

To the S̄r. FIRST CIVIL JUDGE.

I, Mariano Dominguez, Judge of the Supreme Court of Justice of the Nation, and at present, Supervising Judge of Records of its First Hall, do certify, that the Licentiate Don Antonio Madrid is First Civil Judge of this Capital; that by sickness of the latter, the business of the Court is conducted by the substitute Licentiate Don Ygnacio Solares, and that the signatures of those persons appearing in the foregoing document are the same which they use in all public documents authenticated by them.

I certify in like manner, that Don José Villela and Don Pablo Sanchez, are National Notaries Public, and their signatures to the foregoing proceedings are likewise genuine.

Mexico, 25th August, 1860.

[SEAL.]

MARIANO DOMINGUEZ.

[Rubric.]

L. JOSE M. RODRIGUEZ VILLANUEVA,

[Rubric.]

Secretary.

No. 132. José Miguel Arroyo, Honorary Intendent of the Army and First Chief Clerk of the Ministry of Exterior Relations:

Do certify, that Don Mariano Rodriguez is Judge of the Supreme Court of Justice, and the foregoing signature is his, which he uses in documents authenticated by him.

Due \$4 00.

J. MIGUEL ARROYO.

[Rubric.]

EXHIBIT

LAND COMMISSION PROCEEDINGS, J.W.M.

—
PETITION.

To the Honorable Commissioners to settle Private Land Claims in California.

The petitioner, Andres Castellero, respectfully shows:

That in the year 1845, the petitioner, Andres Castellero, discovered a mine of cinnabar in the jurisdiction of San José and in the now county of Santa Clara in this State.

That having formed a company for working said mine, he, on the 22d day of November, and on the 3d day of December, A. D. 1845, received from the magistrate of that jurisdiction, in due form, the juridical possession of said mine and lands, to the extent of three thousand varas in all directions, all of which is shown by the duly authenticated papers issued from the office of said magistrate, copies of which are submitted herewith, marked "A" with translation marked "B."

That said record of testimony of his mining possession was soon after submitted to the "Junta de Fomento y Administracion de Minería," the highest mining tribunal in the Republic of Mexico, which tribunal, after mature deliberation and an examination of the laws relating thereto, on the 14th day of May, A. D. 1846, declared said juridical possession, although embracing an unusually large extent of land, to be in accordance to law, and fully justified by the peculiar circumstances of the case, and they therefore recommended to the executive power of the Republic, through the Minister of Justice, not only that the mining possession of three thousand varas in all directions from the mouth of the mine be confirmed, but that the executive should also grant in fee to the said Castellero, for the benefit of his mine, two square leagues of land on the surface of his mining property.

That on the 20th day of May, A. D. 1846, the Minister of Justice replied to the President of the "Junta de Minería" that the President of the Republic had acceded to the recommendations of the Junta and the petition of Castellero, and granted the land so asked for and so recommended.

That on the same day the Minister of Justice officially notified the Minister of Exterior Relations, Government and Police

of the aforesaid grant of the President of the Republic, in order that the corresponding decree or orders might be issued; all of which is fully shown by the duly attested documents issued from corresponding offices in Mexico, copies of which, and also copies of the duly authenticated certificates of the Minister of Interior and Exterior Relations and of the Secretary of the Mining Tribunal, that the aforesaid grant of land to the petitioner, Castellero, was legal and approved by the Supreme Government, are submitted herewith, marked "C" with translations marked "D."

That on the 23d day of May, A. D. 1846, the Minister of Exterior Relations, Government and Police issued his order to the Governor of California, notifying him of the aforesaid grant to Castellero, and directing the said Governor to put Castellero in possession of the two square leagues so granted, a copy of which order or patent of title is submitted herewith, marked "E" with a translation marked "F."

That the said Castellero, immediately on receiving the aforesaid grant from the Government of Mexico, started for California, for the purpose of measuring off and taking the juridical possession of the land so granted, but was prevented from doing so and interrupted in his journey by the operations of the war which was then commencing between the United States of America and the Republic of Mexico; he however still continued by his agents and servants in the occupation of the land of his mining possession, and in the latter part of the year 1847, or the beginning of the year 1848, and as soon as the operations of the war between the two nations would permit, he procured a survey of the land so granted and marked out its boundaries; a copy of which notes of survey, dated March 7th, 1848, and a plat of the land, made and executed by Chester S. Lyman, a duly appointed and authorized Surveyor of the Middle Department of California; copies of which notes of survey and plat are submitted herewith, marked "G."

And the petitioner further shows: that the said survey was made with as much formality as was possible, and by the most skillful and competent officer to be procured in the then peculiar state of the country, and under the organized *de facto* government of California: that in order to avoid all questions of boundary with the claimants of the neighboring lands, the agents of the said Castellero, and those holding under him, in making the said survey and marking the boundaries of his grant as aforesaid, so located it on their then mining possession which had been given to Castellero in 1845, and duly approved as aforesaid, as to leave the mouth of the said quicksilver mine, now called "New Almaden," in the centre, or nearly so, of

said grant so located, and to include little or no land on the side next the claimants of neighboring lands, but on the contrary to leave out a considerable portion of land included in the said juridical possession on the side next such claimants, this being done to avoid all dispute respecting boundaries; all of which is shown by the plat submitted herewith, marked "H."

That the said tract of land has not been surveyed by the Surveyor General of the United States, but that it was duly surveyed and its boundaries marked in the year 1848 as aforesaid, that these boundaries are well known, and that the land within them has been in the possession of, and occupied by the said Castellero, his agents, and those holding under him, since the year 1845, by juridical authority, and since the month of May, 1846, by virtue of a title in fee.

That the right acquired under said denouncement and juridical possession have continued uninterrupted until the present time, and now are vested solely and wholly in the petitioner, Castellero, and those holding under him; that by the working of the mine from its denouncement as aforesaid, he acquired by the laws of Mexico a perfect title to the minerals of said mine, and a perfect right to use the said land for mining purposes, even if he had no title in fee to the land itself; but he avers and has shown that such title in fee absolute was conveyed to him by the grant aforesaid, on the 20th day of May, 1846.

That since the petitioner took possession of said mine and tract of land in the year 1845, and more particularly since he received the said grant in fee in the month of May, 1846, he and his associates holding under him, have expended immense sums of money in working said mine, and in improving said land, in constructing roads, opening quarries, erecting lime-kilns, furnaces, smelting-works, machinery, store-houses, fences, bridges, and other costly works of permanent utility, viz., from December, 1845, to the 1st day of May, A. D. 1852, the sum of \$978,114.11.

And the petitioner relies for confirmation of title upon the original documents, copies of which are transmitted herewith, and upon such other and further proofs as they may be advised are necessary.

Wherefore the said Castellero prays this Honorable Board of Commissioners to confirm to him the aforesaid tract of two square leagues of land, as embraced in his mining possession and grant as aforesaid, and described in the accompanying survey and maps.

By his Attorneys,
HALLECK, PEACHY & BILLINGS.

[Endorsed.]

No. 366, Land Commissioners, New Almaden.—Petition of Andres Castellero—By the President of Mexico, 1846.—Santa Clara County.

Filed in office Sept. 30, 1852,
GEO. FISHER, Secretary.

Recorded in Record of Petitions, Vol. 1, pages 280, 281, 282 and 283.

GEO. FISHER, Secretary.

EXHIBIT B.

Señor Alcalde of 1st Nomination:

Andres Castellero, Captain of permanent Cavalry, and at present resident in this Department, before your notorious justification makes representation that having discovered a vein of silver with a ley of gold, on the rancho pertaining to José Reyes Berreyesa, retired sergcant of the presidial company of San Francisco, and wishing to work it in company, I request that in conformity with ordinance on mining, you will be pleased to fix up notices in public places of the jurisdiction, in order to make sure of my right when the time of the juridical possession may arrive, according to the laws on the matter. I pray you to provide in conformity, in which I will receive favor and justice; admitting this on common paper there being none of the corresponding stamp. Pueblo of San José, Guadalupe, November twenty-second, eighteen hundred and forty-five.

(Signed) ANDRES CASTILLERO.

This is a copy of the original to which I refer, signing it with two assisting witnesses, in the Pueblo of San José Guadalupe, on the 13th of January, 1846.

(Signed) PEDRO CHABOLLA.

Assisting Witnesses:

(Signed) P. SANSEVAIN,

(Signed) José SUNOL.

Señor Alcalde of 1st Nomination:

I, Andres Castellero, permanent Captain of Cavalry, before your well known justification, appear and say that on opening the mine which I previously denounced in this court, I have taken out besides silver with a ley of gold, liquid quicksilver, in the presence of several bystanders whom I may summon on the proper occasion. And considering it necessary for the security of my right so to do, I have to request of you that, uniting this representation to the denouncement, it may be placed on file, it not going on stamped paper because there is none. I pray you to take measures to this effect, in which I will receive favor and grace. Santa Clara, December 3rd, 1845.

(Signed) ANDRES CASTILLERO.

This is a copy of the original to which I refer, signing it with the witnesses of my assistance in the pueblo of San José Guadalupe, on the 13th day of January, 1846.

(Signed) PEDRO CHIABOLLA.

Assisting Witnesses:

(Signed) P. SANSEVAIN.

(Signed) JOSE SUÑOL.

There being no deputation on mining in the Department of California, and this being the only time since the settlement of Upper California that a mine has been worked in conformity with the laws; and there being no Juez de Letras (professional judge) in the 2nd district, I, the Alcalde of first nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office for want of a notary public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the rancho of the retired sergeant José Reyes Berreyesa; for the time having expired which is designated in the ordinance of mining, for citizen Don Andres Castellero to show his right, and also for others to allege a better right, between the time of denouncement and this date, and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which this court has,

and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have granted three thousand varas of land in all directions, subject to what the general ordinance of mines may direct, it being worked in company, to which I certify, the witnesses signing with me; this act of possession being attached to the rest of the expediente, deposited in the archives under my charge; this not going on stamped paper, because there is none as prescribed by law.

Juzgado of San José Guadalupe, December 30, 1845.

(Signed) ANTONIO MARIA PICO.

Assisting Witnesses:

(Signed) ANTONIO SUÑOL.

(Signed) JOSE NORIEGA.

—

I have received of Don Andres Castellero the sum of twenty-five dollars on account of the fees for the possession of the quicksilver mine, which is in this jurisdiction under my charge, named Santa Clara. Court-House of San José Guadalupe, December 30th, 1845.

(Signed) ANTONIO MARIA PICO.

[25.00.]

—

Writing of partnership executed by Don Andres Castellero, Captain of permanent Cavalry, with the Commanding General Don José Castro, and the Señores Secundino Robles and Teodoro Robles, and a voluntary grant which the partners make perpetually to the Rev. Father Friar José Maria del Refugio Suarez del Real, of a mine of silver, gold and quicksilver in the rancho of Don José Berreyesa, in the jurisdiction of the pueblo of San José Guadalupe.

ART. 1. Don Andres Castellero, conforming in all respects to the ordinance of mining, forms a regular perpetual partnership with the said persons in this form. The half of the mine, which is that of which he can dispose, will be divided in three parts in this manner: four shares to Don José Castro, four shares to Señores Secundino and Teodoro Robles, and the other four shares to the Rev. Father José Ma. R. S. del Real as a perpetual donation.

ART. 2. Neither of the partners can sell or alienate any of his shares, so that he who may do so shall lose his right, which shall revert to the other partners.

ART. 3. The expenses shall be borne in proportion to the shares, a formal account being kept by an accountant who will be paid from the common fund.

ART. 4. That prescribed by the ordinance of mining being complied with in everything, whatever difference may arise will be decided by the partners themselves.

ART. 5. Don Andres Castellero will direct the labors, expenses and works, and in his absence the Rev. Father Friar José Maria R. S. del Real.

ART. 6. Of the products no larger quantities will be taken out than are necessary for the arrangements of the negotiation, until the works may be regulated, and whatever the quantity may be, it must be with the consent of all the partners, until the negotiation may be arranged.

ART. 7. These agreements will be authenticated by the Prefect of the Second District, Don Manuel Castro, the original document being deposited in the archives of the District (partido), a copy certified by his Honor being left with the persons interested.

Mission of Santa Clara, November 2d, one thousand eight hundred and forty-five.

(Signed) ANDRES CASTILLERO.

For the Commanding General Don José Castro.

(Signed) ANDRES CASTILLERO.

(Signed) FR. JOSE MARIA DEL R. S.

DEL REAL.

For the Señores Secundino Robles and Teodoro Robles.

(Signed) FRANCISCO ARCE.

—

It is a copy of the original, to which I refer.
Santa Clara, Dec. 8th, 1845.

(Signed) MANUEL CASTRO.

(Signed) ANTONIO MA. PICO.

—

COURT OF THE JUSTICE OF THE PEACE, }
San José Guadalupe, Upper California. }

I certify in due form, that the foregoing is a faithful copy made to the letter from its original, the expediente of the mine of Santa Clara or New Almaden, which exists in the archives

under my charge, to which I refer; and in testimony thereof, I have signed it this 20th day of January, one thousand eight hundred and forty-eight.

(Signed) JAMES W. WEEKES,
Alcalde.

BRITISH VICE CONSULATE FOR CALIFORNIA, }
San Francisco. }

I hereby certify that the signature to the above certificate, is the true and proper handwriting of the person it represents, and that it is worthy of all faith and credit.

In witness whereof, I have hereunto placed my hand and official seal, this twenty-first day of January, one thousand eight hundred and forty-eight.

(Signed) JAMES ALEX. FORBES,
[SEAL.] Vice Consul.

I certify and assure that the last preceding signature of the Señor Vice Consul, Don James Alejandro Forbes, is his own, which said Señor is accustomed to use, I having become acquainted with it when I knew him during his stay in this City on the way to Upper California, by various acts which he executed in the house of Messrs. Barron, Forbes and Company.

And at the request of the same persons I affixed my Notarial mark and signature to this testimony in Tepic, on the fifteenth of March, one thousand eight hundred and fifty.

(Signed) JESUS VEJAR.
[Rubric.]

We, the Constitutional First Alcalde and Notary Public, who sign, certify and assure that the preceding mark and signature are those which the Notary, Jesus Vejar, is accustomed to use in all the acts which pass before him,—We thus prove it in Tepic, on the fifteenth of March, one thousand eight hundred and fifty.

(Signed) EUSEBIO FERNANDEZ.
[Rubric.]

CONSULATE OF THE UNITED STATES.

I, George W. P. Bissell, Consul of the United States of North America for this District, hereby certify, that the signatures attached to the foregoing document are in the true handwriting of the subscribers who legally hold the situations therein represented and are worthy of all faith and credit.

[SEAL.] In testimony whereof, I hereunto set my hand and seal of office this first day of December, in the year one thousand eight hundred and fifty, in the City of Tepic.

(Signed) G. W. P. BISSELL,
U. S. Consul.

[Endorsed.]

No. 366.—B.—New Almaden.—Translation of Denouncement, Mining Possession and Partnership.—Andres Castillero.

Filed in office, Sept. 30th, 1852.

GEO. FISHER, Secretary.

Recorded in Record of Evidence, Vol. 19, page 569.

 EXHIBIT C.

SELLO PRIMERO. { Sello para los } OCHO PESOS.
 { años de 1850 y 1851. }

Junta de Fomento y Administracion de Minería.—Número 573.—Exmō. Señor: Habiendo presentado á esta Junta, el Señor Profesor Don Tomas Ramon del Moral unas muestras de cinabrio de la Mision de Santa Clara en la baja California que le remite Don Andres Castillero, asi como las adjuntas copias con el objeto de escitar al Supremo Gobierno para que se sirva auxiliar tan importante empresa, inmediatamente remitió dichas muestras al E. S. Director del Colegio, para que se hiciesen los debidos ensayes, S. E. con oficio de veinte y nueve del pasado recibido ayer, lo dice lo que sigue.—“El Señor Don Tomas Ramon del Moral, Presidente de la Junta Facultativa del Colegio nacional de Minería, en oficio de veinte y cuatro del pasado, me dice lo que sigue.—Exmo. Señor: Havien-dose enterado la Junta Facultativa de los documentos que V. E. le pasó el veinte y uno del presente mes, relativo á un criadero de cinabrio descubierto en California por el Señor Dod Andres Castillero, y á otro de Carbon de Piedra de la Bahía en

San Francisco, tiene el honor de informar á V. E. que las muestras remitidas por dicho Señor Castellero estaban yá depositadas en el Gabinete de Mineralogia, unas, y otras ensayadas por el profesor de Quimica Don Manuel Herrera. El ensayo dió una ley de veinte y cinco y medio por ciento, tomando para hacerlo una meseta de las diferentes muestras porque hay algunas tan ricas que son de cinabrio puro. La Junta cree que el Señor Castellero se ha hecho digno por tan importante descubrimiento de la eficaz proteccion del Supremo Gobierno y de la Junta de Fomento de Minería y está persuadida de que V. E. interpondrá todo su influjo á fin de que este individuo reciba una prueba de que el Supremo Gobierno sabe distinguir y premiar á los ciudadanos que contribuyen á la prosperidad de la Patria. Reproduzco á V. E. con este motivo las consideraciones de mi estimacion y respeto. Y tengo el honor de trasladarlo á V. S. S. como resultado de su oficio relativo.”=La Junta al insertar á V. E. la anterior comunicacion tiene el honor de participarle que ha preguntado yá al Señor Castellero la clase de auxilios ó de proteccion de que necesita para fomento de su brillante empresa felicitando al Supremo Gobierno por un descubrimiento, que si en encuentra en un principio toda la proteccion que se merece puede cambiar completamente el aspecto de nuestra minería libertandola de la necesidad, en que ha estado hasta ahora del azogue estrangera. La Junta con este motivo aprovecha la oportunidad para participar á V. E. que como el veintecuatro del presente mes, termina la gracia que concedió la ley, de cinco pesos de premio á cada quintal de azogue estraido de las minas nacionales, han acreditado hasta la fecha, los mineros de Guadalcazar haber explotado mil quinientos setenta y cinco quintales de Diciembre de ochocientos cuarenta y cuatro, á fin de Marzo procsimo pasado, cuyo resultado excede del calculo que hasta ahora se habia hecho de que la produccion de este mineral, era de cien quintales mensuales. La Junta reitera á V. E. con este motivo las protestas de su distinguida consideracion y aprecio.=Dios y Libertad.=Mexico, Mayo cinco de mil ochocientos cuarenta y seis.=Vicente Segura, Presidente.=Por ocupacion del Secretario, Ysidro R. Gondra, Oficial Primero.=E. S. Ministro de Justicia.

Es copia: Mexico Abril veinte tres de mil ochocientos cincuenta.=O. Monasterio.

Secretaria de la Junta de fomento de Minería.=El Señor Don Andres Castellero, comisionado por el Supremo Gobierno, el año procsimo pasado para pasar á Californias á desempeñar objeto del servicio publico me dice en cartas escritas de la Mision de Santa Clara, la diez y nueve y veinte y dos de Febrero del

presente año lo que sigue.—“ A distancia de cinco leguas de esta Mision al oeste, hé descubierto y denunciado una mina abundantísima de azogue, q. á confirmar me verdad remito á V. S. unas piedras de las que se han tomado por encima de la veta; tambien va un poco de azogue del que sacamos con la mayor facilidad. El Señor Director del Colegio de Minería, Don Ramon del Moral, ha de recibir mucho gusto al ver igualadas las piedras de Almaden. Segun lo ancho de la veta y abundancia de saca de metales dentro de un año, mediante la proteccion del Gobierno Supremo no necesitará la República azogue de afuera.—Remito á V. algunas frioleras hechos por los Indios del Norueste y producidas de aqui, el carbon de piedra es abundantísimo y se encuentra en las costas de la Bahía de San Francisco de modo que los buques de vapor hechando sus embarcaciones menores, pueden cargar todo lo que necesiten; este descubrimiento lo hizo el Señor Coronel Don Juan Bautista Alvarado, el cristal de voca es un cerro muy grande.”—Es copia, Mexico Abril trece de mil ochocientos cuarenta y seis.—J. J. de Herrera.—Señor Director del Colegio de Minería, Don Ramon del Moral.—Mision de Santa Clara.—Febrero diez y nueve de mil ochocientos cuarenta y seis.—Mi estimado amigo y Señor aprecio.—Vd. sabe lo aficionado que soy al ramo de Minería y empeñado en encontrar una mina buena de Azogue, he dado aqui con un criadero abundantísimo; al Exmo. Señor Presidente, remito junto con esta unas piedras de cinabrio y un poco de azogue; estamos formando un horno y hemos ensayado dicho metal en un cañon de escopeta tapado el oido con barro, y metido la boca en agua, asi nos ha dado el treinta por ciento. —Yo estimaria á Vd. que se tomase el trabaja en obsequio del bien publico que se ensayase este metal por depender de su trabajo esta operacion.—Que V. y toda la familia se conserven buenos y que mande cuando guste á su afectísimo S. S. Q. B. S. M.—Andres Castellero.—Son copias, Mexico, Mayo cinco de mil ochocientos cuarenta y seis.—Ysidro R. Gondra, Oficial primero.

Es copia: Mexico Abril veinte y tres de mil ochocientos cincuenta.—O. Monasterio.

Exmo. Señor.—Por la nota de V. E. de cinco del actual y copias, que se sirvió acompañar, queda enterado con satisfaccion el E. S. Presidente interino de la Republica de que en la Mision de Santa Clara en la Baja California ha descubierto el Señor Don Andres Castellero un criadero de azogue de excelente calidad, segun los ensayos practicados en ese Colegio y de que se ha preguntado ya por esa Junta al repetido Señor Castellero, la clase de auxilios que necesita para fomento de su

brillante empresa. Asi mismo se ha impuesto S. E. de lo que participa esa Junta con respecto de la cantidad de Azogue extraida de las minas de Guadalcazar, cuyo resultado ha excedido al calculo que se habia formado. Lo que tengo el honor de decir á V. E. en contestacion, reiterandole con este motivo las protestas de mi consideracion y aprecio.—Dios y Libertad, Mexico, Mayor nueve de mil ochocientos cuarenta y seis.—Becerra.—E. S. Don Vicente Segura, Presidente de la Junta de fomento de mineria.

Es copia : Mexico, Abril veinte y tres de mil ochocientos cincuenta.—O. Monasterio.

Junta de Fomento y Administracion de Mineria.—Exmo. Señor.—Como tuvo el honor esta Junta de anunciar a V. E. en cinco del corriente bajo el número quinientos setenta y tres, el Señor Don Andres Castellero le ha derigido la solicitud, que original tiene el gusto de acompañar á V. E. sobre auxilios que necesita para el nuevo descubrimiento de la mina de azogue en la Mision de Santa Clara del Departamento de Californias. La Junta no duda recomendar á V. E. dicha solicitud porque persuadida de la grande importancia de la empresa, la considera acreedora, á toda la proteccion del Supremo Gobierno, cuando por otra parte las circunstancias particulares de aquel Departamento, y el justo empeño que ha manifestado el Exmo. Señor Presidente por conservar la integridad del territorio nacional, lo hacen digno de la mayor consideracion. Por consiguiente la Junta es de parecer que se le facilite inmediatamente al Señor Castellero la cantidad de cinco mil pesos en los términos que propone; que la antorice para franquear las retortas y frascos de fierro de su pertenencia y los otros mil pesos que podrán emplearse en la construccion de retortas, cilindros y otros aparatos pequeños de destilacion para dicha mina.—Aunque la ley que autoriza á la Junta para hacer préstamos en fomento de los criaderos de azogue, exige el premio de un cinco por ciento anual al capital que se preste es indudable que la oferta del Señor Castellero de pagar los cinco mil pesos con cincuenta quintales de azogue, puestos en Mazatlan á disposicion de la Junta, á razon de cinco pesos cada uno, y en el término de seis meses puesta sin duda mayores ventajas al fondo que el indicado interes.—La urgencia que manifiesta el Señor Castellero para verificar su marcha á aquel Departamento y lo que á ella pueda contribuir en las circunstancias presentes para la conservacion del territorio nacional, es en concepto de la Junta, mas que suficiente motivo para dejar á época mas oportuna la formacion de un contrato de compañía ó de avio p^a el fomento de dicha mina.—Resta pues manifestar á V. E. que aunque la pos-

esion dada al Señor Castellero por las autoridades locales de California no ha sido conforme á la ordenanza, pues que se le han concedido pertenencias en la estencion de tres mil varas que equivalen á quince pertenencias conforme al artículo segundo del título octavo es preciso considerar que reúne en su favor la calidad de descubridor de un *cerro absolutamente nuevo en que no habia ninguna mina abierta*, á quienes se conceden en el artículo primero del título sexto *tres pertenencias continuas ó interrumpidas y si hubiesen descubierto mas vetas, una en cada una de ellas*. Reúne tambien la circunstancia de trabajar en compañía a las que se concede que sin perjuicio del derecho que por el título de descubridor tengan cuando lo sean el que puedan denunciar cuatro pertenencias nuevas aun cuando esten contiguas y por un mismo rumbo; pero lo mas digno de consideracion es que siendo Californias un Departamento fronterizo y amagado con frecuencia por los emigrados de los Estados Unidos de America, y por los nuevos colonos del Oregon, parece conveniente conceder á la primera mina descubierta en un Departamento tan vasto, mayor número de pertenencias lo que corrobora la razon que se encuentra al fue del artículo que dice; “considerando que los limites establecidos en las minas de estos Reynos á que se han arreglado hasta ahora los de Nueva España, son muy estrechos á proporcion de la multitud, abundancia y felicidad de las venas metalicas que la misma bondad del criador ha querido conceder á aquellas regiones, ordeno y mando que las minas que en adelante se descubriesen en vetanueva é sin vecinos se observan estas medidas.—2º. Por el hilo, direccion ó rumbo de la veta sea de oro, de plata, ó de cualquiera otro metal, concedo á todo minero sin distincion de los descubridores (que yá tienen asignado su premio) doscientas varas castellanas que llaman de medir, tiradas á nivel.”—Por ultimo en el artículo primero, título once se espresa en estos terminos. “Y porque no siendo suficiente el caudal de uno solo para grandes empresas, puede serlo de todas las compañías, quiero y mando se procuren, promuevan y protejan semejantes compañías por todos los terminos convenientes, concediendo mi virey todas las gracias, auxilios, exenciones que fueren de conceder á juicio y discrecion del Real Tribunal de Minería, y sin detrimento del interes del publico y de mi real erario.”—En cuanto á la propiedad que solicita el Señor Castellero como colono, de dos sitios de ganado mayor sobre la superficie de su propiedad minera, con el objeto de proporcionarse la leña necesaria para el beneficio, la Junta no teniendo los conocimientos necesarios en la materia, en que abunda el Supremo Gobierno, siempre resolverá el Señor Exmo. Presidente lo que creyere mas conveniente.—En tal concepto al elevar á V. E. esta Junta

la solicitud del Señor Castellero, no duda recomendarla muy eficazmente por la importancia vital de la empresa y su increíble trascendencia en el bien general y la prosperidad de la Republica. La Junta tiene el honor con tal motivo de reiterar á V. E. las protestas de su distinguido aprecio y consideracion.—Dios y Libertad.—Mexico, catorce de Mayo de mil ochocientos cuarenta y seis.—Vicente Segura, Presidente.—Exmo. Señor Ministro de Justicia é Instrncion publica.

Es copia: Mexico, Abril veinte nueve de mil ochocientos cincuenta.—O. Monasterio.

Sello tercero.—Cuatro reales.—Años de mil ochocientos cuarenta y seis y mil ochocientos cuarenta y siete.—Andrés Castellero vecino y minero en el Departamento de la Alta California ante V. E. y V. S.S. como mejor proceda dijo: que habiendo descubierto en la mision de Santa Clara, una mina de Azogue de leyes tan altas como seguramente no se han visto no solo en la Republica, sino acaso en el mundo entero, como lo acreditan los ensayos hechos de órden de la Junta facultativa del Colegio de Minería que reuniendo de todas las muestras que traje desde la mejor hasta la infima han dado por resultado un treinta y cinco y medio por ciento mientras que ha habido nuestra de las superiores que deben producir leyes mucho mayores, me veo en el caso para satisfacer mis deseos en favor del progreso de mi Patriá de aprovechar exclusivamente en favor de los Méxicanos las lisonjeras y muy fundadas esperanzas que proporciona semejante descubrimiento. En tal virtud he denunciado y tomado posesion, no solo de dicha mina denominada Santa Clara, sino de una estencion de hasta tres mil varas en todas direcciones de dicho punto; he formado una compañía para su laboreo, he construido el tiro y cumplido todas las condiciones que previene la ordenanza quedando la mina en frutos, con la notable circunstancia, de que las muestras que traje y que se han ensayado, han sido estraídas de la boca—Muy facil me habria sido haber dado todo el vuelo necesario á la negociacion, admitiendo las repetidas y ventajosas ofertas que se me han hecho por varias casas estrangeras de Californias: pero la empresa no necesita de semejantes auxilios que resultarian en ventajá estraña, cuando todo puede ser nacional, y no he dudado por lo mismo ocurrir ante V. E. y V. S. S. para conseguir los únicos y pequeños recursos de que necesito; ellos se reducen á una corta anticipacion de cinco mil pesos en dinero, atendida la escesiva escases de numerario que hay en aquel Departamento, y la pronta remision á él de retortas, cilindros, y otros aparatos pequeños de destilacion, asi como frascos de fierro para el envase de azogue.—Yo habria pro-

puesto un contrato de compañía á la Junta un avio ó cualquier otro convenio si tuviese tiempo para proporcionar los datos y circunstancias que se requieren para dichos contratos; pero comprometido por el Supremo Gobierno á marchar de esta capital dentro de algunos dias, me veo en al caso de limitarme á lo que parece no presentar dificultad y abre el campo á nuevos convenios posteriores. Estoy bien persuadida de que le Junta accederá á mi solicitud en todo aquello que está en sus facultades, y que elevará al Supremo Gobierno con recomendacion lo que sea del resorte de este.—Mis proposiciones pues son las siguientes.—Primera. La Junta en el acto de aprobar el convenio me entregará una libranza contra una casa de comercio en Mazatlan valiosa cinco mil pesos.—Segunda. Por mi parte me comprometo á situar en dicho puerto, en los seis en ese de haber salido de él, cincuenta quintales de azogue, á razon de cien pesos cada uno, que remitiré de las primeras extracciones con absoluta preferencia á todo otro compromiso.—Tercera. La Junta mandará poner á mi disposicion, antes de mi salida de la capital, las ocho retortas de fierro que tiene en su oficina y todas los frascos para azogue, que se hallan en la negociacion de Tasco en estado de uso y por ultimo entregará al Señor Don Tomas Ramon del Moral mi apoderado, las cantidades que importen las retortas, cilindros, y otra clase de aparatos pequeños que se mande hacer para la negociacion hasta la cantidad de mil pesos.—Cuarta. Las retortas de la Junta las recibiré por el precio de su costo; y los frascos que eseoja á dos pesos cada uno conforme á su avaluo.—Quinta. El importe liquido de dichas retortas y frascos, y el de las cantidades que se hayan entregado al Señor Moral lo devolveré en el término de un año de este convenio, asi como el premio de la libranza contra Mazatlan, en azogue puesto en dicho puerto al precio de cien pesos quintal; pero si la Junta quisiere tomar una ó mas acciones en la mina, quedara en parte de la cantidad correspondiente á una ó mas barras.—Sexta. Entretanto que se arregla la compañía, durante un año contado desde el dia, en que se apruebe este convenio, y satisfechos yá los cinco mil pesos de que habla la proposicion primera, preferiré á la Junta en la venta del azogue puesto en Mazatlan á razon de cien pesos quintal.—Setimo. La Junta representará al Supremo Gobierno la necesidad de que apruebe la posesion, que se me ha dado de la mina por las autoridades locales de Californias en los mismos términos en que hoy la tengo.—Octava.—Y igualmente le representará las ventajas, de que como colono, se me concida dos sitios de ganado mayor sobre el terreno de mi posesion minera, con el objeto de poderme aprovechar las maderas para mis quemas.—Novena. Al cumplimiento de este contrato hi-

poteco la misma mina, y todas sus pertenencias. El que suscribe sujeta á la deliberacion de la Junta esta solicitud la que aceptada se podrá elevar á contrato formal y legalizar del modo mas conveniente.—Dios y Libertad. México doce de Mayo de mil ochocientos cuarenta y seis.—Andrés Castellero.

Es còpia. Mexico Abril veinte y tres de mil ochocientos cincuenta.—O. Monasterio.

Exmo Señor.—Habiendo dado cuenta al Exmo. Señor Presidente interino de la Republica con la nota de V. E. del catorce del presente, á que se sirvió acompañar con recomendacion la solicitud del Señor Don Andres Castellero para el fomento de la mina de azogue, que ha descubierto en la Mision de Santa Clara en la Alta California; se ha servido S. E. aprobar en todas sus partes el convenio celebrado con dicho individuo, para principiar la explotacion de dicho mineral y con esta fecha se hace la comunicacion que corresponde al Ministerio de relaciones exteriores y gobernacion para que libre las ordenes oportunas por lo respectivo á lo que tiene la octava proposicion á la concesion de tenemos en aquel Departamento —Reitero á V. E. las protestas &a. Dios y Libertad. México Mayo veinte de mil ochocientos cuarenta y seis.—Becerra.—Exmo. Señor Don Vicente Segura, Presidente de la Junta de fomento de Minería.—La anterior se comunicó á este Ministerio de Relaciones diciendo “Y tengo el honor de insertarlo á V. E. á fin de que por lo respectivo á la solicitud del Señor Castellero, á que ha tenido á bien acceder el Exmo. Señor Presidente interino sobre que como colono: se le conceda dos sitios de ganado mayor sobre el terreno de su posesion minera se sirva V. E. librar las ordenes de que se trata.—Reitero á V. E. &a. Fecha ut Supra—Becerra.—Exmo. Señor Ministro de Relaciones exteriores y gobernacion.

Es copia. México Abril veinte y tres de mil ochocientos cincuenta.—O. Monasterio.

El Infrascrito Ministro de Relaciones interiores y exteriores. —Certifico: que aunque en la comunicacion, que la Junta de fomento y administrativa de Minería dirigió en cinco de Mayo, en mil ochocientos cuarenta y seis al Exmo. Señor Ministro de Justicia relativa á la mina de cinabrio descubierta en California por Don Andrés Castellero se escribió, que ella está situada, en la Mision de Santa Clara en la *Baja* California; y lo mismo se dice en la contestacion del Ministerio fecha nuevo del citado mes, de cuyos documentos se dieron copias en veinte y tres de Abril último al Señor Eustaquio Barron; este es un equívoco,

pues dicha mina y los terrenos que se adjudicaron á Castellero, estan en territorio de la *Alta California*, cuya concesion declaró legítima y aprobó el Supremo Gobierno despues. Y doy el presente certificado para los fines que convengan, á pedimento del espresado Señor Barron en México á treinta de Julio de mil ochocientos cincuenta.—Lacunza.

Escrito. Eustaquio Barron de esta vecindad, ante V. como mejor de derecho proceda y salvas las protestas legales digo: que á mi derecho conviene tener un testimonio autorizado del contenido que se espresa en los documentos que con la solemnidad debida acompaño en once fojas útiles; y al efecto, A. V. suplico se sirva mandar que por el actuario se compulse el referido testimonio, sin necesidad de citacion por no haber á quien competa; y fecho se me entregue con los originales que presento pues todo se conforme á justicia que imploro, jurando con lo necesario, et cetera.—Eustaquio Barron.

Auto. México, Agosto diez y nueve de de mil ochocientos cincuenta.—Por presentado con los documentos que es acompañan: como lo pide, y obre los efectos que haya lugar Lo proveyó y firmo el Señor Don Antonio Madrid, Juez de Letras del ramo civil en el Distrito federal, doy fé.—M.—Madrid—Ramon de la Cueva.

Concuerdan los documentos insertos, con sus originales que devolvé al interesado á que me remite; de donde se sacó el presente traslado á la letra fielmente consertado y corregido en confirmidad de lo mandado se el auto inserto; á pedimento del Señor Don Eustaquio Barron en la Ciudad de México á veinte y uno de Agosto de mil ochocientos cincuenta, y va en nueve fojas la primera del sello primero, y las demas del cuarto, bienio corriente; siendo testigos á su saca y correccion D. Juan Zavala, D. Felipe Moctezuma y D. Manuel Rojo de esta vecindad; doy fé. (Firmado) Ramon de la Cueva. E. N. and P.

Los que subscrivemos:—Certificamos y damos fé; que Don Ramon de la Cueva p^r. quien está autorizado el anterior testimonio, es Escribano Nacional Publico del número como se titula fiel y de confianza por lo que á cuantos instrumentos legaliza se les ha dado y dá entera fé y crédito su juicio y fuera de él. Y para constancia ponemos la presente sellada con el de nuestro Nacional Colegio en México á veinte y uno de Agosto de mil ochocientos cincuenta.

(Firmado)

YGNACIO PEÑA,

FERMIN VILLA,

MAR. CABEZA DE VACA.

{ Sello del Colegio Nacional de }
{ Escribanos su Mexico. }

No. 932. CONSULATE OF THE U. S. OF AMERICA,
Mexico, January 8th, 1851.

I, the undersigned, Consul of the United States of America, for the City of Mexico, hereby certify that the signatures of Ignacio Peña, Mar. Cabeza de Vaca, and Fermin Villa, subscribed to the preceding certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their official acts, who are well known to me, and were at the time of subscribing their several names duly authorized Notaries Public for the city of Mexico, and that all their official acts are entitled to full faith and credit as such respectively.

Register F folio 52. In testimony whereof I have hereunto set my
Fees \$4. hand and affixed the Consular seal, the day and
[SEAL.] year above written.

(Signed) JOHN BLACK, Consul.

—
El infrascrito, oficial mayor 1º. del Ministerio de Relaciones, interiores y exteriores:—

Certifico: que el testimonio precedente de los documentos ó certificados dados por mí de los títulos de la mina del Nuevo Almaden está igual y conforme en todo con el tenor literal de ellos segun resulta de su confrontacion que he hecho, y que la firma de Don Ramon de la Cueva, que la cobre y la de los otros Escribanos que la comprueban son las mismas que estos usan, como tales escribanos. México 10 de Enero de 1851.

(Firmado) JOSÉ MARIA ORTIZ
MONASTERIO.

No. 970. CONSULATE OF THE U. S. OF AMERICA.
Mexico, Jan. 11th, 1851.

I, the undersigned, Consul of the United States of America, for the city of Mexico, hereby certify that the signature of José Maria Ortiz Monasterio subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same first Clerk of the Department of Interior and Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

Register F, fol. 58. In testimony whereof, I have hereunto set my
Fees \$2. hand, and affixed the Consular seal the day and
year above written.

(Signed) JOHN BLACK, Consul.

Ysidro Rafael Gondra, Secretario de la Junta Directiva y Administrativa de Minería.

Certifico que del expediente que obra en la Secretaría de Minería, relativo al denunció, posesion y adjudicacion á D. Andres Castellero, de la mina de cinabrio, que existe en la Alta California, llamada el Nuevo Almaden, consta: que por informe de la Junta Directiva, el Supremo Gobierno de la República en virtud de lo pedido por el Señor Castellero fué espedido á este el titulo legal ó testimonio respectivo á su adquisicion, conforme á las ordenanzas del ramo, y que esa concesion al mencionado Castellero fué de una pertenencia de tres mil varas sobre el plano de dicha mina de azogue para trabajarla en esa estension, y de dos sitios de ganado mayor contiguos á la referida pertenencia, para sacar de ellos la leña, y demas aprovechamientos indispensables y útiles, para los trabajos de la mina; cuyas concesiones particulares y escepcionales creyó conveniente hacer el Supremo Gobierno por el favor que las leyes disponer que se imparta á los descubridores de minas de Azogue procediendo en ellas de conformidad con la informado por la Junta Directiva.

Yá pedimento de los propietarios de Nuevo Almaden, doy la presente certificacion, refiriendome al expediente mencionado de que todo consta coma va referido, y la firmo en México á 23 de Enero de 1851.

(Firmado) YSIDRO R. GONDRA, Srio.

—

El infrascrito oficial mayor del Ministerio de Relaciones interiores y exteriores.

Certifica que la firma que antecede del Sr. D. Ysidro Rafael Gondra, Secretario de la Junta Directiva y Administrativa de minería es legítima y la misma que acostumbra en sus actos oficiales. México Febrero 26 1851.

(Firmado) JOSÉ MARIA ORTIZ
MONASTERIO.

—

I hereby certify that the above is the signature of Don José Maria Ortiz Monasterio, under Secretary of State for Foreign Affairs of the Mexican Republic.

(Signed) PERCY W. DOYLE,
Her Britannic Majesty's Chargé d'Affaires in the
Republic of Mexico.

Mexico, February 26, 1851.

No. 1075.

CONSULATE OF THE U. S. OF AMERICA,
Mexico, February 26th, 1851.

I, the undersigned, Consul of the United States of America, for the City of Mexico, hereby certify that the signatures of José Maria Ortiz Monasterio, and of Percy W. Doyle subscribed to the foregoing certificates are in the proper handwriting of said persons respectively, the same as used by them in their several official acts, who are both well known to me, and were at the time, subscribing their respective names as follows, to wit, the first—First Clerk of the Department of the Interior and Foreign Relations of the Mexican Government, and the second her Britannic Majesty's Chargé d'Affaires near the aforesaid Government, and that all their several acts are entitled to full faith and credit as such respectively.

Register F folio 75. In testimony whereof I have hereunto set my
Fees \$4. hand and affixed the Consular seal the day and
year above written.

(Signed) JOHN BLACK, Consul.

[Endorsed.]

4.—No. 366.—C.—New Almaden—Copy of Approval of Mining Possession and Record of Grant.—Andres Castellero.

Filed in office Sept 30th, 1852.

GEO. FISHER, Secretary.

A., P. L., annexed to deposition of José M^a. Lafragua, June 29, 1855.

EXHIBIT D.

STAMP FIRST { Seal for the years } EIGHT DOLLARS.
 { 1850 and 1851. }

Junta for the Encouragement and Administration of Mining,
No. 573.

Most Excellent Sir:—Professor Don Tomas Ramon del Moral having presented to this Junta some specimens of cinnabar from the Mission of Santa Clara, in Lower California, which Don Andres Castellero sends him, together with the annexed copies, with the object of inciting the Supreme Government that it may be pleased to aid so important an enterprise, said specimens were immediately sent to his Excellency the

Director of the College, that the proper assays might be made, his Excellency in an official communication of the twenty-ninth of last month, received yesterday, says that which follows :

“Señor Don Ramon del Moral, President of the Junta Facultativa of the National College of Mining in an official communication of the 24th ult., says to me as follows :—‘ Most Excellent Sir: The Junta Facultativa having examined the documents which your Excellency referred to it the twenty-first of the present month, relative to a deposit of cinnabar discovered in California by Don Andres Castellero, and another of coal on the Bay of San Francisco, has the honor to inform your Excellency that the specimens sent by said Señor Castellero, were deposited in the mineralogical cabinet, and others assayed by the Professor of Chemistry, Don Manuel Herrera; the assay gives a ley of twenty-five and a half per cent, a mean of the different specimens having been taken to make it (the assay), for there are some so rich that they are pure cinnabar. The Junta believes that Señor Castellero has by such an important discovery made himself deserving of the efficacious protection of the Supreme Government and of the Junta for the Encouragement of Mining, and is persuaded that your Excellency will interpose all your influence to the end that this individual may receive a proof that the Supreme Government knows how to distinguish and reward those citizens who contribute to the prosperity of the country; with this motive I repeat to your Excellency the considerations of my esteem and respect: And I have the honor to transmit it to your Excellency as the result of my dispatch on the matter.’ ”

The Junta on enclosing the foregoing communication to your Excellency, has the honor to inform you that it has already asked Señor Castellero the kind of aid or protection which he needs for the encouragement of his brilliant enterprise, congratulating the Supreme Government on a discovery which, if it meets from the beginning with the protection which it deserves, may change completely the aspect of our mining, freeing it from the necessity in which it has been until now of foreign quicksilver. With this motive the Junta takes advantage of the opportunity to inform your Excellency that, as on the twenty-fourth of this month the favor terminates which the law granted of five dollars premium on each hundred-weight of quicksilver extracted from the mines of the nation, the miners of Guadalcazar have proved that they have taken out one thousand five hundred and seventy-five quintals from December, eighteen hundred and forty-four, to the end of March last, which result exceeds the calculation which until now has been made, that the product of this mineral was a hundred

quintals per month. The Junta on this occasion reiterates to your Excellency the assurances of the distinguished consideration and esteem.

God and Liberty. Mexico, May 5th, 1846.

(Signed) VICENTE SEGURA.
President.

The Secretary being occupied.

(Signed) YSIDRO R. GONDRA, First Clerk.

His Excellency the Minister of Justice.

It is a copy. Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

—

OFFICE OF THE SECRETARY OF THE JUNTA FOR }
THE ENCOURAGEMENT OF MINING. }

Señor Don Andres Castellero, commissioned last year by the Supreme Government to pass to California on an object of public service, tells me in letters written from the Mission of Santa Clara on the nineteenth and twenty-second of February of this year, that which follows :

“ At the distance of five leagues from this Mission to the west, I have discovered and denounced a very abundant mine of quicksilver, and to confirm my truth, I send you some ores of those which have been taken from the top of the vein ; a little quicksilver also goes, which we have taken out with the greatest facility. The Señor Director of the College of Mining, Don Ramon del Moral, will receive much pleasure in seeing equaled the ores of Ahmaden. From the width of the vein and the abundance of the metals taken out within one year, with the protection of the Supreme Governments the Republic will not need quicksilver from foreign parts. I send you some trifles made by the Indians of the north-west, and products of this country. Coal is very abundant, and is found on the coasts of the Bay of San Francisco, so that the steamers sending out their small boats may load all that they require. This discovery was made by Colonel Don Juan Bautista Alvarado. The rock-crystal is a very large hill.”

Copy. Mexico, April 13, 1846.

(Signed) J. J. DE HERRERA.

Señor Director of the College of Mining, Don Ramon del Moral.

MISSION OF SANTA CLARA,
February 19, 1846.

My esteemed friend and appreciated Sir :—You know how devoted I am to the branch of mining ; and intent upon finding a mine of quicksilver, I have discovered a most abundant deposit.

With this I send to His Excellency the President some ores of cinnabar and a little quicksilver. We are forming a furnace, and have assayed said metal in a musket-barrel, the touch-hole stopped with clay, and the muzzle put in water. In this manner it has given us thirty per cent. I would esteem it a favor if you would take the trouble, for the sake of the public good, to cause this metal to be assayed, as this operation depends upon your work. May you and all the family retain your health, and as much as you please, command your obedient servant, &c., &c.

(Signed) ANDRES CASTILLERO.

The above are copies. Mexico, May 4, 1845.

(Signed) YSIDRO R. GONDRA, First Clerk.

The above is a copy. Mexico, April 23, 1850.

(Signed) O. MONASTERIO.

—

Most Excellent Sir: By your Excellency's note of the 5th inst., and copies which you were pleased to transmit therewith, His Excellency, the President *ad interim* of the Republic, learns with satisfaction that in the Mission of Santa Clara of Lower California, Señor Don Andres Castillero has discovered a deposit of quicksilver of excellent quality, according to the assays made in that College, and that said Señor Castillero has been asked by that Junta what kind of assistance he needs to encourage his brilliant enterprise. His Excellency is likewise informed of that which the Junta reports relative to the quantity of quicksilver extracted from the mines of Guadalcázar, the result of which has exceeded the calculation which was made ; this is what I have the honor to say to your Excellency in answer, repeating to you with this opportunity the assurances of my consideration and esteem.

God and Liberty, Mexico, May 9th, 1846.

(Signed) BECERRA.

His Excellency Don Vicente Segura, President of the Junta for the Encouragement of Mining.

Copy. Mexico, April 25th, 1850.

(Signed) O. MONASTERIO.

JUNTA FOR THE ENCOURAGEMENT AND }
ADMINISTRATION OF MINING. }

Most Excellent Sir : As this Junta had the honor to inform your Excellency on the 5th inst. in number 573, Señor Don Andres Castellero has directed to it a petition, the original of which it has the pleasure to transmit herewith, upon the assistance which he needs for the new discovery of the Quicksilver mine in the Mission of Santa Clara, in the Department of Californias.

The Junta has no hesitation in recommending said petition to Your Excellency, for being persuaded of the great importance of the enterprise, it considers it entitled to all the protection of the Supreme Government, and also the particular circumstances of that Department, and the just desire which his Excellency the President has shown to preserve the integrity of the National territory, render it worthy of the greatest consideration. The Junta is consequently of opinion that there should be immediately furnished to Señor Castellero the sum of five thousand dollars in the terms he proposes ; that it should be authorized to furnish him with the iron retorts and flasks belonging to it, and the other thousand dollars, which can be employed in the construction of retorts, cylinders, and other small apparatus of distillation for said mine. Although the law authorizing the Junta to make laws for the encouragement of deposits of quicksilver, exacts a premium of five per cent. per annum on the capital loaned, it cannot be doubted that the offer of Señor Castellero to pay the five thousand dollars with fifty quintals of quicksilver placed in Mazatlan at the disposition of the Junta, at the rate of one hundred dollars each, and in the term of six months, offers greater advantages to the fund than the said interest. The haste shown by Señor Castellero to put in execution his journey to that Department, and that which his so doing may contribute, under present circumstances, towards the preservation of the National territory, is, in the opinion of the Junta, a sufficient motive to leave until a more opportune occasion the formation of a contract of partnership or of "avio" (for) the encouragement of said mine. It remains then to show to your Excellency, that although the possession given to Señor Castellero by the local authorities of California has not been in conformity with the ordinance, inasmuch as there have been granted him "pertenencias" to the extent of three thousand varas, which are equivalent to fifteen "pertenencias," agreeable to the second article of the eighth title ;— yet it is necessary to consider that he has in his favor the qualifications of discoverer of an *an absolutely new hill in which there was no mine open*, and to such there is granted, in the first article

of the sixth title, three "*pertenencias*" either *continuous or interrupted*, and if he shall have discovered other veins, one ("*pertenencias*") in each of them. He has also in his favor the circumstance that he works it in company with others, to whom there is granted that, without prejudice to the right which they may have by the title of discoverers, when they are such, they may denounce four new "*pertenencias*," even though they are contiguous and in the same direction; but that which is most worthy of consideration is that Californias being a frontier department, and frequently threatened by the emigrants from the United States of America, and by the new colonists of Oregon, it seems proper to grant to the first mine in a department so extensive, a greater number of "*pertenencias*," which view is corroborated by the reason found at the end of the eighth Tit., article 1st, which says: "Considering that the limits established in the mines of these kingdoms, to which those of New Spain have until now been made to conform, are very contracted in proportion to the multitude, abundance and richness of the metallic veins which the goodness of the Creator has pleased to grant to those regions, I order and command that in mines which may hereafter be discovered in a new vein, or without neighbor, these measurements be observed. 2d, Along the thread, direction, or course of the vein, be it of gold, silver, or any other metal, I grant to every miner, without distinction of the discoverers (who have their reward already assigned to them) two hundred Castillian varas, called "*varas de medir*," measured on a "*level*." Lastly, in the first article, eleventh title, there are expressed these terms: And because the capital of a single individual may not be sufficient for great undertakings, while that of all the partners may be, I will and command that such companies be encouraged, promoted and protected by all convenient measures, my Viceroy granting to those who may form such, every favor, aid, and exemption which can be granted them, according to the judgment and discretion of the Royal Tribunal of Mines, and without detriment to the public or to my Royal Treasury." In reference to the ownership of two square leagues which Señor Castellero solicits as a colonist, upon the surface of his mining property, for the purpose of supplying himself with the firewood necessary for the reduction of ores (*beneficio*), not having the necessary information on the matter, of which the Supreme Government has abundance, His Excellency the President will decide as he may think proper. In this view the Junta, in sending up to Your Excellency the petition of Señor Castellero, has no hesitation in recommending it very efficaciously on account of the vital import-

ance of the undertaking, its incredible influence upon the general good and prosperity of the Republic. The Junta has the honor, on this occasion, to repeat to Your Excellency the assurances of its distinguished esteem and consideration.

God and Liberty. Mexico, May 14th, 1846.

(Signed) VICENTE SEGURA,
President.

His Excellency the Minister of Justice and Public Instruction.

Copy: Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

Stamp Third, four reals, for the years eighteen hundred and forty-six and eighteen hundred and forty-seven.

I, Andres Castellero, resident and miner in the Department of Upper California, before Your Excellency and your Honors, as I best may proceed, say: that having discovered in the Mission of Santa Clara a mine of quicksilver of leys richer certainly than were ever seen before, not only in the Republic, but perhaps in all the world, as shown by the assays made by the order of the *Junta Facultativa* of the College of Mining, which, some of all the specimens I brought being mixed from the best to the worst, have given a result of thirty-five and a half per cent., while there have been specimens of the best kind which must produce much greater leys, I see myself in a condition to satisfy my desires in favor of my country, of benefiting exclusively Mexicans, by the flattering and well-founded hopes which such a discovery offers. In virtue of this I have denounced and taken possession not only of said mine named Santa Clara, but also of an extent of three thousand varas in all directions from said point. I have formed a company to work it; I have constructed the pit and complied with all the conditions prescribed by the ordinance; the mine yielding ore, with the notable circumstance that the specimens which I brought and which have been assayed have been taken out of the mouth. It would have been very easy for me to have given the necessary extension to the negotiation, by accepting the repeated and advantageous offers which have been made me by several foreign houses in Californias, but as the undertaking does not require that kind of assistance which would result in advantage to foreigners, when it may be entirely national, I have not, for that reason, hesitated to apply to Your Excel-

lency and Your Honors to obtain the small and only resources which I need. These are reduced to a small advance of five thousand dollars in money, in consideration of the excessive scarcity of coin in that Department, and the quick remittance to it of retorts, cylinders, and other small distilling apparatus, as also iron flasks for bottling up the quicksilver. I would have proposed a contract of partnership to the Junta, an "avio," or some other agreement, if there had been time to be able to furnish the proof and details which would be required for said contracts; but being compromised by the Supreme Government to leave this capital within a few days, I found it necessary to restrict myself to that which appears to present no difficulty, and which may open a way to our future agreements. I am well persuaded that the Junta will accede to my request so far as may be within its powers, and that it will send up to the Supreme Government with a recommendation, that which may require the decision of the latter; my propositions, then, are the following:

First. The Junta, in the act of approving the agreement, will give me a draft for five thousand dollars on some mercantile house in Mazatlan.

Second. On my part I bind myself to place in said port, within six months after leaving it, fifty quintals of quicksilver at the rate of one hundred dollars each, which I will send from the first taken out, with absolute preference over every other engagement.

Third. The Junta will order that there be placed at my disposition before leaving the capital, the eight iron retorts which it has in its office, and all the quicksilver flasks which can be found in the negotiation of Tasco, which are fit for use; and lastly, it will deliver to Señor Don Tomas Ramon del Moral, my attorney, the sums to pay for the retorts, cylinders, and other kinds of small apparatus which may be ordered to be made for the negotiation, to the amount of one thousand dollars.

Fourth. I will receive the retorts of the Junta at cost price, and the flasks which I may select at two dollars apiece, agreeably with their valuation.

Fifth. The ascertained value of said retorts and flasks, and that of the sums which may be delivered to Señor Moral, I will repay in the term of one year from this agreement, and also the premium on the draft on Mazatlan, in quicksilver placed in said port at the price of one hundred dollars the quintal; but if the Junta should wish to take one or more "acciones" in the mine, it shall be left as part payment of the sum corresponding to one or more "barras."

Sixth. While the company is being formed during the period of one year counted from the date on which this agreement shall be approved, and the five thousand dollars spoken of in the first proposition being paid, I will give the preference to the Junta in the sale of quicksilver placed in Mazatlan at the rate of one hundred dollars the quintal.

Seventh. The Junta shall represent to the Supreme Government the necessity of approving the possession which has been given me of the mine by the local authorities of Californias, in the same terms as those in which I now hold it.

Eighth. It shall also represent the advantage of there being granted to me as a colonist two square leagues upon the land of my mining possession, with the object of being able to use the wood for my business.

Ninth. For the compliance of this contract, I pledge the mine and all its appurtenances.

The subscriber subjects this request to the deliberation of the Junta, which if accepted, may be made into a formal contract, and made legal in the most proper manner.

God and Liberty. Mexico, May 12th, 1846.

(Signed) ANDRES CASTILLERO.

Copy: Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

Most Excellent Sir:—Having reported to His Excellency the President, *ad interim*, of the Republic, Your Excellency's note of the 14th inst., with which you were pleased to transmit with a recommendation the petition of Señor Don Andres Castillero, for the encouragement of the quicksilver mine which he has discovered in the Mission of Santa Clara in Upper California, His Excellency has been pleased to approve in all its parts the agreement made with that individual, in order to commence the extraction of said mineral, and on this day the corresponding communication has been made to the Minister of Exterior Relations and Government, to issue the proper orders respecting that which is contained in the eighth proposition for the grant of lands in that Department. I repeat to your Excellency the assurances, &c.

God and Liberty. Mexico, May 20th, 1846.

(Signed) BECERRA.

To His Excellency, Don Vicente Segura, President of the Junta for the Encouragement of Mining.

The foregoing was communicated to this Ministry of Relations, saying: "And I have the honor to enclose it to Your Excellency, to the end that, with respect to the petition of Señor Castellero, to which His Excellency, the President, *ad interim*, has thought proper to accede that there be granted him as a colonist two square leagues upon the lands of his mining possession, Your Excellency may be pleased to issue the orders corresponding. I repeat to your Excellency, &c. Date as above.

(Signed) BECERRA.

To His Excellency, the Minister of Exterior Relations and Government.

Copy. Mexico, April 23d, 1850.

(Signed) O. MONASTERIO.

I, the undersigned, Minister of Internal and External Relations, certify: that although in the communication which the Junta for the Encouragement and Administration of Mining, directed on the 5th of May, 1846, to His Excellency, the Minister of Justice, relative to the mine of cinnabar discovered in California by Don Andres Castellero, it was written that it is situated in *Lower* California, and the same is said in the answer from the Ministry dated the 9th of the said month, of which documents copies were given on the twenty-third of April last to Señor Eustaquio Barron. This is a mistake, for said mine, and the lands granted to Castellero, are in the territory of *Upper* California, which grant the Supreme Government afterwards approved and declared legitimate. And I give this certificate for the purposes which it may serve, at the request of said Señor Barron, in Mexico, on the 30th day of June, 1850.

(Signed) LACUNZA.

Petition. I, Eustaquio Barron, of this neighborhood, before you, as I best may proceed in law, and with all legal reservation, say: That it is requisite for the security of my right to have an authenticated copy of the enclosed, which is expressed in the documents which, with due solemnity, I transmit on eleven written leaves; and for that purpose I pray you to have the goodness to order that the said copy be made by the notary, without having occasion to issue a summons, there being no person to be summoned; and being finished, that it be given to me with the originals which I present: for all that I ask is in conformity with justice—swearing whatever may be necessary, &c.

(Signed) EUSTAQUIO BARRON.

Order. Mexico, August 19th, 1850.—Admitted with the accompanying documents: let it be done as he requests, and let it answer the purpose which it may serve. Señor Don Antonio Madrid, Juez de Letras, of the civil branch in the federal district thus ordered and signed. I certify.

(Signed) MADRID.

(Signed) RAMON DE LA CUEVA.

The foregoing documents agree with their originals which I returned to the person interested, to which I refer; from which the present copy was made to the letter faithfully compared and corrected in conformity with that ordered in the act included, at the request of Señor Don Eustaquio Barron, in the City of Mexico, on the twenty-first of August, eighteen hundred and fifty, and it goes on nine leaves, the first being of the first stamp, and the others of the fourth stamp for the present two years, the witnesses to its copy and correctness being Don Juan Zavala, Don Filipe Moctezuma and Don Manuel Rojo, of this neighborhood. I certify.

(Signed) RAMON DE LA CUEVA,
National Notary Public.

We, who subscribe, certify and assure that Don Ramon de la Cueva, by whom is authenticated the foregoing copy, is a National Notary Public of the number, as it is called, faithful and of confidence, and to whatever instruments he makes legal there has been given and is given entire faith and credit in Court and out of it; and in testimony whereof, we give this present, sealed with the Seal of our National College in Mexico, on the twenty-first of August, eighteen hundred and fifty.

(Sgd.) IGNACIO PEÑA (Sgd.) FERMIN VILLA.

(Signed) MAN^L CABEZA DE VACA.

{ Seal of the National College }
{ of Notaries, Mexico. }

No. 932. CONSULATE OF THE U. S. OF AMERICA, }
MEXICO, January 8th, 1851. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signatures of

Ignacio Peña, Man. Cabeza de Vaca, and Fermin Villa, subscribed to the foregoing certificate, are in the proper handwriting of said persons respectively, the same as used by them in all their official acts, who are well known to me, and were at the time of subscribing their several names, duly authorized Notaries for the City of Mexico, and that all their official acts are entitled to full faith and credit as such.

Register F. folio 52. In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first before written.

[SEAL.]

(Signed) JOHN BLACK, *Consul.*

—

I, the undersigned, First Chief Clerk of the Ministry of Interior and Exterior Relations, certify that the foregoing copy of the documents or certificates given by me to the titles of the mine of New Almaden is equal to and agrees with their literal tenor, as shown by the comparison which has been made, and that the signature of Don Ramon de la Cueva, which covers it, and those of the other notaries which prove it, are the same which they use as such Notaries. Mexico, Jan. 10, 1851.

(Signed) JOSE MARIA ORTIZ MONASTERIO.

Fees, \$4.

—

No. 970.

CONSULATE OF THE U. S. OF AMERICA, }
MEXICO, January 11th, 1851. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signature of Jose Maria Ortiz Monasterio subscribed to the foregoing certificate, is in the proper handwriting of said person, the same as used by him in all his official acts, who is well known to me, and was at the time of subscribing the same First Clerk of the Department of Interior and Foreign Relations of the Mexican Government, and that all his official acts are entitled to full faith and credit as such.

Register F. folio 58. In testimony whereof, I have hereunto set my hand, and affixed the Consular Seal, the day and year first before written.

Fees, \$2.

(Signed) JOHN BLACK, *Consul.*

[SEAL.]

YSIDRO RAFAEL GONDRA, Secretary of the Directive and Administrative Junta of Mining.

I certify that the expediente, which exists in the Secretary's Office of Mining, relative to the denouncement, possession and grant to Don Andres Castellero of the mine of Cinnabar which exists in Upper California, called New Almaden, shows: that in consequence of the reports of the Directive Junta, the Supreme Government, in virtue of the petition of Señor Castellero, issued to him the legal title or respective testimony of his acquisition in conformity with the ordinances on that branch, and that this grant to the said Castellero was for a "pertenencia" of three thousand varas upon the plan of said quicksilver mine in order to work it to that extent, and for two square leagues contiguous to the said "pertenencia" to take from them the firewood and other indispensable and useful benefits for the works of the mine; which grants, particular and special, the Supreme Government thought proper to make on account of the favor which the laws direct to be imparted to the discoverers of quicksilver mines, proceeding in them in conformity with that reported by the Directive Junta.

And at the request of the owners of New Almaden, I give the present certificate, referring to the said expediente by which all the foregoing is proved, and I sign it in Mexico, on the 23d of January, 1851.

(Signed) YSIDRO R. GONDRA,
Secretary.

The undersigned, Chief Clerk of the Ministry of Interior and Foreign Relations,

Certifies: that the foregoing signature of Señor Don Ysidro Rafael Gondra, Secretary of the Directive and Administrative Junta of Mining, is legitimate, and the same which he is accustomed to use in his official acts. Mexico, Feb. 26, 1851.

Fees, \$4.

(Signed) JOSE MARIA ORTIZ MONASTERIO.

I hereby certify that the above is the signature of Don Jose Maria Ortiz Monasterio, Under Secretary of State for Foreign Officers of the Mexican Republic.

(Signed) PERCY W. DOYLE,
Her Britannic Majesty's Charge d'Affaires
in the Republic of Mexico.

Mexico, February 26, 1851.

No. 1075.

CONSULATE OF THE U. S. OF AMERICA, }
MEXICO, February 26th, 1851. }

I, the undersigned, Consul of the United States of America for the City of Mexico, hereby certify that the signatures of Jose Maria Ortiz Monasterio, and of Percy W. Doyle, subscribed to the foregoing certificates, are in the proper handwriting of said persons respectively, the same as used by them in their several official acts, who are both well known to me, and were at the time of subscribing their respective names as follows, to wit: the first, First Clerk of the Department of Interior and of Foreign Relations of the Mexican Government, and the second, Her Britannic Majesty's Charge d'Affaires near the aforesaid Government, and that all their several acts are entitled to full faith and credit as such, respectively.

In testimony whereof, I have hereunto set my
[SEAL.] hand and affixed the Consulate Seal the day and year first above written.

(Signed) JOHN BLACK, *Consul.*

[Endorsed.]

No. 366, D.—New Almaden.—Translation of Approval of Possession and Record of Grant.—ANDRES CASTILLERO.

Filed in office, Sept. 30, 1852,

GEO. FISHER, Secretary.

Recorded in Record of Evidence, vol. 19, page 573.

GEO. FISHER, Secretary.

EXHIBIT E.

MINISTERIO DE RELACIONES EXTERIORES }
GOBERNACION Y POLICIA. }

Exmo. Sōr.: El E. Y. S. Ministro de Justicia en Oficio de 20 del corriente me dice lo que copio.

E. S.—Hoy digo al E. S. D. Vicente Segura, Presidente de la Junta de Fomento de Minería lo siguiente.—E. S.—Habiendo dado cuenta al E. S. Presidente interino con la nota de V. E. de 14 del presente á que se servió acompañarme con recomendacion, la solicitud del S. D. Andres Castillero para el fomento de la Mina de Azogue que ha descubierto en la Mision de Santa Clara en la Alta California, se ha servido S. E. aprobar en todas sus partes, el convenio celebrado, con dicho indi-

viduo, para principiar la explotacion de dicho mineral, y con esta fecha se hace la comunicacion que corresponde al Ministerio de Relaciones Exteriores y Gobernacion, para que libre las ordenes oportunas por lo respectivo á lo que contiene la 8ª proposicion, relativa á la concesion de terrenos en aquel Departamento. Y tengo el honor de insertarlo a V. E. á fin de que por lo respectivo á la solicitud del S. Castellero, a que ha tenido á bien acceder el E. S. Presidenté interino sobre que como colono, se le conceda dos sitios de ganado mayor sobre el terreno de su posesion minera se sirva V. E. librar las ordenes de que se trata.—Reitero a V. E. &a.

Y lo transcribo á V. E. para que con arréglo á lo que prevengan las leys y disposiciones sobre colonizacion, ponga, al S. Castellero en posesion de los dos sitios que se mencionan.

Dios y Libertad. Mexico, Mayo 23 de 1846.

(Firmado.) CASTILLO LANZAS.

E. S. Gobernador del Departamento de Californias.

SELLO CUARTO. { Años de mil ochocientos cincuenta y mil ochocientos cincuenta y uno. } UN REAL.

Jesus Vejar, Escribano Publico:—Certifico y doy fé, que el presedente instrumento, autentico firmado por el Exmo. Señor Ministro de Relaciones Exteriores, Gobernacion y Policia, Castillo Lanzas, ha sido respetado bajo esa firma y obsequiado, por las Autoridades Mejicanas que gobernaban en la Alta California en el año de mil ochocientos cuarenta y seis segun las inserciones que aquellas mismas Autoridades hizieron de tal instrumento en actos que autorizaron sobre el asunto que versan y los cuales doy fé haber visto; y por esta razon debe tenerse por cierto y del puño y letra de E. Señor Ministro esa firma en el repetido instrumento, y como que tambien por actos que ante mí han pasado la reconoció el Señor Don Andres Castellero.

Yá pedimente de los Señores Barron, Forbes y Compañia signo y firmo el presente en Tepic á quince de Marzo de mil ochocientos cincuenta.

(Firmado.) JESUS VEJAR.

Alcalde 1º Constitucional y Escribano Publico que firmamos, certificamos y damos fé, que el signo y firma, que antecede, es el que usa y acostumbra el escribano Don Jesus Vegar en todas los actos que ante él pasan, el asi se lo comprovamos en Tepic á quince de Marzo de mil ochocientos cincuenta.

(Firmado.) LORETO CORONA.

(Firmado.) EUSEBIO FERNANDEZ.

CONSULATE OF THE UNITED STATES, }
Tepic, June 8, 1850. }

I, E. L. Barre, acting Consul of the United States, do hereby certify that the foregoing signatures are in the true handwriting of Loreto Corona and Eusebio Fernandez, the first Alcalde 1^a, and the second a lawfully appointed Public Notary in this city, and whose acts are worthy of all faith and credit.

In testimony whereof, I do hereby set my hand and seal of office this day above mentioned.

{ U. S. Consul's } (Signed.) E. L. BARRE,
{ Seal. } Acting Consul.

[Endorsed.]

No. 366.—E.—New Almaden—Copy of Title.—Andres Castellero.

Filed in Office Sept 30th, 1852.

GEO. FISHER, Secretary.

Exhibit No. 3 to the Deposition of Fernando Alden, taken in No. 366, April 5th, 1853. H. I. T.

GEO. FISHER, Secretary.

EXHIBIT F.

MINISTRY OF EXTERIOR RELATIONS, }
GOVERNMENT AND POLICE. }

Most Excellent Sir:—His Excellency the Illustrious Minister of Justice, in an official communication says to me that which I copy.

“Excellent Sir—I to-day, say to His Excellency, Don Vicente Segura, President of the Junta for the Encouragement of Mining, that which follows:—Most Excellent Sir—Having reported to His Excellency the President *ad interim*, the note of your Excellency of this date, with which you were pleased to transmit with a recommendation, the petition of Don Andres Castellero, for the encouragement of the Quicksilver Mine which he has discovered in the mission of Santa Clara in Upper California, His Excellency has been pleased to approve in all its parts, the agreement made with that person to commence the exploration of that mine, and on this date

“the corresponding communication is made to the Ministry of
 “Exterior Relations and Government, that it may issue the
 “proper orders relative to what is contained in the 8th propo-
 “sition, with respect to the granting of lands in the Depart-
 “ment. And I have the honor to enclose it to your Excellency,
 “to the end that, with respect to the petition of Señor Castil-
 “lero, to which His Excellency, the President *ad interim*, has
 “thought proper to accede, that as a colonist there may be
 “granted to him two square leagues upon the land of his
 “mining possession. Your Excellency will be pleased to issue
 “the orders corresponding. I repeat to you &c.”

Wherefore I transcribe it to your Excellency, that, in conformity with that provided by the laws and dispositions upon colonization, you may put Señor Castellero in possession of the two square leagues which are mentioned.

God and Liberty. Mexico May 23rd, 1846.

(Signed) CASTILLO LANZAS.

To His Excellency the Governor of the Department of California.

Stamp Fourth. { Stamp for the } One real.
 years 1850 and 1851. }

JESUS VEJAR, Notary Public.

I certify and assure that the preceding authentic instrument, signed by His Excellency the Minister of Exterior Relations, Government and Police, Castillo Lanzas, has been respected under that signature and obeyed by the Mexican authorities who governed in Upper California, in the year one thousand eight hundred and forty-six, according to remarks which the same authorities made relative to that instrument in acts which they authenticated upon the matter treated of, and which I certify I have seen; and for this reason they ought to be considered as certain, and as the hand-writing and letter of his Excellency, the Minister, that signature in the said instrument, and also Señor Don Andres Castellero recognized it as such in acts which have passed before me.

And at the request of Messrs. Barron, Forbes, and Company, I affix my notarial mark and signature to this present in Tepic, on the fifteenth of March, one thousand eight hundred and fifty-six.

(Signed) JESUS VEJAR.[†]

We, the Constitutional 1st Alcalde and Notary Public, who subscribe, certify and assure that the notarial mark and signature which precede, are those which the Notary, Don Jesus Vejar, is accustomed to use in all the acts which pass before him. We thus prove them in Tepic, on the fifteenth of March, one thousand eight hundred and fifty.

(Signed) LORETO CORONA. †

(Signed) ESUEBIO FERNANDEZ. †

—
CONSULATE OF THE UNITED STATES. }
Tepic, June 8th, 1850. }

I, E. L. Barre, Acting Consul of the United States, do hereby certify that the foregoing signatures are in the true handwriting of Loreto Corona and Eusebio Fernandez, the first "Alcalde primero," and the second a lawfully appointed Public Notary in this city, and whose acts are worthy of all faith and credit.

In testimony whereof, I do hereby set my hand and seal of office this day above mentioned.

(Signed) E. L. BARRE,
Acting Consul.

{ Seal of Consulate }
{ U. S.—San Blas. }

[Endorsed.]

No. 366.—New Almaden.—Translation of Title.—"C. P. L. annexed to deposition of I. M^a Lafragua, Jan'y 29, 1855."—Andres Castellero.

Filed in office, Sept. 30th, 1852.

GEO. FISHER, Secretary.

Recorded in Record of Evidence, vol. 19, page 584.

EXHIBIT G.

BOUNDARIES of the Land pertaining to the Mine of New Almaden,
Upper California.

Commencing at a live oak blazed and marked with a cross, standing on the eastern side of the arroyo de los Alamittos, near the lower crossing of the waggon road leading from the mine to the Pueblo de San José, the line runs along the lands of the Rancho de San Vicente, by compass, south $63^{\circ} 16'$ east, 15 chains and 50 links to a rock surmounted by a pile of stones; thence south $7^{\circ} 41'$ east, 82ch. 00l. to an oak marked with a cross on the summit of a high hill eastward from the mine; thence south $1^{\circ} 56'$ west, 281ch. 80l. to the center of the summit of a high conical peak, the northernmost of the two elevated peaks of the Sierra Azul, situated in a southeastern direction from the mine; thence north $66^{\circ} 41'$ west, 364ch. 80l. to the centre of the high peak of the Sierra, situated south-westerly from the mine, and called by the Indians Umunhum; thence north $27^{\circ} 0'$ east, 227ch. 50l. to a live oak marked with a cross; thence north $19^{\circ} 18'$ east, 132ch. 83l. to another large live oak marked with a cross; thence north $61^{\circ} 46'$ east, 62ch. 50l. to a sycamore marked with a cross, and standing near the western bank of the Arroyo de los Alamittos; thence along the middle of said Arroyo about 48ch 00l. to the place of beginning—said tract of land containing 8883 English acres, or *two* Mexican sitios.

Pueblo de San José, March 7th, 1848.

(Signed) C. S. LYMAN,

Surveyor for the Mid. Dept., Upper California.

[Endorsed]

No. 366.—New Almaden.—Copy of Notes of Survey and plot.—Andres Castillero.

Filed in office, Sept. 30, 1852.

GEO. FISHER, Secretary.

Exhibit No. 1 to the Deposition of Fernando Alden, taken in No. 466, April 5th, 1853.

GEO. FISHER, Secretary.

Recorded in Record of Evidence, vol. 21, pages 640 and 641.

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[Here follows plat designated "Mapa del Terreno de la Mina Nueva Almaden. C. S. Lyman, Agrimensor, Marzo 7 de 1848."]

EXHIBIT II.

Plat of land showing mining possession.

[Endorsed]

No. 366.—II.—New Almaden.—Plot of land showing Mining Possession.—Andres Castellero.

Filed in office, Sept. 30, 1852.

GEO. FISHER, Secretary.

Exhibit No. 2 to the Deposition of Fernando Alden, taken in No. 366, April 5, 1853, II. I. T.

GEO. FISHER, Secretary.

 DEPOSITION OF FERNANDO ALDEN.

(Filed April 5, 1853.....See page 8.)

 EXHIBIT No. 1.

(See Exhibit G. to Petition,.....page 3162.)

 EXHIBIT No. 2.

(See Exhibit H. to Petition,.....page 3163.)

 DEPOSITION OF CHESTER S. LYMAN.

(Filed February 18, 1854.....See page 11.)

 AFFIDAVIT OF WILLIAM E. BARRON.

(Filed October 23, 1854.....See page 13.)

 DEPOSITION OF J. M. LAFRAGUA.

(Filed January 30, 1855.....See page 15.)

EXHIBIT A., P. L.

(See Exhibit C. to Petition,page 3133.)

EXHIBIT B., P. L.

Copia literal del decreto que se halla puesto al márgen de la comunicacion de la Junta de Minería, en que se insertó la solicitud de Castellero.

“MAYO, 20 de 1846.

“Se concede en los terminos que se propone ; y por lo tocante al terreno, librese la órden correspondiente al Ministerio de relaciones para las providencias de su resorte, en el concepto de que el Supremo Gobierno está anuente á la solicitud.”

J. M. LAFRAGUA.

[Endorsed]

No. 366.—Andres Castellero.—New Almaden.—“B. P. L.” Exhibit to Deposition of José Maria Lafragua, January 29, 1855.

Filed in office, Jan. 30, 1855.

GEO. FISHER, Secretary.

Recorded in Record of Evidence, Vol. 18, p. 620.

[TRANSLATION.]

A literal copy of the decree which is found on the margin of the communication from the “Junta de la Minería,” which was inserted the petition of Castellero.

“MAY 20th, 1846.

“It is granted upon the terms proposed, and with respect to the land let the proper order issue to the Minister of Relations for the proceedings so far as his Department is concerned, with the understanding that the Supreme Government is favorable to the petition.”

(Signed)

J. M. LAFRAGUA.

I hereby certify the foregoing to be a true and correct translation of a document marked “B. P. L, Exhibit to Deposition of José Maria Lafragua,” in case No. 366 on the docket of the United States Land Commission, etc.

Witness my official signature this 30th day of January, A. D. 1855.

GEO. FISHER, Secretary.

[Endorsed]

No. 366.—Andres Castellero.—“New Almaden.”—Translation of “B. P. L.” Exhibit to Deposition of José Maria Lafragua, January 29, 1855.

(Filed in office, January 30, 1855.)

GEO. FISHER, Secretary.

Recorded in Record of Evidence, Vol. 19, page 583-4.

EXHIBIT C., P. L.

(See Exhibit E to Petition,.....page 3157.)

EXHIBIT D., P. L.

(See page..... 69.)

DEPOSITION OF FRANK LEWIS.

(Filed March 19, 1855.....See page 27.)

DEPOSITION OF ANTONIO SUÑOL.

(Filed March 19, 1855.....See page 24.)

EXHIBIT A., P. L.

Sõr. Aleº. de 1ª. Nominºn.

Andres Castellero Capº. de Cabª. Permª., y residente hoy en este Departamº ante la notoría justificacion de V. hace presente: que habiendo descubierto una veta de plata con ley de oro en terreno del Rancho perteneciente al Sargº retirado en la compañía Presidial de S. Francisco José Reyes Berreyesa; y queriendo trabajarla en compañía, suplico a Va que arreglado a la ordenanza de minería, se sirva fijar rotulones en los parajes publicos de la jurisdiccion para qº llegado el tiempo de la posesion juridica, asegure mi derecho segun las leyes de la minería.

A. V. suplico, provea de conformidad en lo que recibiré merced y justicia, y admitiendo este en papel comun por falta del sellado correspondiente.—Mision de Santa Clara Novº 22 de 1845.

ANDRES CASTILLERO.

Sór. Alcalde de 1^a. Nominacion del pueblo de San José Guadalupe.

Andres Castellero Capitan de Caballeria Permanente ante la notoria justificacion de V. compareso y digo: que ensallando el mineral que con anterioridad denuncie á ese juzgado, he sacado á mas de Plata con ley de oro Azogue líquido en presencia de algunas concurientes que podré citar en caso oportuno y por combenír así a mi derecho le he de merecer á Vd que unido al escrito de denunciacion se archive este presentacion no llenado en papel del sello p^r no haberlo.

A. V. suplico provea de en lo que recibiré merced y justicia. Santa Clara Diciembre 3, de 1845.

ANDRES CASTILLERO.

No encontrandose en el Depart^o de California Diputacion de Minería y siendo esta la única vez, desde la poblacion de la Alta California que se trabaje con arreglo á las leyes un mineral, y careciendo ademas de Juez de Letras el segundo Distrito, yo, el Alcalde de 1^a nominacion C. Antonio M^a Pico, hé benido acompañado de dos testigos p^a actuar por ceseptoria, a falta de Escribano publico que no le hay, para dar posesion juridica de la Mina conocida con el nombre de Santa Clara en esta jurisdiccion situada en el Rancho del Sargente José Reyes Berreyesa, porque habiendo fenecido el tiempo que señala la ordenanza de minería para deducir su accion el C. Andres Castellero y que otros pudieran alegar mejor derecho desde el tiempo del denunciacion á la fecha, y encontrandose dicho mineral con abundancia de metales explotados, el poso echo con las reglas de arte, y produciendo la elabora de la mina abundancia de Azogue líquido, segun las muestras que tiene el Juzgado, y estando tan recomendado por leyes vijentes la proteccion de un articulo tan necesario para la amalgacion de oro y Plata en la Republica, he benido en conserderle tres mil varas por todos rumbos á reserva de lo que señale la ordenanza gen^l de Minería por su trabajada en comp^a de lo que doy fé; firmando conmigo los testigos y quedando agregado este acto de posesion al cumulo del espediente que queda depositado en el archivo de mi cargo, no yendo puesto en papel del sello respectivo, que no le hay en los términos de la ley.

Jusgado de Sⁿ José Guadalupe Diciemb^o de mil ochocientos cuarenta y cinco.

ANTONIO M^A PICO.

De assã. ANTONIO SUÑOL. De ass^a. JOSE NORIEGA.

[Endorsed]

No. 366.—Andres Castellero.—New Almaden.—A., P. L.—Exhibit to the Deposition of Antonio Suñol.—March 19, 1855.

Filed in office March 19, 1855.

GEO. FISHER, Secretary.

Recorded in Record of Evidence, vol. 18, p. 621 and 622.

[For translation of the foregoing see page 75.]

DEPOSITION OF JOSÉ NORIEGA.

(Filed March 19, 1855.....See page 22.)

DEPOSITION OF DOMINGO DANGLADA.

(Filed March 21, 1855.....See page 28.)

DEPOSITION OF FRANCISCO DE LEON.

(Filed March 21, 1855.....See page 30.)

DEPOSITION OF JOSÉ FERNANDEZ.

(Filed March 28, 1855.....See page 32.)

OPINION OF THE BOARD BY COMMISSIONER
ALPHEUS FELCH.

(Filed January 8, 1856.....See page 81.)

DISSENTING OPINION BY COMMISSIONER
R. AUG. THOMPSON.

(Filed January 8, 1856.....See page 105.)

DECREE OF THE BOARD.

(Filed January 8, 1856.....See page 129.)

CERTIFIED TRANSCRIPT FROM DISTRICT COURT
OF THIRD JUDICIAL DISTRICT.

—
IN THE THIRD JUDICIAL DISTRICT COURT.

THE PEOPLE OF THE STATE OF CALIFORNIA, }
against
JAMES A. FORBES. }

IN THE DISTRICT COURT OF THE }
COUNTY OF SANTA CLARA, }
August Term, A. D. 1850. }

James A. Forbes is accused by the Grand Jury of the County of Santa Clara, by this indictment, of the crime of perjury, committed as follows: The said James A. Forbes, on the twenty-fourth day of May, A. D. eighteen hundred and fifty, at the County of Santa Clara, before Davis Divine, a Justice of the Peace within and for the County of Santa Clara, and duly authorized to administer oaths, that on the day and year aforesaid, and at the place aforesaid, there, in a certain matter in controversy at issue and on trial before said Justice of the Peace wherein Edward S. Townsend was plaintiff, and José Suñol, Antonio Suñol, Padre Sansevaine and Mousure Malero are defendants, and on which said James A. Forbes was sworn by said Justice of the Peace, as a witness, to give evidence in said cause then on trial, touching said matter in controversy, and in his evidence so given stated that he, the said Forbes, had no interest whatever in said matter in controversy, and that he, the said Forbes, had no interest whatever in the Guadalupe Mines, the then subject matter in controversy and on trial, and in substance said James A. Forbes, in his evidence aforesaid, then and there testified that one Alcalde White gave possession to the defendants on the 26th day of May, eighteen hundred and forty-eight, and has no knowledge of any other possession, and saw in February last a party, Townsend, on premises entirely different from the Guadalupe Mines, and that Sansevaine built a house there, and has no personal knowledge of possession, but was during the whole in charge there, and were working a part of the time until the month of August or September, 1849, and worked the mines a short space of the year 1849 towards October; was not aware they worked it any part of winter 1849; could not state the precise time; has been often at the place and saw them operating, and had an interest at that time, but sold in March to a gentlemen in San Francisco; never saw but one man there in January, Lorenzo Penado or Ignacio

Soto, and which testimony was material to the issue in said cause then on trial before said Justice of the Peace. The said James A. Forbes well knowing said statement to be false and untrue. The Grand Jurors aforesaid upon their oaths do further say, that the said James A. Forbes not having the fear of God before his eyes, but instigated and moved by the suggestions of the Devil, and forgetful of his duty to himself, to his fellow-man, his country and his God, did at the time and place aforesaid, knowingly, wickedly, maliciously, and corruptly commit willful and corrupt perjury; all of which being contrary to the statute in such case made and provided, and against the peace and dignity of the people of the State of California.

J. W. REDMAN,
District Attorney.

On the back of the foregoing are the following endorsements, to wit:

"STATE OF CALIFORNIA }
vs. } *Perjury.*
JAMES A. FORBES. }

A true bill, August Term, 1850.

Found Sept. 3, 1850.

CHARLES CAMPBELL, Foreman.

Witnesses, Dr. Wiggins, Judge Divine, Mr. Tingley, Mr. Ryland.

Filed Sept. 3, 1850.

H. C. MELONE, Clerk.

We of the Jury find the defendant not guilty.

S. PEARCE BIRT,
Foreman."

Record of the District Court, Third Judicial District, for the County of Santa Clara, September 11th, 1850.

THE PEOPLE OF THE STATE OF CALIFORNIA }
vs. } Indictment for
JAMES A. FORBES. } Perjury.

In this cause comes the People of the State of California by Fred. H. Sanford, the District Attorney, and the said defendant in his own proper person, and the indictment having been read to him, to which the said defendant plead not guilty.

Thereupon came the following Jurors, to wit: William G. Brown, Stephen Trigg, Samuel P. Blunt, Peter Quivey, E. Knapp, James Clanasley, Philip Bohart, John Alison, Robert Curl, Wm. B. McElroy, A. Richardson, and Martin Cloud, who were duly sworn and empaneled to well and truly try the issue joined in the indictment and their verdict render according to evidence; and the following witnesses examined, to wit: David Divine, for plaintiff. The cause was then submitted to the Jury, who returned the following verdict, to wit: We of the Jury find the defendant not guilty. S. Pearce Birt, Foreman.

It is therefore ordered by the Court, that the said defendant be discharged from custody and his security released, and that the said defendant recover all costs in this behalf expended, and that execution issue therefor.

—

STATE OF CALIFORNIA, }
COUNTY OF SANTA CLARA. }

I, John B. Hewson, County Clerk, and ex-officio Clerk of the District Court of the Third Judicial District of the State of California, in and for the County of Santa Clara, do hereby certify the foregoing pages numbered from one to five inclusive, to contain a true and perfect transcript of the original indictment filed in the said District Court against James Alexander Forbes, September 3d, 1850, and of the endorsements thereon, and also of the record of the trial of said Forbes on said indictment, before said Court, as the same appear on the records and files of said Court.

In testimony whereof I have hereunto set my hand [SEAL.] and affixed the Seal of said Court, this 31st day of August, A. D. 1858.

JNO. B. HEWSON, Clerk.

Filed, October 6, 1860.

W. H. CHEVERS,
Clerk.

TRANSLATION OF EXHIBIT BASSOCO No. 6.

BOOK THIRD OF MINUTES [ACTAS].

From 2d April, 1846, to 30th June, 1847.

The disbursing Cashier, keeper of the Scaled Paper, certified that to-day, at page 18 of the journal of debits, the following entry has been made :

Debit eight dollars, seven reals, which was completed by Don Manuel Rodriguez, for value of one hundred and forty-two seals, fifth class, of the biennial term of 1846 and 1847, which he pays for the same number of leaves of a book belonging to the Junta for Encouragement of Mining.—No. 108. 8. 7. 0.

Martinez del Campo.—Manuel Rodriguez.

Mexico, nineteenth June, eighteen hundred and forty-seven.
With my intervention.

JUAN N. CAMACHO.

[Rubric.]

JOSE MARTINEZ DEL CAMPO.

[Rubric.]

MONTH OF APRIL, 1846.

Session of the 2d.

Present, the Señores Flores and Bassoco; and after the approval of the minutes of the session of the 31st of the past month, report was made of the following communications :

First. From the Ministry of Justice, of date 29th ult., representing that the Government had resolved on the proper reports upon the petitions to be excused from serving as members of the Juzgados.—The Junta resolved that, that which had given origin to the reply of the Suplente of the Juzgado of Pachuca should be presented.

From the Administrator of Vera Cruz, transmitting three per cent. drafts for seven hundred and seventy-one dollars and five cents. The proper separation be made, the drafts accepted, the proper entries made, and the receipt acknowledged.

Second. From the Juzgado Minero of Guanajuato, of date 30th ult., in which the President of the same represents, that his occupations do not permit him to make an examination of the mine of Guadalupe, wherefore it will be necessary to appoint some competent person for that purpose; but that this cannot be done until the Junta may supply the necessary

means, advising that for that purpose there be used the means loaned from the funds of the Sierra.—The Junta resolved that it should be asked what should be the compensation of the person appointed for that purpose (*perito*), that in relation to the debt there had already been transmitted a draft for five hundred dollars.

Third. From the Juzgado of Tlalpujahua, of the 31st ult., stating the inability of the Juzgado to answer the inquiry made in relation to the mine of Socorro, because there exist Territorial Deputations in the Mining District of Oro.—Resolved, that His Excellency the Governor of the Department, be informed of the stand taken by said Deputation against the law.

Fourth. Another from the same, transmitting the acts of the last election of its President. Let the Bureau of Encouragement (*fomento*) report.

Fifth. From the C6lega of the Juzgado of Pachuca, Don Pedro Castelan, praying the Junta to exert its influence to induce the Supreme Government to rescind the order permitting elections to be held in the Mineral District of the Monte.—Let the Bureau of Encouragement (*fomento*) report.

From the Direction General of Industry, date 30th ult., acknowledging the receipt of the last bills transmitted from Vera Cruz and Tampico, and approving of the respective liquidation made by the Controller's office (*Contaduria*).

From the Maritime Custom House of Mazatlan, date 18th of March, transmitting the account asked of the amounts ordered for the 1 per cent. of circulation.—Referred to the Controller's office (*Contaduria*).

From the Collector's office in Mexico, representing that it being the duty of S. Lebrija to furnish the account for the past year, he had been directed to forward the same as soon as possible.—Referred to its expediente.

From the house of the Se1iores F. de la Torre Yecker & Co. of the 18th ult., stating that although they had not received the direct order of the General Treasury, the Administrator of the Custom House had offered to deliver the duties which might be received from the vessels arriving in future.—The Junta resolved that the Ministry should be informed that the order had not arrived.

Lastly, the report of the *Contaduria* was presented, in relation to the account of Se1or Villar, which after being discussed remained pending.

The *Licenciado* Don Castulo Barreda moved that the shareholders of Tasco be cited, in order to take steps in relation to the denouncement of the mine of S. Juan.

Session of the 3d of April, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 2d, report was made of a communication from Don Cayetano Buitron, accompanying a letter of the Señor Lebrija, which was omitted to be forwarded with the official communication of the previous day, and in which it is proposed to transmit the account for the year 1845 of the mining taxes collected in this Department.

The discussion of the report of the Controller's Office (Contaduria) in relation to the accounts presented by S. Villard, of the works of Architecture which had been made on the Mining College, up to the 10th ult., is continued.—The Junta approved the action of said office in the reduction of salaries, and as to the separation of the accounts, requiring one to be formed of the expenses, the estimate of which has been approved, and of those made without said requisite.—That as to the second, the entry of six dollars, five reals, expended in the repairs of the sewer, as ordered by Señor Delmotte, be at once approved: and as to those that remain, the Junta not having ordered that they be disposed of as provided, Señor Villard will be advised that they are ordered to be examined previous to the approbation of the same; and lastly, that the Treasurer of the Junta will proceed to examine the same, giving him a copy of the account in relation to the matter, to the end that he may be able to report what may appear to him proper.

Then was read the report of the receipts for the renting of the College during the past month, which was ordered to be passed to the Controller's office.

It was resolved that Don Diego Moreno be reminded of the question asked him in relation to the sale of pearls at the Fair of San Juan, with which he was encharged.

It was resolved, lastly, that the Bureau of Administration be required to furnish a list of the matters pending in his Department as soon as possible, and that the same be done by the Bureau of Fomento, so soon as the six reports of the common dispatch, which are pending, are concluded.

[3 Rubrics.]

Session of the 4th of April, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 3d, report was made of an official communication of the Ministry of Justice of the 2d inst., accompanying a note of the Governor of Zacatecas, petitioning for the setting aside of an agreement made by the

Government with the shareholders of Fresnillo, to the end that instead of the students which are required to be maintained in the College at the expense of the company, two Cáedras be endowed with twenty-five hundred dollars in the Institute of that Capital, one of Mathematics and the other of Mineralogy. —That the archives be searched for the decree in relation to the same.

Another communication was read from Don Antonio del Castillo, representing that being engaged with the present course of mineralogy, it had not been possible for him to conclude the mining paper which he offered to do within four months. The Junta resolved that the further time of two months be given him.

Another official communication from the Director General of Rentas Estancadas, representing that there was no blasting powder in its warehouses, being actively engaged in urging the manufacture with the Direction of Artillery, and in the delivery of the powder necessary for its supply. The Junta resolved that it be directed to the Supreme Government and to the Juzgado of Sultepec.

Then was read the report of the office of the Controller, of the date of yesterday, presenting the distribution of the letters lately remitted by the Custom House of Vera Cruz, by which there remains a balance to the Director General of $19\frac{1}{3}$ cents. Resolved, that the same be approved.

The Junta resolved that the shareholders of Tasco and the Licenciado Barreda be summoned to appear on Monday, for the investigation of the suit pending in relation to the mine of Socabon of San Juan.

And lastly, that an official communication be sent to the Supreme Government, notifying the same that the Mint had not yet settled for the amount of six bars of silver of Tasco, which had been delivered for coinage since the 16th ult., representing the incalculable prejudices reported by the miners of this department and the neighboring ones.

[3 Rubrics.]

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Session of the 6th of April.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 4th, report was made of the following official communications:

First. From the Mining Juzgado of Zacualpan, dated 2d inst., acknowledging the receipt of circular No. 3, and giving notice that the elections had already been held.—To its Expediente.

Second. From the Juzgado of Zimapan, dated 30th ult., acknowledging the receipt of the same circular.

Third. From the Mining Juzgado of Temascaltepec, date 4th and 5th, acknowledging the receipt of said circular, and the order requiring absolute license to be given to the miner Anasacio Osorio.—To its Expediente.

Fourth. From the person in charge in Guanajuato, stating that on the receipt of the order forbidding the payment of the amounts assigned to the students of the College Córdova and Corro, their receipts of the 19th of March had already been paid; acknowledged, and that the Señor Mayordomo be advised.

Fifth. From Don Agustin Font, stating that he had arrived at Tasco, and desired to work the mine of S. Joaquin.—To its Expediente.

Sixth. From D. Jose Zamora, in Tasco, date 4th inst., transmitting memorials No. 13, and the balance sheets No. 3. Receipt acknowledged, and passed to Controller.

Seventh. From the same, stating that three hundred dollars are necessary for the present week; that he has given one hundred and forty dollars, á Quñones, for judicial expenses, and that he had received nineteen for toll (maquila) from Don Leonardo Maldonado. Acknowledged, and notice ordered to be given to the Controller.

Eighth and Ninth. Giving notice that two drafts had been issued; the first for two hundred and fifty dollars, and the second, for one hundred and forty dollars. Let them be paid.

Tenth. Giving notice that the works of Trinidad had narrowed in such a manner, that the work proposed is now necessary; the expense of which will amount to \$1,225. Let the Bureau report.

Report was made of the letter of Licenciado Barrera, informing the Junta that he cannot meet the same, because his wife is about to be confined.

Let him be required to designate the day when he will be able to attend to meet the shareholders.

Report was made of the decree of the Governor in relation to the revalidation of the contract made by the Zacatecano Company, for the purchase of the mines of Fresnillo; and it was resolved, that in order to furnish the report asked for by the Government in relation to the petition of the Governor of that department, Señor Rosas be asked to attend the Junta on Wednesday.

A report of the Bureau of Fomento was read in relation to the last election by the Juzgado of Tlalpujahua, in which it is advised that the same be presented for the supreme approba-

tion, and that in the meanwhile, orders be given for the election of a Suplente. Resolved in conformity.

The same steps were taken in relation to the report of the Controller, in which he proposes the distribution to be made of the last drafts received from Vera Cruz, for the three per cent of importation, advising that those corresponding to the third part to the amount of \$1720,59, be indorsed in favor of the Direction General of Industry, observing, that after the making of this payment, there would only remain to the Junta seventy-three cents and two-thirds.

Having given notice to the Treasury that payment had not been made for the six bars from Tasco, delivered to the Mint, the Junta resolved that the Señor Superintendent be directed to fix a day in which the same should be paid.

[3 Rubrics.]

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Session of the 7th of April, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 6th, report was made of an official communication from the Señor Superintendent of the Mint, stating that the Junta could apply to the Government for the amount of the six silver bars of silver of Tasco, delivered to the Mint for coinage, and complaining of the threat of the Junta to acquaint the Government with the conduct of said Mint.—The Junta resolved that he be replied to, that in consideration of the prejudices which would result to the Junta from a delay in the coining of its silver, it expressed itself in the terms in which it had; that the Junta had no reason for concealing the discovery which showed the Señor Superintendent, on his entering the Mint, with the amount of the bars introduced by the Junta under the guaranties of the public faith and of a Direction; and lastly, that it would allege its unquestionable rights where and when it might see proper.

An official communication was read from D. Cayetano Buitron, remitting fifteen hundred dollars on account of the mining tax for the past month, and besides thirty-nine dollars four reals belonging to D. Manuel M^a Lebrija.—Receipt acknowledged, and the proper entries ordered to be made in the Controller's office.

[3 Rubrics.]

Session of the 8th of April, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the reading and approval of the minutes of the 7th, report was made of the three following communications from the Ministry of Justice, date 1st inst. :

First. Resolving, in accordance with the opinion of the Junta, that the receipts or drafts which are required to be written upon paper of the 3d and 4th seals, may be issued upon one leaf.—Let the Controller be notified of the same.

Second. Giving notice of there having been communicated to the Ministry of Hacienda the official communication of the Junta, requesting that the necessary orders be given requiring the administrator of the Custom House at Tampico, in fulfillment of the law, to forward directly the 3 per cent. draft of importation.—To its Expediente.

Third. Declaring the election of the President of the Juzgado of Zacualpan to be null, and approving that of the Suplente, in accordance with what had been advised by the Junta.

It was resolved that the communication directed to the Government on the 28th ult., and the foregoing resolution, should be inserted in the one to the Juzgado.

Another from the same Ministry, date 2d, reporting upon the petition of the Governor of Jalisco, praying for the establishment of a Juzgado in the mining district of Lagos.—Let the Bureau of Fomento report.

[3 Rubrics.]

Session of the 11th of April, 1846.

Present, the Señores Segura and Bassoco. The minutes of the session of the 8th being read and approved, report was made of an official report of the Ministry of Justice, date the 6th, giving notice of having transcribed to the Ministry of Hacienda, the vote of this Junta in relation to the supplying of the District of Sultepec with powder.—To its Expediente.

Report was also read of an official communication from the Mining Tribunal of Guadaleazar, in which, under date of the present, it is represented that its President is not renewed in virtue of the seventh proposition of the Plan of S. Luis.—Let the Bureau of Fomento report.

An official communication from the correspondent of the House of Manning and Mackintosh, in Pachuca, was read, forwarding a draft for \$1322 50, being the product of the mining duties for the month of March.—Let the receipt of the same be

acknowledged, and let the draft be accepted to be paid at maturity, and let the proper entries be made.

There were read also four notes, dates 21st ult., in which the correspondent of the said House in Culiacan forwards a draft for \$960 62½, as the product in Alamos for the month of February; another of twenty-two dollars sixty cents, as that of Mazatlan in January; another of one hundred and twenty-six dollars, three reals, six grains, as that of Cosalá during the same month, and the last of twelve dollars forty-six cents, as that of Mazatlan during the month of February. Resolved, that the first be accepted to be paid at maturity, and that the others be paid; and that the proper entries be made, giving the customary acknowledgment of receipt.

A certificate of the assayer at Mazatlan, showing that no bars had been presented during the month of December, 1845, was ordered to be passed to the office of the Controller.

In view of the official communication of the Señores Tomas de la Torre, Jecker & Co., date 25th ult., in which they state that the administrators of the Custom House of Mazatlan will not apply to the Junta the one-half of the duties of average (averia) assigned to it, until a determinate order is received to that effect. Resolved, that a petition be made to the Supreme Government, informing the same of what has taken place.

Lastly, there was ordered to be attached to its antecedents an official communication from the Ministry of Justice, of the 6th, in which notice is given that there had been communicated to the Ministry of Hacienda, that it might take the proper steps in relation thereto, the note of the Junta in relation to the non-payment by the Mint of the amount due for six bars of silver which had been deposited during the last month; and another from the Director of the said Mint, of the 8th, giving assurance that he will respond to the charges that may result from the failure to pay for the said bars.

[3 Rubrics.]

Session of the 13th April, 1846.

Present, the Señores Segura and Bassoco; the minutes of the 11th being read and approved, report was made of an official communication of the Señores Davies & Co., of the 7th, accompanied by a certificate of the amount produced by the mining tax in S. Luis Potosi during the last third of the preceding year. Receipt acknowledged, and ordered to the office of Controller for the proper ends.

It is ordered to acknowledge the receipt, make the proper entries and collection of a draft of two hundred and seventy-

one dollars, five reals, one grain, remitted by the correspondent of the Señores Manning and Mackintosh, in Zimapan, with his note of the 1st inst., as the products of the mining duties during the month of March.

It was ordered to acknowledge the receipt, and pass to the Controller for the necessary ends, the memorials No. 14 of the Mine of Trinidad and San Juan and Hacienda del Chorilla, as ordered by the Administrator in his official communication of the 11th.

Resolved, that draft No. 14 be paid, after the necessary entries, which was drawn for three hundred dollars by the Administrator of the business of the proper date.

It was also resolved to reply *de enterado* to the official communication, advising that two hundred dollars will be necessary for the tally-roll (*raya*) of the following week, and also that receipt be acknowledged of the document of delivery made to Don Agustin Font as a loan of his mine of San Joaquin, and that the same be attached to its *espedientes*.

Report was made of an official communication of the Minister of Justice, of the 6th, accepting the resignation of Don Marcial Fernandez as Counsellor of the Mining Juzgado of Pachuca, which was ordered to be transcribed to the proper Juzgado for the corresponding ends.

It was resolved that there be passed to the Bureau of Fomento, for the same to report thereon, an official communication from the Mining Juzgado of Pinos, in which, under date of the 6th, an opinion is asked: if the *Suplente* lately appointed is at once to act as President, or if he can only do so in cases where the President is prevented from acting; and another from the Juzgado of Catorce, in which, under the same date, an opinion is also asked whether, in case the President has not been so appointed in accordance with the sixth of the bases of the plan of S. Luis, the *Suplente* shall be reappointed with the President, and must he consult the first-named, inasmuch as the first *Cólega* is the one that now exercises the functions of the same.

[3 Rubrics.]

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Session of the 16th of April, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 13th of April, report was made of the following communications:

First. From the Superior Government of this Department, dated the 11th, giving information that his Excellency Don Luis Gonzaga Chavarri had taken possession of the command.

Resolved, that it be replied to, acknowledging the same with satisfaction.

Second. From the Mining Juzgado of Mazapil, accompanying the last decree of that excellent Assembly, regulating the manner of renewing the Suplentes of the Juzgados. Let the Bureau of Fomento report.

Third. From the Mining Juzgado of Guanajuato, dated the 13th inst., in answer to Circular No. 3, representing that it is not believed to be necessary to name a substitute (suplente). Let the Bureau of Encouragement (Fomento) report.

Fourth. Two from the Direction General of Industry, dated the 7th and 8th instant, acknowledging the receipt of the last drafts that had been forwarded, and noting a deficiency of ten and one-third cents in the liquidation. Let it be answered, that the same results from a mistake of some cents in the change.

Fifth. From the Señor Director of the College, replying to the question which was asked in relation to the plastering on the stairs of the College, stating that it is without mastic.—Resolved that it be inserted to S. Besozi.

Sixth. A statement of the Maritime Custom House of Tampico of four drafts pertaining to the 3 per cent., for the sum of three hundred and eleven dollars and four cents.—To the Treasury for collection.

Seventh. From the Collector of Taxes in Zacatecas, accompanying a draft for four thousand six hundred and ninety-one dollars, two reales and six grains, as the products of mining (taxes) for the past month, deducting twenty-five dollars which was delivered to the student Ayala.—Resolved that the draft be accepted, the proper entries made, and receipt thereof acknowledged.

Eighth. From the same, accompanying another draft of two hundred and thirty-six dollars one real, four and a half grains, as the receipts from Sombrereto, in the same month.—Let the draft be accepted and collected, the proper entries made, and receipt of the same acknowledged.

Ninth. From Señor Blumen, encharged with the collection of taxes in Guadalajara, asking information in regard to his responsibility.—Let the Secretary, with preference, report.

Tenth. From the architect in charge of the buildings, of date of yesterday, in reply to the observations which were made to him on the presentation of the last account.—Let the observations referred to be explained, since it is clear from his reply that he has not understood them.

The following reports from the Bureau of Encouragement (Fomento) of yesterday were read:

First. In relation to the communications of the Juzgados of Guadalucazar and the mineral district of Catorce, in which it is stated that a President has not been appointed in accordance with the 6th Base of the Plan of San Luis Potosi. The Bureau is of opinion that the same should be inserted to the Supreme Government, for the resolution thereof, setting forth the convenience resulting from a uniformity in the Juzgados, His Excellency the President having already approved the selection of all the rest.—The Junta resolved in conformity.

Second. In relation to the communication from the Juzgado of Pinos, setting forth the reason why its President had not been renewed.—The Bureau is of opinion that it be replied, that Circular No. 3 annuls the previous resolution, and that therefore its President is to be renewed.—The Junta resolved in conformity.

Third. In relation to the report asked by the Government touching the establishment of a Juzgado in Lagos.—The Bureau advises, that a new report be asked from the Governor of Jalisco; and the Junta resolved in conformity, adding, that the inconveniences should be set forth, which are apt to result from the formation of Juzgados in places where there is not a sufficient number of intelligent miners, and that in order to avoid the inconveniences resulting from great distance, the Juzgados are already authorized to appoint Commissioners in the same, who shall review denouncements and take cognizance of matters of less importance.

Fourth. In relation to the communication of Don José Zamora, relative to the work proposed in the mine of Trinidad; and the Junta resolved that he be asked to furnish the estimate which he has formed.

A report was read from the Bureau of Administration, in relation to the matters pending of the legajo No. 1, in relation to the accounts of agents (apoderados), and in view of the same the Junta made the following orders:

First. That if, during the remainder of the present month, the accounts from Chihuahua and Jesus Maria, which were asked by the Governor-General Monterde on the 12th of January of this year, should not be received for the last third of the year 1843, that they be demanded on the 1st of May.

Second. That Señor Pohls be reminded of the certificate in relation to the assignment made in Guanajuato for the loan of two millions and a half of dollars, which was returned to him on the 23d of September last, to be reformed.

Third. That demand be also made on Señor Potts for the documents which he offered to forward from Chihuahua on the 25th of November of the past year.

Fourth. That Señor Mackintosh, of Guadalupe and Calvo, be reminded of the inquiry that was made of him on the 13th of January, as to whether he would be able to undertake the discovery of Don Cristobal Rodriguez; and also remind the Administrator of Rentas and the First Alcalde of Parral of the report that was asked of them on the 6th of September last, in relation to the closing of the accounts and the whereabouts of the property of the said Rodriguez.

The Secretary reported the agreement made, in accordance with instructions, with the Señor Colonel Don Manuel M. Lebrija, executed in the Junta before the Señor Soraya and the acting escribano in the following articles; but subject to the previous approbation of the Junta.

First. That Don Manuel Ma. Lebrija will continue to receive the remaining two-thirds of his salary, having employment at \$50 per month, while the debts of his creditors will be satisfied out of the remaining third; after which the Junta will commence to receive the whole in payment of what is owing to it.—To which end the necessary general orders will be issued by the Commanding General.

Second. In case he should not obtain employment, but exemption therefrom, he will pay to the Junta thirty dollars a month, and to his assignees in bankruptcy, of his third, twenty dollars.

Third. The Junta will be free from the payment of all costs resulting from the transaction, except such as have already been paid.

The Señor Bassoco observed, that nothing being indicated in the foregoing agreements in relation to the back salary of Señor Lebrija during the time of his suspension, a clause should be added to the agreement, setting forth that he should pay to the Junta the amount coming to him on account of the fifty dollars a month of the amounts which he may receive. In which terms the Junta approved the agreement, ordering in consequence thereof the necessary document to be issued.

[3 Rubrics.]

Session of the 17th April, 1846.

Present, the Señores Flores and Bassoco; and after the approval of the minutes of the session of the 16th, there was read an official communication from the Administrator of the Maritime Custom House of Vera Cruz, accompanying the three per cent. drafts for \$1,564.04.—Resolved, that the proper distribution be made of the drafts, that those relating to the Junta be accepted, and that receipt of the same be acknowledged.

The instructions were read, which were transmitted to Don Eugenio Bermejillo, to whom is committed the collection of the accounts due on the 1 per cent. duties with which he was en- charged as Administrator of Morelia, which was approved, resolving that said appointment be communicated to Señor Cortez.

The Secretary having reported verbally upon the opinion asked by the Commissioner in Guadalajara, in relation to his responsibility in the collection of the mining duties, the Junta resolved that he be answered, that in accordance with the con- tract of the Señores Manning and Mackintosh, those in charge (*los encargados*) are responsible for the collection of said duties, but that if the Supreme Government should not lend the nec- essary aid, the Junta should be advised thereof, in order that it may solicit the same.

An official communication was read from the Minister of Justice, dated the 19th, approving the act renewing the Presi- dent of the Juzgado of Talpujahuá. Resolved, that the same be inserted to said Tribunal.

[3 Rubrics.]

Session of the 20th of April, 1846.

Present, the Señores Flores and Bassoco; and after the ap- proval of the minutes of the 17th, report was made of the fol- lowing communications from the Commissioners for the collec- tion of the mining duties:

First. From the Commissioner of Guanajuato, transmitting a draft for three thousand seven hundred and eight dollars, two reals, as the receipt for the month of March.

Second. From the Commissioner of S. Luis Potosi, ditto, ditto, for one thousand eight hundred and sixty-eight dollars and two cents.

Third. From the Commissioner of Durango, another of seven hundred and ninety dollars, two reals, three grains.

Fourth. From the Commissioner of Guadalajara, accompany- ing a draft for nine hundred and seventy dollars, three reals and ten grains.

Fifth. From the Commissioner of Chihuahua, dated the 4th instant, sending a draft for six hundred and eighty-four dollars, five reals, four grains, as the receipts for the month of Febru- ary in that mineral district, and that of Jesus Maria. Resolved, that they be accepted, the proper entries made, and receipt thereof acknowledged.

The following communications were read from Don José Zamora, of the 18th instant:

First. Transmitting the memorials No. 19 of Tasco. Receipt acknowledged and forwarded to Contaduria.

Second. Advising that there will be needed for the pay roll (raya) of this week three hundred dollars. Acknowledged.

Third. Stating that draft No. 15 has been issued for two hundred and fifty dollars. Let the same be paid.

Fourth. Reporting that in the mine of Trinidad there had been encountered some new minerals, which although in narrow veins, have a very reasonable ley, since the working of twenty-five mares gives 140 dollars for 100 quintals; there will be a profit of seventy dollars, for which reason the pay roll (raya) will be increased. Acknowledged with satisfaction.

Fifth. Representing that having proposed to the Junta on the 30th of August last, as a security for his calculations, that he would not receive his salary as Administrator as long as the business should not be profitable, but it resulting from the account transmitted by him on the 4th of June last, that the same had yielded a profit, the Junta would not object to his receiving the salary which he had forborne to draw.

Reports were asked from the Bureau for the proper resolution of the same.

Another official communication was read, dated the 18th, from Don Miguel Quiñones, stating that the Mining Tribunal denied a hearing to the other shareholders of the mine of San Juan, but that as to him it only denied the appeal interposed, and concluded by asking the order that S^r. Zamora be required to pay his costs. Resolved, that it be inserted with preference to Señor Licenciado Barrera, and that he be informed that said order is already given to S^r. Zamora.

Report was made of the distribution of the last drafts from Vera Cruz, made by the Contaduria, a balance remaining to the Direction General of Industry of 26 $\frac{2}{3}$ cents. Resolved in conformity.

There was read a minute of the reply of the Bureau of Administration to Señor Don Henrique Blumet, in relation to the responsibility of the Commissioners in the collection of mining duties.

Lastly, a report was made from the Controller's office in relation to an account presented by Don Antonio Villard, representing a discrepancy in the same of \$1 50, and giving it as his opinion that this being deducted from the amount claimed the balance should be paid of the estimate of the works approved by the Supreme Government; which was thus approved.

Session of 23d April, 1846.

Present, the Señores Segura, Flores and Bassoco. After the approval of the minutes of the session of the 20th inst., report was made of the following communications:

First. From the Ministry of Justice of date 17th instant, authorizing the Board to submit to arbitration the question of the claim for eight thousand dollars against Don Joaquin Llaguno as surety for Don Manuel Gonzales.—Let instructions be drawn up for Don Eduardo Penny.

Second. From the same of date 20th, replying that there has been transmitted to the Ministry of Finance copy of the communication in which it is requested that executive orders be given to the Custom Houses of Mazatlan and Guaymas, for the delivery of the half of the duties of average (averia) appropriated for the payment of the debt of the Government to the Junta.—To its Expediente.

Third. From his Excellency the Governor of San Luis Potosi, accompanying certificates of there having been extracted from the mines of Guadaleazar five hundred and eighty-six quintals of quicksilver, for the purpose of claiming the premium of five dollars per quintal granted by law, representing that the parties interested request the prompt payment of the same, with the object of procuring an apparatus for distilling.—Let the Bureau of Encouragement (fomento) report.

Fourth. From the Mining Tribunal of Zimapan, complaining of the Judge (Juez de Letras) of that District.—Let the same be communicated with recommendation to the Governor of the Department.

Two from the Direction General of Industry, dated 21st and 22d inst., acknowledging the receipt of the last drafts for the three per cent. of importation duty, with the difference of one cent.—The first to its Expediente, and the second remitted to the Controller's office.

Another from the Collector of Customs at Hermosillo, representing why he has not been able to send the accounts of the one per cent. which are asked of him.—To its Expediente.

Another from the architect Don Antonio Villard, presenting a list of the works which in his opinion should be done on the college for its repair and preservation, amounting to two hundred and fifty dollars.—Let the Treasurer report in view of the works proposed.

There was read a report from the Controller's office relative to an account of the Collector in Guadalajara, advising that the Assayer and Administrator be reprimanded for certifying to the same without having examined it. The Junta resolved in conformity, and also that in addressing the principal assayer

the said certificate be remitted to him, and he be requested to return it, that it may be sent back to the Collector to make out anew, and that like communication be addressed to the Direction of the Revenue, in respect to the Administrator.

Another report from the Controller's Office, making distribution of the drafts for the three per cent. lately received from Tampico, amounting to three hundred and eleven dollars, sixty-four cents.

Notice was given of an opinion of the Bureau of Fomento, relative to the Tribunal of Mazapil not having elected a President. The Bureau is of opinion that the question be asked—How can there be no miners who can read and write, when in February of the present year twenty-three voted by secret ballot by means of tickets?—The board ordered in conformity.

The Secretary said, that in the Expedientes relating to Tasco, it is shown to be true that Don José Zamora has not received the sixteen dollars per week which the Junta allowed him as administrator, ever since on the 30th ult. he offered not to claim said allowance, in the case that after a settlement of the accounts of the whole year there should have been no profit to the Junta, and also represented that the proper Bureau of the Controller's Office had reported on the 14th of March to agree that the profit of four thousand dollars which said Zamora deducted, has been deducted exactly. The Junta resolved, that said sum may be credited to him from August to the end of December of the past year.

The Professor of the College, Don T. Ramon del Moral, having sent in some specimens of cinnabar from the presidio of Santa Clara, in Californias, it was resolved, that they be transmitted to the Director, with copies of the letters of Señor Castellero, who sends them, that the proper assays of them may be made.

Report was made of a list presented by the Bureau of Administration of unfinished business, and it was resolved—

First. That Don Enrique Mackintosh be required to collect the installments due by the assayer Don Mariano Cataño.

Second. That Señor Don Diego José Perez Fernandez be reminded of the sums and answers which he promised to give since the 1st of March, and that the official letter to this effect be delivered to him in person.

And *Third.* That there be duplicated to Señor Don Miguel Moro the official letter, in which he was asked if he was disposed to pay the interest of the eight thousand dollars which he owes on his estate of San Sebastian.

Session of the 25th of April, 1846.

Present, the Señores Segura, Flores and Bassoco; after the reading and approval of the minutes of the 23d, a report was read from the Bureau of Encouragement (Fomento) in relation to a communication from his Excellency the Governor of San Luis, dated the 18th inst., in which he asks that there shall be paid as soon as possible the premiums awarded for quicksilver esplotado from the national mines.—The Bureau is of opinion that, the documents being in conformity with the regulations made for the payment of said premiums, there should be paid the amount of two thousand nine hundred and thirty dollars for the five hundred and eighty-six quintals esplotados up to the end of March last from the mines of San Antonio and Sta Lucia in Guadaleazar, and that the Governor be informed that the Junta, by the last English packet, had ordered from London two distilling apparatuses, as lately improved by Dr. Ure.

It also proposed that an order be issued to its Commissioner in San Luis, for the delivery of the products of the mining duty of the present month; but there having been presented two drafts for the said amount of two thousand nine hundred and thirty dollars, the Junta resolved that they be immediately paid on proving the signature, conforming in all other respects with the report of the Bureau, and that the Governor and the Señor Don Julian de los Reyes should be so informed by the mail of to-day, representing to them the earnest desire of the Junta for the encouragement of the quicksilver mines of Guadaleazar.

It was finally resolved to summon the shareholders of Tasco and the Licenciado Don Castulo Barreda, to appear on Monday next, in order to inform them of the last answers of Don Miguel Quiñones in relation to the suit pending with the Señor Madariaga in relation to the denouncement of Socabon de San Juan.

[3 Rubrics.

Session of the 27th of April, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 25th, report was made of the following communications:

First. From the Mining Juzgado of Tacualpan, transmitting the act of the election of its substitute (suplente).—Let the Bureau of Encouragement report.

Second. From the Mining Juzgado of Guanajuato, dated the 24th inst., stating that the amount for the examination of the

mine of Clavellinas will be about one hundred and twenty-five dollars, and that the observations have been passed to the anterior account of Señor Lascano.—Resolved, that the Señor Montes de Oca be informed in relation to the matter, in order that he may, if possible, cause an examination to be made of the mine, more exact, impartial, and cheaper.

Third. From the Direction-General of Industry, dated the 25th, acknowledging the receipt of the last drafts from Tampico, amounting to ninety-nine dollars and ninety-two cents, and being in accordance with the last liquidation.

Fourth. From the Chief Assayer, of the date of to-day, returning the account which was remitted to him from Guadalajara, and offering by the next mail to represent to the assayer the fault of which he has been guilty.—To its Expediente.

Fifth.—From the Commissioner in Guadalupe and Calvo, accompanying a draft for two thousand five hundred and seventeen dollars and twenty-one cents, as the receipts of mining taxes for that mineral district during the months of January, February and March of this year, and the account of the last quarter.—Let it be passed to the Controller's Office; let the draft be accepted, the proper entries made, and receipt of the same acknowledged; and let Señor Mackintosh be told that he may solicit that some one be encharged with the collection of the debt of which he speaks, allowing him a certain portion of what may be collected.

Sixth. From the Administrator of Direct Contributions, claiming the payment of thirty dollars for the last third of the pension due of the three per thousand of the establishments of the College.—Resolved that the same be paid.

Seventh. Six communications of Don José Zamora, dated the 25th inst., transmitting with the first the memorials No. 16.—Resolved, that receipt be acknowledged, and that it be transmitted to the Controller's Office. Stating in the second that there is needed for the pay-roll (raya) of the present week, two hundred dollars.—Acknowledged. Accompanying the third with an estimate of the new work proposed in the mine of Trinidad.—The Junta resolved that said expense be authorized. Stating in the fourth, that there had been delivered to D. Miguel Quiñones about twenty-five dollars for duties collected for that Tribunal, as shown by the certificate of said gentleman.—To its expediente. And stating in the two last, that draft No. 16 had been drawn for three hundred and nine dollars four reales, and No. 17, for one hundred and twenty-five dollars.—Resolved that the same be paid.

Eighth. From Don Miguel Quiñones, dated the 25th, accompanying the certificate of that tribunal, asked for by Señor Li-

cenciado Don Cástulo Barreda, and stating that Don José Zamora had received one hundred and twenty-five dollars in payment of the costs of the same.

At this moment, Don Cástulo Barreda presented himself, and stated that he had received from Don José Zamora, one hundred and twenty-five dollars for the payment of costs. After the examination of said certificate, it was resolved that the Junta duly ratify the appointment made by the old establishment, of its Secretary, as its agent, and requiring the Eseribano to make the proper annotations in the protocol and copy.

The shareholders of the mine of Trinidad not appearing, in accordance with citation.

[3 Rubrics.]

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Session April 29th, 1846.

Present, the Señores Flores and Bassoco; and after the approval of the minutes of the 27th, a communication was read from His Excellency the Minister of Justice, dated 21st inst., in which, in conformity with the opinion of the Junta, it is provided that the Juzgados of Guadalcazar and the Mineral district of Catorce, proceed at once to the election of Presidents, it being thought that their renewal is not comprehended in Art. 6 of the plan of S. Luis Potosi.

Whereupon, there was read the report made by the Treasurer in relation to the works executed without previous estimate in the College, and resolved, that repudiating only the sum of six dollars five reals, for the repairing of the sewer at the entrance of the house of the Señor Director, the sum of forty-two dollars six reales, the amount due for said work, be paid, charging it to the amount designated for repairs, for which the Junta has authority for the present year in accordance with law.

A report was read from the Bureau of Encouragement (Fomento), in which it is proposed to submit to the Supreme Government the election of the President of the Juzgado of Zacualpan, made on the 19th inst., for its approval of the same. Resolved in conformity.

The Señores of the Junta signed the power conferred on its Secretary, to represent the rights of the Junta in the suit pending with the Señor Madariaga in relation to the denouncement of the mine of Socabon de S. Juan.

[3 Rubrics.]

Session of the 30th of April, 1846.

Present: the Señores Segura, Flores and Bassoco, and after the approval of the minutes of the 29th, an official communication was read from the Ministry of Justice, dated the 28th, acknowledging the receipt of the statements of receipts and disbursements for the months of February and March, and that in future, they will be forwarded monthly. The Junta resolved, that the statements for the preceding year be required, which are the only ones wanting.

Three official communications from the Governor of the Department of San Luis Potosi, dated 25th ult., transmitting petitions from the Miners of Guadalcazar, and the certificates showing that there have been *esplotado* eighty quintals of quicksilver from the mine of S. Antonio, and one hundred quintals from the mine of Sta. Lucia.—Let the Bureau of Fomento report.

Another official communication from the Juzgado of Asientos, forwarding the act of the election of a substitute (*suplente*).—Let said Bureau report.

Another from the Admr. of the Maritime Custom House of Vera Cruz, dated the 25th, accompanying 3 per cent. drafts for the sum of one thousand four hundred and seventy-four dollars and one cent. Resolved, that the proper separation be made from those belonging to the Director General of Industry, and also that the proper entries be made, that those pertaining to the Junta be accepted, and that receipt be acknowledged of the whole.

Three communications from the Commissioner of Culiacan, accompanying as many drafts; the first for four hundred and thirteen dollars, seven cents and one grain, as the receipts of the mining duties for the month of February, in Cosalá; the second, for three hundred and ninety-five dollars and seven cents, being the receipts of mining duties in Mazatlan, during the month of March; and the third, for two hundred and eighty-three dollars, seven reales and seven-eighths, as the receipts of mining duties in Alamos, during the month of March.—The Junta resolved that the drafts be accepted, the proper entries made, receipt be acknowledged, and that the last mentioned one be collected.

Two reports were read from the Bureau of Administration, the first in relation to the debt of Don Mariano Cataño, and the Junta resolved in conformity therewith, but that it be indicated to Sōr. Mackintosh, that the Junta is ready to pay him for said collection as much as ten per cent., and that of this premium he can pay as much as he sees proper to his agent in Parral.

In the second report, in relation to the debt of Don Cristobal Rodriguez, the Junta resolved that it be placed at the end of the last resolution on the subject.

The Señor Licenciado Don Diego José Perez Fernandez having presented himself at the conference to which he was invited, in order to take steps in relation to the two unsettled points in his debt, the Junta resolved that the Controller should report on to-morrow in relation to the antecedents of the same, citing said Fernandez to appear on Saturday for the resolution of the matter.

[3 Rubrics.]

MONTH OF MAY, 1846.

Session of the 2d.

Present, the Señores Bassoco and Flores; and after the approval of the minutes of the preceding day, a communication was read from Don Manuel Mariano Cortazar, of the 22d ult., accompanying an inventory of the stock on hand (existencia) received at the mine of Atargea. The Junta resolved, that while the Bureau reported he should be answered, that Sōr. Echeverria should be seen, and that by him, or by the mail of Thursday, money should be sent to him.

The Señor Licenciado Don Diego Perez Fernandez presented himself, and after having agreed with the observations made by the Controller, represented that, having to go to Yxtlahuaca, where he had been appointed to the office of *Juez de Letras*, he would present his propositions for the payment of what was owing, for which purpose he would come on Monday and terminate the respective liquidation.

[3 Rubrics.]

Session of the 4th of May, 1846.

Present, the Señores Segura, Flores and Bassoco; the minutes of the preceding meeting being approved, report was made of the following communications:

First. From the Juzgado of Pachuca, dated 30th ult., representing the want of powder in that mineral district. Resolved, that the same be inserted to the Government.

Second. From the District of Nueves, dated 25th ult., replying to Circular No. 3. Let the Bureau of Fomento report.

Third. From that of Bolaños, representing the renewal of its President in conformity with the order of the Government; on which the same resolution was made.

Fourth. From the Administrator of Morelia, Don José Ma. Cortez, excusing himself for not having forwarded the three per cent. accounts. Let the Contaduria report.

Fifth. From Colonel Don Miguel Mosso, representing that although he acknowledged upon his hacienda of San Sebastian the sum of eight thousand dollars of S. Fagoaga, the individuals to whom it is to be paid have not yet been designated. Let this communication be transmitted to Sōr Fagoaga.

Sixth. From Don Eugenio Bermejillo, dated the 24th, in Morelia, accepting the office given him for the receiving in that city the accounts of Don José M. Cortes, who had offered to deliver them within fifteen days.

Seventh. From the Señor Director of the College, inserting the report of the Junta Facultativa of the same, in relation to the result of the assay made by him of the samples of cinnabar forwarded by Don Andres Castellero, of Californias. Resolved, that it be inserted to the Supreme Government, representing that this reply had not been received until yesterday, and that Señor Castellero had been answered that he should set forth the kind of protection or aid he needed for the favorable result of his enterprise, and lastly referring him to the premiums which had been paid for the national quicksilver extracted in Guadalcazar.

The Maritime Custom House of Tampico forwarded the index of 3 per cent. drafts, to the amount of four hundred and seventy-nine dollars and eighty-seven cents.—Let the drafts be collected from the Treasury.

A communication was read from Don Julian de los Reyes, dated 29th ult., stating that he is informed of the payment of his preceding draft for two thousand nine hundred and thirty dollars, and that he had drawn another for two thousand dollars, with two, amounting to two thousand five hundred, directed by Don Vicente Bustos, understanding that no others will be presented, save those corresponding to the quicksilver received during the month of April, and up to the 24th of May, at which time the privilege ceases.—Action was suspended on the same until the reception of the report of Bureau of Encouragement (Fomento).

Four communications from Don José Zamora, dated the 2d inst., the first being accompanied by memorials No. 17, and the balance sheet No. 4 for the past month.—Receipt acknowledged and passed to Controller.—In the second, it is stated that two hundred and fifty dollars will be needed for the pay-roll (raya) of the present week.

In the two last, it is stated that drafts No. 18 and 19 have been issued, which were ordered to be paid.

A report was read from the Controller, designating the drafts corresponding to the Direction General of Industry, of those lastly remitted from Vera Cruz, on which there is a balance of eleven cents.—Resolved in conformity.

Two reports from the Bureau of Encouragement (Fomento), in the first of which it is advised that the act of election of its President be presented for supreme approbation,—resolved in conformity; and the other in relation to a communication from the Governor of San Luis Potosi, forwarding certificates that the miners in Guadalcázar had *esplotado* nine hundred quintals of quicksilver.—The Bureau is of opinion that there shall be paid as a premium of five dollars the quintal, the sum of four thousand five hundred dollars, and that the two thousand dollars indorsed in favor of D. Julian de los Reyes may be paid by the draft, which it is understood has this day issued for that sum.—The Junta resolved in conformity, and ordered the payment of said draft.

[3 Rubrics.]

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Session of the 6th of May, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the session of the 4th, it was resolved to send an official communication to the Minister of Justice, setting forth that, although the Junta does not consider itself as included in the circular of the 5th inst., ordering the suspension of payments, still it asks, if those payments must be suspended, which are necessary to be made in the discharge of the administration confided by law to the Junta for the encouragement of quicksilver mines.—It was also resolved to consider the proposal made by the Señor Licenciado D. Diego José Perez Fernandez, in relation to paying every month from his salary as Juez de Letras of the District of Yxtlahuaca, the sum of fifty dollars, until the completion of the payment of his debt, which liquidated amounts to one thousand four hundred dollars, commencing to make his payments from the 1st of July.

The Señor Don Andres Castellero presented himself, and made a verbal report in relation to the discovery, denouncement and actual condition of the quicksilver mine in the mineral district of Santa Clara of Alta California, inviting the Junta to take shares in the company which he had established for the working of the same, with other measures which he asked from the Supreme Government for the encouragement of the enterprise.—The Junta resolved, that Señor Castellero should present his statements in writing, in order that the

Junta might take the same under consideration, and determine what might be convenient.

Señor Bassoco was encharged with the duty of replying to Sor. Don Pedro Echeverria, in relation to placing in hacienda of Ajuechitlan the three hundred dollars per month which are to be remitted for the use of the mines of Atarjea.

[3 Rubrics.]

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Session of the 7th May, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the preceding session, report was made of the following communications :

First. From the Juzgado of Asientos, replying to circular No. 3.—Let the Bureau of Encouragement (Fomento) report.

Second. From the agent in Guanajuato, forwarding a draft for five thousand two hundred and eighty-one dollars, four reals and three grains, as the mining products for the month of April.—Let the draft be accepted, the proper entries made, and receipt of the same acknowledged.

Third. From the agent in Pachuca, of the 5th inst., with a draft for nine hundred and seventy-six dollars as the products during said month.—Same resolution as above.

Fourth. From the agent in Guadalajara, stating that he is informed of the note, in which is set forth the responsibility of agents.—To its Expediente.

Fifth. From the Señores Manning and Mackintosh, stating that Don Henrique A. Mackintosh having retired from the office of Collector of mining duties in Guadalupe and Calvo, Don Tomas Mackintosh had taken his place.—Informed.

Sixth. From the Director of the Company of the " Mineral del Monte," asking advice in relation to the laws governing the property of foreigners in mines.—Resolved, that the same be passed to the Señores Consultores of the Junta for their report.

The Junta confirmed the understanding of its resolution that there should be paid to S. Zamora ten dollars a week only to the end of the last week in the current year.

Finally, The account of the rents of rooms belonging to the College, collected during the last month, was presented and ordered to be passed to the Controller's office.

[3 Rubrics.]

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Session of 9th May, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after having approved the minutes of the previous day, report was made of the following Official communications :

First. From the Ministry of Justice, of the 7th inst., acknowledging receipt of the statement of receipts and disbursements which had been transmitted to it.

Second. From the same, informing that the notice of the scarcity of powder given by the tribunal of Pachuca, had been transmitted to the Ministry of Finance (Hacienda).—Let it be passed to said Tribunal.

Third. From the Commissioner at Guanajuato, of date 4th inst., transmitting the answer given by the Administrator of Revenue regarding a certificate which had been asked of him.—Let it be transmitted to the Comptroller's Office.

Fourth. From the Direction General of Industry, acknowledging receipt of the last drafts, and informing that the settlement of account is correct.

There was read a report from the Controller's Office, relative to the reply which should be made to the excuses alleged by the Administrator of the Revenue at Morelia, Don José Maria Cortes, for not forwarding his accounts, still pending, and the proceeds of the one per cent. which should be on hand in his office.—The Junta resolved in conformity, considering that recourse be had to the Inspectors of said Custom-House, and that Señor Cortes be so informed.

The Treasury reported, that having made application to the General Treasury, by order of the Minister, there had not been delivered to it the last drafts received from Vera Cruz, for four hundred and sixty-nine dollars, eighty-seven cents, nor the one for two thousand and odd dollars from San Blas, for the half of the duty of the average.—Let the notices be annexed to their respective Expedientes, and information of the first be given to the Direction of Industry.

There were read two reports from the Bureau of Fomento—the first relating to the communication from the Tribunal of Nieves, of 26th ult., in reply to the Circular No. 3 recommending to call for the decree to which it refers, and that information be given of the number of deputies (Suplentes) in said tribunal.—The Junta resolved in conformity. The second informing that, there having been a new election this year for the Tribunal of Santa Rosa, it is not necessary to have another election for any of its members.—The Junta resolved in conformity.

[3 Rubrics.]

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Session of 11th May, 1846.

Present, the Señores Segura, Flores and Bassoco; and after having approved the minutes of the 9th, report was made of

two communications from His Excellency the Minister of Finance, dated 6th and 8th inst.—the first asking information relative to the moneys paid into the treasury, and the second, relative to the receipts of the same for account of the branches appropriated to the Quicksilver fund.—Resolved that information be given regarding both matters, observing to the Ministry that said communications having been received together on the 9th, at 2 o'clock, P. M., the Junta is engaged in replying in detail to the various matters contained in them.

Third. From His Excellency the Governor of Chihuahua, replying that he had called for the information requested of him.—To its Espediente.

Fourth. From the Mining Tribunal of Hidalgo, transmitting the report of the proceedings at its installation.—To the Government, if there is no illegality.

Fifth. From that of Temascaltepec, transmitting the Certificate of Election of a Deputy.—Let the bureau of Fomento report.

Sixth. From the Commissioner of Zacatecas, dated 2d May, remitting a draft for six thousand two hundred and twenty-four dollars, four and a half reals, proceeds of the Mining fund (Mineria) for the last month, and a receipt for twenty-five dollars for the student Ayala.—That the draft be accepted, the proper entries made, and receipt acknowledged.

Seventh. From the Commissioner at Zimapan, remitting another for one hundred and thirty-six dollars, two reals, five grains, proceeds of the month of April.—Resolved as above, and also that the draft be collected.

Eighth. From the Commissioner at Guadalajara, of date 5th inst., advising having placed in the house of Messrs. Manning & Mackintosh one hundred and sixty dollars, for account of partial payments made by Señor Garay.—Resolved, that the amount be collected, and that the bureau report regarding payments still pending.

Ninth. From Señor Demetrio Montes de Oca, communicating that he has spoken with Don Pedro Anda respecting the inspection of the mine of Clavellinas, and that he will report the result.—To its Espediente.

Tenth. Three from Don José Zamora, dated the 9th inst.,—the first transmitting the tally accounts No. 18 (Memorias) of the negotiation of Tasco.—Acknowledge receipt, and transcribe to the Controller's Office.—The second, informing that in the present week will be commenced the new work, and that for the tally roll (raya) he will require three hundred dollars.—Understood.—In the third, he communicates having drawn draft No. 20 for two hundred and sixty dollars.—Let the same be paid.

Session of 13th May, 1846.

Present, the Señores Segura, Flores, and Bassoco; and after the approval of the minutes of the 11th, report was made of two Official communications from the Ministry of Justice, dated 9th inst., informing of the approval by the Supreme authority of the Certificates of Election of President of the Tribunal of Zacualpan and a Deputy for that of Asientos.—Resolved, that they be transcribed to the respective tribunals.

There was read a communication from Don M. Mariano Cortazar, of date 5th inst., transmitting the tally accounts (Memorias) Nos. 3 and 4 of the mine of Atargea, informing having extracted twenty-three loads of ore, and that he had not received the draft corresponding to the present month.—The Junta resolved, that there be procured a draft for three hundred dollars on Queretaro, drawn in favor of Señor Cortazar, on which resolution Sor. Flores reserved his vote, for the reason that the Government had been consulted as to whether payments should be made by the branch of Quicksilver, and that in the meantime no payment should be made. It was also resolved that Señor Cortazar be notified that he must specify in all his accounts the number of loads extracted every week, and that he report the assay made of the quality of the ore whenever there exists any reason to believe that it may have varied.

Lastly: notice was given of a report made by the bureau of Administration, having relation to the monthly payments made by Señor Garay to the Commissioner in Guadalajara, representing that the payments have been made in full up to the month of January of the present year, and that the sum of one hundred and sixty dollars, which Señor Blume has received, should be collected, without other discount than the current exchange, and the same be credited to Señor Garay.—The Junta resolved in conformity.

[Three Rubrics.]

Session of 14th May, 1846.

Present, Señores Segura, Flores, and Bassoco; and after the approval of the minutes of the previous session, report was made of the following communications:

First. From the Ministry of Justice, of date 9th, acknowledging receipt of the Official letter in which was communicated to it the discovery of the mine of Quicksilver in Californias.

Second. From his Excellency the Governor of San Luis, dated 9th inst., transmitting certificates showing that there have been extracted from the mines of Trinidad and San Andres

seventy-eight quintals of Quicksilver.—Let the bureau of Fomento report.

Third. Another from the same, and of the same date, transmitting three certificates showing the extraction of fifty-three quintals of Quicksilver from the mine of San Antonio in Guadalcázar, and it was sent to said Bureau for report.

Fourth. From the Tribunal of Sombrerete, dated 5th inst., inserting the resolution of the E. Assembly of Zacatecas, that said tribunal do not obey the Supreme order communicated by the Junta relative to the Election of Substitutes (Suplentes).—Resolved, that it be transcribed to the Ministry, informing it that only in this Department has there been any such resistance.

Fifth. From the Tribunal of Jesus Maria, with notice of its installation, and in reply to the Circular No. 3.—Let the bureau of Fomento report.

Sixth. From the Commissioner for Collections in San Luis Potosi, remitting a draft for three hundred and fifty-one dollars, fifteen cents, for proceeds of the Mining Fund (Mineria) in the month of April.—That the draft be accepted, the proper entries made, and receipt acknowledged.

Seventh. Three communications dated 28th April, from the Commissioner in Chihuahua, remitting a draft for seven hundred and seventy dollars, three rials, for proceeds of that city and of Jesus Maria in the month of March—an account which had been asked by the Controller's Office.—That the draft be accepted, the proper entries made, receipt acknowledged, and the amount transmitted to the proper Office.

Eighth. From Don Manuel Garcia del Valle, with his resignation of the post of First Copying Clerk in this Office.—Resolved, that it be transmitted to the Supreme Government, recommending that it be accepted.

Ninth. From Don Ignacio Rosso, soliciting the appointment to the vacant place of Second Copying Clerk of the same.—Reserved.

Notice was given of a report from the Controller's Office, respecting the communication of the Commissioner in Guanajuato, dated 4th inst., relative to the remitting of documents in the Expediente of Señor Robles. The Junta resolved in conformity with everything proposed, with exception of the last indication made in regard to applying to the Treasurer and Administrator of Guanajuato for duplicate of the certificate of payment made by Señor Robles of sixty dollars for the fourth quarter of the loan for the payment of the debt of the United States.

Session of 18th May, 1846.

Present, Señores Segura, Flores and Bassoco; and after the approval of the minutes of the session of the 16th, report was made of the following communications:

First. From his Excellency the Governor of Jalisco, of date 28th ulto., returning with information the tariff of fees of the Tribunal of Bolaños.—And the Junta, being in conformity with said information, resolved that the same be transmitted with approval to the Supreme Government.

Second. From the Governor of San Luis Potosi, accompanying a petition of Don Andres Barroeta, that there be paid to him the premium corresponding to fifteen quintals, one arroba, fifteen pounds, six ounces of quicksilver extracted from the new Almaden and pedernal (flint) in the Durazno.—Let the Bureau of Fomento report.

Third. From the Company for restoring (or establishing) El Oro, complaining of the scarcity of powder.—Let it be transcribed to the Supreme Government with recommendation.

Fourth. From the Commissioner of Zacatecas, of date 12th inst., acknowledging receipt of the documents remitted to him for the collection of the debt of Señor Llaguno.—To its Espediente.

Fifth. From the Commissioner at Guadalupe y Calvo, informing having forwarded the accounts asked of him.—Let the bureau of administration report.

Sixth. From the Second Civil Judge, requesting information regarding the amount to the credit of the minor Elguea in the dotal fund.—Let the Controller's Office report.

Seventh. From Don Miguel Quinones, of date 16th inst., requesting that order be given to Señor Zamora to supply him with the amount required to pay the Tribunal of Tasco the costs of the certified copy of the proceedings which the party will show.—Let such order be given.

Eighth. From Don José Zamora, five communications dated 16th, transmitting in the first the tally accounts (memorias) number 19.—Acknowledging receipt, and send to Controller's Office. In the second, he notifies that he requires three hundred dollars for the tally (raya).—Understood. In the third, he informs, that of the one thousand two hundred and seventy quicksilver flasks existing in the negotiation, there are only a very few having flaws, and that they ought to be worth three dollars each per piece, as they are valued at two reckoned as iron.—Let this difference be represented to Señor Castellero, and to the Government when his propositions are approved— and transmitting in the two last advice of having drawn the Bill number 21 for the sum of two hundred dollars, and number 22 for one hundred and forty.—Let them be paid.

A petition of Don Tomas Ramon del Moral was read, relative to fixing the amount of compensation which he is to receive for the month during which he acted as substitute in the direction of the College, and the opinion which the Bureau of Fomento gave upon the petition pending before the Government was also read.—The Junta resolved, that this be transcribed to the Minister, with a copy of said opinion and of the articles of the law relating to substitutions of the members of the Junta and its officers.

Notice was given of the five following reports of the Bureau of Encouragement (Fomento):

First. Relative to the ordering to be paid three hundred and ninety-four dollars, four rials, two and a half grains, to Don Andres Barroeta, for premium on seventy-eight quintals, three arrobas, fifteen pounds, one and a half ounces of quicksilver, which he shows he has extracted from the mines of La Trinidad and San Andres de Guadaleazar.—The Junta resolved, that the settlement of this matter be suspended till the resolution of the Government.

Second. Relating to the payment of two hundred and sixty-five dollars for premium on fifty-three quintals of quicksilver extracted by Don Demetrio Toscano from the mine of San Antonio in Guadaleazar; and the order in this case was the same as in the former.

Third. Relative to asking from the Supreme Government the ratification of the election of a deputy (suplente) made by the Tribunal of Temascaltepec.—The Junta resolved in conformity.

Fourth. Recommending the approval of the election of President, and his substitute, made by the Tribunal of Bolaños, and that the Supreme Government give notice to the members who served the last year to continue in the office the present year.—The Junta resolved in conformity.—And expressing its opinion in the last, that the Tribunal of Jesus Maria in Chihuahua be called upon to forward the certificate of its installation, that it may elect another substitute if it only has elected two; that the fund be designated to it from which according to law it is to defray its expenses, and that there be remitted to it the documents and information which it has solicited.—The Junta resolved in conformity, with the exception of the transmission of a copy of the mining ordinances.

Session of 22d May, 1846.

Present, Señores Segura and Bassoco; and after the approval of the minutes of the session of the 18th, report was made of the following communications:

First. Five from the Ministry of Justice, dated 16th, 19th and 20th inst., informing in the first having accepted the resignation of Don Manuel G. del Valle, as first Copying Clerk of this office.—The Junta ordered it to be transcribed to the party interested. In the second, transmitting for report an official letter from His Excellency the Governor of Chihuahua, soliciting that there be sent to him the mining ordinances, and that the allowance made to the Secretary and Officers of the Tribunal of Jesus Maria be approved.—Resolved, that the Bureau of Encouragement report.

In the third, informing that the certificate of the installation of the Tribunal of Hidalgo del Parrel has been approved. In the fourth, that of the substitute of the Tribunal of Temascaltepec; and in the last, informing of having transcribed to the Ministry of Finance the petition of the Company for restoring the mining district of El Oro relative to the scarcity of powder.

Second. From the Tribunal of Ojo Caliente, transmitting the certificate of election of a substitute.—Let the Bureau of Encouragement report.

Third. From the Tribunal of Guanajuato, in reply to the report of the Controller's office relative to the account of Clavelinas.—That said office report.

Fourth. From the President of the Tribunal of Mazapil, dated 5th inst., resigning his office.—Let the same be communicated to the Government with recommendation.

Fifth. From the Mercantile Junta of Encouragement of this Capital, transmitting five copies of the balance of last year.—Answer, with many thanks.

Sixth. From His Excellency Don Demetrio Montesdeoca, informing that Don Pedro Anda, having the necessary qualifications, and being of unimpeachable integrity, offers to inspect the mine of Clavellinas for a gratuity of two hundred dollars.—That he proceed to make the inspection, and that Señor Montesdeoca draw upon the Junta for said sum.

Seventh. From the Inspection General of offices in the Department of Michoacan, relative to its having demanded the accounts of the suspended Collector of the Custom House, and that it will cause them to be adjusted without delay.—To its Expediente.

Eighth. From the Commissioner at Guadalajara, remitting a draft for eight hundred and thirty-seven dollars, one rial, three and a half grains, proceeds of the mining dues for the month of

April.—Let the draft be accepted, the proper entries be made, the receipt be acknowledged, and order be given to collect the one hundred and sixty dollars of Señor Garay.

Ninth. Another of the same, date 15th, informing having received one hundred and sixty dollars from Señor Garay for account of the months from February to May.

Tenth. From the Commissioner at Durango, remitting a draft for the sum of one thousand and thirty-eight dollars, seven and a half grains, proceeds of the mining dues of the month of April, and the detailed account of the previous year.—Let the draft be accepted, the proper entries made, the documents transmitted to the Controller's Office, and receipt acknowledged.

Eleventh. From the Commissioner at Culiacan, dated 1st May, remitting a draft for six hundred and five dollars, two rials, proceeds of Cosala in March.—That the draft be accepted, the proper entries made, and receipt be acknowledged.

Twelfth. Another from the same, and of the same date, remitting a draft for one hundred and three dollars, seven rials and six-eighths, proceeds from the 20th to the 30th ultimo of the new Assay Office of Culiacan, and the accounts lately called for.—Let the draft be accepted and collected, the proper entries made, and receipt acknowledged.

Thirteenth. From Don Manuel Mariano Cortazar, dated 17th inst. at Queretaro, acknowledging receipt of the three hundred dollars which were remitted to him lately, and requesting that he be furnished with the sum necessary to take possession of the mine of Providencia.—Resolved, that on account of the late order for the suspension of payments, the Junta will hardly be able to remit the three hundred dollars monthly, according to promise, to maintain the mine, and that the Bureau report concerning the accounts transmitted.

Lastly. There were read two petitions for the post of Second Copying Clerk in the office, presented by Don Joaquin Urrutia and Don José Garcia de Arana.—Resolved, that they be kept in reserve.

Session of 25th May, 1846.

Present, Señores Segura, Flores and Rosas; and after having approved the minutes of the 22nd, report was made of the following communications:

First. From the Commissioner for Collections at Guanajuato, dated 22nd inst., with a statement of the silver assayed in the first four months of the present year, the weight of the bars, and the general account of dues.—Resolved, that they be transmitted to the Controller's Office.

Second. From the Commissioner at Zacatecas, dated 13th, remitting the general account for Zacatecas and Sombrerete; and the same resolution was passed.

Third. From the same, dated 18th, remitting a draft for one hundred and seven dollars, two rials and five-eighths, for dues collected in Sombrerete in April.—Let the draft be accepted, the proper entries be made, and receipt acknowledged.

Fourth. From the Collector of the Maritime Custom-House at San Blas, informing having given a draft in favor of the Junta for the sum of seventy-five dollars, eighty-six cents, for the half of the duties of the average.—Resolved, that the Treasurer apply for the same at the General Treasury.

Fifth. Four communications from Don José Zamora, dated 23d, informing in the first that he requires twelve stampers (almadanetas).—Let them be purchased.—In the second, transmitting the tally account (memorias) No. 20.—Acknowledge receipt, and transmit to the Controller's Office.—And the other two, advising having drawn bill No. 23 for one hundred dollars, and No. 24 for two hundred dollars.—Let them be paid.

Sixth. An Official letter from his Excellency the Minister of Justice, dated 20th, approving the propositions of Don Andres Castellero, which the Junta had transmitted to the Supreme Government; and informing that he had sent to the Ministry Government the petition for two square leagues of land (Sitio de ganado mayor) as a colonist, upon his mining property.—The Junta resolved, that the proper judicial agreement be drawn up immediately, and that application be made for the draft for the five thousand dollars on Mazatlan or Guadalajara; to which Señor Castellero agreed; and finally, that by the mail of Wednesday the proper orders be sent to Tasco, that the administrator deliver to the order of Señor Don Tomas Ramon del Moral all the quicksilver flasks in good condition in the store-houses there, at the rate of two dollars each.

[Two Rubrics.]

Session of 26th May, 1846.

Present, Señores Segura, Flores and Rosas ; and after approving the minutes of the session of the 25th, there was read a report of the Controller's Office, informing that the instrument, the date of which Señor Macedo wishes to know, was executed before the Notary Don Fernando Tamayo, on the 20th April, 1807.—The Junta ordered that the same be communicated to the Court.

There were read other three reports from the Bureau of Administration ; the first relative to the note of 28th ult., of Don Enrique Mackintosh, opining that it is necessary to wait for the account of the weights of bars which has been asked of him.

Second. That there be duplicated to Señor Olascuaga, surety for the payment to be made by Señor Lebrija, a resolution relative to the fifty dollars of the month of September next, which he has not remitted ; and finally, that Señor Don Diego Moreno be reminded to remit the proceeds of the pearls of Señor Garay which were given to him to sell, or that he return them by some person in whom he can confide.—The Junta resolved in conformity.

[Three Rubrics.]

Session of 27th May, 1846.

Present, Señores Segura, Flores and Rosas ; and after having approved the minutes of the session of the 26th, there was read an Official letter of His Excellency the Governor of Michoacan, informing that he had ordered the suspended Administrator of the Revenue to present his pending accounts, and pay over amount due by him, and that he will communicate the result.—To its Espediente.

There were read three reports of the Bureau of Encouragement—the first recommending that the Supreme Government's approval of the election of a substitute of the Tribunal of Ojo Caliente be requested in conformity with the last circular on the subject ; and the Junta resolved accordingly.

Second. Relating to the recommendation of the Government in regard to a communication from His Excellency the Governor of Chihuahua, requesting copies of the ordinances, and that the thirty dollars per month to the Secretary of the Tribunal of Jesus Maria be approved. The bureau is of opinion that the Government be informed, that as the Junta has no copies of the ordinances, they may be purchased at Zacatecas, where they are sold at twenty rials ; and respecting the salary, it be stated that the decree which established said salary has been

abrogated, and that fees stated in the tariff only are allowed.—The Junta resolved accordingly.

Third. Relative to the last communication from Don Manuel Mariano Cortazar, with the Inventory of the Mine of Atargea. The bureau is of opinion that it be transmitted to the Controller's Office for its report; and the Junta so resolved.

[Two Rubrics.]

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Session of 28th May, 1846.

Present, Señores Segura and Rosas; and after approval of the minutes of the 27th, report was made of the four following communications:

First. From the Ministry of Justice, dated yesterday, transcribing the communication of the Ministry of Finance of same date, in which it represents that intimation having been received of the blockade of the ports of Vera Cruz and Tampico, it is not to be expected that the remittances of drafts from these Custom-Houses will be continued; for which reason the Government directs that the Junta reserve its existing funds for its own expenses and those of the College, suspending for the present all payments for the extraction of Quicksilver.—The Junta resolved that the bureau of Encouragement report.

Second. From the Commissioner at San Luis Potosi, with the account and note of the weight of the bars of silver assayed during the past month.—To the Controller's Office.

Third. From Don Eugenio Bermejillo, informing that he had obtained from His Excellency the Governor of Michoacan, the order that the suspended Administrator of the revenue there present his accounts within two weeks, after which time a clerk will be employed to make them out at his expense.—To its Espediente.

Fourth. From the Messrs. Manning and Mackintosh, dated 27th, representing that the signature of Señor Garcia Granados is only that of an attorney of Señor Stahlknecht.—To its Espediente.

[Two Rubrics.]

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Session of 29th May, 1846.

Present, Señores Segura, Flores and Rosas; and after having approved the minutes of the 28th, report was made of a communication from His Excellency Don Francisco Fagoaga, in reply to the last official letter addressed to him, relative to the

incumbrance of eight thousand dollars on the estate of San Sebastian.—The Junta resolved, that it shall be reserved, adding it to the Expediente until Señor Rosas shall have acquired some information in the matter.

There was read a report of the bureau of Encouragement upon the communication of the Government, relative to the suspension of payments from the Quicksilver fund. The bureau reports: *First.* That said communication be transcribed to His Excellency the Governor of San Louis Potosi, with reference to the payment of the premiums for quicksilver which it had resolved should be paid; two thousand dollars to Don Timoteo Toscano, two hundred and sixty-five to Don Demetrio Toscano, and four hundred and seventy-one dollars, four reals, eight and a half grains to Don Andres Barroeta, for premiums on National Quicksilver which they have extracted, at the rate of five dollars per quintal; and that if the first sum has not been paid to Don Timoteo Toscano, it was for the reason that he did not make application at the proper time, and the others for the reason that the demand of payment of them was received after the order was communicated for the suspension of payments.

Second. That the same order be communicated to Don Manuel Mariano Cortazar, representing to him that if he can do so, he should continue to extract quicksilver to some extent, so as to keep up the working of the mine.

Third. That it be transcribed also to His Excellency Don Demetrio Montesdeoca, with the object that he will please order a suspension of the sale of the mine of Clavellinas, but that if by virtue of former resolutions, he should have been at any expense, it shall be refunded to him immediately.

In consequence of the Supreme Government having accepted the resignation which Don Manuel Garcia del Valle made of the post of first copying clerk, in the Secretary's Office, the Junta has resolved, that it be represented to the proper ministry that, according to law, the second copying clerk, Don Manuel Couto, should be promoted to the office; that if the Government so accords, he may be put in possession.

It was also resolved, in conformity with the report of the Controller's Office, that twenty-five dollars be paid to the Notary Calapiz for proceedings in the instrument of agreement which had been made with Don Andres Castellero to assist his quicksilver enterprise in the mine of Santa Clara, in Upper California, embraced in the official order for the suspension of all payments for this branch.

Session of 30th May, 1846.

Present, Señores Segura, Flores and Rosas; and after the minutes of the 29th, report was made of a communication from the Ministry of Finance, dated 28th inst., in which information is asked relative to whether the two thousand one hundred and twenty five dollars, ten and a half grains, belonging to the fund of the new prison at Guadalajara are disposable; and the Junta resolved that it be answered immediately, with a short review of the origin of this fund belonging to the quicksilver fund, and that it be indicated, that this business being pending in the Council, the Junta informally deposited said sum in a respectable commercial house, with the condition that it should be refunded in Guadalajara, in the same class of coin in which it was paid, one month after notice being given of its repayment, offering to amplify this information should the Ministry consider it necessary.

The Secretary's Office represented that Señor Don Tomas Ramon del Moral laid before the retiring Junta the petition which he presented, relative to the allowance of salary or gratuity for the time in which he acted as substitute in the direction of the College last year.

Señor Don Joaquin Velasquez, in the name of His Excellency the Director of the College, represented, that requiring in London the sum of one thousand dollars, and understanding that the Junta had some money in the house of Messrs. Baring Brothers, he requested to order that credit should be given to said house for the sum of seventy-two pounds seven shillings and six pence, sterling, for account of some articles ordered from those gentlemen for the College, and that it draw a bill of exchange in favor of said Señor Velasquez for the sum of one hundred and eleven pounds nine shillings and seven pence sterling, in full of one thousand dollars, at the current exchange of forty-four and one-eighth pence.—The Junta resolved that the order be given, and that said bill of exchange be drawn to account of the two bills of exchange for five hundred pounds each drawn against said house by Messrs. Manning and Mackintosh on the 30th November of the past year.

[One Rubric.]

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MONTH OF JUNE, 1846.

Session of the 1st.

Present, the Señores Segura and Rosas. After the reading and approval of the minutes of the 30th ult., report was made of four communications from the Ministry of Justice, as follows:

First. Dated the 29th, accepting the resignation of Señor Espino of the office of President of the Juzgado.

Second. Of the 28th, stating that the *arancel* of Bolaños had been approved. Let the same be inserted to the Juzgado.

Third. Of the same date, approving the election of Don Agustín Romo as substitute (suplente) of the Juzgado of Ojo Caliente. Let the same be inserted to the Juzgado.

Fourth. Of the 30th, setting forth that the Supreme Government approves of the promotion of Don Manuel Couto to the office of First Clerk in the Secretary's office. The Junta resolved that he be put in possession of the office from the time of the date of the communication.

Another official communication was read, from the Mining Juzgado of Catorce, accompanying the act of the election of its President and Adviser (Consultor). Resolved, that the Bureau of Encouragement (Fomento) report. Another, from Señor Don Cástulo Barreda, asking eighty dollars on account of his salary. Let the receipt and account of what he has asked be remitted.

Three from Don José Zamora, of the 30th ult., forwarding with the first, memorials No. 21. Let receipt thereof be acknowledged, and let the same be passed to the Controller's office.

Two stating that the leyes of the metals of Trinidad and Socabon had reached to from forty to forty-five mares; that the amount extracted weekly will reach forty-five cargass; and that a new work has been commenced which promises well. Concluded; and stating in the last that draft No. 29 had been issued for four hundred and fifty dollars in favor of Don José Mariano Zárate. Let the same be paid.

[One Rubric.]

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Session of 3d June, 1846.

Present, the Señores Segura and Rosas; and after the approval of the minutes of the 1st, a communication was read from the Minister of Hacienda, dated the 31st ult., in which, by virtue of the cession made by the Honorable Departmental Assembly of Jalisco, for the attentions of the Company, of the twenty thousand one hundred and twenty-five, ten and a half grains, which the Junta has on deposit on account of the quick-silver fund, it is ordered that a draft be drawn in favor of the Ministers of the General Treasury for said sum. The Junta resolved, that answer should be made, that it was ready to issue said draft, but that it felt it to be its duty to represent

that an Expediente had been instituted by the Minister of Justice in relation to the claims made by the Governor of that Department for this amount; the Supreme Government consulted with its Council in relation to this matter, and this (Council) advised that the matter should be determined by the Legislative power, which was communicated to said Government, for which reason the Junta is at a loss to know how it can be assured that the amount mentioned belongs to it; therefore, in order to secure itself against any responsibility in the matter, it hopes it will be instructed whether it is to issue the drafts in the terms indicated, or in those that may seem most convenient to the Supreme Government.

It was also resolved that the Minister of Justice should be informed of the foregoing resolution, communicated by the Minister of Hacienda, as the report on the last petition of the Governor of Jalisco, which was referred for report in March last.

Another official communication was read from the Juzgado of Auganguco, forwarding the Act of the renewal of its President. Let the Bureau of Encouragement (Fomento) report.

Finally, the report of the same Bureau was read, advising that the Act forwarded by the Juzgado of Catorce, renewing its President and an Adviser, be presented for the supreme approbation. Resolved in conformity.

[One Rubric.]

Session of 4th June, 1846.

Present, the Señores Segura, Flores, and Rosas; and after the approval of the Act of the 3d, report was made of a communication from the Minister of Justice, dated the 2d inst., in which is inserted a communication from the Minister of Hacienda, stating that the Direction General of Tabaco has ordered twenty-six boxes of powder to be forwarded, in order that the Subaltern Administration of Tulancingo may be provided with what it requires, which is the source from whence Pachuca must be supplied. The Junta resolved that the same be inserted to the Juzgado of Pachuca.—S. Segura.

[One Rubric.]

Session of 6th June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the session of the 4th, an official

communication was read from the Chief Assayer, accompanying eighty-nine dollars, two reals, nine grains, being the remainder of what he has collected in mining duties for the preceding month, including twenty-two dollars, seven reales, nine grains, pertaining to Don Manuel Lebrija.

Receipt acknowledged and passed to the Treasury.

Whereupon, report was made of the following communications :

First. From the Controller's office, in relation to the account forwarded by the Tribunal of Guanajuato, on the 18th ult., which the Junta resolved should be inserted to said Tribunal.

Second. From the same, in relation to the inventories of the stock heretofore on hand, and on hand at the present time at the quicksilver mine of Atargea, in relation to which explanations were asked, touching said differences, from the Juzgado of Guanajuato. The Junta resolved in conformity.

Third. From the Bureau of Encouragement (fomento), advising that the act of the election of President and a consultor for Auganguco held on the 20th of April, be presented for supreme approbation; resolved in conformity.

Finally, the account presented by the Treasury, for the rent of the rooms of the College in the month of May, was read and ordered to be passed to the office of the Controller.

[Two Rubrics.]

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Session of 8th June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 6th, report was made of the following communications :

First. From the Minister of Justice, dated the 6th, inserting an official communication from the Minister of Hacienda, in which he communicates a supreme order that there shall be issued in favor of the Ministers of the General Treasury the twenty thousand one hundred and twenty-five dollars, ten and a half grains, which are on deposit in the quicksilver fund belonging to Jalisco, in the house of S. D. Ancelmo Zarutuzá, with the understanding that the right of any one having a legal interest in said sum is reserved. The Junta resolved, that the draft should be issued and forwarded, the then Treasurer of the Junta receiving the proper certificate of delivery; and that Señor Adone be directed to deliver said sum, giving information of the day when it should be done for the purpose of liquidating the amount; and finally, that the Minister be informed that the supreme order had been complied with.

Second. From the Collector of Guanajuato, accompanying a draft for four thousand seven hundred and thirty-four dollars, two reales and seven grains, as the product of the mining duties for the month of May. Let the draft be accepted, the proper entry made, and receipt of the same acknowledged.

Third. From the Collector of Pachuca, forwarding a draft for one thousand and forty-six dollars, one real, four grains, as the product for the said month; on which the same resolution was made as in the foregoing.

Fourth. From the Collector of Hermosillo, accompanying a draft for five hundred and fifty-eight dollars and ninety-eight cents, as the product of the mining duties from the first of September to the end of December of the last year, and besides a certificate and an account of said third of the year. Let the draft be accepted, the proper entries made, the documents passed to the Controller's office, and receipt of the same acknowledged.

Fifth. From the Collector of Sinaloa, dated the 16th of May, accompanying draft for six hundred and seventy-nine dollars, seven reales, and six grains, as the product of said duties in Cosalá for the month of April. Let the draft be acknowledged, the proper entries made, and receipt of the same acknowledged.

Sixth. From the same, of the 9th of May, accompanying another draft for three hundred and fifty dollars, six reales and two-eighths, as the product of said duties during the month of April; on which the same resolution was made.

Seventh. From the same, and of the same date, accompanying a draft for seventy-five dollars, corresponding to the duties collected in Mazatlan during the month of April.—Resolved that the draft be accepted, the proper entries made, and receipt acknowledged.

Eighth. Another from Don Miguel Quiñones, dated the 6th, accompanied by a package directed to Licenciado Don Càstulo Barrera, who will report to the Junta the last proceedings in relation to the Socabon of San Juan.

And, finally, three official communications from D. T. Zamora, of the 6th inst., the first being accompanied by the memorials No. 22, the statements No. 5, and the balance sheet of the past month.—Received and passed to the Controller's office. The second stating that the work of reduction was about to be commenced, for which six quintals of quicksilver were needed; that the leyes continued to be good, and the works in a good condition, particularly in the direction of the Socabon of San Juan, in which labors it was calculated that an outlay of fifty dollars would be required.—The Junta resolved that the Treasury should report the price of quicksilver, and that S^r. Za-

mora should be informed of the same, adding that the subterranean measurements spoken of should be immediately proceeded with; and, lastly, forwarding a draft for two hundred and fifty dollars on Don George Rafard.—Let the same be paid.

[Two Rubrics.]

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Session of 12th July, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 8th, report was made of the following communications:

First. From the Mining Juzgado of Nieves, accompanying the act of its installation.—Let the Bureau of Encouragement (Fomento) report.

Second. Three official communications dated May 25, from the Collector of Chihuahua, accompanying a certificate of a draft for three hundred and thirty-one dollars five reales and three grains, as the product of the mining taxes of Chihuahua and Jesus Maria, for the month of April.—Let the draft be accepted, the proper entries made, and receipt thereof acknowledged.

Third. From Don Diego Moreno, dated the 8th of May, at the Hacienda of Guaracha, in reply to the official communication which was directed to him on the 17th of November, stating that he had delivered the string of pearls belonging to Señor Garay, to Don Elenterio Mendez, who had the misfortune to lose the same on the road, and which reply to the communication of the 4th of April last, adds that the said Mendez will present himself to Don José Antonio Nieto, and will answer for the interested party Don José Garay.—The Junta referred the same to the Bureau of Administration to report.

Finally, a communication from Don Castulo Barreda, accompanying a letter from Don Miguel Quiñones, was read, in relation to the proceedings pending in the matter of the denouncement of the mine of the Socabon of San Juan, asking that fifty dollars be paid to Señor Zamora, for the opening of the road to the new works of the mine of Trinidad, nearer to Socabon. This point having been already resolved and communicated by the mail Thursday, the Junta only acted upon the second point, in relation to the transmission of copies of documents as proof of the possession of the mine of Trinidad received in 1807, another in 1816, and the last in 1819.

It was also resolved to accede to the petition of Don Manuel Couto, chief clerk of this office, granting him leave of absence

for one month for the purpose of attending to his personal matters, with the understanding that if the business of the office should render it necessary in the meantime to employ another clerk, he shall be paid by the said Couto from his own salary, and not from the funds of the Junta.

[Two Rubrics.]

Session of 13th June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 12th, the Treasurer returned the official communication of the Administrator of the Custom-House of San Blas of the 14th of May, stating that he has forwarded a draft for seventy-five dollars and six cents on account of the average duty, as ordered by the Supreme Government. =To the office of the Controller.

The Bureau of Administration presented as a report, the receipt given by Diego Moreno for the pearls belonging to S. Gonzales; resolved, that a copy of said receipt be forwarded to Señor Moreno, in order that in view of the same, he may be pleased to say when the Junta can apply for the five hundred dollars, since it has nothing to do with Sör Mendez in relation to the matter, in consideration of the aforesaid document.

A report was read from the Bureau of Encouragement (fomento), advising that the act of renewal of the President of the Juzgado of Nieves be submitted to the supreme approbation. =Resolved in conformity.

The chief clerk presented a topographical map made by Don Miguel Arriaga, with the corresponding measurements, in the year 1822, of the works of the mine of Trinidad; resolved that the same be manifested to Sör Licenciado Barreda, insisting that, as soon as possible, the measurements and excavations be made of the works contiguous to the mine of San Juan.

[Two Rubrics.]

Session of 15th June, 1846.

Present, the Señores Flores and Rosas; and after the approval of the minutes of the 13th, report was made of the following communications.

First. From the Mining Tribunal of Guanajuato of the 9th inst., accompanying the denouncement made by Don Jaleo Arreguin of the mine of Guadalupe in Clavellinas, situated on the side of the hill of Capulin in the jurisdiction of San

Felipe, in consideration of its having been abandoned for one year. The Junta resolved, that the same be inserted to the Supreme Government, asking if in virtue of the order of suspension of payment, it will consent to loan the property of said mine, or if it will sustain its possession.

Second. Another official communication of the 9th inst., in Zacatecas, from the Collector, accompanying a draft for five thousand nine hundred and sixty-seven dollars, and a receipt for twenty-five dollars paid to the student Ayala, as the product of the mining duties for the month of May, and a certificate of the *barreage* of the last third of the year.—Let the draft be accepted, the proper entries made, and receipt acknowledged.

Third. From that of Durango, accompanied by another draft for six hundred and fifty-eight dollars and eight grains, as the product of the same month.—Same resolution as foregoing.

Fourth. From that of Zimapan, with a draft for three hundred and forty-eight dollars, two rials, six and a half grains, as the products of the same month.—Resolved as above.

Fifth. Four official communications from D. José Zamora, the first being accompanied by memorial No. 23 of the negotiation of Tasco.—Received and ordered to Office of Controller.—Stating in the second, that he had placed at Chorrillo an assistant of the Azoguero, with a salary of three dollars a week, in order that he may take care of the galera in the *aumencias* of this during all the time of the reduction of silver ore; and lastly, that three hundred dollars are required for the pay-roll (*raya*) of the present week.—Resolved, that the outlay be approved, and that reply be made to that effect; and the two last, that draft No. 27 has been issued for two hundred dollars, and No. 28 for eighty.—Let the same be paid.

[Two Rubrics.]

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Session of 16th June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 15th, report was made of an official communication from Don José Zamora, of the 8th inst., stating that by the arriero Fis, the almadanetas which has been asked, can be forwarded.—Resolved, that they be ordered, and the bill be paid.

Two reports were read from the Controller's office.—The first in relation to the non-reception of the draft sent by the Administrator of the Custom-House of S. Blas to the General Treasury, and consulting if the same action be taken, as was resolved in a similar case during the past month.—The Junta

resolved in conformity, and in consequence, that the communication be attached to its Expediente, and that the non-receipt of the draft be reported to the Administrator of S. Blas.

The second opinion advises that there be collected from Sōr. Monterde five hundred dollars, five rials, eleven grains, as the remainder of the mining fund collected in Chihuahua.—The Junta resolved in conformity.

The Treasurer having, on yesterday, manifested that he had applied repeatedly to the house of the Señores Cecillon and Bernede for the collection of several drafts amounting to eight hundred and seventy seven dollars and twenty-one cents, received from Custom Houses of Vera Cruz and Tampico, as the three per cent. duties, without being able to obtain either the acceptance or the payment of the same, under various pretexts, and knowing that the said house has made to the Mercantile Tribunal a petition in bankruptcy, the Junta will determine what it may deem proper.—Resolved, that the drafts be protested, and that they be forwarded to the Treasury, at the same time advising the Supreme Government, in order that it may collect the same as a privileged debt.

[Two Rubrics.]

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Session of 19th June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 16th, report was made of the following communications:

Two official communications from the Minister of Justice of the 18th inst.—The first approving the expenditure of three hundred and forty-four dollars, the authority for which was asked, in the repairs necessary to be made in the building, which it was resolved to report to the office of the Controller; and the second approving the act of the renewal of the President of the Mining Juzgado of Nieves, which was ordered to be inserted to the respective Juzgado.

Another official communication from the Señor General Don Mariano Monterde, in reply to the observation made to him by the Contaduria; and resolved, that he be pleased to present himself at said office, in order to satisfy himself of the exactitude with which the liquidation spoken of has been made.

[Two Rubrics.]

Session of 22d June, 1846.

Present, the Señores Segura, Flores and Rosas.—After the reading and approval of the minutes of the 19th, report was made of the following communications:

First. From the Minister of Justice of the 17th inst., reporting to the Junta the opinion of His Excellency the Governor of Chihuahua in relation to the *fondos* of the Mining Juzgados.—Let the Bureau of Encouragement (Fomento) report.

Second. From the Consultor, Don José Delmotte, remitting twenty-nine dollars, one-half rial, corresponding to the contribution from salaries during the last third of the past year.—Let receipt thereof be acknowledged.

Third. From the Commissioner of San Luis Potosi, accompanied by a draft for three hundred and eighty-six dollars and ninety-five cents, as the products of the mining tax during the month of May.—Let the draft be accepted, the proper entries made, and receipt acknowledged.

Fourth. From the agent in charge of Guadalajara, accompanying another draft for seven hundred and twenty-three dollars, two rials, three grains, for the same mining duties, and for the same month; on which the same resolution was made.

Fifth. Another of the same date, 5th inst., representing that it has always been the custom in the Capital, for the Director of the Mint to certify only the duties on silver.—To the Contaduria to report.

Sixth. Three from Don José Zamora, of the 20th, the first accompanied by Memorial No. 24.—Received and forwarded to Contaduria.—Stating in the second, that a draft has been issued for two hundred and ninety-five dollars, two rials and six grains, in favor of the Señores Soberino & Brothers.—Let the same be paid; and stating in the last, that the amount of metal extracted is increasing, since during the present week seventy *cargas* have been extracted; that the opening and repairing of the road to the works in the direction of the Socoban have been finished; that in repairing the labadero, more than thirty pounds of quicksilver had been found, and that in order to facilitate the work of reduction six animals and six quintals of quicksilver were needed.—The Junta resolved that he should be answered, that he could send for the quicksilver whenever he desired, and that he could purchase the six animals if he should think it necessary.

Session of 23d June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the reading and approval of the minutes of the 22d, three reports were read from the Contaduria.—The first in relation to claiming four rials, ten grains, still owing by Don José Cordero.—The Junta resolved in conformity.

Second. Claiming also from Don Fernando Pohls three dollars, six rials, eight grains, still owing by the Collector of Chihuahua up to the end of December of the past year.—The Junta also resolved in conformity; and finally, in relation to a communication from Señor Blumet of Guadalajara, that reply be made, that they are informed of the notice, that in that City the Director of the Mint exercises the functions of administrator.—Resolved also in conformity.

Finally, a report was read from the Bureau of Encouragement (Fomento) in relation to the funds for the expenses of the Juzgados, preparation of apartments for the Bureau of the same, and the delivery of the Archives of the Ancient Mining Deputations. The Bureau is of opinion, that reply should be made that the funds are the duties of Arancel alone: that the Departmental Governments may appropriate apartments for the business of the Juzgados, in the public buildings, when there are such; and that lastly, they can order the Archives of the Ancient Deputations to the Juzgados, which have succeeded them in accordance with law; to which the Junta agreed.

[Two Rubrics.]

Session of 30th June, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 23d, report was made of the following communications:—

First. From the Minister of Justice of the 27th, referring for report the petition of Don Juan Sutherlan, asking that the Mining Tribunal of Tasco may give him further time for the commencement of the draining of the Mine of San Mateo del Monte. The Junta resolved, that the petition be returned advising the Supreme Government that the petition should be granted, said Sutherlan being prevented from procuring a steam engine on account of the blockade of our ports; it is clear, that the time in which he was required to do this should be extended.

Second. From the Direction of Industry, forwarding three protested drafts with the respective documents, in order that

they be returned to the Custom-Houses from whence they issued, in order that they may be replaced. The Junta resolved that, accompanied by those that are found in the same circumstances, those from Vera Cruz be returned to that Custom-House, and those from Tampico to the General Treasury, for the same purpose, acknowledging to the Director General the receipt of the same, and advising the same that they were not forwarded by the mail of Saturday, for the want of time.

Third. From the Juzgado of Mazapil, of the 16th, setting forth the sad condition of the mines of that district.

Let the Bureau of Encouragement report.

Fourth. From the Juzgado of Temascaltepec of the 23d, complaining that the Justice of the Peace of that district, contrary to the ordinances, has prevented the miners from using the lands and pastures which, according to the ordinances, they are entitled to possess.

Let the Bureau of Encouragement report.

Fifth. Four communications from Don José Zamora, dated the 27th, with the first, forwarding memorial No. 29, in relation to that negotiation.—Received and referred to Controller. Advising in the second, that during the week, the three hundred and twelve quintals have been reduced, to which have been added three hundred and eighteen from Yxtajal, and that for the pay roll there is needed the sum of three hundred dollars—noted.—And stating in the last two, that draft No. 30 had been issued for three hundred and eighty-four dollars, and No. 31, for one hundred dollars. Let the same be paid.

On presentation of a list of salaries due; the Junta resolved that the same be paid without a reduction of one-fourth, the same not being included in the circular of the Minister of Hacienda, ordering said discount to be made to the offices which are paid from the public Treasury, for the reasons set forth, among which reasons, one is, that other offices in a condition similar to that of the Junta have not been subjected to said discount; and secondly, that this measure having been dictated in order to diminish the drafts upon the Treasury when its funds are so much exhausted on account of the war with the United States, which reason does not hold good with respect to the salaries of the Junta, since they are not to be paid from the Treasury, not pertaining to the "*fondo dotal*," it being a particular fund absolutely independent of the public Treasury: neither to that (the fund) of azogue, because payment of the same having been suspended for the present on account of the political circumstances of the country, the Supreme Government has ordered that the amounts on hand be reserved for payment of the expenses of the College, and the salaries of the officers.

MONTH OF JULY, 1846.

Session of the 3d.

Present, the Señores Segura, Flores and Rozas, and after the reading and approval of the minutes of the 30th ult., the following communications were read :

First. From the Señores Ministers of the General Treasury, acknowledging the receipt of the drafts from the Custom-House of Tampico, which had been forwarded to them protested by the houses of the Señores Cecillon and Bernede and Serment & Co., in order that the said drafts be made good, and returning Nos. 117, 122 and 132, amounting to fifty dollars and seventy-four cents, since the time for the payment of the same having expired, that aduana is not responsible for the same. The Junta resolved that they be again transmitted, since the time for the third payment being unexpired, the Custom-House is responsible for the third part of said amount; and with respect to the other two, as that office has the privileges of the exchequer, it may recover in both proceedings, which the Junta cannot do by itself alone.

Second. From the Mining Juzgado of Mazapil, of the 23d ult., stating that Don Rafael Espino has delivered the Juzgado to the first Cóllega Don Antonio Porto.—Noted.

Third. From the same Tribunal, giving notice to the said Cóllega to remain in charge of the Presidency.—Noted, in consideration that there are no substitutes.

A report was made from the Bureau of Encouragement, in relation to the communication from the said Juzgado, of the 16th of June, excusing the non-election of substitutes (suplentes) for the want of miners qualified to discharge the duties of such offices. The Bureau is of opinion that the election of President must first of all be proceeded with, since the resignation of S. Espino has been accepted; but in relation to the preceding communications it was of opinion that a President propietario and a suplente should at once be appointed in accordance with Circular No. 3 of this year; and it was thus resolved.

Another report was read, from the same Bureau, in relation to the complaint made by the Juzgado of Temascaltepec against the Justice of the Peace of that partido. The Bureau advises that the same be inserted to His Excellency the Governor of the Department, in order that he may require of that political authority the fulfillment of the ordinances in relation to pasture lots and water for the use of the miners. Resolved in conformity.

The Señor Flores moved, and the Junta resolved, that the Government be asked to authorize the payment from both

funds, of one dollar and a half a-day, to a clerk who shall assist in the office of the Controller, until the re-establishment of the health of Don José Francisco Bonilla, since it being necessary to regulate the payment of the public debt, said office is necessarily occupied in the liquidation of all that has been loaned from its fund to the Government, or that this has received during the administration from the time of Independence to the present date.

The Controller represented the difficulties in the way of carrying out this operation, with the promptness and exactness desirable.

The Junta agreed that inasmuch as it was difficult to make a prompt and exact liquidation of said account, extending through so many years, those entries susceptible of so easy proof, might be presented to the Government, for the purpose of obtaining its consent to receive the same in the way of payment, while the said liquidation was being arranged, asking of the Controller's office the account of the provisional Junta which succeeded to the ancient Mining Tribunal, and all the other documents necessary for the purpose.

[Two Rubrics.]

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Session of 6th July, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 3rd, report was made of the following communications:

First. From the Commissioner of the Zimapan, forwarding a draft for a hundred and fourteen dollars, three reals and two grains. Let the same be accepted and collected, the proper entries be made, and receipt of the same acknowledged.

Second. From the Collector in Guadalupe y Calvo, representing that having to leave that mineral district, he has left the Collectorship in charge of the Director of the Mint, to whom he has delivered the products of the months of April and May, not having yet received that belonging to Parral. Acknowledged, and surprise expressed that the money has not been sent by drafts as usual.

Third. From the Señor Assayer General, forwarding eight hundred and seventy-nine dollars, three reals, as the products of the mining duties during the past month, including twenty-two dollars, two reals, three grains, paid to Don Manuel Lebrija.—Received and forwarded to the office of the Controller.

Fourth. Six from Don José Zamora, the first being accompanied by memorial number twenty-six, statements number six,

and the volita of reduction number five of the negotiation of Tasco.—Received and passed to the Controller's office. Two stating that the amount of quicksilver collected in repairing the works, was forty-one pounds, and that for the pay roll of the present week, one hundred dollars be required.—Noted.—Three proposing that the guard be removed from the mine of Cotitlan, since the ores of the same do not pay the expenses of working, and by this means an annual expense of thirty-nine dollars will be avoided.—The Junta resolved in conformity. Finally, stating in the three last that draft number thirty-two had been issued for one hundred dollars, number thirty-three for one hundred and twelve dollars, number thirty-four for one hundred and fifty dollars.—Let them be paid. The Junta resolved that Señor Zamora be asked for a statement in relation to the renting of the houses pertaining to the negotiation, and that the quicksilver being now ready, he should send the arriero for the same.

[Two Rubrics.]

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Session of 7th July, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the preceding day, report was made of the following communications.

First. From the Minister of Justice, dated 29th ultimo, stating that the Government has resolved, that the denouncement made by Don Julian Arreguin, of the mine of Guadalupe in Clavellinas. The Junta resolved that the same be inserted to the Juzgado of Guanajuato, asking that an inventory be made of the stock on hand pertaining to said mine, for the ends that may be necessary, in accordance with Article 1, Title 6th, of the Ordinanzas.

Second. From the general treasury, dated the 4th instant, acknowledging the receipt of drafts from Tampico, Nos. 109, 112, and 114, amounting to one hundred and fifty dollars and forty-four cents, which had been remitted and were returned. —To its Espediente.

The sum of twenty-five dollars was ordered to be paid for the political essay, and for the travels of Baron de Humboldt, in eleven volumes, authorized by the Government last year to be purchased for this office.

It was resolved, finally, that the communication directed to Don Manuel Moreno, of Tejada, on the 4th of September of the last year, be repeated, informing him that in accordance with the orders of the Supreme Government, the payment of all expenses pertaining to the quicksilver fund is now suspended.

[Two Rubrics.]

Session of 9th July, 1846.

Present, the Señores Segura, Flores and Rosas; and after the approval of the minutes of the 7th, report was made of the three following communications.

First. From the Minister of Justice, dated the 6th, stating that the Government had approved the expenditure of a dollar and a half a day, for a clerk as a substitute for the clerk of the Controller's office.

Second. From the Direction of Industry of the same date, forwarding four copies of its memorial of last year.—Let receipt be acknowledged, with thanks for the same.

Third. From the Commissioner in Pachuca, forwarding the certified accounts for the last third of the year.—Received and passed to the Controller's office for examination. At the petition of the Controller's office, the Junta resolved that certificates be asked of the collectors of the mining duty, and of the office of Controller of Propios.

[Two Rubrics.]

Session of 11th July, 1846.

Present, the Señores Segura and Rosas; and after the approval of the minutes of the 9th, report was made of an official communication from his Excellency the Minister of Hacienda, requiring that the products of the discount to be made of one fourth part of the salary of the employés of the Junta is to be paid monthly into the respective departmental treasuries.—The Junta resolved that this matter be reserved for Monday.

A report was read from the office of the Controller, in which some advice is asked in relation to the credits which are to be liquidated, for the purpose of negotiating their collection under the new regulation established for the public credit.—The Junta resolved that with respect to the interest of the two per cent. per month, upon the thirty thousand dollars entered into with Don Gregorio Mier and Feran in 1833, a separate account be made, in order not to complicate the collection of the remaining amounts, which do not present the difficulties found in this.—That the same be done in relation to the credit of the Concordia del Tabaco.—And finally, that there be excluded from the list the credits de cobre, forced loans, subsidy of war, and all others, the payment of which may be already provided for by law, since all these must be collected under a separate account, in accordance with the different regulations which have been made or may be made.

[Two Rubrics.]

Session of 13th July, 1846.

Present, Señores Segura, Flores and Rozas; and after the approval of the minutes of the 11th, a report was made of the following communications:

First. From His Excellency the Governor of this Department, stating that a report had been asked of the Juzgado of Temascaltepec, and for the present the lands or ejidos which are claimed by that Mining Juzgado should not be disposed of.—Let the same be inserted as the result of his communication.

Second. From the Juzgado of Guanajuato, inserting a proposal made by Dr. Leopold Videt, in relation to leasing the mine of Guadalupe in Clavellinas.—Let the Bureau of Encouragement report.

Third. From the Juzgado of Jesus Maria, forwarding the act of his installation, and a draft for fifteen dollars for the purchase of six copies of the Ordenanzas.—The Junta resolved that the act be presented to the Supreme Government, the draft be collected, and that the circular asked be forwarded.

Fourth. From the Collector in Zacatecas, dated the 7th inst., forwarding a draft for six thousand three hundred and seventy-nine dollars, one real and ten grains, as the products during the last month in that capital, after the deduction of salaries and twenty-five dollars paid to the student Ayala, and another for nineteen dollars; besides two hundred dollars, seven reals, six grains, as the products of Sombrerete.—Let the same be accepted, the proper entries made, and receipt be acknowledged, collecting at once the one from Sombrerete.

Fifth. From the Collector in Chihuahua, forwarding another for seven hundred and forty-eight dollars, six reals, nine grains, the two hundred and ninety dollars, six reals, two grains belonging to Jesus Maria, and the remainder to that capital as the products of the month of May.—Let the draft be accepted, the proper entries made, and receipt acknowledged.

Sixth. Eight communications from Don Josè Zamora in Tasco, dated the 11th inst., forwarding with the first the memorials No. 27.—Received and passed to Controller.—Stating in the second, that during the week there had been worked the three hundred and eighteen quintals of Yxtajal, and that other three hundred and eighteen had been incorporated with four hundred pounds of quicksilver; that one of the works *barrenò en limpio*, and the other narrowed, wherefore the amount of metal extracted was diminished, reducing the labor alone to the metal *de pinta*; the four succeeding ones being accompanied by four drafts numbered from 35 to 38.—Let the same be paid; and stating in the last, that the draft issued in

favor of Don José Maria Rodriguez having miscarried, it should only be paid to that gentleman.

[Two Rubrics.]

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Session of 16th July, 1846.

Present, the Señores Segura, Flores and Rozas; and after the approval of the minutes of the 13th, report was made of the following communications:

First. From the Minister of Justice, dated the 15th, stating that the approbation of the Supreme Government had been obtained of the act installing the Juzgado of Jesus Maria. Let the same be inserted to said Tribunal.

Second. From the Controller of Propios, of the same date, replying to the communication which had been directed to him, asking certificates for the purpose of proving the debt of the Government, stating that some of them did not exist in that office, and that the others, as vouchers of the accounts, could not be separated from the same without permission of the Government; but that in order to comply with the wishes of the Junta, he forwarded a certificate to the effect that there existed in that Contaduria three certificates of twelve hundred and forty dollars, entered in the ancient *Coninaria* of S. Luis Potosi, without stating the year, and finally, that which exists in the accounts of Guadalajara corresponding to the year 1834. Another certificate of four hundred dollars delivered to the said Supreme Government. The Junta resolved, that not being able to use the certificate of the Señor Controller de Propios for the collection of the debts corresponding to the different years, and only stating in one of them the time to which they pertain, the Señor Contador be asked, approving at the same time the disposition manifested by him to comply with the request of the Junta, for copies to be made of both certificates, accompanying the same with certificates that they are copies of the originals remaining on file in that office, since in this way the debt will remain accredited, and in case the Government should deem it necessary to examine the original certificate, it can apply to the said Controller's office. That search shall be made by the Controller of the Junta for the other certificates which was asked of the Controller of Propios, in order to transmit them in the original or in copy to the Supreme Government.

Third. Two from the agent in Guanajuato, dated the 13th inst., the first being accompanied by a draft for four thousand seven hundred and four dollars, one real, six grains, the amount

of the mining duties of that department for the month of June. Let the draft be accepted, the respective entries, made, and receipt acknowledged. The second, acknowledging the receipt of the note in which it was communicated, that some miners had been paid for the silver taken by General Santa Anna in Guanajuato, for which reason they had not satisfied the amount of the mining duties for the month of November, 1844.

A report was read from the office of the Controller, setting forth the account presented by the agent of the Junta, and that he has been for four years Secretary of the same. Resolution of the same suspended.

[Two Rubrics.]

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Session of 20th July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 16th, the following communications were read:

First. From the Sör Director of the Mining College, replying to the recommendation in favor of the son of Señor Zamora, that he be placed in the first vacancy that may occur. Let the same be inserted to Señor Zamora.

Second. From the Commissioner in Durango, accompanying a draft for seven hundred and ninety-five dollars, four reals, the remainder of the products of the mining taxes for the month of June. Let the draft be accepted, the proper entries made, and receipt acknowledged.

Third. From the Assayer of Parral, replying to the demand made of him of the payments which, at the rate of ten dollars per month, should already have been made, and stating that he has already satisfied, of his debt, more than four hundred dollars. Let the Controller report in relation to this point.

Fourth. Six communications from Don José Zamora; the first, dated the 13th inst., sending by the arriero for the quicksilver.—Let it be delivered. The second, being accompanied by the memorials Nos. 28, and the boleta No. 6.—Received and passed to the Controller's office. The third, being accompanied by the account of the house of Srā. Yndaburo. For the office of the Controller, that it may be noted, and to Sör. Zamora, that he may make a fuller report in relation to the other houses. Noticing in the fourth, that three hundred dollars are required for the pay roll—noted; and stating in the two last, that draft No. 39 had been issued for two hundred dollars, and No. 46, for fifty-two dollars.—Let them be paid.

The Controller of the Junta having manifested that the

official communication of the Controller of Propios, accompanying the copies of certificates asked of him, should be returned to him, on account of a mistake which had occurred. The Junta ordered the same to be returned.

[Three Rubrics.]

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Session of 21st July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 20th, report was made of the following communications:

First. From the Office of the Controller of Propios, dated the 15th inst., stating that not being able to forward the original certificate asked of him, he transmitted a certificate, expressing that it was not to be understood as setting forth any right against the public treasury, or that it effect a payment in the offices of the National Hacienda.—The Junta resolved, that the object of asking such certificate, being that of collecting from the Government the amounts which they accredit, it is necessary to apply to the same, representing what has taken place, and that in attention to said certificates, in order that they may serve as notes of proof of said account, which have not been noted up to the present date, the said office of Controller will be required to deliver the said certificates to the Junta, a certified copy of the same remaining for the purpose of noting the same.

Second. From Don Manuel Mariano Cortazar, dated the 14th inst., forwarding the memorials of the mine of Atargea, from No. 5 to 15, corresponding to the work ending on the 11th of the present month. From his reply, it is inferred that the last communication in relation to the suspension of payments from the quicksilver fund has not been received, since he asks that the two last drafts for two hundred dollars be remitted; and finally that he be informed as to the time of the commencement of his salary.—The Junta resolved that the memorials be passed to the office of the Controller, and that the communication be repeated in relation to the suspension of all payments on account of quicksilver by order of the Government, and that the Junta cannot remit to him the drafts he asks for.

Third. From the house of Baring Brothers, London, acknowledging the receipt of draft for one thousand pounds sterling, drawn against them in favor of the Junta, and forwarding correspondence of Dr. Ure in relation to distilling apparatus which they propose to place in Liverpool at an early date at the price of two hundred pounds each—For this purpose it

was resolved to notify the Señor Mayordomo of the College to pay the thousand dollars which were loaned to the College during the last month on account of stock on hand in the house of the Messrs. Baring.

Finally, a report was read from the Controller's office in relation to asking that an account be made out of the amounts owing by the Supreme Government; some documents to Don Lorenzo Carrera, and to the agents in Hermosillo, Guadalajara, Parral, Chihuahua and Guanajuato; and the Junta resolved in conformity.

[Three Rubrics.]

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Session of 22d July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 21st, a report was read from the Bureau of Administration in relation to the debt of Señor Cerraton, and as in said report it is expressed that Senor Bassoco had said that Licenciado Yrayo was a magistrate of Morelia, and that said gentleman had been encharged with the duty of selecting a person how should be encharged with the collection of said debt, the Junta, in view of the Act of the 23d of March of the present year, which is referred to, resolved that it appears in the respective expediente that the Señor Bassoco did not say that Señor Yrayo should be a magistrate of Morelia, but of Queretaro, and that he had not encharged him with seeking a person in Morelia to be commissioned to make said collection, and that lastly, in consideration of the same, the members of the Junta should cause a report to be made as to who might be a suitable person for said business.

In another report from the same Bureau, it is proposed that the Supreme Government be reminded of the petition made to it on the 30th of March, to resolve as to the conduct to be observed by the Junta for the purpose of making effective the recovery of the thirty-four thousand dollars taken by General Santa Anna from the Mint of Guanajuato, and another for the repetition of the official communication of the 7th of February to the Administrator of Rents in Durango, in relation to the payment of the two thousand one hundred and fifty-nine dollars, five reals, which remains as the amount of two endorsed drafts, and the Junta resolved in conformity, adding that having remitted the drafts to the Commissioner through the house of Messrs. Manning & Mackintosh, this gentleman shall be directed to forward the same to the agent for collection.

Finally, an official communication was read from the Minister of Hacienda, dated the 7th inst., in which he communicates

the order of the President in relation to the products of the discount of the one-fourth part of the salary of the employés of the Junta; that the same shall be paid monthly into the respective Departmental Treasury. The Junta resolved that payment be made of the amount of one hundred and seventy-eight dollars, one real, the fourth part of the sum of the salaries of the office, which are paid from the quicksilver fund, discounted during the present month, *pro rata*, to all the employés, which *pro rata* has been adopted with unanimity in relation to all the employés upon principles of equity; it is not to be understood, however, that the payment shall prejudice the rights which every one is considered to have; and, in relation to the College, that the order mentioned by the Señor Director be inserted, advising the Government, the one and the other, through the Minister of Hacienda, and inserting the official communication of the Minister of Justice.

[Three Rubrics.]

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Session of 23d July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the preceding day, report was made of a communication from the Sub Prefectura of Colotlan in the Department of Jalisco, informing the Junta that Don Juan Francisco Cantabrana, President of the Juzgado of Bolaños, having made a pronunciamiento for this reason, and for other crimes of which he is accused, he cannot continue to exercise the functions of President. The Junta resolved that the same be inserted to the Supreme Government.

Second. From the Tribunal of Bolaños, in which the substitute of the President, Don Manuel Velasquez, states that he has taken charge of the Juzgado, the Señor Cantabrana having fled without delivering over the archives or the Expedientes. The Junta resolved that he be answered that his communication had been received, and let the same be inserted to the Supreme Government as the result of the motion of the Sub Prefect of Colotlan.

Third. From the Commissioner in Pachuca, remitting a draft for fourteen hundred and ninety-three dollars, two reals, four grains, the product of the mining tax for the past month. Let the draft be accepted, the respective entries made, and receipt acknowledged.

Fourth. From the agent in San Luis Potosi, accompanied by another draft for thirteen hundred and forty-five dollars and three cents, as the products of the mining duties for the month of June. Same resolution as last.

[Three Rubrics.]

Session of 24th July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the preceding day, the following reports were made:

First. From the office of the Controller, in relation to the last communication from Don Mariano Cataño, in relation to his debt as surety of Doña Ana Sierra, stating, in conclusion, that there may be paid to Cataño two hundred and ninety dollars, and not four hundred and odd dollars, as stated. The Junta resolved that this report be inserted to said Señor Assayer, and that in the meantime that reply be made to him, that he will not only make the payment of ten dollars per month, but as much more as he can on account of the payments which have not been made.

Second. From the Bureau of Administration, in relation to a debt of S. Fagoaga, proposing that the office of Controller proceed to its liquidation. The Junta resolved in conformity.

A communication was read from the Señor Director of the College, accompanied by an official communication from the Governor of Vera Cruz, stating that he has appointed the twelve students for the Mining College, pertaining to the marine corps, in conformity with the decree of the 4th of April of the present year, adverting to the fact that in the college there is no dormitory for their reception. The Junta resolved, that this being the first notice it had received in relation to the said decree, and being ignorant if any of said students have been received, what amount is to be paid to the College, or when the payment is to be made; finally, where the new dormitory is to be made, and that the amount of the expenditure incident thereto be communicated to the President of the Junta, in order that the Señor Director, after having examined the matter may report to the Junta, that it in view of the matter may be able to resolve what may be necessary.

[Three Rubrics.]

Session of 27th July, 1846.

Present, the Señores Segura and Bassoco; and after the approval of the minutes of the 24th, report was made of the following communications:

First. Two from the Minister of Justice, dated the 25th inst., acknowledging the receipt of the official communication, in which it is stated that the President of the Juzgado of Bolaños has been replaced by the substitute provided by law; and in the other communication is transcribed the reply of the Minister

of Hacienda, in relation to the exhibition of the fourth part of the salary of the employés of the Junta. To their Expedientes.

Second. Two from the Señor Director of the Mining College, of the 25th inst.; there being inserted in the first an exposition of the Professor D. Joaquin Velasquez, Don Sebastian Camacho, Don Antonio Castillo, Don José Salazar and Don Blas Balcarcel, in relation to its being declared that they are not comprehended in the decree deducting one-fourth part of the salary of the employés, adding that in his opinion, the petition is founded in justice, since it would be unjust to reduce the salary of some of the professors and not of the others. The Junta resolved that the same be inserted to the Supreme Government through the Minister of Justice, and that the Señor Director be informed of the fact, representing to him the difference between the professors who are paid from the fund dotal, and those that are paid from the quicksilver fund, which are those that are considered as comprehended in the said decree. In the second, it is proposed, in consideration of its being necessary to pay during the coming week a considerable sum for books and apparatus brought by Don Clemente Bourges, for the use of the College and for the Museum, together with the freights amounting to the sum of one thousand five hundred dollars, as appears by the accompanying account of the Señor Mayor-domo, there will be paid the one thousand dollars, placed to his credit in London, deducting five hundred every month from the amount paid to said Mayordomo. The Junta resolved, that reply be made in conformity, making the first payment of the two thousand dollars, from the quicksilver fund, to be anticipated in the coming month.

Third. From the Commissioner of Guanajuato of the 14th inst., remitting receipt for seventy dollars, paid by Señor Robles, in 1846, for the fourth quarter of the forced loan; forwarding also an official communication from the Departmental Treasurer, not being able to duplicate the certificate, as asked, of the two thousand seven hundred and twenty-two dollars, seven reals and nine grains, which Señor Hoffay is sure was remitted with the accounts of March, 1845. And finally, adding, that Señor Robles claims of him the *boletas de Minería* which remained pending during the time that he was Collector. The Junta resolved that the matter be referred to the Controller to report.

Fourth. Four official communications from Señor Zamora, dated the 25th inst., the first accompanied by the Memorials Nos. 29 of the negotiation of Tasco. Let receipt of the same be acknowledged, and let them be passed to the office of the Controller. Stating in the second, that draft No. 41 for the

sum of two hundred dollars had been issued in favor of S. Rafael Solarez. Let the same be paid. Stating in the third, that for the pay-roll of the present week there will be needed two hundred and fifty dollars. Noted. And in the last, giving thanks for the recommendation made by the Junta in favor of his son.—To the Archives.

The Secretary represented, that Don Agustin Font, who had leased the mine of S. Joaquin de Tasco, had written to him on the 21st inst. from Orizaba, to know if the Junta would desire to habilitate the same, since a very good vein (labor) had been encountered, valuable not so much on account of its *ley* as on account of the abundance of the mineral.—The Junta resolved, that not having funds for this class of habilitations, he should be answered to that effect, but reminding him at the same time that until the mine should be supplied he should continue in possession of the same to avoid denouncement.

[Three Rubrics,]

Session of 28th July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the preceding day, a communication was read from the Mining Tribunal of Temascáltepec, announcing, that it being understood that in the report of the Señor Prefect it was proposed to set forth the facts in support of his complaint, offering to forward the proofs.—The Junta resolved, that he be replied to, that his communication has been received, and that the Junta awaits the offered proofs.

A report was read from the office of the Controller, containing the liquidation of the debt of Señor Fagoaga, which remains reduced to two thousand eight hundred and ten dollars, six reals and ten grains. The Junta commissioned Señor Segura to examine the accounts presented by Señor Fagoaga, and, in view of the same, to report what will be proper in the premises.

[Three Rubrics,]

Session of 30th July, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 28th, a communication was read from the Collector of Pachuca, representing that not having received the receipt of the accounts which were forwarded on the 7th inst., he asked to be informed if they had miscarried. Let the Secretary report.

The two following reports were read from the Controller's office: *First.* In relation to the mistake adverted to in the power of attorney given by the heirs of Don José Amares, in which the name "*Berroete*" is written instead of "*Berroecos.*" The Junta resolved, that in consideration of the honorable character of Señor Berroecos, he should continue to be recognized as the attorney of said heirs; but that he should be officially notified that within six months he should explain the mistake of the word *Berroete* in place of *Berroecos.* *Second.* In relation to the last reply of the agent in Guanajuato with respect to the account of Señor Robles. The Junta resolved in conformity.

[Three Rubrics.]

MONTH OF AUGUST, 1846.

Session of the 3d.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 30th, report was made of the following communications:

First. From the Mining Juzgado of Augangueco, asking the advice of the Junta as to what is to be done in consideration of the rejection of the President, and to which rejection the President refuses to submit. The Junta resolved that application should be made to the Judge of the Partida, consulting with the same in accordance with the laws establishing the Juzgados, and applying to the Departmental Government, if it should be necessary, for the enforcement of its acts.

Second. From Diego José Perez Fernandez, dated the 2d instant, stating that, when he received his salary, he would make the payment for the present month.

Third. From the Commissioner in Culiacan, forwarding two drafts, one for one hundred and twenty-eight dollars, two reals, as the mining products of Cosalá during the month of May, and another for thirty-seven dollars seventy-nine cents for those of Mazatlan during the same month.

Fourth. From the agent in Guanajuato, offering in place of the certificate which was asked, to send a testimonio of the protest made by Señor Hoffay at that time.—To the office of the Controller.

Fifth. Seven communications from Don José Zamora, the first of the 27th ultimo, stating that the Arriero had not brought more than four and a half quintals of quicksilver, one and a half quintals remaining in the house where it was purchased, which should be remitted. With the second, forwarding the

memorials number thirty, and the statement and balance-sheet number seven of the negotiation. Received and passed to the office of the Controller. In the third it is asked that there shall be sent six varas of cloth, if it should be one-third of a vara in width, and three varas if it should be double that in width, which are required for the water-wheel, and stating that the mine promises well, and that for the pay-roll of the coming week there is needed three hundred dollars. Noted, and reply made that the cloth will be procured. In the fourth, it is stated that the invaders of Yguala had been repulsed and tranquillity established. Noted. In the fifth, forwarding an enlarged report in relation to the houses forming that negotiation. Let the Bureau of Encouragement report; and forwarding, with the last two, drafts numbers forty-two and forty-three, for the sums of one hundred and fifty dollars and two hundred dollars. Finally, there was read a petition from Doña Maria Ygnacia Barron, asking that there may be returned to her the discounts made from Monte Pio to her deceased husband, Don Fernando Tamayo. Let the Bureau of Encouragement report.

[Three Rubrics.]

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Session of 7th August, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 3d the following communications were read:

First. From the Minister of Justice, of the 5th instant, authorizing the Junta to do what it should think best in relation to the denouncement and proposed leasing of the mine of Clavellinas. The Junta resolved that the same be inserted to the Juzgado of Guanajuato.

Second. From the Collector of the Mining Taxes in Mexico, forwarding a thousand and five dollars and three reals, being the sum collected during last month, including twenty-five dollars, three reals, nine grains, for pay to Don Manuel Lebrija. Received and passed to the Controller's office.

Third. From Don Eduardo Schleiden, accompanying a copy of a petition directed to His Excellency the Governor of the Department of Michoacan, against the President of the Juzgado of Augangueo, who having been rejected, not only refused to admit the rejection, but has proceeded in the business by citing the parties, and by calling the Cōlegas associated with the two Suplentes.—The Junta resolved, that His Excellency the Governor of Michoacan be asked, that having caused the necessary investigation to be made in the matter, he may

require that tribunal to administer prompt and exact justice in all matters pertaining to its jurisdiction.

Fourth. A report was read from the Controller, giving it as his opinion, that the certificate mentioned by Don Fernando Pohls in his official communication of the 31st ultimo, might be asked of the Mint in Guanajuato, under the supposition that the Señor Administrator of Rents in that place could not forward it. The Junta resolved in conformity.

[Three Rubrics.]

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Session of 10th August, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 7th, report was made of the following communications:

First. From the Collector in Zimapan, forwarding a draft for two hundred and thirty-seven dollars, one grain, as the product of the mining taxes for the month of July. Let the draft be accepted and collected, the proper entries made, and receipt thereof acknowledged.

Second. Four communications from Don José Zamora, of the 8th instant; the first accompanied by Memorial number 31, and the boleta of beneficio No. 7.—Received and passed to the office of Controller; stating, in the second, that the last ores reduced have given a ley of almost 70 marcos to the 100 quintals; he represents the necessity that there shall be sent six more quintals of quicksilver, and that in the present week there will be reduced a lot of 300 quintals. The Junta resolved, that reply be made that on the 21st the Arriero may come for the quicksilver. In the 3d and 4th, he states that draft No. 44, has been issued for two hundred and seventy-eight dollars, and No. 45, for fifty dollars.—Let them be paid.

The chief official having read a decree of the Departmental Assembly of Chihuahua, of the 10th ultimo, appropriating for the military services of that department the product of the mining taxes, the Junta resolved, that his Excellency the Governor of that Department be notified in relation to the mistake into which that Assembly has fallen in supposing that this fund pertains to the public revenues, and forwarding him a copy of the exposition made to the Government on the 10th of January of the year last past, in relation to similar action by the Assembly of Guanajuato, and the order made in consequence by the Supreme Government, with the consent of the Council, in relation to the annulling of said order.

It was also resolved, that an official communication be sent to Don Antonio Castillo, urging the conclusion of the mining map which was to have been delivered some time since, and that in the mean time, he should return the one that had been loaned to him by Señor Segura.

[Three Rubrics.]

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Session of 13th August, 1846.

Present, the Señores Flores, Segura and Bassoco; and after the approval of the minutes of the 10th, report was made of the following communications:

First. From the Juzgado of Guanajuato, stating that he had transferred to Señor Arreguin, all the communications of the Junta, and inserting a copy of the reply of said gentleman. The Tribunal, not knowing what to do, has passed the matter to the Assessor. The Junta resolved, that the Bureau of Encouragement report, and that Doctor Vidal be informed that the Junta is ready to cede in his favor all the rights that it has in the mine of Clavellinas, provided, that he pay the expenses that may be necessary in the suit mentioned by Señor Arreguin, with the understanding that the amount of the same shall be deducted from the third part of profits made.

Second. From the General Direction of Industry of the 10th, acknowledging the receipt of a draft for one hundred and twenty-nine dollars, ninety-four cents, returned by the Custom-House of Vera Cruz. To its Expediente.

Third. From the agent in Durango, forwarding five hundred and fifty dollars, three reals and one grain, the product of the mining taxes during the month of July.—Let the draft be accepted, the proper entries made, and receipt acknowledged.

Fourth. From the agent in Culiacan, forwarding two drafts, one for seven hundred and thirty dollars, five-eighths of a real, as the products of the mining taxes in Alamos, in the month of May, and another for four hundred and fifty-four dollars, three and a half reals, as the product of the mining tax during the month of June.—Let the drafts be accepted, the proper entries made, and the receipt acknowledged.

Fifth. Three other communications from the same, accompanied by three drafts, one for two hundred and twenty-two dollars, five-eighths of a real, as the product of the mining taxes in Culiacan, during the month of June; another, for one hundred and fifty-two dollars, ninety cents, as the product of the mining taxes in Mazatlan, during the month of June; and the last for forty-six dollars, five reals, as the product of the mining

taxes in Cosalá, during the same month.—Let the drafts be accepted, the proper entries made, and the receipt acknowledged.

Sixth. There was read the account of the receipts during the month of July for the rents of the rooms of the College.—To the Office of the Controller.

Finally. There was read a petition from Don José Maria Artega, asking to be appointed to the clerkship, the duties of which had been discharged by Don Manuel Garcia Romero.—The Junta resolved that the matter be reserved for consideration.

An official communication was read from the sub-Junta of San Juan de la Chica, representing that the Junta of San Juan de la Chica had resolved to ask the shareholders to make the second dividend on the twenty-second.

[Three Rubrics.]

Session of 17th August, 1846.

Present, the Señores Flores, Segura and Bassoco. After the approval of the minutes of the 13th, report was made of the following communications :

First. A communication dated the 14th instant, in Pachuca, forwarding a draft for fourteen hundred and seventy-five dollars, six rials.—The Junta resolved that the draft be accepted, the proper entries made, and the receipt acknowledged.

Second. From the Collector in Zacatecas, of the 10th instant, forwarding two drafts, one for six thousand three hundred and twenty-three dollars, one and a half grains, as the products of that district during the month of July ; another for one hundred and fifty-three dollars, four rials, as the products of Sombrerete during the month of July.—Let the draft for six thousand three hundred and twenty-three dollars, one and a half grains, be accepted, and let the draft for one hundred and fifty-three dollars, four rials, be accepted and collected, and receipt of the same acknowledged.

Third. From the Commissioner in Guanajuato of the 14th, accompanying a draft for six thousand one hundred and thirty-nine dollars, five rials, one grain.—Let the draft be accepted, the proper entries made, and the receipt acknowledged ; reporting to the office of the Controller in relation to the introduction of silver, upon which no duties have been paid.

Fourth. From the Commissioner of Chihuahua of the 18th July, forwarding a draft for three hundred and forty-five dollars, one rial, as the products of the mining tax during the

month of July, in Chihuahua and Jesus Maria.—Let the draft be accepted, the proper entries made, and the receipt acknowledged.

Four communications from Don José Zamora, dated the 15th, the first being accompanied by the Memorials number 32.—Received and passed to the Controller.—Acknowledging in the second the receipt of the remaining six quintals of quicksilver, which had been sent him, and stating that he had drawn drafts No. 46 and 47, each for one hundred and fifty dollars.

[Three Rubrics.]

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Session of 19th August, 1846.

Present, the Señores Segura, Flores and Bassoco; and the Señores Licenciados, Don Arcadio Villaloea and Don Francisco Gomez, as representatives of the partners of the Junta in the mine of Trinidad de Tasco, and the Licenciado Cástulo Barreda, as the representative of Don José Maria Madariaga, in the matter of the denouncement of the mine called "El Socabon de San Juan."

This last gentleman represented that he had moved the Junta to summon the partners, in order that they might take measures for the defense of their just rights against the spoliation attempted to be made upon their property, which recourse will be beneficial in proportion as the proof is full and complete. The Señor President represented that the Junta was ready to continue defraying the expenses of this appeal, charging the same to the account against the partners for supplies.

Señor Gomez said that in this view of the case, he saw no difficulty in sustaining the rights to the Socabon of San Juan.

The Señor Villaloea indicated that the appeal under consideration did not appear to him to be proper, because on his part at least, he had no new proofs to add to those which had been expressed by Señor Barreda, in the defense of the rights of the Junta, in which they had agreed, and that he did not think it necessary to take this step, with no other object than to delay the matter.

Señor Barreda insisted, that for the same reason, in order to amplify and corroborate the proof, it would be necessary to take this course, that it should be resolved at once that they should avail themselves of it in the manner indicated, which was agreed to unanimously; finally, Señor Barreda asking, and the Junta agreeing, that a copy should be made of this act, for such purposes as might be convenient.

Furthermore, report was made upon a communication from

Messrs. Manning and Mackintosh, dated the 18th inst., accompanied by indorsed bills of exchange Nos. 95 and 100 of the 20th of November, 1844, and the 4th of January, 1845, against the Administrator of Rents in Durango; the first being for the sum of five hundred and seven dollars, two reals, and three grains; and the second for one thousand and twenty dollars, seven reals; which were passed to the Controller for his report.

The account of Don Celso Muñoz was presented for his services in making examination, and drawing a plan of the mine of Trinidad. The Junta resolved that they be passed to Don José Zamora, for his report.

[Three Rubrics.]

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Session of 19th August, 1846.

Present, the Señores Segura, Flores and Bassoco, and the Señores Licenciados, Don Arcadio Villaloea and Don Francisco Gomez, as representatives of the partners of the Junta, in the mine of Trinidad de Tasco, and the Licenciado Cástulo Barreda, as the representative of Don José Maria Madariaga, in the matter of the denouncement of the mine called "El Socabon de San Juan."

This last gentleman represented that he had moved the Junta to summon the partners, in order that they might take measures for the defense of their just rights against the spoliation attempted to be made upon their property, which recourse will be beneficial in proportion as the proof is full and complete. The Señor President represented that the Junta was ready to continue defraying the expenses of this appeal, charging the same to the account against the partners for supplies.

The Licenciado Barreda made a review of all the steps and proceedings from the time of the denouncement in July, 1842, up to the time when the matter was found in condition to be restored for forty days to the conclusion of the proof; he explained the reasons upon which the opposition to the denouncement was founded, which are the same as appears in the writings which were found in the acts; the design of the articles is to obtain an extension of time for proof; he spoke also of the condition of the appeal interposed, in which the partners were excluded from a hearing.

The Señor Gomez said that there was no difficulty in consideration of the merits made use of in the business, in sustaining on his part the rights of the Socabon de San Juan. The Señor Villaloea explained, that it did not appear to him necessary to have recourse to arbitration, since on his part, at least,

he would have nothing to allege in relation to what had been set forth by the patron of the Junta; nor had he any other proofs save those which had been set forth by him in defense of the common rights in the Socabon de San Juan.

Señor Gomez having adhered to the opinion expressed by Señor Villaloa, the Licenciado Barreda asked that a certificate should be given him, that the partners had approved, as they had indicated, the administrative conduct of the Junta, and the measures taken in relation to the defense of the Socabon of S. Juan, to the end, that by this certificate the point under consideration may be concluded, which is not judged necessary.—It was resolved by the gentlemen present in conformity.

The Licenciado Barreda further explained, if in order to enlarge or corroborate the proofs, it was considered necessary to have an arbitration, that it should be resolved to interpose the same as soon as that necessity was manifested by the gentlemen interested and the Junta.—They also agreed unanimously upon this point.

It was also resolved, on the motion of the Licenciado Barreda, that as soon as the proof should be concluded, he should give his definitive opinion in relation to the matter, and his views in relation to the final writing for the objects which may be interesting to all.

It was finally resolved, that a copy of this Act be given to the Licenciado Barreda, whereupon the Junta was concluded.

[Three Rubrics.]

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Session of 20th August, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 19th, report was made of the following communications:

First. Two of the 17th, the first from the Excellent Señor Louis Chavarri, stating that he had delivered up the Government of the Department; and the second, from the Excellent Señor Don José Gomez de Cortina, stating that he had taken charge of the same.—Let reply be made that they have been received with satisfaction.

Second. From the Direction General of Industry of the 19th inst., returning endorsed draft No. 884, for one hundred and twenty-two dollars, twenty-five cents, and the account of the expenses of protest, in order that they may be returned to Maritime Custom-House of Vera Cruz. The Junta resolved that they be inserted to the administrator.

Fourth. From the Señores Manning and Mackintosh, dated the 18th inst., accompanied by a decree of the Assembly of Chihuahua, applying the products of the mining duties to military purposes. The Junta resolved that reply be made to the Assembly, that already it had applied to the Superior Government of that Department, and that the same should be said to the agent in Chihuahua.—The Junta resolved, that the proper entries should be made in the protocol in relation to the death of Señor Garcia Romero by Don Ramon de la Cueva, National and Public Notary.

[Three Rubrics.]

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Session of 21st August, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 20th, report was made of an official communication from his Excellency, the Governor of Michoacan, dated the 17th, replying to the Junta, that he had already made the necessary orders in relation to the matter of Señor Schleiden.—Let the same be inserted to the interested party.

Second. From the agent in S. Luis Potosi, accompanied by a draft for two thousand nine hundred and ninety-seven dollars, seven reals, six grains, as the mining products during the last month.—Let the draft be accepted, the proper entries made, and receipt acknowledged.

Third. From the Commissioner in Culiacan, accompanied by a draft for one hundred and eighty dollars and one real, as the products during the month of May. Let the draft be accepted and collected, the proper entries made, and receipt of the same acknowledged.

A proposal of Don Manuel Mariano Cortazar was read, in relation to the purchase of the metals and tools on hand in Atargea, for the sum of eleven hundred dollars.—The Junta resolved, that the proposition could not be received, and that a person should be appointed to take charge of said stock.—In accordance with the report of the Contrroller, ordered that the sum of two hundred and ninety-two dollars be paid to said gentleman, the amount unsettled for the eighteen weeks of amparo (protection) in Atargea, there only remaining unsettled the account of the last week, to be remitted, together with the amount due for taking care of the mine at the rate of six dollars a week from the date when the working of the same was discontinued.

[Three Rubrics.]

Session of 24th August, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 21st, report was made of the following communications:

First. From the Mining Juzgado of Augangueo, representing, that in view of the opinion of the Assessor, it was hoped that the honor of the Tribunal, which had lately suffered, would be re-established.—Let reply be made that the communication has been received with satisfaction.

Second. From the Administration of Revenues of Zacatecas, dated the 18th inst., informing the Junta that it has, subject to the orders of the same, the sum of twelve dollars, seven rials, paid by the Administrator of Villanueva, as the amount owing by him on account of the one per cent. for the exportation of coin.—Let the said amount be delivered to the Commissioner in that city who will remit the same in a separate draft, so that the funds be not mixed.

Third. From the Commissioner in Guanajuato, forwarding the certificate which had been asked from the mint in that place.—To the office of the Controller.

Fourth. From Señor Don Mariano Monterde, accompanied by a document in reply to the observations made on his account.—To the Office of the Controller.

The contract entered into with Don Manuel Mariano Cortazar, for the purchase of the stock and minerals on hand at the mine of Guadalupe in Atargea, was read and signed.—Resolved, that Sör. Don Diego Moreno be reminded of the matter of the pearls.

[Three Rubrics.]

Session of 25th August, 1846.

Present, the Señores Segura, Flores and Bassoco; the minutes of the preceding day were read and approved.

An official communication was read from the agent in Tasco, Don Miguel Quiñones, dated the 21st inst., in relation to the payment of four hundred and fifty dollars, the costs in the case of San Juan due to the mining Tribunal; resolved, that the original account, or a copy thereof, be forwarded, reporting what may be necessary in relation to the same.

Drafts Nos. 48 and 49, for one hundred and for three hundred dollars, drawn by the agent in Tasco, dated the 22d inst., were ordered to be paid, and also that the proper entry be made.

It was ordered to acknowledge the receipt of the *memoria* of

the mine and of the Hacienda, numbered 33, and of the boleta No. 8, and that they be forwarded to the Office of the Controller for the necessary ends.

It was also resolved, to reply to the note in which the agent advises that there have been washed during the week a lot of three hundred quintals, and that there remain incorporated with six hundred pounds of quicksilver, other two of three hundred each, and that for the pay-roll of the coming week, there will be needed three hundred dollars.

[Three Rubrics.]

MONTH OF SEPTEMBER, 1846.

Session of the 3d.

Present, the Señores Segura, Flores and Bassoco. An official communication was read from Don José Mariano Cataño, dated the 17th ultimo, asking that there be paid the two hundred and forty-five dollars, five and a half grains, which he gave to Don Juan Arguelles, and the one hundred and thirty-three which were delivered to the Señores Lujan and Mackintosh, as shown by the accompanying vouchers.—Resolved, that the Controller report.—Ordered, that after the proper entries are made, there be paid the account of three hundred and twenty-two dollars, presented by Don Celso Muñoz, and remitted by Don Zamora of Tasco, with his official communication of the 28th ult. for services rendered in making examinations, measurements, and drawing plan of the mines of Trinidad and Socabon de S. Juan, for which purpose he was appointed by Don Miguel Quiñones.

Report was made of three official communications from the agent in Culiacan, Don Tomas Mackintosh, dated the 15th of August ultimo, with which are remitted three drafts numbered from 99 to 101, for the sum of one thousand two hundred and thirty-four dollars, twenty-seven cents and three quarters, as the product of the mining duties during the month of July last, in Cosalá, Mazatlan and Alamos.—Let the drafts be accepted, the proper entries made, numbers 100 and 101 collected, and receipt thereof acknowledged.

The account presented by the Treasury, showing the amount collected for the rent of rooms in the college for the month of August last, was ordered to be passed to the Controller.

It was also ordered that there be transcribed with a recommendation to the Direction of the Tabaco and other *rentas estancadas*, an official communication of the President of the Mining Juzgado of Augaguco, dated the 28th of August last,

in which he states that there is no powder in that mineral district, and representing the serious prejudices resulting from the want of this article.

[Three Rubrics.]

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Session of 7th September, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 3d, report was made of the following communications:

First. From the Governor of Chihuahua, again asking for nine copies of Ordinances for those Juzgados. The Junta resolved, that the resolution of this matter be suspended until it should be known whether or not said tribunal still existed in said State.

Second. From His Excellency the Señor Director of the College, dated the 6th, accompanied by the two first thirds of the present year.—To the office of the Controller.

Third. From Don Eugenio Bermejillo in Morelia, of the second of September, accompanied by an inventory of the accounts of the administrator, Don Joaquin Caballero.—Let the Controller report.

Fourth. From the Commissioner in Zimapan, of the 1st inst., remitting a draft for one hundred and fifty-five dollars five reals, as the products of the mining duties during the month of August.—Let the draft be accepted and collected, the proper entries made, and receipt thereof acknowledged.

Fifth. From Don José Joaquin de Guergue, in Oajaca, dated the 24th ult., accompanied by a copy of the document presented to that tribunal by the miner Don José Contreras, as to whether or not gold and silver are subject to confiscation in certain cases designated by the "*panta*."—Let the Bureau of Encouragement report.

Sixth. Six communications from Don José Zamora, dated the 5th inst., the first accompanied by *memorias* No. 35, and the statements and balance sheet No. 8, of the negotiation of Tasco.—Received and passed to Controller. Stating in the second, that he had remitted with the arriero Luna, six barras of silver, weighing 814 marcs 4 ounces, which will be in Mexico on Thursday or Friday; that there is nothing new in relation to the works, the ores recently extracted being equal to those which have yielded a ley of 70 marcs; and finally, for the pay roll of the present week, there are nearly three hundred dollars wanted.—Entered. The three following ones accompanied by drafts, Nos. 52, 53 and 54, the first and last for one hundred dollars each, and the second for two hundred.—Let them be paid.

And representing lastly, in a private letter to Señor Segura the injustice with which Señor Madariaga had calumniated him, proving that he had complied with the ordinance, with the rayador, captain of barros and other dependants, and lastly, that in title 9, might be found the defense of Trinidad.—The Junta resolved, that reply should be made to him, that it was satisfied in relation to his honor, and that his references should be remembered in case a denouncement should be made.

It was resolved to send an official communication to the Supreme Government, representing that notwithstanding the order providing for the suspension of all payments, comprehended the payment of the dividends corresponding to the share that it had in the quicksilver mine of San Juan de la Chica, it was under the necessity of asking that said order be annulled on this point, since by means of a writing, the Junta would be judicially obliged to make good its promises, and if its payments were not opportunely made, it would be compelled to lose the whole amount invested in the enterprise, up to the present date, wherefore the Junta proposed that the unsettled dividend should be satisfied from the amount of the revenue yielded by the twenty thousand dollars belonging to the Department of Jalisco, for the encouragement of quicksilver mining, and which was taken as a loan by the previous administration.

[Three Rubrics.]

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Session of 10th September, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 7th, the Secretary represented that not knowing whether or not Don Joaquin Lebrija had obtained any employment, that he had not commenced to make any payments on his debt; and that besides to the demands made upon Señor Olascoaga, for the fifty dollars, which as the security of Lebrija he should have paid, the said gentleman has not replied. The Junta resolved, that an investigation be made to see if Señor Lebrija has obtained employment, and that Señor Olascoaga be again reminded in relation to the matter, delivering the communication to Señor Bassoco.

It was also resolved, that Señor José Diego Perez y Fernandez be advised, that in view of the letter of the 2d ultimo, the Junta expects that he will immediately remit the amount due the past month, together with that due this month.

It was also resolved, that the Supreme Government be officially advised in relation to what had been set forth in the Expediente, touching the indorsements on drafts from the

Administrator de Rentas of Durango, in order that the Supreme Government may determine what is necessary.

A petition was read from Don José Antonio Nieto, asking that there be sold to him at cost, one of the apparatuses of Dr. Ure, which the Junta had purchased, to be placed in Guadalcázar; the Junta acceded to the petition, directing inquiry to be made of Señor Nieto, if it would be convenient for him to receive the apparatus in Havana. The Junta resolved, that an official communication be sent to the Supreme Government, giving thanks to the same for the decree declaring free the manufacture of gunpowder.

[Three Rubrics.]

Session of 17th September, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 10th, with a few corrections, report was made of the following communications:

First. From his Excellency the Governor of Chihuahua, dated the 1st instant, acknowledging the receipt of a letter directed to his predecessor, stating that the mining fund not being a departmental revenue, the Junta could not consent that it should be used by the department.

The said Governor stated, that having referred the matter to said corporation (Departmental Assembly) he would inform the Junta as soon as the matter was determined by the same. To its Expediente.

Second. From his Excellency the Governor of the State of Mexico, giving notice that he had removed his residence to the City of Toluca.

Third. From the Commissioner of San Luis Potosi, dated the 12th instant, accompanied by a draft for two hundred and fifty-two dollars and fifty-seven cents, as the product of the mining duties during the month of August. Let the draft be accepted and collected, the proper entries made, and the receipt thereof acknowledged.

Fourth. Two communications from Don José Zamora of the 12th instant, stating in the first, that the amount of mineral extracted in Trinidad in the preceding week, reached 54 cargas; stating that the same mine had been denounced by Don José Maria Madariaga, and that there had been washed during the preceding week, 300 quintals of mineral, 350 remaining in *salmuerados*, and that lastly, three hundred and fifty dollars were needed for the pay-roll.

With the second, accompanying the memorias No. 36, and

the boleta No. 10, of that negotiation.—Received and passed to the Controller. In a private letter he insists that the visit he has asked may be made.

The Junta resolved, that not considering said visit necessary, the expenses necessary for the same will not be incurred, thanking him for the notices that he has given, and desiring him to continue his communications.

Fifth. From Don Miguel Quiñones, forwarding the account of expenses presented by the Secretary of the Tribunal of Tasco, asking that the same be paid, as also that of Don Celso Muñoz.—The Junta resolved that the last be paid to Señor Zamora, returning the first to Señor Quiñones, for the reason that he himself says there are some reductions to be made from the same, and that said document cannot serve as a voucher in the office of the Chief Controller, reminding him that it cannot be paid until it is made out exactly, and that the other entries be made in another account.

[Three Rubrics.]

—
Session of 18th September, 1846.

Present, the Señores Flores, Segura and Bassoco ; and after the approval of the minutes of the 17th, two reports were read from the Controller in relation to the debt of Señor Cataño.—On the first the Junta resolved in conformity, ordering the documents to be returned to him, which do not sufficiently prove the delivery of the sums set forth ; that those that pertain to the amounts that are believed to be payable by the Controller remain in his office, and that the decision be inserted to Señor Cataño. On the second it was resolved that an official communication be sent to the agent in Parral, inserting to him the report, and instructing him in such a manner as that he may at once be able to make the collection.

Another decision was read of the same Controller, in relation to the last reply of Senor Monterde, late agent in Chihuahua. The Junta resolved that said gentleman be asked to visit this office, when he will be informed of the said decision, and all other matters that may be necessary for the termination of the matter.

Report was made of the following communications :

First. From the Mining Juzgado of Anganguco, of the 11th inst., praying that the Government may be asked to declare official correspondence free. The Junta resolved, that reply be made, that the freedom of the correspondence of the Juzgado has been already solicited, and the Supreme Government has not thought proper to grant it.

Second. From Don José Antonio Nieto, accompanied by a letter from Señor Barreta, giving information of the prosperous condition of the works of Guadalcazar, and also of the want of durability of the iron retorts furnished by Señor Tobin, to the end that the necessary precautions may be taken in relation to the apparatus of Dr. Ure. The Junta represented to Sōr. Nieto, that in all probability said apparatus was already on its way, and consequently, it is indispensable that he should determine at once, whether or not he will take said apparatus, and requested that he would reply by return of mail.

[Three Rubrics.]

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Session of 21st September, 1846.

Present, Señores Segura, Flores and Bassoco ; and after having approved the minutes of the session of the 18th, report was made of the following communications:

First. From the Ministry of Relations, dated 19th, transcribing the Official letter of the Ministry of Finance, in which, according to the indications of the Junta, it informs that the Supreme Government has ordered that the assets on hand belonging to the quicksilver fund continue to be used as had been ordered in the advancement of the College, and asking as a loan from the dotal fund the sum of twenty-five thousand dollars.

Señores Bassoco and Flores were of opinion that it ought to be represented to the Government, that while the Junta acknowledges the urgent necessity that all should contribute to the national defense as far as possible, nevertheless, considering the origin and actual condition of the dotal fund, the Junta does not consider itself invested with sufficient authority from its constituents to employ it in any other object than those which are designated by law ; and after an attentive discussion it was so resolved, notwithstanding the remarks made by Señor Segura, who reserved his vote, and gave in a protest which he desired should appear in the minutes, and which he said he should transmit to the Ministry, together with the reply which it was resolved should be sent.

The Junta resolved, in regard to the first, that said protest be inserted in the minutes ; and with respect to the second, that Señor Segura, as a member of the Junta, might transmit the communications which he thought proper, but that the Junta could not authorize he might make protests against the resolutions of the majority. Consequently, the protest treated of is the following :—The undersigned, though with regret, is under

the necessity of protesting that his opinion differs from that of his worthy colleagues. His opinion is, that in the present penury and afflicting condition of the public treasury, the Supreme Government ought to be furnished with the loan of twenty-five thousand dollars, solicited for the dotal fund, the property of the miners; that there being not this amount on hand, there be remitted to the Treasury what there is, and the balance to complete said loan from the first moneys the Junta can dispose of; that he considers it unnecessary, before obeying the order of the Supreme Government, to make to it those very proper observations which operate in favor of the same fund, and of the interests of the Government itself, because, in the wisdom of the Government, the reasons have been weighed, and the balance inclined towards the public weal, when, by the most unjust war, is endangered the most precious of our possessions—the National Independence—have caused it to dictate an order which should be promptly obeyed, with the reservation of manifesting, after having obeyed it, what may be proper. This is his vote, which he desires may be registered in the minutes of the day, and also that the distribution, which is being made, be suspended, so that the money may be dedicated to the loan solicited; and that should such distribution be carried out, it will be understood that he also reserves his vote in said resolution.

Report was then made of an Official communication from the Tribunal of Guanajuato, in which is inserted the petition of Don Ignacio Porter, as one of the persons interested in the sale of the mine of Toro, praying that he be paid three hundred and fifty dollars balance due to him.—The Junta resolved that the Bureau of Encouragement report.

Another from Don Fernando Pohls, dated 18th, with a draft for four thousand nine hundred and fifty dollars, seven rials, one grain, for proceeds of mining dues in the month of August.—Let the drafts be accepted, the proper entries made, and the receipt acknowledged.

From the Commissioner of Pachuca, dated 19th, remitting draft for one thousand five hundred and fifty-nine dollars, one rial, for nett proceeds of mining dues in the past month.—Same resolution as the foregoing.

Finally, another of date 16th inst. from the Commissioner at San Luis, transmitting the account and statement of the weight of bars for the last quarter.—Resolved, to pass it to the Controller's Office.

It was resolved, that there should be recorded in the minutes, as the opinion of Señores Flores and Bassoco, the Official letter which was directed to the Supreme Government, which is as follows:

This Junta received yesterday, Sunday the 20th, the official communication which your Excellency is pleased to address to it of date 19th inst., transcribing that of His Excellency the Minister of Finance of the same date, in which the Junta is informed that His Excellency the General-in-Chief, in exercise of the Supreme Executive power, had thought proper to decree, in view of the Official note of date the 12th, that there be given to the fund established for the Encouragement of Quicksilver Mines the destination to which it is directed in favor of public instruction, but that the great penury of the Treasury being so notorious and pressing, the Supreme Government requires, that from the dotal fund a loan be made to it of twenty-five thousand dollars, in the understanding that the payment of the same shall be decreed as soon as possible,

For nothing in the world would the Junta have it thought, for one moment, that it is indifferent to the urgent necessity that all those who appreciate the Mexican Nationality should hasten to assist in its defense in the manner in which each is able, but it also believes that it would betray the confidence which the miners and creditors of the dotal fund placed in its agents, and that it would even make itself unworthy of the respect of the Supreme Government itself, should it not make the remarks which it proceeds to make.

The dotal fund consists of the payment of one rial per mark of eleven pennyweights, and by legal authority this contribution was levied by the mining body on itself for its establishment; and as property belonging exclusively to said body, according to the provisions of the decree, it has administered it through its representatives with entire separation from the public revenues of the State. Under these guaranties, it has solicited and obtained from various persons loans of large sums of money on irregular deposit, with mortgage of the same fund, and these owing at these dates, on capitals or principal sums, upwards of eighteen years of interest. This is what constitutes the debt of the body, and it thus results that the attorney of the creditors is one of the members of the Junta.

This very slight explanation, in our own opinion, is sufficient to prove that the dotal fund is private property, and in this position to be dealt with and taxed like others, without there appearing any reason why it should be subject to any other exactions; and the Government, consequent to these principles, even although it has been comprehended in some contributions, has not exacted any sum from it since 1842, notwithstanding that during the same period it has taken various sums, making in all a large amount, from the Quicksilver fund, which from its nature is national and public property.

Notwithstanding the incolumity of the dotal fund during this time, and the endeavors by which the Junta has procured the improvement of its administration, having established amendments of much importance, the exactions from its funds on former occasions were of such transcendancy and pernicious influence that it has not been able to recover from the discouragement and prostration to which it was reduced by them.

The mortgage is valid, the administration upright and very economical, but, nevertheless, the value of the credits fell excessively, and this evil has been entirely owing to the cause we have pointed out.

This consideration is what moves the Junta to propose to your Excellency, that the persons and corporations who have capital invested in the funds, may be taxed with other contributions or exactions rather than on their investments here; it being plain, that besides a withdrawal of a portion of these, they would have to experience in future the fatal result of a still greater decline in the value of their credits than that already suffered. The attorneys of the mines and creditors have certainly no other authority over the dotal fund in virtue of the laws for the establishment of this body, than to administer the same, and to apply it to the objects which those laws designate; and none of the parties will consider that their agents have fulfilled their duty, did they not present these observations to an enlightened administration like the present. The Junta therefore reiterates, that only the desire of thoroughly fulfilling its duty compels it to express its sentiments in the manner set forth; in other respects, as private individuals, they have contributed, and are disposed to do in the present critical circumstances, whatever the condition of their affairs will allow them. The Junta protests to your Excellency the security of its distinguished consideration and respect.

[Three Rubrics.]

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Session of 22d September, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 21st, report was made of the following communications from Don José Zamora, of the 19th inst.

First. Accompanying the memorials No. 37, and the *boleta de beneficio* No. 11.—Received and passed to Contrroller.

Second. Stating that the amount of metal extracted is increasing; that the labors of the Socabon had been suspended for the want of blasting powder—there being none in that jurisdiction, and desiring it to be asked, if it can be forwarded from the

capital, and finally, that for the pay roll of the coming week, four hundred and fifty dollars will be needed.—Understood, and ordered that inquiry be made of the administration if there is mining powder on hand, and at what price the mine of Trinidad can be supplied.

Third. Forwarding a report of a visit made by the Tribunal of Tasco, on the 10th of February, to the mine of Trinidad.—Let information be given to the Señor Licenciado Barreda.

Fourth. Acknowledging the receipt of six quintals of quick-silver recently forwarded, and asking account for same.—Let the same be forwarded.

The others stating, finally, that three drafts had been issued as follows: No. 54, for seventy dollars, in favor of Don Antonio Herrera; 56, for three hundred dollars, in favor of Don Leonardo Maldonado, and No. 57, for four hundred and seventy-four dollars, to Don Rodriguez Solarez.—Let them be paid.

An official communication from Don Miguel Quiñones, dated the 19th inst., asking the payment of the duties of that tribunal, and also the payment of the expert (perito) who made the visit.—The Junta resolved that the same be subject to what has heretofore been resolved in both matters.

It was finally resolved that the permit (tornaguia) of the bars from Tasco, be remitted, together with the weight of the same.

[Two Rubrics.]

• *Session of 24th September, 1846.*

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 23d, report was made of the following communications:

First. From the Minister of Justice of the 23d, asking leave of absence for the Secretary, Don José Ma. Castera, in order that he may fulfill a temporary commission which the Government has thought proper to confide to him, with the understanding that on his return he will again take charge of the office of Secretary of the Junta.—Leave granted, and reply made to the Government, that its order had been complied with.

Second. From the Collector in Guanajuato, remitting the accounts and documents in relation to the respective third of the year.

Third. From the agent in Zacatecas, forwarding the account and documents pertaining to the respective third of the year.—On which, same order was made as last.

Fourth. From the Commissioner in Guaymas, remitting a cer-

tificate of thirteen hundred and eight dollars, delivered in that Department by Don Pablo Rubio.—Passed to the office of the Controller.

Resolved, that receipt be acknowledged of seven thousand two hundred and seventy-two dollars, seven reals, three grains, for the six bars from Tasco, which were sold for this amount to Señor Don Xavier Echeverria.

Report was made by the Bureau of Administration and that of the Controller's office, advising that an especial power be given to Señor Bermejillo, to enable him to demand the unsettled accounts of the Administration of Morelia, Don Joaquin Caballero.—The Junta resolved in conformity, and that the two reports be inserted to him, but that of the Bureau only as far as the words, *if it should be necessary*; giving an order on the Treasury for the payment of fees for the power to the clerk.

Ordered, that the sum of six dollars be paid to Don Castulo Barrera, the amount of postage paid by him on a package of documents directed to the Mining Juzgado of Tasco, and ten dollars paid to the extraordinary expressman, employed to carry the urgent communication remitted to that mineral district.

Finally. Report was made of a communication from His Excellency the Director of the College, accompanied by an official communication from the Minister of Relations, in which it is ordered to deliver the Direction to the Professor of the same, Don Andres del Rio, appointed *ad interim*, as a substitute, and the reply given to said Minister.—The Junta resolved that there be inserted to the Government the articles of the law in relation to the mode of substituting the Director, informing the Government also in relation to the official communication of Señor Tornel, in order that it may be pleased to determine in what case the office should be vacant by the resignation of that gentleman, and that the Junta should exercise, respectively, the powers entrusted to it by law.

[Two Rubrics.]

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Session of 28th September, 1846.

Present, Señores Segura, Flores and Bassoco; and after having approved the minutes of the 24th inst., the following communications were reported upon:

A report from the Ministry of Justice, bearing date of 22d inst., acknowledging receipt of statement of expenses for the months of April to July, inclusive.—Referred to its expediente.

Another from the Director of the College, dated 24th inst.,

requesting an advance of nine hundred dollars from the quick-silver fund, for the payment of certain collections purchased for the museum, which will be repaid at the rate of three hundred dollars per month, in October, November and December of the present year.—Ordered that the advance be made.

From D. E. Schleiden in Trojes of Anganguco, dated 24th inst., advising that the case of Señor Lopez Romano had been sent to the Comandancia General.—Referred to its expediente.

[Two Rubrics.]

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Session of 29th September, 1846.

Present, Señores Segura, Flores and Bassoco ; and after having approved the minutes of the 28th inst., the following communications were read :

First. From Don Rafael Olascoaga, seeking relief from having signed the bond of Lebrija, as clerk of Don José M. Gonzales, on account of having no effects.—Ordered that Señor Bassoco should make investigation as to the reality of the insolvency.

Second. From Don Miguel Quiñones, requesting the remittance of one hundred dollars, which he requires, in order to pay the "Acesor," and other small accounts, whilst, in view of the expediente, he can prove the account rendered.—The Junta resolved that Señor Zamora should be authorized to deliver the said sum if he thought proper, and that he should request from Señor Barrera a report of the proceedings of the special commission sent to Tasco.

Third. Five from Señor Zamora, dated 26th inst., the first accompanied by memorials number 38, relating to the matter.—Received and referred to the Controller. The second mentions the payment of three hundred and twenty-two dollars to Don Celso Muñoz, on account of his salary : that four hundred quintals of "metal de ixtajal," had been washed during the week, and that four hundred and fifty dollars were needed for the pay-roll.—Understood.

The third, accompanied by an estimate of the expenses and profits resulting from the working of the wells of "Purísima" and "Dolores," in the "Socabon" of Guadalupe, supposing the "leyes" to be the same as those actually being extracted, and that two hundred cargas be extracted weekly.—The Junta resolved that answer should be made, whether it would not be inconvenient to undertake, first, the opening of one well, and afterwards of another, in which case work might be commenced at once, on the one most advantageous, giving information to the Junta, under other circumstances.

The two last being accompanied by drafts Nos. 58 and 59 ; the first for three hundred and fifty dollars, in favor of Don Teodoro Chaves, and the second for three hundred and twenty-two, in favor of Don Rafael Zarate—Ordered to be paid.

[Two Rubrics.]

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MONTH OF OCTOBER, 1846.

Extraordinary Session of the 4th.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the preceding day, report was made of an official communication from the office of the Minister of Hacienda, dated the 3d, representing, that notwithstanding the opinion of the Junta, that the twenty-five thousand dollars asked as a loan from the *fondo dotal*, should not be delivered, His Excellency the General, in exercise of the Executive power, had ordered that the said amount be entered in the General Treasury on the same day, notwithstanding it should be a day on which the office was closed, since otherwise the Supreme Government will be obliged to take more stringent measures.—The Junta resolved, that in a matter of so much gravity, it was necessary to immediately summon the Señores Consultores, in order to take their advice in the matter, whereupon it was ordered that they be summoned, in the meantime suspending the session.

The Señores Gordoia and Delmote answered verbally that they could not attend, being indisposed, and Señor Fagoaga having presented himself, the session was continued.

The Junta acquainted the said Señor with the nature of the correspondence which had taken place between the Supreme Government and the said Junta. The members of the Junta stated their views at length, and after a long discussion they agreed upon summoning the creditors of the *fondo dotal*, in order to give an account to them of what had taken place, and that they should personally call upon His Excellency the Minister of Hacienda, representing to him, that the agents (apoderados) of the mines and creditors, having no other authority for the management of the *fondo dotal*, than to receive and distribute the same in accordance with law, it was believed indispensable to assemble the creditors for the determination of the matter, in order to avoid all responsibility, particularly if Señor Segura insisted, as his opinion would indicate, on delivering said amount to the Government in all respects as if it were paid into the Treasury, suspending the payment of the third, which is being satisfied.—And thus it was resolved.

[Two Rubrics.]

Session of 5th October, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the 4th, report was made of the following communications :

First. From the Minister of Justice, dated the 2d, reporting that the Government had acceded to the petition of the Señor Director *ad interim* of the College, that there should be delivered to him the amounts given by the Junta for the College to the Mayordomo of the same, or to the person who might be commissioned. The Junta resolved, that he be replied to, that it would be paid to whoever might be Mayordomo of the College, with the approval of the Director, as has been done up to this time, and as is provided in the regulations designating the security to be given by the Mayordomo.

Second. From the Direction of the College, dated to-day, asking the necessary order for paying to the student Don José M. Gomez del Campo, who goes to practice in the mineral district of the Monte, the twenty-five dollars designated by law, and that he be recommended to the Tribunal of Pachuca and to the Director of the English Company.—The Junta resolved in conformity.

Third. From Don Manuel Mariano Cortazar, dated the 29th, stating that up to date, the bond of the English Company had not been received. The Junta resolved, that reply be made that it was expected to be received as soon as another person should be substituted.

Fourth. From the Collector in Culiacan, remitting a draft for fourteen dollars, one real, as the products of the mining duties during the month of August.—Let the draft be accepted and collected, the proper entries made, and receipt acknowledged.

Fifth. From the Commissioner in Guadalajara, stating that Don José M. Garay refused to make the payments which he had promised.—Passed to the Bureau to report.

Señor Bassoco represented, that Don Rafael Olascoaga, who had gone security in Toluca for Lebrija, had property sufficient to satisfy the fifty dollars remaining of the security, but that there was another Don Rafael Olascoaga, a dependant of Don José M^a. Gonzales, and it was he who had signed the bond.

[Two Rubrics.]

Session of 7th October, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the preceding day, the Secretary

represented that the Señor Director of the College had asked for a copy of the Mining Ordinances for the use of the student of the College, Don José M. Gomez del Campo, who would leave on to-morrow for the mineral district of the Monte, in order to practice his profession in that place. The Junta resolved that a copy be delivered to him.

Whereupon the following communications were read :

First. From the Mining Tribunal, dated the 12th ultimo, forwarding the matriculation of the miners of that district, which it had not been able to forward since February, on account of the pressure of business, and the want of a clerk.—Understood, and receipt thereof ordered to be acknowledged.

Second. Nine official communications from Don José Zamora of the 3d inst., remitting with the first the accounts (memorias) No. 39, statements No. 9, and the balance-sheet to the end of September, pertaining to the negotiation of Tasco.—Received, and passed to office of Controller. Stating in the second, that there was nothing new in relation to the mine ; that in order to guard against robberies, doors had been ordered to be placed at the mouth of the Socabon of Guadalupe, and two others in the mine of Trinidad ; that these lots were amalgamated in the Hacienda, and that for the pay-roll of the present week four hundred dollars were needed.—Understood. In the third he states, that he has commenced work in the well (poso) nearest the present works, which will serve as prospect of the other, in accordance with what had been indicated to him.—Understood. In the fourth he represents, that one hundred dollars have been paid to Miguel Quiñones for judicial expenses.—Understood, and passed to office of Controller. In the other five, he states that draft No. 60, for three hundred dollars, in favor of Don Rafael Zarate ; No. 61, for two hundred, in favor of the same ; No. 63, for forty, in favor of George Raffard, and No. 64, for one hundred and forty-five dollars, four and one-half reales, in favor of His Excellency, Señor Don Fran^{co}. Modesto Olagnivel.—Ordered that they be paid.

The Treasury presented the account of what had been received for the rent of the rooms of the College during the last month.—Ordered that the same be passed to the office of the Controller.

In view of the verbal communications had with the Minister of Hacienda, and of the resolution of the Assembly of Creditors cited by the Attorney, and which took place on the preceding day, the proceedings of which were added to the Expediente, the Junta resolved, that the twenty-five thousand dollars should be remitted to the Supreme Government as a loan, to be returned from the new contributions asked on the

19th ultimo, remitting to the general treasury a draft on the house of Manning and Mackintosh, for the sum of twenty-four thousand eight hundred and ten dollars, five and one-half grains, there being no coin.

[Two Rubrics.]

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Session of 9th October, 1846.

Present, the Señores Segura, Flores and Bassoco; and after approval of the minutes of the 7th, report was made of the following communications:

First. From the Minister of Relations, dated the 19th inst., that Don Andres del Rio having been appointed to visit the College, there is remitted to him a "Cuadeero," with the report of Señores Bustamente, Laenza and Varela, forwarded by the Minister to the Junta.—Resolved, that there be forwarded the project of the law for the regulation of the College, and that the Supreme Government be informed of the same, adverting to the fact that no report has been received.

Second. From the same Minister, of yesterday, acknowledging the receipt of the balance sheets for the months of August and September.—To its Espediente.

The Secretary exhibited a letter from the Licenciado, Don Castulo Barreda, asking the payment of fifty dollars on account of his salary, offering to forward the accounts already arranged, during the next week, for the inspection of the office of the Controller.—The Junta resolved, that his receipt be forwarded to-morrow, that said amount may be paid him.

[Without Rubrics.]

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Junta of Creditors.

A list of the gentlemen who assembled in the Hall of Sessions on the 7th of October, 1846, on account of the demand made by the Government for the payment of the twenty-five thousand dollars:—

Señor Don Francisco Fagoaga, for himself and Doña Faustina.

Señor Dr. Rojas, for the Parish of S. Pablo.

Señor Lombardini, as the Executor of Señor Santiago.

Señor Escalante, for Santa Ysabel.

Señor Mackintosh.

Señores Agüero, Gonzales and Company, for themselves and the Señores Yturigarais.

Don Juan Ma. Flores, for himself and the Señora Ferán.

Don José Rafael Berruecos, for the Arnares and Gomez del Castillo.

Don Francisco Ma. de Yturbe.

Don Ignacio Cortina Chaves.

Don Donato Monterola, for the Señora Aniesola.

Don Ignacio Fainaga, as Executor of the Señora Fauregui.

Don Eladio Ramon del Rivero, for Don P. Fáuregin and Francisco de la Yglesia and Larre.

The Señora Doña Ramona Ordoñer.

Don José Fernandez, for the Padre Pietas.

Don José Joaquin de Posas, for himself and the Bureau of Burgos.

Don José Maria Bassoco.

Report was made of all the notes of the Government, and the replies of the Junta to the following propositions of Señor Flores.

The Attorney of the creditors in company with another creditor appointed by the Junta will call upon the Minister of Hacienda, setting forth to him the reasons why the amount asked should be diminished as much as possible; which, after discussion, was approved. The Señor Licenciado Don José Rafael Berruecos was appointed.

The Session adjourned—José Ma. Bassoco, Attorney of the Creditors.—Donato Manterlola—Francisco Yturbe—Agüero, Gonzales & Co.,—Manning and Mackintosh—Antonio Algara—Juan M. Flores—Ygnacio Cortina—Francisco Fagoaga—José Rafael Berruecos—Ygnacio Fainaga—Pedro Rojas—Mariano Picazo—Eladio Ramon del Rivero—José Fernandez—Atenógenes M^a. Lombardini—Rafael Diaz—Francisco Veles de Escalante—José Joaquin de Rozas.

The following is a copy, Mexico, October 13th, 1846.

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Session of 13th October, 1846.

Present, the Señores Flores and Bassoco; and after the approval of the minutes of the preceding day, report was made of the following communications:

First. From the Director *ad interim* of the College, dated today, asking that there be paid in Guadalupe y Calvo, the twenty-five dollars assigned to the student Don José M. Gomez del Campo, who does not go to the mineral district of the Monte, but to said place (Guadalupe y Calvo), for the purpose of practicing his profession.—Resolved in conformity.

Second. From the Mining Juzgado of Pachuca, of the 17th

inst., inserting an official communication from the Director of the English Company, asking that all the dependents and employés in the mines may be excepted from the service of the National Guard.—The Junta resolved, that the employés and dependents of mines, who are not exempted from this service as contributors, may become so by contributing a small sum, thus avoiding the inconvenience mentioned by the Director of the English Company, and that the Junta will have no objection to petition the Governor of the State to this effect, if it should be deemed necessary.

Third. From the General Treasury of the Federation, dated on the 8th, setting forth the difficulty represented by the house of the Señores Manning and Mackintosh in relation to the payment of the drafts which had been drawn upon the same for the loan asked for by the Supreme Government—it is asked that the same be attached to its Expediente, the difficulty mentioned in relation to the discount of the drafts having been subsequently removed.

Fourth. From the Collector in Chihuahua, dated the 19th ult., forwarding four notes of the notice of the amount collected in said Capital and Jesus Maria, during the months of July and August, and a draft for eight hundred and eighteen dollars, seven reals and three grains, as the amount of the whole.—Let the draft be accepted, the proper entry made, and receipt thereof acknowledged.

Fifth. From the same, dated the 22d instant, forwarding some documents required in the office of the Controller.—Let them be passed to the same.

Sixth. From the Collector in Durango, of the 2d inst., remitting six hundred and forty-two dollars and ninety-three cents, as the product of the mining duties for the month of September.—Let the draft be accepted, the proper entries made in the office of the Controller, and receipt thereof acknowledged.

Seventh. From the Collector of Zimapan, dated the 1st inst., one hundred and thirty-one dollars, four reals, nine grains, pertaining to the last month.—Let the draft be accepted and collected, the proper entries made and receipt acknowledged.

Eighth. From the Administrator of the Maritime Custom-House of Vera Cruz, dated the 8th, remitting the *pro rata* of the amount of the expenses of the protest of the drafts for your acceptance by the house of the Señores Serment & Co.—To the Controller.

Ninth. From the Señores Manning and Mackintosh, of the 9th inst., refusing to discount the drafts indorsed by the Junta in favor of the Government.—Resolved, that the same be filed, the said house having become convinced of its obligations to make the discount, and having subsequently agreed to do so.

Tenth. From the same, replying to the note of the Junta, stating that on account of the death of Señor Villet, the Señores Don Jorge Lebrun and Don Luis Belangé are encharged with the duties of collectors.—To its Expediente.

Eleventh.—Four from Don José Zamora, of the 10th, forwarding with the first the memorials No. 12 and 13 of the negotiation of Tasco.—Received and passed to the office of the Controller; stating in the second that the mine continues in the same condition; that three hundred quintals from Ixtajal have been washed, and another lot of three hundred quintals from the Socabon of Guadalupe remain *ensalmuerados*; that for the pay-roll three hundred dollars are needed; and that, unless the blasting powder asked for is furnished, the labors will have to be suspended, since it is impossible to obtain the same at that place.—Understood that three quintals be asked from the Director of *rentas estancadas* in Mexico, or any other point more convenient to Tasco; that inquiry be made if the same can be obtained in Cuernavaca, and that Señor Zamora be informed to that effect. Stating in the two last that two drafts—one, No. 65, for seventy-nine dollars, one real, eight grains, and another, No. 66, for one hundred and seventy-seven dollars, two reales, four and one-half grains—have been drawn in favor of Don Antonio Herrera.—Let them be paid.

An opinion of the Bureau of ——— was read, advising that the agent in Guadalajara be instructed to collect from Señor Garay the monthly payments in proportion to the salaries received, and that which he had when he offered to pay the forty dollars a month.—The Junta resolved in conformity.

The Secretary stated that His Excellency Don Joaquin Yturbide, as attorney of Señor Barroeta, had stated that the distillin apparatus would be received in Mexico.—To its Expediente.

[Two Rubrics.]

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Session of 15th October, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 14th, report was made of the following communications:

First. From the Commissioner in Zacatecas, of the 8th inst., accompanied by a draft for five thousand one hundred and forty-four dollars, as the products of the mining duties during the last month, besides the receipts of the student, Don Agustín Ayala, and a certificate of that Administration.—Resolved, that the draft be accepted, the proper entries made, the documents passed to the Controller's office, and receipt be acknowledged.

Second. From the Commissioner in Culiacan, dated the 26th ult., remitting a draft for two hundred and thirty-nine dollars, three reals, two cents, as the products of the mining duties in Cosalá during the month of August, and another for two hundred and eighty-six dollars, four reales, as the product of Alamos during the same month.—Let the drafts be accepted and paid, the proper entries made, and receipt thereof acknowledged.

Fourth. From the General Direction of *rentas estancadas*, in reply to an official communication, asking to purchase three quintals of quicksilver stating that the same will be furnished at the rate of two and a half reales per pound for cash.—Resolved, that reply be made; that the Administrator of Taseo has been instructed to forward the same on the terms indicated, and that the same be said to Señor Zamora.

A report was read from the Bureau of Administration, to the effect that the twenty-one dollars claimed by Señor Robles may be considered as paid, he having delivered in Mexico seven hundred and fourteen dollars, when he should have entered the same in Guanajuato, with the twenty-two dollars, the amount against him on account of the six months' delay in the payment of the said amount.—The Junta resolved in conformity, and that Señor Robles be informed of said resolution.

[Two Rubrics.]

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Session of 19th October, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 15th, report was made of the following communications:

First. From Don José Zamora, dated the 6th inst., stating that he had sent the Arriero Fiz for the three quintals of blasting powder which had been asked.—The Secretary stated that it had been delivered to him, and that he had paid to the *Direccion* one hundred dollars and one-half real, at the rate of two and a half per pound for the amount sent.

Second. From the Government of the State of Guanajuato, acknowledging the receipt of the recommendation forwarded to him in favor of Señor Cortazar.—Let the same be inserted to the interested party.

Third. From Don Andrés del Río, returning the project presented by the Señores Bustamente, Lacunza and Varela.—To its Expediente, which is in the possession of Señor Segura.

Fourth. From the Commissioner of Guanajuato of the 16th inst., remitting a draft for four thousand eight hundred and eighty-three dollars, seven reales and nine grains, as the pro-

ducts of the mining duties during the past month.—Let the draft be accepted, the proper entries made, and receipt thereof acknowledged.

[One Rubric.]

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Session of 20th October, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after having approved the minutes of the 19th, report was made upon the following communications :

First. From the Commissioner in Pachuca, accompanied by a draft for eight hundred and thirty-one dollars, two reales, as the products of the mining duties of the past month.—Let the draft be accepted, the respective entries made, and receipt acknowledged.

Second. Four from Señora Zamora, dated the 17th ; the first accompanied by Memorias No. 41, and the boleta de beneficio No. 14.—Received, and passed to the office of Controller.

Stating, in the second, the amount of labors performed during the previous week ; that ten quintals of quicksilver are needed, and ten of sulfato ; and that during the week six bars of silver will be made.—Understood, and that application be made for the quicksilver and the sulfato. Stating in the last two, that two drafts have been issued, No. 67 for two hundred and twenty dollars in favor of Don George Raffard, and No. 68 for seventy-six dollars in favor of Don Antonio Herrera.—Let them be paid.

[Two Rubrics.]

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Session of 23d October, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the 20th, an official communication was read from Señor Don Vicente Segura, as Commissioner for the collection of the rents of this *mazana*, representing that the Junta should order, as the agent of the owners (propietarios) of the edifice, the payment of the amount of two hundred and fifty dollars in four parts, and besides, one hundred and fifty dollars for other apartments that are rented.—The Junta resolved that there be paid to said Señor Commissioner the fourth part, corresponding to the two hundred and fifty dollars, and that the Controller report the exact amount of the rent of the other apartments rented.

It was also resolved that there be remitted to the office of the Chief Controller the accounts of the quicksilver fund and the fund *dotal*, showing their present condition ; whereupon

said accounts were remitted, with the corresponding inventories, comprehending the foregoing year, and besides, some other back accounts of the Collectors of both funds, including also those relating to the College for the years 1844 and 1845.

[Two Rubrics.]

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Session of 25th October, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the 23d, report was made of the following communications :

First. From the Tribunal for the revision of accounts and documents, dated the 24th, remitting the receipt of the accounts and documents which had been forwarded, and with the corresponding inventory signed—To its Expediente.

Second. From the Commissioner of S. Luis Potosi, of the 21st, remitting a draft for nineteen hundred and forty-seven dollars, twenty-one cents, as the products of that State during the past month.—Let the draft be accepted, the respective entries be made, and receipt acknowledged.

Third. From Don José Zamora, dated the 24th, remitting, with the first, the Memorias No. 42 and the *boleta de beneficio* No. 15 ; received and passed to the office of the Controller.—Stating, in the second, that for the want of blasting powder the mine was without laborers ; that in one of the works (labores) the vein was a vara in width ; setting forth the labor done in the hacienda, and finally, that for the pay-roll of the present week five hundred dollars were needed. Understood.—Setting forth in the third, that draft No. 63, for four hundred dollars, had been issued in favor of Don Leoncio Blanco.—Let it be paid.

Señor Zamora, in a private letter to the Señor President, represented the condition of the suit in relation to the denouncement of Madariaga ; resolved, that the same be inserted to the Licenciado Barreda, requesting him to report to the Junta in relation to the last proceedings. He says, afterward, that it is not possible that the *ley* of the silver ore remitted could be so low, and that it would be well to make another assay of the remainder, to see if there has not been some mistake. Announcing, finally, that knowing of some robberies having been recently committed on the road, he will make the necessary investigations before forwarding the bars.

[Without Rubrics.]

Session of the 28th October, 1846.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the 25th, a report of the office of the Contrroller was read, showing the amount of one hundred and fifty-three dollars as the monthly rent of the buildings belonging to the College, in order that the account of the contribution to be made by the Junta, in accordance with the law upon the subject, may be enlarged, besides the two hundred and fifty dollars, as computed by the Señor Commissioner of the manzana, on the part of the College—The Junta resolved in conformity, and ordered that both these sums be paid in the office of direct contributions.

An official communication was read from the Minister of Relations, dated the 23d, stating that his Excellency the General, encharged with the Supreme Executive power, directs that whoever may be the vocal of the Junta facultativa of the College, who may discharge the duties of the office of Director, shall receive a salary of fifteen hundred dollars per annum.—The Junta resolved that the advice of the Government be asked, if said order is not to be understood as applying to a case where there is no Director, since, otherwise, it will result in grave prejudice to the funds ; and secondly, if the fifteen hundred dollars are to be paid to said vocal, besides the salary, or salaries, they receive as professors.

An official communication was read from the 2d Juzgado, in relation to the distribution which has been made of the capital recognized by the Junta as pertaining to Doña Maria Josefa de la Torre Perez Villalobos, which was ordered to be passed to the office of the Contrroller, which reported, and the Junta resolved that the same be inserted to the Tribunal, asking the necessary explanations.

Finally, report was made of an official communication from Don José M. Garay, dated in Guadalajara on the 23d, making inquiries in relation to the pearls which Señor Don Diego Moreno had carried to market.—The Junta resolved that inquiry be made if Señor Moreno is in Mexico.

[Two Rubrics.]

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MONTH OF NOVEMBER, 1846.

Session of the 4th.

Present, the Señores Segura, Flores and Bassoco ; and after the approval of the minutes of the 28th ult., an official communication was read from the Minister of Relations, dated the 29th ult., in reply to the last communication of the Junta in

relation to the salary of the Director of the College, declaring in effect that the vocal of the Junta facultativa is to be paid when there is no Director *propietario*; and, in relation to the second, that the fifteen hundred dollars are to be paid besides the salary received by said vocal—To its Expediente.

The Licenciado Don Castulo Barrera presented a report in relation to the proceedings in the suit instituted by the Señor Madariaga, and at his instance the Licenciado Mirafuentes was appointed attorney before the Tribunal of the State.

Six communications from the Administrator of the Negotiation of Tasco, dated the 31st ult., were read; in the first, advising, that in order to avoid risk, the bars (barras) should be remitted to Cuernavaca to the house of S. Rozas, and that from that place they could be transported under the care of an escort, when the opportunity occurred.—The Junta was of the same opinion, and that Señor Zamora be informed that he should continue to do so whenever he considered it safe to remit the bars to Cuernavaca, and that Señor Rozas be informed in relation to the matter.

In the second, he states that the works continue profitable, and that being much in want of quicksilver, he will send for what has been asked during the next week.—Understood.

In the third, he acknowledges the receipt of three quintals of blasting powder, which was sent by the Arriero Fiz, and of the six arrobas which were received from Cuernavaca, the price of which he is ignorant, and asking if he can still continue to be supplied with this article.—The Junta resolved, that the price should be asked of the *estanco* of Cuernavaca, and that an account of the six arrobas should be forwarded as soon as the same was furnished by Señor Rozas.

With the fourth he remits the Memorias No. 43, the boleta No. 16, and the Statements No. 10.—Received and passed to the office of the Controller. In the last two he states that draft No. 70, for two hundred dollars, has been issued in favor of Don Antonio Castañón, and No. 71, for two hundred dollars, in favor of Don Teodoro Chaves.

[Two Rubrics.]

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Session of 5th November, 1846,

Present, Senores Segura, Flores and Bassoco; and after having read and approved the minutes of the preceding day, report was made of an official communication from the Ministry of Relations, dated 3d, desiring that in the term of eight days there be transmitted to it an exact account of the proceedings of the Junta since 1845, with the suggestions which may be

thought proper.—The Junta resolved, that having in view the annotations of the report made by Señor Castera, said account be transmitted to the Ministry, adding the posterior occurrences up to the present month.

[Two Rubrics.]

Session of 9th November, 1846.

Present, Señores Segura, Flores, and Bassoco; and after approval of the minutes of the 5th, report was made of the five following communications from the Administrator of Tasco: with the first he transmits the tally accounts (Memorias) No. 43, and a ticket for the reduction of ores on shares, (or toll.)—Let the receipt be acknowledged, and transmit to the Controller's office. In the second, informs that he will remit the bars to Cuernavaca on Tuesday of the present week.—Understood. In the third, that the last five hundred loads of ore of La Trinidad had been reduced; that the working had been increased by two working parties, and that he required five hundred dollars for the present week.—Understood.—In the two last he informs that he has drawn two bills, Nos. 72 and 73, one for four hundred dollars, and the other for one hundred dollars.

Beginning was made of the reading of the report, (Memoria) to be presented to the Government, and the two chapters relating to the Office and to Mining Tribunals were approved; and it was resolved that an official letter be addressed to Señor Otero, inquiring of him the condition of his work upon mining legislation.

There was read an official communication from the Collector of the Maritime Custom House of Vera Cruz, dated 2d, in which he informs that he has not been able to procure from the drawer of the bill No. 884, which was protested, another in its place, and that consequently he had given notice of this affair on the 10th September, and would give further notice of the result.—Notify the Controller's Office, and to its Espectante.

Another from Don José Joaquin de Rosas, dated the 5th, informing that he has notified his Clerk, Don Antonio Gutierrez, of Cuernavaca, to receive the bars to be sent to him from Tasco, and that he will give notice of the cost of the six arrobas of powder which he sent to the same negotiation.

Another from Don Cayetano Buitron, dated the 5th, remitting one thousand three hundred and sixty-two dollars, nine grains, the proceeds of mining dues for the last month.—Ac-

knowledge receipt, and transmit to the Controller's Office, that the proper entries may be made.

Another from Don José Zamora, dated the 2d, ordering that by the muleteer, José Apolonio, there be remitted to him the ten quintals of quicksilver, and the same quantity of sulphate, which he has asked.—Order that they be delivered.

From Don Manuel Mariano Cortazar, dated at Rio Blanco the 25th ulto., transmitting the last tally account (memoria) of the mine of Atargea.—To the Controller's Office, and notifying that Señor Rule is prepared to execute the bond for the value of the effects delivered to Cortazar at said mine, and claiming the charge made for the watchman of the mine in nine weeks, requesting that there may be remitted by draft the entire sum of ninety-eight dollars, six rials, amount of the memoria.—The Junta resolved, that Señor Rule be informed, that if he is to be in Mexico shortly, he can execute the bond there, but if he has to delay his coming, he may execute it before the authorities of that mining district, or appoint an attorney; that an official communication be addressed to Señor Segura to deliver the former official letter, and obtain the answer of Señor Rule. That Señor Cortazar be notified to appoint his attorney to sign the instrument; that the Junta cannot, according to the agreement, allow the watchman to be paid for nine weeks; but only for three, and that it being difficult to procure a draft, there be paid to him the amount of the memorias, less the thirty-six dollars of such charge, to the Commissioner whom he may send when he comes to sign.

[Two Rubrics.]

Session of 13th November, 1846.

Present, Señores Segura, Flores and Bassoco; and after having approved the minutes of the 11th, it was resolved, that there should be paid at once the balance of the three-thirds of the contributions from houses for the part belonging to the College.

[Two Rubrics.]

Session of 16th November, 1846.

Present, Señores Segura, Flores and Bassoco; and after having approved the minutes of the 13th, report was made of the following communications:

First. From the Commissioner at Guanajuato, remitting a

draft of five thousand six hundred and thirty-nine dollars, seven rials, proceeds of mining dues for the month of October.

Second. From the Commissioner of Zacatecas, remitting another draft of four thousand one hundred and forty-five dollars, two rials and nine grains, for the dues of said month.

Third. From the Commissioner of Durango, with another for one thousand three hundred and forty-nine dollars, forty-four cents, corresponding to the same period.

Fourth. From the Commissioner of Zimapan, dated 1st November, with another draft for three hundred and seventy-three dollars, corresponding to the previous month.—That said drafts be accepted, the proper entries made, and the receipt of the same be acknowledged.

Fifth. From the Commissioner of Zacatecas, remitting another draft of one hundred and twenty-three dollars, six rials, three grains, proceeds of October in Sombrerete.

And last: another transmitting the balance-sheet and detailed account of the sums collected for mining dues in that city in the second and third of the present year.—Acknowledge receipt and transmit to the Controller's Office.

The reading of the report, which was continued on the previous days, having been finished, the same was approved; and it was resolved to direct also to the Supreme Government an official communication requesting that the Ministry of Finance transmit the respective orders to the effect that so soon as the blockade is raised, the Custom Houses of Vera Cruz and Tampico remit directly the corresponding drafts in favor of the Junta, giving authority to the Junta to negotiate a loan for the purpose of defraying the expenses of the College and the most urgent expenses of the branch of quicksilver; resolving, finally, that the President convey said communication to the Minister, that it may be promptly dispatched.

[Two Rubrics.]

Session of 19th November, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 16th, report was made of the following communications: .

First. From the agent in Guadalajara, dated the 13th inst., remitting a draft for eight hundred and seventy-five dollars, five and a half grains, as the mining taxes collected during the last month.—Let the draft be accepted, the proper entries made, and receipt acknowledged.

Second. From the same, of the same date, stating that nothing

had been collected on the debt of Señor Garay, because, during the last five months nothing had been paid to the employes *cesantes*.—To its expediente.

Third. From the Commissioner in Hermosillo, dated the 12th ult., inserting a communication from the Assayer of that point, copying the order of the Governor of Sonora, for the using of the mining duties in consideration of the urgent need of that Treasury. The Junta resolved, that the said Governor be informed of the resolutions passed in similar cases arising in Zacatecas and Durango by the General Government, by the advice of its council, and that this communication be remitted to Señor R binson, in order that he may deliver the same to that Governor, that he may acquaint himself therewith; and providing finally, that if that Government still insists upon using said funds (although the Junta does not believe that this will occur), the proper certificates will be taken, in order that the respective charges may be made against the General Government.

Fourth. Four communications from Don José Zamora; the first of the 11th inst., asking that two boxes of blasting-powder may be sent by the Arriero Fiz, there being none in Cuernavaca.—Let it be sent. Another dated the 14th, accompanying the memorias No. 45, and the boleta No. 17.—Received and passed to Controller. In the third, of the same date, he states that the mine continues in the same condition; that he had forwarded the barras to Cuernavaca, and that for the pay-roll of the present week four hundred dollars were needed. In the fourth, he states that draft No. 74 for two hundred and fifty dollars has been issued in favor of Don Francisco Aramburn.—Let the same be paid.

Fifth. From Don José Garay, dated the 22d of October, desiring to know if Señor Moreno is in Mexico; and he being in Mexico, resolved, that the communication be inserted to him urging his prompt settlement of the matter, and that Señor Garay be informed to that effect.

A report was read from the Bureau of Encouragement, dated the 24th of September, in relation to the petition of the widow of the Clerk, one José Tamayo, that there be returned to her the discounts of the *monte pío* made to her husband, and which had not been remitted by the Junta to the treasury of said establishment: the Bureau presented the liquidation made by the Controller's office of the amount of said discounts, the same being one hundred and seventy-four dollars and three reals, stating that in order for said payment to be made, it will be necessary for the Señora, as tutora of her minor children, to take the necessary proceedings before the proper Judge. The

Junta resolved in conformity, and that the same be communicated to the interested parties.

[Two Rubrics.]

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Session of 23d November, 1846.

Present, Señores Segura, Flores and Bassoco; and after having approved the minutes of the 19th, report was made upon the following communications:

First. From the "Ministerio de Relaciones," dated the 21st inst., in which reply is made to the question propounded to it by the Junta on the 9th of last month, resolving that it belongs to the Government of the States to adjudicate as to the mine mentioned in article 5th, title 6th, of the Ordinances.—Let the "Mesa de Fomento" be informed thereof.

Second. From the Director of the Mining Company of the mineral region "del Monte," stating in reply to the note of the 11th inst., that he has written to Don Manuel Mar^o. Cortazar, in order that he may arrive in the beginning of January of the coming year, and that the matter of his security may be regulated. The Junta decided that Señor Cortazar should be notified to this effect, in order that he may hasten his arrival.

Third. From the Commissioner in Pachuca, under date of 19th, remitting a bill of exchange of the value of thirteen hundred and sixty-five dollars, three reals, four grains, being the product of the mining tax in the month of October.—Ordered that the bill be accepted, the necessary entries made, and receipt acknowledged.

Fourth. From the agent at San Luis Potosi, remitting another of eighteen hundred and three dollars and ten cents, being the product of the same tax, in the same month.—The Junta passed the same resolutions as with regard to the preceding.

Fifth. From the Commissioner of Chihuahua, remitting another of the value of one hundred and sixty-four dollars, six grains, one hundred and twenty-five dollars, one real, four grains, belonging to Jesus M^a. and the balance to that capital, as the product of the month of September in both places.—Ordered, that the bill be accepted and collected, that the corresponding entries be made in the Treasury, and receipt acknowledged.

[Two Rubrics.]

Session of 24th November, 1846.

Present, Señores Segura and Bassoco; and after approving the minutes of the 23d, report was made upon the following six communications:

From Don José Zamora, dated 21st inst., the first, annexed to the memorial No. 46, and the "boleta de beneficio," No. 28. Received and referred to the Controller.

Second. Setting forth the good condition of the mine, so that they are only waiting for the certainty of obtaining all the powder that it required in order to give greater impetus to the labors, according to a plan offered to be submitted to the Junta. Report of the labors of the Hacienda, and that for the pay-roll of this week, there are required four hundred and fifty dollars. Resolved, that the quantity of powder required shall be stated; that it has been ordered to purchase two cases besides those last carried by the "Arriero" Fiz.

Third. Advising the arrival of the bars at Cuernavaca, and acknowledge the receipt of ten quintals of quicksilver and ten of sulphate, value unknown.—Let it be stated what it was in the end. In the three last, notice is given of having drawn the bills of exchange, No. 75, value, two hundred dollars; No. 76, value, two hundred and eighty; and No. 77, value, fifty dollars.—Ordered to be paid.

Another communication from the same, giving information as to the last "vinta" made to the mine; it was passed to Lic. Don Castulo Barreda, in order that, in company with Don Miguel Quiñones, he should report to the Junta, on Saturday, as to the matter of Señor Madariaga.

[One Rubric.]

Session of 28th November, 1846.

Present, Señores Segura, Flores and Bassoco; and after approving the minutes of the 24th, report was made upon a communication from the "Ministerio de Relaciones" of the 25th inst., acknowledging the receipt of balance sheet for the month of October.—Referred to its Expediente.

Señor Mackintosh having expressed on the 13th of last month a desire of reforming the second article of the contract celebrated with the Junta on the 3d of February, 1844, Señor Bassoco was commissioned to confer with the contracting party and to arrange the reform of the said article, in such manner as should be most suitable to both parties, and the Junta agreeing to this, ordered that the corresponding document should be

issued, signed by the members, and by Señor Mackintosh, that it may appear in the Act of to-day, and is as follows:

Additional Article, modifying the second of the contract, celebrated on the 3d of February, 1844, between the "Junta de Fomento y Administrativa de Minería," and Messrs. Manning and Mackintosh.—(*To discount at seven-eighths per cent. per month the bills which the Junta may have on their account, as is specified in Art. 2d, from to-day upon the drafts.*)

The obligation of Messrs. Manning and Mackintosh, to discount at seven-eighths per cent. the bills which the Junta may have on their account, as is specified in Art. 2d, from to-day, upon those drafts or values which the Junta shall indorse, in order to pay its creditors without passing into the hands of another person, or it may wish to discount them for its own purposes, and in this last case, the amount shall not exceed three thousand dollars per month, the corresponding sum being allowed to accumulate for three past or future periods of the year in which the transaction is made, and no more.

In any other case the bills shall be first presented to them, and if it shall suit them to discount the bills at the said rate of seven-eighths per cent. per month, then there shall be no obligation as in the cases mentioned above, and the holders shall be at liberty to discount with whomsoever they choose.—Mexico, 25th November, 1846.—Vicente Segura—Flores—José Ma. de Bassoco.—Manning y Mackintosh.

A report was read from E. S. Don Agustin Perez de Lebrija, dated to-day, notifying the debt of seventy-seven dollars costs, to the respective Justice's Court of the rents ordered to be deposited, belonging to Doña Guadalupe Echagaray, and it was ordered to be paid, previously making the proper entries and liquidation in the Treasury. A petition was read from Don José Fran^{co}. Bonilla, soliciting leave of absence for the benefit of his health, leaving a substitute with all his salary.

The Junta resolved, that although it understood that for a portion of the long time during which he had enjoyed leave of absence, Señor Bonilla might have performed his duties at the office, inasmuch as he was able to go out at night, and travel to Toluca, considering that he leaves all of his salary in favor of his substitute, and considering also the fitness of Don José Carbajal, who has discharged his duties thoroughly, the present petition is granted without being considered as an example for the future, and the said Carbajal is appointed to take the place of Señor Bonilla, upon the terms proposed by him.

Señores Lic. Don Castulo Barrera, and Don Miguel Quiñones appeared, and reported to the Junta relative to the questions pending, as to the denunciation of the "Socabon de San

Juan," of the mine of "La Trinidad," in Tasco, and they discussed at length the points connected with the allegation and the proofs to be presented; they requested, moreover, the first two hundred dollars on account of what they had earned. Approved and granted.

[Two Rubrics.]

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Session of 30th November, 1846.

Present, Señores Segura, Flores and Bassoco; and after approving the minutes of the 28th, report was made upon the following communications:

First. From Don José M. Garay, dated at Guadalajara, 24th inst., repeating what was directed to him on the 23d of October, inquiring the condition of the payment of his debt, secured by the value of the pearls which were delivered to Don Diego Moreno. In conclusion, he inquires if he has been credited with the amount already paid to the Señor Moreno. The Junta decided that this note should be enclosed to the said Señor Moreno, urging him as to the delivery of the value of the pearls, and that they repeat the answer lately given to Señor Garay, adding that at the same date the report should be transcribed for Señor Moreno.

Second. From Don José Zamora, dated 28th inst., remitting memorials No. 47, and the "boleta de beneficio," No. 19, of the negotiation of Tasco.—Received and referred to the Treasury.

Third. From the same, setting forth that the mine continues good and without depreciation of the ley of the metals. That they had washed three hundred quintals from Guadalupe, and that five hundred quintals "del tercero," were incorporated with two hundred and fifty pounds of quicksilver; that he was about to remit other six bars to Mexico, and inquires to whom they should be consigned; he acknowledges the arrival of the two cases of powder and requests four more. He says, lastly, that for the pay-roll of this week, he requires five hundred dollars.—Resolved, that the bars be consigned to Señor Echeverría, and that four cases of powder be sent.

Fourth. Defining the plan proposed by him for increasing the labors, which the Junta approved.

Fifth. In the four last communications, he advises having drawn the bills of exchange No. 78, value two hundred and forty dollars; No. 79, value thirty-eight dollars; No. 80, value seventy-five dollars, and No. 81, value sixty-two dollars three reals, which were ordered to be paid.

A report from the treasury, dated to-day, was read, relative to the balance sheet for the month of October, pertaining to the College, which is remitted by the director *ad interim* in conformity with the regulation. The Junta resolved that that for the month of September should be demanded, as the accounts had been presented up to the end of August; that the said accounts being made distinct from both funds, the balance sheets should be made with the same distinction; also, to keep separate in them the items corresponding to the different assignments established by the law of the 5th October, 1843.

[Two Rubrics.]

MONTH OF DECEMBER, 1846.

Session of the 2d.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the session of the 30th ult. report was made of a communication from the Commissioner in Zacatecas of the 26th ult., remitting a draft for eighty-two dollars, three reals, three grains, as the product of the mining taxes in Sombrerete during the month of September.—Let the draft be accepted, the proper entries made, and receipt thereof acknowledged.

Another from Don José Zamora of the 9th ult., forwarding six bars weighing 828 marcos 4 oz. of silver, which were consigned to Señor Zaviera Echeverria.

[Two Rubrics.]

Session of 5th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 2d, report was made of the following communications:

First. From the Minister of Relations, dated yesterday; in the first acknowledging the receipt of the notices remitted of the memorial authorizing the Junta to obtain, on the best possible terms, the amounts necessary to cover the expenses of the College, and the salaries to be paid from the quicksilver fund by the hypothecation of this fund, with the understanding that the necessary orders have been given, that as soon as the blockade of Vera Cruz is raised, there be remitted directly to the Junta drafts for the three per cent. of importation, until the completion of the amount of eight thousand dollars, annually. Adding besides, that in case said loan is not obtained, the

Junta will supply the amounts needed from the fund *dotal* as a loan, to be returned by the quicksilver fund, which will be repaid as soon as any amounts are received from the Custom-Houses, or when the said loan is realized.

The Señores Flores and Bassoco represented, that the object of the fund *dotal* being fixed, the Junta had no authority to divert to other objects, even in the class of a loan. The Señor Segura explained, that it being within the authority of the Government to dictate the measures under consideration, he was of opinion that the order should be obeyed, soliciting at once the said loan, taking care to receive the proper orders for the drafts for fifty thousand dollars annually from the port of Tampico, as soon as the country may be relieved from the American invasion. In consequence whereof, a majority of the Junta resolved, that the Government be replied to in the terms indicated by the Señores Flores and Bassoco, and the Señor Segura asked that his dissent be noted on the minutes, adding besides that he would explain to the Government the reasons upon which his opinion was founded.

In the second communication the Junta is urged to use all diligence in endeavoring to accomplish the loan of the two millions of dollars for the purchase of Spanish quicksilver under the decree of the 17th of February, 1843; resolved, that the same be taken under consideration on next Monday.

[Two Rubrics.]

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Session of 7th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the preceding day, report was made of the following communications:

First. Remitting the memorias No. 48, the boleta de beneficio No. 20, the balance-sheet No. 11, and the statements corresponding to the month of November.—Received and passed to Controller.

Second. Stating that there is nothing new at the mine, giving an account of the labors performed during the preceding week, and that for the pay-roll of this week five hundred dollars are needed.—Understood.

Third. Remitting six bars, detained in Cuernavaca since the middle of last month.—Let receipt thereof be acknowledged.

Fourth. Stating that Don Francisco Asambura has denounced a *boca* situated one hundred varas from the mine of S. Ygnacio, which is called Nicolá, and asking that inquiry may be made of Licenciado Villaloea if he has any instruction in relation to

the ownership of said boca, since in the archives under his care there is no notice whatever of the same: that subsequently he has known that the object of said denouncement is to collect some refuse ore which may produce some hundreds of cargoes of metal, which may have a ley of twenty marcos, and the cost of extracting which will not exceed one dollar per cargo.—Let the same be inserted to Señor Villaloea, and that the extraction of the metal will not be permitted until the mine is adjudicated to the denouncer.

Fifth. Asking that four boxes of blasting-powder be sent by the Arriero Fiz.—Let the same be sent.

Six, seven and eight. Stating in the three last, that drafts Nos. 82, 83 and 84, the first for two hundred and eighty dollars, the second for one hundred, and the third for forty, have been issued.—Let them be paid.

The Señores Consultores were ordered to be summoned to attend the next session, in order to determine the reply to be made to the Supreme Government, in relation to supplying from the fund *dotal* the expenses of the College, and those salaries which are to be paid from the quicksilver fund.

[Two Rubrics.]

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Session of 9th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the preceding session, report was made of an official communication of date of to-day, from the Señor Licenciado Don Arcadio Villaloea, communicating the information he possesses in relation to the vein of Nicolás, indicating that the Junta can ask information in relation to this point from the other parties interested.—Let the same be transcribed to Señor Zamora, and that inquiry be made of Señor Licenciado Gomez.

Another from Señor Don José Delmott, excusing himself for not assisting at the Junta of to-day, on account of his state of health.

Whereupon Señor Don Francisco Fagoaga presented himself, and being informed of the official communication of the Supreme Government, and of the Act of the 5th, as also of the reasons upon which the Señores Flores and Bassoco founded their opinion, and that of Señor Segura, whereupon matters were discussed at length and decided in accordance with the opinion of the first, but representing that it was not believed to be proper to say nothing to the Government, while no steps were taken with regard to the loan, so that the Junta might be

authorized and the contract remitted for its approval : the Junta decided accordingly, that Señor Bassoco be commissioned to take the necessary steps for the formation of the contract.

Señor Segura reported a letter from Don Agustin Font, dated at Tasco, 5th inst., offering his services for the purposes which might offer in the mine of Trinidad, and to manage its works for a small salary, leaving the corresponding margin in order to avoid the total ruin of the works. The Junta resolved to answer him, thanking him for his offers, and that they would bear them in mind when occasion required, but having no motive for changing the direction of the said business, they did not see fit to discharge Señor Zamora.

With regard to the report of the Supreme Government that the Junta may act as it thinks proper, in order to realize a loan of two millions of dollars, in order to contract for the quicksilver of Almaden, the Junta commissioned Messrs. Fagoaga and Rozas, that in conformity with the report of the Government, they may advise as to what steps are necessary for the realization of said loan.

[Two Rubrics.]

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Session of 14th December, 1846.

Present, the Señores Segura, Flores and Bassoco, and after having read the minutes of the 9th, Señor Segura called attention to the agreement of the majority relative to the manifestation which it thought proper to make to the Government in opposition to the report, which provides that in case of not obtaining the loan, there shall be supplied from the "fondo dotal" what is wanting from that of quicksilver for the expenses of the College, and the salaries which are paid from the said fund.

He impugned also the reasons set forth by Señor Fagoaga in the session of the 11th inst., with respect to the utility and importance of the new classes established in the College, and repeating the previous indication as to when the answer should be given to the Government, he cast his individual vote in opposition to the majority of the Junta.

In continuation, report was made upon the following communications :

First. From the "Ministerio de Relaciones," dated 11th inst., in which is inserted the order of the "Hacienda" to the Administration of the Custom-House of Vera Cruz, that they shall remit bills of exchange of the three per cent. henceforth, or as soon as the blockade shall be raised.—Ordered to be annexed to its Expediente.

Second. From the Mining Tribunal of Tasco, dated 11th inst., remitting the account of the duties which have accrued in the suits relative to the denouncing of the "Socabon de Guadalupe" and the mine of Trinidad.—Ordered that Señor Lic. Barrera report upon the matter.

Third. From Don José Zamora, dated 12th inst., remitting memorials No. 49, and the boleta de beneficio No. 21, from the negotiation of Tasco.—Received and referred to the Treasury.

Fourth. From the same, dated 12th inst., setting forth the labors performed in the "Hacienda del Chorillo," during the preceding week; that the mine continues in the same condition, and that for the pay-roll of this week, five hundred dollars are required.—Understood.

Fifth. From the same, advising the having drawn the bill of exchange No. 87, value two hundred dollars, in favor of Don Antonio Castañón, and No. 88, value two hundred and six dollars, in favor of Don Victorio Carillo.—Ordered to be paid.

Sixth. From the same, advising the remittance of six quintals of sulphate, by the arriero José Apolonio.—Ordered to be bought.

Seventh. From Don José Mariano de Saavedra, setting forth his having been appointed Administrator of rents for San Juan Tlotitihuacan, rendering thanks for the time he had been in this office, and requesting a certificate of his behavior.—The Junta resolved, that they were perfectly satisfied, and that the certificate should be issued.

Eighth. From the Commissioner at Guadalajara, dated 8th inst., remitting a bill of exchange of the value of five hundred and fifty-six dollars, one real, pertaining to the mining tax of that mint, during the month of November.—Ordered that the bill be accepted, the necessary entries made, and receipt acknowledged.

Ninth. From the Commissioner at Zimapan, dated the 1st inst., remitting another of one hundred and fifty-two dollars, five reals, for the same tax in the same November.—Ordered that the bill be accepted and collected, that the proper entries be made, and receipt acknowledged.

[Two Rubrics.]

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Session of 17th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after approving the minutes of the 14th, report was made upon the two following communications:

First. From the Commissioner at Durango, dated 9th inst., remitting a bill of exchange for ninety-eight dollars, forty-six

cents, being the product of the mining tax for November.—Ordered that the bill be accepted, the necessary entries made by the Treasury, and receipt acknowledged.

Second. From Don José M. Garay, dated 11th inst., at Guadalajara, acknowledging receipt of the communication in which was enclosed one to Don Diego Moreno, as to the payment of five hundred dollars, the value of the pearls which were delivered to him for sale, and stating, in conclusion, that there was nothing new respecting the case. The Junta appointed Señor Segura to wait upon Señor Moreno, exhibit to him the answer of Don José Garay, and point out to him the justice and urgency of payment, in order to avoid contentions, which could only result in increased expenses.

[Two Rubrics.]

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Session of 19th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after approving the minutes of the 17th, the account of the hiring of the apartments of the College for the past month, was read.—Referred to the Treasury.

A report was read from Don José Joaquin Rozas, dated 17th inst., in which he accepts the commission, in company with Señor Fagoaga, conferred by the Junta, in order that they may suggest a mode of facilitating the loan for the contract of the quicksilver of Almaden.—Understood.

A report was read from the “Ministerio de Relaciones,” dated 16th inst., in reply to the communication directed to it respecting the balance-sheet remitted by the Director *ad interim* of the College, stating that a commission had been appointed for the purpose of clearing up the said matter and any other doubtful one, preparing the necessary reforms, and composed of Señores Don José M^a. Godoy, Don Luis Varela, and Don Mariano Navarro.—Referred to its Expediente.

A report was read from Professor Don Blas Balcarcel, stating his appointment as second “vocal of the Junta facultativa,” in charge of the Direction of the College, in the absence of Señor Moral.—The Junta resolved, to reply that they had observed this with satisfaction, and to transmit to the Supreme Government the communication directed to Señor Rejon, respecting the fulfillment of the law as to the appointment of a Director.

[Two Rubrics.]

Session of 21st, December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 19th, report was made upon the following communications:

First. From the "Ministerio de Relaciones," dated 18th inst., in relation to the Junta extending the temporary leave of absence granted to its Secretary, Señor Castera, on the 25th of September, for two months more, reckoning from the date of the expiration of the commission entrusted to him by the Supreme Government.—Let the Government be consulted.

Second. From the Administrator of rentas of Zacatecas, dated the 16th, stating that the twelve dollars, the amount of the draft pertaining to the quicksilver fund, which had been returned to the Commissioner of the Junta in the capital, had been delivered as directed.—To its expediente.

Third. From said agent, dated the 18th, remitting said amount by draft.—Let the same be accepted, the proper entries made in the office of the Controller, and receipt acknowledged.

Fourth. From the same, dated the 10th, stating that he had written to Señor Llaguna proposing to submit the settlement of his debt to arbitration, but that up to date he had received no reply.—To its expediente.

Fifth. From Don José Zamora, dated the 19th, remitting the memorias No. 50, and the boleta de beneficio No. 22 of the negotiation of Tasco.—Received and passed to the office of Controller.

Sixth. From the same in relation to the prosperous condition of the mine, and the flattering prospects presented by the increased extraction, and the good leys resulting from the last assays, and that for the pay-roll of the present week five hundred dollars are required.—Understood.

Seventh. Stating that a draft has issued, No. 88, for two hundred dollars in favor of Don George Raffard.—Let the same be paid.

Eighth. Accompanying the notes in which the Prefect of that district has assigned two hundred dollars of the forced loan to that negotiation, and the reply made to him, representing that the Junta had control of the same, and that during the last month, considerable sums had been loaned for a short time. The Junta resolved, that the reasons be set forth to the Señor Prefect of Tasco, why it could not be comprehended in the loan, twenty-nine thousand dollars having been advanced, as appears by the balance sheet published in the *diario*, and that this communication be inserted to the Señor Governor, asking that the Señor Prefect be thus ordered, in case he should still insist on having said amount assigned, and advising Señor Zamora to that effect.

Ninth. From the same, forwarding seven bars, weighing nine hundred and thirty marcos, consigned to Señor Don Francisco T. Echeverria.—Let the same be sold by Sōr. Flores as commissioner, and receipt acknowledged.

Tenth. A private letter from the same, representing that it being necessary very soon to elect Colleagues of that Tribunal, in accordance with article 6th, title 2 of the Ordinances, his name might be used as a representative of the Junta in the elections.—Resolved that he be nominated, and that if he should think it necessary to have judicial power, it shall be remitted to him by the next mail.

[Two Rubrics.]

Session of 23d December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 21st, report was made of the following communications:

First. From the Juzgado of Pachuca dated the 20th and 21st, stating that the Sub-Prefectura of that Partido had appointed twelve laborers from those mines to the military service, accompanying a list of the same; and that having complained to the Prefect of the illegality of this proceeding, he had replied, admitting the same, but stating that it was not in his power to remedy the evil, because the recruits had been delivered to the disposition of the staff, wherefore application was made to the Junta, that it might interpose its influence. The Junta resolved, that the same be inserted to the Señor Gefē of the staff (plana mayor), citing the last law in relation to recruits passed by the Departmental Junta of Mexico.

[Two Rubrics.]

Session of 24th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after approving the minutes of the 23d, report was made upon the four following communications:

From the Commissioners at Culiacan. With the first, dated 5th inst., four bills of exchange, the first for fifty-seven dollars, being the product of Culiacan for the month of July; another for seventy-five dollars one real and three-eighths, for the product of September: another for eighty-three dollars five reals and five-eighths, for the month of October, and the last for three hundred and thirty-two dollars, four reals and five-eighths, for the month of November.

Ordered that the first three be accepted and collected, and that the last be accepted, and that the proper entries of all be made, and receipt acknowledged.

With the second, they remit a bill of exchange for ninety-three dollars, and fifty-seven cents, being the product of Mazatlan in the month of October.

The third is accompanied by a bill of exchange for (\$295) two hundred and ninety-five dollars, six reales, seven grains, being the product of Cosalá, for the said month, and the last by another bill of exchange for one hundred and forty one dollars, four reales, seven-eighths, as the product of Alamos, for the said October.

Ordered that the said bills be accepted and collected, and that the proper entries be made and receipt acknowledged.

[Two Rubrics.]

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Session of 26th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after approving the minutes of the 24th, report was made of the following communications:

First. From the Excellent Sör. Chief Clerk of the Ministry of Relations, dated the 23d, asking for the by-laws (reglamentos).—Let him be referred to the dates of the law which established the by-laws of the College, and that which established the Constitution (planta) of the office, with copies of the provisional by-laws of the same, with information of the present condition of those drawn up by the Junta and returned to it.

Second. From the Señores Baring Bro's, in London, of the 3d October, advising having placed at Havana, at the disposal of Messrs. Picard and Alvero, the two distilling apparatuses which they were commissioned to procure, with the corresponding plans, so that they may be easily set up, and accompanying their invoice.—Let the receipt of said communication be acknowledged, and a bill of exchange be negotiated for the amounts remaining in their hands, namely: two hundred and sixty pounds five pence; for which purpose Sör. Bassoco was commissioned.

[Two Rubrics.]

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Session of 28th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 26th, report was made of the following communications from the Ministry of Relations,

dated the 11th, and not received until to-day, in which the Exc't Sör. Chief Clerk inserts the communication addressed under date of the 10th to the second member (vocal) of the Professional Board (Junta Facultativa), Don Blas Balcarcel, and in which the Supreme Government accedes to the petition of the gentleman charged with the direction (of the college), Don Tomas Ramon del Moral, to have the said Señor Balcarcel take charge of the same.—The Junta resolved that note be made of the date of the receipt of this official communication, and it be added to its espediente.

Report was next made of the following communications:

First. From the agent of the Junta at Guanajuato, enclosing a draft for five thousand four hundred and ninety dollars, one real and three grains, for mining dues, corresponding to the month of November.—Let the draft be accepted, the proper entries be made by the Controller's office, and receipt be acknowledged.

The same resolution was adopted as to the second official communication, which the agent for the collection of the dues in San Luis Potosi sends, enclosing a draft for two thousand three hundred and eleven dollars sixty-three cents, belonging to the same month of November.

Five official communications from Señor Zamora, dated the 26th inst., remitting with the first reports No. 51 of that negotiation.—Acknowledge receipt, and to the Controller's office. Advising in the second, that there had been washed during the week, three hundred quintals of ore; that the mine continues in the same condition, and that he requires to pay the workmen, six hundred dollars.—Noted. In the third he acknowledged the receipt of the return permit for the six bars which he sent on the 9th September, to the house of the Sör. Rozas at Cuernavaca, and he asks for that of the other seven, which lately came consigned to Sör. Echeverria.—Noted.

In the two last he advises having drawn draft No. 90, for the sum of four hundred and twenty-nine dollars, in favor of Don Teodoro Chavez, and draft No. 91, for the sum of two hundred and forty-six dollars, in favor of Don Leonardo Maldonado.—Let them be paid.

In a private letter from the same, of the same date, he says, that he considers the power of attorney sent him to represent the Junta at the next elections of that Tribunal sufficient.

[Two Rubrics.]

Session of 30th December, 1846.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 28th, report was made of the following communications:

First. From Don Ramon Alfaro, Executor of the Controller's Office of this office, Don Miguel Hierro, dated the 26th inst., conveying intelligence of the death of said employé, which happened after one o'clock in the morning of the 23d.—To the Controller's office.

Second. From Messrs. Manning and McIntosh, of the 28th, inserting the communications which have passed between Don Fernando Pohls, Commissioner in Guanajuato, and the Señor Commissioner General of that State, touching the appropriation made by the Government thereof of the sum of five thousand dollars, as a loan to the Collection of the mining dues.—The Junta resolved, that he be informed that it has approved his conduct, and that there be remitted to him a copy of the circular of the Minister of Hacienda, in which those who may have paid loans of the larger quota in the district, are exempt from the loans to the States.

[Two Rubrics.]

YEAR 1847.

MONTH OF JANUARY, 1847.

Session of the 2d.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 30th ult., the law of 30th December, 1843, was read, and in accordance therewith notice was given to have the corresponding circular printed, stating that Don Juan Maria Flores, the agent of the miners, had began to act as President for the present year, following the precedents which exist as to the mode of communicating the same to the authorities and corporations existing at the capital.

The Sör. Steward of the College requested leave to visit the capital of San Luis Potosi, leaving under his responsibility his brother Don Leandro, and the Junta granted it, requiring it to be communicated to the Sor. Director *ad interim* of the College.

Subsequently the Sor. Flores stated that a dispatch should be sent to the Supreme Government, informing it that the loan which the Junta was authorized to procure for the purpose of defraying the expenses which are paid out of the quicksilver fund, as well in the College as in the office, not having been obtained, and which has become more difficult to obtain on

account of the late suspension of payments ordered by the Ministry of Hacienda, and as there is now only enough of said fund left to pay the expenses of the present month, it should be informed that the Junta cannot pay those expenses out of the dotal fund, because the objects to which exclusively it is to be appropriated are designated in the law.

The Sor. Segura dissented, saying that if the majority of the Junta insisted on sending said communication, he would write down in full his reasons for voting against it, so that they might appear on the minutes, and would transmit them to the Government. After a prolonged discussion the majority of the Junta resolved, that the answer alluded to should be sent to the Government, Señor Segura insisting that his own vote should be recorded, which he would transmit to the Government to relieve himself from responsibility.

[Two Rubrics.]

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Session of 4th January, 1847.

Present, the Senores Segura, Flores and Bassoco; and after the approval of the minutes of the 2d, report was made of the following communications:

First. From the Tribunal of Pachuca, dated the 3d, thanking the Junta for its answer to the petition in favor of the miners of that district, upon whom were levied the quotas for reimbursing, and stating that only one of them had been set at liberty.—Let it be inserted to the Chief of the Staff, urging him to decide, and let the President of the Tribunal be so informed.

Second. From the Administrator of the Maritime Custom-House of Vera Cruz, dated the 28th ult., stating that he had urged the Tribunal of the District to send the drafts of the quicksilver fund, which await the decision of that Tribunal.—To its espediente.

Third. From the same, of the same date, acknowledging the receipt of the order of the Ministry of Hacienda, which was communicated to it for the payment of the three per cent. duty, and acknowledging the receipt of a subsequent order of the same Ministry to apply the said duty proceeding from vessels which avoid the blockade to the fortifications of Vera Cruz, Uloa and Alvarado.—Let it be inserted to the Government, requesting it to renew the order given on the 9th ult, in regard to this matter.

Fourth. From Don José Zamora, dated the 2d, transmitting report No. 52, and ticket No. 23, and cash balance-sheet No.

12, of that negotiation.—Acknowledge receipt to the Controller's office.

Fifth. From the same, and of the same date, stating that there was nothing new, and that to pay wages for the present week he requires five hundred dollars.—Noted.

Sixth. From the same, the first numbered one, amounting to four hundred dollars, in favor of Don Leoncio Blanco, and the other, numbered two, amounting to one hundred and fifty, in favor of Don Rafael Solarez.—Let them be paid.

Seventh. From the Licentiate Don Castulo Barreda, stating that it would be proper to send some amount to Tasco, on account of dues owing to that Tribunal.—The Junta resolved, that Señor Zamora be informed that the payment of those dues has been delayed solely by awaiting the vouchers to be duly presented by him to the Controller General's office, in concert with Señor Quiñones he may pay that part of said account which is sufficiently proven, and as to the debit of which there may be no doubt, taking the proper receipt; and, finally, that he tell Señor Quiñones to answer all questions put to him by the Señor Licentiate Barreda, touching this matter, so that it may be concluded as soon as possible.—The Junta resolved, in like manner, that the Supreme Government be informed that, not having obtained the loan it was authorized to procure for the purpose of defraying the expenses of the College and the office, which is done out of the quicksilver fund, it cannot defray them out of the dotal fund, because it is a private fund of the mining body.

[Two Rubrics.]

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Session of 5th January, 1847.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the previous day, report was made of some communications remitted by the Señor Mackintosh from the agent at Guadalupe y Calvo, dated 15th December, enclosing a draft for three thousand four hundred and forty-six dollars, six reals, for proceeds corresponding to the months of April, May, June and July.—The Junta resolved, that the draft be accepted, the proper entries made, it be collected in due time, and receipt thereof be acknowledged, asking him for the accounts up to the end of December, and that he state in the advices the amount of the proceeds of dues for the preceding month; that he deduct therefrom a commission of four per cent., and send a draft for the balance on Messrs. Manning & Mackintosh in favor of the Junta.

With the second he encloses a draft for two thousand and

forty-two dollars, six reals, four grains, for proceeds for August, September and November.—Let the draft be accepted, the proper entries be made, and receipt be acknowledged.

It was further resolved, that the Señor Bassoco arrange with the house of Messrs. Manning & Mackintosh the payment of the first draft without waiting for the expiration of six months from its acceptance, as the draft was not received in due time, owing to some irregularity, and the amounts were received by the Commissioner in the months of April, May, June and July of the previous year.

On motion of Señor Segura, it was resolved that a felicitation be addressed to Excellent Señor General Don Antonio Lopez de Santa Anna, upon his appointment as President *ad interim*. Another to the Excellent Señor Don Valentin Gomez Farias, upon his appointment as Vice-President, and the Señor Segura himself was commissioned to draft the same after the adoption of the motion—the Señor Flores declining to vote.

[Two Rubrics.]

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Session of 7th January, 1847.

Present, the Señores Segura, Flores and Bassoco; and after the approval of the minutes of the 6th, report was made of the following communications:

First. From the Ministry of Hacienda, dated the 5th, asking the Junta to furnish it thirty thousand dollars, to be refunded from the duties which may be collected on the “conducta” of money which is to leave about the middle of the month.—And the Junta resolved that the Ministry be answered verbally by the Señor President of the Junta, that the dispatch was received at five o'clock in the afternoon of Tuesday, by reason of which the Junta could not meet to answer it until to-day, manifesting to it that the quicksilver fund is completely exhausted, and that it cannot dispose of the dotal fund, that being a private fund of the miners.

Second. From the Ministry of Relations, acknowledging the receipt of the circular in which it was informed that the Sōr. Flores was President of the Junta.—To its expediente.

The same disposition was made of a similar answer from the Sōr. Director of the College, and of one from the Sōr. Controller of the same.

Third. From the Junta menor for working the mines of San Juan de la Chica, advising that on the 15th inst. the third exhibition is to be completed by the shareholders.—To its expediente.

Fourth. From Don José Zamora, dated the 21st ult., sending the muleteer Fiz, so that he may be sent four boxes of powder. —Let them be purchased, and let him be told that as there is no sulphate in Mexico he must endeavor to obtain it himself, or use *magistral*, as he formerly did.

A petition was read from the “*oficiales*” and writer of the Controller’s office, to have the Supreme Government informed of the death of the Controller, Don Miguel Hierro, asking that the corresponding commissions may be issued according to the scale provided by law.—The Junta appointed the next day to treat of this subject.

A report was read from the Controller’s office, which was confined to show that there is no objection to the issuance of the certificate asked for by Don Manuel Pruneda for the sums he has received of the capital due by the Junta to the Hospital of Divino Salvador.—The Junta resolved that the certificate be made out.

A similar one was ordered to be given to Don Francisco Fischer, of the services which his father rendered to mining, according to the proofs which may be found in the archives.

The draft of the felicitation to the Exc’t Señores President and Vice-President of the Republic was presented, and after being sufficiently discussed, that which is to be addressed to the former in the following terms was approved :

“Exc’t Sir.—The Junta for the Encouragement and Administration of Mining, which owes its existence to the Supreme decree made by your Excellency on the 2d December, 1840, would deem itself derelict in its most sacred duties of justice and gratitude, if it should fail to unite its voice on this occasion to those of all corporations and individuals who are hastening to felicitate you upon your new election to the first magistracy of the State. This Junta can never forget that all the laws passed for the protection of this important branch, from the epoch of our glorious independence to the present time, owe their existence exclusively to your Excellency, and that only under your administration has the national mining industry attained the importance it deserves. It therefore expects that during the new Presidential term of your Excellency, you will continue in favor of the miners of the country, the elements of public wealth, which now more than ever you are required to encourage for the purpose of sustaining the independence and good name of Mexico, seriously jeopardized by the unjust war of the United States of the North; and finally it sends up its fervent supplications to the Supreme Being, to grant your Excellency the most complete and speedy triumph in the present struggle, preserving your important life and granting you

all kinds of happiness. With such motive it has the honor to repeat to your Excellency the assurance of its distinguished esteem and consideration. God, etc."

Three dispatches were read from the agents in charge of the Administration in Chihuahua, dated the 22d ult., remitting with the first two a draft for the sum of four hundred and sixty-six dollars, two reals, six grains, for dues belonging to the month of October, in Chihuahua and Jesus Maria; and in the third remarking that the difference of eleven dollars arises from his having overpaid by the previous remittance.—The Junta resolved, that the draft be accepted, the proper entries be made, passing to the Controller's office for report what relates to the difference of eleven dollars.

[Two Rubrics.]

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Session of 8th January, 1847.

Present, Señores Segura, Flores and Bassoco; and after having approved the journal of the session of the 9th, the following communications were submitted:

First. From H. E. the Minister of Finance, of this date, asking that there be remitted to him seven thousand dollars, to be returned from the first funds received.—The Junta resolved that there be remitted to the Treasury one thousand and thirteen dollars, being all the cash disposable, stating the same in answer to H. E. the Minister; that notice be given to the Auditor's office, and the corresponding certificate be procured from the general treasury; Señor Flores reserving his vote.

Second. From the Director *ad interim* of the College dated yesterday, informing of the election of the Board of Faculty (*Junta Facultativa*) of the same.—Understood.

Third. From Don Cayetano Buitron, of this date, remitting two thousand and thirty-four dollars, five reals, six grains, for mining dues appertaining to last month.—Receipt, and to the Auditor's office.

[Two Rubrics.]

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Session of 9th January, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 8th, there was submitted a petition from the employés of the Auditor's Department, that on communicating to the Supreme Government the death of the Auditor, it be requested to order that their commissions corresponding to their promotion be made out, in

conformity with the decree of 30th December, 1845.—The Junta resolved in accordance, and also that at the same time the Supreme Government be put in mind of the communications addressed to it by the Junta, relative to the expenses of the College and the assignment to the office which are paid out of the quicksilver fund. The Junta furthermore resolved that there be delivered to its President, Señor Don Juan M. Flores, two thousand five hundred dollars for expenses of the negotiation of Tasco during the present month, that the same be communicated to the Auditor's office, and that he render an account at the end of the month.

A petition from Don José Garcia was read, in which he solicits the office of clerk in the Auditor's office, which will be vacant by reason of the promotion of Don Francisco Bonilla.

[Two Rubrics.]

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Session of 11th January, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the 9th, the following communications were submitted :

From their Excellencies the Governors of the States of Mexico and Queretaro, from the Directory of Colonization and Industry, from the Directory of Tobacco and excise revenues, and from the Post-Master General's office, acknowledging receipt of the circular notifying that the President of the Junta for the present year is Señor Don Juan M. Flores.—To the expediente.

From the collecting agent at Durango, dated 1st instant, informing that he had delivered personally to the Administrator of the revenue of that department, the communication which had been recommended to him, the answer to which he would transmit immediately on receiving it.—To its expediente.

Six communications from Don José Zamora at Tasco, transmitting with the first the pay-rolls No. 1 of that negotiation; requesting in the second that there be sent to him the sulphate which he has ordered to replace what he had borrowed; advising that he had recommenced the work at the mine which had been stopped for want of gunpowder; that in the present week he will commence draining; that the extraction and the quality of the ores continue as usual; that he had begun to prepare the mill of Cantarranas, and that he required six hundred dollars for the pay-roll.—Understood. In the third he states, that not having been able to examine the bill of costs of the Tribunal of Tasco, it being in the hands of Señor Barreda,

in accord with Señor Quiñones, he is of opinion that there be paid to the Court three or four hundred dollars, and with regard to the account he will examine it minutely when he receives it.—The Junta resolved in accordance, and that there be transmitted to Señor Zamora a copy of said account, applying to Señor Barreda for the same. In the three last he advises having drawn bills of exchange, Nos. 3, 4, and 5, the first for one hundred dollars and the others for three hundred dollars each.—Let them be paid. In a private letter he informs Señor Segura of the result of the election of associates to that Tribunal, and that he himself had been appointed Alcalde, and requests that his acceptance be confirmed, founded on the article of the ordinance, recommending it to H. E. the Governor of the State of Mexico.—The Junta resolved to thank him for his good services in the electoral board, and that he be told to forward his representation through the Junta, which will recommend it effectively.

A petition of the citizen José de Jesus Piña was read, soliciting one of the vacancies of clerkship in the Secretary's or Auditor's department.—The Junta resolved to reserve it for the proper occasion, annexing it to the expediente.

[Two Rubrics.]

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Session of 12th January, 1847.

Present, Señores Segura, Flores and Bassoco; and after having approved the journal of the session of the 11th, there was submitted a report from the Auditor's office relative to the communication of the agent at Chihuahua, dated 22d ultimo, showing the mistake made in the previous remittance of eleven dollars and some reals; the Auditor's department concurs in the same, with the sole difference of half a real.—The Junta also concurred, and ordered that the agent be answered to that effect, and the answer attached to the expediente.

A report from the Bureau of Administration was read relating to the capital sums levied for building the bridge of Zimapan, recommending that the account and settlement of said capital sums, and of the interest paid upon them, be asked from the Auditor's office.—The Junta resolved to ask the Licentiate Barreda for the documents in his possession, and to procure from the archives all those to be found there referring to said bridge, to enable the bureau to amplify its report.

[Two Rubrics.]

Session of 15th January, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 12th, the following communications were submitted:

First. From H. E. the Governor of Puebla, and from the mining tribunal of Pachuca, dated 13th instant, in reply to the circular announcing the appointment of Señor Flores as President.

Second. From the mining tribunal of Mazapil, transmitting the record of its elections.—Let the Bureau of Encouragement report.

Third. From the Agent at Guanajuato, with copies of the official communication of H. E. the Governor, insisting upon the loan of five thousand dollars.—The Junta resolved that they be laid before the Supreme Government, that it may be pleased to declare that the Junta is comprised in the circular of 28th November, and to bear in mind the amounts which it has delivered; that Señor Pohls be informed to this effect, and instructed that as he should remit the proceeds of the mining dues at the beginning of each month, he ought to remit them immediately, and so free himself from responsibility.

Fourth. From the agent at Durango, remitting a draft for seven hundred and forty-four dollars, seventy-seven cents.—Let it be presented for acceptance, the proper entries be made, and receipt acknowledged.

Fifth. From the agent at Pachuca, remitting in a draft one thousand three hundred and twelve dollars, three reals, four grains, for the proceeds of last month.—The Junta resolved in the same manner.

Sixth. From the Licentiate Don Castulo Barrera, with his remarks on the bill of costs charged by the Tribunal of Tasco.—To the Auditor's office.

Seventh. From Don Manuel Mariano Cortazar, dated 12th ult., representing the difficulties which have been in the way of his complying with his contract for the purchase of the stock and implements which remained at the mine of Atargea, and also of his giving the bond which he had offered, to be executed by the Director of the Real del Monte Company.—The Junta resolved to answer him, that as he is accountable for the fulfillment of said contract, the Junta has nothing to do in the matter of the denouncement of the mine for abandonment on his part, and that it will be under the necessity of demanding its fulfillment, and the security-bond, when and where it may be convenient.

Session of 18th January, 1847.

Present, Señores Segura and Bassoco; and after having approved the journal of the session of the 15th, the following communications were submitted :

Four from their Excellencies the Governors of the States of Aguascalientes, Michoacan, San Luis and Vera Cruz, in reply to the circular notifying the appointment of President.

Fifth and Sixth. From the Mercantile Tribunal of Mexico, and the Mining Tribunal of Guanajuato, to the same effect.—To the expediente.

Seventh. From Professor Don Blas Balcarcel, of this date, informing that he had been ordered by the respective Ministry to deliver over the direction of the College to the senior member of the Board of Faculty, Don Joaquin Velazquez, which had been immediately done.—Understood, and communicate to the Auditor's office.

Eighth. From the agent at Zacatecas, dated 12th, remitting a draft for four thousand six hundred and twenty-three dollars, one real, proceeds of mining dues in the month of December, and a receipt for twenty-five dollars, from the student Don Agustin Ayala.—Let the draft be presented for acceptance, the proper entries be made, and receipt acknowledged.

Ninth. From the agent at San Luis Potosi, remitting a draft for one thousand six hundred and ninety-three dollars, forty-two cents; and the same resolution was passed as the preceding.

Tenth. From the agent at Guanajuato, dated 15th, transmitting the account for the four months ending in December, with the respective vouchers; and informing that the proceeds for December were five thousand five hundred and seventy-eight dollars, seven reals, eleven grains, which have been carried to the new account, and which he does not now remit because he considers that the sum of five thousand dollars have been attached in his hands in consequence of an official communication from his Excellency the Governor of that Department, which he transmits, in which he says that the Junta is not comprised in the circular of 28th November of last year.—The Junta resolved to delay answering until Señor Bassoco should approach the Ministry for the purpose of urging a resolution to the communication addressed to it on this subject on the 15th instant.

Eleventh. From the agent at Guadalajara, dated 12th, representing that some legal difficulties having occurred relating to the Mint, he required a denouncement proving his agency of the Junta in that city.—Let it be transcribed to Señor Mackintosh that he may substitute to him the power of attorney which he holds from the Junta.

Twelfth. Three from the Tribunal of Guanajuato, dated 9th instant, the first stating the demands made by Don Ignacio Porto and the other proprietors of the Mine of Toro for the sum of three hundred and fifty dollars, being one-half of the sum for which they sold said mine, and which is still due to them.—Let the Bureau of Encouragement report. In the second, dated 13th, he informs that he has collected the tools belonging to the mines of Toro, Clavellinas and Guadalupe, and proposes that he should sell the timber remaining in the buildings of Clavellinas, to prevent its being lost.—Same resolution as the preceding. In the third, dated 14th, he informs that Doctor Vidal had withdrawn his denouncement of the mine of Guadalupe, and requests the Junta to reply to him by return mail.—Same resolution.

Thirteenth. Four communications from Don José Zamora, dated 18th, transmitting with the first the pay-rolls No. 2.—Receipt, and to the Auditor's office. Representing in the second, that he considers that it will be beneficial to accept the services offered by Don Agustin Font, but stating that the workings have been conducted according to rule. Advising in the third, that he has drawn bill No. 6, for one hundred dollars in favor of Don Jorge Raffard.—Let it be paid. And in the last, informing that he has received an order from the Government of the Department, in which, promising to furnish him with the respective decree, it says that the Legislature has provided that no change be made in the tribunals of the State for the present year, which enactment contrary to the ordinance he believes Señor Madariaga has procured by surprise. He further informs that the loan of two hundred dollars was not insisted on, and that he requires four or six carabines for the defense of the property of the negotiation.—Let the respective passage be transcribed to the Licentiate Barrera, that he may report whether the person he commissioned in Toluca may be encharged to speak to the Governor on the subject, and let Señor Zamora inform whether he can procure the carabines at Tasco, and their price.

[Two Rubrics.]

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Session of 20th January, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 18th, there was submitted a communication from Professor Don Joaquin Velasquez de Leon, dated 18th, in which he informs that he had taken charge provisionally of the Directory of the College by order of his Excellency the President *ad interim*.—Under-

stood with pleasure, and that the Junta entertains the same feelings as expressed by him, and will contribute on its part as much as it can to the progress of the College.

A petition from Don Pantaleon Teran, soliciting the vacancy about to occur in the Secretary's office.—Let it be reserved for the proper occasion.

Señor Bassoco stated, that as he had not been able to obtain the order which the Junta had solicited to prove its exemption from the loan levied in Guanajuato, Señor Pohis should be informed of the same, and instructed to resist the payment, and it was so resolved.

The Junta also resolved to make answer to Señor Zamora, that for the present it does not consider it expedient to accept the offer of Señor Font.

Finally, a report from the Bureau of Encouragement was read, relative to the official communication from the Tribunal of Guanajuato, dated 14th inst., regarding the decision in the case of the denouncement of the mine of Guadalupe in Clavellinas, recommending that the Junta make no opposition to the same in view of the facts shown by the proceedings; and it was resolved in accordance, and that answer be made that by next mail the tribunal shall be informed of the person to whom the stock and implements may be delivered.

[Two Rubrics.]

Session of 21st January, 1847.

Present, Señores Segura and Bassoco; and after having approved the journal of the previous session, there was read a communication from his Excellency the General in Chief of the army, replying satisfactorily to the congratulations which the Junta had addressed to him.

Second. From the Governors of the Departments of Jalisco and Zacatecas, acknowledging receipt of the circular communicating the appointment of the new President.—To its expediente.

Third. Others from the mining tribunals of Anganguco and Tlalpujahuá, on the same subject.—To its expediente.

Fourth. From the agent at Guadalajara, dated 15th inst., remitting a draft for one thousand and fifty-five dollars, seven reals, proceeds of dues in the last month.—Let the draft be presented for acceptance, the proper entries be made, and receipt acknowledged.

Fifth. From the agent at Durango, transmitting the answer to the reclamation addressed to the Administration of the

Revenue of that Department through him.—Let the Auditor's office report.

Sixth. From the tribunal of Tlalpujahua, transmitting the denouncement of a new mine discovered under a house in that town.—The Junta resolved in accordance with the verbal report of the Secretary, that it be transmitted with explanations to his Excellency the Governor of the State of Michoacan, requesting his approval, should the municipal authorities of that place make no objections, and transcribing to him the resolution of the Supreme Government in regard to the exercise by the Governors of the States of the powers stated in article 15, title 6, of the Ordinance.

[Two Rubrics.]

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Session of 25th January, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 21st, the following communications were submitted:

Three from the mining tribunals of Catorce, Sultepec, and Tasco, acknowledging receipt of the circular communicating the appointment of Señor Flores as President.—To the expediente.

Fourth. From the agent at Guanajuato, dated 22d, remitting a draft for five hundred and seventy-eight dollars, seven reals, eleven grains, for proceeds of dues in the last month, considering as attached the remaining five thousand dollars, although he had transcribed to H. E. the Governor the communication in which the Junta informs him that application had been made to H. E. the Vice-President, to declare that the Junta is comprised in the circular of 28th November of last year.—The Junta resolved that the draft be presented for acceptance, the proper entries be made, and receipt acknowledged, and that he be told that he ought to have remitted the five thousand dollars, inasmuch as the matter being pending on the resolution of the Supreme Government, the Government of the State could not order the attachment; but even if it did, after remitting this sum there would still remain the proceeds of the present month, should the Government continue to insist, and with more reason ought he to have made this remittance, seeing that he had been expressly told on the 16th inst., that if the attachment was levied after the first fifteen days, he would be made responsible for not having complied with the orders expressed in his instructions.—Let there be transcribed to Señor Mackintosh said communication of the 16th, that received to-day from Señor Pohls, and the answer.

Eight communications from Don José Zamora, transmitting with the first the pay-rolls No. 3.—Receipt, and to the Auditor's office. In the second, he acknowledges the receipt of the account presented by that tribunal, and promises to examine it.—In the third, he informs that the mine continues with very little alteration, and that he requires six hundred dollars for the pay-roll.—Understood. In the fourth, he inquires whether he may sell twenty to thirty arrobas of old copper, which Señor Arambura desires to buy at twenty-five dollars a quintal.—Let him sell it at the best price he can, advising what articles it is made up of, that they may be noted in the inventory. In the fifth, he writes that the Prefect had informed him that H. E. the Governor had authorized him to reduce the quota of the loan from two hundred dollars to one hundred.—Let there be transcribed to him the declaration of the Supreme Government regarding the loan. In the three last, he advises of having drawn bill No. 7, for four hundred dollars, in favor of Don Benito Ortiz, on the 23d instant; No. 8, for three hundred dollars, in favor of Don Leoncio Blanco, on the same date; and No. 9, for a like sum, in favor of said Blanco, and on the same date.

[Two Rubrics.]

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Session of 27th January, 1847.

Present, Señores Segura, Flores and Bassoco; and after having approved the journal of the session of the preceding day, the two following reports of the Auditor's department of the Junta were submitted:

First. On the last communication from the Agent of Durango, in reference to the debt of four thousand four hundred and seventy-seven dollars, six reals, three grains, appertaining to the one per cent., recommending that a statement of everything that has occurred be made to the Supreme Government, and the Junta resolved in accordance.

Second. Representing its concurrence with the remarks made on the bill of costs of the Tribunal of Tasco by the Licentiate Don Castulo Barrera. The Junta resolved in conformity, and Señor Flores noticed a mistake of one dollar less in the result of said account; and it was resolved finally to transmit the same to Señor Zamora, that together with Señor Quiñones, he may examine it, clear up the doubts regarding it expressed by Señor Barrera, and report what may be expedient.

Lastly. The Junta resolved that there be delivered to said Señor Licentiate a copy of the Mining Ordinances which he has requested.

[Two Rubrics.]

Session of 28th January, 1847.

Present, the Señores Flores, Segura and Bassoco ; and after having approved the journal of the session of the 27th, the following communications were submitted :

First. From the Supreme Court of Justice, dated 26th, informing of having appointed the Licentiate Don Pablo Vergara, Treasurer-collector of the fund created by the law of 30th November, 1846.—Understood.

Second. Three from the Ministry of Relations, dated 27th, informing, in the first, of having transcribed to the Ministry of Finance the communication of the 5th inst., that the Administrator of Vera Cruz be notified to comply punctually with the order of the 9th of last month.—To its expediente. In the second, advising that H. E. the Vice-President does not consent to the repeal, as solicited, of the order providing that the expenses of the College and this office, which were paid by the quicksilver fund, be supplied by the dotal fund.—To its expediente. In the third, approving of the appointments of Auditor and employés in the regular course of promotion, made by the Junta, by occasion of the death of Don Miguel Hierro.—To its expediente.

Third. From H. E. the Governor of the State of Durango, dated the 18th, and from the tribunal of Fresnillo, dated 20th, acknowledging receipt of the circular communicating the appointment of Señor Flores to the Presidency.—To its expediente.

Fourth. From the Chief Administration of direct contributions, dated 25th, asking for a statement of the employés of the office, so as to make the corresponding settlement.—Let it be transmitted.

Fifth. From the Agent at Guanajuato, dated 25th, remitting a draft for one thousand six hundred and sixty-six dollars, five reals, four grains, which he had retained in his possession of the dues of last month, in virtue of the apportionment of five thousand dollars to the agency of the mining dues in that State, made by that Government, and which, according to the law of 19th November, could only be exacted two-thirds in cash and the balance in paper. He advises that he has paid three thousand three hundred and thirty-three dollars, two reals, and given bond for the respective paper, considering it better to proceed in this manner than to be exposed to a formal levy and its subsequent proceedings, in which event he says the whole sum would have been exacted from him in cash.

The Junta resolved that the draft be presented for acceptance, the proper entries be made, and receipt acknowledged ; that it be represented to him, furthermore, that having given

him timely notice, twice repeated, to recall the payment of said sum, the Junta being exempted from the same, it is surprised that he should have paid it over notwithstanding these warnings, and not have waited till the levy was made; that having notified him that in conformity with his instructions he should remit the proceeds of the foregoing month at the beginning of the following month, the money which he paid over is on his own responsibility, and more especially so as no levy took place, in which event its having been taken by force might have saved it; neither is it certain that if the levy had been made, the whole five thousand dollars would have had to be paid in cash, inasmuch as the decree expressly provides that only two-thirds shall be in cash, and the other in bonds; finally, that unless the Government delivered the drafts of the clergy, it could not compel the lenders to pay, and consequently, the documents transmitted to him are sufficient for him to recover the three thousand three hundred and thirty-three dollars which he was pleased to pay, but that the Junta reserves its right to demand this sum from him, and will demand it, and has so notified the house of Manning & Mackintosh.

A petition from Don Ignacio Castro was read, soliciting the post of clerk vacant in the Auditor's office.—To its expediente.

[Two Rubrics.]

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Session of 1st February, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 28th, the Señor Licentiate Don Castulo Barreda presented himself, and handed in his account for his fees as solicitor of the Junta in the proceedings in the denouncement of the mine of San Juan and Trinidad.—To the Auditor's office for its report.

The following communications were read:

First. From the mining tribunal of Temascaltepec, acknowledging the receipt of the circular notifying of the appointment of Señor Flores as President of the Junta.—To its expediente.

Second. From that of Sayula, acknowledging the receipt of said circular, and informing of the decree passed by that Legislature on January 11th, of the present year, abolishing mining tribunals.—To its Expediente.

Third. From that of Guanajuato, dated 29th, promising to send to the Junta a statement of the stock in hand at the mine of Toro, as soon as it is received from the Alcalde who had

been ordered to prepare it, and advising that the tools amount to about 67 dollars.—To its Expediente.

Fourth. From the Agent at Zimapan, remitting a draft for one hundred and twenty-four dollars, two reals, six and three-quarters, for dues of last month.—Let the draft be presented and collected, the proper entries be made, and receipt acknowledged.

Fifth. From the Agent at Guanajuato, dated 29th, informing that he has received and transmitted to the Government of that State the communication of the Ministry of Relations declaring the Junta exempt from the forced loan in the States.—To its Expediente.

Sixth. From the Executor of the testamentary estate of Don Miguel Hierro, asking that a person be appointed to represent its interests for the three hundred and fifty dollars owing to the Junta. The Junta resolved to appoint Señor Delmotte, it being understood, that by so doing the present Junta does not take upon itself the responsibility of the former one; and that said Executor and Señor Delmotte be notified of this appointment.

Seventh. Ten official communications from Don José Zamora, dated 30th ultimo, transmitting with the first the pay-rolls No. 4, of the negotiation of Tasco.—Receipt, and to the Auditor's office. In the second, he acknowledges receipt of the report made by Señor Barrera, on the bill of costs of the Tribunal of Tasco.—To its Expediente. In the third, he acknowledges receipt of the copy of the official communication addressed to the Governor of Guanajuato on the subject of the loan. In the 4th, he advises having received ten dollars which had been lent to the carrier, Agustín Fiz, and inquires the cost of the case of gunpowder which was sent to him from Cuernavaca.—Let the ten dollars of the carrier be charged to him, and he be informed of the cost of the gunpowder. In the 5th, he informs that at the distance of twenty-six varas, there had been found the vein which they had been searching for in the work done in the interior of the adit of Guadalupe; that the width of the vein is three-fourths of a vara of good ore, and that they had succeeded also in draining the upper works; that the entire cost of the work has not amounted to one thousand dollars, and that the drainage of the pit of Dolores goes on well; that at the Hacienda, there were washed last week six hundred and fifty quintals; that he was waiting for the sulphate which he has ordered to commence the reduction of three hundred quintals more, and that he required six hundred and fifty dollars for the pay-roll of the present week.—Understood, and that the Director of the Apartado be written to, asking the sulphate.

In the 6th, he asks for the approval of the charge of ten dollars a week paid to Don Agustin Font, and three dollars a week to the miner who watches the works by night, this assistance being indispensable in view of the greater extent of the works of Trinidad.—In accordance. In the four last he advises having drawn for one thousand and seventy dollars in four bills.—Let them be paid.

Señor Flores presented the account of the two thousand five hundred dollars delivered to him to pay the expenses last month of the negotiation of Tasco, and it was resolved to transmit it to the Auditor's office.

[Two Rubrics.]

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Session of 4th February, 1847.

Present, Señores Flores, Segura and Bassoco ; and after having approved the journal of the session of the 1st, the following communications were submitted :

First. From the Ministry of Relations, dated 30th ultimo, transmitting a petition from Don Francisco Fischer, requesting the vacant post of clerk.—To its Expediente.

Second. From the mining tribunals of Sombrerete and Mazapil, acknowledging receipt of the circular notifying the appointment of Señor Don Juan M. Flores, as President for the present year.—To its Expediente.

Third. From those of Fresnillo and Asientos in Aguascalientes, advising of the election of their associates.—Understood with satisfaction.

Fourth. From the Agent at Sombrerete, remitting a draft for thirty four dollars, one and a half grains, for proceeds of the month of December, in Sombrerete.—Let the draft be presented and collected, the proper entries made, and receipt acknowledged.

Fifth. From the same, transmitting vouchers Nos. 1 to 9, for the last four months of the previous year.—To the Auditor's office.

Sixth. From the Agent at Guanajuato, dated 1st instant, informing that he had transmitted to the Commissariat the official communication of the Ministry of Relations lately forwarded to him ; and transmitting a copy of the answer he had received from the Governor, in which he states, that under that date he had addressed his remarks to the Supreme Government.—The Junta resolved that said answer be transcribed to the Supreme Government, and that Señor Bassoco be commissioned to speak to Señor Mackintosh on the subject of the responsibility for the three thousand three hundred and thirty-three dollars.

Seventh. From Señor Don José Delmotte, dated the 3d, accepting the commission to represent the Junta on the estate of Señor Hierro, and asking for the Expediente of the matter and an authenticated copy of the proceedings in relation to the same.—Let them be transmitted to him.

Eighth. From the Directory of the Apartado, stating the distribution made of the sulphate, and informing that the Junta may send for four quintals.—Let its cost be paid, and notice given to Señor Zamora to send for it. There was read a report from the Bureau of Administration of this date on the subject of the debt of the Licentiate, Don Diego José Perez y Fernandez.—The Junta resolved to commission the Secretary, Don José M. Castera, to make verbal inquiry of this gentleman of who is the person who paid the one hundred dollars appearing as paid for his account, and to arrange with him for the back payments which have not been made, and for the payments he may have to make in future.

[Two Rubrics.]

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Session of 6th February, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 4th, the following communications were submitted:

From the Ministry of Relations.

First. Of the 27th ultimo, intimating that Don Francisco Segura be considered as a probationary clerk (*meritorio*) of the Auditor's department, provided that the Junta finds no objections; and the Junta resolved to suspend its action on the matter till another session.

Second. Of the 29th, from the same, transcribing the communication which it had addressed to the Ministry of Finance, with the copy of an official letter in which money was asked from the Junta to supply provisions to the troops, and copy of the answer of the Junta, remitting one thousand one hundred dollars.—To its Expediente.

Third. Of the 1st instant, advising of having transmitted to the Ministry of Finance the communication of the Junta, requesting that the necessary orders be issued that the Administrator of the revenue at Durango pay the four thousand four hundred and seventy-seven dollars, six rials, three grains, which he owes for the one per cent. on the circulation of money.—To its Expediente.

Fourth. Of the 3d, from the same, transcribing the order communicated to his Excellency the Governor of the State of

Guanajuato, to refund the sum received for the loan exacted from the agent there, and declaring the Junta to be exempted from such payment.—Let it be transcribed to Señor Pohls, representing to him the responsibility of the contracting house.

A report from the Auditor's office was read on the subject of the account of fees of the Licentiate Don Castulo Barreda, which concludes by recommending that the receipt of Señor Quiñones be disallowed, and that he be paid the balance.—The Junta resolved in accordance.

[Two Rubrics.]

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Session of 8th February, 1847.

Present, Señores Segura, Flores and Bassoco; and after having approved the journal of the session of the 6th, the following communications were submitted:

First. From the Government of Chiapas, acknowledging receipt of the circular notifying the appointment of Señor Flores as President.—To its expediente.

Second. From that of Michoacan, informing that in compliance with the insinuation of the Junta, it had applied to the municipal authorities of Tlalpujahua for the necessary information respecting the case of having to cut through a street to work the mine which had been denounced.—To its expediente.

Third. From the Director of the National College, informing that the student Don Francisco Erdosain is going to practice at Anganguco, and requesting that the proper orders be issued for paying him there his monthly allowance.—The Junta resolved that answer be given, that as it has no agent in the State of Michoacan, it cannot comply with the request.

Fourth. From Don Sebastian Segura, dated the 6th in Pachuca, representing that he has not been able to remit the account and the amount collected for rents of the houses there belonging to the Junta, but that he will do so in person about the middle of the present month.—To its expediente.

Fifth. From the Agent at Zacatecas, dated 2d instant, transmitting the certificate of the Administration of the revenue which was wanting with his account of the last four months.—To its expediente.

Sixth. From the Agent at Guadalupe y Calvo, dated 12th January, informing that he had instructed his agent at Parral to exact from Señor Lujan de Muñoz the accounts which had been asked from him, and declining to collect the debt owing by Señor Rodriguez, as he can find no one willing to take this business in charge on account of the little prospect of collecting anything.—To its expediente.

Seventh. From the Agent at Guanajuato, of the 5th instant, protesting against the responsibility charged to him for having paid the loan assigned to that agency, and stating that on this subject he will correspond only with Manning & Mackintosh, from whom he received this commission, and remitting a draft for three thousand dollars which he had collected up to that date.—Let the draft be presented for acceptance, the proper entries be made, and receipt acknowledged.

Eighth. Seven communications from Don José Zamora, dated 6th inst., transmitting with the first the pay-rolls No. 5, the reduction ticket, and the statements and cash balance sheet No. 1.—Receipt, and to the Auditor's office. In the second, informing that he dispatches the carrier Fiz for the four quintals of sulphate, and that he is waiting to be notified when he may send for the other four.—Let the sulphate ordered be sent, and he be informed that he can send for other six quintals next week. In the third, he communicates that the quality of the ore in the vein which has been struck is of seventy marks for one hundred quintals; that he had ordered the work to be driven three or four varas more; that the vein is from five quarters to a vara and a half wide, but in strips; that in the shaft of Dolores the water had been reduced fourteen varas; that at the Hacienda of Cantarranas the timber for the wheel would be all ready by the end of the present month, and that for the pay-roll of this week he requires seven hundred dollars.—Understood. In the four last he advises having drawn in four bills for the sum of eight hundred and ninety-eight dollars.—Let them be paid.

Finally. A petition from the citizen Pedro Jausequi was read, that there be given to him one of the vacant clerkships.—To its expediente.

[Two Rubrics.]

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Session of 10th February, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 8th, there was submitted a report of the Bureau of Encouragement relating to the resignation by Don Ignacio Castelaso, of the Presidency of the Tribunal of Pachuca; and after mature discussion, it was resolved to make answer to this gentleman, that as the Junta no longer, in this matter, possesses the power conferred on it by the law of 2d December, 1842, in virtue of the establishment of the federal system, it cannot transmit his resignation, as it would desire to do, to the Government of the

State of Mexico, whose office it is to decide in the matter ; and that he may present his application to the same in accordance with the supreme declaration of November last.

The account presented by the Treasury, of rents collected from tenements of the college building in January, was then read, and ordered to be transmitted to the Auditor's office.

Finally, The Junta resolved that an official letter be addressed to the Director of the Mint, putting him in mind of the payment of the value of seven bars of silver, introduced for his account since 16th March last, and which has not yet been paid.

[Two Rubrics.]

Session of 11th February, 1847.

Present, Señores Flores, Segura and Bassoco ; and after having approved the journal of the session of the 10th, the following communications were submitted :

Two from His Excellency the Governor of Chihuahua and from the agent there, acknowledging the receipt of the circular notifying the appointment of Señor Flores as President of the Junta for the present year.—To its expediente.

Third. From the Tribunal of Anganguco, transmitting the acta of one associate and two advisers.—Understood.

Fourth. From the agent at Durango, remitting a draft for one thousand four hundred and thirty-three dollars twenty-three cents, for the proceeds of mining dues in the month of January.—Let the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

Fifth. From the agent at Pachuca, dated 10th inst., transmitting the account for the quarter ending in December.—To the Auditor's office.

Sixth. From Don Cayetano Buitron, stating that he had transmitted to Don Manuel M^a. Lebrija all the documents required to enable him to present his accounts.—The Junta resolved that Señor Lebrija be notified to forward his unsettled accounts within a fortnight at most, as Señor Buitron had represented that he had transmitted him all the documents.

[Two Rubrics.]

Session of 15th February, 1847.

Present, Señores Segura, Flores and Bassoco ; and after having approved the journal of the session of the 11th, the following communications were submitted :

First. From His Excellency the Governor of Tamaulipas, acknowledging receipt of the circular notifying the appointment of Señor Flores as President for this year.

Second. From the agent at Zimapan, remitting a draft for two hundred and sixty-four dollars, six rials, for proceeds of dues in the last month.—Let the draft be presented and collected, the proper entries made, and receipt acknowledged.

Third. From the agent at Guadalajara, remitting another draft for seven hundred and sixteen dollars, three rials, one and a half grains.—Let it be presented for acceptance, the proper entries made, and receipt acknowledged.

Fourth. From the agent at Guanajuato, remitting a draft for two thousand eight hundred and seventy-one dollars, seven rials, for balance of proceeds on the last month, and also a receipt for fifty-five dollars, four rials, for costs of the protests made in the affair of the loan of the three thousand three hundred and thirty-three dollars.—Let the draft be presented for acceptance, the entries made, and receipt acknowledged.—Let Señor Mackintosh be informed that, as Señor Pohls has refused to have any correspondence with the Junta on the subject of the three thousand three hundred and thirty-three dollars of the loan, and has not even communicated the result of the last interference by the Government, he should see to its being recovered, in the understanding that the contracting house is responsible.

Fifth. Four from Don José Zamora, dated 13th, transmitting with the first the weekly pay-rolls No. 6, and the reduction ticket No. 2, of the negotiation of Tasco.—Receipt, and to the Auditor's office; and in the other three, advising of having drawn for one thousand four hundred dollars in favor of Don Rafael Solarez.—Let them be paid.

The Licentiate Don Castulo Barrera presented an account of fees in the matter of denouncement of the adit.—To the Auditor's office.

[Two Rubrics.]

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Session of 18th February, 1847.

Present, the Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 15th, there was read a report from the Auditor's office, on the account of fees presented by the Licentiate Don Castulo Barrera, amounting to forty dollars, recommending its approval, and said sum was ordered to be paid.

The three following communications were submitted:

First. From Don José Zamora, dated 13th, ordering the cloth

necessary and proper for the two mills; also, that the sulphate which he has ordered be sent to him, and two cases of gunpowder.—Let them be purchased and forwarded.

Second. From the agent at Guaymas, dated 18th January, representing that since April, last year, he has transmitted the account for the last four months of 1845, appertaining to Hermosillo, and that he would send another copy, considering the post to have miscarried.—He remits duplicate of a draft for five hundred and fifty-eight dollars ninety-eight cents, dated 20th April, but the Bureau of Administration having noticed that it appears from data in the Auditor's office that said draft has been paid by the contracting house, and that the accounts referred to are also on file in said office, the Junta resolved that Señor Robinson be so informed, and the draft returned to him. The Auditor's Department having recommended that said agent be required to satisfy the cost of the stamped paper of the fifth stamp, on which said account should have been written, and the amount charged for postages, both amounting to five dollars six rials, the Junta agreed not to make said demand, in view of the difficulty of collecting the same, and of the small commission which the agent receives by reason of the limited amount collected.

Third. From the agents at Culiacan, in answer to the demand made to them for the unsettled accounts, stating that one of them, Señor Le Brum, had to come to Mexico in the present month, and would bring them with him. They transmit also an official letter from Señor Don Juan Nepomuceno Lopez Portillo, dated 23d January in Mazatlan, in which he offers to settle with said gentlemen and finish their accounts, which he had not done till then because of the political disturbances occurring so frequently at that post.—To its expediente, and let it be remembered on the arrival of Señor Le Brum in Mexico.

[Two Rubrics.]

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Session of 22d February, 1847.

Present, Señores Flores, Bassoco and Segura; and after having approved the journal of the session of the 18th, the following communications were submitted:

First. From the Ministry of Relations, transcribing the official communication of the Ministry of Finance, stating that the proper orders shall be issued for remitting to the Junta the drafts corresponding to the three per cent., so soon as the blockade is taken off.—To its expediente.

Second. From the same, acknowledging receipt of the statement of Receipts and Disbursements of last year.

Third. From the agent at Zacatecas, remitting a draft for four thousand eight hundred and fifty-nine dollars, two rials, for proceeds of the last month, and a receipt from the student Ayala.—Let the draft be presented for acceptance, the entries made, and receipt acknowledged.

Fourth. From the agent at San Luis Potosi, transmitting the accounts of the last four months.—To the Auditor's office.

Fifth. From Don Sebastian Segura, at Pachuca, dated 16th, transmitting the accounts of the property of the Junta for the last year, and two hundred and thirty-nine dollars five rials to account —Receipt, and to the Auditor's office.

Sixth. Three communications from Don José Zamora, dated the 20th, transmitting with the first the pay-rolls No. 7; informing in the second that he was going to get reduced two lots of ore, which being finished he would remit five bars of silver.—Understood; and advising in the last that he had received the seven quintals of sulphate which had been forwarded to him, and that he would dispatch the carrier for the three remaining, the two cases of gunpowder, and the cloth for the mills; and finally recommending that in the invoice of the sulphate, it should be stated that it is for mining purposes.—The Junta resolved that it be so stated.

[Two Rubrics.]

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Session of 25th February, 1847.

Present, Señores Flores, Segura and Bassoco. The Secretary submitted the result of his labors at Toluca in the matter of the collection of the debt owing by the Licentiate Don Diego José Perez Fernandez, which was that he proposed to give an order on the State Treasury to discount sixty dollars a month from his salary till the debt should be paid; and the Junta taking into consideration that any other measures would occasion expenses and make the recovery of the debt more difficult, from the want of means in Perez, and also that there are other creditors to his property, resolved to accept the proposal, and to write to this effect to the substitute Attorney Licentiate, Don Ignacio Arrieta, telling him to receive the order and the installments, and to remit the same to the Treasury of the Junta safely and opportunely; and also that he represent the Junta in that city in business which may occur relating to Tasco.

[Two Rubrics.]:

Session of 24th March, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of 25th February, the following communications were submitted:

First. From their Excellencies the Governors of Sonora and Sinaloa, acknowledging receipt of the circular in which it was communicated to them that the Señor Flores was acting as President of the Junta for this year.—To its expediente.

Second. From the Agent (*Apoderado*) in Guanajuato, dated the 5th and 15th instant, remitting in two bills of exchange six thousand three hundred and fifty-two dollars, two rials, for proceeds of the month of February.—Let the bills be presented for acceptance, the proper entries made, and receipt acknowledged.

Third. From the Agent at Durango, of 5th March, remitting another draft of eight hundred and seven dollars and seventy-four cents, for the previous month; and the same resolution was passed as the preceding.

Fourth. From the same, dated 19th March, transmitting the account of the last four months.—To the Auditor's office (*Contaduría*).

Fifth. From the Agent at Chihuahua, dated 16th February, remitting a draft for six hundred and ninety-eight dollars, seven rials, for proceeds of December and January, in that city.—Ordered, that the draft be presented for acceptance, and the proper entries having been made, that receipt be acknowledged.

Sixth. From the same, and of the same date, transmitting the account of the last quarter.—Receipt, and to the Auditor's office.

Seventh. From the Agent at Pacluca, of 17th March, remitting another draft of one thousand six hundred and forty-six dollars, six grains, for proceeds of the month of February.—Let the bill be presented for acceptance, the proper entries made, and receipt acknowledged.

Eighth. From the same, advising that he had made a mistake in the remittance which he made in the month of February.—Passed to the Auditor's office for report.

Ninth. From the Agent at Guadalajara, remitting six hundred and fourteen dollars, five rials, eight grains, for proceeds of the same month of February; and the same resolution was passed as the preceding.

Tenth. From the same, communicating having ordered to be made duplicates of the accounts corresponding to the last four months.—That notice be given to the Auditor's office.

Eleventh. From the Agent at Culiacan, dated 10th February, remitting three drafts, one for three hundred and twenty-four

dollars, one and a half rials, appertaining to Alamos, for the month of November last; another for three hundred and fourteen dollars, six rials, appertaining to Culiacan, for the month of December, and the third, for three hundred and one dollars, five rials, corresponding to Alamos for said month.—That the bills be presented for acceptance, the proper entries be made, and receipt acknowledged.

Twelfth. Other four, from the same, and of the same date, transmitting a draft for two hundred and twenty-four dollars, three rials and two-eighths, appertaining to Cosalá for the month of November last; 2d, for two hundred and thirty-nine dollars, one rial, corresponding to the same mining district for the month of December; 3d, for one hundred and nineteen dollars, seven rials, ten grains, appertaining to the month of January, in the same place; and last, another for one hundred and sixty-nine dollars, two rials, two-eighths, produced by Culiacan in the month of January.—That said drafts be presented and collected, the proper entries be made, and receipt acknowledged.

Thirteenth. From the Agent at Guadalupe y Calvo, transmitting the accounts in conformity with the communication addressed to him on 9th January last.—To the Auditor's office.

Fourteenth. From the Agent at Zacatecas, dated 5th instant, remitting a draft for one thousand three hundred and fifty dollars, two rials, ten and a half grains, for account of the proceeds of the month of February.—That the draft be presented for acceptance, the entries be made, and receipt acknowledged.

[Two Rubrics.]

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Session of 26th March, 1847.

Present, Señores Flores, Segura and Bassoco; the journal (*acta*) of the previous session was read and approved, and there were submitted the following communications:

First. From the Director of the negotiations of Tasco, dated 27th February, transmitting the weekly pay-rolls No. 8 of the mine and Hacienda.—Receipt, and to the Auditor's office.

Second. From the same, of same date, advising that there had been sold to Don Francisco Aramburu, 27 arrobas, 15 lbs. old copper, at 27 dollars per quintal, amounting to one hundred and sixty-two dollars, four rials, and transmitting the return Custom-House docket for seven quintals of sulphate.—Receipt, report to the Auditor's office, and send back the return docket.

Third. From the same, dated 6th March, transmitting the weekly pay-rolls, No. 9 of the mine and Hacienda, and two

statements and one cash balance, marked No. 2.—Receipt, and to the Auditor's office.

Fourth. From the same, dated 13th March, transmitting the pay-rolls No. 10 of the mine and Hacienda.—Resolution same as the preceding.

Fifth. From the same, March 20th, transmitting pay-rolls marked No. 11.—Dispatched in the same manner.

Sixth. From the same, March 20th, advising having drawn bill of exchange No. 30, for two hundred dollars, in favor of Don Manuel Parres.—Let it be paid.

Seventh. From the same, of the same date, advising having drawn bill No. 29, for the sum of one hundred dollars.—Payment ordered likewise.

Eighth. From the same, 27th February, advising having drawn bill No. 22, for ninety-six dollars.—Payment also ordered.

Ninth. From the same, same date, advising having drawn bill No. 21, for one hundred dollars, with same resolution.

[Two Rubrics.]

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Session of 27th March, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of yesterday was read and approved, and there was submitted an official communication of the Agent of the District, with which he remits one thousand one hundred and ninety-seven dollars, two rials, six grains, proceeds of the mining dues collected in the previous month, and it was resolved that the receipt be acknowledged and the proper entries made.

The Notary, Don _____ then notified the Junta that its share in the mine of San Juan de la Chica had been adjudged, because it had not met its responsibilities in time; and he was answered by representing to him that the reason for not having paid up the whole amount fixed by the contract, was that an express order had been received from the Government for the suspension of payments, even those of this nature, notwithstanding its having been informed fully of the kind of obligation contracted by the Junta in this matter; which was known to the Company of the Negotiation, having been so informed by its representative, the President of the Mining Junta.

[Two Rubrics.]

Session of 29th March, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the session of the 27th was read and approved, and the following official communications were submitted:

First. From the Director of the negotiations of Tasco, February 22d, in which he orders three quintals of sulphate, two cases of gunpowder, six yards of wire-cloth, and three or four pounds of English gunpowder.—Let answer be made that the cloth has been sent, that the gunpowder shall be procured and shall be ready when the carrier returns, and that the sulphate shall be applied for again and sent when it is procured.

Second. From the same, February 26, reporting his conference with Señor Olaguibel, relating to the infringement of the decree prohibiting the continuation of the Mining Courts which existed in the State of Mexico at the time of its promulgation.—Resolution suspended.

Third. From the same, February 27, informing that the works of the mine and the quality of its ores continue in good condition, and giving an account of the work going on.—Understood.

Fourth. From the same, March 6, advising having drawn bill No. 23, for four hundred dollars.—Let it be paid, and the corresponding entries made.

Fifth. From the same, same date, with advice of having drawn bill No. 24, for four hundred dollars.—Same resolution.

Sixth. From the same, same date, advising having drawn bill No. 25, for other four hundred dollars.—Same resolution.

Seventh. From the same, March 9, ordering six quintals of quicksilver.—To its Expediente, said article having been remitted since the 26th.

Eighth. From the same, March 13, advising having drawn bill No. 26, for four hundred dollars.—Let it be paid, and the respective entries made.

Ninth. From the same, March 20, communicating the state of the working of the mine, and the want there is of quicksilver.—Understood, repeating the notice that said article has been sent.

Tenth. From the same, of same date, advising of the drawing of bill No. 27, for four hundred dollars; and its payment was resolved, and that the respective entries be made.

Eleventh. From the same, and of the same date, relative to the drawing for other four hundred dollars by bill No. 28; and the same resolution was passed.

Twelfth. From the same, March 27, informing of the work at the mine, and inquiring if the five bars which he has to remit in Easter week, shall be consigned also to Señor Eche-

verria.—Understood, and that he make the remittance to the same consignment, unless he should have sufficient reason for fearing danger at the time of remitting said bars.

Thirteenth. From the same, and of the same date, transmitting the weekly pay-rolls No. 12 of the mine and Hacienda.—Receipt, and to the Auditor's office for the consequent purposes.

Fourteenth. From the same, and of the same date, advising the drawing of bill No. 31, for three hundred dollars; and the payment of the same was resolved, and that the corresponding entries be made.

Fifteenth. From the same, and of said date, advising the drawing of bill No. 32, for three hundred and thirty-four dollars; and the same resolution was passed.

Sixteenth. From the same, and of the same date, ordering that the quicksilver be not sent to him, as he has already obtained it, and inquiring whether he may receive money from the house of Señor Zurutuza, notwithstanding its being in copper coin.—That the quicksilver has already been sent to him; and in regard to his inquiry, he may act as seems proper to him, as there has been no intention to extort from the negotiation, but, without detriment to it, to accommodate the holder.

Seventeenth. Account presented by the Treasury of the amount collected for rents of the tenements of the College in the month of February.—Transmit to the Auditor's office for the necessary purposes.

Eighteenth. Report from the Auditor's office relative to repeating a communication to the Agent at Pachuca, allowing him two dollars, three grains, difference in accounts.—In conformity.

Nineteenth. From the Agent at San Luis Potosi, March 24th, transmitting a draft for sixty-five dollars, ten cents, collected in February.—Let receipt be acknowledged, the draft collected, and the proper entries made.

Twentieth. From the Agent at Guadalupe y Calvo, March 9, relative to employing and paying an Attorney to negotiate the collection of the debt of Rodriguez in Parral.—Let the respective Bureau report.

Twenty-first. From the Agent of the District, offering to present his pending accounts.—That he be urged to do so without delay.

[Two Rubrics.]

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Session of 30th March, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the preceding session was read and approved, and there was

submitted a communication from the Ministry of Relations, dated yesterday, reinstating by it Señor Tornel in the office of Director of the College of Mining; and it was resolved to reply to it that such information had been received.

There was also submitted an official communication from the Agent of the district, dated 16th February, in which he reiterates that the case of his compromise has not occurred, because he has not been reinstated in his office, nor has his retirement on a pension yet been declared.—Let him be told that in view of all the considerations which the Junta has had with him, it seems just that he should make an effort, and pay over on account in proportion to the sums he receives, until the business is definitely settled.

[Two Rubrics.]

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Session of 5th April, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the session of the 30th ultimo was read and approved, and the following official communications were submitted:

First. From the Director of the negotiations at Tasco, dated the 3d, transmitting the weekly pay-rolls No. 13 of the Hacienda, the reduction ticket No. 3, two monthly statements, and a cash balance sheet marked with the same number.—Receipt, and pass the statements and pay-rolls to the Auditor's office.

Second. From the same, of the same date, in reply to some inquiries regarding taking away pillars, which it is reported has been done in the negotiation.—Let it be transcribed to the Licentiate Barreda.

Third. Another, relative to the state of the works, showing that the roll of the following week will amount to eight hundred dollars.—Understood.

Fourth. Another, informing that a carrier had left, who may convey the pending three quintals of sulphate, and other six; six quintals of Biscayan iron flat bars, and two cases of gun-powder.—Let the articles ordered be purchased, and be ready for the carrier.

Fifth. Another, transmitting the general account for the year 1846.—Receipt, and to the Auditor's office.

Sixth. Another, advising of having drawn bill No. 34, for four hundred dollars.—Let it be paid, and the proper entries made.

Seventh. Another, advising the drawing of bill No. 33, for other four hundred dollars.—Same resolution passed.

Eighth. From the Directory of the College, March 30, trans-

cribing the order of the Government that Señor Tornel be reinstated in said Directory,=To its Expediente.

Ninth. From the Ministry of Relations, of February 24, acknowledging receipt of the statements of receipts and disbursements of the Junta in the month of January.=To its Expediente.

Tenth. From the Correspondent at Zimapan, dated 1st, remitting a draft for three hundred and thirty-three dollars, two rials, four grains. Receipt, let the draft be presented for acceptance, and the proper entries made.

Eleventh. From the Director of the negotiations of Tasco, dated 3d, in which he requests that he be paid what is due to him for the ten dollars per week appropriated to him by the Junta.=Let the proper Bureau report.

[Two Rubrics.]

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Session of 6th April, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the session of the preceding day was read and approved, and there was submitted a communication from the Ministry of Relations, in which, under date of March 20, is transmitted the petition of Don Francisco Fischer, that there be conferred on him the situation of copying clerk, which is vacant in the office, and it was resolved to suspend action on it for the present.

Immediately, and in view of the report of the Auditor respecting whether in view of its having been ordered that the Agent at Hermosillo be allowed five dollars, six rials, with which he credits himself for postages and stamped paper in his account corresponding to the last four months of 1845, this favor should be extended to the two preceding terms, and also to the future. The Junta resolved to be without effect their resolution of the 18th ultimo, and provides that the Auditor's Department be governed by the terms of the contract for collection made with Messrs. Manning and Mackintosh.

[Two Rubrics.]

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Session of 7th April, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the session of the previous day was read and approved, and there was submitted an official communication from the Agent of the District, remitting nine hundred and eighty-five dollars, one rial, collected for mining dues in the month of March; and

it was resolved to acknowledge the receipt and make the corresponding entries.

The Junta then ordered that the Auditor and the Bureaus of Encouragement and Administration in the Secretary's office, be notified to provide without delay, a statement of the entries now pending in them, so that in view of the same, reasonable resolutions may be passed.

On petition of Don Manuel de Jesus Piña, formerly probationary clerk (*meritorio*) in the Auditor's office of the Junta, that there be issued to him a certificate of the manner and time of his service, it was ordered that the Auditor give him a certificate of the facts.

[Two Rubrics.]

Session of the 8th day of April, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the session of the preceding day was read and approved, and there was submitted an official communication from the agent at Guanajuato, dated 5th, in which he transmits a draft for three thousand five hundred dollars, for what he has collected of the mining dues in the month last past; and it was resolved to acknowledge the receipt, that the draft be presented for acceptance, and the corresponding entries made.

[Two Rubrics.]

Session of 9th April, 1847.

Present, Señores Flores, Segura and Bassoco; the journal of the session of previous day was read and approved, and there was submitted a report from the Bureau of Administration, dated the 7th, in which answer is made to the inquiry whether or not there should be appointed the solicitor and attorney proposed by the Agent at Guadalupe y Calvo, to continue negotiating the collection of the debt of Don Cristobal Rodriguez, formerly agent of the Junta at Parral.—Let reply be made, that in the supposition that there is a person who will accept the power of attorney, the Bureau report the terms on which he should be paid.

In view of the report of the Bureau of Encouragement, in which it is recommended that there be credited to Don José Zamora five hundred and twenty dollars, corresponding to fifty-two weeks of the previous year, at the rate of ten dollars per week, for the gratuity assigned to him, in the understanding that it is beyond doubt that the profits of the year will

defray this expense: and that the interested party be required to present the account of said profits in proof thereof; it was resolved in conformity, with the addition, that as the proof of the profit or loss of the negotiation can only be properly calculated at the end of each year, the decision on making said allowance be deferred till the end of the year '47.

[Two Rubrics.]

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Session of 10th April, 1847.

Present, Señores Flores, Segura and Bassoco. The journal of the previous day was read and approved, and it was ordered that there be transmitted for the Auditor's report an official communication of the Ministry of Relations, of date 7th inst., in which a report is required from the Junta in relation to a petition from Don Andres del Rio, that there be appropriated to him six hundred dollars, for the purpose of printing a supplement to his work on mineralogy.

There was submitted an official communication of the General Directory of Tobacco of the same date, notifying that it had no stock of gunpowder on hand to supply the negotiations of Tasco; and it was resolved to purchase one quintal from Señor Carrera, and another of what is for sale in the street of Cadena, or in any other place, and that they be remitted to Zamora, with an account of their cost, so that on trial being made, they may report which kind gives the greatest satisfaction, and may be contracted for in future.

[Two Rubrics.]

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Session of the 12th April, 1847.

Present, Señores Flores, Segura and Bassoco. The journal of the session of the 10th was read and approved, and the following communications were submitted:

First. From the Director of the negotiations at Tasco, dated 7th, advising the drawing of bill No. 38, for one hundred dollars.—Let it be paid, and the proper entries be made.

Second. Another, with advice of No. 37, for two hundred dollars.—Same resolution passed.

Third. Another, advising of No. 36, for fifteen dollars.—Same resolution.

Fourth. Another, advising of No. 35, for four hundred dollars.—Same resolution.

Fifth. Transmitting weekly pay-rolls No. 14, of the mine

and hacienda.—Acknowledge receipt, and pass to the Auditor's office.

Sixth. Another, informing of the carrier having left who is to convey the sulphate and gunpowder asked for.—Let endeavors continue to be made to procure these articles.

Seventh. Another, informing that the copper articles lately sold were three retort-heads and one furnace-tube of no use.—To the expediente.

Eighth. From the Court of Anganguco, dated 5th, proposing the encouragement of mines in said district, and transmitting statistical data.—Let the Bureau of Encouragement report.

Ninth. From the agent at Durango, dated 2d, remitting a draft for nine hundred and thirty-three dollars eighty-two cents, proceeds of mining dues.—Let receipt be acknowledged, the draft presented for acceptance, and the proper entries made.

Tenth. From the Auditor's office, dated 10th, making certain reclamations in regard to accounts of the agent at Guadalupe y Calvo.—In conformity.

Eleventh. From the Director of the negotiations at Tasco, of the same date, proposing that there be sold there five bars, to prevent the risk in remitting them.—That he give fuller explanations on the subject, and that he may sell the five bars at one and a half per cent. discount.

[Two Rubrics.]

Session of 13th April, 1847.

Present, Señores Segura and Bassoco. The journal of the session of the previous day was read and approved, and there was submitted a report from the Bureau of Encouragement, stating that to enable it to give the report required by the Supreme Government, in consequence of the petition of Don Andres del Rio, that six hundred dollars be provided him for printing the supplement to his work, it is requisite that said Señor del Rio explain whether this expense is to be for his own account, or on account of the College, it being indispensable that in both cases the Director express his opinion on the subject; and it was resolved in conformity with the opinion of said Bureau.

[One Rubric.]

Session of 14th April, 1847.

Present, Señores Flores, Segura and Bassoco. The journal of the previous day was read and approved, and it was ordered

that there be transmitted to the Auditor's office for its report, an account presented by the Licentiate Barreda, and which was remitted by the Secretary of the Mining Tribunal at Tasco, charging one hundred and ninety-two dollars for judicial costs; and it was ordered that there be purchased twenty-four mill stamps, to be sent by the carrier Don Ricardo Luna, according to advice of the Director of the Negotiations, in his official communication of the 6th of this month.

[Two Rubrics.]

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Session of 15th April, 1847.

Present, Señores Flores, Segura and Bassoco. The journal of the session of the previous day was read and approved, and there was submitted a report from the Bureau of Encouragement, in which it is recommended that the superior authorities of the State of Michoacan be stimulated to give protection to mining in that district as soon as the political condition of the country will permit; and that it be recommended also to the Mint that there be no misusage in cutting off pieces of bullion for assays; and it was resolved in conformity, and ordered that the corresponding communications be forwarded, acknowledging receipt, and giving due thanks to the Court for the remittance made and for the statistical information which it promises; and that the law in regard to bullion for assays be explained to Señor Mackintosh, so that under the new management of the house the abuses of which the Court complains be not committed.

[Two Rubrics.]

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Session of 17th April, 1847.

Present, Señores Flores, Segura and Bassoco; and after the approval of the journal of the 15th, there was read a communication from the Señor Judge Don Agustin Perez Lebrija, in which he states that the Illustrious Señor Don Manuel Yrisarri, having been appointed executor of Señor Dr. Don Juan José Gamboa, he is prepared to proceed to collect the assets of the testamentary estate, and that consequently there may be paid to him the interest on the capital owing by the dotal fund.—Transmitted to the Auditor's office for its report.

The Señor Minister of Finance presented himself to the Junta, representing the actual urgent demands on the public treasury, and the necessity which the Supreme Government was under of remitting, this day, a considerable sum of money

to his Excellency Señor Don Antonio Lopez de Santa Anna, and making himself even personally responsible for the largest amount which the Junta might furnish him with.

The members of the Junta thereupon represented to H. E. that they were well disposed to assist the Supreme Government; but that having to defray the expenses indispensable for the support of the college, to pay the salaries of officers, and the weekly pay-rolls of the negotiation of Tasco, they could only furnish him the sum of ten thousand dollars, under the condition that he should engage to repay four thousand dollars on the 27th or 28th of the present month, and the balance on the 15th of May next: that said sum was not in cash, but in drafts on the house of Messrs. Manning and Mackintosh, payable at various dates, but that he could receive the money for them at a discount of seven-eighths per month.

The Minister consented to the terms proposed, adding only that in that case he should deduct the discount on said drafts from the time of making the repayment to the dates in which they become due.

[Two Rubrics.]

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Session of the 19th April, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 17th, there were read the following communications from Don José Zamora, dated the 17th instant in Tasco:

First. Transmitting the pay rolls No. 15.—Receipt, and to the Auditor's office. In the second, he advises having delivered to Don Miguel Quiñones fifty dollars for his journey to Mexico.—Understood. In the third, he notifies that bill No. 21, which he drew in favor of Don Agustín Fiz for one hundred dollars having been lost, it may not be paid to any person presenting it.—Understood. In the four following, he advises having drawn bill No. 39 for four hundred dollars in favor of Don Manuel Parres; No. 40, for two hundred and seventy-one dollars, three rials, six grains, in favor of Don Leonardo Maldonado; No. 41, for four hundred and fifty dollars in favor of Don Francisco Aramburu; and No. 42, for two hundred and twenty dollars in favor of Don Jorge Raffard.—The Junta resolved that they be paid, and that the corresponding entries be made.

Second. From the Commissioner at Pachuca, dated 14th, remitting a draft for eight hundred and eighty-eight dollars, five rials, two grains, for proceeds of the month of March.—Let it be presented for acceptance, and receipt acknowledged.

Third. A communication was received from His Excellency the Minister of Finance, dated yesterday, advising having received the drafts against the house of Messrs. Manning and Mackintosh for ten thousand dollars, which were transmitted to him.—The Junta resolved to pass the same to the Auditor's office, and that the corresponding entries be made.

A communication was received from the Ministry of Relations, dated 7th instant, transmitting the petition in which Don Francisco Segura asks that there be conferred on him the situation of copying clerk vacant in the Auditor's Department, that it may be considered on making the presentation which the Ministry expects the Junta will transmit without delay. After a mature discussion, the Señores Flores and Bassoco agreed that reply should be made to the Supreme Government in the following terms :

This Junta de Fomento y Administrativa de Minería received on the 6th of February last the official communication from your Ministry, which it was pleased to address to the Junta on the 27th of the previous January, informing that His Excellency, the Vice President *ad interim*, had decreed in accordance with the petition in which Don Francisco Segura had solicited to be considered as a probationary clerk (*meritorio*) of the Auditor's office, from the day in which he began his services in the same, *provided that on the part of the Junta no objection should be found.*

The Junta considered it convenient to suspend its action upon the contents of this communication and its consequent answer, until it should have to occupy itself with the matter of supplying the two vacancies which exist in its office, which time has now arrived, in view of the official communication of Your Excellency of the 7th instant, received the 18th, in which you transmit the petition which the aforesaid Don Francisco Segura presents, that there be conferred upon him the office of copying clerk (*escribiente*) which is vacant in the Auditor's Department, and order us to consider the same on making the presentation which the Government expects the Junta will remit without delay.

The Junta, then, taking into consideration the first communication to which it has the honor to reply, believes that it is necessary to explain in what manner Don Francisco Segura entered the Auditor's Department, said communication providing that he be considered as a probationer from the day in which he commenced to serve in this office. Señor Don Vicente Segura, President of the Junta, being his father, informed individually the other members, who are the same that at present with him constitute this body, that as his son Don Francisco

could not continue prosecuting his studies in the college, he had resolved that he should attend the Auditor's office to improve his handwriting and accounts; to this, his colleagues considered that no objection could be made, neither was it necessary to enter into any examination of the obstacles which might exist to his admission as a probationer.

If, apart from the antecedents, we esteem the communication as a mere order for the future, that Señor Segura be considered from the day of its date as a probationer, *provided that on the part of the Junta no objection should be found*, we are concerned to be obliged to say that we do find such objection.

Regarding the question of expediency, the Junta believes that nothing more contributes to prevent the most capable persons from aspiring to situations in the public offices than the employment of probations in them, because there being no obstacle opposed to their admission, in consideration that the little or much which they do is entirely gratuitous, yet from the relations which they acquire with the employés and heads of departments, they are afterwards preferred to others outside in filling situations, who being more capable, had not submitted to the mere expectancy of a vacancy.

With regard to legal enactments, relating to probationers in the offices of the Public Treasury, the Junta does not consider that its office is included, as certainly it does not appertain to the Public Treasury.

It is true, that one of the sections of article 5th of the decree of 30th November, 1843, in which is established the estimate of this office, provides that, "All (the employés) shall have the same privileges, and shall be subject to the laws regulating those of the Public Treasury." But this law was passed doubtless in contraposition to article 5th of the Regulations of the Junta, not admitted by the Government, in which it was stated: "The first (section) shall be composed of the Secretary, etc., the situations in which shall be of exclusive appointment of the Junta and in conformity with what is enacted by article 14th, title 1st, of the Mining Ordinances." Said article speaks of the free removal of employés; but we repeat that this enactment, far from proving that the office of the Junta appertains to the Public Treasury, proves the reverse, and it would be impertinently superfluous to declare, that the employés of an office not of the Public Treasury should be considered as employés of the Public Treasury. The other peremptory reasons which might be alleged to prove that it does not so appertain, the Junta believes unnecessary to state, in addressing a Minister who is perfectly aware of the nature of the mining fund; and with the above it considers that answer is made to the communication of 27th January.

In regard to the presentation which the Government expects, according to the contents of the communication of the 7th instant, the Junta considers it to be its appropriate duty to make some observations to His Excellency the Minister, that they may be examined in justification of its action.

It appears, beyond doubt, that the considerable increase of employé's made in this office by the aforesaid decree of 30th December, 1843, was principally in consequence of the accumulation of labor thrown upon it by the new quicksilver fund which it was required to administer, receiving and disbursing its proceeds in the manner designated by the laws passed to that effect. It is now some time since receipts from this source have entirely ceased; and of its distribution there has remained only the dotation appropriated from said fund to the college, and the portion for increase in the salaries of the office, which payments are being made, by order of the Government, from the dotal fund, on condition of their being refunded to it, which it is not easy to foresee when may happen, although the time may be considered as far distant when said repayment shall be made, in view of the actual state of affairs. This consideration, in addition to that of there no longer existing the accumulation of labor caused to the administration by the quicksilver fund, inclines the Junta to believe that it is proper for the present to suspend the presentation to the two situations which are vacant in its office, and it does not doubt that Your Excellency will duly appreciate the motives which impel it to make these remarks.

The Junta protests to Your Excellency its distinguished consideration and esteem.

Señor Segura said: Seeing that my present colleagues have thought proper to enroll in this journal the official communication which they have resolved to address to the Government in reference to the petition of Don Francisco Segura, soliciting that there be conferred on him the situation of copying clerk now vacant in the Auditor's department, I find myself obliged to speak and place this matter in its true light.

While President of the Junta I placed Don Francisco Segura in the situation of probationer, he having the qualifications required by the laws for being admitted as such. I then informed my colleagues of this, but not in the understanding that it was simply with the object that a young man of eighteen years old should improve his handwriting and exercise himself in accounts, as he could write, and had gone through the first and second course of mathematics in the College of Mining, from which it was necessary to take him by advice of physicians, because of a cerebral affection with which he had been

attacked. Since that time, that is, from January, 1846, he has acted as copying clerk in the Auditor's department, that post having been left vacant, doing its work to the satisfaction of his immediate superiors, Señores Auditor Don Miguel Hierro and Don Miguel Gangoiti, who have given him honorable certificates, which my colleagues have seen. In these he has been considered as a probationer, and the same opinion is held of him by every person in the different departments of the Junta.

If this office for the administration of the dotal fund of the miners cannot be said to appertain to the public treasury, still it does so unquestionably, because it also administers a national fund appertaining to the public treasury, namely, the quicksilver fund.

But waiving this question, article 5th, of the law of December 30, 1843, says literally as follows: "All (the employés in the office of the Junta) shall have the same privileges, and *shall be subject to the laws regulating those of the public Treasury.*" And these same laws, as well those passed in the time of the Spanish Government as the others passed since the Independence, provide in benefit of the public service, that in all offices probationers be admitted, and that vacancies be filled *necessarily with them.* This theory that probationers in the public offices are prejudicial, is new, contrary to the laws, and is the private opinion of the present agent of the creditors to which *till now* the Junta has been continually opposed, it having admitted such persons as desired, but who seeing that they were never presented with the slightest gratuity for their daily labor, have resigned to go to other offices.

It is also true that the posts of copying clerks which are vacant should be filled, because since they became vacant the Junta has been daily in the necessity of paying others to dispatch the work of the office.

Don Francisco Segura certainly is my son; but this relationship is no impediment to his occupying this situation, the Supreme Government having declared that in the offices of the Junta two brothers may be employed.

Having the highest confidence in the integrity of His Excellency the President, I have no doubt that he will act justly, and attend to the petition of the said Don Francisco Segura.

The Junta, in view of the information from Tasco relative to that Tribunal having passed judgment in the expediente on denouncement of the mine of Trinidad, ousting the Junta from its possession and depriving it of the half of the products existing in it, resolved that S^r. Bassoco should present himself in arbitration to said Tribunal, as agent of the creditors of

the total fund invested in Trinidad, and for the sum which said mine owes for the defalcation of its manager Arismendi.

It was likewise resolved, that said Señor Bassoco be authorized to incur all expenses, and order such proceedings as he may consider proper to obtain a reversal of said judgment, presenting vouchers for the first, and informing of the second.

[Two Rubrics.]

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Session of 22d April, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 17th, the following communications were submitted:

First. From his Excellency the Director of the College, of this date, transmitting the accounts to the end of last year.—Receipt, and to the Auditor's office.

Second. From the agent at Guanajuato, remitting a draft for two thousand seven hundred and seventy-one dollars, six reals, for balance of proceeds of last month.

Third. From the agent at Zacatecas, remitting another for two thousand four hundred and two dollars, seven reals, seven and a half grains, for the same month.

Fourth. From the agent at San Luis, remitting another for one thousand five hundred and seventy-four dollars, sixty-six cents, corresponding to the same term.

Fifth. From the agent at Guadalajara, of 16th inst., with another for nine hundred and ninety-seven dollars, five reals.—Let the drafts be presented for acceptance, the entries made, and receipts acknowledged.

Sixth. From the agent at Zacatecas, remitting draft for forty-two dollars, one real, four and a half grains, for proceeds at Sombrete, in February.—Let it be collected, and pass to the Auditor's office.

Order was given to pay a receipt to Don Miguel Quiñones for account of dues, and to pass to the Auditor's office, recommending to its immediate dispatch the account sent in by the Licentiate Señor Castula Barreda.

There was submitted an official communication from the Minister of Finance, dated 14th instant, in which he asks a circumstantial account of the different exactions levied upon mining in sundry periods.—The Junta resolved to suspend its answer until some of its members should call and request the Government to explain said communication.

[Two Rubrics.]

Session of 23d April, 1847.

Present, Señores Flores, Segura and Bassoco; and having approved the journal of the session of the 22d, there was read an official communication from Messrs. Manning and Mackintosh, dated the 15th, informing that Señor Don Jorge Lebrun being about to arrive, bringing with him the accounts and information asked from him, giving this information in case that the Junta should prefer to await the arrival in Mexico of this gentleman, and stating the drafts which said Lebrun brings in favor of the mining branch, and also the appointment which they have made of agents in Culiacan of Señores Don Guillermo Hooper and Don Luis Bellangi.—The Junta resolved that reply be made in accordance, and that attention be paid to the arrival of Señor Lebrun.

Two reports from the Auditor's office were read: the first, dated the 15th, referring to the accounts of '35 from Hermosillo. The Junta resolved in accordance, except in that portion which recommends that the account be returned, as the want of stamped paper may be supplied by transmitting the sheets cross-lined, and the assayer's signature may be forwarded without returning the account. It was also resolved, that Mr. Mackintosh and Messrs. Hooper and Bellangi be informed that the proceeds of Hermosillo for the last year had not been received, and of the remarks relative to the accounts of 1845. In the second is shown the liquidated account of the interest for six years, on the capital of 1703 dollars, 3 rials, recognized by the dotal fund in favor of Doctor Don Juan José Gamboa, amounting to four hundred and seventy-one dollars, two reals, six grains, which may be paid to his executor the Illustrious Señor Don Manuel Yrizarri.—The Junta resolved in accordance, and that it be paid by a draft.

A petition from the 2d Clerk of the Secretary's Department, Don José M. Canchola, was read, in which he solicits leave of absence for two months, for the recovery of his health, in Queretaro, paying him his salary in advance.—The Junta resolved that he should present legal proof of his being ill, and that leave be granted him, but not with his salary paid in advance. Señor Bassoco being of the contrary opinion, and voting that the petition be not granted.

Another from Don José de Jesus Carbajal, requesting one of the vacant offices of copying clerk in the Department of the Auditor and Secretary of this Junta.—Suspended with the previous petitions.

Session of 24th April, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 23d, there was read a report from the Auditor's Department relative to the account lately presented by Señor Barreda, expressing its conformity with the charges contained in the same, with exception of the last, which is for three dollars paid to a clerk, and noticing that in the addition there is a mistake of eleven dollars in favor of Señor Barreda, and after deducting from which the three dollars disallowed, the amount remaining due is two hundred and ninety-seven dollars, seven rials.—The Junta resolved in accordance, ordering that the same be paid.

[Two Rubrics.]

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Session of 27th April, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the preceding session, the following communications were read :

First. From the Mining Deputation of Guanajuato, transmitting the document which has been made of the mine of La Purísima in the Mesa del Toro.—Let the Bureau of Encouragement report.

Second. From Don José Zamora, dated 24th, transmitting the weekly pay-rolls No. 16.—Receipt, and to the Auditor's office.

Another, in which he advises that in consequence of the possession given to Señor Madariaga, the half of the pay-roll of the present week will be for account of the Junta, and also the half of the ores which may be extracted.—Understood.

Another, in which he advises that he has appointed Don Leonardo Maldonado as depositary; that the purpose in requiring him to make affidavit to the stock on hand was that the half should be delivered to Madariaga; that he had asked and it was conceded that a Controller (*interventor*) should stay at the mine, but that Madariaga would not consent that his salary should be for account of the negotiation; and finally, that he had not yet given account of the stock on hand, although it had been demanded from him again on the 23d.—Resolved, that he transmit a copy of the judgment; that the appointment of Controller and Depositary are approved; but that he do not insist that the negotiation pay the Controller, should Madariaga not consent to the proposition; that he report what said compensation should be; that he be asked what was the result of the sale of the bars, and the condition of the Hacienda denounced, so that it be known whether it is within the

requirements of the ordinances, calculating the cost of its repairs to prevent said denouncement.

A report from the Licenciado Don Castulo Barreda, was read relative to the account of Don Miguel Quiñones, and a letter in which he asks to be paid twelve dollars for fees of said report.—The Junta resolved that they be paid.

There was read a certificate from the physician, Don Amador Frazt, proving the necessity for Don José M. Canchola proceeding to take the hot baths of San Bartolo, at Queretaro. The Junta resolved that leave be granted to him in conformity with the order of the 23d. Señor Bassoco reserved his vote, saying that he had been opposed to granting leave to Señor Canchola, because, in his opinion, he was entitled to his retirement with a pension of one half his salary, as recommended by the Junta, on account of the mining fund.

[Two Rubrics.]

Session of 30th April, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 27th, there was read a communication from Don Juan Robinson, dated 22d March, transmitting a draft for eight hundred and ninety-six dollars and ninety-three cents, for proceeds of mining dues in the assay office of Hermosillo, for the last four months of the last year, and the corresponding accounts for the same term.—Let the draft be presented for acceptance, the entries made, the accounts passed to the Auditor's office, and receipt acknowledged.

It was resolved that Messrs. Hooper and Bellangi be informed that Señor Le Brun has deposited in this office the accounts of Mazatlan for the years 1845 and 1846: a draft for five hundred and thirty-one dollars, thirty cents, nett proceeds of what was collected in said port for dues in the month of January, of the present year, and another for three hundred and thirty-two dollars, two rials, six grains, corresponding to said month for dues at Alamos, remaining pending only the accounts of Cosalá; and finally, there was received the sum of seven hundred and eighty dollars for the last payments on account made by Señor Pambert, in Mazatlan.

A report from the Auditor's office was read relative to the last account presented by Señor Barreda; and although said report does not consent to allowing three dollars, the matter having been examined, the Junta resolved that there be paid to him thirty dollars, amount of said account.

An official communication from Señor Don Francisco Fagoaga, informing that he had received a draft for three hundred and twenty-four dollars, two rials, nine grains, for the portion corresponding to the Junta in the last apportionment of last year for the ten thousand dollars owing by the Hacienda of Valparaiso, for which sum the proper receipt would be given on Monday, and it was so resolved.

It was resolved to ask the Licenciado Barrera for the rough draft of the last pleadings which he transmitted to Tasco.

It was resolved, finally, on petition of Señor Canchola, that the leave of absence conceded by the Junta should commence on the 1st May.

[Two Rubrics.]

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Session of 3d May, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the 30th ultimo, the following communications were submitted:

First. From the Mining Tribunal of Tasco, in which is transcribed the petition of Don José Ma. Madariaga, that there be furnished to him fourteen thousand dollars in cash, with the character of *avío*, with premium on silver on the mine of Trinidad.—Resolved, that it does not deserve to be answered, and that it be transmitted to the Solicitor, that he may bear in mind the partiality of that tribunal.

Second. From His Excellency the Governor of the State of Michoacan, in reply to the communication addressed to him by the Junta on the 10th of the same month, informing that as soon as the State Congress opens its sessions, he will apply to it that it may be pleased to regulate by decree the costs of the Court of Anganguco.—Let it be transcribed to said court.

Third. From Don José Zamora, dated 1st, transmitting the pay-rolls No. 17, and the statements and cash balances No. 4.—Receipt, and to the Auditor's office.

Fourth. From the same, advising having drawn bill No. 44, for two hundred and seventy-one dollars, in favor of Don Teodoro Chaves.—Let it be paid.

Fifth. From the same, advising that he could not sell the five bars of silver to Señor Wiled before the judgment was pronounced, and the less so, as he did not believe that they would be included in it as stock on hand, but that he kept them in his possession, determined to make all possible resistance to their being taken away from him. He informs that the Hacienda of San Juan has three mills and three *arrastres*, with four crushing mills and two reducing floors, all in ruins, and conse-

quently liable to denouncement; and that the repairs on one of the arrastres would cost two thousand five hundred dollars, which he considers would be a useless expenditure, there being no ores to be reduced.—The Junta resolved, that reply be made that he should have remitted the bars, or at least have had them removed from Tasco, but that he continue to defend them as he may be able by hiding them or delivering them to a safe person, or remitting them to the house of Señor Rosas, at Cuernavaca. That in view of his report on the Hacienda of San Juan Bautista, the Junta does not believe that Madariaga will wish to go to so much expense; but that nevertheless, the Junta desires to be informed how much would be the sum required to be paid by the denouncer for what should be purchased by him according to the ordinance.

It was resolved that there be paid to Señor Barreda thirty dollars, amount of his last account.

There was read the decree of the 30th ultimo, issued by the Minister of Finance, and yesterday published by proclamation, in which an addition of one rial per mark of eleven pennyweights fine is made on silver, six grains are taken from the rial of mining dues, and the collection of the remaining six grains is entrusted to the Commissioners.—The Junta resolved that a declaratory remonstrance be laid before the Supreme Government, asking it to repeal said enactments, and commissions for this purpose Señor Segura and the First Clerk.

Señor Bassoco represented that, as agent of the creditors, he was going to convoke them to meet on Wednesday, with the object of making valid their rights by such means as they might resolve to adopt.

[Two Rubrics.]

Session of 6th May, 1847.

Present, Señores Segura, Flores and Bassoco; and after having approved the journal of the 3d, the following communications were submitted:

First. From Señor Robinson, agent at Hermosillo, transmitting the account of his collections corresponding to the last four months of 1845.—Receipt, and to the Auditor's office.

Second. One from Señor Zamora to Señor Bassoco, dated 4th, informing him that he has heard that the legal adviser (*Asesor*) of the Tribunal of Tasco had adjudged in the expediente of arbitration, that there should be delivered to Madariaga the half of the products, on his giving previous security to the entire satisfaction of Zamora; adding that it will be proper to have prepared certified copies of the mortgage deeds.

Third. A communication from the Ministry of Finance, in which it gives notice that the Supreme Government has acceded to the request of Don Leonel Davidson, relative to the importation of quicksilver at the port of Tampico, and that consequently order has been given to the Collector of said port, residing at Ozuluama, to permit said importation.—Understood, and that it be communicated to the Tribunals of Guanajuato, Zacatecas and San Luis that the price at which he offers to give the quicksilver is one hundred and thirty dollars at the port, adding the cost of conveyance.

There was submitted, ultimately, the account of what has been collected from tenements of the College in the last month, which was ordered to be transmitted to the Auditor's office.

[Two Rubrics.]

—
Session of 8th May, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 6th, there was submitted a communication from Don Cayetano Buitron, transmitting one thousand six hundred and twenty-two dollars, seven rials, nine grains, net proceeds of collections for mining dues in the month of April; and also forty-two dollars, five rials, six grains, corresponding to payment made by Don Manuel Lebrija.—Receipt, and to the Auditor's office.

In continuation, it was resolved to communicate to Señor Quiñones that the Junta had appointed the Licentiate Don José M. Cuevas to defend the case of Trinidad on appeal to the Superior Tribunal.

Finally, it was resolved to ask from the Licentiate Barreda all the documents relating to this business, and that the First Clerk be commissioned to receive them.

The Junta read and approved the remonstrance to the Government calling for the repeal of the decree of 30th April; and Señor Bassoco deposited in the Secretary's office the proceedings of the meeting held by the creditors because of said decree.

[Two Rubrics.]

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Session of 10th May, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the previous session, the following communications were submitted:

First. From Señor Polles, agent at Guanajuato, dated 7th,

transmitting a draft for five thousand dollars for dues of last month, and advising that probably from the 8th he should then collect only the half of the rial through the Commissariat.—The Junta resolved that the draft be presented for acceptance, the entries made, and receipt acknowledged, and that he be informed that Señor Mackintosh has already transmitted to him, by Saturday's mail, the necessary instructions that no alteration be made in the collection in the rial of mining dues.

Five communications from Señor Zamora, dated 8th, the first transmitting the weekly pay-roll, No. 18, of the Hacienda of Chorrillo.—Receipt, and to the Auditor's office. The second, endorsing copy of the pay-rolls 1 and 2 of the mine of Trinidad, corresponding to the two weeks in which it is worked for account of Madariaga.—Receipt, and to the Auditor's office, and that neither he nor the Controller should allow the seventy-two dollars charged for the administration of the mine. In the third, he advises having drawn bill No. 45, for two hundred and fifty-two dollars, in favor of Don Antonio Castañon.—Let it be paid. In the fourth, he says that being pressed to deliver over the half of the stock of metals on hand, he desires to know whether, when the execution with which he is threatened is levied, he may, to prevent costs, and on making the corresponding affidavit, offer security to Madariaga, and keep the stock in his possession till the case is finally settled.—The Junta resolved in conformity.

Another communication from Don Miguel Quiñones, in which he represents that it is threatened to attach the metals of Trinidad for the payment of the costs due to the Tribunal of Tasco, which amount to more than a thousand dollars, and that although he is not conformable with some of the charges, security has been offered to him that the excess, if any, shall be refunded.—That orders have already been given to Zamora to pay all the charges in said account, in which they both agree that no reclamation has to be made, and that he draw for the amount on the Junta; but with the disputed charges, let him make the reclamations which have to be made, and which he ought to have done already, and transmit the account to the Junta. Let the same be communicated to Señor Zamora.

[Two Rubrics.]

Session of 14th May, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 10th, the following communications were submitted :

First. From the Ministry of Relations, informing the Junta that the remonstrance in which it asks for the repeal of articles 2 and 4 of the decree of 30th April, has been transmitted to the Ministry of Finance.

Second. From the Director of the College, of this date, transmitting the accounts corresponding to the first four months of this year.—Receipt, and let him be put in mind to transmit the cash balance-sheets, which the Junta is obliged to ask in conformity with article 51 of the Regulations of the College, of 29th December, 1843.

Third. From the same, of the same date, transcribing a communication from the Ministry of Relations of the 4th instant, in which he is informed that his Excellency the President substitute has acceded to the petition of Colonel Don Miguel Mosso, mayordomo of the College, that he may leave a substitute under his responsibility whenever he may have to leave the capital.—Let answer be made, that the Junta believes it to be its duty to observe, that it does not consider the sureties of Señor Mosso liable for his substitute; but his bond may be amended, or his Excellency may act as he thinks proper, as the matter of sureties appertains to the Directory.

Fourth. From Señores Stahlkuechs Lehemann, transmitting a draft for one thousand two hundred and twenty-eight dollars and five cents, for proceeds of the mining dues in Durango for the month of April.—Let the draft be presented for acceptance, the entries made and receipt acknowledged.

Fifth. From the Mining Tribunal of Anganguco, acknowledging receipt of the communication in which was transcribed that from his Excellency the Governor of Michoacan, about regulating the fees of said Tribunal, and returning thanks to the Junta.—To its expediente.

Sixth. From Señor Laveaga, dated 28th ultimo, in Mazatlan, informing that Señor Peimbert had paid up his account, and noting the dates of the different payments.—Let the Auditor's Department report, and thanks returned.

It was also resolved to ask the Director for all that is wanting in the inventories of what he received in the College, especially of books, instruments, etc.

[Two Rubrics.]

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Session of 17th May, 1847.

Present, Señores Flores, Bassoco and Segura; and after having approved the journal of the session of the 14th, the following communications were submitted:

First. From the agent at Guanajuato, dated 14th instant, remitting a draft for one thousand five hundred and sixty-five dollars, two reals, four grains, for balance of the proceeds of mining dues for the month of April, and the weights of bars and the accounts of the last four months; and informing that the decree of 30th April had not been published in that city, the Government having received no official copy.—Let the draft be presented for acceptance, the entries made, and receipt acknowledged.

Second. From the agent at Guadalajara, dated 11th instant, remitting a draft for one thousand two hundred and fifty-five dollars and twenty-two cents, for proceeds of the month of April.—Let the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

Third. From the agent at Zacatecas, dated 10th instant, advising that the dues corresponding to April last, less twenty-five dollars paid to the pupil Ayala, amounted to five thousand seven hundred and three dollars, three reals, for which he says that he transmitted a draft which did not come. The Junta resolved, that Señor Mackintosh be notified that it is understood that the term for payment of the draft will be reckoned from to-day.

Fourth. Eight communications from Señor Zamora, dated 15th, transmitting with the first the pay-roll of Chorrillo No. 19; copy of that of Trinidad No. 3, and the return Custom-House dockets for the gunpowder, quicksilver, sulphate and iron, lately sent.—Receipt, and the first documents to the Auditor's office, and to the Treasury the second. Second, informing of having washed three hundred quintals of ore in the preceding week: that he is waiting for the stamps to continue crushing in Cantaranos, and that having paid Don Miguel Quiñones one thousand three hundred dollars for judicial costs, he has drawn for the same in two bills of exchange; and lastly, that for the pay-roll of the present week he requires two hundred dollars.—Understood, and let him transmit the account. Third, informing that he had been notified by the board of the forced loan levied by the State Congress, of one hundred and twenty dollars.—That the Junta having been ousted from the mine of Trinidad, sole negotiation which could have borne said loan, he represent the same to the authority which notified him, and that not having any property in the State the Junta cannot contribute to any loan. Fourth, transmitting the statement asked from him of the expenses and profits of the mine of Trinidad in the previous year.—Let the Bureau report. Fifth, informing that it having been persisted in that he deliver the products in his possession, he had agreed to give bonds for the

same, and that Madariaga had consented that his own personal responsibility was sufficient, with the condition that his ores should be reduced at the same time at Chorrillo, to which no objection was made; appointing a Controller to be paid by Madariaga, which he consented to, provided that the price for crushing should be one real and a quarter, instead of a real and a half, as it has been customary to pay; to which he had answered that he would consult with the Junta and resolve within a week: and informing finally, that he believes that Madariaga has made this proposal because Aramburn has not got the Hacienda supplied with the articles required for reduction.—That he ought not to have decided on the sufficiency of the security of Señor Martinez del Campo, but should have notified the Junta that it might do so; but as it has been agreed upon that the products shall remain in his possession, the Junta has no objections; but there are very great objections to the Junta having to wait for the reduction of its ores to favor Madariaga, and even thus to lower the price for crushing, he believing that he does a favor in paying a controller to take care of his own interests. In the three last, he advises having drawn bill No. 46, for two hundred and ten dollars in favor of Don Jorge Raffard; No. 47, for one thousand dollars in favor of Don Leoncio Blanco; and No. 48, for three hundred dollars in favor of Don Tomas Avila.—Let them be paid.

Fifth. From Don Miguel Quiñones, dated 15th, advising that the assessment of costs in the denouncement of Trinidad was made by the Notary after his being cited and in his presence; and as this payment is made a part of the judgment given in the motion for appeal, the Court ordered that they should be paid forthwith; consequently, having consulted with Señor Zamora, he had paid them on the same day, but had required a bond in security for the excess in the account in case of reclamation being made. He promises to remit the account asked of him, and advises that Señor Castera had written to him that the superior Tribunal had demanded the original process, but that by mistake the order called for the papers of the denouncement of San Juan instead of Trinidad, regarding which matter he had already written.—The Junta resolved, that it be represented to him that as he himself had said that he had objections to make to said account, giving this as the only reason for not having paid it, it ought to be considered as an unliquidated account, and on an unliquidated account execution cannot be levied, which has already been represented to him, but which he has not acted on: that he transmit the account however it may be, with the objections which he has said he has to make to it.

Session of 21st May, 1847.

Present, Señores Flores, Bassoco and Segura; and after having approved the journal of the session of the 17th, the following communications were submitted:

First. From the Ministry of Relations, dated 15th instant, representing that the Señor Professor Don Andres del Rio had indicated that the loan of six hundred dollars which he solicits for the purpose of printing his work, shall be repaid with a corresponding number of copies of the same which he will deliver to the College, the copyright remaining his own, and consequently the other copies which he may desire to print.—The Junta resolved to suspend its action on this matter until it should receive the report of the Señor Director of the College, to whom this communication shall be transcribed.

Second. From the same Ministry, dated 18th instant, acknowledging receipt of the cash balance sheets forwarded to it, corresponding to the months of February and March.—To the expediente.

Third. From the same, and of the same date, acknowledging receipt of the statements for April; and the same resolution was passed.

Fourth. From the Ministry of Finance, dated 19th instant, transcribing the order which under date of the 14th instant it had transmitted to the Custom-House of the District, that said Custom-House should continue to collect the mining dues in the same terms as was done before the decree of 30th April.—Let it be transcribed to Señor Buitron, inquiring of him if he has collected in the present month any amount belonging to the Junta.

Fifth. From the Government of the District, advising that it had granted the suitable license to carry arms which had been asked for the new guard of the building.—To its expediente.

Sixth. From the agent at San Luis Potosi, remitting a draft for one thousand four hundred and forty-one dollars, twenty-two cents, for proceeds of mining dues, corresponding to last month, and inquiring whether in the account which he has to forward of the bars assayed in the four months of the present year, he shall include those taken by General Santa Anna in January, the dues of which have not been collected.—That the draft be presented for acceptance, the corresponding entries made, and receipt acknowledged; and he be informed that in the account of the dues collected in the first four months of this year there cannot be included what has not been collected in that period, but that he ought to state the facts in a note with the names of the persons liable for such dues, and that he should

be careful to collect them when the individuals are not paid in bars, inasmuch as, by the balance of last month of the Treasury of Zacatecas, it appears that seven thousand and ninety-two dollars, three reals, half a grain, had been deposited for payment of such bars, which had not been paid because the persons entitled to receive them had not presented themselves. The balance is printed in the *Diario del Gobierno*, of the 19th inst.

Seventh. From the agent at Hermosillo, of 31st March, transcribing the communication of the Government of the State, in which it agrees that the mining dues are the property of the miners.—To its expediente.

There was read a report from the Auditor's office of the 17th of this month, expressing its conformity with the account of Señores Cooper and Bellange: and with the amount collected in Mazatlan by Señor Labeaga from Don Mariano Peimbert, this business being concluded.—In conformity.

[Two Rubrics.]

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Session of 24th May, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 21st, the following communications were submitted:

First. From the Collector of the Custom House of Mexico, dated 22d, transcribing the order of the Ministry of Finance in which he is notified to pay over the amount collected for the rial per mark of silver, taking one half for the Public Treasury, and delivering the other six grains to the Junta, which in future will collect said half in the same manner that it formerly collected the rial per mark. He therefore represents that he holds at the disposal of the Junta four hundred and ninety-three dollars, three reals, one grain.—The Junta resolved to reply that it had received the information, and that he could order said sum to be paid to its treasurer, Don Teodoro Castera; and finally that said communication be transcribed to Don Cayetano Buitron.

Second. From the agent at Pachuca, remitting a draft for one thousand three hundred and twenty-seven dollars, one rial, six grains, for mining dues corresponding to the month of April.—That the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

Third. From Don José Zamora, dated 22d instant, transmitting the pay-roll No. 20 of the hacienda of Chorrillo: the reduction ticket of the same, No. 4; and copy of pay-roll No. 4, of Trinidad.—Receipt, and to the Auditor's office.

Fourth. From the same, and same date, transmitting the receipt given to him by Señor Quiñones for the sum of one thousand three hundred dollars for costs of Court.—That the receipt which the Junta requires, either original or in copy, is not the receipt of Señor Quiñones, but of the Tribunal which by its decree ordered on compulsion the attachment.

Fifth. From the same, of same date, acknowledging receipt of that addressed to him on the 19th relative to the payment of ninety-seven dollars, one rial, amount of costs in the expediente of arbitration, and promising to forward the receipt.—To its expediente.

Sixth and Seventh. From the same, advising having drawn bill No. 49, for two hundred and fifty dollars, in favor of Don Rafael Zárate; and No. 50, for ninety-seven dollars, one rial, in favor of Don Antonio Castañón.—Let them be paid.

Eighth. From Don Miguel Quiñones, dated 22d, transcribing the order of the Tribunal for remitting the original process.—That it be transcribed to Señor Castera.

[Two Rubrics.]

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Session of 31st May, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 24th, the following communications were submitted:

First. From Señores Quiñones, dated 24th, transmitting a certificate given by the Tribunal of Tasco, in consequence of the order overruling the appeal from the judgment in the matter of denouncement of Trinidad.—To its expediente.

Second. From the same, dated 29th, remitting a copy of the settlement of costs claimed by the Tribunal of Tasco, and informing that there had been refunded to him thirty-seven dollars, two rials, for charges which had been amended. He informs also that the legal adviser (*asesor*) claimed fees both as Judge of First Instance and as advocate, reclamation against which matter he thinks ought to be made to the superior Tribunal.—It was resolved to pass the same to the Auditor's office for its immediate examination, that it may be transmitted to Señor Castera at Toluca.

Third. Three from Don José Zamora, dated 29th, transmitting with the first the pay-roll of Chorrillo, No. 29, and copy of that of Trinidad, No. 5.—Receipt, and to the Auditor's office. In the second, advising of the improvements made in the Hacienda, and that the carrier Fiz had left for the purpose of conveying the stamps and the sulphate which he had ordered;

and finally, that for the pay-roll he required two hundred dollars.—Understood, and that the stamps and sulphate be procured and remitted. In the third, he advises having drawn bill No. 51, for two hundred dollars, in favor of Don Antonio Castañon.—Let it be paid.

Fourth. A communication from Señor Don Juan Gomez Navarrete, informing that he had communicated to Don Diego Moreno the letter addressed to him on the 26th inst., although he had previously said that, as soon as circumstances would permit, he would forward to this capital a drove of cattle to provide for the payment of the five hundred dollars which he owes.—The Junta resolved to commission Señor Segura to represent personally to Señor Navarrete, that only in consideration of his mediation, has the Junta not proceeded judicially to collect this amount, which ought to have been in its possession more than a year ago.

[Two Rubrics.]

Session of 2d June, 1846.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of 31st March, the Junta resolved that should the troops of the United States unfortunately take possession of this Capital, or the communication with it be cut off, in such case one of its members with one department of the office shall remove to some one of the States which may be free from the invasion, so as to conveniently collect there the money appertaining to the mining dues, and in accord with the members remaining in Mexico, proceed to its disbursement, having in view the payments which required to be made here.

Seasonable notice of his departure shall be given to the Supreme Government.

[Two Rubrics.]

Session of 4th June, 1847.

Present, Señores Flores, Bassoco and Segura; and after having approved the journal of the session of the 2d, the following communications were submitted:

First. From the agent at Guanajuato, remitting a draft for five thousand dollars on account of mining dues of the month of May.—Let the draft be presented for acceptance, the corresponding entries made, and receipt acknowledged.

Second. From the agent at Zacatecas, dated 28th ultimo, remitting duplicate of the draft for five thousand seven hundred and three dollars, three rials, and the receipt of the pupil Ayala, which probably were not received before by reason of having been sent to some other correspondent.—Let the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

Third. From the agent at Durango, transmitting the accounts and weight of bars for the first four months.—Receipt, and to the Auditor's office.

Fourth. From the President of the Tribunal of Fresnillo, dated 26th, transmitting a decree of the legislature of Zacatecas suppressing the mining tribunals in that State.—Receipt, and let an official communication be addressed to His Excellency, the Governor, representing to him the advantage of the continuation of the territorial deputations for economical and administrative purposes, founded on the provisions of the said decree.

Fifth. From Señor Castera, Commissioner to Toluca, dated 27th ultimo, in which he represents that having conversed with Señor Villela, President of the Superior Tribunal, he informed him that the process of Tasco must be returned in the state in which it was when the superior order was received, and that therefore it is necessary to wait the result of said order.—To its expediente.

Sixth. From Don José Zamora, dated 25th, desiring that the stamps and sulphate which he has ordered, be forwarded to him by the carrier Fiz.—That further search be made to procure the stamps, and the sulphate purchased which is at the Apartado.

Seventh. A petition from Don Vicente Ortiz, that a certificate may be given to him of the sums received six years ago by Don José M. Arteaga, for the capital of one thousand dollars owed by the dotal fund and the testamentary estate of Doña Josefa Medina de Moran.—To the Auditor's office, that it may report what is shown by the books.

The account presented by the Treasury of what was collected for the tenements of the College in the last month, was read and ordered to be transmitted to the Auditor's office.

There was presented from the Auditor's office a report relative to the account of the Judicial costs at Tasco, transmitted by Señor Quiñones, and it was resolved to transcribe the same to Señor Castera, and to transmit to him the account, that he may consult counsel as to making or not the corresponding reclamations; and let the same be communicated to Señor Quiñones.

Lastly, the draft of a communication to Sor. Castera was read, which had been agreed upon at the previous session, to the effect that the Junta did not consider itself authorized to assign to him any daily allowance for the time he might remain in Toluca in exercise of the power of attorney from the Junta further than his salary, judicial costs, postages, and the costs allowed to attorneys for the proceedings which they may have to dispatch.

[Two Rubrics,]

Session of 7th June, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 4th, the following communications were submitted :

First. From the Señor Director of the College, dated 5th, stating that he had given orders for forming catalogues of the library, and of the additions made to the professorships of the College, which would be transmitted so soon as they were finished.—To its Expediente.

Second. Another from the same, of the same date, informing that in the last revolution many of the windows of the College and of his dwelling had been shattered.—The Junta commissioned the Treasurer to examine into the panes wanting, and to cause an estimate to be formed of the cost of replacing them.

On this, Señor Segura represented the deplorable condition of the railings of the balconies, and of the timbers of a lower room and the cellar under the office.—The Junta resolved that Treasurer order estimates to be formed of the balconies and the rafters of the lower room and the cellar.

Third. From the Agent at Guanajuato, dated 4th inst., remitting a draft for two thousand dollars for account of collections in the month of May.—That the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

Fourth. From Don José Zamora, dated 5th, transmitting the pay-roll of Chorillo, No. 22; the statement and cash balance for May, No. 5; and copy of the pay-roll of Trinidad No. 6.—Received, and to the Auditor's office.

Fifth. From the same, inclosing the answer of the Administrator in regard to the apportionment of one hundred and twenty dollars to the forced loan, expressing that this amount was levied on the Junta, because of its property in Tasco, independent of the mine of Trinidad.—The Junta resolved that he be told that the loan is levied on prominent possessions, and that in almost all the Prefectures, there have been reckoned as

such, those that are valued in upwards of twenty-thousand dollars; and that the Junta not possessing this amount, either in the half of the stock of the mine or in the valuation of the Hacienda of Chorillo, should be exempt from said payment, and oppose it as much as possible, or as a last resource, procure that the quota be reduced.

Sixth. From Don Miguel Quiñones, dated 5th, informing that the Tribunal of Tasco had refused to send up the process unless the judgment was entirely carried out by delivering the half of the products to Madariaga, and forwarding the respective official communication to be transmitted to the Superior Tribunal.—Let it be transmitted to Señor Castera, and receipt acknowledged to Quiñones.

Seventh. From Don José M. Castera, with copy of the instructions given by Señor Cuevas, which he forwarded by the mail of Friday, to Tasco.—Receipt.

[Two Rubrics.]

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Session of 10th June, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the reply of the 7th, the following communications were submitted:

First. From the office of the Collector of the District, remitting four hundred and thirty-four dollars, one rial, three grains, collected for mining dues from the 22d to the 31st ultimo, at the rate of half a rial per mark of silver, in conformity with the law of 30th April.—Receipt, and to the Auditor's office, that the proper entries be made.

Second. From the Agent at Zacatecas, dated 31st ultimo, transmitting the accounts of the last four months.—Receipt, and to the Auditor's office.

Third. From Don José Ma. Castera, dated 7th, in reply to the one addressed to him on the 2d inst., relative to his daily allowance as attorney of the Junta at Toluca.—The Junta agreed to pay him, besides law and travelling expenses, postages, and the fees assigned by tariff to attorneys, the rent of the house occupied by him in Toluca, the amount he may pay to the person left in charge of his affairs in Mexico, the excess of his expenditures, and the damage he may suffer from his removal.

Fourth. From Don Miguel Quiñones, dated 8th, informing that he has received the instructions from Señor Cuevas, and inquiring in what manner he may overcome the difficulty in the way of sending up the process, caused by the refusal of

Madariaga to pay a Controller in the case of the ores being reduced in common.—The Junta resolved, that he be answered that all the difficulties which he indicated to Señor Bassoco, are met by the instructions submitted to him by Señor Castera, on the 4th inst., although he does not answer whether Señor Madariaga consents to the deposit; but that nevertheless his communication be transcribed to Toluca, to consult Señor Cuevas, in relation to paying the Controller, and that Señor Castera be informed of the same.

[Two Rubrics.]

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Session of 14th June, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 10th, the following communications were submitted:

First. From His Excellency the Governor of Guanajuato, acknowledging receipt of the communication addressed to him recommending the pupils, Altamira and Matute.—To its Expendiente.

Second. From the Agent at Guadalupe y Calvo, of the 25th ult^o, remitting a draft for one thousand seven hundred and forty-seven dollars, four rials, seven and a half grains, for proceeds of mining dues in the four months ending 30th April.—That the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

Third. From the same, of the same date, remitting another draft for one thousand four hundred and eighty-four dollars, three rials, two grains, for dues from Parral, in the four months ending 31st December of last year; and the same resolution was passed, and that the account annexed be transmitted to the Auditor's office.

Fourth. From the Agent at Zimapan, of 10th instant, remitting another draft for two hundred and fifty-nine dollars.—That the draft be presented and collected, the proper entries made, and receipt acknowledged.

Fifth. From the agent at Guanajuato, informing that the decree of 30th April not having been published in that State, because of the Governor's opposition to it, the miners had refused to pay the additional rial on the mark of silver; but that under date of the 2d instant, the Ministry of Finance have insisted that the law should be carried into effect, for which reason he would remit only the half of the dues collected, placing the other half on deposit there until the matter should be settled. He also transmits a copy of the last communica-

tion of the Commissary and his answer.—Resolution suspended.

Sixth. Five official communications from Don José Zamora, transmitting with the first the pay-roll of the Hacienda No. 23, and copy of that of the mine No. 7.—Receipt, and to the Auditor's office. In the second, he informs that he had been pressed for payment of the forced loan so much as to be exposed to the indignity of an attachment, to prevent which he had deposited seventy empty quicksilver flasks; that the Administrator had told him that the quota had been assigned by the Board of Qualification, which he considered would make no reduction.—It was resolved that, notwithstanding this, he should present his objections to said Board, and in the case of his not obtaining even a reduction, that he pay the one hundred and twenty dollars. In the third he reports on the work of the Hacienda, and advises that for the whole of the rainy season he requires twenty quintals of quicksilver, and that he had sent the carrier for the sulphate.—That the sulphate is ready, and let inquiry be made anew for the stamps. In the two last he advises having drawn bill No. 52, for one hundred dollars, in favor of Don Miguel Quiñones; and No. 53, for two hundred and seventy-four dollars, in favor of Don Jorge Raffard.—Let them be paid.

[Two Rubrics.]

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Session of 17th June, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 14th, the following communication was submitted :

First. From the Agent at Guadalajara, dated 11th inst., remitting a draft for eight hundred and forty-two dollars, sixty-nine cents, for the proceeds of mining dues in the month of May.—Let the draft be presented for acceptance, the proper entries made, and receipt acknowledged.

The clerk of the Auditor's Department, Don Francisco Bonilla, presented the other certificate of a physician which had been required of him; and the Junta resolved to grant him leave of absence for two months.

A statement from the Auditor's office was read to the effect that not having received up to this time the accounts nor the proceeds from Parral, corresponding to the first two terms of four months of last year, they should be demanded of Señor Don Tomas Mackintosh.—Resolved in accordance.

[Two Rubrics.]

Session of 22d June, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 17th, the following communications were submitted :

First. From the Agent at Guanajuato, dated 11th, remitting a draft for eight hundred and thirty-eight dollars, four rials, ten grains, for balance of proceeds in the month of May.—That the draft be presented for acceptance, the entries made, and receipt acknowledged.

Second. From the Agent at San Luis Potosi, transmitting the accounts of the months of February, March and April, of this year, leaving in suspense the account for January, as the dues of the bars taken by General Santa Anna had not been paid.—To the Auditor's office.

Third. From Don José Zamora, dated 19th, transmitting pay-roll No. 24, of the Hacienda of Chorrilo, and copy of that of No. 8, of Trinidad.—Receipt, and to the Auditor's office.

Fourth. From the same, of the same date, advising that he requires two hundred dollars for the pay-roll, and that he was about to send the carrier, Fiz, for the sulphate and the stamps which he had ordered.

Fifth. A private letter from the same to Señor Segura, transmitting a copy of the inventory of stock on hand, which he was going to present, and consulting respecting the bars made 6th April.—It was resolved to represent to him the importance of sending on the process immediately, even if he should have to present the bars; but that with regard to the delivery of the half of these, he must not deliver them without the corresponding security, admitting Señor Martinez del Campo as such, or if any other security is offered, he will inform the Junta that it may decide whether it be admissible.

The decree of the 16th of this month was submitted, which repeals article 2d, of that of the 30th April.

[Two Rubrics.]

Session of 25th June, 1847.

Present, Señores Flores, Segura and Bassoco, and after having approved the journal of the session of the 22d, the following communications were submitted :

First. From the Agent at Zacatecas of 5th June, remitting a draft for ten thousand six hundred and sixty-nine dollars, five reals, ten and a half grains, proceeds of mining dues in the month of May.

Second. From the same, remitting another draft for fifty-two dollars, three rials, one and a half grains, for the corresponding dues in Sombrerete, in the same month.—That the first draft be presented for acceptance, the second collected, the proper entries made, and receipt acknowledged.

Third. From the Agent at Hermosillo, dated Guaymas, 26th May, remitting another draft for one thousand two hundred and forty-seven dollars, sixty-three cents, and promising to forward the corresponding accounts and annotations.

Fourth. From the Agent at Pachuca, remitting another draft for one thousand and eighty-eight dollars, one rial, for dues of the month of May.

Fifth. From the Agent at Durango, dated 14th, remitting in a draft eight hundred and thirty-two dollars, eighty-one cents, for proceeds of the same month.—That the drafts be presented for acceptance, the proper entries made, and receipt acknowledged.

A report from the Auditor's Department was read, in relation to the last remittance from Guanajuato of funds appertaining to mining dues for the month of May last, showing that the agent has made a mistake against himself of forty-nine dollars, seven rials, nine grains.—The Junta resolved that he be notified of the same.

[Two Rubrics.]

Session of 28th June, 1847.

Present, Señores Flores, Segura and Bassoco; and after having approved the journal of the session of the 25th, there was submitted a report of the Auditor's Department in relation to the communication from the Judge of the 5th Civil Court, dissolving the injunction ordered by Señor Tamayo, on the payment of the interest corresponding to the capital of one thousand dollars to the Executor, Don Vicente Ortiz; the Auditor represents that to make this creditor equal with the others, he should be paid two hundred and eighty-five dollars.—Resolved accordingly.

The following communications were then read:

First. From the Governor of the District, representing that the Junta cannot be exempted from paying the two thousand dollars assigned to it in conformity with the law of the 17th instant.—The Junta resolved to represent anew, that possessing no revenues of its own, inasmuch as it is only the disburser of the funds appropriated to the maintenance of the College, the expenses of the office, and the payment of interest to the creditors, the proportion appertaining to these last should be

computed to each one separately in reckoning the amount of their incomes; but that notwithstanding these considerations, his Excellency be requested to order that in the expediente of the matter it may be recorded and shown always, that after the great and continued exactions just made upon it to the amount of more than sixty thousand dollars, the Junta yet remits to the treasury the two thousand dollars demanded from it, and which shall be sent this day with an official communication to the Ministers of the General Treasury.

Second. From his Excellency the Director of the College, desiring that the proper orders be given for paying to the pupil of said College, Don Miguel Velasquez de Leon, his allowance of twenty-five dollars in Fresnillo.—Let the orders be given, and the customary recommendations forwarded.

Third. A petition from the 2d clerk, Don José Ma. Canchola, that his leave of absence for the improvement of his health at Queretaro, be extended for two months longer, in consideration of his not having been able to take the baths of San Bartolo, which his health requires.—The Junta resolved to grant the extension.

Finally, there was made a report from the Bureau of Encouragement in relation to the last communication for his Excellency the Governor of Zacatecas.—The Junta resolved that reply be made to said Señor Governor, in accordance with the opinions expressed in the report, without the necessity of consulting Señor Otero.

It was also resolved to ask said Señor Licentiate for the books and papers in his possession belonging to the Junta, relative to the drawing up of the ordinances.

Señor Bassoco read the following remonstrance.—The conduct which this Junta has observed for some time past, in retaining considerable amounts of value in its treasury, is without doubt illegal, and highly injurious to the interests of the creditors, whom I have the honor, and it is my duty, to represent in the Junta.

That it is illegal is apparent by simply reading the articles of the law referring to the matter, according to which the proceeds of the mining rial ought to be invested in the maintenance of the College, the expenses of the office, the payment of interest, and the redemption of capitals. Can any doubt then exist that the balance on hand, after paying the two first claims, should be dedicated to the third and last object? On what principle, or by what reasoning, can we give an honest appearance to these reservations of thirty or forty thousand dollars after having satisfied the two first calls? It is necessary to speak frankly; and I have expressed myself in writing

to the same effect on a former occasion ; such conduct will admit of no other interpretation than that we desire to secure for a long period the means of satisfying the expenses of the College and those of this office, in which are included our own salaries, afraid of the occurrence of an event which experience has proved to be impossible, namely, the stoppage all over the Republic of the collection of the mining rial.

My conscience does not accuse me of having secured any salary by conduct prejudicial to my constituents. I have always been vigilant of their rights, and of the fulfilment of our duty, and of the many occasions, it is sufficient to mention the one when the third part was distributed to the testamentary estate of the Señora Castañiza ; but the time shall pass away, and we shall pass away with it, and no permanent mark remain behind of those occurrences and of this my conduct, and when the thirty-thousand, or call it the twenty-nine thousand dollars furnished by or wrested from this fund in the time of Señor Haro, proclaim so loudly and to the point the evils of the system which I condemn, it becomes necessary that I should redouble my efforts to put a stop to the injury done to the creditors (*mortugors*) of the fund, and also cover my responsibility and my honor, which I propose to do by moving the adoption of the following resolution, which I ask may be spread upon the record of the proceedings of the Junta.

At present, and every month henceforward, reserving what is required for the College and the office in the following month, and the expenses of the same for the current month having been paid, the balance on hand should be applied to the payment of interest to the creditors of the fund.

Señor Segura said: Had the proposition just presented by Señor Bassoco no further object than to captivate the good will of his constituents, I would be silent ; but I observe that the representations on which he founds it, are calculated to merit their esteem by exciting their rancour against the person who does not vote for it. I am in this position ; but my character and principles lead me to act according to my convictions, and to do my duty, fearing nothing that my unjust enemies may lay against me by reason of such conduct. I look upon the interests of the creditors of the dotal fund in the same manner as has been done by those who constituted the former Mining Establishment, and as they have been considered till now by others of my colleagues in this Junta. There are three different and even opposing interests in this fund—those of the Government, the miners, and the creditors. To desire that the latter should predominate over the other two, is beyond doubt the most certain measure that can be adopted to cause the fund to

disappear in so far as the creditors are concerned, and that their interests, like so many others, should fall into the public treasury. If aid is not afforded to the Government in the present afflicting times when it asks to borrow money from us; if the mining interests are not furthered by every practicable expedient; and above all, if the College is not supported, this fund will not continue to be collected. For these reasons, the proposition of Señor Bassoco should be rejected, inasmuch as its object is to dispose, not of money, because the Junta has got none in its treasury, but of drafts to be collected when they become due. And for what purpose? That they may be in the possession of the creditors so that the Government may not dispose of them. And in what circumstances is it proposed to adopt such a measure? When the enemy's cannon are about to thunder upon the Capital within a week. In my bosom beats a Mexican heart, and I should consider myself unworthy of the honorable name I bear were I in such circumstances to vote for the proposition of Señor Bassoco. I must also observe that measures are every day proposed which, however they may result to the benefit of the creditors, are injurious to that of the mines, and such is the measure which I now discuss. When the present contract was made with the house of Messrs. Manning and Mackintosh, it was then understood that the creditors were to suffer a delay of six months in their payments, but this obstruction was submitted to for their own interest and that of the miners. The apportionment was not made till the drafts became due. This proceeding was afterwards changed, and after a considerable number of drafts were received, it was agreed to distribute them, notwithstanding that many persons received them with reluctance. Señor Bassoco now proposes that the expenses of only the current and the following month shall be set apart, and that all the balance be distributed in drafts. May we not expect, in view of this proposition, that to-morrow, or next day, this gentleman may sustain that even this arrangement is prejudicial to the creditors, and that nothing should be reserved for the following month? And if the collections are stopped, as probably will be the case, considering the distressed condition of the whole Republic, must the Mining Seminary be closed, and shall there not be reserved, as has already been done, sufficient funds for its support, solely because we are afraid that the Government may dispose of this deposit, and out of consideration that it be lost to the creditors? In giving my opinion in favor of this reservation, which is absolutely necessary to save the interests of the Government, of the miners, and even of the creditors, I am far from comprehending in such reservation our salaries as

officers of this Junta. Such egotism, such meanness, such preference, wrongful in every point of view, I have the noble pride to believe is negatived by the whole of my long and honorable career as a public officer. These considerations, which I have only insinuated, oblige me to cast my vote in opposition to Señor Bassoco.

[Two Rubrics.]

—

Session of 30th June, 1847.

Present, Señores Flores and Segura; and after having approved the journal of the session of the 28th, the following communications were submitted:

First. From Don José Zamora, dated 26th, transmitting the pay-roll No. 25, of the Hacienda of Chorrillo, and copy of No. 9, of that of the mine of Trinidad.—Receipt, and to the Auditor's office.

Second. From the same, reporting on the work at the Hacienda in the previous week, urging that the stampers be forwarded, and advising that he requires two hundred dollars for the pay-roll.—Understood, and that application be made anew for the stampers.

Third. Advising having drawn in favor of Don Francisco de la Fuente for three hundred dollars.—Let them be paid.

Fourth. Informing that in the conjunction with Señor Quiñones he will urge the forwarding of the original process: that on the part of Madariaga it had been hinted to him that his portion of the stock might remain in possession of Zamora, provided security were given, he paying the Controller on his own account, but that the ores should be reduced at the Hacienda, to which he (Zamora) had answered that he had no objections to giving the security, but that he would consult the Junta in regard to the other matters. He also inquires whether he shall withhold the delivery of the packet transmitted to him until the process is forwarded.—The Junta resolved to make answer, telling him to accelerate said transmission; that it does not consent to the reduction of the ores of Madariaga until all those of the Junta are reduced; and not to deliver the packet before the process is dispatched.

The Treasury presented a certificate from the General Treasury of its having received the two thousand dollars assigned to the Junta for the contribution of one million.

A representation from the citizen Vicente Ortiz, executor of Doña Josefa Medina, was read, praying that there may be no delay in paying the interest due at the next apportionment,

and that it may not be paid in drafts as it is a deposit, and the estate cannot bear the discount.—That the Auditor's office report.

The following remonstrance of Señor Bassoco was then read, and it was resolved that it be spread upon the journal.

Under date of 4th January, of the present year, this Junta represented to the Supreme Government, through the respective Ministry, that the quicksilver fund being exhausted, and all receipts on account of the same having ceased, the dotal fund of the mining body could not bear the increase in the expenses of the college and employés of the Junta provided by the decrees of 5th October and 29th December, 1843, which assigned twenty-four thousand dollars per annum for this purpose, from the national quicksilver fund, over and above the twenty-five thousand dollars, which from remote times had been appropriated by royal letters patent, and allowed by the dotal fund which is the property of the miners.

The Government, under date of the 27th, replied *that in the understanding that this was only an advance* which certainly would be refunded, for the very interesting object of supporting the college, on which it was to be expended with evident benefit to the mining interest, it hoped that the order, the repeal of which was asked by the Junta, would be regarded.

It is seen that the Junta set forth just reasons why this fund which belongs peculiarly to the miners, and is dedicated by law to certain purposes, should not be applied to the discharge of others proper to another fund which is national; and the Government in refusing to accede to the pretensions of the Junta, opposes reasons of expediency.

Moreover, it will not be thought presumptuous that the Junta, one of whose members is the representative of the miners, should claim to be the faithful expounder of the interests of those, who, when they solicited from the Sovereign the establishment of a Mining College, represented that it was to be for teaching the branches necessary for the successful direction of a negotiation of mines, and not a general college of natural sciences with a leaning towards a polytechnic school, as it has become or was intended to be made by the legal provisions of 1843.

There have already been lent by the dotal to the quicksilver fund, in consequence of the aforesaid order of the Government, upwards of eleven thousand dollars, without any prospect of an immediate end to the system of borrowing, for which reason, I, as the representative of the creditors, consider it to be my bounden duty to repeat my opposition to this expense which is so prejudicial to my constituents, and not less so to

the miners themselves; declaring and protesting that it is incurred against my express will, and requiring of the Junta to urge upon the Government not to expend said fund on the College, and only the twenty-five thousand dollars which had been paid up to the year 1843, which had been held as sufficient to satisfy the object for which the miners had established said College.

Reasons of justice loudly demand this reduction; and that it may be shown how much that establishment is susceptible of economical reforms, I shall make a statement of the salaries and of the numbers of students attending the classes, which was presented to me on the 19th May last:

MONTHLY SALARIES

OF THE EMPLOYEES IN THE MINING COLLEGE PAID OUT OF THE DOTAL AND QUICKSILVER FUNDS UNITED.

Don Blas Balcareel, as Chief of Police.....	\$25.0.0	
As Professor of Geography.....	25.0.0	
As Prefect of studies.....	75.0.0	
	—————	\$150.0.0
Don José Zalazar, as Vice Prefect.....	\$25.0.0	
As substitute of classes.....	41.5.4	
	—————	66.5.4
Don Antonio Castillo, as Prof. of Mechanics.	\$50.0.0	
As substitute of classes.....	41.5.4	
As substitute Professor of Mineralogy....	41.5.4	
	—————	133.2.8
Don Joaquin Velasquez de Leon, as Professor of Zoology.....	\$100.0.0	
As Professor of Geology.....	108.2.8	
	—————	208.2.8
Don Ramon del Moral, as Professor of Cosmo- graphy.....	108.2.8	
As Professor of Delineation.	50.0.0	
	—————	158.2.8
Chaplain, Don Miguel Velasquez de Leon,.....		33.2.8
Professor of Mineralogy, Don Andres del Rio, for the mineralogical class and his pension.....		191.5.4
Of Chemistry, Don Manuel Herrera.....		166.5.4
Of Natural Philosophy, Don Manuel Tejada.....		166.5.4
Of first course of Mathematics, Don Manuel Caitro.		125.0.0
Of second do. do. Don Castulo Navarro.		125.0.0
Of Drawing, Don Jesus Corral.....		58.2.8
Of the English Language, Don Juan Palacios.....		50.0.0

Of German, Don Claudio Gen.....	50.0.0
Mayordomo, Don Miguel Mosso.....	66.5.4
Janitor and larderer.....	33.2.8
Five servants, at \$16.....	80.0.0
Cook.....	18.0.0
Allowance to the Vice Rector.....	25.0.0
Professor of Grammar, Don Sebastian Camacho.....	83.1.0
Do. of French, Don Antonio Balderas.....	50.0.0
Do. of Botany, Don Pio Bustamante.....	100.0.0
Director of the Museum, Don Ysidro R. Gondra:.....	100.0.0
Clerk to the Director.....	25.0.0
Do. of the Museum.....	25.0.0
Physician to the College.....	25.0.0
Assistant in the Museum.....	29.1.4
Warden of Museum.....	25.0.0
Sum total.....	\$2,368.50

NUMBER OF STUDENTS ATTENDING THE CLASSES AT THIS DATE.

Mineralogy.....	3	Delineation.....	4
Zoology.....	3	Geography.....	3
Chemistry.....	1	Logic.....	9
Natural Philosophy.....	2	English.....	7
Mathematics, 2d course....	4	French.....	22
Do. 1st course.....	8	German.....	0
Mechanics.....	0		

Whatever may be the resolution which the Junta may be pleased to adopt in this matter, I ask that the above be received as my vote, and that it be transcribed in full in the journal of its sessions.—Bassoco.

[Two Rubrics.]

[SEAL.]

OFFICE OF THE SECRETARY OF THE }
Administration of the Mining Fund. }

I, Manuel Couto, Secretary of the Administration of the Mining Fund, and in charge of the archives of the same office, in virtue of the decree of 28th June, 1852, do hereby certify there exists as a part of the archives of this office a bound book, composed of 142 leaves, numbered on the first page only, from 1 to 142 inclusive and in succession, containing and filled up with the journals (*actas*) of the sessions of the Junta for the Encouragement and Administration of Mining, from 2d April,

1846, to 30th June, 1847, entitled "Book Third of Actas, from 2d April, 1846, to 30th June, 1847."

I furthermore certify that the foregoing one hundred and ninety-five leaves of this bound book are a true and exact copy of said third book of Actas, in which copy, on leaf 19th, line 8th, is interlined the word "manifeste;" and on leaf 85th, line 21st, the word "declarando;" and on leaf 95th, line 11th, the words "Cortes de Caja" are erased.

I certify lastly, that on leaves 1 and 142 of the abovementioned book there exists the seal of the stamped paper office.

In testimony whereof, I give these presents in the City of Mexico, this 20th of April, 1859.

MANUEL COUTO,
[Rubric.] Secretary.

I, Vicente Segura, Administrator of the Mining Fund, do certify that Don Manuel Couto, whose name appears in the foregoing certificate, is Secretary of this Administration and in charge of the archives of said office of Mining, to which archives belongs the book referred to, entitled "Book Third of Actas, from 2d April, 1846, to 30th June, 1847;" that said Couto is in the exercise of the office of Secretary at the date of his certificate, that his signature thereto is true, and deserving of full faith and credit.

In testimony whereof, I give this present, under my hand and the seal of this office, in the City of Mexico, this 20th April, 1859.

[SEAL.]

VICENTE SEGURA.

The undersigned, Chief Clerk of the Ministry of Encouragement, Colonization, Industry and Commerce:

Do hereby certify, that Don Vicente Segura, and Don Manuel Couto, are the former Administrator, and the latter Secretary of the same Administration of the Mining Fund, which is under the inspection of this Ministry. I likewise attest that the archives of said office are in the charge of the Secretary; and finally, that the signatures appended to the two foregoing certificates, and those used by these gentlemen, and that the seal affixed to their certificates is the true seal of the office in which they are employed.

In testimony of which I give this present, signed by me, and sealed with the seal of the Ministry, in the City of Mexico, this twentieth of April, eighteen hundred and fifty-nine.

[SEAL.]

P. ALMAZAN.
[Rubric.]

[No. 67.]

I, José Miguel Arroyo, honorary Intendent of the Army, and Chief first Clerk of the Ministry of Exterior Relations of the Mexican Republic:

Do hereby certify that Don Pascual Almazan is
[SEAL.] Chief Clerk of the Ministry of Encouragement, Colonization, Industry and Commerce, in said Republic, and that the foregoing signature is his own, and that which he uses in documents authenticated by him.

Mexico, April 20th, 1859.

[SEAL.]

Dues, 4 dollars.

J. MIGUEL ARROYO.

[Rubric.]

TRANSLATION OF H. L. No. 3 ; O. H. No. 28.

(See page 172.)

DEED—S AND J. T. ROBLES TO FORBES.

At the Mission of Santa Clara, of Upper California, the fourteenth day of December, one thousand eight hundred and forty-seven, personally appeared before me, Ygnacio Alvisu, Justice of the Peace of this jurisdiction, and the assisting witnesses, who, in the absence of a Notary Public, officiated in due form, Don Secundino Robles and Don José Teodoro Robles, natives of California, which I duly attest, and declare, that, for themselves, and in the name of their children, heirs and successors, or any persons possessing any right, title, or claim whatsoever, they solemnly sold, conveyed, and forever alienated all their right, title and interest, in and to two barras in each of the three pertenencias belonging to the quicksilver mine of Almaden of Santa Clara, with all the privileges, favors, concessions and rewards, that may have been granted to the partners in the said mine, by the Mexican Government, and in fine, every right, of any nature whatsoever, appertaining to the two barras aforesaid, to Don Diego Alexander Forbes, H. B. M.'s Vice-Consul at California; and the said Secundino Robles and José Teodoro Robles, declare and affirm, that they have not heretofore alienated nor sold the said two barras, nor any part thereof, in the said quicksilver mine of Almaden of Santa Clara, and that they are entirely exempt from any incumbrance, whether temporary or perpetual, tacit or expressed, or from any bond or mortgage, and as such, they sell them, together with all the rights thereunto appertaining, for the sum of three thousand, eight hundred and sixty (3,860) dollars, and the parties executing this, acknowledge having received the said sum from the purchaser, to their entire satisfaction, and declare moreover, that this is the just price, and true value of the said two barras, in each one of the pertenencias above mentioned, with all the rights thereunto appertaining.

Three thousand, eight hundred and sixty dollars, is the extent of their value, and in case they are or may be worth more, be the surplus greater or less, the said grantors, for themselves, their children, heirs and successors, do hereby cede and grant the pure, perfect, and irrevocable title to the said purchaser, now and forever (as styled in law "intervivos

con insinuacion) of the said two barras, in each of the three pertenencias aforesaid belonging to the said quicksilver mine of Almaden of Santa Clara, with all the rights and privileges thereunto belonging, as the lawful property of the said Don Diego Alexander Forbes, and his representatives.

And the said Secundino Robles, and José Teodoro Robles renounce all benefit of the laws respecting contracts, purchases, sales and exchanges, and others which might give them the right of recovery of one half of the just price, more or less, and henceforth and forever, release and abandon, for themselves, their heirs, successors and any person whatsoever, all their right of dominion, property possession, title or recovery in and to the said two barras in each of the three pertenencias belonging to the said quicksilver mine, as before expressed in this document, and they renounce, cede, and transfer them to the said purchaser, and his representatives, so that he may take possession of, work, use, enjoy, exchange, alienate and dispose of the same, as he pleases, as his property acquired by just and lawful title, conferring upon him irrevocable power, free "parroca," and general right of administration, empowering him to act as attorney in his own cause. And the subscribing parties to this instrument do hereby bind themselves, with all their goods, now possessed or that may be possessed by them, to the faithful performance of the conditions thereof, and to secure the peaceful enjoyment of the property, hereby conveyed to the purchaser, and all persons holding under him. All of which is submitted to three Judges and Justices, in order that by virtue of their office, and in due form of laws they may record and certify the same, by definite and unanimous decree, in testimony whereof the said parties have executed this instrument, and, not being able to sign their names, have made the mark of Santa Clara before me the Judge aforesaid and in presence of the witnesses, which I duly attest.

IGNACIO ALVISU ✂.

Auxiliary Judge.

SECUNDINO ROBLES,
JOSÉ TEODORO ROBLES.

AGUSTIN DESFORGES, }
EUSEBIO SALERIDON. } Assisting witnesses.

OPINION

OF

HIS HONOR M. HALL M^cALLISTER,

CIRCUIT JUDGE,

DELIVERED, JANUARY 16, 1861.



THE UNITED STATES

VS.

ANDRES CASTILLERO,

} "NEW ALMADEN."

The jurisdiction of this Court in this case is a preliminary question, and must therefore be first discussed.

It is urged by the Government, that if the nature and character of a mine under the laws of Spain and Mexico are considered, it resembles an easement at common law, is a usufructuary interest, and therefore is a "property" which cannot be protected by this Court under the Act of Congress of the 3d March, 1851.

It is urged again, that such Act limits the jurisdiction of this Court to claims of land held in fee simple only; and lastly, it is asserted that no test of the jurisdiction of this Court is found, in inquiring into the question whether a mine owned by a person constitutes him the holder of real estate, or not.

Now, as to the idea that the jurisdiction is limited to the determination of only fee simple estates in land, such construction would render the carrying out the Act of 3d March, 1851, almost impracticable. Neither the owner of land under a colonization grant, nor the holder of a mine under titles from the Mexican Government, could be deemed tenant in fee simple. The former held under a grant fettered in many instances with

stringent conditions; among them even one against alienation of the estate. Such was the fact in the Fremont case, and we have met with it in others. The owner of a mine held a peculiar estate under the laws of Mexico, and subject to the provisions of the Mining Ordinances. Neither can be said properly to have held an absolute fee simple estate.

To adopt the construction contended for, that fee simple estates in land are alone protected by the Statute of 3d March, 1851, would impute to Congress an intention in framing the Act to forfeit, or leave to their fate, all estates in land less than fee simple; for a clause in the 13th Section of the Act declares, that *all* lands, the claims to which shall not have been presented to the said Commissioners within two years after the date of the Act, shall be deemed, held and considered as part of the public domain of the United States. 9 Statutes U. S. at large, 633.

The word estate is derived from the latin *status*, it signifying the condition or circumstance in which the owner stands with regard to his property. 2 Blk. 103.

Under the Mexican law, two separate parties might be the owners of different interests in the land, and each recognized as the holder of a distinct estate.

In this case the claimant presents his claim for two different estates in land; the one under a title from the Mexican Government in the form of a grant for land *eo nomine*, the other under a title from the same Government in the form of a mine. In discussing this question, as the objection to the jurisdiction is limited to such portion of the substance of the land only as has been converted to mining purposes, the inquiry will be confined to *it*; nor will the Court consider the proposition urged by a portion of the argument of claimant's counsel, that the mining right being "property," such as is protected by the Treaty of Guadalupe Hidalgo, is entitled to the protection of this Court, under the Act of Congress of 3d March, 1851.

In the view this Court takes of this case, a decision of that question is unnecessary to fix a construction upon the Statute of 1851, upon which the jurisdiction of this Court solely rests.

The Treaty may well be borne in mind when the Court attempts to fix a construction upon that statute from its face, and

when the intention of the law makers is to be ascertained, whether a literal and stringent, or a fair and more liberal construction, will best carry out the statute. Such regard to the Treaty, and to that extent on this question, we think salutary.

The object proclaimed by the Act of 3d March, 1851, and in its first section, is the ascertaining the "*private land claims*" in the State of California. The eighth section of the Act requires that each and every person claiming *lands* in California by virtue of *any right or title* derived from, etc. The subject to be adjudicated then is a "*claim to land.*" The *nature* of such *claim*, the *estate* and *interest*, are wholly *unlimited*. It would seem, therefore, from the very words of the statute, that a claim to *land* by *any right or title* derived from the Mexican Government, and whether acquired for the purposes of extracting the minerals from it, or for any other purposes to which it could be applied, every such claim would be within the Act. So it would appear from the language of the statute, that a claim under a title or right from the Spanish or Mexican Government to any *estate or interest in land*, whether a conditional or absolute estate, whether for term of years, for life, or in fee, is within the statute.

For all the purposes of this case, it is only necessary for this Court to decide, that the fair interpretation to be applied to the Act of 3d March, 1851, is to include all species of property claimed under titles from the Spanish or Mexican Government, which are considered and deemed by the laws of either of those governments, and by the law of our own country, as belonging to that class of property whose "*nomen generalissimum*" is expressly mentioned in the statute.

If *land* be designated in the statute in relation to title, as in this case, every portion which formed its original substance is deemed in the eye of the law a part of the land, the law not recognizing a change of substance by a change of use or name.

A simple license to dig gold or quicksilver is a mere incorporeal hereditament, and would not come within the rule of interpretation; but the *owner* of a mine, under the laws of Spain or Mexico, has a *jus in re*, and not a mere *jus ad rem*. Under that interpretation, he who claims a mine as *owner* un-

der these laws, is, in legal contemplation, claiming land under a title from Mexico, as well as he who claims under a colonization grant.

We think that it has been correctly stated, that "Although the things belonging to each species (land and mine) possess all the attributes of land, being immovable corporeal hereditaments, the name *land* is therefore generic, and, in strict legal acceptation, applicable to both species; yet, in common parlance, and frequently even in legal language, this generic name is used to designate one of the two species, while the other, to designate its species, is called a mine, or by some characteristic name."

"The nomenclature is not, perhaps, perfect, but sufficiently so for all practical purposes, for, while the name *land* is usually applied to one species, from the greater frequency of its use in that respect, its definition (in a legal sense) is so plain that no one can fail to perceive that it includes both, when it becomes necessary to predicate of either the *generic* attributes of land."

But the three thousand varas of surface land, as well as a vein of cinnabar included in this mining claim, are certainly to be considered land.

But, leaving mere verbal speculation, let us ascertain the solution of this question by reference to authority. What, then, are the nature and character of the property held in a mine by its owner under the Spanish and Mexican laws?

We know no better authority to refer to than the celebrated commentator on the mining laws of New Spain. The references are to Heathfield's Translation, 2 vols.

Speaking of a mine, and the indispensable necessity of keeping it at work, Gamboa says, that this being required by law, and being a condition the Sovereign has thought proper to annex "*in granting the right of property*," it must be performed. (2 Gamboa, Heath. Trans., 92, Sec. 18.) Again, he states, in considering the privileges awarded to the miners by the authors he was at the time combatting: "Another circumstance treated by the authorities (authors) as a privilege, is the permission given to the miner to appropriate nine parts of the produce, paying to the crown a tenth only, as an acknowledg-

ment for giving its subjects a *beneficial* and *direct interest* in this *valuable class* of property." Both Gamboa and his opponents seem to have considered the miner's interest in his property both "beneficial and direct." *Ibid*, p. 157, Sec. 15.

Again: Gamboa makes reference, in a case he is discussing, to the laws of Peru, which directed that upon the death of the proprietor of a mine, his executors shall, if his heirs be in Spain, sell it, "*like other landed property, within thirty days.*" *Ibid*, p. 95, Sec. 22.

Under the laws of Mexico, all remedies, whether framed for originally acquiring, maintaining or recovering the possession of immovable or landed property, were held applicable to mines. 2 Gamboa, 258, Sec. 6.

Gamboa, in the 14th section of his Commentaries, vol. 1, p. 20, discusses the doubts which had arisen whether the mines in the kingdom of the Indies were to be regarded as the peculiar right of the crown, or whether they are to be considered as the absolute property of the subject. This he does with his usual ability, and comes to the conclusion that the mines of the Indies "are a right of the Crown, and that as this right is quite consistent with the property granted to the subject therein, it must follow, beyond dispute, as a consequence of their being made over to the latter; with the power to dispose of them as of anything of his own, that all the incidents of property must attach in favor of the proprietor, and that, therefore, they (the mines) may be exchanged, sold, leased or alienated by contract, donation, or inheritance; may be given in marriage or charged with a rent, and that interest may be demanded for the purchase-money while remaining unpaid. *Ibid*, Sec. 25, p. 28.

"But all the above qualities," continues this eminent commentator, "are to be understood as governed by this essential condition: Those to whom the property devolves, by universal or particular succession, must conform to the ordinances and fulfill the obligations thereby imposed, being the law." 1 Gamboa, Sec. 24, p. 27.

He further tells us: "The grant of the Sovereign, therefore, conveys to his subjects a direct and beneficial right of property." This last clause has been translated more literally, using the technical terms employed by Gamboa, thus: "And

there passes to the subject this *dominium directum*, or right of property (á propiedad), and also the *dominium utile*, by virtue of the gift and concession of the Sovereign, which we hesitate not to name *una modal donacion*."

The learned writer then proceeds to say, that such qualified gift will appear upon considering the rules by which that species of gift is defined by law, that is to say, that it be a free and complete act, which being perfected, a charge attaches on the donee from that time forth (and the being worded as a condition makes no difference), and that upon the failure of the modification limited by the donor in his own favor, or in that of a third person, or the kingdom or republic, the gift determines, as will be seen by reference to various texts and doctors," a reference to which is made in a note. *Ibid*, Sec. 25, p. 28.

These rules Gamboa considers precisely applicable to the second ordinance he is considering, for he states it thereby gives "and makes a grant to his subjects of the property and possession of the mines discovered, or to be discovered, with power to dispose of them as of anything of their own," which amounts to a complete act of gift, no price being paid for the grant, nor for the registry or denouncement of the mine. But the ordinance proceeds, "observing, both in regard to what they have to pay us by way of duty, and in all other respects, the regulations and arrangements established by this edict in the manner hereinafter mentioned," which is the charge or qualification, and which refers to the payment of the fifth from that time forth, and to the observance of the ordinances which regulate the mode of working the mines, the number of hands to be kept at work in them, their boundaries, and the other matters required to be observed, upon the omission or non-performance of which the gift determines, and the mine becomes liable to be denounced by any one." 1 Gamboa (Heathfield), p. 29, sec. 26.

If any title has been acquired by the claimant—a question hereafter to be discussed—and the inquiry shall arise as to his forfeiture of his title, it will be more appropriate to the discussion of such forfeiture than to the question of jurisdiction, as to the matters alleged as ground of forfeiture. We have cited

thus fully from Gamboa, although his Commentaries, which have given him so much celebrity, were made upon the Ordinances of 1584, known as the New Code, and are alluded to by a majority of the Board of Land Commissioners in this case as "the celebrated Commentaries of Gamboa on the Mining Laws of Spain, which, although published before the Ordinance of 1783 was adopted, is a work of inestimable value at the present time." Transcript, p. 85. The dissenting Commissioner in the case, also, does not place his dissent in the matter in which he disagrees from the majority of his associates to any want of authority in Gamboa's Commentaries, but upon their alleged misconception of certain passages in that work. *Ibid*, 108. The same favorable testimony is borne to them by the counsel of both parties in this case who cite from and rely on them.

But we rely more on them by reason of the statement, verified by examination, that the "Mining Ordinances of 1783," which were promulgated about twenty years after the publication of Gamboa's Commentaries, adopted his views both as regards the rights of the Crown and the rights of the subject in the mines, and made the law as he said it was:—"a comparison of the twenty-fourth, twenty-fifth, and twenty-sixth paragraphs of the second chapter of Gamboa's Commentaries with the fiftieth of the Mining Ordinances of 1783 will illustrate this."

The caption to this title is, "Concerning the fundamental ownership (*dominio radical*) of mines, of their concession to individuals, and of the duties for which they are to be paid." Mining Laws of New Spain of 1783; (Halleck), p. 222.

The first article declares the right of the Crown in mines. It describes that right by the term *dominio radical*, which conveys a similar meaning with the *dominium altum* of which Gamboa speaks. This we infer from the second article. This is in the words: "Without separating them from my royal patrimony, I grant them in property (*en propiedad*) and *possession* in such manner that they may sell them, exchange them, rent them, donate them, pass them by will, either in the way of inheritance or legacy, or in any other manner alienate the right which in the mines belongs to them on the same terms on which they themselves possess it, and to persons capable of acquiring it."

This article certainly did not intend to separate the mines from the royal patrimony. The *dominio radical* stated in the grant, the *dominium altum* spoken of by Gamboa, and "the rights of sovereignty in the mines," as they are designated by the Supreme Court in the case of Fremont, it was intended not to separate from the Crown; but in the same instrument in which this reservation is made, the royal donor granted the mines to his subjects in property and possession (en propiedad y posesion) in such manner that they may sell them, etc. There can be no doubt that this grants the mines to individuals in property and possession.

The framers of these Ordinances of 1783 undoubtedly adopted the views and opinion of Gamboa, in the sections cited at large from that commentator by this Court especially. (1 Gamboa, ch. 2, Sec. 24, p.27.)

The mine is land in the Spanish, as "fundo" and "bienes raices" and "bienes inmuebles;" the one translated, is land; the second, *real estate*; the third, *immovables*.

We deem the foregoing authorities, without citing others, sufficient to establish:

1. That the transfer of a mine under Spanish and Mexican law was the granting of "a direct and beneficial right in this valuable class of property."

2. That such property was deemed by the Mexican laws of conveyance, and those as to the remedies to be applied to the recovery of the possession of it, as property in land.

3. That while the *dominio radical* or the *dominium altum* remained in the Crown, the *dominium directum* or right of property (ó propiedad) and also the *dominium utile* were in the subject.

4. That there was no inconsistency between this right of the subject and the reservation to the Crown of the *dominium eminens*.

Having ascertained the nature and character of the property held by the owner of a mine under the Spanish and Mexican laws, the inquiry is: "What view does the common law which obtains in our country take of the property of a mine as one in land?"

This is an important investigation in discussing the question

of jurisdiction under the statute. If property in a mine is considered, under the laws of Mexico, real estate because it is land, and if it is so viewed by the common law, these facts will illustrate the propriety of the interpretation this Court has placed upon the statute. Such illustration will have been derived from the laws and acts of the two parties to the Treaty of Guadalupe Hidalgo, to carry out which such statute was enacted.

The venerable father of the common law (Lord Coke) lays down the rule: "By the name of *minera* or *fodina plumbi*, the *land itself* shall pass in a grant, if 'Livery of Seizin' be made, and also be recovered in assize *et sic de similibus*." 1 Co. 6, A.

We learn from any text-writer of modern times on the subject, that an action of ejectment cannot be brought for *incorporeal* hereditaments that lie in grant, except for tithes, and that by statute in England of 32 Henry VIII., Ch. 7.

That ejectment can only be maintained for the possession of a corporeal hereditament, such as land or a mine.

Notwithstanding the difference which exists between the absolute ownership of the gold and silver in the King of England, and the distribution of the property in mines which subsisted in Spain and Mexico between the Crown and its subjects, it is held at the common law that land does not cease to *be* because converted to mining purposes, and grants for copper, lead and other mines have been held to pass estates in lands and be recoverable, as it always had been, by ejectment. Ejectment lies for a coal mine (or any other) upon the principle that it is not to be considered as a bare profit *apprender*, but as comprehending the ground or soil itself which may be delivered in execution. Adams on Eject. 19.

In the case of *Stoughton vs. Leigh* (1 Taunton, 402), an application was made for dower, out of *several mines and strata of lead out of the lands* of the husband, to a Court of Equity; a case was directed by the high Court of Chancery to the Court of Common Pleas of England for its opinion on the case. The counsel for the doweress admitted rather reluctantly in open Court, "that where mines have been actually *wrought* as part of the estate of the husband, they may perhaps be collaterally subject to dower, together with the *rest of his real property*." *Ibid*, pp. 404, 405.

In that case a second argument was prayed on behalf of the heir, which the Court refused, thinking the case *sufficiently clear*.

The Court of Common Pleas certified to the High Court of Chancery in the above case their opinion, arising out of the first and second statements in the case, submitted as follows. Their response to the first statement applicable to this question will be only given. The remaining portion of the case refers to the mode in which the Sheriff should act in the service of an execution against mines.

To the first statement of the case presented, the Court of Common Pleas certified: "That the widow of John Harbury (the deceased) was dowable of all his mines of lead and coal, as well those which were in his own landed estates as also the mines of lead, or lead ore and coal, in the lands of other persons, which had been in fact open and wrought before his death, and wherein he had an estate of inheritance during the coverture; and that her right to be endowed of them had no dependence upon the subsequent continuance or discontinuance of working them, either by the husband in his lifetime, or by those claiming under him since his death." *Ibid*, 409.

Such decision, which solemnly enunciates the principle that the property in a mine is *real estate*, and constitutes a part of the estate to which a widow is entitled at common law, as tenant in dower, affords a conclusive proof that *land* converted to mining purposes remains *land* in substance, and the law therefore considers it real estate.

A few observations on the above case of *Stoughton vs. Leigh* will illustrate to what extent a mine is deemed by the common law *land*. As early as the time of Littleton, a widow was entitled, as tenant in dower, only to a portion of the *lands and tenements* of which the husband was seized during the coverture; and such has been the law ever since in every country where the common law has obtained.

The Courts in that case (both the Chancery and the Common Pleas) could not have cut out the heir and awarded dower to the widow out of any property other than *lands and tenements* of which the husband had been seized. Now, it cannot be urged with propriety that a mine is to be deemed a tenement.

The Chief Justice said that "the words (lands and tenements) must receive the same exposition." The Court, though, evidently placed their decision upon the ground that the mines being landed estates were real estate. Apart from any legislation like that of Spain and Mexico, which creates a different ownership of the surface of the soil and of the soil beneath between individuals, land extends downwards to an indefinite extent, and, by the common law, beneath the soil is a part of the land, and belongs to the owner of the surface of the earth above.

The change of the ownership of the intermediate soil to another owner does not change it from its original substance of land, even in Mexico, where the change is made, as we have seen by the review of her laws. Blackstone, discussing the general character and attributes of land at common law, tells us that land has indefinite extent downwards as well as upwards * * * * * so that the word *land* includes not only the face of the earth, but everything under it * * * * * and therefore, if a man grants all his lands, he grants thereby all his mines of metals and other fossils. * * * * * not but the particular names are equally sufficient to pass them. But *the capital distinction is this*, that by the particular name nothing else will pass except what falls with the utmost propriety under the name used, "but by the name of land, which is *nomen generalissimum*, everything terrestrial will pass." 2 Black. pp. 18, 19.

In the case of *Townley vs. Gibson* (2 Term Rep. 701), the construction of an Act of Parliament was before the Court; one of the Judges, delivering his opinion, says: "Whether by this Act of Parliament the mines passed to the tenants? That is the question here. The soil undoubtedly passed; now what are the mines but part of the soil?" When a review of the common law teaches us, that by the name of *mine* the land itself will pass; that an action of ejectment is an appropriate remedy to recover possession of a mine as well as land; that mines can be recovered by a widow as part of her dower, although she is entitled to a portion only of the lands and tenements of which her husband had been seized during his co-

verture; that mines pass by an Act of Parliament, by which the soil passes as part of it; that in a deed, where mines are mentioned *eo nomine*, that nothing but what properly and strictly comes within that term—such as his metals—will pass, but by the name of land which is *nomen generalissimum*, the grant passes thereby all his mines and fossils. When such review gives such results in our country, which harmonize with our view of the Spanish and Mexican law on this point, must not an American tribunal consider, that when Congress used the words “claiming *lands*,” in the Statute of 3d March, 1851, they were used in the sense they are understood and interpreted by the laws of this country and of Mexico—the two parties to the Treaty of Guadalupe Hidalgo?

The case of *Fremont vs. The United States* (17 How. 542), has been cited as a controlling authority on this question of jurisdiction. It cannot be deemed so, without a violation of the rules of judicial construction. In *Carroll vs. Carroll's Lessee* (16 How. 287), the Court say: “If the construction put by the Court of a State upon one of its statutes (and the proposition is applicable to any Court) is not matter in judgment, if it might be decided in either way without affecting the right brought in question, then, according to the principles of the common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the *precise* question necessary to be determined, to fix the rights of the parties, and to decide to whom the property in contestation belongs.”

Now, the Supreme Court in the *Fremont* case could have decided either way upon the title of the colonization grant, under which *Fremont* claimed, without affecting the question before us; and this is what they actually did do, and they in so many words tell us: “The only question before the Court is the validity of the title.” What title? It could have been none other than that of the colonization grant, the only title presented to the Court. If the only question that was before them was the validity of that title, how can an authoritative decision upon a totally different question be imputed to the Court? All that was suggested in the argument of counsel for the Government in relation to mines, was referred to by

the Court in these words: "And whether there be any mines on this land, and if there be any, what are 'the rights of the sovereignty in them,' are questions which must be decided in another form of proceeding, and are not subjected to the jurisdiction of the Commissioners or the Court by the Act of 1851." (565.) In a word, no claim to landed property known as such under the laws of Mexico and this country as a mine, was before them, and it therefore was not decided upon by them.

The Court does refer, as it seems to us, to the *dominio radical* found in the Title V. of the Ordinances of 1783, the *dominium altum* spoken of by Gamboa, and designates the property reserved by the Crown as "the rights of the sovereignty in the mines." But no decision was made which should control this Court in its action on the claim of an individual to a right in a mine which he alleges he has derived from the Government of Mexico.

The only case in which such question has come before a Court in this country, is that of *Delassus vs. The United States* (9 Peters, 117). The suit was instituted in the District Court of the United States for the District of Missouri, and carried on appeal to the Supreme Court.

In the language of Chief Justice Marshall (p. 131): "The suit was instituted under the Act of the 26th of May, 1824, enabling the *claimants to lands* within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims."

This case has been cited by counsel for claimant as authority. We do not consider the question was so directly adjudicated as to make it a decision which should control this Court.

It is true, that substantially a lead mine was recovered, and the decree of the Court was in favor of the petitioner's claim as a tract of land; and lastly, Chief Justice Marshall says (p. 142): "The lead mine has been mentioned, but the Act of Congress makes no reservation of lead mines." This leaves this implication, that the term "land" included "lead mines," and that it required an *express* reservation in the Act to exclude it; but the question arose in the case like that in the Fremont case, from the suggestion of counsel, and was not so raised so as to constitute a *res adjudicata*.

The Ordinances of 1783, under which we have heretofore discussed the question of jurisdiction, continued in force throughout New Spain to the time of the captivity of Ferdinand VII, when great changes were made by the general Cortes between 1811 and 1814. The Cortes passed the Act of January 26, 1811. This Act is to be found in Galvan's "Collection of the decrees and orders of the Cortes of Spain, which are *actually in force in the Republic of the United Mexican States*," is translated by Röckwell from the "Printed volumes, published by Authority," and by Halleck from "Note to Article 22, Title VI, Mexican '*Ordenanzas de Minería*.'" This decree abolished the monopoly of quicksilver reserved by Law 1, Title 23, Lib. 8 of the *Recopilacion de las Indias*, and the right reserved by Article 22, Title 6, of said Ordinances of 1783, of taking *mines* of that metal from the *discoverer*, and working them on account of the *Royal Treasury*, which in the language of the decree, "leaving uncertain the interest of the owner, and taking it out of trade, necessarily restrain people from engaging in the useful and expensive undertaking of discovering and working mines of quicksilver." It consequently modified considerably the tenure by which the quicksilver mines had been previously held. Though this Act made no alteration in the mode of acquiring title, or in the principles of the mining laws regulating mines which previously existed, it certainly enlarged the tenure of the holder of a quicksilver mine, and rendered his right of property more secure and certain.

It is true that this decree of the Cortes, with all their other acts, were annulled by Ferdinand VII, on his restoration in 1814, but the troubles which ensued in Mexico constrained him to re-establish the Constitution on the 9th day of March, 1820.—Galvan's *Decretos del Rey Don de Ferdinand VII*, p. 284. Subsequently, by decree of April 15, 1820, he declared the "Decrees" of the said general and extraordinary Cortes in full force *through America*.—Galvan's *Decretos de Ferdinand VII*, p. 292.

Independently of these reluctant decrees, the Courts in this State have held that the decrees of the Spanish Cortes, except so far as they were incompatible with the new order of things, were in full force in Mexico.

“It is true,” says one of the members of the Board of Land Commissioners in this case, “that this decree of the Cortes was, in common with all the other acts of that body, annulled on the restoration of King Ferdinand; but it is also true, that this, like the others, was revived by the revolution of 1820, and was in force at the time the independence of Mexico was achieved.” He then asserts that the principle above cited has been “universally admitted, and has been so decided repeatedly by this Commission.”—Trans. 111.

After the most careful review, the conclusion to which we have come is, that the Court has jurisdiction.

The next question which, like that of jurisdiction, is a preliminary one, will now be disposed of.

It arises out of the objection that the proceedings in California, in obtaining title to and possession of the mine, being before the Alcalde, the whole were therefore void, not having been made before the mining deputation. It is gathered from the record of the proceedings of the local authority in this case, that there was no mining deputation in the department, and that was the only time since the settlement of Upper California, that a mine had been worked in conformity with the laws; and there being no *Juez de Letras* in the second district, the Alcalde of first nomination, etc. The fact of there being no mining deputation in Upper California was thus announced in a public judicial proceeding in December, 1845, the evidence of which has been on record for years in the archives: the petition in this case was filed in 1852, with the documents of title in which the fact was asserted; and in the years which have intervened not a *scintilla* of evidence has been introduced to contradict the statement thus publicly made in a public document some fifteen years ago. The reasons why Mining Judges and Deputies did not exist in California, will be found in the construction in Mexico of the portion of the Ordinances of 1783, which constructed this somewhat complicated machinery of mining tribunals.

Those reasons are such, even if that portion of those Ordinances was not expressly repealed when Mexico achieved her independence, as would authorize the claimant as a discoverer of a mine which gave him an incipient right, and entitled him

under the mining laws in full force to denounce, register, and take possession of the mine before the ordinary judges, there being no Mining Judges.

Even the strictest common law rule adopts the axiom, "*Non cogit ad impossibilia*," and a Court acting on principles of equity as this Court does, would violate them by enforcing a forfeiture solely on that ground. We will now inquire into these reasons.

Gamboa tells us that judicial matters, such as registry, denouncement, the giving possession, and so forth, are the province of the Justices and (by way of appeal) of the royal audiences, as we shall more particularly show in the proper place.—1 Gamboa, p. 149, Sec. 15.

In his Commentary, 2d v. p. 286, Sec. 1, he observes, speaking upon this subject: "This ordinance is not observed in the Indies, nor could it be enforced there, without great damage to the public, and particularly to the miners, etc.—*Ibid.* Sec. 1. He then proceeds to discuss the question, p. 288, Secs 5, 6; and on p. 290, Sec. 10, he states, "Such as *denouncements*, insufficient working, boundaries, questions of the right of possession or property, the proving of entries in the register, the removal of the pillars of support, or the embezzlement of bullion; all which belong to the *Chief Alcaldes or Mayors*, (whom he designates, p. 286, Sec. 2.) 'Ordinary Judges,' and by way of appeal to the Royal Audiences."

Now if special Mining Judges did not exist, and the Ordinance of 1783 on the subject was not observed, nor could be enforced in the Indies (Mexico), how could they have obtained in California without special legislation?

Independently of the fact that no special Mining Judges existed, and the provisions of the Ordinance in relation to them were not enforced in Mexico, there are other reasons for the non-existence of them in California.

To authorize their legal existence here, special legislation was absolutely necessary to organize them in a mode essentially different from that prescribed by the Ordinances of 1783.

Those provisions demanded, previous to any legal organization of "Mining Deputations," a state of things which did not exist in California, a country where the first mine that was

ever worked in conformity with laws was the one in controversy.

Title 2d of those Ordinances, Section 2, provides the source from whence the Mining Deputies were to receive their election and authority. It prescribes that "all those, who, for more than one year, shall have worked one or more mines, expending on them, as owners thereof in whole or in part, their capital, their labor, or their personal attention and care, shall be enrolled (*matriculados*) as miners of that place (*lugar*), and their names shall be entered in the Book of Enrolled Miners, which shall be kept by the Judge and Notary of that Mining place (*Mineria*).—Mining Laws of Spain and Mexico, 1783; Halleck's translation, p. 201, Art. 2.

By the third article of same law it is prescribed that the miners so enrolled, and certain suppliers being miners, the millers (*maquideros*) and the owners of *Haciendas*, for grinding and smelting in each place (*lugar*), shall annually assemble in the beginning of January in each year, in the House of the Judge of Mines, to elect persons who are to fill the office of Deputies of said Mining Place (*Mineria*).—*Ibid*, pp. 201, 202, Art. 3.

By fourth article of said law it is prescribed that each of the enrolled miners shall be entitled to a vote at such elections, and some qualification is then provided for by this section in relation to the voting by the suppliers, millers, and owners of *Haciendas*. *Ibid*, p. 202, Art. 7.

In the seventh article it is provided that the Judge of each *Real* or *Asiento*, (which words are translated by Rockwell, Mine-town or Establishment; Rockwell, p. 35, Sec. 7), and the Deputies of the preceding year, shall preside over and regulate the election; and in case of disagreement, the casting vote is given to the Judge of Mines.—*Ibid*, p. 202, Art. 7.

By the eighth article it was provided that in each *Real* or *Asiento* of Mines, there shall be a Deputation composed of two Deputies.

According, then, to Gamboa, that portion of the Ordinances which related to Mining Deputations was not of force, and *ex natura rerum* could not practically exist in California, for there

was no one *Real* or *Asiento* nor no *Reales* or *Asientos* (enrolled merchants in some or any of those places, who, under the Ordinances, were to elect and organize the "Mining Deputations").

It is urged by the Government, that a complete answer is found to all the above suggestions, inasmuch as the ordinance requires the discoverer to present his written application, if there be no Deputation of Mines in the district in which the mine was discovered, to the *nearest thereunto*.

The most reasonable construction to place on these words, is to refer to the nearest mine-town, mining district or establishment within the limits of the jurisdiction of the department within whose borders the mine was discovered. Under the mining laws the origin of the title by denouncement and registry has always been left to the local authorities; and when these words were used in the Ordinances of 1783, the intention of carrying, under any circumstances, a local jurisdiction into a distant tribunal which might exist in a foreign department, is not to be imputed.

In this case the claimant certainly applied to the proper local authority, the Alcalde. In the case of *Mena vs. Le Roy* (1 Cal. 220) the Supreme Court of this State decided that Alcaldes in Departments of California, New Mexico and Tabasco, had, under the laws of Mexico, the powers of Judges of First Instance, where there was no such Judge of First Instance in the district.

In conclusion, on this point, we refer to what Gamboa says: 'It is to be observed that when a question arises concerning a contract for the purchase or sale of a mine, the right of succession, under a will or otherwise, or any point of like nature, it is competent not only to the Mining Judge and Chief Alcalde, but to the ordinary Justices of the Territory, to entertain the suit, and that it is only upon questions arising under the Ordinances, that the jurisdiction, in the first instance, belongs to the Mining Judge. If there be no such Judge, the question must be tried by the other Justices, as may be noticed in the Ordinances of Peru, above referred to.'—Rockwell, p. 362.

The last authority we will refer to on this subject, is that of

Peña y Peña. It seems to be a principle in the jurisprudence of Spain and Mexico, that where cognizance of any particular matter is given to a special tribunal not being in existence, the matter reverts to the ordinary tribunal which had jurisdiction of the same kind of matter, if judicial in its character.

Peña y Peña (2d v. p. 53), says: "A special tribunal is destined to take cognizance only of a certain class of causes, or of particular persons. It is called *special* in contradistinction to the *ordinary*, which is established to take cognizance indiscriminately of all classes, causes and persons, so that a *special* tribunal is an exception to the ordinary tribunals; so that some writers on public law call them exceptional tribunals. From this it is inferred, that an exception being extinguished, the general rule remains in force. So, also, a special tribunal being extinguished, all its jurisdiction returns to the ordinary tribunals as to its source, and remingles with them from the very nature of things, without its being necessary to invest them with the authority of the new tribunal." Peña y Peña, 2, p. 371-2.

Such seems to be the principle of the Spanish Law, although it is not one of the common law.

We have heretofore considered the power of the Alcalde to deliver the juridical possession of the mine in the absence of any Mining Judges in California, in view of the Ordinances of 1783, and the construction placed upon them by Gamboa, and that view has induced us to conclude that he had the power to do so.

But the question may be viewed in another aspect. Since Mexico achieved her independence, we believe that her legislation has expressly transferred the denouncement and registry of mines to the ordinary Judges. By the 7th "Article of the Constitutive Acts of the Mexican Federation," passed 31st January, 1824, by the "Second Constitutive Mexican Congress," the Federation was made to "consist of States, and Territories, the *Californias* belonging to the latter class, and remaining directly subject to the Supreme power."—White's Col. vol. 1, p 375.

By the 18th Article, it was provided that the judicial power

should be confided to a Supreme Court of Justice, and to such tribunals as may be established in the several States, and by the 23d Article, that "the judicial power of each State shall be exercised by such tribunal as may be established *by its* Constitution, but that the Legislatures of the different States may provisionally organize their interior government; and until that is done, the laws actually in force shall be observed." White's Col. pp. 378, 379.

In Article 123 of the "Federal Constitution of the United Mexican States," established by said "Constitutional Congress" on the 24th day of October, 1824, it was declared, "the judicial power of the Union shall reside in a Supreme Court of Justice, and in Circuit Courts and District Courts." White's Col. p. 404.

From the time, therefore, of the above "Constitutive Act," and the "Federal Constitution of the Mexican States," the whole judicial power became vested in the "Supreme Court of Justice," in the "Circuit," and "District" Courts, and in such tribunals as the Constitution of each State should "establish." From that time, even if Gamboa should be in error in supposing that the portion of the Ordinances of 1783 in relation to Mining Deputations did not obtain, nor could be enforced in Mexico, it is still certain that since the legislation we have referred to, it could not legally exist in California.

The influence which had been exerted by that legislation is evident from the decree of the Mexican Congress of May, 1826, which in the first article prescribes—

Art. 1. "The Tribunal General of Mining must cease, *according to the General Constitution*, in so far as it relates to the Administration of Justice, with which it was charged."—Decree of 28 May, 1820; Halleck's Mining Laws, 409. And whether such Mining Deputations could exist in the States, depended, from the time of the adoption of their respective constitutions, upon the fact whether they were "established," or "designated" thereunder.

The Federal Constitution of 1824 was overthrown in 1836, and the "Constitutional Laws" adopted in its place, but these did not establish *special* tribunals.

Subsequently, with that kaleidoscopic irregularity which distinguishes the movements of the Mexican Government, Santa Anna, having displaced the said "Constitutional Laws," and assumed dictatorial powers under the plan of Tacubaya, on the 27th day of November, 1841, issued a decree creating a *Junta*, to form and present, as soon as possible, a new project for the *re-establishment* of the *Special Tribunals* of Mining, with the modifications which *the present system of government* requires," etc.—Laras' "*Decretos y Ordenes de Gobierno Provisional.*" Halleck's Mining Laws, p. 425.

"The Establishment of Mining," created by the 2d article of the Mexican Congress (Halleck's Mining Laws, p. 409), continued in existence until the 2d day of December, 1842, when by a decree of that date issued by Nicolas Bravo (*provisionally* substituted for Santa Anna), a new regulation was made, *re-organizing* said Establishment of Mining, under the name of the Board for the Encouragement and Administration of Mining (*Junta de Fomento y Administrativa de Minería*).

By the 10th Article of Title 1st of said Decree it is provided, that the attributes of this *Junta* shall be those which include an economical and faithful administration of the fund mentioned in this decree, etc., in conformity with the regulation which it shall draw up and transmit to the Supreme Government for its approval. In this regulation, there shall, moreover, be determined: 1st, the manner in which quicksilver shall be obtained, distributed, and sold to those who reduce ores, fixing the cases and mode in which the working of quicksilver mines in the Republic is to be supplied, rewarded, or in other ways stimulated and protected.

2d. Everything relating to the redemption of the debt of the endowment fund, according to what may be directed in the respective title.

3rd. The regulation and direction of the *Junta* itself; and finally, it shall be an attribute and object of its most efficacious solicitude, to promote the encouragement of the business or branch (*ramo*), its funds, and its College (*Seminario*).

The 16th article of the same title authorizes the said *Junta* to settle the business pending by the extinguished "Tribunal

of Mining," and the "Establishment of Mining." The 24th Article, Title 4, of said Decree provides, "The Governors of Departments, in concert with the Departmental *Juntas*, and with the previous approval of the Supreme Government, will establish in each of them the number of Courts of First Instance which are required within them."

Article 25 of the same title directs that "Each Court shall be composed of three Territorial Deputies, *elected in the manner which is prescribed in the old Ordinance of Mining*, and of these three individuals, the first shall be President of the Court, and the other two, associates."

The foregoing decree is wholly translated in Halleck's Mining Laws, p. 434 (Laras' Dec. y Ord. del Gob. Prov. 1842-3. No. 549, p. 221, 229). On the 24th day of May, 1843, Santa Anna having resumed the functions of Provisional President of the Mexican Republic, issued a decree that "In accordance with my intention to *encourage* whatever may contribute to the *national aggrandizement and wealth*, and considering as one of the means *most suitable* for that purpose the granting of rewards and exemptions to the important branch of *Mines of Quicksilver*, so necessary for the reduction of the *precious metals*, the *most important branch of the industry* of the Republic, without which the others can make no progress." After this preamble, the Decree, in its first article, prescribes that the Royal Orders of January 13, 1783, November 12th, 1791, of December 6th, 1796, and of August 8th, 1814, with respect to exemption from excise duties (alcabala), granted to articles of consumption in mining, will be observed with respect to mines of quicksilver in the Republic.

Article 2d. No general municipal impost shall be levied upon quicksilver extracted from the mines of quicksilver of the Republic.

Article 3d. Permits quicksilver to be sold throughout the nation without permits, passes, or other Custom House papers.

Article 4th. Provides there is granted to each one of the first four operators who shall extract in one year from the mines of the Republic 2,000 quintals of quicksilver, a premium of \$25,000.

Article 6th. Exempts all operatives in mines of quicksilver from all military service and all personal taxes. (*Laras' Dec. y Ord. del Gob. Prov.* 1842-3. Translated in Halleck's Mining Laws, p. 452, 453.)

On the 5th July, 1843, Santa Anna issued another Decree, having the same object in view—the encouragement of quicksilver mines. (*Ibid*, 1843. Halleck's Mining Laws, p. 454, 455.)

In conclusion, on this point, we consider that it has been shown by the preceding observations, that according to the views of Gamboa, that portion of the Ordinances of 1783 which related to "Mining Deputations," were not enforced in Mexico (New Spain)—that they could not be legally organized in California by reason of there never having been "*Reales*" or "*Asientos*" there, and, as a consequence of none such having existence in Mexico prior to her independence, they could not in California,—that Gamboa lays down the rule, that in the absence of Mining Deputies the ordinary judges may act—that a similar principle is asserted by Peña y Peña—that it is proof that no Mining Deputations existed in California; on the contrary, that the *alcaldes* acted. Such is the testimony of Mr. Larkin, the United States Consul at Monterey.

In conclusion on this point, "no Courts of First Instance" were ever created in Upper California under the decree of Nicolas Bravo, of December 2d, 1842. Such fact, if it ever existed legally, would be proved and must be to have had the "previous approval of the Supreme Government," and that the election had been made in the manner which is "prescribed in the old Ordinance of Mining," which was the only mode in which such tribunal could be legally constituted—that is, the members must be elected by the miners of each "*Real*" or "*Asiento*," not one of which existed in Upper California.

The Court cannot consider the objection to the jurisdiction of the *Alcalde* who delivered the juridical possession of the mine an available one.

The next question to be considered is the genuineness of the documentary title presented by the claimant.

There are two classes of this title.

The first consists of documents which are connected with the

proceedings which took place in California in relation to the mine.

The other is the evidence of the action of the Supreme Government of Mexico, on which the claimant relies as a ratification and confirmation of the title to the mine, and as curing all defects, if any such exist in it.

It is alleged by the Government that both classes of the documentary title, and each one of them, whether executed in California or Mexico, are forged, and consequently void.

The number of witnesses called to testify in this case, the protracted examinations to which they have been subjected, the mass of immaterial facts which have been elicited, have swollen the transcript to four volumes, amounting to upwards of three thousand printed pages, and has had the effect of presenting to our attention about nine hundred pages of briefs.

In exhibiting such a case the Court is like a man who stands by an immense magazine of wheat. He may take a handful and hold it out to view, but he cannot exhibit each grain in the mass to the eye of any purchaser.

All that is practicable to do is to take a general view of the testimony, save where minuteness to ascertain the weight of testimony to prove the authenticity or genuineness of documents where forgery is alleged.

We shall first consider the evidence given in relation to the documentary title given to the claimant by the local authorities of California, then turn to that connected with that which was obtained by claimant in Mexico.

There are three links in the chain of the claimant's title. The first two are the registry of Castellero in his two communications addressed to the Alcalde, dated respectively November 22d and December 3d, 1845.

Pico, the Alcalde who signed the Act of Possession and gave juridical possession of the mine to Castellero, proves the signatures of the latter to those applications. José Noriega and Antonio Suñol, the attesting witnesses to the Act of Possession, both swear to the genuineness of Castellero's signatures, being acquainted with his handwriting, and having seen him write.

The third link in the chain of claimant's title is the Act of

Possession. The Alcalde, Pico, who signed it, and delivered the juridical possession of the mine, and the two witnesses José Noriega and Antonio Suñol, each and all swear directly each to his own, and the signatures of the two others. The testimony of these witnesses is direct and positive, and if the documents are forged or antedated, each and all are guilty of perjury. Now, the testimony of Antonio Maria Pico has been on the files of this Court in this case nearly three years, and that of the two attesting witnesses, José Noriega and Antonio Suñol, have been five years. No attempt has been made to impeach their testimony by witnesses against their character or their want of reputation for veracity.

So far from such attempt having been made, it appears from the transcript that each and all of these witnesses have been called and examined by the parties in this case at different stages of it, each in its own behalf.

They, then, who have testified as to the genuineness of these documents, stand unimpeached, and must be treated by this Court like all others who stand in the same attitude. So long as the law deems them competent, and the Court finds their testimony not disproved, it must act upon a belief in it. In this case, however, a strict invocation of that rule is not necessary. The forgery or antedating of documents is a fact which is to be proved by those who allege it. Now, the most careful review of the evidence in this case has induced this Court to believe that the testimony of the witnesses is confirmed by other testimony from various quarters—by individuals, by facts and events so nearly simultaneous with, and following so immediately, the proceedings of the local authorities in California, that they cast their shadows upon them.

Those events and facts are proved by the Mexican Archives under the charge of the Surveyor-General of the United States, from the official correspondence of the time, and the judicial records of this State.

Before reference to them we proceed to a witness who was not a party to, nor attested either document. José Fernandez was *Sindico del Juzgado* at one time, at another a second Alcalde. He proves as directly the signatures of Pico, the Al-

calde, and those of the two attesting witnesses to that document, as they proved their own. "I know this document," says the witness, "saw it twice, once in 1845, in Court, afterwards when second Alcalde." He further states, "he was Secretary to Alcalde Pico; that this document was handed to him by Gutierrez, who wrote the body and paid him his fee of \$3.50."

He is asked, "When handed to him by Gutierrez, what did you do with this document?"

He replied: "It remained there in the Court." He states, "he was in charge of the Archives." We will now refer to some facts.

Alcalde Pico, in the concluding clause of the Act of Possession, after stating the grant by him of three thousand varas to Castellero, declares: "*This Act of Possession being attached to the Expediente deposited in the Archives under my charge.*"

Pico's term of office expired one or two days after these proceedings, and he was succeeded by Chavolla as Alcalde. On such occasion, under the law and usages, an inventory of all papers and effects in the Juzgado is taken and signed by the outgoing, and a receipt given for them by the incoming Alcalde. Such inventory produced from the Archives of the City of San José, by the Clerk of that City, Chapman Yates, on the 30th January, 1858, is filed in this case, and it designates, among numerous other papers, one "*Posecion de la Mina de Santa Clara, á D. Andres Castellero.*"

This record of possession must be the one preserved by the Alcalde in the Archives of his Court, and when the old Alcalde system was, in 1850, replaced by the Municipal Authorities of the City of San José, it passed into the Mayor's office, whence, in January, 1851, it was taken to the office of the County Recorder of Santa Clara county and filed, where it has remained to the present time.

Unless these records are forged, and got clandestinely introduced upon the records (of which there is no proof), they confirm the truth of the attesting witnesses to the documentary title. The next circumstance which confirms that truth is this: Under the Mining Laws, the Ordinances of 1783 prescribe, that after the written statement of the discoverer shall be noted in

substance in the book, for his security, there be given to him, *as his corresponding title*, a *copia autorizada* of all proceedings in giving possession. The written statements or representations of Castellero in registry were not returned to him, but remained in the Alcalde's office. He, however, received certified copies of them on the 13th January, 1846, signed by Pedro Chavolla, Alcalde, and by José Suñol and Pedro Sainsevain, as attesting witnesses.

The *Copia Autorizada* was delivered to Castellero. This document, which is a copy of the expediente, has been filed in this case.—Transcript, p. 2693.

The history of this document, so far as the evidence goes, is that one Robert Walkinshaw, at the time acting as the agent of Alexander Forbes, part owner and sole lessee of the mine, placed in the hands of a professional legal firm in the City of San Francisco, in January, 1853, this *Copia Autorizada*, to be used in relation to some litigation which had arisen in relation to the possession of the New Almaden mine. It remained in the office of those gentlemen, when it was delivered back to Walkinshaw with other papers, and a receipt taken for them.

These facts are established by Mr. Hall McAllister, one of the said legal firm, and Mr. Reese, in their depositions.—Trans. 2698, 2712.

Walkinshaw, on receiving this document, with the others, from Mr. McAllister, handed them with others to his agent, John Young, with whom he deposited all his papers when he left this country, to which he never returned, as he died in Scotland in April, 1848, and Mr. John Young became the sole executor of his last will and testament. On receiving the papers Mr. Young enveloped and labeled them "Papers relating to disputed *barra* between Walkinshaw," etc.

The time when, and the circumstances under which, this document was discovered, are detailed by the depositions of John Young and Thomas Bell.—Trans. 2684, 2696.

To prove the identity of this *Copia* the Alcalde, Antonio Maria Pico, was examined in July, 1860. He swears that the Act of Possession in this document was signed by him, "Antonio Suñol and José Noriega; these latter signed in my pre-

sence as witnesses." He also testifies: "I have no doubt that I delivered this document to Castellero, because I see my receipt thereto for twenty-five dollars, my fee. The body of the document is the handwriting of Gutierrez, and bears my signature, which was placed on the day of date."

In this *Copia* there are two copies, purporting to be such, of the two representations of Castellero to the Alcalde of 1st Nomination. Each of these is signed by Castellero, Pedro Chavolla, Alcalde Pico, and two attesting witnesses, P. Sainsevain and José Suñol. The Alcalde testifies that he is acquainted with the signatures of all of them, and that they are genuine. José Suñol is dead. Pedro Chavoya proves his own signature and those of P. Sainsevain and José Suñol. He was Alcalde at the date, and signed the documents at their respective dates. Pedro Sainsevain proves his own signature, that of Pedro Chavolla and José Suñol.

The document in the *Copia* of the act of possession, the third link in the chain of claimants' title, is the document which Alcalde Pico, as we have seen, has sworn to be genuine, and he has no doubt he delivered it to Castellero, was presented to the witness, José Noriega, one of the attesting witnesses. He testifies the handwriting of the body of the document is that of Gutierrez. "It bears the genuine signature of Antonio Maria Pico, Antonio Suñol and myself; we all signed it at the same time, and in each other's presence, I presume on the date of its date. I have no reason to suppose it was not." He then states, in answer to the inquiry, that the receipt from Antonio Maria Pico to Castellero for twenty-five dollars is in the handwriting of Gutierrez.

At the end of many years, on the procurement of this testimony, the parties in interest, with the single exception of José Suñol, who had died, have been able to invoke every witness who was a party either to the original record or its certified copy.

The earliest act of Castellero, as the evidence informs us, was to communicate to Governor Pio Pico, under date 10th December, 1845: "The mine has been denounced by me, and, between a few, we have formed a company, etc." He also sent

a sample of the quicksilver and says: "There is such abundance of quicksilver that eight arrobas of ore give one of metal." In this letter he expresses a wish that the vacant lands near our works be conceded to cut wood, and asks for an order to place him in possession of the Island of Santa Cruz, which had been granted to him by the Supreme Government.

This letter was transmitted by Governor Pico through the Minister of Exterior Relations, with the sample of quicksilver, to the President of Mexico, and he requests his Excellency may be made aware of, and satisfied with, so happy a discovery.

On the margin of this letter is the following order by the Minister: "April 6th, 1846. Received and noted with satisfaction, and with respect to the other matters contained, let him inform attentively as he may think fit."

The letter of the Governor of California, communicating to the Supreme Government the letter of Castellero, giving the discovery of the mine and its denouncement, was dated 13th February, 1846.

The answer made under said order to the Governor is in these words (Trans. p. 1806): "His Excellency, the President *ad interim*, learns with satisfaction, by the letter from Señor Castellero, which your Excellency sent with your official of 13th February last, the important discovery which has been made in that department. His Excellency having seen the sample of that ingredient cited in said letter, and which your Excellency sent me by Don José Maria Covarrubias, I have the honor to say this to you, by supreme order, in reply to the said communication, and with respect to the other matters referred to in Señor Castellero's letter, that Government will please report attentively what it deems convenient."

Now, all this correspondence between the Governor of the Department of California and the Supreme Government of Mexico in relation to the discovery and denouncement by Castellero, unless it was forged and clandestinely introduced into the archives, has been filed among them, since within a few days after the proceedings of the local authority had placed Castellero into juridicial possession of the mine.

These communications between Castellero (voluntarily sought

by him) on one side, and the Territorial Government and Supreme Government on the other, and the approval of both of the discovery and denouncement of the mine, is certainly another circumstance tending to confirm the authenticity of the documents as sworn to by the witnesses.

If Castellero had anything to do with this alleged forgery, crime took an extraordinary course with him, for it impelled him as soon as possible while the event was recent, to give to the public authorities an opportunity of ferreting out his crime, before the dust of the future should have settled upon his foot prints.

Five days after writing to the Governor about the mine, Castellero makes a second communication under date of 15th December, 1845. He supposes that his Excellency may not have received his previous letter, and he again informs the Governor of the discovery of the mine. This letter is also in the Mexican archives.—Statement of Hopkins, Trans. 3068; proved by 13th answer of Governor Pio Pico, Transcript, 2533.

Now if this letter has not been forged and clandestinely introduced into the archives, the presumption is that it must have been sent to the Governor at the time it bears date, and such also tends to confirm the testimony of the witnesses.

But the proceedings in giving possession of this mine were not concluded or done in the dark; one of the Mexican functionaries gets hold of them. On the 31st day of December, 1845, Manuel Castro, Prefect of the Second District, makes an official communication to the Secretary of the Departmental Government, that Don Andres Castellero had denounced, and is now working, a quicksilver mine found in the jurisdiction of the town of San José Guadalupe on private property. This letter of the Prefect Castro was answered, the blotter of answer is in the archives; Transcript, 2551. Proved by answer 10th of Pio Pico, Transcript, 2533; Hopkins' statement, 3068.

Having thus satisfied ourselves that the witnesses who have sworn to the genuineness of the documentary title obtained by the petitioner, so far from having suspicion thrown upon their testimony, are confirmed by record evidence from the Mexican archives now in charge of the Surveyor General of the United

States, we will proceed to one or two additional species of testimony.

Capt. John C. Frémont testifies that he paid a short visit to the New Almaden mine; he left it about the 24th January, 1846. This must have been about twenty-four days after the juridical possession of the mine had been given. He visited it in company with Capt. Hinckley, who introduced the witness to the owner, Castellero, who showed him about, and the excavation from which he had taken the ore, showed him two or three heaps of the ore and gave him some specimens, some of which he brought away.

Before visiting the mine, the witness states he had conversed with Capt. Leidesdorff with regard to purchasing the mine. When there, "I spoke slightly with Castellero on the subject, and Mr. Hinckley also said something to him at greater length tending to the same end, but Castellero was not at all disposed to converse about selling. About this time, I think, Castellero was engaged in building a house below in the valley, to be used for the occupation of himself or workmen. I learned from Castellero that he held the mine under a denouncement, and then I, for the first time, became acquainted with the Spanish system of acquiring mines by denouncement."

In an official letter of Thomas O. Larkin, written as Consul of the United States, at Monterey, to the Minister of the United States, at Mexico, under date of the 3d April, 1846, among other things, he states that Don Andres Castellero is going as Commissioner to Mexico from the Military Commander of California, Gen. José Castro. He concludes his communication thus: "Near the town of San José, eighty miles from Monterey, Don Andres Castellero has discovered a quicksilver mine; the ore produces from sixteen to sixty per cent.; I have seen him, from an old gun barrel, in thirty minutes, run out about thirty per cent. in pure quicksilver. This must be a great advantage to California."

On the 4th of May, 1846, Mr. Larkin, as such Consul, addressed to the State Department a long report upon the mineral resources of California. Certain extracts are certified by Lewis Cass, and under the seal of the Department of State, to be true

copies of the original dispatches of Thomas O. Larkin, U. S. Consul at Monterey, dated 4th May, 1846, which are to be found in the State Department.—Transcript, 2657.

The Consul communicates to the Department, that "From the town of San José, and near the Mission of Santa Clara, there are mountains of quicksilver ore, discovered by D. Andres Castillero (of Mexico), in 1845, which the undersigned has seen twice produce twenty per cent. pure quicksilver, by simply putting the pounded rock in an old gun-barrel, one end placed in the fire, the other in a pot of water, etc. * * * There appears to be no end to the production from these mountains. Working of the quicksilver is but now commenced, under great disadvantages, from not having any of the materials generally used in extracting that material, etc."—Trans. 2657.

In the same communication Mr. Larkin states what in substance Castillero told Fremont as to the mode of acquiring under Spanish laws a title to a mine by denouncement. Mr. Larkin states that "By the laws and customs of Mexico respecting mining, every person or company, foreign or native, can present themselves to the *nearest authorities*, and denounce any unworked mine; the authorities will, after the proper formalities, put the discoverer in possession of a certain portion, which I believe is according to its extent. The possessor must thereafter occupy and work his mine, or some other may denounce against him," etc.

There are various other official communications, but enough of this species of evidence has been cited. Various others will be found in the Transcript.

If we turn from the record evidence derived from the Archives of Mexico, and that from the official correspondence of a Consular Agent of the United States, to the judicial records of California, we will find historical evidence of the genuineness of the proceedings to which the witnesses have sworn. In March, 1847, in the suit of G. C. Cook vs. James Alexander Forbes and others, the complaint was that Andres Castillero, James A. Forbes and others, were working on the land of plaintiff contrary to law, praying that they be removed. The

parties having appeared, the case was continued until the mine was surveyed. Two men made a report, and the case was dismissed. If there were no registry, no act of possession, how could there be a mine in existence to survey?

On the 14th August, 1847, James Alexander Forbes, then British Vice Consul for California, writes to John Burton, Esq., Justice of the Peace of San José, that two persons have commenced digging a pit by the direction of G. Cook, within the limits of the *juridical possession of the said mine*. * * * "Permit me to refer you to the documents which exist in your office, upon which was founded your conviction of the justice of your decision in relation to the claim of Mr. Cook in March last, and to request you will be pleased to adopt such measures for protecting the rights of the owners of the said mine, and of those who are legally interested in the same, as you may deem most conducive to that end."—Trans. 810.

This letter was produced by Chapman Yates, Clerk of the City of San José, from the archives of that place, on the 30th January, 1858 (Trans. 769), and proved by the witness McCutchen (767.)

Subsequently, on the 5th May, 1847, James Alexander Forbes, in a letter to Mr. Alexander Forbes, alludes to the "*juridical possession which was given of the mine by the local authority of this jurisdiction*," and also of "*the three thousand varas of land given in that possession as a gratification to the discoverers*."—Trans. p. 842.

Weekes' amended possession, given 21st January, 1848, refers to the *original act of possession*, and declares that "*the right and title of the mine to the mine and land granted as a reward in the original act of possession, shall remain valid*."

This circumstance, while it confers no title on the claimant, being the act of one who, without the consent of both parties, had no authority, is however the recognition of a *de facto* magistrate of the genuineness of the proceedings to which the witnesses in this case have sworn.

In the action between Walkinshaw vs. Forbes, complaint was filed 18th October, 1849, in which plaintiff claimed "*one-eighth part of the mine by title derived under the original act of registry*."

The mine was denounced on 6th October, 1849, by Mr. Horace Hawes, for *abandonment* and *insufficient registry*, and the mine is described as situated on Berreyesa's rancho, and as known *in its original title of registry as the Mine of Santa Clara*.

In the pleadings of plaintiff it is alleged its last possessors were Andres Castellero, Alexander Forbes, James A. Forbes, Robert Walkinshaw, and the two Robles.

Alcalde May's proclamation, on 23d October, 1849, made in relation to the suit, citing parties to appear, describes it as the quicksilver mine situated in the District of San José, known and designated, *in its original act of registry*, as that of Santa Clara, and now known by the name of New Almaden.—Trans. p. 297.

Now, a great portion of the evidence relied on to sustain the allegation of forgery and antedating of the documentary title of the petitioner, consists of the letters which passed between James Alexander Forbes and other parties in interest, filed by the Government, and which were before the Circuit Court on the argument for injunction, and some letters interchanged between James Alexander Forbes and Alexander Forbes, explanatory of those filed by the Government. Among these numerous letters from various parties in interest there is *one* letter alleged to have been written by Alexander Forbes to James Alexander Forbes, under date of March 28, 1848, which is the only letter where a positive assertion is to be found that forgery or antedating had been actually committed.

Nor is the fact asserted in *THIS* letter alluded to in any other part of the voluminous correspondence. We refer to it now simply in connection with the documentary titles obtained by Castellero in California.

The letter of 28th March, 1848, speaks a language different from that uttered in any other. The sentences which do so are these: "Were I not already so deeply interested in this negotiation I would never think of investing another dollar in it, but this interest renders it necessary to have the control of all the shares, in order that I may dispose of the whole whenever an opportunity may offer, and save myself from the heavy loss that would ensue, should it unluckily leak out, that in fact,

the documents procured by Castellero in Mexico, as his title to the mine and lands, were all obtained long after the occupation of California by the Americans. This unfortunate irregularity cannot be easily repaired, and serious objections might be made to our new Act of Possession."

Now, the charge of antedating in this letter, if the Court could believe in its authenticity, apply to only such documents as were obtained in *Mexico* by Castellero, and hence the fact that the charge is not by the letter applied to such as were obtained elsewhere, is one to be considered when determining the truth of witnesses who have sworn directly to their genuineness in California.

The Court, in view of foregoing considerations, must take the authenticity of the documentary title obtained there as satisfactorily proved.

We turn, now, to the documentary title obtained in Mexico, which loses its importance, because, satisfied as the Court is with the proofs in this case of the authenticity of the documentary title obtained from the local authorities of California, and as the title held under them is sufficient to sustain the confirmation of the claim to the title to the mine, no aid is requisite from the action of the Supreme Government to sustain it, save as to the three thousand varas granted by the Alcalde.

No action of an Alcalde can grant to a party such an amount of surface land as "*pertenencias*," or for any other purpose. He, whatever the President can do, has only power to give such extent of "*pertenencias*" as the mining laws allow.

A *discoverer* of one or more mineral hills (*cerros*) absolutely new, may acquire, in the principal vein which they may select, as much as three *pertenencias* continued or interrupted.

As *discoverer* the Alcalde had the power to assign to Castellero three "*pertenencias*" as such.—Halleck's Mining Ordinances, Art. 1; Trans. 54.

Castillero formed a copartnership on the 8th December, 1845, with the two Robles', José Castro, and Padre Real for the working of the mine, and thus working in partnership, the Alcalde had the power to assign to Castellero *four* additional *pertenencias*.—Ordinances of 1783, p. 252; Halleck's Mining Ordinances; Trans. 54.

Thus, seven *pertenencias* is the largest amount an Alcalde is authorized to assign as such, and to *grant* land to any extent was utterly beyond his jurisdiction.

As the appellate Court may take a different view of the evidence of the documentary title obtained in California, and it is made necessary, under the view this Court takes of the action of the Alcalde in relation to his (the Alcalde's) grant of three thousand varas, that we now refer to the documents of title obtained by Castellero in Mexico, we will now do so.

It has been before observed, that the allegation of forgery and antedating as to them, mainly rests upon the letters written between James Alexander Forbes and some of his associates in interest.

Both of the judges on this bench have heard the nature, character and legal effect of those letters as evidence, elaborately argued on two occasions, once on the discussion of the motion for an injunction in the Circuit Court of the United States for this Judicial District, and on the present trial of title in this Court. Everything has been said, and heard by them from both sides, on the question, which learning and research could invoke. With the very elaborate arguments presented to them on that point, it is deemed needless to travel in detail through the numerous letters offered in evidence on this point. They are all set forth in the Transcript, and open to the appellate tribunal, who, after an examination of them, can correct any error committed by this Court in the conclusion it has come to, upon the character and legal effect of all the letters on which the allegations of forgery and antedating in this case rest.

A careful perusal of these letters has satisfied the Court that, with the exception of the letter of 28th March, A. D. 1848, which James Alexander Forbes swears he received from Alexander Forbes, there is nothing in them which even tends to prove that forgery or antedating had been committed. In other words, there is no proof afforded that the documents presented by claimant are the result of either.

They do show that James Alexander Forbes was *willing* to have titles forged and antedated, for the purpose of curing

what he deemed irregularities and defects in the original title.

They also prove that he actually suggested to some of his associates the importance of prompt action in the premises, and complained of their delay. This suggestion was made, at one time, by a memorandum left with one of his associates, and at others by letters to one or two of them.

Now, the *willingness* of an owner, or of all the owners, to better their title by forgery and antedating, will not defeat their original title if sufficient to pass the estate.

The question presented to the Court, in cases where forgery is alleged, is whether the titles produced are the fruits and results of such forgery.

In the United States *vs.* West's Heirs (22 How. 315), the Attorney General for the Government contended that a provisional or equitable grant, which may be converted into a legal title, upon the contingency of the approval by the Departmental Assembly, and the performance of other conditions, must be regarded as wholly abandoned, when the conditions are not complied with, and another and a different claim set up under a forged title.

West, the petitioner, died during the pendency of the proceedings before the Board of Land Commissioners; the case was brought up to this Court, which confirmed the claim for a league and a half.

The Supreme Court say on appeal: "We have only to say that the fraudulent attempts to enlarge the grant were made after California had been ceded to the United States; and though the proof of it is undeniable, and was an attempt to defraud the United States, that cannot take away from the wife and children of West their claim to the grant, which was made to him before California had been transferred by treaty." The Court, therefore, confirmed the claim for one and a half leagues, about the genuineness of which there was no doubt.

Now, in this case, throughout the whole of these letters, there is no evidence to prove either forgery or antedating by any one, even James Alexander Forbes. The only exception in the whole correspondence is the letter of the 28th March, A. D. 1848, which Forbes swears he had received from Alexander Forbes.

We have given a copy of this letter, in which the following language is used: "and save myself from the heavy loss that would ensue, should it unluckily leak out, that in fact, the documents procured by Castellero in Mexico, as his title to the mine and lands, were all obtained long after the occupation of California by the Americans."

From the evidence set out in the Transcript, we believe this letter to be a forgery. The *loss* and *contents* of the original are proved by James Alexander Forbes and Robert Birnie, the former the master spirit and the latter his instrument.

We shall not attempt to go into the details of all the numerous facts which have forced upon the Court the conclusion that the letter of 28th March, 1848, is fabricated, but refer only to a few circumstances.

Forbes, the witness, is impeached by nine witnesses, all of whom resided in the county of Santa Clara, where the witness did. Some of these knew him in 1846, some in 1847, and some in 1850.

This letter of 28th March, 1848, alleges that all the documents procured by Castellero in Mexico, were obtained "long after the occupation of California by the Americans."

A portion of the letters in evidence in this case were purchased by one Henry Laurencel, who, it seems, had some interest in the event of this suit, from James Alexander Forbes, after he had sold out his interest in the mine, and had become hostile to his former friend, Alexander Forbes, for the sum of twenty thousand dollars.

These letters so purchased were deposited at a banker's in this city, subject to the joint order of Forbes and Laurencel, but were brought into this Court by process of this Court, and filed here by the Government.

Subsequently other letters, explanatory of these, and between the same parties, were brought into Court.

The attempt by the production of these letters on the part of the Government, was to prove that forgery had been committed with regard to the title papers, or some of them, in 1850, in accordance with a memorandum made and left by James Alexander Forbes in Tepic in 1849.

This theory was disaffirmed by the letters subsequently filed by the claimants, particularly by the letter of James Alexander Forbes, on 5th May, 1847, to Alexander Forbes, in which he tells the latter of his having seen the copy of the two-league grant, signed by Castillo Lanzas, ordering the Governor of California to put Castellero in possession of the land, and speaks of the juridical possession of the mine of three thousand varas as a gratification. Trans., 842.

Now, when James Alexander Forbes sold for *twenty thousand dollars* the letters filed by the Government, they were sold for the purpose of proving forgery and ante-dating. Where was the letter of 28th March, 1848 (if in existence), at the time of the sale of these letters by Forbes to Laurencel?

It is the only one which gives an express statement of forgery, and is the most important in the whole correspondence.

The account of his reasons when in selling certain documents for a pecuniary consideration, which, for the purpose of enhancing the value of the evidence sold to Laurencel he did not include this original letter among those he sold, are inconsistent.

Forbes, in his answer, in the latter part of it, states in his 197th answer (Trans. 895): "If this letter had been in my possession, or rather, accessible to me, I would have presented it with the others; but it had been mislaid, and I had forgotten where I had put it."

In reply to question 199: "While you were making selections from your correspondence for Mr. Laurencel's inspection and for sale, did it occur to you there was such a letter in your possession as this of the 28th March, 1848?"

The witness had stated that he had *sold* no documents to Mr. Laurencel, but "he paid me for a specific use of those papers."

After reiterating his denial as to a sale, he answers the question as to his recollecting the letter. He says: "I certainly did recollect of the existence of the letter alluded to, and that, having received it a long time before the dates of the correspondence which I allowed Mr. Laurencel to use, I had laid the letter in question aside among some other papers, and I was

unable to lay my hands upon it when the aforesaid correspondence was submitted to the inspection of Mr. Laurencel.—Answer 199, Trans. 896.

The attention of the witness was then called to the fact that among the papers sold or delivered for a special use to Laurencel, there were seven letters prior to the letter of 28th March, 1848. His answer is, in the latter part of it: "My answer (200) alluded to those letters which were considered of the greater importance in that correspondence, which were comprised in the dates I have mentioned, 1849 and 1850." And in his answer 201, he says: "In my said answer 199 I had in view the dates of those letters of that correspondence which were considered of the most importance." Now, what paper could he consider more important than the one of 28th March, 1848?

He searched, he says, for that letter when he sold the use of the papers to Laurencel. When asked, "Did you at the time mention to Mr. Laurencel that you had received such a letter?" he replied, "I did not."—Trans. 897, Ans. 205.

In his answer 443 (Trans. 943), he assigns as his reason, and says: "I will *now take occasion to state what was my real* object in retaining that letter in my possession. I knew that the counsel himself had gone to the city of Washington, attended by William E. Barron, for the purpose of getting a bill passed for the taking of testimony in Mexico; and if they should not be successful in obtaining the passage of such a bill, the witnesses would be brought here for the purpose of supporting the title to New Almaden, and after such testimony should have been given in this Court I was determined to exhibit that letter to the authorities of the United States."

He was asked "whether he ever wrote to Mr. Alexander Forbes, requesting any explanation of the expressions in that letter, or to Castellero, requesting some information as to the title?"

The witness answers, he never did, and he considered the attempt useless, inasmuch as he believed the last act of possession was obtained for the purpose of remedying anterior defects in the title (Answer 371, Trans. 919.) In answer 374 he says. "I made no inquiry with regard to the matter set

forth in that letter, for the reason already stated, namely: that I considered it next to impossible for me to obtain such information, and more especially as I had been already informed by Mr. Alexander Forbes that in case everything else failed we should fall back upon that possession."

The last reason he assigns for making no inquiry about the letter of 28th March, 1848, was, it stated an important fact which he considered would never be made the subject of correspondence, neither on the part of Mr. Castillero or Mr. Forbes, even had there been a less precarious mode of conveying such correspondence from Mexico to California. Can this witness be deemed to have given a clear account of this letter which he secreted, and made no inquiry for years until June, 1858, a period of ten years from its date, when it is produced by a copy; Forbes swearing the original was stolen from his carpet-bag on the 30th June last?

When asked by counsel for claimant, "Do I understand you to say that on the 30th of June last, and after the conclusion of your examination before Judge Hoffman, and after you had suffered Birnie to make a copy of that letter, the said letter was stolen from your carpet bag at your lodgings, at the Railroad House in this city?" 'This was on the evening of 30th June, 1858, that Birnie made the copy.

Forbes answered: "That letter was in my possession up to nine o'clock in the evening. I had occasion to leave my lodging for a short time; for security I took that letter out of my coat pocket and put it into my carpet-bag, locked my room door and went up as far as Montgomery Street. I was absent half an hour or more; on my return I found my room door locked as I had left it; and on retiring to bed I had occasion to go to my carpet-bag, when I found that letter was missing."

This is an improbable story, coming from a man who is proved by the correspondence as not only willing to have forged title, but urging his suggestions upon his associates to fabricate it.

There is improbability in the story, as he tells it, as to the manner in which he lost it.

The witness deemed it an important document, and he re-

served it *as* his real object, as he tells us, to deliver it to the authorities of the United States, in the event that witnesses from Mexico should be brought here to testify. Why should the character of the letter, as true, depend upon that fact?

It is improbable that a document deemed so important should be left in a carpet-bag in a large public house, and left in a carpet-bag, as the witness swears, for "security."

We shall no further pursue the facts spread out in the Transcript to establish the forgery of the 28th March, 1848, so far as James Alexander Forbes is concerned. His coadjutor, Robert Birnie, takes the stand. Sixteen witnesses, old neighbors of Birnie for four or five years, who knew him well and his reputation, say it is so bad they would not believe him on his oath. Whoever desires to arrive at a knowledge of Birnie's reputation has only to read the testimony of one of these witnesses.

The general fact sworn to by him that he was not to be believed on his oath, is confirmed by all the rest. That witness is Nathaniel Jones, and his testimony to be found in the Transcript, p. 2769.

Mr. Jones is a farmer; held the office of Sheriff in 1850 and 1851; was Public Administrator a short time after; was then elected Supervisor of the County; is the Corresponding Secretary of the Contra Costa Agricultural Society, and Vice-President of the Bay District Agricultural Society, representing Contra Costa county. This witness swears he has lived in the neighborhood of Birnie for some four or five years. He would not believe him on his oath.

On his cross-examination this witness testifies: "It is not from any single act of his, but it is from his want of occupation, and the universal belief among the people that he swears falsely and procures false evidence in land cases; he is utterly worthless, and a loafer."

Now such was the coadjutor of Forbes, who copied the letter of the 28th March, 1848, on the night of 30th June, 1858; who swears he did so, and he swears the letter he copied was one directed to James Alexander Forbes, dated ("I believe") 28th March, 1848, from Monterey.

He swears to every thing about the letter that Forbes did

about his copying, and also he identifies the original letter which he copied as that of Alexander Forbes.

He can say nothing about the stolen letter, as no one was present save Forbes and the carpet bag. But Forbes could not return the favor Birnie had done him.

On his cross-examination, Birnie deposed that the first notice he had to attend as a witness, "was from a subpoena to appear *instanter*. I came over in the boat yesterday with Mr. Randall, the Deputy Marshal, Mr. Forbes and Mr. Laurencel were in company with the Deputy Marshal. I went to Mr. Forbes and asked him the object of this subpoena so suddenly. He told me that it was to testify about the copy of the letter I got from him," etc. Answer 36; Trans. 861, 862.

Forbes was called some two days after the examination as a witness, and he knew that Mr. Randall, the Deputy Marshal, if he did not tell the truth in despite of his friend Birnie would bring out the truth, as he Randall was cognizant of the falsehood of Birnie; he, Forbes, therefore actually told the truth, and falsified all that his friend had sworn to. "I went," says Forbes, "on our arrival at Oakland or soon thereafter, at the request, or rather by *his consent*, thinking it would be less disagreeable to Birnie to speak to him before the subpoena was served, as the *subpœna* called for his appearance *instanter*." Ans. 35; Trans. 876.

"I told him," says the witness Forbes, "simply, that the United States Marshal was there and had a *subpœna* for him; that he would not be required to go to San Francisco until the following morning, provided he would be ready to go at 5 o'clock in the morning. I then left to see the Marshal, and informed him that Birnie would be on board in the morning." So that what Birnie had deposed to was expressly falsified by Forbes, from the fact of the Deputy Marshal's presence.

Escaping from this forged letter, we will look briefly to the testimony adduced by claimant to sustain the genuineness of the documentary title obtained in Mexico.

Great delay in the administration of justice in this case has taken place, from the fact of the tenacity of the Mexican Government in adhering to the law or regulation inhibiting the

use of the great seal to evidence transactions done in Mexico in foreign countries.

The inability of claimant to clothe the evidence he had to procure in a form to be received in the courts of this country under existing laws, has had the effect of making this case drag along at a very slow pace. They have had the means, however, to put an end to further delay, and by the exertion of them to bring their witnesses from their homes in Mexico to give their testimony, and testify personally to the genuineness of the documentary title which the claimant obtained from the Mexican Government. The impression generally has been entertained that titles may be easily forged, and that the Government of Mexico was approachable by clandestine means.

The correspondence of which so much has been said, which was filed by the Government in this case, was naturally calculated to fortify that impression. That correspondence did establish to some extent the settled purpose of one of the parties to have papers antedated and forged, and that one or more of the other parties did not promptly repudiate his suggestions, which the Court consider may have been the result of many motives into which it is unnecessary to inquire, under the view entertained and enunciated by this Court, of the nature, extent, and legal effect of that correspondence as evidence to prove forgery or antedating. The record shows that an application was made by Eustace Barron and Castellero to Castillo Lanzas, while Minister of Relations, to authenticate copies of various documents in the public offices of Mexico relating to the Almaden Mine, with the great seal of the Republic. The application was refused, upon the ground that the uses to which the great seal may be put are defined by law and do not embrace the authentication of copies of public documents. One of the witnesses examined in this case was Lanzas himself, and he gives the laws which regulated the use of the great seal (Trans. 2237.) See the letter of Castillo Lanzas giving the reasons why the President denied the use of the great seal save for the special purposes designated by law (Trans. 2384). Now, it strikes the Court, if the precision and tenacity of the Mexican Government about the great seal are so great that it

would not yield to the intercessions of Andres Castellero, he certainly could not have possessed such influence as has been imputed to him to obtain a forgery of documents in all the public offices through which his title passed. This Court has decided that the only evidence produced to prove a fabrication of these documents is the forged letter of 28th March, 1848, and the proof which has been produced to prove the authenticity of these documents is as strong as it can be made. We must come to the conclusion that the archives of the Mexican Government must have been forged, and the eleven witnesses sworn in this country under its law, and examined in the presence of her magistrates, have perjured themselves. The deposition of John Forsyth, United States Minister in Mexico, is in the Transcript, 1111. The following motion in relation to it was passed by this Court :

“ THE UNITED STATES
 vs.
 ANDRES CASTILLERO. } No. 420.

On motion of Messrs. Peachy and Yale, of counsel for claimants, and by consent of parties, it is ordered by the Court that the deposition of the Hon. John Forsyth, remaining under the seal of R. B. Owen, United States Commissioner, be and the same is hereby published.” Trans. 1110.

In his deposition, Mr. Forsyth deposes, he went first to the office of the *Junta de Minería* in company with the British Consul, John P. Brodie of California, agent of the claimant, and others, and where was produced from the archives of said office an expediente, which, being carefully compared with a copy in the hands of the said Pardo and Brodie, proved to be absolutely alike and correct in every respect, and to that copy he made a certificate dated the 4th day of August, 1858.

“ On the 30th July, 1858, I was present in the *College of the Mines* with the same parties, when an expediente was produced from the archives, which was compared, etc., which copy was certified by me on the 4th day of August, 1858. On 29th of July, 1858, I was present at the office of *Foreign Rela-*

tions, when and where the Chief Clerk of the Section of Europe produced from the archives of said office an expediente which was compared, etc., and to that I certified on the 4th day of Aug. 1858. On the same day I was present at the office of the *Ministry and Police*, when the Chief Clerk of said office produced from the archives of said office an expediente in the presence of the same parties, which, on being compared," etc.

"On the 30th July, 1858, I was present at the office of the Escribano, or Notary, Don Juan Navarro, where and when said Navarro produced from the archives of his office a book formed of sheets of stamped paper, stitched together and consisting (exclusive of the fly-leaves in the beginning, and the index at the end) of one hundred and twenty leaves, and titled '*Año de 1846, Protocolo de Instrumentos del Escribano Don Nazario Fuentes.*' In the presence of the same persons, certain original instruments, contained in said book, were examined, and being compared unto a copy found to be correct and similar, with the exception of two slight omissions, which were certified by the Notary on the same day, and to that copy I certified on the 4th day of August, 1858. These original documents were found in the several offices where they appropriately belonged, and were produced by the officers having the custody of them; and I saw nothing whatever to cause me to doubt that their being genuine originals. I, as Minister, certified each of the copies hereinbefore mentioned, and the facts set forth in those certificates are true, and the certificates are in accordance with the laws of Mexico."

Mr. Forsyth further deposes that the Government will not allow the great seal of Mexico to be attached to copies of such documents, nor will they allow the originals to be withdrawn. "And the manner in which the copies herein mentioned have been authenticated is the only way in which such copies can be authenticated."

Now, all these expedientes, in the archives of the *Junta of the College of the Mines*, in the *Ministry of Foreign Relations*, in the office of the *Ministry of Government and Police*—four of the public offices and departments—must have been forged in each one of them, and introduced clandestinely into the archives

of each. And the same must have been done in relation to the original documents produced from the archives as sworn and certified to by Mr. Forsyth from the archives of the Escribano. Now this is what is most improbable to do without detection.

The claimants have offered the testimony of the three members of the *Junta de Fomento* in the year 1846, namely: Don José Vicente Segura, Don Maria Flores and Don José Maria Bassoco. The testimony of the first two was taken in Mexico, and that of the testimony of some eleven other witnesses was taken in San Francisco, and proves the genuineness of the documentary title obtained by Castellero; we shall limit ourselves to their testimony.

The following witnesses were sworn in San Francisco, and examined: José Maria Bassoco, before the District Judge; Manuel Couto, who was a Clerk in the *Junta de Fomento* in 1846; remained Clerk until the *Junta* was displaced by the *Administracion del Fondo* in 1853, and since then has remained Clerk in that Administration. He copied Castellero's proposals to the *Junta*. The testimony of Don José Maria Lafragua, Minister of Foreign Relations under President Salas, in the latter part of 1846, proves the *expedientes*.—Trans. 15.

Professor Balcareel was a Member of the Faculty of the College of Mines in 1846; was present at the meeting of the Faculty when the result of the assay of quicksilver was ordered to be printed.—Trans. 1865.

Another witness, Antonio del Castillo, Member of the National College, kept the minutes of the proceedings of the result of the assay; deposited the specimens sent by Castellero in 1846, in the Cabinet of Minerals.—Trans. 1935.

It is useless to pursue this detailed inquiry into the testimony. It is set out in the Transcript, and direct and positive to the genuineness of the documents obtained by Castellero, in Mexico, in 1846.

The witnesses are eleven in number who have been examined in this country, and they stand free from any impeachment.

In addition to the testimony of Mr. Forsyth, and the eleven witnesses from Mexico, who testify to the genuineness of the

documents obtained by Castellero in this city, there is added a document of some significance.

The witness Couto was asked on the cross-examination—“You say, that all these things were done by the *Junta*?” Answer of witness—“I do.” “You know they were done by them?” “I do.” “Was there a record kept of them—of the discussions of the *Junta* on the subject of such applications?” Answer of witness was—“The result of each day’s deliberations was written down in a book, and signed by the gentlemen of the *Junta*. This record was called the book of the *Actas*.” “Where is that book now?” Answer—“In my possession, in the office in Mexico. These books are not allowed to leave the office.” “Were not the final resolutions of the *Junta* on the subject of any application extended more formally than in the *acts* or journal of their proceedings, to which you have referred?” Answer—“This book of the *acts* is a formal record. The first and last sheets of the book are stamped. The book is stamped in the stamp-paper office, and the pages are all numbered in that office before it is stamped, so that it is the same as if each page was stamped. The same was paid to the stamp office as if each leaf were stamped. The *Administrator de Papel Sellado* certifies on the first page of the book the number of pages in it. This book undergoes all this preparation before it is used by the *Junta*.”

“Is this the only book in which the final resolutions of the *Junta* were recorded?”

Ans.—“Yes.”

“Why did you not bring a copy of the acts of the *Junta* upon his petition with you, that being as you have said, a mode by which the *Junta* executed contracts and assumed obligations?”

Ans.—“Because my business here was only to prove my own signatures, and to prove that the dates upon the documents in the expediente of which I have spoken were the true dates of those papers, and to prove that they have been in my custody.”

The result of this examination was to induce the taking measures to get the *actas* from Mexico, and they will be found

in the Transcript, 1682. Here is a whole year's business of the mining body, their proceedings, day after day. Session of 6th May, 1846, there is an entry, stating that Don Andres Castellero appeared and made a verbal report regarding the discovery, denouncement, and actual condition of the quicksilver mine situated in the mining district of Upper California. The Junta resolved that Señor Castellero should present his indications in writing.

Session of 14th May, 1846. "From the Ministry of Justice, of date 9th, acknowledging receipt of the official letter, in which was communicated to it the discovery of the mine of quicksilver in Californias."—Trans. 1684, 1688.

Session 18th May, 1846. "In the third he informs, that of the one thousand two hundred and seventy quicksilver flasks existing in the negotiation, there are only a very few having flaws, and that they ought to be worth three dollars each per piece. Let this difference be represented to Señor Castellero, and to the Government, when his propositions are approved." Trans. p. 1690."

Session of 25th May, 1846. "An official letter from His Excellency the Minister of Justice, dated 20th, approving the propositions of Don Andres Castellero, which the Junta had transmitted to the Supreme Government, and informing that he had sent to the Ministry of Government the petition for two square leagues of land (*sitio de ganado mayor*) as a colonist, upon his mining property."—Trans. 1694.

"The Junta resolved that the proper judicial agreement be drawn up immediately, and that application be made for the five thousand dollars, on Mazatlan or Guadalajara, to which Castellero agreed; and finally, that by the mail of Wednesday the proper orders be sent to Tasco, that the administrator deliver to the order of Señor Don Tomas Ramon del Moral all the quicksilver flasks in good condition in the store-houses there, at the rate of two dollars."—Trans. p. 1694.

Session 29th May, 1846.—"It was also resolved, in conformity with the report of the Controller's Office, that twenty-five dollars be paid to the notary Calapiz, for the proceedings in the instrument of agreement, which had been made with

Don Andres Castellero, to assist his quicksilver enterprise in the mine of Santa Clara in Upper California, embraced in the official order for the suspension of all payments in this Branch."—Trans. p. 1697.

These "*actas*," where we see from day to day entries of facts made at the proper dates to meet the acts of Castellero to procure his title, harmonize with the balance of the testimony to negative the idea of forgery or antedating, or that all the documents procured by Castellero in Mexico were all obtained long after the occupation of California by the Americans.

The questions the Court will now discuss are :

1. Whether the claimant has proved satisfactorily a ratification by the Supreme Government, of the act of Alcalde Pico, granting to him three thousand varas of land at the time he delivered to him the mine.

2. Whether the claimant openly and fairly submitted that transaction to the executive supervision, in the propositions he made.

These are important inquiries, in the solution of which, so far as this Court is concerned, the destiny of these three thousand varas depends ; for if it be not ascertained beyond reasonable doubt that the grant of the Alcalde was as clearly and fairly presented in the propositions as the other things proposed, or that there is not a direct and distinct ratification of the Alcalde's act, the transaction is a nullity and has no legal existence.

In Castellero's communication to the *Junta de Fomento*, under date of 12th May, 1846, submitting his views as to a contract respecting a mine he had discovered and denounced, he submits various details ; among them, he states that he had denounced and taken possession "not only of the said mine of Santa Clara, but also of the extent of three thousand varas in all directions from that point."

The statement of all he had to say as to his past acts and future views having been made, he closes with these words : "My propositions, then, are the following—"

Then follow nine propositions.

The *seventh* only, will now demand our attention.

The original communication of Castillero, with its various propositions, were sent by the *Junta* with their recommendation in favor of it, through the Minister of Justice to the President, who, therefore, had them before him.

The result of his action in the premises is the written order on the margin of the communication he had received from the *Junta*, recommending Castillero's propositions to his approval. It is in these words: "Granted *in the terms* which are proposed; and with respect to the land, let the corresponding order issue to the Minister of Relations for the *proper measures of his office*, with the understanding that the Supreme Government accedes to the proposition."

It is contended that the above order approves *in all its parts* the agreement. Such is the construction placed upon the order by the Minister of Justice in his letter communicating to the President of the *Junta de Fomento* the result of the action of his Excellency the President, under date of 20th May, 1846.

Counsel for claimant places as comprehensive a construction on the order as did Mr. Becerra, the Minister of Justice. He states: "*All that is proposed is granted, the two square leagues among other things.*"—Mr. Peachy's Brief, 5.

Such are the interpretations placed upon the order of the President by those two gentlemen. The construction to be placed upon this little document now rests upon this Court; if it be erroneous, it is gratifying to feel that there is an appellate tribunal to correct such error.

As to the interpretation of the Minister of Justice, if his only object is to give his inferences and his interpretation of what was done by the President, his course may, in the estimation of many, be deemed correct; but it must strike some, that in the performance of his official duty as a subordinate officer, where large interests were concerned, it would have been as well to issue the order of his superior so that it might speak for itself, without placing his own construction on it. In doing so, he has introduced language not to be found in the order. The words "*in all its parts,*" have been seized upon by all who, interested, have written or spoken about the title, and its ratification by the Supreme Government of Mexico, draw-

ing their inference from those words, and the coloring thrown upon the order by them, when in fact no such words exist in the order.

That part of the interpretation of the learned counsel for claimant, which considers the language operates to convey the two square leagues, we will consider hereafter. The inquiry at present is exclusively as to the three thousand varas of surface land.

Castillero was not an illiterate, ignorant man; the evidence shows he was well informed and educated. He was familiar with the mining laws. Colonel Fremont testifies that in the early part of 1846, he obtained from Castillero all the necessary information which he (Fremont) was able to use for his individual benefit subsequently, in obtaining a mining title at Mariposa. It is reasonable to believe, that one so generally intelligent and cognizant of the mining laws, knew precisely what an ignorant Alcalde was doing at his suggestion, as it is reasonable to believe it was, as he was present, and it was done for his benefit. Castillero must have known that in the annals of his country there was no precedent for an Alcalde to grant three thousand varas to a miner, either as "pertenencias," or by way of grant.

It is important, in justice to the President and to all parties in interest, to look with care when such important interests were entrusted to him, to see, when he bound his country and himself, to what extent he did so. It cannot be urged that the interpretation of a subordinate of a Government of the legal document of his superior, is to be conclusive on this Court in the construction of it. We have cited the construction placed upon the order by one of the counsel for the claimant. The first part of it is in these words: "All that is proposed is granted." We do not differ in this from the learned counsel. We merely add the negative to his affirmation and add: "All that is *not* proposed is *not* granted."

We now turn to the proposition of Castillero. He had in his communication to the *Junta de Fomento*, in the statement he had made in it, preliminary to his propositions, informed that body he had "denounced and taken possession not only

of said mine of Santa Clara, but also of an extent of three thousand varas in all directions from that point."

Thus far he as an honest man acted ; but he looked to his interests, as we shall see.

By the minutes of the *Junta*, it appears that he appeared before them personally, and gave a verbal account of his discovery, and having been requested to make a written statement, he handed, on 12th May, 1846, his written propositions.

These propositions were either prepared or drafted by Castellero, or under his eye. Conversant as he was with the mining laws, he must have known what a gross violation of the ordinances the Alcalde had committed in granting him three thousand varas, which he stated in his communication to the *Junta de Fomento* he had denounced. Now, there is no ground known to the mining laws on which a denouncement could be made of three thousand varas as the appurtenance to a mine.

The statement of Castellero is not only without proof, but is negatived. In the act of possession the reason averred by the Alcalde for delivering the juridical possession of the mine was, that the time between the denouncement and this date had expired. This is the only time the word "denouncement" is used in the act of possession. After stating the delivery of the mine, he says, "I have granted three thousand varas."

Now the assertion of Castellero that he had denounced these three thousand varas, is falsified by the very record on which the title rests which is presented to this Court for confirmation. No man, shrewd and educated like Castellero, makes a false statement, deliberately in writing, without some motive. We can only gather that motive from his subsequent conduct. Now, the principal object of Castellero in invoking the action of the Supreme Government was to procure their ratification of the title to his mine, so as to secure it from any attack that might be made by reason of any serious irregularity that may have been committed in the proceedings; or from want of power in the Alcalde, there being no Mining Deputation in California. Another object was to procure pecuniary means by way of a loan, and the prompt use of retorts, cylinders, and other apparatus to work his mine. These were his principal

objects, and with his knowledge of the gross violation of the ordinances which had been committed, he feared that an insertion of the grant by the Alcalde in his proposals, and asking a ratification of his possession under it, would jeopardize or defeat his whole application. He determines, therefore, to insert in the preliminary part of his written statement the Alcalde's grant, and so word his proposition as to possession, that if an unrestricted ratification was given, he might claim under it the land as the subject of the grant as well as that of the mining title.

His seventh proposition, the only one of the nine which asks for the approval of possession, is in these words: "The *Junta* shall represent to the Supreme Government the necessity of approving the possession which has been given me of the mine by the local authorities of California, in the same terms as I now hold it." Not one word is used that conveys an idea of the grant for three thousand varas, or the possession of it. Why was not an approval of the possession of those asked? Was it an inadvertence? It does not look like one. Castellero, if he intended this proposition to cover the land he held as well as the mine, could not be deemed acting inadvertently. He actually converts two separate and different acts of the Alcalde into one and the same transaction; it confounds two different transfers of different species of property, conveyed and regulated by different systems of law. It asks, if so intended, and if not intended why claimed, three thousand varas of surface, together with a mine, "*in the same terms as I now hold it.*"

The statement that he had *denounced* this land must have been introduced from a desire to aid the effort made in the seventh proposition in converting the two different transactions into one. Now, if Castellero intended to effect his object of obtaining the approval of the Government in this mode, it was a fraud; if it was done through inadvertence, and he only in fact intended to propose for an approval of the possession of the mine, the grant gives him no right to the three thousand varas. The possession of them was never confirmed. To prove the separate character of the two acts, and that Cas-

tillero only proposed the approval of the possession of the mine, we submit the following reasons :

As we consider the views expressed by one of the counsel for claimant, as to the character of the delivery of the mine and the transfer of the three thousand varas, as correct, we shall cite them : It seems that in the year 1848, Mr. Alexander Forbes applied to Alcalde Weekes to grant an increase of "*pertenencias*" to the owners of the Almaden Mine, as provided by the ordinances. Upon this, the counsel for the Government objected : "Why, if the original Act of Possession, dated 30th December, 1845, had been in existence in January, 1848, by which the Alcalde granted a mining possession of the three thousand varas in every direction from the mouth of the mine, should Alexander Forbes have prayed the Alcalde to grant an increase of '*pertenencias*' in 1848, as provided by the Ordinances ? For three thousand varas, measured in every direction from the mouth of the mine, includes many more "*pertenencias*" than the *seven* which Alcaldes are authorized to grant when a newly discovered mine is worked in partnership." To this objection the counsel replies : "A careful examination of the Act of Possession given by Pico in 1845, discloses the fact that the Alcalde gave possession of the mine, *and also* granted to Castillero three thousand varas in every direction from the mouth of the mine. He first declares that he gives juridical possession of the mine known by the name of Santa Clara, and then proceeding to enumerate several reasons for what follows, he *grants* to Castillero three thousand varas, etc., so that the giving juridical possession of the mine was *one act*, and the granting of three thousand varas was *another act*, both of which were recorded in the same instrument, which is usually called the Act of Possession. What, then, did he mean by the mine ? What was its extent ? Evidently he intended by the mine such a number of '*pertenencias*' as the discoverer of a mine in a new hill was entitled to by the ordinances, which would be *three* if he worked the mine alone, and *seven* if he worked it in partnership with others."

The distinction between the *judicial* possession of the mine and the grant of three thousand varas, is very explicitly, says

the counsel, stated by Castellero in his proposals to the *Junta de Fomento* on the 12th May, 1846. There he says: "Wherefore I have denounced and taken possession, not only of the said mine, but also of three thousand varas," etc.

Now, what we consider is, that Castellero himself being personally conversant with the difference between the possession of the mine and the possession of the land, seeks to sustain his title to the latter upon a grant of the Supreme Government as a ratification, and to which he is not entitled, as he did not propose it for ratification in his seventh proposition, or in any other.

Among the nine propositions submitted by Castellero to the *Junta de Fomento* is the eighth, which is in these words: "It shall also represent [to the Supreme Government] the advantage of there being granted to me, *as a colonist*, two square leagues upon the land of my mining possession, with the object of being able to use the wood for my burnings."

We have seen that the written communication by Castellero, with his nine propositions annexed, were transmitted by that body to the President, with their commendation of the petition of Señor Castellero. That the petition was before the President, with its various propositions, together with the recommendation of the *Junta*. On the margin of this communication from that body the grant for two leagues of land is to be found, as alleged.

Before giving the language which is relied upon as a grant of two leagues of land, the Court will advert to the announcement made of its interpretation by Mr. Becerra of the action by the President, under date 20th May, 1846, which was the first announcement that was made to D. Vicente Segura, President of the *Junta*.

Mr. Becerra wrote that "His Excellency has been pleased to approve, *in all its parts*, the agreement made with that individual." Where is the agreement to which Mr. Becerra alludes?

Castillero had made no agreement with the *Junta de Fomento*. All he did do, he tells us at the end of his proposals: "The subscriber submits this *request* to the deliberation of the *Junta*,

which, if accepted, may be made into a formal contract and made legal in the most proper manner."

The communication of the *Junta* was not in form or substance a petition. Petitions are not made from one department to another of the same Government. In the exercise of their powers under the mining laws, the *Junta* exercised their right to recommend the petition of Castellero to the Supreme Government.

There was no agreement before the President; but there was a recommendation of the *Junta*. What they sent for his approval, the only petition made by any one, was the *petition of Castellero* in relation to which the *Junta* say in their letter: "In this view, the *Junta*, in sending up to your Excellency the *petition of Señor Castellero*, has no hesitation of recommending it very efficaciously," etc. Now to what petition did the President accede, and what did he grant? He must have referred to Castellero's petition, the only one before him, and the word *grant* must be of things in the terms proposed by Castellero in his propositions.

On one of the papers before him (the recommendation of the *Junta*), is an *acuerdo* or written order signed with the rubric of the Minister of Justice. It is in these words: "May 20, 1846. Granted in the terms proposed; and with respect to the land, let the corresponding order issue to the Minister of Relations for the proceedings so far as his office is concerned, with the understanding that the Supreme Government accedes to the petition."

It is strenuously urged, that among the nine things proposed, all being proposed are granted, and that the two square leagues among the rest are conveyed.

Now, all that Castellero asked the *Junta* to recommend to the Supreme Government in his eighth proposition was a colonization grant. His proposal was, in terms, to grant him two leagues *as a colonist*.

This was all the President did; it was all that Castellero proposed. To consider that the word "granted" applied to *all* the propositions of Castellero, and conveys and transfers all property in each, is to do violence to the language, and to an-

nihilate an axiom of almost universal prevalence—“*Expressio unius, est exclusio alterius.*”

The word “granted” applies to all that is proposed, which is not excluded. But after using that word, it excepts the land, and thus qualifies that word in relation to the land. After the word “granted,” in the terms proposed, the language as to the land is, “and *in respect to the land*, let the corresponding order issue to the Minister of Relations for the proper measures of his office, with the understanding that the Supreme Government accedes to the petition.”

Becerra, the Minister of Justice, in his communication to Vicente Segura, President of the *Junta de Fomento*, states the *agreement* made with Castellero had been approved in all its parts; also states (and it is the only reference he makes to the land) “that on this day the corresponding communication is made to the Minister of Exterior Relations and Government, to issue the proper orders respecting which is contained in the 8th proposition for the grant of lands in that Department.”

The Minister of Justice sent a copy of this letter to Castillo Lanzas, the Minister of Relations, and says: “I have the honor to transcribe it to your Excellency, to the end that, with respect to the petition of Señor Castellero, to which His Excellency the President *ad interim* has thought proper to accede, there be granted to him as a colonist two square leagues upon the *land of his mining possession*. Your Excellency will be pleased to issue the orders corresponding.”

Lanzas, the Minister of Relations, on the 23d May, 1846, at Mexico, addresses a communication to the Governor of the Department of California.

He premises what he has to say to the Departmental Governor, with a copy of the letter which Mr. Becerra, the Minister of Justice, had written to the *Junta* on 20th May, 1846, and sent one to him, and a copy of the letter which he, Lanzas, had received from the Minister of Relations, and then Lanzas concludes to the Governor in the following language: “Wherefore, I transcribe it to your Excellency, in order that under what is *prescribed by the laws and dispositions upon colonization*, you may put Señor Castellero in possession of the two square leagues which are mentioned.”

Now the interpretation by Lanzas of the *grant* was correct. Castellero proposed for a grant as a colonist, in his eighth proposition. It was such, and was the only one proposed that the Supreme Government had granted. The grant was viewed by the Minister in its true light, a colonization grant; he did not direct the Governor to place Castellero in possession, but stated that he had transcribed to His Excellency in order that under what is prescribed *by the laws and dispositions upon colonization, you may put Castellero in possession of the two square leagues* which are mentioned.

In the recommendation made by the *Junta* in favor of his application for land, they declined to express any opinion.

It was, in fact, a subject with which they had nothing to do. The origin of title to mines, and of the granting of lands, and the regulations of them, belonging to two different systems of law; and those laws to the administration of different tribunals. The colonization decree of 1824, and the regulations of 1828, made under that law, had given the granting power to the Governors of departments, subject to the approval of the department, and in special cases to the Supreme Government.

The Minister of Exterior Relations and Government was the functionary through whom the President communicated with the Governors of the departments, and hence the order in this case to the functionary having charge of the granting power where the land was situated, and where the provisions made by the Colonization Decree of 1824, and the regulations of 1828, made for the protection of the rights of third parties, which by the local authorities could be more practically enforced than in Mexico.

Here ends the Expediente of the two square leagues of land. A grant was never issued, nor was a solitary movement made by the Governor towards one, nor a survey of the land made, or possession of it given by any Mexican functionary.

The letter addressed to the Governor of California by Castillo Lanzas, was dated in Mexico, May 23d, 1846, some ten days *after* the 13th May 1846, the day the Congress of the United States declared by resolution, and the President announced by proclamation to the people of the United States, that

war existed between the United States and Mexico by virtue of the commencement of actual hostilities on the part of the Republic of Mexico.

The Supreme Court of the United States say: From the capture of Monterey on the 7th July, 1846, till the surrender of Los Angeles, and the organization of a Territorial Government by Commodore Stockton, under the United States, there were about six weeks. * * * In the Act of 1851, and the decisions of this Court, that day is referred to as the epoch at which the power of the Governor of California under the authority of Mexico to alienate the public domain terminated.—U. S. vs. Pico, 23 How. 321.

The case of the United States vs. Castillero (23 How. 464), has been cited as a controlling authority in this. If it be in fact so, it will be the duty of this Court so to consider; but in its opinion, it cannot be so regarded, without violating clear principles of judicial construction.

In the case of Cohens vs. Virginia (6 Wheaton, 264), the canons of judicial construction are thus laid down by Chief Justice Marshall: "It is a maxim not to be disregarded, that general expressions in an opinion are to be taken in connection with the case in which those expressions are used. If they be beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, *when the very point is not presented*. The reason of this maxim is obvious. The question actually before the Court is investigated with care and consideration in its full extent; other principles which may seem to illustrate it, are considered in relation *to the case decided*; but their possible bearing or relation on all other cases is seldom completely investigated."

Now, apply these rules of judicial construction to the case cited.

For years the granting of lands situate in the Department of California, and up to the time of the acquisition of this country by the United States, were regulated by the Colonization Law of 1824, and the Regulations of 1828, of Mexico. Provisions which she deemed called for by her colonization policy, and conditions and terms having for their object the protection of the rights of third parties, were embodied in them.

Among them, one of vast importance confided the granting of lands to the local authorities—the Governors, or, as they once were termed, “Political Chiefs,” subject to the approval of the Departmental Assemblies, and, in cases specially provided for, to the action of the Supreme Government.

This was the uniform, almost universal law. This Court is asked to decide in this case, where no grant from the Governor was ever placed upon the record, where no grant by that functionary was ever made, where no “*informe*” was taken, where no solitary provision of the law made for the protection of third parties was observed, to consider the *decision* of the Supreme Court in the above case, which enunciates the principle “that the Colonization Law of Mexico of 1824 and the Regulations of 1828,” do not apply to “*islands*” situate on the coast, a *decision authoritative* in this case. If it is to be so treated, this Court will violate all the principles of judicial construction, and decide that *whether or not islands on the coast are subject to the Colonization Law and Regulations* is the “*very point presented*” in this case, which is, *whether those laws and regulations apply to colonization grants of lands in the interior of the country.*

In the case of the United States vs. Osio (23 How. 273), the Supreme Court decided, that an “island” situated in the Bay of San Francisco, not claimed under the Colonization Law of 1824 or Regulations of 1828, but under certain special orders issued to the Governor by the Mexican Government, and the Governor issued a grant under them, the *power* of the Supreme Government to grant the *island* was deemed undoubted; but the claim to it was rejected on other grounds.

At the same term (23 How. 464), between the same parties now before the Court, after making a statement of the petitioner’s title, the Court in that case discuss the question of the character of the property claimed. They say (p. 465) “*islands* situated on the coast, it seems, were never granted by the Governors of California or by any of her authorities, under the Colonization Law of 1824 or the Regulations of 1828. From all that has been exhibited in cases of this description, the better opinion is, that the power to grant the lands of the

'islands' was neither claimed nor exercised by the authorities of the Department prior to the twentieth day of July, 1838, as was satisfactorily shown in one or more cases heretofore considered and decided by this Court.

"On that day (July 20, 1838), the Minister of the Interior, by the order of the Mexican President, addressed a communication to Governor Alvarado, authorizing him, *in concurrence with the Departmental Assembly*, to grant and distribute the lands of the desert islands adjacent to that Department, to the citizens of the nation who might solicit the same. * * * * *

"Grants made by the Governor under the power conferred by this dispatch, without the concurrence of the Departmental Assembly, were simply void, for the reason that the power, being a special one, could only be exercised in the manner prescribed. It was so held by this Court in *United States vs. Osio*, decided at the present term, and we are satisfied that the decision was correct."—*Ibid*, 466.

But the grant in this case (say the Court), was not made under the general authority conferred by that dispatch.

On the same day, the 20th July, 1838, a dispatch of a special character was addressed by the same Cabinet Minister to the Governor.

"By the terms of the communication the Governor is informed, that the President, regarding the services rendered by the claimant, etc., has directed the Minister to recommend strongly to the Governor *and the Departmental Assembly*, that one of the islands, such as the claimant might select, near where he ought to reside with the troops under his command, be assigned to him, before they proceed to grant and distribute such lands under the general authority conferred by the previous dispatch."

It is upon the following remark of Mr. Justice Clifford, upon the facts stated by him above, that reliance is placed to show that the case is decisive upon the question before this Court on a colonization grant. "Beyond question," says Mr. Justice Clifford, "the legal effect of that second communication was to withdraw such one of the islands as should be selected by the claimant from the previous order, and to direct that it be

assigned to this claimant." And the following remark is also relied on, which will be found on page 469: "Emanating as the dispatch did from the Supreme power of the nation, it operated of itself to adjudicate the title to the claimant, leaving no discretion to be exercised by the authorities of the Department."

On what was based the assertion of the doctrine the Court had above enunciated? Why, upon the decision made that the granting of "islands" on the coast had never been claimed, nor the power over them exercised by the authorities of the Department; and that the power of granting "islands" was in the Supreme Government, and to which the colonization laws and regulations did not apply.

There is nothing in this case to justify the idea, that if the Court had decided that those laws and regulations DID apply to islands, they would have decided as they have done; and by so doing, thus impute to them a decision which would sanction the repeal by the President of Mexico of all the colonization laws by an act embodied into an order for the violation of them.

Such was not the action of the Court.

Having decided that the Colonization Laws and Regulations did not apply to "islands," they administered to them those laws which in their opinion did.

Now, Spain was an absolute Government, but at the same time a government of laws, and the absolutism of the monarch consisted in the concentration in his person of all the powers of Government, executive and legislative. He could, therefore, change the law at pleasure, but while the law continued in force, he was as much bound by it as was his subject; and any act done by him in contravention of *existing* laws should be disregarded by the Judiciary.

By one of the decrees made as early as the year 1369, it was provided: "*Royal Letters or Warrants* that may be granted contrary to law or contrary to our judicial system, invalid and not to be executed."

This is the caption of the decree which was issued by Henry II, at Tors. The decree itself provides, "That sometimes it happens, that by personal importunities, or in some other

manner, we grant Royal Letters or Warrants contrary to law or contrary to our judicial system, by the present decree we ordain that such Royal Letters or Warrants shall be of no value, and shall not be executed, although they may contain a clause *that* they may be complied with, notwithstanding any privilege, order, or ordinance to the contrary.”—*Novissima Recopilacion*, Book III, Law 11.

In the year 1448. John II, at Valladolid, issued a decree with the following caption :

“Royal orders to dispossess any person of *his property*, without being first heard and sentenced, invalid and not to be executed.” This is the caption.

The Decree itself prescribes : “If it shall happen that we have given, or shall give any Royal Letter *that any* be dispossessed of his property, or public office, and should it be given to others, it is our will and command that such letters may be respected, but not to be executed ; and as it is never to be understood that we take property from any person without being first notified and sentenced, and care must be taken that *the laws of the kingdom must be complied with in all* such cases, and the same to be strictly observed in every particular as they are written, etc. * * * * * But if any one in a public office commits any notorious malpractice, the same being certified up to us, the letters we thereupon may give, we command they shall be complied with.”—*Ibid*, Book III, Title IV, Law VI.

To repeal a system of laws and regulations made under them, which have prevailed for a series of years “*in writing*,” and have become a rule of property in the acquisition of it, from the Government, without any legitimate exercise of the right of previous repeal, is not a principle to be recognized by this Court as existing in a government of laws, unless the appellate tribunal shall so decide. This we do not consider that Court has yet done. In the case cited as controlling this ; they have decided that the Colonization Law of 1824, and the Regulations of 1828, “did not apply to islands,” and this is all they have decided. We return now to what is called the grant. “If this grant is anything that passes title, it is a colonization

grant." Such a one the petitioner applied for in terms, "as a colonist." Such an one, the President, therefore, in the "*acuerdo*" granted, when he directed, with respect to the land, "let the corresponding order issue to the Minister of Exterior Relations for the corresponding measures of his office, with the understanding that the Supreme Government accedes to the petition."

Mr. Becerra, the Minister of Justice, tells the President of the *Junta de Fomento* what kind of grant it was, if we did not learn it from the eighth proposition of Castellero, and the fact displayed on the marginal title by the direction of the President, that the grant to become one must take the course that all colonization grants of lands must take to be valid; that is, must be made under the then *existing* laws.

Mr. Becerra, in his communication of 20th May, 1846, to Castillo Lanzas, transcribes for the latter a copy of foregoing letter he had written on same date to the President of the "*Junta*" to the end "with respect to the petition of Señor Castellero, to which His Excellency the President *ad interim* has thought proper to accede, that there be granted to him, *as a colonist*, two square leagues upon the land of his mining possession. Your Excellency will be pleased to issue the orders accordingly."

Lanzas addresses in Mexico, in obedience to foregoing orders, a communication to the Governor of the Department of California, and concludes his letter in these words: "wherefore I transcribe this letter [the copy of which he had received from Mr. Becerra, the Minister of Justice] to your Excellency, in order that under what is prescribed by the laws and dispositions upon colonization, you may put Señor Castellero in possession of the two square leagues which are mentioned."

Now, this order for two leagues, from the President down to the last functionary, had been treated as a colonization grant, and none other can it be considered; as such it must have applied to it the laws and regulations which govern such, or it is invalid to pass title.

This Castillo Lanzas dispatch was issued, as we have seen, on the 23d May, 1846, in Mexico, so short a time before the day when, by the decision of the highest judicial tribunal in

our country, the power of the Government of Mexico to alienate any of its public domain had ceased to exist (23 How. 321). There could not have been a sufficient time within which to place Castillero in possession "in conformity with the laws and dispositions upon colonization."

The condition of California is portrayed by James Alexander Forbes at the time he held an interest in the claim in this case, and was on friendly terms with his associates, in his letter of the 5th May, 1847: "This Departmental Government [he writes to Alexander Forbes] is completely '*acefalo*;' that is to say, it has no Mexican head, or Governor; in consequence of which, the possession of the two *sitios*, ordered by the dispatch of Señor Castillo Lanzas, has not been obtained, nor cannot be obtained, nor even mentioned without imminent risk of opposition on the part of the American Government in this Department."—Trans. 843.

And yet the Government made as much speed as it well could do. On the 20th May, 1846, the alleged grant was made; on the same day it was transmitted by the Minister of Justice, Mr. Becerra, to the Minister of Exterior Relations, and the dispatch drafted in less than three days from the date of the alleged grant. All was vain; the Government found she had undertaken to alienate a large body of land, the *possession* of which she could not deliver under either the laws of colonization or any other.

That the Lanzas dispatch is no grant—that the Supreme Court has confirmed no one claim under what purported on its face to be a colonization grant—and no grant was given, where not a single provision of the law or regulations on colonization had ever been complied with—this Court has been unable to find; and if it existed, the learning and untiring research of the numerous counsel in this case would have detected such. In the case of *The United States vs. Osio*, and of *The United States vs. Castillero*, both claimants had grants from the Governor. The title of the claimant in the latter case is thus described by the Judge who delivered the opinion: "All of the documentary evidences of title produced in the case are duly certified copies of originals found in the Mexican Archives, as

appears by the certificate of the Surveyor-General, which makes a part of the record. * * They consist of a special dispatch from the Minister of the Interior of Mexico addressed to Governor Alvarado, the petition of the claimant for the same, and the *original grant to the petitioner*, signed by the Governor, and countersigned by the Secretary of State of the Department." The grant was made by the Governor in 1859.

The case of the United States vs. Osio was rejected, mainly on the ground that the granting power was not exercised in strict conformity to the general dispatch from the General Government under which he acted.

The Castellero case was decided in favor of the claimant, on the ground that the Governor acted in strict conformity with the special dispatch on which he based his grant.

They gave precedence in both cases to the action of the Supreme Government in the granting of "*islands*" over the Departmental Governors, as the colonization law and regulations did not apply to them.

We cannot consider The United States vs. Castellero cited as controlling this case. There are some curious features here, apart from those already alluded to. Considering this document in any light, it must be regarded as inchoate and imperfect. It left the President's hands in a direction given to all colonization grants.

The Secretary of Foreign Relations drafted the order to the Governor of California, and closed his communication with these words: "Wherefore I transcribe to your Excellency, in order that in conformity with what is prescribed by the laws and dispositions upon colonization, you may put Señor Castellero in possession of the two square leagues mentioned."

This seems to be plain enough. If the land is not found, and cannot be delivered—if the condition of the country is such that the grantor has lost the power of consummating the contract and delivering the land—it is difficult to perceive how either equitable or legal principles interpose to demand relief in equity in a case where such claim is not legal.

By the insertion by Mr. Becerra, the Minister of Justice, in his letters of the action of the President, we find the land

located by Mr. Becerra on the *mining possession of Castellero*. As the mine is described in the act of possession as *situated on the rancho of the retired sergeant José Reyes Berreyesa*, it follows that the location of two square leagues upon the lands of Castellero's mining possession must injuriously affect the rights of a part at least of another man's land for the use of that other. While we admit the power of the Supreme Government to take the land of one and give it to another, under the laws of Spain and Mexico, for mining purposes, and on the terms they prescribe, we cannot acquiesce in its power to take from its owner his lands for any purpose not authorized by law.

This Court have decided in this case, that the three thousand varas granted by the Alcalde to Castellero, was an unwarrantable exercise of authority on the part of the Alcalde. We regarded, however, the merits of the claimant as both discoverer of a mine of quicksilver, and as working it in copartnership; and the Court so considering, concluded to award him the highest number of "*pertenencias*" allowed to any discoverer and partner in working a mine.

The "*pertenencias*," as to mines, are regulated by a separate body of laws, and the Court has awarded the claimant the highest number that those laws concede.

It considers, therefore, that it has gone as far as any equity demands in such a case.

OPINION

OF

HIS HONOR OGDEN HOFFMAN,

DISTRICT JUDGE,

DELIVERED, JANUARY 17, 1861.



THE UNITED STATES }
 vs. } "NEW ALMADEN."
ANDRES CASTILLERO, }

The claimant in this case asks the confirmation of his title to,
1st, A mine of quicksilver situated in Santa Clara county, and
called the mine of "New Almaden," including three thousand
varas of ground measured in all directions from the mouth of
the mine.

2d, Two square leagues of land, situated upon the land of the
above-mentioned mining possession.

It is objected that this Court has no jurisdiction to decree a
confirmation of the former claim. The objections relied on by
the United States are two:—

1. That by the Act of 3d March, 1851, the jurisdiction of this
Court is confined to cases where the interest claimed is a fee
simple interest, or such as in equity should be converted into
one, and that such interest was not held by the owner or
grantee of a mine by Mexican law.

2. That the subject matter of this claim is not "*land*," with-
in the meaning of the act.

The first objection is not only wholly unsupported by the
words of the Act, but it is inconsistent with the sense of justice

and the sacredness of treaty stipulations which we must presume to have actuated Congress.

1. The Act declares that every person claiming lands by virtue of *any* right or title derived from the Spanish or Mexican Governments, shall present his claim, etc.

There is thus no specification as to the *nature* of the claim, except that it must be to "*land*," nor of the *estate* or *interest* claimed. It may be leasehold or freehold, conditional or indefeasible, for years or in fee.

2. That such estates constitute property, in its fullest sense, will not be denied.

If, then, claims to such estates in lands cannot be presented for confirmation under the Act of 1851, or if presented are to be rejected, this species of property in land is not merely unprotected, but by the terms of the Act it is confiscated; for the 13th Section provides that all lands, the claims to which have been finally rejected, or which shall not have been presented within two years, shall be deemed held and considered as part of the public domain of the United States.

It cannot, therefore, be imputed to Congress that it meant to declare all lands public property the claims to which were not presented, and at the same time restrict the right of presenting claims to a limited number of cases, thus ignoring and confiscating all rights of property in land but those of a particular description, when all were equally sacred under the laws of nations and the stipulations of the Treaty.

3. But even if the jurisdiction of this Court were limited, as supposed, the estate of the owner of a mine under the Mexican and Spanish Ordinances was of at least as high a degree as a determinable fee at common law, and the concession of a mine conveyed to him full property in the very substance of the mine.

As, however, the nature of the mine owner's estate in a mine cannot be considered without examining and ascertaining what was the nature of a mine itself, and whether it constituted "*land*," as that term is used in the common law, and in the Act of Congress, the point will be treated of in considering the second objection to the jurisdiction of the Court.

2. Is a mine *land* within the meaning of Act of Congress?

"By the civil law," says Gamboa, "all veins and mineral deposits of gold and silver ore, or of precious stones, belonged, if in public ground, to the Sovereign, and were part of his patrimony, but if on private ground, to the owner of the land, subject to the condition that if worked by the owner he was bound to render a tenth part of the produce to the Prince as a right attaching to his Crown. It subsequently became an established custom in most kingdoms, that all veins of the precious metals, and the produce of such veins, should vest in the Crown and be held to be a part of the patrimony of the King or Sovereign Prince. That this is the case with respect to the Empire of Germany, the Electorates, France, Portugal, Arragon and Catalonia, appears from the laws of those countries, and from the authority of various authors."—1 Heath. Gamboa, 15.

The reasons for attributing to the Sovereign this right of property in a part of the soil of the land of his subjects, it is not necessary to recapitulate; but that the distinction between the ownership of the surface, and that of the mines or minerals beneath, it was recognized at a very early period, appears from the law of the Partida, which declares that the property of the mines shall not pass in a grant of the land by the King, although not excepted out of the grant—and even if included in it, the grant shall be valid as to mines only during the life of the King who made it; and a similar rule prevailed in England with respect to mines of the royal metals, which alone were held to belong to the Sovereign by prerogative.

The distinction thus drawn between the right of property in the surface, and that in the minerals beneath, is founded on the essential difference in the qualities of the various substances of which the earth is composed. It has accordingly been recognized in the jurisprudence of all nations.

In Spain, as we have seen, mines do not pass in grants of land (*fundos*) by the Sovereign, unless particularly mentioned. (1 Heathf. Gamb. 132.) To the same effect is Solorzano, (Pol. Ind. lib. 6, ch. 1. No. 17,) who says: "So that, although private persons may allege and prove that they possess such lands

(tierras) and their appurtenances by special gift and concession of the Prince, no matter how general may be the words in which the grant is made, this will not of itself be of any avail or advantage to them for acquiring or gaining thereby the mines which may be discovered in the lands, unless it is so specially provided and expressed in said grant;" and Colmeira, (*Der. Adm. Esp.*) observes: "Jurisconsults and Publicists agree in the opinion that it is proper to distinguish in the soil (*en el suelo*) the right of property in the superficies (*de la superficie*) from that in the depth (*del fondo*). Truly, the man who acquires a piece of land, gives not the least labor nor advances the smallest capital in consideration of the riches (*las riquezas*) which it may conceal. He examines its fertility, its situation, its extent, and all the circumstances which determine its value as a building-lot or agricultural land, but he does not take into account the mines which, perchance, it may conceal in its bowels. There is not, then, the least relation between the proprietor (of the land) and the subterranean matter from which any right can be deduced."

So, Lares, a Mexican author, in his *Derecho Administrativo*, p. 93, remarks: "The law, then, has not recognized property in the mine to be in the owner of the soil, but has made the property in the mine to consist in the grant which the Nation makes to him who registers or denounces it conformably to the ordinance."

By the French law of 1810, the same distinction is recognized, and all mines of gold, silver, platinum, lead, mercury, etc., are declared not to belong to the owner of the soil, but to be governed by the Mining Laws (*Teulet's Sup. to Codes, Verb. Mines*). "From the moment" (says the author last cited) "when a mine shall be conceded even to the proprietor of the surface, this property shall be distinguished from that of the surface, and thenceforth considered a new property," and, Le Guay, in his *Thesis on Mining Legislation*, says he "agrees with Mirabeau in the proposition that any legislation which does not recognize two species of property, one in the surface of the earth, and the other in its depth, would be absurd"—p. 125.

In his work on the *General Jurisprudence of Mines*, M.

Blavier observes: "It is a truth which has been admitted for a long time, that the preservation and prosperity of mines depend essentially on the adoption of a system of laws calculated to reconcile the interests of the public with that of those who work them. * * * It is these conditions which the governments of ancient and modern states have sought to fulfill in admitting, nearly all of them, that the Sovereign alone has the right to dispose of the public property in mines, or to confer on others the useful enjoyment thereof."

This regalian right, or right reserved by the whole state to dispose of subterranean property as public property, independent of the private ownership of the land which conceals it, seems to have been recognized in Germany from the earliest periods; (Cancrin. *Dr. Pub. des Mines en Allemagne*, p. 2); and M. Blavier remarks: "It is, therefore, not surprising that this regalian right should have been confirmed by nearly all the governments of the northern countries."

But it is unnecessary to multiply authorities in support of a principle so universally recognized.

From the foregoing citations it is clear—

1. That the grant or ownership of the superficies or land which contains the mine, confers no right of property to mines in the bowels of the earth, or even on its surface; and

2. That this property in the mines is, by common consent of almost all modern States, deemed to be vested in the State represented by the Sovereign, and is a regalian right. Indeed, it would seem that these two propositions are sufficiently demonstrated by the fact that mining ordinances exist in almost every State possessed of considerable mineral wealth; for those ordinances are but the dispositions made by law for the exercise of this regalian right, or right of property in all mines, whether in public or private land.

Having thus established that the right of property in mines is wholly distinct from the ownership of the soil, and that the former remains in the Sovereign, notwithstanding the possession of the latter by a private person, we proceed to inquire—

1. Did this right to the mine constitute a right to "land," as that term is used in the Acts of Congress?

2. If so, did the miner by registry and denouncement acquire an estate in "land," and what was its quantity and quality?

These two inquiries, though in form separate, are nevertheless intimately connected; for the nature of the subject matter of the right of property reserved by the Sovereign, can best be ascertained by inquiring what was the subject matter of the estate conveyed to the subject by registry and denouncement, as also the quality and quantity of such estate. "For how," as remarked by Lares, "can the nation grant that which it has not; or how can it give to one person what belongs to another?"

It will be shown that minerals owned by a title wholly independent of the property in the lands in which they are situated, still form a part of the land itself, and constitute land in the strictly legal acceptance of that term at common law. Independently of authority, it would seem clear that, it being admitted that "various sections of the soil divided horizontally" (1 Eng. Law and Eq. Rep. 249) may belong as separate properties to different persons, the sections which are beneath the surface must constitute "land," as much as those which are upon it. The vein of ore or the bed of coal is "land," as fully and completely as the superficial earth, and he who owns the former owns *land* as much as he who owns the latter. On this point the English authorities are agreed.

Nor is the application of those authorities to the question under consideration at all affected by the circumstance that, in England, the regalian right to mines is held to extend only to mines of the precious metals; for the owner of lands in which mines of the base metals are situated, having alienated to one person the mine, but reserved to himself or alienated to another the lands in which the mine is found, the question whether the owner of the mine is an owner of "land," would be presented precisely as if the severance of the two rights of property had originally existed, and the several properties derived by separate grants from the Crown.

"When the mines form part of the general inheritance, they will, of course, be transferred along with the lands without being expressly mentioned in the conveyance; but when they

form a distinct possession or inheritance, a title to them must be established, without reference to the general title of the lands in which they are situated.”—Bainbridge on Mines, p. 4; Rockwell, p. 536.

In the latter situation, “they still, of course, retain the qualities of real estate, and will be transferred by conveyances applicable to the particular disposition of them intended to be made.”—*Ibid.*

They are capable of livery and being made the subjects of ejectment.—Cro. Jac. 150.

“By the name of *minera*, or *fodina plumbi*, the land itself shall pass in a grant if livery be made, and also be recovered in an assize.”—Co. Litt. 6 a.

It is held that mines do not lie in grant, but pass like other hereditaments by livery of seizin.—Chetham vs. Williamson, 4 East, 476; 2 Barn. and Cress. 197.

When a reservation in a deed of feoffment is made in favor of the grantor of mines, no livery is necessary, for the grantor will never have been out of possession; but when the exception is in favor of a stranger to the legal estate, livery cannot be dispensed with.—Co. Litt. 47 a.; 1 Ad. & Ell. 748.

In numerous English cases, the distinction is clearly drawn between a mere license to dig and carry away ores, in land of which the possession is retained by the grantor, and a demise of the mine itself, by which an estate in the land is created; nor is it necessary, to constitute such an estate, that the grantee acquire any right or interest in the surface—for minerals are capable of forming a distinct inheritance in the lands of which they are a part, and consequently, an actual estate may be both created in, and restricted to, any specified kind of minerals.—19 Vesey, 158; 4 East, 469; 2 Barn. and Ald, 724; Bainbridge on Mines, 3, 55, 124, 141, 170.

In *Stoughton vs. Leigh*, 1 Taunt. 403, it was held, that a grant of a stratum of coal in the land of another is a grant in fee simple of a real hereditament, and that the widow of the grantee was dowable of all the mines of her husband, as well those which were in his own landed estates, as the mines and strata of lead, or lead ore and coal, in the lands of other persons.

In *Wilkinson vs. Proud et als.*, 11 Mees. and Wels. p. 33, it was held that a right to a given substratum of coal lying under a certain close is a right to land, and cannot be claimed by prescription. But a bare right to dig and carry away coal in another man's land may.

An action of ejectment, an assize, a common recovery trespass, an action for use and occupation, and almost all the legal remedies applicable to "land," can be maintained at common law with respect to a *mine*. But they do not lie for an incorporeal thing.—Ad. on Eject. p. 18–20; Co. Litt. 6 a; Bainbridge on Mines, p. 141; 2 Barn. and Ald. 737; 4 Barn. and Ald. 401; 2 Strange, 1142.

The case of the Queen vs. the Earl of Northumberland, Plowden, 310, is relied on by the counsel of the United States to show that in England the right of the King to royal metals in the lands of a subject is a merely incorporeal right or easement, like rights of common, way, estovers, and the like.

But it is not so said in the case. It is merely said, that as the subject may acquire by usage, title or interest in the freehold or inheritance of the King, as common, way, estovers, etc., so the King may possess by prerogative a title or interest in the freehold of the subject. It is not said that the title or interest of the King in royal mines is identical with the title or interest of the subject, who has a right of common, way, estovers, etc., in the King's lands.

If the private owner of the inheritance can, by his grant, sever the right of property in the soil from that in the mine, and vest the ownership of the former in one person, and of the latter in another; and if the mine so owned is "land," it is not easy to perceive why, when the severance is effected by law, and the King is the owner of the mine, he should not also be deemed the owner of "land"; and this, whether the royal right is confined, as in England, to a particular description of mines, or extends, as in Spain, to all mines.

That this was not meant to be decided in the case in Plowden, is clear; for no question was made as to whether the right of the King was a corporeal or incorporeal hereditament, and the judgment of the Court was, "that all ores of gold and

silver in the lands of subjects, whether the mines thereof be opened or unopened, with power to dig in the lands of the subjects for the same, and to carry them away, with all other incidents thereto, *belong of right to the Queen.*"

From the foregoing authorities, it is abundantly clear, that the law of England is not guilty of what Mirabeau calls the absurdity of refusing to recognise two species of property, one in the surface of the earth, and the other in its depth.

That in the case of royal mines, the property in the mines remains in the Crown, distinct from the general ownership of the land in which they are situate, and in the case of base mines, the general owner may sever by his own grant the property in the mines from the property in the lands. But in both cases, the mine or strata of minerals form part of the land itself, and are *land* in as strictly legal a sense as the non-metalliferous portions of the soil.

Having thus seen that a property in veins of metals is a property in "*land*," notwithstanding it is entirely independent of the property in the soil which contains them, and that it is so regarded, whether the severance between the two species of property be effected by the grant of the Sovereign to whom royal metals belong, or by the owner of the inheritance, who, by the law of England, was the owner of the base metals within his lands, we will next inquire what was the nature of the estate which was acquired by registry and denouncement under the Spanish and Mexican laws.

This inquiry will necessarily involve a consideration of the nature of a mine under those laws; for it is admitted, as urged by the counsel of the United States, that an estate in a mine may closely resemble an estate in land, while the subject matter of the two estates may remain essentially different.

It will, therefore, be shown not only that the estate of a mine-owner is nearly identical with a fee simple conditional estate in land, at the common law, but that the subject matter of that estate, viz., "a mine," as defined in the Ordinances, is "*land*" in the strictest sense, as proved by its intrinsic nature, and by the application to it in Spanish and Mexican laws and treatises of terms which describe and express what is understood in our jurisprudence by the word "*land*."

In the earlier periods of the Spanish Monarchy, it was established as a principle of Castilian law, that all mines found in the Royal Seignory belonged to the Crown. All persons were prohibited from working them except under royal license.—Part. 3, tit. 28, law 11; Nov. Recop. lib. 9, tit. 18, law 1.

In 1387, permission was given to every person to work mines found within his own inheritance, or in that of other persons with their permission.—Nov. Recop. lib. 9, tit. 18, law 2.

And as early as 1526 and 1551, a general royal license was given to work mines discovered in the Indies, on giving an account thereof to the Governor, and payment of a certain proportion of the products to the Crown.—Recop. de las Ind. lib. 4, tit. 19, 61, 14.

On the 10th January, 1559, Philip II, by a law promulgated on that day, extended to all mines of gold, silver and quicksilver found within the kingdom, whether on royal land or on those of lordships, or of the clergy, or in public, municipal, vacant or private lands, the right of ownership which had previously been vested in the Crown, as to mines found within the Royal Seignory; and all mines of the three metals named were declared "to be resumed and incorporated in the Crown and royal patrimony of the King," excepting only such mines of gold or silver, as had, under previous grants to individuals, been begun to be worked, and were then actually worked.—Nov. Recop. lib. 9, tit. 18, l. 3, Halleck's Mining Laws, pp. 6, 15; Rockwell, 113, 116.

The reasons for this act of high sovereignty are set forth in the preamble of the law. They are chiefly founded on the policy of stimulating the discovery and working of mines, by giving to all subjects of the Crown the right of discovering and acquiring the ownership of them in limited parcels, in order that thereby this source of national wealth might be developed, instead of being locked up, as theretofore, in the hands of a few, who did not or would not develop it.—Rockwell's Gamb. Comm. p. 127; Nov. Recop. lib. 9, tit. 18, l. 3, Halleck's Trans. p. 6-11.

It thus became an established and fundamental principle of

the Spanish law, that all mines of gold, silver, quicksilver and other metals, whether found on public or private lands, belonged to the Sovereign.—Rockw. Gamb. 126, 127; Solorzano Polit. Ind. lib. 6, cap. 1, No. 17; Ordenanzas de Minería, p. 68; Ordinances of 1783, lib. 5, art. 1; Ordinances of 1584, lib. 6, tit. 13, l. 9.

To carry into effect the policy thus inaugurated, ordinances were established in 1584 (called by Gamboa the Old Ordinances), which continued in force until August 22d, 1783, when the New Ordinances, as they were called by Gamboa, were enacted.

By these new ordinances, all former edicts and ordinances were revoked, so far as they were opposed to the provisions of the new law, except the provisions of the law of 1783, so far as they treated of the incorporation into the royal patrimony of the gold, silver and quicksilver mines of the kingdom.

The second article of the New Ordinances is as follows:

“And in order to benefit and favor our subjects and natives, and all other persons whatsoever, even though foreigners to these our kingdoms, who may work or discover any mines of silver already discovered, or to be discovered, we will and command that they shall have them, and that they shall be their property in possession and ownership, and that they may do with them as with anything their own, observing, as well in regard to what they have to pay by way of duty to us, as in all else, what is prescribed and ordered in this edict.” Halleck’s Trans. p. 70.

By the laws of the Indies, the Emperor Charles and King Philip II. had made a similar grant to all their subjects, whether Spaniards or Indians (except certain officers), authorizing them to work the mines freely and without impediment, and “making them common to all persons, wheresoever situate;” provided, that the Indians should not be injuriously treated, and that no other parties be prejudiced. 1 Heathf. Gamboa, p. 20, Book IV. Lib. XIX, law 1; Recop. de las Indies, Halleck’s Trans. pp. 130, 140.

From the very ample terms of these grants a doubt arose, says Gamboa, whether the mines were still to be regarded as the peculiar right of the Crown, or whether they were to be considered as the absolute property of the subject.

On the one side, Don Mateo de Lagunez and Cardinal de Luca were of opinion, that as all mines in the Indies had been declared "*common*," and all persons were at liberty to try for them, wherever situate, it was to be inferred that the mines were no longer vested in the Crown, and that the effect of the Ordinances was precisely the same as if the mines had been made private property (*particulares*), as they may be by concession and privilege.

This opinion Gamboa combats, and after discussing the question at length, concludes that the mines remained a right of the Crown and annexed to the royal patrimony, and that the laws made the vassals "*participants*" of this right; not giving them the private and absolute property to use at will, but in subjection to the Ordinances; and that although the laws concede to them the ownership and property (*dominio y propiedad*), it is by "participation," and not by absolute translation (*por participacion y no por translacion absoluta*); the supreme right of property (*alto dominio*) remaining in His Majesty.

"The correct opinion then seems to be," says Gamboa, "that the mines remain attached; to the Crown (*que S. M. mantiene en su corona las minas*), and that the King, not being able to work them himself, has admitted his subjects to a share of them (*dio parte á los vasallos*), under various restrictions and subject to various liabilities."

The opinion advocated by Gamboa appears to have been adopted in the Ordinances of 1783, in which many of the suggestions of Gamboa were embodied.—(Gamboa, cap. 11.)

The first two articles of Title V of that Ordinance are as follows:

"ART. 1. Mines are the property of my Royal Crown, as well by their nature and origin as by their reunion, declared in Law IV Lib. XIII Book VI, of the Nueva Recopilacion.

"ART. 2. Without separating them from my royal patrimony, I grant them to my subjects in property (*en propiedad*) and possession in such manner that they may sell them, exchange them, rent them, donate them, pass them by will, either in the way of inheritance or legacy, or in any other manner alienate the right which in the mines belongs to them, on the same

terms on which they themselves possess it, and to persons capable of acquiring it."—Halleck's Trans. p. 222.

It was under these last Ordinances that the rights of Castilero were acquired ; but as they adopted the views of Gamboa as to the Ordinances of 1584, his Commentaries on the latter, and definition of the mine-owner's estate acquired under them, are of controlling authority in the interpretation of the Ordinances of 1783.

In Section 24, p. 19, Gamb. Comm. Heathf. Trans. pp. 27-8, he observes: "Having established then the regalian right of His Majesty in the mines, and that this right is entirely consistent with the right of disposition and property (con el dominio y propiedad) of the subjects, it is indisputable, that as a consequence of their passing to the latter with power to dispose of them as their own (como cosa suya) all the incidents of "*property*" (propiedad y dominio) must attach in favor of the proprietor, and that they may therefore be exchanged, sold, leased or alienated by contract, donation and inheritance, may be given as a portion in marriage, or may be charged with a rent, and that interest may be demanded for the purchase-money while remaining unpaid," etc., etc.

"There passes, then, to the subject the direct dominion or property, as also the right to the use (dominio directo ó propiedad, y tambien el util), by virtue of the favor and grant of the Sovereign—which we hesitate not to call a gift on conditions (una modal donacion), as will appear upon considering the rules by which that species of grant is defined in law: that is to say, that it be a free and complete act, which being perfected, a charge attaches on the donee from that time forth (and the being worded as a condition makes no difference), and that upon the failure of the modification limited by the donor in his own favor or in that of a third person, or of the kingdom or republic, the gift determines, as will be seen by reference to various text and doctors."—Ch. 11, Sec. 25.

Throughout the Commentaries of Gamboa, the estate of the mine owner in the mine is called the "*dominio y propiedad*;" and in Sec. 15, ch. xxi. he says: "Another privilege treated of by the authorities above alluded to, is that of appropriating

nine parts of the metal, paying only the tenth to the King as an acknowledgment of his having shared with his subjects the direct and superficial ownership (*de aver participado á sus vassallos el dominio util y directo*), of so valuable a kind of property (*de tan preciosos fundos*).

We have already seen that the "alto dominio" of eminent domain is reserved by the King, by virtue of which and of the conditions on which the grant is made, a new grant may be made if the first be forfeited by breach of the conditions, viz., the payment of the fifth, and the observance of the Ordinances, which Gamboa calls the *modo*, or gravamen with which the donation is charged, and which make it a "donacion modal."—Chap. 11, Art. 26.

From the foregoing citations the nature of the estate in the mine acquired by registry and denouncement under the Spanish laws, might seem sufficiently clear.

It will, however, not be inappropriate to show what in Spanish law is the meaning of the various terms which are used in the Ordinances, and by Gamboa, as descriptive of his estate. Those terms are, "propiedad," "propiedad y posesion," "propiedad y usufructo," "propiedad y utilidad," "plena propiedad," "dominio," "pleno dominio," "dominio absoluto y perpetuo," "dominio directo y util."

"Propiedad," is the right to enjoy and dispose freely of things which are ours, so far as the laws forbid not. Commonly, the dominion which is not accompanied by the usufruct is called "propiedad," or "nuda propiedad," and the dominion which is accompanied by the usufruct is called "plena propiedad."—Esriche's Dict. verb. "Propiedad."

"Dominio," is the right or power to dispose freely of a thing, if the law, the will of the testator, or some agreement does not prevent.

It is divided into the full, and the less than full—"dominio pleno y menos pleno."

"Dominio pleno y absoluto," is the power which one has over anything to alienate independently of another—to receive its fruits—to exclude all others from its use.

"Dominio directo," is the right a person has to control the disposition of a thing, the use (*utilidad*) of which he has ceded.

“Dominio util,” is the right to receive all the fruits of a thing, subject to some contribution or tribute, which is paid to him who reserves in it the “dominium directum.”—Escriche’s Dict. verb “Dominio;” Alvares’ Institutes, vol. ii, pp. 23–33.

It appears, therefore, that the words which the laws and commentators apply to the miner’s estate, viz., “propiedad y usufructo,” “plena propiedad,” “pleno dominio,” “dominio directo y util,” etc., are descriptive in the Spanish law of the highest estate or right of property in land which the subject can acquire.

It would seem to be higher than any right of property in land enjoyed in England; for, says Blackstone, “A subject has only usufruct and not the absolute property of the soil;” or, as Sir Edward Coke expresses, “he hath the ‘*dominium utile*,’ but not the ‘*dominium directum*.’”—Comm. book 2, ch. 7.

The ownership of the subject in the mine remains, however, subordinate to the dominium altum, or eminens, or dominio alto of the Crown.

But this is merely the right tacitly reserved by the Government or sovereign authority of a State, and to which all individual rights of property are subject, to take possession of the property in the manner directed by the Constitution and laws of the State, whenever the public interest may require.—Per Ch. Walworth; Beckman vs. Saratoga R. R. Co., 3 Paige R. p. 45.

The fact that the estate of the mine owner may be forfeited or determined by a failure to comply with those of the Ordinances which impose that penalty, *i. e.* by breach of the conditions subsequent attached to the gift, in nowise affects its nature as an estate in fee.

Every estate held by feudal tenure was subject to forfeiture for breach of the conditions on which it was granted. Nor were these conditions always expressed in the grant; for every act of the vassal which amounted to a breach of his allegiance, or the tie which bound him to his lord, operated a forfeiture of the land.

In a grant of a mine the principal conditions, the breach of which worked a forfeiture, were, 1st, the payment to the

Crown of its proportion of the products; and 2d, the working it according to the laws.

If no breach of these conditions occurred, the estate of the miner would continue forever.

It therefore closely resembled a conditional or determinable fee at common law (1 Prest. on Est. 480). The number of cases where, by the Ordinances of 1584, the mine was declared forfeited (*perdida*), was no less than fifteen, but many of these causes of forfeiture were totally abolished, and the rigor of the laws was essentially mitigated by the Ordinances of 1783, and subsequent laws.

The decree of the Cortes of Spain, of January 26, 1811, exempted the miners of quicksilver from the payment "of all duties, even including *the duty* of the fifth, or the proportion *which* the miner is bound to pay;" and annulled "all dispositions which opposed free trade *in said* mineral, and the security of *absolute and perpetual* ownership (*dominio absoluto y perpetuo*) of the miner; provided, that in managing and working them, he observe the general rules established on the subject."

In the communication from the Secretary of the Regency, transmitting to the Royal Tribunal General of New Spain this decree, he says :

"Under this date I notify your Excellency, that the prerogative of Seignory, which from remote times the Vice-Royal Treasury has reserved to itself with respect to mines of quicksilver, has been annulled by the General and Extraordinary Cortes, in consequence of the resolution and manifestation of the Council of Regency, enacting at the same time that the said mines shall be worked under the same rules and ordinances as those of gold, silver and other metals, and that their possessors shall preserve their ownership and usufruct (*propiedad y usufructo*), and in no case shall they be obliged to alienate them to the State—giving them permission moreover to sell their products to any one who will pay the highest price for them. This measure affirms in a manner *inviolable* the ownership (*propiedad*) and profits (*utilidad*) of this kind of real estate (*de talis jucas*), and dispels the reasonable fears which prevented individuals from taking them under their care."

It would not be easy to find words to express more strongly the notion of a permanent and inviolable right of property, than the language of this decree and communication.—Orden. de Min. pp. 79-82; Halleck's Mining Laws, pp. 381-385. *

One of the principal causes of forfeiture established by the Ordinances of 1584, was the failure to work the mine for four successive months. But even this provision, so necessary to secure the great object of the Crown in conceding the mine, viz., the development of the mineral resources of the country, was regarded as highly penal, and therefore to be strictly construed. It was thus easily evaded, for by working the mine for a few days every four months the forfeiture was avoided. This defect was remedied in the Ordinances of 1783, which declared that the omission to work for eight months, whether successive or interrupted, in any one year, should forfeit the mine; but the Judge before whom the mine was denounced, was authorised to admit, in addition to the excuses allowed by the former law, any "other just causes which, combined with their former merit, might render the miners worthy of equitable consideration."—Halleck Trans. 244; Ord. of 1783, Art. 15; Heathf. Gamboa, p. 80-86.

Some of the other causes of forfeiture were for the breach of directions in the Ordinances clearly necessary for the security of the mine or of the operatives—such as removing the pillars or supports of the mine, or in other ways neglecting to comply with the rules of the Ordinances, or the directions of the competent authorities, as to their security and preservation, and their better working.—Ord. of 1783, Arts. 7, 10, 11, 12, 13, 14, 15; Halleck's Trans. 242 *et seq.*

In some cases these forfeitures were only imposed after repeated offences (Art. 10), and all the facts were to be judicially ascertained in appropriate proceedings.

From the foregoing it results, that although "the observance of the Ordinances" was in strictness a condition of the concession, yet in fact the forfeiture of the mine was a punishment or penalty imposed for violations of salutary and necessary rules, incurred in but a limited number of cases, and when no equitable considerations existed for mitigating their rigor.

A determinable fee, however, determined by the act or event expressed in its limitation, usually beyond the control of the tenant, and the occurrence of which could not be imputed to him as a fault, still less as a violation of law.

The annexing of conditions subsequent to grants, seems to have been a policy by no means peculiar to Spanish jurisprudence with regard to mines. It was intended to provide a security for the attainment of those objects which formed the consideration for the grant.

These, in colonization grants, were generally occupation and cultivation. In Florida and Louisiana, the settlements were made under a preliminary concession or warrants of survey, and on the fulfillment of the conditions, the final or perfect title was issued.

In Mexico, however, under the law of 1824, and the regulations of 1828, a perfect title issued in the first instance, but charged with conditions as to occupation and settlement; and the grant provided that "if the grantee failed to comply with the conditions, he should lose his right to the land, and it might be denounced by another."

I am unable to perceive any substantial difference between the estate of the colonization grantee and that of the mine owner. Both were liable to denouncement and forfeiture for noncompliance with the conditions expressed in or annexed by law to the grant; and in both cases, equitable excuses could, in general, be received for the omission.

In the California land cases, the existence in the grants of conditions subsequent has never been regarded as presenting any obstacle to their confirmation—where no forfeiture had accrued and been judicially ascertained under the former Government.

Having thus ascertained the nature of the mine owner's estate in a mine, we are next to consider what was the nature of a mine itself, considered as a subject of property.

From the quality of the estate, and the fact that it possessed all the incidents of an estate in *land*—that it was alienable, devisable, and inheritable—that it could be leased, charged with a rent, mortgaged, and given as a portion in marriage, etc., it

might reasonably be concluded that the Spanish law, like the English, regarded the mine as "*land*." But all doubt is removed by recurring to the terms which were applied to it. It is a "*fundo*," or land (1 Gamb. ch. v, sec. 5 : id. ch. xxi, sec. 15). It is "*bienes raices*," or real estate (id. ch. xvii, sec. 22). It is "*bienes inmuebles*," or immovables (id. ch. xxiii, sec. 6). All the rules relating to petitory and possessory actions for lands are applied to it (ch. xxiii, secs. 1, 6, 19); and in these cases the proceeding may be for the ore, or merely to substantiate the right of property in the mine (*sobre los metales ó puramente sobre la propiedad*).—ch. xxiii, secs. 20, 21.

The fact that a judicial delivery of possession was authorized to be made, indicates that the thing to which the title or right of property had attached was a corporeal hereditament. It is laid down by Alvarez (Inst. v. 11, p. 23 *et seq.*) as an axiom of the civil law, that "only things corporeal can be delivered, since only these can be transferred by corporeal act from one to another." And this corresponds with the rule of the common law, that corporeal hereditaments pass by livery of seizin, while incorporeal hereditaments lie only in grant.

As the Ordinances gave to the miner the right of property in and possession of the mine, the judicial delivery of the mine, after the title *to* the thing had been acquired by denouncement and registry, vested the mine owner with the right *in* the thing, and gave him the *full* dominion—the title to and the right in the thing, the right to dispose of it, and the right to use—*dominio directo y util*. It is unnecessary to pursue this discussion further.

No one, I think, who examines the Ordinances and the Commentaries of Gamboa with care, can avoid the conclusion that the mine owner, by denouncement and registry, and the delivery of the possession to him, obtained, under the Mexican law, a right to and property in the mine, and that the mine so acquired consisted of the very substance of the minerals of which it was composed—was a corporeal hereditament like a mine or stratum of ores in the English law, and was land in the strictest and fullest sense of the term.

The case of *Frémont vs. the United States*, 17 How. 565, is

relied on by the counsel of the United States as sustaining his objection to the jurisdiction. In that case the Court say: "In relation to that part of the argument which disputes the right on the ground that the grant embraced mines of gold and silver, it is sufficient to say, that under the mining laws of Spain, the discovery of a mine of gold or silver did not destroy the title of the individual to the land granted. *The only question before the Court is the validity of the title.* And whether there be any mines on this land, and if there be any, what are the rights of sovereignty in them, are questions which must be discussed in another form of proceeding, and are not subjected to the jurisdiction of the Commissioners or the Court, by the Act of 1851."

It will be seen, that the only question before the Court was whether the fact that mines of gold and silver had been discovered on land which had been previously granted under the colonization laws, destroyed the title of the individual to the land granted. It was of course held that it did not. Whether there were any outstanding rights of sovereignty in such mines, and, if so, what was their nature, and in what sovereign they were vested, the Court declared itself without jurisdiction to determine.

But it was not decided, nor could it have been intended to be decided, that a private grantee of a mine under Mexican law could not present his claim for confirmation under the Act of 1851. That question was not before the Court. And even if the language is to be construed as extending to a right to a mine acquired under Mexican law by a private individual, and is not to be restricted, as its terms imply, to rights of sovereignty outstanding in the United States or the State of California, it must be regarded as *obiter dictum*—not necessary to the determination of the case, and relating to a question which did not and could not have been presented by it.

A similar decision of the point presented for determination had already been made by the Supreme Court in *Delassus vs. The United States* (IX Pet. 117). The claim in that case was, like that of Fremont, for the confirmation of a concession of a tract of land. It differed from the case of Fremont in the

circumstance that the motive of the petitioner in soliciting the grant was declared to be to make explorations for lead mines.

But the Court held that the concession was for land; and as all claims for lands were submitted to its jurisdiction, without any reservation in the Act of Congress of claims for lands containing lead mines, a confirmation could not be withheld.

In Fremont's case the same objection—viz., that the land granted contained mines—was taken, and the Court held that that circumstance did not impair the validity of the grant, or divest its jurisdiction over it as of a claim to land. Such, it seems clear to me, was the whole scope and effect of the decision.

The nature of a *claim* to a mine, as distinguished from the right of an agricultural grantee to the surface, and the jurisdiction over such a claim confided to the Commissioners by the Act of 1851, were not considered, or intended to be decided.

My conclusions, then, on the question of jurisdiction, are—

1. That the jurisdiction of this Court is not restricted to those cases where the estate claimed in lands in California is a fee—or such as in equity should be converted into a fee.

2. That even if it were, the estate of a mine-owner in a mine is, under Mexican and Spanish law, a fee with conditions subsequent; closely resembling that of a grantee under the colonization laws.

3. That by the common law of England the ownership of the surface may be vested in one person, and that of a mine, or substratum of mineral, in another; and that the latter is “land,” in its strictest sense.

4. That by the Spanish and Mexican laws a mine considered as a subject of property, and distinct from the ownership of the surface, is “land”—or rather, that terms are applied to it in those laws which are the precise equivalents of the common law term “*land*.”

And that therefore this Court has jurisdiction to ascertain and settle a private land claim to a mine, the title to which is derived from the Spanish or Mexican Governments, as of a claim to “*land*.”

Having thus ascertained that a mine is "*land*," and that the estate of the mine-owner closely resembled a conditional fee at common law, we will next briefly inquire by what proceedings and in what manner that estate was acquired.

Such an inquiry naturally precedes an examination into the genuineness of the alleged title to the mine, and the determination of its legal effect if found to be genuine.

In Art. 4, Tit. VI, of the Ordinances of 1783, entitled "Of the modes of acquiring mines—of new discoveries, registries of veins, and denouncement of mines abandoned or forfeited," is as follows:

"Those mentioned in the preceding articles must appear with a written statement before the Deputation of Mining of that Territory, or the one nearest if there should be none there, stating in it their names and those of their partners, if they have any; the place of their birth, their residence, profession and employment; and the most particular and distinguishing features of the place (*sitio*), hill (*cerro*), or vein, of which they ask the adjudication. All of which circumstances, and the hour at which the discoverer presents himself, shall be noted in a book of registry, which the Deputation and Notary (*Escribano*) of Mines, if there be one, shall keep, and this being done, his written statement shall be returned to the discoverer for his due security, and notices shall be fixed to the doors of the church, Government houses, and other public places of the town, for due information. And I order that within ninety days he shall have made in the vein or veins of his registry, a pit (*poso*) of a vara and a half wide, or in diameter, and ten varas down, or in depth; and that as soon as this is done, one of the Deputies shall personally go, accompanied by the Notary, if there be one—and if there be none, by two assisting witnesses and a professional mining expert of that Territory—to inspect the course and direction of the vein, its width, its inclination to the horizon, which is called *echado* or *recuesto*, its hardness or softness, the greater or less firmness of its sides, and the species or principal indications of the mineral—taking an exact account of all this, in order that it may be added to the corresponding part of its registry, with the evidence (*fê*) of possession, which shall immediately be given in my Royal name, measuring to him his *pertenencias*, and causing him to fix stakes (*estacas*) in his boundaries, as will hereafter be mentioned; which being done, there will be delivered to him an attested copy of the proceedings as a corresponding title.

“Art. 5. If during the ninety days any one shall appear pretending to have a right to said discovery, he shall have a brief hearing in Court, and it shall be adjudicated to the one who best proves his claim; but if he appear after that time, he shall not be heard.”

Art. 7 provides, that when a question shall arise as to who is the first discoverer, he shall be held such who shall have first found metal in the vein—and in case of doubt, he who shall first have registered it.

It is well said by one of the counsel for the claimants, that the object of the various Mining Ordinances of Spain was to stimulate and promote to the utmost extent the discovery of mines and the development of their riches.

The means adopted to stimulate *discovery* were to give to the discoverer the mine he might discover—the State reserving for itself a small part of its products. The means by which the development of the riches of the mine was secured, consisted in making the continuance of the right of property dependent on working it to the extent and in the manner prescribed by law.

Discovery, therefore, was recognized by those laws as the real foundation of the right, and the true consideration for the grant of property in a mine.

Gamboa considered the discoverers of mines as entitled even to greater encouragement than the inventors of useful arts (Heathf. Gamb. 1, p. 259), and in all the Mining Ordinances of Europe the right of the discoverer is recognized by the promise of a grant of the mine as a reward for the discovery.

In the *Sala Mejicana* (vol. 2, p. 58), discovery is declared to be one of the modes of acquiring mines, and it is recognized as a species of occupation, and as constituting a source of title, like the finding of a buried treasure, precious stones, and the like.

In the jurisprudence of Spain and the continental nations, discovery, with regard to mines, as a source of title and consideration for the grant, corresponds with occupation and cultivation under our own pre-emption laws with regard to vacant public lands; and in all the claims to lands in Florida and

Louisiana, submitted to the Supreme Court, the fact of settlement, under a contract for or with a just right to expect a title, has been regarded as a valuable consideration secured by the State, and creating an equitable obligation to confer the title.

But this inchoate right created by discovery must be perfected in the manner prescribed by law.

It is therefore required that the mine be registered; and without registry, says Gamboa, no mine could be lawfully worked, and it remains liable to be registered by any other person—the form of the ordinance not having been complied with. (Chap. V, sec. 3.) The reasonableness of this regulation, he remarks, is evident. It is not necessary to recapitulate the various arguments by which he vindicates its policy and necessity.

As the revenue was interested in a portion of the product of the mine; as the public policy required that an account should be taken of so important a part of the national wealth; as the mine-owner, from the moment of registry, became subject to laws designed to secure the development of the mine he had discovered; for these and other reasons, it was indispensable to provide a mode in which the discovery should be formally made known to competent authority, and the right of the discoverer judicially declared and defined. Registry is, therefore, said by Gamboa to be the fundamental title, or the base of the title (*el titulo fundamental de las minas*), and the attributive cause of the subject's right of property in it; for the Crown has conceded the mines, and made them common, subject to this burden or condition (*gravamen*).—Ch. v, sec. 2.

And in other places, he speaks of registry as "*el titulo fundamental de el dominio de las minas*."—Ch. xi, sec. 2; ch. vii, sec. 3.

The registry, however, did not constitute the *title* to the mine in the sense of being itself a concession or grant.

The registry, or formal declaration of the discovery in the manner prescribed by law, was the fulfillment of the condition imposed, in the general grant by the Sovereign, on the discoverer of mines, and on its performance the law itself annexed the title as the legal consequence of discovery and registry.

It still remained subject to further conditions—some to be performed before a formal delivery of possession could be given, and some to be perpetually observed under penalty of forfeiture.

The registry was therefore required to be made before a judicial tribunal, and not before an administrative officer, who, like the Governors of California, might exercise a discretion as to whether or not the concession should be made. The declaration of the ownership of the discoverer was termed an “adjudication,” and even after registry, and at any time during the period allowed the person registering for digging the pit, any person pretending to have a right to the discovery, was entitled to a hearing “*in Court*,” and the mine was *adjudicated* to him who best proved his claim.

In sec. 14 of chap. V, Gamboa states that “registries of mines in the Indies are not to be made before royal officers, but before the justices of the Department alone; and the oath of the discoverer, that he will bring in to be stamped all the gold and silver, etc., is to ensure the due levying of duties, and is not to be made upon the registry of a mine, *the title to which comes under the cognizance of the justice.*”

In section 15, he says: “But *judicial matters*, such as registry, denouncement, the giving possession, etc., are the province of the justices, and, by way of appeal, of the royal audiences.”

In sec. 24, he defines registry to be “any judicial order, or proceedings (*autos ó diligencias*) which authenticate and afford evidence of some judicial act.”

The whole proceeding thus seems to have been the judicial recognition and declaration of a previously existing right, asserted and established in the manner required by law, rather than the creation and conferring of a title which had no previous existence.

Thus, Gamboa, in speaking of the necessity of registering says: “And therefore, the discoverer, *if he would preserve his right*, should give notice of his discovery, and make himself known.”—Ch. V, 4.

So, in sec. 17 of the same chapter—“If, after the expiration of the term of twenty days, some other person should come

forward and register, the discoverer loses *his right*, this being the penalty he is liable to pay for his culpable default, in neglecting to register *his mine*, and thus frustrating the ends of the Ordinances ; for a mine which is worked without being registered, is not properly to be called a mine, and does not merit the name, even though it should yield good ore.

“The Ordinances give the name of mines to such only as are registered, because the registry is the fundamental title (*el titulo fundamental*) to every mine ; and because the omitting to make registry evinces a vicious intention to dispose of the ore or silver clandestinely, in fraud of the right of the Crown, and to put impediments in the way of other individuals who might wish to take mines upon the same vein, or at the same spot.”—1 *Heathf. Gamb.* p. 150.

In neither the Ordinances of 1584, nor in those of 1783, is mention made of any title paper to be delivered to the party, containing, in terms, any grant or concession of the mine.

His “statement” is, by the Ordinances of 1783, to be returned to him, after its contents have been duly noted in the register, “for his security ;” and when he shall have dug his pit he is to be put in possession, if no adverse claim be interposed. But the only evidence of his title consists in the judicial ascertainment and record of the fact that he declared his discovery in the form required by law, which being done, the law itself gave the title on the conditions fixed by the Ordinances.—When the pit had been dug, and judicial possession given, the 4th Article of the Ordinances of 1783, directed, as we have seen, that an authorized copy of all the proceedings (*de las diligencias*) should be given him as his corresponding title (*como titulo correspondiente*). To perfect and secure the right to a mine, registry was, in all cases, indispensable. In making it, all that was necessary was “to manifest the person, the place, and the ore.” But if the mine had previously been worked, and was denounced for abandonment or other cause of forfeiture, a preliminary proceeding called a denouncement was required. This was in the nature of an accusation against the former owner, charging him with having left the mine unworked, or having come within some other ground of forfeiture. Upon

this question a summary judgment was had, after notice to neighbors, proclamation, etc. If the mine was declared forfeited, the denouncer was, nevertheless, obliged to register it and go through the same proceedings as the discoverer had done.—Heathf. Gamboa, ch. v, secs. 21–22, p. 153.

That the discoverer of a mine was recognized by the law as having acquired a right to it even before registry, is further shown by the terms of the twentieth Ordinance of 1584, which enacts that, “No person shall presume to register, or to enter in the register a mine which is not *his own property*, under the penalty of one thousand ducats,” etc.

Among the cases mentioned by Gamboa, to which this law applies, is that of a person other than the discoverer of the ore registering a mine before the expiration of the twenty days allowed by the Ordinance to a discoverer for registering his mine.—1 Heathf. Gamboa, p. 156–8.

The discoverer is thus treated as the true owner of the mine, until, by failing to register within the time prescribed, his rights are lost; and the registry of the mine within that time by any person in his own name is considered and punished as a fraudulent attempt to acquire the property of another, like a similar act by the mortgagee of the mine, or by the curator or tutor of a minor, and other cases mentioned by Gamboa.

From these and many other provisions in the Ordinances, and passages in the Commentaries of Gamboa, the nature and effect of registry is unmistakably manifested; nor can our views of it depend upon the meaning we attach to a single phrase of Gamboa (*el titulo fundamental*), as to the correct translation of which a question was raised at the Bar.

The foundation of the right to a mine was discovery. But this right was lost unless the discoverer made known the fact before the judicial tribunal authorised to receive such declarations. The proceeding for the purpose was entirely *ex-parte*, and consisted merely of a production of the ore, a description of the place where it was discovered, and the person of the discoverer. These facts being duly made known and recorded, the title passed by operation of law, unless within the time limited some one having a better right appeared.

The foundation of the denouncer's right was in principle the same.

Having brought to the notice of the court, and established that a mine was abandoned or had been forfeited, the law gave him the right to register it in his own name, like a new mine, except that not being an original discoverer, the mining space (*pertenencias*) to be assigned to him was more limited.

The registry cannot be regarded as the base of the title to the mine, in the sense that without registry a right of property could, in no case, be asserted to it; for as we have seen, even after registry by an alleged discoverer, and after he had dug his pit, obtained judicial possession, and even had his *pertenencias* measured, any one pretending to have a right to the discovery, could within ninety days from the date of the registry assert his claim and procure the mine to be adjudicated to him; but where no objection was interposed, and the person registering was the true discoverer of the mine, the causing it to be registered, or the formal declaration of his discovery, was the fulfillment of the condition established by law upon which his inchoate right as a discoverer became a perfect right of property (although until the pit was dug he was not entitled to a judicial delivery of possession, nor could he alienate the mine). And the register itself, or the record of the procedure, became his fundamental title *paper*, or *evidence of his title*, for it established judicially the fact of the discovery, and the fact that he had declared it as required by law.

I have thus endeavored to arrive at a clear conception of the nature and effect of the registry of a mine, and of the rights of a discoverer, that we may be the better able to judge of the validity of the alleged registry by Castellero, and correctly to estimate the equitable or inchoate rights he may have acquired as the discoverer of a new mine.

Having premised this much as to the rights of a discoverer, and the nature, objects and effect of a registry, we will now particularly consider the provisions of the articles under examination.

It will be observed, that to effect a registry, and to entitle himself to the judicial delivery of possession of the mine, the

only acts required of the discoverer were : 1st, his appearance before the deputation, with a written statement of the facts necessary to be set forth ; and 2d, that he should within ninety days thereafter, make a pit in the vein of his registry of the required dimensions.

The noting in the book of registry of the contents of the statement, the hour at which the discoverer presented himself, the notices for due information, etc., were acts to be performed by the Judge or Deputation. It would seem that any injurious effect on the discoverer's right by the omission of the first of these formalities, was intended to be provided against by the direction that the written statement should " be returned to him for his due security," and it is presumed, with a certificate annexed of the fact and time of its presentation.

We learn from Gamboa, that in 1727, the Viceroy Marquess of Casa Forte issued an order, dated at Mexico, commanding the royal officers and justices to send an account of the mines within their several districts, whether at work or abandoned, etc. ; and in case they should have no book of registry for the mines which might have been registered there, to form one with all possible dispatch, that an account might thus be obtained of all the mines in the kingdom, from which a general book might be made up, etc. " But we are not aware," says Gamboa, " that this order, so agreeable to the spirit of the Ordinances now under consideration, and so important to the interests of the revenue in a public, and of the subject in a private point of view, was soon carried into effect." We find here no intimation that the failure of the officer to enter the registry in a book in any way impaired its validity, and this, notwithstanding that the Ordinance he was considering (art. xix.) expressly requires the Mining Administrators of each district to keep a book in which all registries made in such district were to be entered, and for this purpose the miners were required to send authenticated copies of such registry to that officer.

Gamboa goes on to observe, that " the original proceedings (diligencias) ought *not* to be given into the custody of the owners until the registry, etc., be made in the proper book ; for other-

wise these important instruments would be exposed to the contingencies alluded to above, and very serious difficulties may arise in subsequent dealings in ascertaining whether the registry or denouncement was made with due solemnity, the time and manner of making it, the greater or less antiquity of the mine," etc.

This suggestion appears to have been adopted in the Ordinances of 1783, which provide, as we have seen, that the contents of the statement and the hour at which it was presented, shall first be noted in the book of registry, and the statement then returned to the discoverer "for his due *security*."

The registry having been effected, the working of the mine could lawfully be commenced at once; and within ninety days the pit was required to be dug. As soon as this was done formal possession could be given.

If, however, the party who had registered the mine failed to do this, his rights were, by the Ordinances of 1584, forfeited, and the mine might be denounced by and adjudged to another. As, however, from the nature of the vein, a pit of the depth of three *estados* might be wholly unnecessary, or the hardness of the rock, the caving in of the pit, the breaking out of springs of water, etc., might prevent the digging of the pit within the time limited, it was provided by the Ordinance, that the justice, on an application made to him, and an investigation, might dispense with this requirement of the law, or enlarge the time for its fulfillment, as might be necessary.

In the Ordinances of 1783, the penalty of forfeiture is not in terms imposed for the omission to dig the pit within ninety days. It is presumed, however, that a breach of so positive and important a provision of law would, if without excuse, under the later Ordinances have rendered the mine liable to denouncement.

By Art. 4, of the Ordinances of 1783, the *pertenencias* of the mine were required to be measured, and the stakes fixed in the boundaries at the time possession is given.

By the Ordinances of 1584, the miner was not obliged to do this until cited by some neighboring miner "who asked for stakes." Ten days were then allowed him to select the ground

he might prefer, or, using our mode of expression, to *locate* his *pertenencias*—subject, however, to the condition that his original pit of possession, or fixed stake, should be within the limits of the boundaries he might select. If he failed to make his selection within ten days, his boundaries were established by the Justice. But this designation of his *pertenencias* was not final; for he might at any time afterwards, on discovering the true course of the vein, etc., apply to have his stakes bettered (*mejorar las estacas*), and his boundaries might be altered in any way not injurious to the neighbor, between whose mine and his own the boundaries had already been established.—1 Heathf. Gamb. pp. 297, 8, 325; 2d Heathf. Gamb. p. 10.

The frauds and litigation to which this practice gave rise, led Gamboa to suggest that every one should, by positive ordinance, be required to set out his boundaries at the time possession was given, under pain of incurring the forfeiture of the mine and of being *ipso facto* deprived of it, even though not denounced by any other party.—2 Heathf. pp. 10, 11.

This suggestion was adopted in the Ordinances of 1783, except that the omission to set out the boundaries at the time possession is given was not declared to forfeit the mine, *ipso facto*.

But, notwithstanding this establishment of boundaries, the miner could improve the location of his stakes (*mejorar las estacas*) or change his boundaries by the authority of the deputation of the district, provided it could be done without injury to his neighbors, who were to be summoned and heard in the matter.—Ord. of 1783, Art. 11, Halleck's Trans. p. 236.

It thus appears that the giving possession was, under the Ordinances, a formal proceeding, like a livery of seizin, of which the measurement of *pertenencias*, or the establishment of boundaries, did not of necessity form a part; and that although these acts were required to be done by the Ordinances of 1784, their omission did not forfeit the right of property acquired by the registry; still less does it appear that their performance was a condition precedent to the vesting of the title.

In all cases where land was granted under the Mexican colonization laws, a formal judicial delivery of possession was

in strictness required. But it has never been held by the Supreme Court, that this formality was necessary to vest the title or right of property; and in the majority of cases passed upon by this Court it was not given. In its own nature, it was an act which supposed the existence of a title acquired, but had no effect in conferring one; that having already been done by the concession or grant. I see no reason to make any distinction between the judicial delivery of possession of an agricultural grant and that of a mine, or for considering that the omission of that formality would be fatal to a right of property already acquired in the one case more than in the other.

We shall see, however, when we examine the proofs in this case, that the Alcalde, accompanied by witnesses of assistance, gave to Castellero judicial possession of the mine he had discovered, as well as of three thousand varas in all directions from it, which he undertook to grant him; that no per tenencias were measured or stakes fixed, but that Castellero had already commenced working the mine and had dug a pit, the precise dimensions of which do not appear; that he continued in possession, and working his mine, with the full knowledge, not only of the authorities of the Department to whom he made known his discovery, but of the American Consul, and the inhabitants generally; and that this possession has been retained by his assigns and representatives to this day.

I proceed to consider the evidence as to the registry of the mine by Andres Castellero, and having ascertained what was in fact done by him, to determine its validity and effect.

The documents relied on by the claimants as constituting the registry of the mine of New Almaden are:

1st. A written statement by Andres Castellero, addressed to the Alcalde of the First Nomination of the Pueblo of San José, dated Nov. 22, 1845, setting forth his name, office and residence, and the fact that he had discovered a vein of silver with a *ley* of gold on the land of the retired sergeant José Reyes Berreyesa, which he desired to work in company. He therefore requests the Alcalde to fix up the proper notices in order that his right might be made sure when the time for giving the judicial possession should arrive.

2d. A second statement addressed by Castellero to the same officer, and dated December 3d, 1845, setting forth that on opening the mine previously denounced by him he had taken out, besides silver with a ley of gold, liquid quicksilver. He therefore asks the Alcalde to unite this representation to the previous denouncement and to place it on file.

3d. The act of juridical possession. In this document the Alcalde recites:

“There being no Mining Deputation in the Department of California, and this being the only time since the settlement of Upper California that a mine has been worked in conformity with the laws, and there being no Juez de Letras, (professional judge) in the Second District, I, the Alcalde of First Nomination, citizen Antonio Maria Pico, accompanied by two assisting witnesses, have resolved to act in virtue of my office, for want of a Notary Public, there being none, for the purpose of giving juridical possession of the mine known by the name of Santa Clara, in this jurisdiction, situated on the land of the retired Sergeant José Reyes Berreyesa, the time having expired which is designated in the Ordinance of Mining for citizen Don Andres Castellero to show his right, and also for others to allege a better right between the time of denouncement and this date; and the mine being found with abundance of metals discovered, the shaft made according to the rules of art, and the working of the mine producing a large quantity of liquid quicksilver, as shown by the specimens which the Court has; and as the laws now in force so strongly recommend the protection of an article so necessary for the amalgamation of gold and silver in the Republic, I have granted three thousand varas of land in all directions, subject to what the general Ordinance of Mines may direct, it being worked in company, to which I certify, the witnesses signing with me; this Act of Possession being attached to the rest of the expediente, deposited in the Archives under my charge; this not going on stamped paper because there is none, as prescribed by law.

Juzgado of San José Guadalupe, Dec. 1845.

ANTONIO MARIA PICO.

Assisting witnesses—ANTONIO SUNOL,
JOSE NORIEGA.”

These documents are produced from the Recorder's office of Santa Clara county. They were found in the Mayor's office

at that place in 1850, by Capt. H. W. Halleck, and by the Mayor transferred to the Recorder's office, where they now remain. It appears that a large portion of the archives or papers belonging to the former Alcalde's office in San José, were deposited in the Mayor's office of that place, a knowledge of which circumstance induced Capt. Halleck to institute a search in the latter place, which resulted in the discovery of the document.

The Expediente thus produced contains several papers besides those enumerated above. These papers will hereafter be referred to.

In investigating the genuineness of these documents it will be convenient to consider—

1st. The proof of the signatures attached to them ;

2d. The evidence tending to establish that the documents were executed at the time they bear date, and were filed or archived in the Alcalde's office—and,

3d. The proofs which show that, in fact, the mine was discovered and denounced, and the judicial possession given, as stated in the Act of Possession.

The Act of Possession is signed by Antonio Maria Pico, as Alcalde, and by José Noriega and Antonio Suñol, assisting witnesses. All these persons have been sworn, and testify to the genuineness of their signatures, and that they were affixed on the day the instrument bears date. The genuineness of these signatures, and that of Castellero, is also proved by other witnesses.

I do not understand that the fact that the instruments were signed by the parties whose names they bear, is seriously questioned, as all of them, except Castellero were produced, and testified not only to their own signatures, but to the facts which the documents recite. The theory of the Government which supposes these statements to be false, must admit their readiness to affix their names to antedated documents.

The real questions, therefore, are *when* were these documents prepared and signed, and *when* were they placed in the Alcalde's office?

2. On this point we have, as before stated, the evidence of

Pico, the Alcalde, and the two subscribing witnesses, Suñol and Noriega.

We have, also, the testimony of José Fernandez, who was Sindico del Juzgado and Escribano of the Court in 1845. This witness not only swears to the handwriting of the documents and the genuineness of the signatures, but states that he saw the Expediente in 1845, when it was brought to him by Gutierrez, in whose handwriting the body of the decree is. He also swears that he saw it again in 1849, among the archives of the office, he being then second Alcalde.

James W. Weekes, a witness called by the Government, testifies that he saw the Expediente in 1846-7, when Burton was Alcalde, and in 1848, when he was himself Alcalde. He is unable, however, positively to identify the Expediente now produced with the "little book" which he saw in the office when Burton was Alcalde. This witness, in 1848, certified at the request of Mr. James Alex. Forbes, to a copy of the Expediente. The copy was prepared by James Alexander Forbes, from a document handed to him by Alexander Forbes of Tepic (who was then in California), not from the original in the Alcalde's office. The certificate of Weekes, that it was a faithful and literal copy of the latter document, was obtained, but no comparison was made of the copy made by Mr. Forbes with the original; the witness supposing, as he states, that it was correct. The copy thus certified to by Weekes differs from that found in the Alcalde's office in several particulars, which will hereafter be noticed.

The claimants have also produced the original inventory of papers and effects in the Alcalde's office, which, as was customary, was on the 1st of January, 1846, signed by the outgoing Alcalde, Pico, and receipted by the incoming Alcalde, Chavolla.

This document is produced by the Clerk of the City of San José. It was found amongst other papers which had accumulated under the government of the Alcaldes of the Pueblo, and which now form part of the Archives of the City. The signatures and rubrics of Pico and Chavolla to the inventory are proved; and the document itself is in the handwriting of José Fernandez, the Escribano or Secretary of the Juzgado.

In this inventory, amongst nearly a hundred entries of papers and records, and of the smallest objects belonging to the office—such as candlesticks, old knives, tables and benches—is found a note of a document entitled “Posecion de la mina de Santa Clara á Don Andrés Castellero.”

No attempt has been made to impeach the genuineness of the signatures to this document, nor is it said that there is anything in the handwriting of the important entry in question, or in its position on this list, which could suggest the idea of a possible interpolation. Unless this entry be forged, it would seem conclusive evidence that a document of the kind described was on file in the Alcalde’s office on the 1st January, 1846.

Another inventory, of a similar kind, made on the 10th day of November, 1846, about nine months subsequently to the former, has been produced by the United States from the Archives of San José.

In this inventory, no entry of the document in question is found. If the lists were in other respects similar, the omission of this one item might possess much significance. But the two lists seem to be different in many particulars; and though some of the entries are alike in both, several which appear in the first are wanting in the second. That all the papers mentioned in the first inventory must have existed on the files of the office, and should have been noted in the second inventory, is evident. When, therefore, we find not only the “Poseción” of the Mina de Santa Clara, but several other documents, omitted in the second inventory, we necessarily conclude that the latter was prepared in the loose and inaccurate manner in which the public business of such offices was usually conducted in those primitive times.

A striking illustration of the incompleteness of the second inventory is presented by the evidence offered by the United States. Three documents are produced from the Archives of San José, purporting to be orders by the Alcalde for the publication of the denouncements of mines—one on the lands of Justo Larios, another on those of José de J. Vallejo, and a third on the rancho de Ojo de la Coche. These orders are dated in April, March and June, 1846. I find no one of them noted in

the inventory made in the succeeding November. And yet, both the documents and the inventory are produced as genuine by the United States.

I can see nothing, therefore, in the omission of the entry of the possession of the mine of Santa Clara in the second inventory which, in the absence of any suggestion that the handwriting or the color of the ink of the entry in the first inventory differs from those of the rest of the document (as would be the case if it had been interpolated after any considerable interval), or that the position of the entry on the list would have rendered such an interpolation possible, should weaken the force of the evidence afforded by the inventory that a document, purporting to be the possession of the mine of Santa Clara, was on file in the Archives of the Alcalde's office of San José on the 1st January, 1846.

3d. As to the proofs which show the facts of denouncement, judicial possession and working of the mine about the time indicated by the documents.

We have already seen that the subscribing witnesses, the Alcalde and José Fernandez, testify to the fact that the possession was given as described by them.

It is shown, however, by evidence which is uncontroverted, that in December, 1845, and early in 1846, Castellero and his partners were notoriously known to be working a mine of quicksilver, of which they claimed to be the owners by denouncement. That these facts were made known to the Governor of the Department, and by him communicated to the Supreme Government. That they were known to the United States Consul, and by him communicated to his own Government, and also to a Cabinet Minister of the Government of the Sandwich Islands, with whom he corresponded, and by whom his letter was published in a Hawaiian newspaper of the date of July 25th, 1846, a copy of which is produced. That the mine was in December, 1845, worked by Indians under the superintendence of Chard, an American employed by Castellero, who is produced as a witness, and whose employment continued until about the middle of 1846. That in December, 1845, it was visited and examined by Col. J. C. Frémont, to whom Cas-

tillero, who claimed to own it, explained the Mexican mode of acquiring titles to mines by denouncement and registry, but declined some overtures for its purchase made to him by Frémont.

Other allusions to and recognition of the possession and grant of three thousand varas, in letters, judicial proceedings, etc., at a late period, but previous to the supposed date of their fabrication, will subsequently be considered.

Among the documents alleged to have come from the City of Mexico, traced copies of which are exhibited, was a communication from Pio Pico, Governor of the Californias, to the Minister of Relations, dated February 13, 1846. In this letter Governor Pico states that he incloses a letter from Don Andres Castillero, apprising him of the important discovery of a quicksilver mine, and transmitting a sample of the quicksilver. He therefore begs the Minister of Relations to bring it to the superior knowledge of His Excellency the President, etc.

On the margin of this letter is the usual note, stating its reception on the 6th April, 1846, and that it is noted with satisfaction, etc. The letter of Castillero alluded to in the foregoing, dated 10th December, 1845, is also produced from the Mexican Archives. On searching the Archives in this City, for records of this correspondence, there was found the borrador, or office copy, of the letter from Pio Pico, and a letter from Castillero—not the one inclosed by the Governor in his communication to the Minister of Relations, for of that, he states in that communication, he sends the original; but a subsequent letter, dated December 15th, 1845. In this letter he states: "I have the satisfaction of informing you, if you have not received my other letter through the Prefecture, that I have discovered," etc., repeating substantially the contents of the former letter, which had, in fact, been received and inclosed to the Minister of Relations. It is not disputed that these documents are in the Archives. The borrador, or draft, of Pico's communication to the Minister, is in the handwriting of Olvera, who was Secretary of the Assembly at the time.

There was also found, at the same time, by Mr. Hopkins, the Keeper of the Archives, amongst those records, a letter from

Manuel Castro, the Prefect of the Second District, to the Secretary of the Departmental Government, dated December 31, 1845. In this letter he states that "Castillero has denounced and is now working a quicksilver mine;" and after felicitating the Secretary, and through him the Governor, on so beneficent a discovery, he adds that he incloses a petition by Castillero for two square leagues of land adjacent to his mine. A borrador, or draft of the reply by the Secretary to this letter is also found in the archives, but it appears to have been cancelled by black lines drawn transversely.

The handwriting and the signatures of these documents are proved by Pio Pico, who also states his recollection of having dispatched J. M. Covarrubias with his letter of the 13th February, 1846, to the Minister of Relations, and the bottle of quicksilver sent to him by Castillero.

The testimony of Pico on this point is corroborated by that of José M. Covarrubias, who swears that he left San Pedro in the schooner *Juanita*, Capt. Snook, on the 14th February, 1846, taking with him the Governor's dispatch, Castillero's letter, and a bottle of quicksilver, all of which he delivered on his arrival at Mexico to the Minister of Relations, Mr. Castillo y Lanzas. Files of the "*Diario Oficial*," the Government newspaper, published in Mexico, and of the "*Monitor Republicano*," and the "*Republicano*," also published in Mexico, are produced, and under the heading of marine news there are found notices of the arrival of the "*Juanita*," Capt. Snook, at Mazatlan, on the 2d March, 1846, twelve days from San Diego; of her departure on the 12th of the same month from Mazatlan for San Blas, having on board as passengers José Maria Covarrubias and others.

It cannot, therefore, be doubted that the letter of Castillero of the 10th December, 1845, a traced copy of which is produced from the Mexican Archives, was, in fact, sent to Governor Pico, and by him transmitted in February, 1846, to Castillo Lanzas, Minister of Relations, together with the dispatch, the borrador of which is found in the Archives in this City, and a bottle of quicksilver.

There are also produced by the claimants two letters from Castillero to M. G. Vallejo, of Sonoma.

In the first of these, dated December 2d, 1845, Castellero says: "While waiting for the time of my departure, I have employed myself as a miner, having extracted from the same vein quicksilver, silver, and gold, in surpassing quantities."

In the second letter, dated December 21, 1845, he, amongst other things, informs Vallejo that he has found such abundance of quicksilver that he has extracted twenty pounds of it from twenty arrobas of ore, etc.

These letters are produced and proved by Gen. Vallejo. I do not understand that the genuineness of Castellero's signatures to them is disputed. As Castellero left California in the spring of 1846, and has never returned, they must have been written about the time they are dated, unless we suppose they have since, and after an interval of many years, been written in Mexico, antedated, and sent on to Vallejo to be produced by him—a supposition which the contents of the letters and the allusions in them to personal matters and contemporaneous events of slight importance render wholly inadmissible. There is also produced, by the claimants, a copy of the *Polynesian*, of the date of July 25th, 1846, which contains a letter from G. P. Judd, the Minister of Finance of the Hawaiian Kingdom, to the editor of the newspaper, inclosing a letter received by the Minister from Thos. O. Larkin, U. S. Consul at Monterey, dated June 24, 1846. In this letter, which is also published in the *Polynesian*, Mr. Larkin informs Mr. Judd of the discovery of a quicksilver mine, seventy miles north of Monterey, and states, that in 1845, "a Mexican being in the vicinity examined the rock and immediately denounced the place before the nearest Alcalde, and then made known what it contained. The owner, with a priest, in a small and imperfect manner has commenced extracting the metal." After describing the process adopted by them, he adds: "They obtain about fifteen per cent. of the metal."

The receipt of this letter in the Sandwich Islands is sworn to by the editor and publisher of the newspaper. He is wholly unimpeached. The fact that it was published in the newspaper on the day alleged, is sworn to by a gentleman of San Francisco, who read it, and whose attention was particularly

drawn to it. A copy of the paper is produced and filed. From among the papers of the late Mr. Larkin is produced, by his son, the reply of Mr. Judd to his father's communication. The reply is dated July 20, 1846. It acknowledges the receipt of Larkin's letter of the 24th ultimo (June) with a specimen of the ore, and it states that he had sent it to the editor of the *Polynesian* for insertion. The handwriting and signature of Mr. Judd are proved by persons intimate with him.

It has already been mentioned that files of several Mexican newspapers, published in 1846, have been produced by the claimants. In the "Diario del Gobierno de la Republica Mexicana" of the 27th December, 1846, we find credited to the "Espia de la Frontera," a newspaper not produced, a notice of the account given in the "Polynesian" of the 24th July, of the discovery of a quicksilver mine seventy miles north of Monterey, and the same notice purporting to be taken from the same paper, the "Spy of the Frontier," is found in the "Republicano" of the 9th December, and in the "Monitor Republicano" of the 6th.

It is unnecessary, however, to dwell on these incidental corroborations; for the fact of the reception of Larkin's letter by Mr. Judd, and its publication in the *Polynesian* cannot be doubted.

The claimants have also produced from the files of the State Department at Washington, extracts from official despatches of Mr. Thos. O. Larkin to the then Secretary of State. These extracts are certified by Mr. Cass, November 28, 1859.

The first dispatch of Mr. Larkin is dated May 4, 1846.

The extract produced states that—

"Near the Mission of Santa Clara there are mountains with veins of quicksilver ore, discovered by D. Andres Castellero, of Mexico, in 1845, which the undersigned has twice seen produce twenty per cent. of fine quicksilver, etc. * * *

* * * * * By the laws and customs of Mexico respecting mining, every person or company, foreign or native, can present themselves to the nearest authorities and denounce any unworked mine. The authorities will then, after the proper formalities, put the discoverer in possession, etc. * * *
Up to the present time there are few or no persons in California with sufficient energy or capital to carry on mining,

although a Mexican officer of the Army, a Padre, and a native of New York, are on a very small scale extracting quicksilver from the San José Mine."

There is also produced from the consular book of Mr. Larkin a dispatch addressed by him to the American Minister at Mexico, dated April 3, 1846.

After mentioning the intended departure of Don Andres Castellero from this port (Monterey) in a few days, for Acapulco, on board the Hawaiian barque Don Quixote, as Commissioner to Mexico from Gen. José Castro, and that he would arrive in Mexico by the 25th or 30th of this month (April), Mr. Larkin says: "At the town of San José, eighty miles from Monterey, Don Andres Castellero has discovered a quicksilver mine. The ore produces from fifteen to sixty per cent. I have seen him, from an old gun-barrel, in thirty minutes run out about thirty per cent. in pure quicksilver. This must be a great advantage to California." In a letter to Capt. Montgomery, of the U. S. Ship Portsmouth, dated May 2, 1846, Mr. Larkin communicates to that officer substantially the same information.

These extracts from Mr. Larkin's correspondence are important, not only as showing that the mine had been discovered, and was being worked in the spring of 1846, but that the mode of acquiring a mine, as understood by Larkin, was precisely that alleged to have been adopted in this case. And further, that "the officer," the "Padre," and "the native of New York," spoken of as working the mine, were undoubtedly Castellero, Padre Real, and William G. Chard, as will hereafter appear.

The whole official dispatch of Mr. Larkin to the Secretary of State, is produced by the son of the former from the letter book of his father. The portions extracted and certified to by Mr. Cass are all that it is important to notice.

That the mine was worked by Castellero in January, 1846, is shown by the deposition of Col. Frémont.

That gentleman states, that in January, 1846, he visited the mine in company with Capt. Hinckley; that the latter introduced him to Castellero, the *owner* of the mine, who show-

ed him the excavations, the heaps of ore, etc., and explained the process of extracting the metal. Impressed with the value of the mine, he spoke slightly to him about purchasing it; but Castellero was not disposed to converse on the subject. Castellero informed him that he had acquired his mine by denouncement, and explained the nature of the proceeding. Acting on this information, Col. F. subsequently denounced the mines upon his own property of Mariposa.

He also adds, that Capt. Leidesdorff, with whom he had spoken as to the purchase of the mine, supposed it might be effected for \$30,000, "an immense sum of money in California in those days."

The working of the mine, so far back as December, 1845, is also proved by Mr. Wm. G. Chard. This witness testifies that he was employed by Castellero and the priest Don José Maria Real; that he went there to open the mine in November or December, 1845; that the metal was extracted by heating the ore in gun-barrels; that while working in this way, the possession was given, in December, 1845 or January, 1846. The witness enumerates among those present on that occasion, the Alcalde Pico, Suñol, Noriega, Fernandez and the old man Berreyesa. He does not recollect to have seen Castellero on the ground when possession was given—a circumstance, as observed by counsel, not surprising—for Castellero, Chard states, was constantly coming and going, and on one visit stayed there eight days; but the statement indicates the good faith of the witness in declining to swear to what he did not recollect.

Mr. Chard describes the operations at the mine. They were conducted by himself, another white man, a blacksmith whom they called Old Billy, and some Indians. He built a furnace and smelted the ore in some large whaler's try-pots, capable of holding three or four tons of ore. He remained in this employment until August or September, 1846.

Chard states himself to be a native of Columbia county, New York. He is evidently the "native of New York" to whom Mr. Larkin refers in his dispatch. His testimony is uncontradicted, and his character unimpeached.

There is much other testimony which corroborates the fore-

going on various points, but which it is unnecessary to notice. It relates chiefly to the first visit of Castellero to the mine; his first experiments with the ore; his trip to Sutter's Fort and visit to Vallejo, at the baptism of whose child he was godfather, and who thus became his compadre, by which title he addressed him in his letters already cited; his return to Santa Clara, and the formation of the partnership between himself, Castro, Father Real and the two Robles', in November, 1845. As this writing of partnership is conceded to be genuine, and as it relates to the working of the mine of silver, gold and quicksilver on the land of José Reyes Berreyesa, the fact that the mine was discovered at that time must be taken to be admitted.

We thus find that early in December, 1845, the discovery and denouncement of the mine was made known to the Governor of California, and the information, with a sample of the quicksilver produced, by him transmitted to Mexico. That in May, 1846, Mr. Larkin officially communicated the fact of the discovery and the working of the mine, with an explanation of the mode of acquiring title to it under Mexican laws, to our own Government.

That in June of the same year, he informed Mr. Judd of the discovery of the mine in 1845, and the fact that it had *been immediately* denounced.

That in January 1846, Col. Frémont visited the works, and conversed with the "*owner*;" that its reputed value was then about \$30,000.

That it had been worked from the November or December preceding by a person employed by Castellero, and continued to be worked by the same person until August or September, 1846.

It has appeared to me incredible that Castellero, a Mexican acquainted with mining laws, should, on discovering so valuable a mine, have omitted to denounce it. That he knew the necessity of the proceeding, we learn from Frémont, as did also Larkin, *a foreigner*, as is shown by his dispatch.

To suppose that Castellero, with a knowledge of the great value of the mine, of the necessity and efficacy of a denounce-

ment, neglected, notwithstanding his statements to the Governor, to take the simple proceedings he is alleged to have done, and that Larkin was entirely mistaken as to the fact of his having done so, is to suppose what I cannot but consider a moral impossibility.

I am aware that the fact that the mine was denounced by Castellero, and claimed and worked by him as owner, does not necessarily show that a juridical possession of it was given, or that the record of that possession is genuine. It is shown, however, by evidence in part introduced by the United States, that the juridical possession, as alleged to have been given, was recognized and alluded to in the correspondence of the parties, and in official acts of Alcaldes, before the date at which, on the hypothesis of the United States, the forgery was committed.

So early as January 30th, 1846, James Alexander Forbes, in a letter to Eustace Barron, of Tepic, apprises the latter that "D. Andres Castellero, a sort of Commissioner from the Mexican Government, is now working a quicksilver mine near the Mission of Santa Clara, which has yielded forty per cent. upon the assay of mineral employed;" and on the 5th May, 1847, the same person, who had in the interval been placed in charge of the mine, in a letter to Alexander Forbes, who had become a part owner, urges him "to obtain from the Government of Mexico the unqualified ratification of the *judicial possession which was given of the mine by the local authority of this jurisdiction, including, if possible, the three thousand varas of land given in that possession as a gratification to the discoverer.*" The fraudulent nature of this suggestion is obvious, but it nevertheless implies that a juridical possession and a gratification of three thousand varas had already been given, a ratification of which was thought necessary.

In the preceding March, the same person, together with Castellero, Castro, Real and the Robles', had been sued by the owner of an adjoining rancho for working on it contrary to law. It would seem from the imperfect record of that suit, produced from the archives of the Alcalde's office, that a survey of the mine was ordered and the plaintiffs mulcted in

costs; a result which could hardly have occurred if the persons working the mine on the lands of another had been destitute of record evidence of their rights. The fact that a survey of the mine was ordered would seem to be a recognition of the mine-owner's right to his mine, and that the boundaries of his possession were capable of being ascertained.

On the 14th August, 1847, allusion to this suit, and a still more explicit reference to the juridical possession, is made in an official letter of James Alexander Forbes, then H. B. M. Vice-Consul for California, to John Burton, Alcalde.

In this letter Mr. Forbes informs the Alcalde that "two persons have commenced digging a pit, by the direction of Mr. Cook (the plaintiff in the former suit), within *the limits of the juridical possession of the mine.*" He adds, "Permit me to refer you to the documents which exist in your office, upon which was founded your conviction of the justice of your decision in March last in relation to the claim of Mr. Cook, and to request that you will be pleased to adopt such measures for the protection of the owners of the mine, and of those who are legally interested in the same, as you may deem most conducive to that end."

The genuineness of this letter is not disputed. It will be observed that, though written in August, 1847, it refers the Alcalde to documents existing in his office upon which a decision rendered in the March preceding was based.

On the 19th January, 1848, Alexander Forbes, who had come to California, made a petition to the Alcalde, Weekes, to "visit and inspect the mine, as required by the Ordinances, and to determine the direction and inclination of the vein, for the purpose of reforming and correcting (since there is occasion for it) the *boundaries of the former Act of Possession*, and to correct such other mistakes as may appear in it."

In conformity with this petition the Alcalde proceeded to inspect the works, and having ascertained the true course of the vein, and admitted the right of the owner to an improvement of stakes (*mejora de estacas*), he established his boundaries, assigning to him *four pertenencias*, the location of which he designates; but without prejudice to the right and title of

the mine (siendo constante el derecho y titulo de la mina) to the gratification or gift (*gracia*) of land conceded in the original Act of Possession.

Whether the four *pertenencias*, which were thus designated, were all which under the Ordinances a discoverer, though working in company, was entitled to, we will hereafter consider. The only purpose for which the proceeding is now referred to, is to show that at its date (January, 1848) and about the supposed time of the alleged forgery, "an original Act of Possession," containing a "*gracia*" of land of a much larger extent, is plainly alluded to as existing; nor is the force of this fact weakened by the circumstance that Weekes, the *Alcalde*, may have been ignorant and willing to comply with all that Alexander Forbes required; for the fact that the latter inserted such an allusion in the document he may have caused Weekes to execute, is at least evidence that at that early day he claimed that there was in existence an original Act of Possession, including a *gracia* of an extensive tract. It will be observed that the petition of Alexander Forbes to Weekes is dated January 19th, 1848. Its object was to procure the judicial ascertainment of the inclination and depth of the vein, to correct the boundaries of the former Act of Possession, and to decide upon an increase of *pertenencias* and the square corresponding to them. But if, at that very time, Forbes had already fabricated, or was about to fabricate, an Act of Possession, which was to be antedated and placed in the archives, where no document of the kind had hitherto existed, the application to Weekes, and the designation of *pertenencias* by him, would be wholly superfluous, if not absurd; for in the forged paper which was to serve as the original Act of Possession by the Mexican authorities, the designation of *pertenencias* might have been inserted and the boundaries established in any way the forger might desire. All objections or doubts as to the authority of an American *Alcalde* to act under Mexican Mining Ordinances would thus have been avoided; and the same *Alcalde* who, according to the theory of the United States, was induced to recognize and affirm the existence of an Act of Possession, either not in his office, or

recently forged and placed there, could, with equal facility, have been brought to recognize an Act of Possession which should be free from the errors and uncertainties which he was called on to correct, and which should contain as many *per tenencias* as he was desired to designate.

Similar allusions to the original registry and act of possession are found in various judicial proceedings during the year 1849. On the 18th October of that year, Robert Walkinshaw, between whom and James Alexander Forbes a contest for the possession of the mine had arisen, filed a complaint against the latter, averring himself to be "the owner of one-eighth of the mine, *by title derived under the original act of registry.*"

Previously to the filing of this complaint, Mr. Horace Hawes, a lawyer of much acuteness, and very familiar with Mexican law, had denounced the mine before the Alcalde for abandonment. In this denouncement he describes it "as known in *its original title of registry* as the Mine of Santa Clara."

In the proclamation issued thereupon, on the 23d October, 1849, the Alcalde describes the mine "as known and designated in its *original act of registry* as that of Santa Clara, and now known by the name of New Almaden." On the refusal of the Alcalde to take jurisdiction of the proceeding, Mr. Hawes files a protest, dated 15th November, setting forth that, "besides having failed to work the mine, the alleged owners had never acquired any title thereto, *by reason of the insufficient registry thereof*, which he stands ready to prove in Court by witnesses, records and documents," etc.

As Walkinshaw, though he had originally obtained possession of the mine as the agent of Castellero and his assigns, was in these proceedings endeavoring to acquire the mine for himself, and co-operating with and assisted by his attorney, Mr. Hawes, these references to the original act or title of registry conclusively show that such a document was on all sides admitted to exist, though Mr. Hawes maintained it to be "*insufficient*;" nor is it conceivable that when Hawes and Walkinshaw, by possessory suits, by denouncement for abandonment, by purchasing the lands of adjoining rancheros, etc., were struggling with so great pertinacity to obtain the mine for themselves,

they should have utterly failed to disclose the fact, of which Walkinshaw could not have been ignorant, that no registry had ever been made, and that the document purporting to be the act of possession was a recent forgery, then lately interpolated among the archives.

In the correspondence between James Alexander Forbes and Alexander Forbes, and the other owners of the mine, the necessity of procuring fraudulent and antedated title papers from Mexico, is repeatedly and urgently represented. But the fraud recommended is the fabrication of an absolute grant of two *sitios* of land, and a ratification of "the acts done by the Alcalde in the possession given by him of the quicksilver mine in his jurisdiction."

Such are the very terms of the memorandum of "documents to be procured by Castellero," alleged by James Alexander Forbes to have been left by him in Tepic in May, 1849. And in October of the same year, chagrined, it would seem, that his suggestions had not yet been acted on, he complains that he is obliged to depend on "the precarious and illegal possession of the mine granted by the Alcalde of this district to Castellero, who was in reality the judge of the quantity of land given by the Alcalde."

Whether the doubts here expressed as to the legality of the possession be well or ill-founded, it is clear that in this most confidential communication, where no motive existed for suppressing or distorting the facts of the case, that possession is treated as having actually been given, and the record of it as actually existing and genuine, though the possession itself is considered precarious and illegal.

Having thus reviewed the evidence which establishes the genuineness of the act of possession by the testimony of the witnesses to the document; of those who were present when the possession was given, and who testify to the fact; by the production of documents from the Archives of California, and the correspondence, both private and official, of the United States Consul at Monterey; by the testimony of unimpeached witnesses that the mine was, early in 1846, claimed by and recognized as belonging to Castellero, and worked by him as

such ; by the proofs afforded, by a correspondence admitted to be genuine, that the act of possession was treated and spoken of by the parties, when writing in the most confidential manner, at a time when they could not have been ignorant of the facts, as genuine, though perhaps invalid, and was so recognized in various judicial proceedings by persons who would certainly have discovered and denounced any forgery which might have been committed ; and finally, the intrinsic improbability of the supposition that Castellero would have omitted to denounce a mine, of the great value of which he was fully aware, and the means of acquiring a title to which, under the Mining Ordinances, he was well acquainted with, as was also Mr. Larkin, a resident foreigner—I shall next consider more particularly the nature and contents of the documents produced by the claimants, as well as the principal objections to them urged by the counsel for the United States.

These documents are four in number. The first is the original Expediente, produced from the Archives of the City of San José, and discovered by Capt. Halleck in 1851, among the Archives of the old Alcalde's office, in the office of Belden, the Mayor of San José.

This document contains the two representations of Castellero, and the act of possession with the original signatures of Castellero, the Alcalde and the assisting witnesses.

It also contains a petition of José Castro, dated June 27, 1846. In this petition, Castro states that he represents the person and rights of Capt. D. Andrés Castellero, and other individuals composing the company in the quicksilver mine which Señor Castellero denounced on the 3d day of December, 1845, and of which possession was given on the 30th of the same month and year. He therefore claims that, in conformity with the Mining Laws, there be given three pertenencias in continuation of the first ; and that this petition be attached to the Expediente of denouncement, and remain among the Archives. On the margin of this petition is an order signed "Pacheco," directing it to be archived as prayed for.

If this document be genuine, it affords important evidence of the date of the judicial possession.

The handwriting of the petition is sworn by Fernandez to be that of Benito Diaz. The signature of Castro is proved by himself, and he testifies that it was signed at its date, having been prepared from a draft left with him by Castellero. He also states that the handwriting of the marginal order is that of Salvio Pacheco, and the signature that of Dolores Pacheco; and that after sending the petition to the Alcalde he left Santa Clara, but was informed, on his return, by the Alcalde, in presence of Manuel Castro and Juan B. Alvarado, that his petition had been granted.

Salvio Pacheco is also produced, and testifies to his own handwriting and the signature of his brother the Alcalde. He swears that the order was written at its date. As this witness has been produced by the United States to sustain the character of a witness impeached by the claimants, it is presumed that his own character is not liable to the imputations from which the United States rely on him to shield another.

The only evidence tending to show that the petition was not written at its date is that of Benito Diaz. He does not precisely specify the time at which it was written; but it can be gathered from his testimony that it was at the end of 1847 or the beginning of 1848.

But this witness is, unfortunately, too well known to the Court to permit any reliance to be placed upon his unsupported declarations. I have not been able exactly to understand on what theory this petition is supposed to be forged.

If the act of possession be genuine, it is immaterial, so far as the rights of the parties are concerned, whether the petition be antedated or not; but it is not easy to imagine the motive of the parties in fabricating a petition addressed to an Alcalde who had ceased to be in office, and whose antedated marginal order did not even purport to convey any rights. Had the marginal order contained a grant of an increased number of pertenencias, some motive for fabricating it would have existed; but it merely directs the petition to be archived; and the application for an increase of pertenencias is in substance renewed in the petition of Alexander Forbes to Weekes, made in 1848, at the very time when we are asked to suppose this

petition of Castro was fabricated. If the act of possession be genuine, and the Castro petition be antedated, the conduct of the parties seems to me inconsistent, absurd and inexplicable. But if the act of possession was itself fabricated in 1848, and did not exist at the date when the Castro petition was fabricated, the acts of the parties are equally incomprehensible. Of what use could it be to have a petition for an increase of pertenencias included among archives which contained no registry or denouncement, or grant of any pertenencias whatever? It may be said that the fabrication of the act was then in contemplation; but if so, why not make that document contain all that was desired as to the number of pertenencias, the designation of boundaries, etc. Why accumulate superfluous forgeries, involving the necessity of new perjuries, and largely increasing the risks of detection; and why resort to the proceedings had before Weekes for the ascertainment of boundaries and an increase of pertenencias, when it was known that the fundamental title to the mine had yet to be forged, and might be framed in any way to suit the interests of the parties?

The counsel for the United States has urged upon the Court the inconsistency between the petition of Castro for three additional pertenencias and the supposition that a concession of three thousand varas in all directions, amounting to nine hundred pertenencias, had already been obtained. But this objection, whatever be its force, seems to admit the genuineness of the Castro petition; or, it attributes to the fabricators the absurdity of contriving at the same time two forged documents repugnant to each other. That an act of possession, either genuine or forged, was in existence when Castro's petition was drawn, is evident, for the dates of the denouncement and of the judicial possession are given. To what end then, file a petition which could have no other purpose than to furnish a plausible argument against the genuineness of the previous concession of three thousand varas?

From all the evidence, and on consideration of all the circumstances connected with this petition, I confess myself unable to discover any sufficient reasons for considering it forged.

The claimants have also produced a document alleged by

them to have been delivered to Castellero shortly after the date of the judicial possession.

It contains certified copies of the two representations of Castellero, purporting to have been made on the 13th January, 1846, and a duplicate original of the act of possession signed by Antonio Maria Pico. Appended to these is a receipt by Pico for twenty-five dollars, dated December 30, 1846.

This document was recently found among the papers of Robert Walkinshaw, deceased. It is shown in the deposition of Hall McAllister, Esq., who was counsel for Walkinshaw in a suit respecting a share of the mine, that the document was placed in his possession by Mr. Walkinshaw early in the year 1853, and that it remained in his office until May, 1858, when he delivered it to Walkinshaw.

The genuineness of the signatures is testified to by all the assisting and subscribing witnesses, except José Suñol, who is dead.

This expediente does not contain the petition of Castro, for the certified copies appear to have been made on the 13th January, while the Castro petition was not filed until the June following. There is one circumstance, however, which, though entirely accidental, affords important proof of its genuineness. In copying the first representation of Castellero, it appears that a line was omitted. This has been supplied by another hand, and the handwriting is that of Castellero. As Castellero left California early in 1846, and has never returned, we must suppose that this interlineation was made before he left, or else that the document was fabricated here at a later period, sent on to Castellero in Mexico, interlined by him, and returned to Walkinshaw's possession before January, 1853, when he delivered it amongst other papers to Mr. McAllister. But that he was in possession of "some important papers of the original registry of the mine," in 1849, appears from James Alex. Forbes' letter of October 28th of that year; and it also appears from the certified copy made out by Weekes on the 20th January, 1848, that the expediente we are now considering must have been the document which James Alex. Forbes copied, and which Weekes erroneously certified to be a literal

copy of the original in his office. The year in which it is supposed by the Government that these titles were fabricated, is 1848. How, then, could this expediente have been made, certified to by the subscribing witnesses, sent on to Castellero, interlined by him, and returned to California in time to be copied by Forbes and certified to by Weekes, on the 20th January, 1848? And why, if the Castro petition had then recently been written by Benito Diaz, and antedated, was it not included in this expediente, concerning which so much pains were taken?

The omission of the Castro petition in this expediente seems to me, I confess, an important corroboration of the statements of the witnesses who prove the genuineness of the signatures. There is also produced the copy of this expediente, by Weekes, already alluded to. Weekes himself swears that he made it, and he is corroborated by James Alex. Forbes. I do not understand this fact to be disputed.

The claimants have also produced a copy of the original expediente, certified by Pedro Chabolla, on the 13th August, 1846, to be a literal copy of the original acts (autos) in the archives of his office.

The whole of this copy is proved by Salvio Pacheco to be in his own handwriting, and to have been made at its date. It contains the Castro petition which had been made in the preceding June, and attached to the original on file, and it even omits, like the original, the date of the act of possession—that date being on both papers December, — 1845, and not December 30th, as in the testimonio or duplicate original given to Castellero. That the document was scrupulously compared is further evident from the fact that in the copy the date of Castellero's first representation is Mission de Santa Clara, Nov. 22, de 845, instead of 1845—and on turning to the original, we find in the printed copy that the first figure of the date is separated by a comma from the three other figures. I have not had an opportunity to examine the original, which remains at San José; but it would seem from the printed Transcript that the date is written in an unusual manner, which has been either exactly reproduced or has led to the omission of the first figure in the copy.

It has been earnestly contended by the counsel for the United States, that the non-existence of the original expediente in the archives at San José, even so late as December 23d, 1850, is proved by the affidavit of Mr. Halleck, at that time, and since, Superintendent of the Mine, and counsel for James Alexander Forbes in a suit brought against him and Walkinshaw by the Berreyesa's. In this affidavit, which was made in answer to an order obtained by the plaintiffs in the suit upon the defendants, requiring them to produce the papers on which they intended to rely as a defense, or copies thereof, Mr. Halleck swears:

"That the defendants have exercised all due diligence to procure and produce said papers in Court, by writing immediately on the receipt of the above mentioned order to the *parties in Mexico who hold them.* But to this date the defendants have not received them. * * * * And the defendants specify among others the following papers and documents as absolutely necessary to them before they can proceed with the trial of this cause, viz.:

"1st. *The original denouncement of the mine of New Almaden, and the juridical possession given of the same in the year 1845.*

"2d. The confirmation of said denouncement and possession by the Supreme Government in 1846, and prior to the late declaration of war by the United States against Mexico.

"3d. The original grant of land, including said mining possession, made by the Supreme Government of Mexico prior to the declaration of war as aforesaid, to the owners of said mine."

It is obvious that this affidavit states that the original denouncement and judicial possession of the mine was then in Mexico, and not in the Alcalde's office. That Mr. Halleck, then lately appointed Superintendent of the Mine, might have been ignorant of the fact that those papers were among the archives of the Alcalde's office, is conceivable; and he may also have accepted the assurances of his client, Jas. Alex. Forbes, that he had exercised all due diligence to procure them, as sufficient to authorize his affidavit of that fact; but it cannot be supposed that Jas. Alex. Forbes could have labored under a similar misapprehension. We have already seen that in August, 1847, he had, in an official letter to Alcalde Burton,

referred him to the documents existing in his office, upon which was founded his conviction of the justice of his decision in relation to the claim of Mr. Cook, in the preceding March.

In January, 1848, he had himself copied and procured Weekes to certify to the expediente containing certified copies of Castellero's representations and a duplicate original of the act of possession. This expediente has since been produced from among Walkinshaw's papers, and its possession by him, or his counsel, is traced back as far as 1853. The circumstance that it is interlined in the handwriting of Castellero, proves it to have been at some time in his possession. As Castellero left California early in 1846, it is in a high degree improbable that the document could have been fabricated here, sent on to him in Mexico, and returned before January, 1848, when it was copied by Forbes and certified; nor does such a hypothesis comport with the theory of the United States, which supposes the forgeries to have been committed about the time of the Weekes certificate. It is almost equally improbable that this document, after being copied by Weekes, should have been again sent to Mexico, and returned to Walkinshaw in time to be found among his papers in 1853.

There is no reason to presume that the Weekes copy ever left this State. It was produced by the claimants when proceedings were first instituted before the Board of Commissioners, in 1852. It is clear, therefore, that as the order of the Court called for the documents on which the defendants relied, or *copies* thereof, it was easy for Mr. Forbes to have satisfied the order by furnishing the copy required.

It also appears from his own letters that he had already received a notarial copy of the Lanzas dispatch on which they rely. A copy of this could also have been furnished. We are thus compelled to seek for some other motive for withholding those copies which the order required, and which, on any theory of the case, he could readily have furnished. That motive seems to me apparent. From the 5th of May, 1847, up to the 26th February, 1850, James Alexander Forbes had not ceased to urge upon his associates the necessity of obtaining fabricated documents of title. In his letter of February 26th, 1850, he

again dwells upon the necessity of carrying his suggestions into effect, and specifies the required documents as follows :

“1. A full and complete ratification of all the acts of the Alcalde of this jurisdiction, in the possession of the mine.

“2. A full and unconditional grant to Castellero, of two *sitios* of land, covering that mining possession, expressing the boundaries stated by me in the memorandum I left with you at Tepic. Both of *these documents* to be of the proper date and placed in the proper Governmental custody in Mexico.”

On the 7th April, 1850, Alexander Forbes, of Tepic, writes to James Alexander Forbes : “Mr. Barron and Castellero have arrived in Mexico, and have every prospect of finding the document you are aware of, and which will, of course, be forwarded as soon as possible.”

When, therefore, in December, 1850, James Alexander Forbes represented to Mr. Halleck, that papers had been sent for, and were daily expected from Mexico, it cannot be doubted that he referred to the documents, the fabrication of which he had so urgently recommended. The description of the expected documents in the affidavit, in no respect applies to the Lanzas dispatch ; for the ratification, and the grant of two *sitios*, are evidently described as two separate instruments, and they are spoken of as “*of the proper date,*” viz., “prior to the late declaration of war by the United States against Mexico ;” that is, prior to the 13th May, 1846 ; whereas, the Lanzas dispatch is dated on the 23d May.

We have already shown that James Alexander Forbes could readily have complied with the order of the Court, by furnishing “*copies*” of the denouncement and registry, and of the Lanzas dispatch, both of which he must have then had in his possession. The statements, therefore, which he made to his counsel, and on which the affidavit was founded, were evidently made for delay, and to enable him to receive the more full and explicit documents he so much desired. Such being the motive and intent of Mr. Forbes, the allegation that “the original denouncement of the mine was in Mexico,” may well be taken as made in furtherance of the same object, and to give

increased force to his showing, for the postponement which he was so anxious to obtain.

That Mr. Halleck should have embodied in an affidavit these representations of Forbes will, perhaps, not be surprising to any one acquainted with the facility, often too great, with which counsel receive and adopt in affidavits statements made by their clients in the progress of a cause. Such has seemed to me the more probable explanation of this affidavit. For, whatever may have been therein sworn to, I can see no reason for concluding, on the strength of that affidavit alone, and in the face of the mass of testimony which has been adduced to the contrary, that the expediente of the mining possession was not then in the Alcalde's office.

It was also strongly urged by the counsel of the United States, on the hearing, that the non-existence of the alleged act of possession and concesssion of three thousand varas was proved by the acts of the parties themselves, and their dealings with each other.

The circumstances chiefly relied on were—

1. The fact that in the Castro petition, drafted by Castellero, three pertenencias are asked for, in continuation of the one already obtained.

2. That in the power of attorney executed by Castro, on the 12th June, 1846, to McNamara; in the contract by McNamara, under the power of attorney, executed in Tepic on the 28th November, 1846; and in the ratification of that instrument by Castellero in Mexico, on the 17th December, 1846, the mine is spoken of as consisting of only three pertenencias, while the grant of three thousand varas is not mentioned.

3. That in the numerous deeds and acts of sale by which barras or shares in the mine were transferred, the writing of partnership executed by the original owners of the mine is the only document referred to, no allusion is made to the possession of three thousand varas, or to any tract of land whatsoever; and the Expediente of Registration is, for the first time, mentioned in the deed from Padre Real to Walkinshaw, dated August 9th, 1849.

These objections, so far as they relate to the mention of the *pertenencias*, will more conveniently be considered in treating of the legal effect of the judicial possession; but in respect to the omission of all allusion in the deeds either to the registration or to "lands," it is to be observed that to many of these deeds James Alexander Forbes was a party. We find by his letter of May 5th, 1847, that at that date the "ratification" of three thousand varas of land given by the Alcalde, and the concession of two sitios of land to Castellero, were known to and spoken of by him as having actually been made, the object of that letter being to urge the necessity of obtaining an unqualified ratification of the mining possession, and a positive, formal, and unconditional grant of the two sitios. Similar references to the act of possession, and the order of Castillo Lanzas, occur throughout his correspondence. And, as we have already seen, the former document and the fact of registration is referred to in various legal proceedings by Forbes and Walkinshaw in the years 1847-8; as also in Alexander Forbes' petition to Weckes, in January, 1848.

The inferences, therefore, which might otherwise be drawn from the silence of the deeds on this point, seem to be repelled by the fact that, in letters and various judicial proceedings, the registration, the grant of three thousand varas, and the concession of two leagues, are frequently spoken of and claimed to have been made.

It will be noticed that in the first representation of Castellero, dated November 22, 1845, the mine is described as a vein of silver with a ley of gold; and, by his second representation, it appears that he subsequently, and at some time previous to December 3d, discovered it to contain quicksilver. The writing of partnership, however, dated November 2d, describes a silver mine with a *ley of gold and quicksilver*, showing that twenty days previous to his first denouncement he must have been aware of the existence of quicksilver in the vein. This discrepancy is forcibly urged by the counsel of the United States, as affording conclusive proof that the alleged denouncements are forgeries.

It seems, from the evidence produced by the claimants, that

in the month of October, 1845, Castellero and Castro set out from Monterey, to visit General Vallejo at Sonoma, and General Sutter, at Sutter's Fort. On their way, Castellero, at the suggestion of Castro, examined the spot which, as the latter told him, had for a long period been reported to be a mine, but of what kind was unknown. He assayed the ore, and found a little gold and silver, and a small quantity of quicksilver. The latter he considered of no importance.

The party proceeded to Sonoma, and thence to Sutter's Fort, and set out on their return on the 12th November. On reaching Santa Clara, Castellero made further assays of the mineral. "He then discovered," says Castro, "abundance of quicksilver, denounced the mine as a quicksilver mine and formed a company to work it." But this statement is evidently erroneous, for the writing of partnership is dated November 2d, and, if executed at its date, must have been made when the parties were on their way to Sonoma and Sutter's Fort, and not on their return from the latter. But if Castellero, at the latter date, had discovered quicksilver in large quantities, how can we account for his first representation, which omits all mention of that metal, nor for his second representation, which announces the discovery of it, as having been made after the date of his first representation, *i. e.* after November 22d?

It is quite probable, however, that Castro may be in error, if he means to state that Castellero discovered the abundance of quicksilver and denounced the mine as a quicksilver mine immediately on his return to Santa Clara. Castro himself went on, as he states, to Monterey. The party, having left Sutter's Fort on the 12th November, must have reached Santa Clara between the 16th and 20th. It may well be, therefore, that Castellero made his first representation immediately on his arrival, and subsequently made the further assays spoken of by Castro, in consequence of which he prepared his second or amended denouncement. On this hypothesis we can account for his omission to mention the existence of quicksilver in his first denouncement, as he did not then know that it existed in sufficient quantities to deserve attention. But whatever explanation of this discrepancy be offered or conjectured, I have

been unable to perceive how it furnishes the conclusive evidence of the fraudulent character of the denouncement, which the counsel for the United States supposes it to afford.

If these papers were forged about the year 1848, they must have been forged at a time when the character and great value of the mine were well understood. What motive, then, can be suggested for fabricating two representations, in one of which the existence of quicksilver in the vein was entirely ignored?

Impressed, as the parties must then have been, with the great value of the mine, as a mine of quicksilver, can it be supposed that, merely to give the appearance of truth to the documents they were fabricating, they caused them to express a pretended ignorance of the nature of the vein?

Even if so refined and subtle a cunning could be attributed to them, the same cunning would not have suffered them to overlook the fact that the writing of partnership existed, which fixed upon them the knowledge of the existence of quicksilver in the vein twenty days before the date of the first denouncement.

I confess that, though unable to demonstrate how this discrepancy has occurred, I perceive in it rather what the ingenious counsel for the United States has on another occasion characterized as the "deshabille of truth," than that meretricious ostentation of consistency, which falsehood would not have neglected to display.

But the circumstance that I have found most difficult to account for, and which most strongly suggests suspicions as to the genuineness of the Act of Possession, is the failure of Castillero to exhibit, or even mention, it during his protracted negotiation with Mr. Negrete. The correspondence of the latter with his principal, Alexander Forbes, shows that Castillero was called on to exhibit his title papers. He responded by producing the writing of partnership and, after a little delay, the Lanzas dispatch. He not only does not exhibit the "copia autorizada," which, if genuine, he must have received before his departure from California, but he does not even mention that he has been put in possession and received a concession from the Alcalde of a tract of three thousand varas in

extent, nor that any such possession had been ratified by the Supreme Government. So far as appears from the instrument executed at that time, and the testimony of Mr. Negrete, the writing of partnership was the only document of title to the mine relied on, and an interest in the two-league grant during the term of the lease is added as a kind of voluntary cession to the aviadores. In all the deeds which passed between the parties for several years, no allusion whatsoever to the Act of Possession occurs, but the writing of partnership and a mine of three pertenencias are alone spoken of.

That the parties were ignorant of the precise number of pertenencias allowed by the law is not improbable, and that they should have treated the mine as consisting of the number of pertenencias assignable to a discoverer, can be reconciled with the facts as they are claimed to have existed. But the omission of Castellero to exhibit the Act of Possession, which constituted his only title paper for the mine, and the only evidence of his denouncement and registry, and which alone showed that the persons, or any of them mentioned in the writing of partnership, had any rights whatever in the subject matter of their contract, is a circumstance which I have found it impossible to account for.

Even on the hypothesis that he had neglected to bring with him, through accident or otherwise, a copy of the act of possession, it would still seem almost inevitable that he should have given to Mr. Negrete some information of the existence of such a paper, and at least mentioned the Alcalde's concession of three thousand varas. No explanation of this circumstance is offered by the claimants. I have been much impressed with its significance. It might well seem to justify the inference, not that the mine was not discovered and worked as alleged, or that it was not in some manner denounced, or that the Alcalde did not give a possession, as sworn to by the witnesses—for of these facts, there can, I think, be no doubt—but that the record of the Act of Possession has been since fabricated and antedated.

But when we consider the vast number of perjuries and complicated forgeries which such a supposition involves, and the

grave and almost insuperable objections which present themselves to any theory of forgery,*no matter what date be assigned for its commission, and especially if we accept the date fixed by the counsel for the United States (viz., subsequent to February 2, 1848), it seems impossible under the proofs to adopt the hypothesis of the United States.

Our daily experience apprises us that events are constantly occurring which would *a priori* be pronounced in the highest degree improbable. That which is true does not always present the appearance of truth, and it is not usually safe to discredit positive testimony to a fact on an estimate of what would be likely to have happened.

But in this case, if, reasoning on the extreme improbability that Castillero would have failed to produce to Mr. Negrete the Act of Possession, if it existed, we adopt the conclusion that it did not then exist, we encounter improbabilities greater than those we are seeking to avoid.

For admitting, as we must admit, that he discovered the mine; that its great value, estimated by Col. Fremont at \$30,000, was known to him; that he denounced it in some form, as is stated by Mr. Larkin to Mr. Judd, and to his own Government by himself, and by Castro to the Governor of California, as was notorious throughout the country—it is, as before observed, almost incredible that he should not have made the denouncement in writing, and substantially as is now claimed. If the papers were fabricated after February, 1848, how can we account for the copy certified to by Weekes in January of that year, and which must then have contained the interlineation in Castillero's handwriting, who was absent in Mexico?

How can we account for the useless forgery of the Castro petition, which the counsel for the United States allege to have been made by Diaz in 1847, and which speaks of the denouncement and act of possession, which had not yet been fabricated? Why, if the parties were then preparing their spurious documents, did they, at the same time, ask for additional *pertenencias*, when the documents they were forging could be made to express all that they desired?

How shall we explain the absence, throughout James Alexander Forbes' voluminous correspondence, of any reproach, or even regret, that the forgery had been so clumsily effected as to leave the Act of Possession "precarious and illegal;" how account for the allusions to the documents of registry in judicial proceedings, official letters of Forbes to the Alcalde, and the entire absence of any accusation or hint of forgery, when Walkinshaw, who must have been in the secret, was struggling so fiercely with Forbes for the acquisition of the mine?

These, and many other considerations which might be offered, are sufficient, without now alluding to the large number of witnesses who swear to the genuineness of the documents, to apprise us that the theory of forgery is beset with greater difficulties than the supposition that Castellero, for some unexplained reason, omitted to produce or allude to the Act of Possession, which, nevertheless, existed.

Assuming, then, the genuineness of the Act of Possession, I proceed to inquire what this document and the proofs show to have actually been done—and what was its legal effect.

In the first place, it appears that the written statement required by Art. 4, Tit. VI of the Ordinances to be made by the discoverer, was in fact presented by Castellero. The vein was described as situated on the lands of Berreyesa, and the discoverer declared that he wished to work it in company. The names of his partners were not stated as enjoined by the Ordinances.

It does not appear that the corresponding entry, in a book kept by the Alcalde, was made, nor was the "statement returned to the discoverer for his" due security.

Whether notices were affixed, as required by the Ordinances, is perhaps not clearly established, although some witnesses testify to the fact.

It further appears, that within the ninety days limited by law a pit had been dug, the mine opened and working commenced, and that at the expiration of thirty-eight days from the date of the denouncement, judicial possession of the mine was given.

It is not pretended that any number of pertenencias were measured to Castellero when possession was given, nor that he

was caused to fix stakes in his boundaries, as directed by the Ordinance.

It has already been shown that, by the spirit and terms of the Ordinances, discovery was recognized as the true foundation of title to a mine. That the registration was but a formal announcement of the fact of discovery, and only required, in the language of Gamboa, three things to be manifested—"the person, the place, and the ore." That upon this declaration the law itself annexed the title, and the mine was said not to be granted, but to be *adjudicated*, by the judicial tribunal which had jurisdiction in such matters. That from the moment of denouncement the discoverer had the legal right to commence working his mine, and was required within ninety days to dig a pit of certain dimensions under penalty of forfeiture of his right, but that as soon as this was done he was entitled to receive judicial possession of his mine; and this, notwithstanding that the period allowed for others to show a better right, had not elapsed.

It was also shown that under the old Ordinances no measurement of *pertenencias* was required to be made when possession was given; and though this was required by the Ordinances of 1783, the penalty of forfeiture was not by those Ordinances annexed to the omission to do so, though such a provision had been recommended by Gamboa. It was also shown that the requirement of the Ordinances with regard to noting the contents of a statement in a book, etc., was directory to the Alcalde, and that his neglect of duty in that respect ought not to impair the vested right of the discoverer any more than the omission to record a colonization grant should effect the title of a *bonâ fide* grantee of land. The duty of recording registries in a book to be kept for the purpose was also imposed by Ordinances prior to the time of Gamboa; but that author, though he strongly urges its policy and convenience, nowhere intimates that a failure by the mining tribunals to comply with this requirement of the law affected the title of the mine owner—whose rights were evidenced by the copy of the "diligencias" or proceedings which was delivered to him—which corresponded to the "attested copy of the proceedings" which, by the Ordi-

nances of 1783, was required "to be delivered to the party as his corresponding title."

If these views be correct, it follows that all the provisions of the Ordinances indispensably necessary to vest the title in the discoverer of a mine have in this instance been followed. And Castillero, by his denouncement, the digging of a pit within ninety days, and the judicial possession given, acquired by law a right to his mine, with the number of *pertenencias* allowed to a discoverer working in company.

But it appears, from the loose and informal document executed by the Alcalde, that in addition to the juridical possession which he was empowered to give, that officer "concluded to grant to Castillero three thousand varas in all directions, subject to that which the general Mining Ordinance indicates."

It will be observed, that the Alcalde does not here pretend to adjudicate the mine to the discoverer, nor to put him in possession of any designated number of *pertenencias*, but to grant him a large tract of land about his mine. It is unnecessary to say that such a concession even of public land by an Alcalde was wholly void, and as against either the Sovereign or a private owner conveyed no rights whatever.

It is insisted by the counsel for the United States, that this distinction between the possession of the mine and the *gracia*, or gift, of three thousand varas, is due entirely to the ingenuity of counsel for claimants, and is not found in the words or sense of the instrument.

We have already seen that the same distinction is clearly taken in James Alexander Forbes' letter of May 5th, 1847. We will hereafter see that it is alluded to in Castillero's communication to the Junta, in which he states "that he has taken possession not only of said mine, but also of an extent of three thousand varas in all directions from that point."

The distinction is not, therefore, a recent suggestion of ingenious counsel.

That it is very clearly expressed in the very inartificial document called the Act of Possession, is not pretended.

Taken literally, that document merely states that, "I, the Alcalde, have resolved to act, by virtue of my office, in order

to give juridical possession of a mine known by the name of Santa Clara, and [after sundry recitals] have concluded to grant him three thousand varas in all directions, subject to what the Mining Ordinance indicates."

Nor is it pretended that any possession of the mine, as distinguished from the three thousand varas, was given. That the Alcalde, the assisting witnesses and others, went to the mine for the purpose of giving a possession of some kind, is clear; but he made no measurements, and fixed no stakes. He probably told Castellero that he gave him possession of the mine, and added that he might take three thousand varas in every direction around it.

The explanations of this act given by Pico himself, are confused and contradictory.

In his first deposition taken on behalf of the claimants, Pico says: "Castillero told me he required three thousand varas in all directions, and I told him to take them. He told me he had that right by reason of his being the first discoverer of the metal. According to what Castellero told me, I believed that I, as Alcalde, had authority to do that, there being no other *Juez de Letras*. He was a man learned on all those subjects." He adds: "I do not know whether it [the land of which he gave possession] was round or square, because I made the division in different directions, as I proposed to Castellero; that is to say, that he should take it where it was vacant, or in the mountains, because the rancheros would not have mountains—they wanted plains only."

In a subsequent deposition, taken some three years afterwards—viz., in 1860—Pico admits that he had stated in a deposition taken in another case, that he pointed out the boundaries which Castellero was to take, but gave him no fixed possession; that there was a question between Castellero and Berreyesa—Berreyesa would not consent that possession should be given to Castellero unless he would admit that he (Berreyesa) should have an interest in the mine. In consequence of this, I did not give any fixed possession of the land."

In a subsequent part of the deposition of 1860 (Ans. 17), Pico says: "I intended to grant only what was intended by

the Ordinance around the mine, and the rest to be taken on public land." "I never intended to grant another man's land" (Ans. 16). When reminded by the counsel for the United States that the mine was at some distance from the nearest body of public land, recognized as such at that time by himself, and asked how he could have granted three thousand varas, to be measured in all directions from the mouth of the mine, if he intended only to grant public land, the witness replies: "It was because Berreyesa agreed with Castellero at the time, and told me I might grant the land, provided I did not include the land needed for cultivation; and therefore I made the grant." And in Answer 24, he admits that three thousand varas in all directions would include part of Berreyesa's land as well as public land.

Amidst these confused and contradictory statements it is, I think, not difficult to perceive what was really done, or attempted to be done, by the Alcalde. He was aware, and so informed Berreyesa, as he states, that "the Ordinances authorized a certain quantity of land around the mine to be granted, whether on public or private land—that is, that to the discoverer and to the one working in company, a certain number of pertenencias were to be assigned. How many, neither he nor probably Castellero knew. But in addition to these pertenencias, which determined the extent of the mine, he also undertook to grant a tract of three thousand varas to be taken on public, or on Berreyesa's land, if the latter consented. The transaction with regard to this grant seems to justify the observation of James Alexander Forbes, in his letter of October 30th, 1849, that the possession of the mine granted by the Alcalde to Castellero "was precarious and illegal; the latter being in reality the judge of the quantity of land given by the Alcalde."

The concession of the three thousand varas is by its terms provisional, for it is declared to be "subject to what the general Mining Ordinance indicates"; nor does it purport to be a concession of the tract described, as of so many pertenencias of the mine, but rather a grant of land as a gracia or gift.

The difference is important, for in the one case Castellero (if

the grant were valid) would, under the Mexican laws, have been the owner, not only of the large tract conceded to him, but of all the mines which might be discovered within it; in the other, he would merely have owned the mineral veins within the *pertenencias* allowed by law, while all others within the three thousand vara tract would have remained liable to denouncement by any one who might discover and be ready to work them.

Castillero himself seems to have understood that he was entitled to four *pertenencias*, for in the petition of Castro, which was drafted by himself, there is asked "three *pertenencias* in continuation of the first." It is not, however, very clear, that three additional *pertenencias* are here asked for, or perhaps Castro may have misunderstood Castillero's instructions, for it appears that in his ratification of McNamara's contract, made at Mexico, Dec. 17, 1846, Castillero describes the mine as of three *pertenencias* only. That such was understood to be the dimensions of the mine by all parties in 1846 and 1847, appears not only from their acts of sale, but from the testimony of James Alexander Forbes.

This witness states, that "in 1846 he received from Padre Real possession of the mine, the hacienda, about a mile distant from it, the mining utensils and some ores. No definite extent of land was specified. It was understood that the mine contained three *pertenencias* at that time, but the hacienda was not understood to be within the three *pertenencias*." The possession transferred by him to Walkinshaw in 1847, and again on his return from Tepic received back from Walkinshaw, is stated to have been like the original possession received from Padre Real. It comprised the hacienda and the mine, but no definite tract of land.

In a subsequent part of his examination, he says: "There was only one act of possession which I understood to have been given. This embraced three *pertenencias*, so far as regarded the mine. Three *pertenencias*, and also lands about the hacienda, I understood to have been given to Castillero in 1845."

"These lands were understood to be of the extent of three

thousand varas," he adds; and in the deed received by him from the Robles', and which conveys "all their rights and shares in each one of the *three pertenencias* of the mine," their interest in the lands and hacienda passed, for "by Mexican custom, a sale of barras in a mine includes an interest in the hacienda."

In the possession obtained by Alexander Forbes from Weekes, Alcalde, in January, 1848, four *pertenencias* seem to have been considered the number to which the parties were entitled, and a tract two hundred varas long and eight hundred wide, comprising exactly four *pertenencias*, is designated by the Alcalde.

It is, I think, apparent, that from 1846 down to a late period, the parties interested considered themselves the owners of a mine, with the number of *pertenencias* allowed by law—whether three or four they seem to have been uncertain—and that this ownership, acquired by registration and denouncement, carried with it the ownership of the hacienda or reducing establishment. But they seem to have attached, so far as we can discover from their acts of sale, proceedings at law, etc., little importance to the rights in the large tract six thousand varas square, which the Alcalde assumed to grant them partly on public, and partly on private land. On no other hypothesis can we account for the omission to mention the word "lands" in any of their conveyances during so long a period.

No inference of fraud can, however, be justly drawn from this circumstance, for the same omission is observable in deeds and proceedings *after* the date of the supposed forgery, as before it.

But whatever may have been the notions of the parties as to their rights, it is, I think, plain, that the possession given to Castellero should legally be treated as having included two entirely distinct objects: one, the *mine* properly so called, comprising the pit or "pozo de posecion," with the limited number of *pertenencias* allowed by the Ordinances; and the other, a tract of land six thousand varas square, which the Alcalde assumed to grant, but of which no "*fixed possession was given.*"

This distinction between the judicial possession of the mine,

which the tribunal having jurisdiction of mining matters had a right to give, and a grant of more than a square league of *land*, partly on private and partly on public, is not only admitted but insisted on by the counsel for the claimant. Its importance will appear hereafter when we come to consider the alleged "*ratification*" of the mining possession by the Supreme Government.

By Art. 14, Tit. VI, of the Ordinances of 1783, it is provided, that "Any one may discover and denounce a vein or mine, not only in common land, but also in the private lands of any individual; provided he pays for the land of which he occupies the surface, and the damage which immediately ensues therefrom, according to the valuation of experts appointed by both parties, and a third in case of disagreement. The same being understood with respect to him who denounces a place (*sitio*) or waters for establishing works, and working the machines necessary for the reduction of ores, which are called haciendas; provided, they do not include more land nor use more water than may be necessary."

It is not pretended that in this case any denouncement of a *sitio* or of waters for a hacienda, was made. Had such been the case, and the title to a hacienda duly acquired by the mine-owners, it may well be that, as affirmed by Mr. Forbes, a sale of a *barra*, or share, in the mine would have conveyed, by Mexican usages, a corresponding interest in the hacienda. But the parties appear to have selected and taken possession of this hacienda, relying on the grant of six thousand varas square, made by the *Alcalde*, or on some arrangement made with Berreyesa, the reputed owner of the land.

Antonio Maria Pico, in his last deposition, seems to desire it to be understood that Berreyesa gave an oral assent to the grant, provided it did not include the level land; and in a previous deposition before the Land Commissioners, the same witness testified that a written contract was entered into between Berreyesa and the owners of the mine, by which the former was to have a share in the mine, and was to be paid for the wood and limestone used in the establishment. After the possession was given, Berreyesa demanded a compliance with the

contract, and wrote to Padre Real to that effect. It does not appear that any arrangement was entered into with him. He was soon after killed by the Americans, and the hacienda and tract of three thousand varas in every direction has remained in the possession of the New Almaden Company to this day.

I am unable to perceive how, under these circumstances, and in the absence of any denouncement of the sitio used for a hacienda, Castellero can be deemed to have acquired, by the attempted concession of the Alcalde, any title whatever to lands beyond the limits of the pertenencias which the law allowed.

With respect to these, the Ordinance does not expressly declare whether the denouncer of a vein or mine on private land is required to pay for the land of which he occupies the surface as a condition precedent to the vesting of his title. It would seem that he is not.

The denouncement or formal declaration of discovery is evidently the first step to be taken; the pit is then to be dug and the discoverer is, by the terms of Art. IV, to be put at once into possession. No provision is here made for a suspension of proceedings until the land can be valued and paid for, nor until the expiration of ninety days can the denounee be sure that some one having a better right will not present himself; as the private land-owner is only to be paid for the surface land which is occupied, and the ensuing damage, it would seem impossible to ascertain what amount of surface-land is to be occupied until the number of pertenencias is fixed and their boundaries marked out, which can only be done when judicial possession is given.

The Ordinance seems to contemplate a claim or proceeding instituted by the land-owner; for it provides that the land shall be appraised by experts appointed by both parties. If, therefore, the payment for the land, and satisfaction for damages, are conditions precedent to the vesting of any title to the mine, the land-owner might, by refusing to appoint an expert, indefinitely postpone its acquisition—thus defeating the policy of the Mining Laws, as well as the right of the discoverer, which those laws so fully recognized, and so amply protected. For it is not to be forgotten, that under the Spanish as well as

all other Mining Ordinances, the discoverer was considered the true owner and creator of the wealth he had discovered; and that the grantee of the superficies had merely the right to an indemnity for actual damage done by the occupation of a small portion of the surface. But to hold, under the circumstances of this case, that no title vested by denouncement and discovery, because the claim of Berreyesa was not first satisfied, would be peculiarly inequitable.

The mine, it is true, was generally understood to be on his land, and denounced as such. But no judicial measurement of his land had been made, nor were his boundaries established. It is to this day unsettled, whether in fact the mine is within the boundaries of Berreyesa, or those of his neighbor, Justo Larios, or without both, on public land. Had Berreyesa been paid, as required by the Ordinances, it may yet prove that the payment was unnecessary, because the mine was on public land; or to the wrong person, because it is on the land of Justo Larios. Where land was gratuitously distributed in tracts from one to eleven square leagues in extent, the indemnity which experts would have awarded for the occupation of a few rectangles of the surface, two hundred varas long by two hundred wide, would have been little more than a nominal sum; and to defeat the meritorious title of a discoverer, because under such circumstances the indemnity was not paid, would seem unjust and absurd.

The next question to be considered on this branch of the case is, whether the Alcalde had, under Mexican laws, jurisdiction to receive denouncements, make registrations, and adjudicate the titles of mines.

By Art. IV, Tit. VI, of the Ordinances of 1783, the discoverer was required to present himself before the Deputation of that Territory (territorio), or the one nearest if there should be none there.

It is unnecessary particularly to examine the nature and organization of the Special Tribunals to which the Ordinance refers. It is sufficient to say that they were composed of deputies chosen by the enrolled miners of each mining territory, who themselves were members of the great mining corporation

or body of matriculated miners throughout the Kingdom of New Spain.

These Special Tribunals were in the Federal territory abolished by the Constitution of 1826 and by the law of 1837.

But by the law of December 2d, 1842, Courts of First Instance, composed of three Territorial Deputies elected in the manner prescribed in the Ordinance, were required to be established in each of the Departments by the Governor, in concert with the Departmental Junta, and with the previous approval of the Supreme Government.

To these Courts were given substantially the powers formerly possessed by the Territorial Deputations under the Ordinances.

Under this law mining tribunals were established in various departments—but none were ever organized in the Californias.

It is contended, that inasmuch as these tribunals existed in some parts of Mexico, it was the duty of the discoverer to address himself to the one nearest to his mine; and that that tribunal alone had jurisdiction in the premises.

It is not disputed, as a general principle of Mexican law, that in default of any of the authorized special tribunals, their functions devolve upon the Courts of general jurisdiction. The question then is, was there any special tribunal to which the discoverer of a mine in the Department of the Californias could address himself.

It seems to be considered by the counsel for the United States, that the provision of the Ordinance which directs the discoverer to the Deputation of the nearest territorio, in default of any deputation within his own territorio, of necessity directs him to the nearest Departmental Court organized under the law of 1842, if there be none in his own department. But this provision of the Ordinance is not adopted or alluded to in the law of 1842. The small territorios, in each of which a mining deputation was by the Ordinances of 1783 to be established, in no respect corresponded to the great divisions of the Mexican Republic called "Departments," in a single one of which both the Californias were included. The Deputies under the Ordinances were to be elected in each Real or Asiento of mines by

the matriculated miners "*of that place*" (*lugar*), whose names were embraced in a book kept by the Judge and Notary of that mining place (Mineria).

I am not informed what were the ordinary territorial limits of the Reales or Asientos of mines here spoken of; but it is obvious that they could not have been larger than would be consistent with the convenience of the miners who were required to enroll their names, and every year to vote at elections. When, therefore, it happened that in a newly discovered mining district, no deputation had been elected, the discoverer was reasonably directed to the nearest deputation, which would ordinarily be at no great distance.

But to send him to a remote Department of Mexico on such an errand would be absurd, and a practical denial to him of any right whatever to register his mine. Nor could in such case the other provisions of the Ordinances be complied with; for to what purpose affix notices on the doors of the churches in Chihuahua, that an individual had discovered or denounced a mine in Upper California, and how could one of the Deputies personally go, and within ninety days inspect the mine, examine the pit, and give the possession as enjoined by the Ordinances?

That no such proceedings could have been contemplated by the law of 1842, is also clear from the terms of the law itself. The Governor and Junta of each Department were to establish, as we have seen, as many Courts of First Instance as were required within their limits.

It is to be presumed that the jurisdiction of each of these Courts was restricted to the territorial limits assigned to it; but it certainly did not extend beyond the boundaries of the Department. Art. 26 provides, that "Each one of these Courts shall exercise *within its territory* the executive and economical powers given by the old Ordinance," etc. How, then, can it be supposed that, organized under the authority of the Department, and with its jurisdiction restricted to its territory, it could take cognizance of mining matters in another department, separated from it by hundreds of leagues, and with which communications were rare and difficult.

It is, I think, beyond doubt, that at the time of the discovery of this mine, there were not only no special tribunals in Californias which had jurisdiction in mining matters, but there were none anywhere established in Mexico which possessed jurisdiction to make a registration of a mine discovered in California. On the principle of Mexican law already referred, the functions of the special tribunals, under these circumstances, devolved on the Courts of ordinary jurisdiction—or rather the jurisdiction remained in them, as it had done in the Federal Territory from the adoption of the Constitution of 1824 and the law of 1837 ; it never having been divested in this Department by the establishment of special tribunals under the law of 1842.

If, then, the ordinary Courts had cognizance of mining matters in the Californias, the jurisdiction must have been vested in the Alcaldes, for no ordinary Courts of First Instance existed.

By the decree of May 23, 1839, the judiciary of each of the departments was to be composed of Justices of the Peace, Alcaldes, Judges of First Instance and a Superior Tribunal.

But this organization was not perfected in the Californias, and the Alcaldes in this department appear to have exercised the functions and jurisdiction which would otherwise have belonged to the Courts of First Instance.

In the decree of March 2, 1843, it is stated, that in the Californias there had been no Courts of Second and Third Instance established in the Californias, New Mexico and Tabasco ; and by Act 28th, the Governors of those departments are ordered “ to take care that justice is punctually and completely administered in first instance by Judges of that grade, if there be such, or by Alcaldes or Judges of the Peace. But even if the authority of an Alcalde to take cognizance of mining matters were doubtful, it ought, I think, to be sustained as that of a *de facto* officer exercising an undisputed jurisdiction.

The registration of a mine was a simple proceeding, of which the principal objects were to apprise the Government of its existence, so that it might secure its portion of the produce—to give an opportunity to other persons to show a better right

than that of the alleged discoverer or denouncer, and to subject the latter to the salutary rules of the Ordinance as to its working and preservation. When the discoverer had made known his discovery in the manner prescribed by law, and dug his pit of possession, the law itself gave him the title.

It would seem, therefore, that if the discoverer addressed himself to the only judicial authority of the country, and if that authority, with the knowledge and acquiescence of the Governor and inhabitants of the Department, took cognizance of the matter and adjudicated the mine to him, a presumption in favor of the rightful exercise of power ought to be indulged. Nor should we affirm the Alcalde's acts to be void, except on the clearest proofs that he was wholly without jurisdiction in the premises.

Having thus seen that by the discovery and registration of his mine, and by the possession given by the Alcalde, Castillero acquired a right to the mine, with the number of *pertenencias* allowed by law, I proceed to inquire what number of *pertenencias* he thus became entitled to.

By Art. 1, Tit. VI, of the Ordinances, it is provided that "the discoverers of one or more mineral hills (*cerros*), absolutely new, in which there is no mine nor trial pit open, may acquire in the principal vein which they may select, as many as three *pertenencias*, continuous or interrupted, according to the measurements which are hereinafter prescribed; and if they have discovered more veins, they may have one *pertenencia* in each vein, said *pertenencias* being discovered and marked out within the term of ten days."

Art. 2, Tit. XI, provides: "Although by these Ordinances I prohibit any individual miner who works in the ordinary limits from denouncing two contiguous veins on the same vein—notwithstanding this, I grant to those who work in company, although they be not discoverers, and without prejudice to the right which by reason thereof they may have in case they are such, (*y sin perjuicio del derecho que por este titulo deban tener en caso de que lo sean*), the right to denounce four new *pertenencias* or mines which have been worked and abandoned, even when they are contiguous and on the same course."

It is claimed that, under these provisions, Castellero was entitled as a discoverer to three *pertenencias*, and as one working in company, to four additional *pertenencias*, making seven in all.

The counsel for the United States contends that the allowances of *pertenencias* mentioned in the foregoing articles, are not cumulative; and that four, or the number given to him who works in company, are all that can be acquired.

The determination of this question entirely depends upon the true meaning of the Spanish text. The counsel for the United States insists that the Spanish phrase quoted above reads, when properly translated: "And without prejudice to the right which by this title [viz, that of discoverers] they may be entitled to have in case that they may be such."

That is, that although it was prohibited to an individual miner to denounce two contiguous mines, yet those who work in company may denounce four *pertenencias*, either new and unopened, or old and abandoned mines; and this right is not to prejudice their rights as discoverers, in case at any time thereafter they may *become* such.

If, however, we attribute a present and not a future signification to the verb, the meaning of the phrase would be, that all persons working in company shall have four *pertenencias*, and shall enjoy this right without prejudice to their rights as discoverers, in case *they are such*; that is, all persons working in company shall have four *pertenencias*, and if they be also discoverers, their rights as such shall remain to them.

I do not pretend to be able to determine, from a knowledge of the Spanish, which is the true translation of the phrase. I have therefore addressed myself for information to several persons skilled in that language. They all concur in adopting the translation suggested by the claimants.

There are some general considerations which serve to strengthen my belief in its correctness.

The object of the law was to determine the extent of mining spaces, or *pertenencias*, to be allowed to miners. As the merit of the discoverer was greater than that of one who merely denounced a forfeited mine, and as the policy of

the law was to encourage and reward discoveries, it gave to the discoverer, though working alone, three *pertenencias*, if his discovery were of an absolutely new hill, in which no mine had been opened; but if the discovery were of a new vein in a hill known and worked in other parts, he was allowed to acquire two *pertenencias*. It was also the policy of the law to promote the development of mines by encouraging the formation of companies, the associated capital of which would enable them to prosecute the works on a larger scale and with greater efficiency. Title XI, in the 1st Article, enjoins upon the Viceroy to encourage, promote and protect all such partnerships by all convenient measures.

In furtherance of the same policy, Article 2d gives to all those who work in company the right to acquire either four new and unopened *pertenencias*, or four mines (of one *pertenencia* each) which have been worked and abandoned. The law which prohibited the acquisition of two contiguous *pertenencias* by an ordinary miner, is *pro tanto* repealed, while those which determined the rights of discoverers are allowed to remain.

Such would seem the natural mode of carrying out the evident policy of the law-giver.

For why should the ordinary miner be rewarded with three additional *pertenencias*, because he works in company, and the discoverer only be allowed one additional *pertenencia*?

The law recognizes two species of merit—that of discovery, and that of working in company. If a miner possesses both, ought he not to receive the rewards allowed for both?

The phrase “and without prejudice to their rights as discoverers,” etc., is evidently intended to guard against an interpretation of the provision prejudicial to the rights of the discoverers. It is the exclusion of a possible conclusion which might otherwise have been drawn.

But could it have been supposed that because persons working in company are to have four *pertenencias*, no one of them could have the rights of a discoverer, if at any future time, and perhaps at a distance from his mine, he discovered an entirely new hill? Such a construction of the provisions in favor of

partnerships would have been wholly unwarranted. This could not, therefore, have been the conclusion intended to be excluded. But it might have been supposed that the law, in giving to partnerships four *pertenencias*, meant to fix the maximum number of contiguous mines which the same individuals could in any case acquire. If, as discoverers, they were already entitled to three, the formation of the partnership would give them but one more. Both provisions would thus have been satisfied. Three of the *pertenencias* would be held by a double title,—that of discovery, and that of working in partnership—while the fourth would be given for the latter reason alone.

To guard against this construction, the provision was inserted that the allowance to partners should be without prejudice to their rights as discoverers, in case they were such; and in this view the provision was sensible, and perhaps necessary. It left to each kind of merit its appropriate reward, and gave to the miner who united both in himself all the privileges which the law attached to each.

I am, therefore, of opinion, that under the Mining Ordinances referred, Castillero, as a discoverer and as one working in company, was entitled to seven *pertenencias*.

Having thus ascertained what acts were done and rights acquired by Castillero in California, we will next consider the title claimed to have been obtained by him from the Supreme Government of Mexico.

The facts as alleged by the claimants, are as follows :

Early in 1846, and while he was yet in California, Castillero, impressed with the importance of the brilliant discovery he had made, communicated the fact in two letters addressed to J. J. De Herrera, former President of Mexico, dated at the Mission of Santa Clara on the 19th and 22d February 1846, respectively, and also in another letter written on the last mentioned day to Don Tomas Ramon del Moral, at Mexico.

These letters, together with some specimens of cinnabar and a small flask of quicksilver, were sent by the hands of Lazaro Piña, who sailed from Monterey for Mazatlan in the brig *Hannah*, in the early part of March, 1846.

Extracts from the two letters to Herrera were, it appears,

furnished by him to Señor Moral, and a note embodying these extracts, together with a copy of Castellero's letter to himself, were, by Señor Moral, about the middle of April, 1846, communicated to the Junta de Fomenta y Administrativa de Minería, a body charged with the development and encouragement of mining interests in Mexico, and the administration of certain funds connected with the same object.

There were also transmitted by Moral to the Junta, at the same time, some specimens of cinnabar which had been delivered to him by Piña.

On the 21st April, 1846, the Junta addressed a letter to José Maria Tornel, Director of the College of Mining, transmitting to him copies of Castellero's letters, and the specimens of cinnabar, and requesting that an assay might be made of the latter.

On the 23d April, Tornel, by an order on the margin of the letter of the Junta, directed the specimens to be sent to the Junta Facultativa, or Faculty of the College, for assay.

The result of the assay was communicated to Tornel by Señor Moral, President of the Junta Facultativa, on the 24th April, 1846, and the receipt of this letter was acknowledged on the 29th of the same month by Tornel, who, on the same day transmitted the letter of Moral of the 24th, announcing the result of the assay, to the Junta de Fomento. His official communication on the subject was received by them on the 3d May, and on the 4th, ordered by an "acuerdo" or marginal order to be sent to the Government. On the succeeding day, viz., the 5th, a communication signed by Vicente Segura, President of the Junta, and Isidro R. Gondra, First Clerk, was accordingly addressed to the Minister of Justice, in which was stated the reception of the specimens, and their transmission to the Director of the College for assay. A copy of the communication of the Director of the College, stating the result of the assay, was also embodied in the Junta's letter, and the Minister of Justice was informed that the Junta had already asked Castellero what kind of aid or protection he needed for the encouragement of his brilliant enterprise, etc., etc.

This letter was received by the Minister of Justice on the 9th May, as shown by the marginal note of its contents and recep-

tion, and on the same day the Minister formally acknowledged its receipt in a dispatch addressed to the Junta.

On the 12th May, 1846, Castellero, who had sailed from California in the barque *Don Quixote*, and arrived in Mexico, submitted to the Junta nine propositions in writing, in which he indicated the kind of aid and protection he required. He had previously however appeared before them, given a verbal account of his discovery, and been requested by the Junta to furnish a written statement as to what aid he required.

On the 14th May, 1846, the Junta transmitted the written statement of Castellero to the Minister of Justice, retaining a copy in their own office. In this communication of the Junta, the Government is urged to accept the propositions of Castellero.

Among the propositions thus made by Castellero to the Junta, and by the latter transmitted to the Minister of Justice, were the following :

“7th. The Junta shall represent to the Supreme Government the necessity of approving the possession which has been given me of the mine by the local authorities, in the same terms as those which I now hold it.”

“8th. It shall also represent the advantage of there being granted to me as a colonist two square leagues upon the laud of my mining possession, with the object of being able to use the wood for my burnings.”

The communication of the Junta, inclosing the propositions of Castellero, and urging their acceptance, was received by the Minister of Justice, and on the 20th May, the following “*acuerdo*” was noted on the margin :

“Granted in the terms which are proposed, and with respect to the land, let the corresponding order issue to the Minister of Relations for the proper measures of his office, with the understanding that the Supreme Government accedes to the petition.”

This “*acuerdo*” is signed with the rubric of Becerra, Minister of Justice.

On the same day (May 20th) Becerra addressed to the President of the Junta an official dispatch, as follows :

“ MINISTRY OF JUSTICE }
AND PUBLIC INSTRUCTION. }

“ Most Excellent Sir :—Having reported to His Excellency the President *ad interim* of the Republic, your Excellency’s communication of the 14th inst., with which you were pleased to transmit with a recommendation the petition of Señor Don Andres Castellero, for the encouragement of a quicksilver mine which he has discovered in the Mission of Santa Clara, in Upper California, His Excellency has been pleased to approve in all its parts the agreement made with that individual in order to commence the working of said mine, and on this day the corresponding communication is made to the Minister of Exterior Relations and Government, to issue the proper orders with respect to that which is contained in the 8th proposition for the grant of lands in that department.

“ I repeat to your Excellency the assurance of my esteem.

“ God and Liberty. Mexico, 20th May, 1846.

“ BECERRA.

“ To His Excellency, D. VICENTE SEGURA, }
President of the Junta de Fomento de Minería.” }

On the same day Becerra addressed to the Minister of Relations an official communication, in which he transcribes the foregoing dispatch to Segura, and adds :

“ And I have the honor to transcribe to your Excellency, to the end that with respect to the petition of Señor Castellero to which His Excellency the President *ad interim* has thought proper to accede, that there be granted to him as a colonist two square leagues upon the land of his mining possession, your Excellency will be pleased to issue the orders corresponding.”

In obedience to these orders, the Minister of Exterior Relations, Castillo Lanzas, on the 23d May, 1846, directed an official dispatch to Pio Pico, Governor of California, in which, after transcribing the foregoing communication of Becerra, he says :

“ Wherefore I transcribe it to your Excellency, in order that in conformity with what is prescribed by the laws and dispositions upon colonization, you may put Señor Castellero in possession of the two square leagues which are mentioned.

“ God and Liberty. Mexico, May 23d, 1846.

“ CASTILLO LANZAS.

“ To His Excellency the Governor of }
the Department of the Californias.” }

Upon these last dispatches, viz., that from Becerra to the Junta de Fomento of May 20th, and that from Castillo Lanzas to the Governor of California of May 23d, the claimants rely, as constituting a ratification of the grant by the Alcalde of 3000 varas in every direction, and a concession of two square leagues of land. They also claim that the "acuerdo" or marginal order found in the communication of the Junta of May 14th, 1846, amounts, in equity at least, to a concession of all that the Junta recommended.

The proofs of the foregoing allegations consist of a large number of expedientes from various public offices in Mexico—of certified copies of the actas or minutes of the proceedings of the two Juntas, viz., the Junta de Fomento and the Junta Facultativa of the College of Mining—of certified transcripts of entries in official books of the Ministers, and of the parol testimony of Members of the Juntas, Clerks in the offices by whom the documents were written, and of the Minister himself, Castillo Lanzas, who was the author of the dispatch of May 23d. These witnesses swear, not only to the existence of the archives, the handwriting and the genuineness of the various documents, traced copies of which are produced, and to the accuracy of those copies, but also to the facts stated to have occurred, or to such parts of the transactions as each was personally concerned in.

Some of these witnesses, who were brought from Mexico by the claimants at great expense, have held distinguished official positions, are of advanced years, and independent fortunes.

The United States aver that their testimony is false and perjured; and that the documents sworn to by them are forged and antedated. To arrive at a just estimate of the force of the evidence and reasons on which the United States rely to support this accusation, a brief statement of the nature and amount of the proofs offered by the claimant is necessary.

In the short summary of the evidence which I propose to give, I shall follow rather the chronological sequence of the events alleged to have occurred, than the order in which the various documents were produced.

It will be remembered that the Junta de Fomento was first

notified of the discovery of a mine of quicksilver by Castellero, by receiving from Don Tomas Ramon del Moral a communication, containing copies of letters from Castellero, that this communication was sent to the Director of the College that an assay might be made, and by him referred to the President of the Faculty, who in due time reported the result of the assay to the President, who in turn communicated it to the Junta, and the latter to the Minister of Justice.

There is accordingly produced from the Archives of the College of Mining the original communication of the Junta de Fomento, signed by the President, Vicente Segura, and addressed to the Director of the College, together with copies of the communication of Moral, which, with the specimens of cinnabar, were sent to the Director. The accuracy of the traced copy produced, and the existence of the original in the College of Mining, is testified to by José Maria de Bassoco, for many years a member of the Junta, and by Balcarcel and Castillo, Professors in the College. These witnesses also swear to the handwriting of the dispatch, and of the copies of the letters, to the genuineness of the signatures of Vicente Segura, President of the Junta, and of Gondra, the Chief Clerk of the Junta, who certifies to the copies which accompany the dispatch. On the margin of the dispatch is an acuerdo, or order signed "Tornel," directing it to be sent to the Junta Facultativa. The fact that Tornel was Director of the College, and the genuineness of his signature, are also proved by the same witnesses.

From the archives of the Junta Facultativa of the College, are produced traced copies of the minutes of a session of the Board of the 24th April, 1846 (erroneously dated 24th March). These minutes show a resolution of the Board that a report of what had been done, and the result of the assay made by Professor Herrera, be communicated to the Director of the College. From the same archives is produced a traced copy of the reply of the Director General Tornel to the report of the Board, in which he acknowledges the receipt of a letter from Moral, President of the Faculty, of the 24th April, communicating the result of the assay. The accuracy of these traced

copies, and the existence, genuineness and handwriting of the originals, are proved by the Professors Castillo and Balcarcel, who were present at the meeting of the Faculty, and who not only swear to their personal recollection of the facts, but also testify that the cinnabar was received, an assay made, a meeting of the Faculty on the subject held, and the specimens deposited with appropriate labels in the Cabinet of the College, where they now remain.

From the archives of the Junta de Minería, are produced traced copies of the office copy of the communication sent to the Director of the College, the original of which is found, as we have seen, in the archives of the latter; also, a traced copy of the communication received from the Director of the College, announcing the result of the assay—with a marginal note directing it to be transmitted to the Government, signed by Segura, President of the Junta de Fomento.

There is also produced, from the same archives, a traced copy of the borrador or office copy of the communication thereupon addressed by the Junta to the Minister of Justice, together with a traced copy of his reply, dated May 9th, 1846.

There is also produced from the same archives a traced copy of the borrador or draft of a second communication from the Junta to the same Minister, transmitting to him the petition of Castellero for aid, etc., and recommending it to the favorable consideration of the Government.

A traced copy of the reply to this communication by the Minister of Justice, is also produced from the same archives.

Appended to the expediente containing it, are certificates of Manuel Couto, Secretary of the Administration of the Mining Fund, and in charge of the archives of the Office of Minería.

A certificate of Vicente Segura, certifying to the official character and handwriting of Couto.

A certificate of P. Almazan, Chief Clerk of the Ministry of Encouragement, Colonization, etc., certifying to the official character of Segura, Administrator of the Mining Fund, and to that of Couto, the Secretary, and that the archives of the office are in charge of the latter, and also to their signatures and seals.

A certificate of J. Miguel Arroyo, Chief Clerk of the Min-

istry of Exterior Relations, certifying to the official character of Almazan, and to his signature and the seal of his office.

And, finally, a certificate of John Black, U. S. Consul, certifying to the official character and the signature of Arroyo, and also that he is the person authorized by law to legalize Mexican documents to be used in foreign countries, and that the seal of the Department affixed to the documents is the same used in the legalization of all documents by that officer.

The accuracy of the traced copies, the existence and handwriting of the originals, where those originals are borradores or drafts, and the existence and handwriting of the signatures to the originals, where they are the original communications received by the Junta, are proved by Mr. Bassoco, by the Professors Balcarcel and Castillo, by Miranda and Yrisarri, who were employed in the Ministry of Justice, by Manuel Couto, who testifies that he copied Castellero's petition from his rough draft, and by Castillo Lanzas, the former Minister of Relations of Mexico.

From the archives of the Ministry of Relations, to which the archives of the Ministry of Justice have been transferred, are produced traced copies of the communication addressed by the Junta to the Minister of Justice, informing him of Castellero's discovery, and embodying the communication received by the Junta from the Director of the College, informing the Junta of the results of the assay.

A traced copy of the draft of this communication, as we have seen, is produced from the archives of the office from which it emanated. A traced copy of the borrador or draft of the Minister's reply to this communication, is also produced from the same archives, in all respects conforming to the original reply, a traced copy of which, as before stated, is produced from the archives of the office to which it was directed.

There is also produced, from the same archives, a traced copy of the communication of the Junta, inclosing and recommending Castellero's petition, corresponding with the borrador produced from the archives of the Junta, and a traced copy of the borrador of the reply of the Minister, in like manner corresponding with the original produced from the archives of the Junta.

On the margin of the communication of the Junta is the usual membrete or memorandum of its contents, and an "acuerdo" or order of the Minister in regard to it. The latter is signed with the rubric of the Minister, and the official dispatch transmitted to the Junta conforms entirely to the acuerdo or resolution taken on the subject, and noted in the margin of the communication. There is also produced from the same archives a certified copy of the draft of the communication addressed by the Minister of Justice to the Minister of Relations.

From the archives of the Ministry of Relations is produced a traced copy of this last communication of the Minister of Justice, the borrador of which is found in the office of the latter; and a borrador of the communication or dispatch addressed, in pursuance of the order of the Minister of Justice, by the Minister of Relations, Castillo Lanzas, to Pio Pico, Governor of California. And, finally, the claimants produce from their own custody, the original of the last mentioned dispatch, signed by Castillo Lanzas, and addressed to the Governor of California.

It may here be observed, that from the Archives of the Ministry of Relations is also produced a traced copy of the communication of Pio Pico, of February 13, 1846, addressed to the Minister of Relations, informing him of Castellero's discovery, and transmitting Castellero's letter of December 10th, 1845. There is also produced from the same Archives a traced copy of the borrador of the reply of the Minister, dated April 6th, 1846.

We have already seen that the borrador of Pico's communication, and the original of the Minister's reply, are found among the Archives of California in this city. Their genuineness is undisputed.

To the traced copies from the Archives of the Ministry of Justice are affixed the certificate of Arroyo and seal of his department, as also the certificate of Black, the United States Consul, in the same terms as those already mentioned.

The accuracy of the copies, the existence of the originals in the Archives of the offices to which they belong, their handwriting, and the genuineness of the signatures they bear, are sworn to by the escribientes, or clerks, by whom they were

copied, some of whom are still connected with the Ministries by M. de Bassoco, and by the ex-Minister Castillo Lanzas himself.

There is also produced a traced copy of an extract from a book now existing among the records of the Ministry of Justice. It contains various entries or notes, purporting to have been made from May 11th, 1846, to May 20, 1846. Amongst those made on the 20th, is an entry of the membrete or memorandum of contents of the Junta's letter to the Minister of May 14th, and of the acuerdo or resolution taken by the Minister on the subject. On the top of the first page on which the communication of the Junta is written, are found these letters and figures: "L. g^l 15, S. f. 140 v^{ta}."

José M. Yrisarri, the Fifth *Oficial* of the Ministry of Justice, being interrogated as to the meaning of this inscription, testifies that it means "Libro General, vol. 15, reverse of page 140," and that the entry already mentioned is found in the volume and page referred to. He further states that this inscription, or reference, was made by himself, as was also the entry on the book to which it refers.

The original dispatch of Becerra to the Minister of Relations, is stated by Miranda and Yrisarri, to be in the handwriting of the former. The "acuerdo" on the margin is said by Castillo Lanzas to be in his own handwriting and signed with his genuine rubric; and the draft of the dispatch addressed by him to Pio Pico, to be in the handwriting of Mr. Quintanar, an employé of the Ministry of Relations in 1846. The original dispatch addressed to Pio Pico is proved to be in the handwriting of A. J. de Velasco, by Castillo Lanzas and by Velasco himself. The signature of Castillo Lanzas is proved by Lafragua, former Minister of Relations in Mexico, by Velasco, who wrote the dispatch, and by Castillo Lanzas himself.

It is also testified by Mr. Negrete, that this identical dispatch was handed to him in December, 1846, by Castellero; that a copy of it was inserted in the instrument by which Castellero ratified the McNamara contract, and the original sent by him (Negrete) to Alexander Forbes, of Tepic, on the 19th December, 1846.

In corroboration of this statement of Mr. Negrete, there is produced a series of letters written by him to Alexander Forbes, from December 5th, 1846, to February 6th, 1847. In these letters Mr. Negrete informs Mr. Forbes of the state of his then pending negotiation with Castellero; and in his letter of December 18th, advises him that he transmits "the document showing the grant which the Supreme Government made in favor of Don Andres Castellero for two leagues of land," etc.

These letters, which Mr. Negrete swears he saw for the first time since they were written, when produced to him by the claimants in this country, he testifies are in his own handwriting and that of his clerk, Oruña, and signed by himself. He also identifies three checks or orders drawn by himself on his banker, Don Donato Manterola: one in favor of Castellero for four thousand dollars, and receipted by the latter, and two in favor of Don Nazario Fuentes, the Notary, for one hundred and thirty-seven dollars and twenty-five cents, and twenty-nine dollars and seventy-five cents, respectively, both of which are receipted by Fuentes.

The testimonio or authenticated copy of Castellero's instrument of ratification, containing the Lanzas dispatch, is exhibited. It is signed by Nazario Fuentes, the Notary Public, whose signature and *signo* are attested by three Notaries Public in a certificate under the seal of the National College of Notaries of Mexico, dated December 19, 1846.

A second copy of the same instrument, issued from the office of the Notary Fuentes under his hand and seal, is also produced. It is dated February 6, 1847, and is certified by three Notaries Public, under the seal of the National College of Notaries. Among the three Notaries signing these certificates is Mr. Villalon. This gentleman has been examined as a witness. He testified that his signature and *signo* on each of the certificates are genuine, that they were affixed at their respective dates, that the signatures of the other Notaries are genuine, as is also the seal of the National College. It is also shown that this instrument of ratification was brought to California by Mr. Walkinshaw, in 1847, when he took charge of the mine; and the terms of James Alexander Forbes' ratifica-

tion, in which the language of Castellero's Act is copied, show that the latter must have been before him when writing his own ratification of the McNamara contract—a conclusion rendered certain by the very distinct allusion in Forbes' letter of May 5th, 1847, "to the possession of two sitios ordered to be given by the dispatch of Señor Castillo Lanzas."

The claimants have also produced from the Archives of the Junta de Fomento, traced copies of the original borradores, or drafts, of the minutes of the Junta in April, May, September, November and December, 1846; also a traced copy of the clean copy made from those minutes, and authenticated by the rubrics of the members of the Junta who assisted at the sessions; and finally a copy of the entire Volume 3d of the Minutes of the Junta from April 2, 1846, to June 30, 1847.

In these Minutes, amongst a great number of other entries, we find a record of the action of the Junta from the reception of the specimens of cinnabar to the payment of the Notary Calapiz, when further proceedings were abandoned.

In the Actas of the session of April 23d, 1846, is an entry of the receipt of specimens of cinnabar from the Presidio of Santa Clara, in California, and a resolution that they be sent, with copies of Castellero's letters, to the Director for assay.

On the 4th May, the receipt of the letter of the Director inserting the report of the Junta Facultativa is noted, and it is resolved that it be transcribed to the Supreme Government, representing that a reply has been made to Señor Castellero, asking him what kind of protection or assistance he requires.

On the 6th May, the Actas show that Don Andres Castellero appeared and made a verbal report, etc., and the Junta resolved that Señor Castellero should present his indications in writing. On the 14th May, the receipt of the communication from the Minister of Justice dated May 9th is noted.

On the 25th May, is a like note of the receipt of Becerra's dispatch of the 20th, approving the agreement made with Castellero, etc., and a resolution of the Junta that the proper judicial agreement be drawn up immediately, etc.

On the 29th May, is a note of an order for the payment of twenty-five dollars to the notary Calapiz, for proceedings in

the instrument of agreement which had been made with Castellero to assist his quicksilver enterprise, etc.

The accuracy of the traced copies of the *Actas* is testified to by Mr. Bassoco, who compared them with the originals; and he also proves the existence and authenticity of the originals in the Archives of the Junta, and the genuineness of his own rubrics and those of his colleagues affixed to them.

The claimants have also produced, and filed as an exhibit, an original report made by the Junta de Fomento to the Minister of Justice, relative to the matters confided to its care. This report is embodied in a report made to the National Congress by José M. Lafragua, Minister of Relations, and read before that body on the 14th, 15th and 16th December, 1846.

The original manuscript "Memoria," or report by the Junta, is stated by Mr. Bassoco, to have been procured by himself from Escalante, the agent of Lafragua. Its proper place of custody was the Ministry of Relations, but M. de Bassoco supposes that it had probably been taken by Mr. Lafragua to his own house, when the latter was preparing his report to the National Congress, and accidentally remained among his papers. He identifies the signatures and rubrics of Vicente Segura and Isidro R. Gondra, which are affixed to it, and states his conviction that it is the identical document sent in by the Junta to the Minister.

On referring to the "Actas" of the Junta, we find it noted on the 5th November, 1846, that a dispatch was received from the Minister of Relations, dated November 3d, calling for an account of the labors of the Junta, to be furnished within eight days.

It also appears, that on the 9th the reading of the report was commenced; that it was concluded at the session of the 16th, and a resolution adopted, that the report should be transmitted to the Government; and that on the 5th December, a communication from the Minister acknowledging its receipt was received by the Junta.

Two copies of the Report of Lafragua, in which the Memoria was embodied, are also offered in evidence by the claimants. It is a printed volume of considerable size.

Of these copies, one was originally produced by the claimants, and identified by Mr. Lafragua, Mr. Bassoco and others.

A second copy has recently been produced and identified by the Hon. J. P. Benjamin, one of the counsel in the cause, as having been received by him in 1849, from Don José Garay, the validity of whose grant he was then investigating. The volume remained in Mr. Benjamin's possession until about two years ago, when Mr. Rockwell, also of counsel for claimants, called on him to retain him in this cause. In the course of conversation Mr. R. alluded to an official report of Mr. Lafragua, which, in his opinion, contained conclusive proof of the genuineness of the title of the claimant. From his description Mr. Benjamin thought he recognized the volume in his possession as the one referred to, and immediately procured it from an adjoining room. On examination it was found to contain the passages relating to the discovery of the mine, etc., which are found in the copy previously produced by the claimants. Mr. Benjamin was not, until that time, aware that it contained anything in reference to the mine. At Mr. Rockwell's request, he allowed him to retain the volume, which he recognizes as the one now produced.

The claimants have also offered in evidence files of the "Diario," the "Republicano," and the "Monitor Republicano," newspapers, in which the reading of Lafragua's report on the 14th, 15th and 16th December, 1846, is noticed.

It is unnecessary to extract at length the passages in this report, in which reference is made to Castellero's discovery, and the action of the Government upon it.

They merely contain an account of the presentation of the specimens to the Junta by Señor Moral—the assay, the inquiry of Castellero as to the assistance he desired, his petition, and the Junta's agreement to it; the approval of the agreement by the Supreme Government, and the failure to carry it into effect owing to the order of the Supreme Government of May 10th, 1846, directing the suspension of all payments from the public Treasury.

In the foregoing statement of the documentary and other proofs on which claimants rely to show the action by the

Mexican authorities in reference to the important discovery of Castellero, much evidence as to various handwritings, signatures, etc., has been omitted.

Enough has been set forth to show the nature and the force of the proofs offered in support of the genuineness of the documents exhibited.

It will be seen that these proofs do not consist of any one set of papers derived from a single office, the archives of which might have been falsified and the officials corrupted.

Each document is found in two and some in three distinct repositories. The borradores, are produced from the offices from which the communications emanated—the originals from the offices to which they were sent—and in some instances the communications are, according to the Mexican custom, inserted in dispatches from the office to which they were originally directed, and those dispatches are found in the archives of the Ministry to which they are addressed.

All the papers are so intimately connected and complicated with each other, that it is almost impossible to suppose any one to have been fabricated unless the whole series be spurious. They are written in various handwritings, with a multitude of signatures, rubrics, etc., of well known individuals attached to them. The same document contains, in some instances, no less than four different handwritings—viz., that of the clerk who drew it, of the official who signed it, of the clerk who wrote the membrete and acuerdo, and that of the Minister by whom the latter was signed.

The writing is sworn to be that of clerks attached for many years to the offices from which the papers emanated. Their handwriting must therefore be well known, and a forgery of it could readily be detected.

When we consider the long series of forgeries, and the almost innumerable perjuries which must have been committed if these documents are not genuine, the crimes imputed to the witnesses are as appalling as the extent and almost endless ramifications of the conspiracy to commit them are incredible.

We must suppose that Professors in a National College, forsaking their scientific pursuits, have carefully fabricated

false minutes of the proceedings of the Faculty of which they were members; that they have made a tedious and dangerous journey to sustain, by carefully prepared perjuries, the forgeries they had committed; and that they have had ingenuity and depravity enough to give to their statements the appearance of truth, by inventing circumstantial details as to the reception of the specimens, the assay made of them, their deposit in the cabinet of the College, and even the purport of the tickets or labels upon them, which as they state can be seen by any visitor to the College.

With regard to the Junta de Fomento, the forgeries and perjuries imputed are still more complicated and improbable. Not only must the various dispatches alleged to have been addressed by them to the Director of the College, and to the Minister of Justice, with the signatures of the President of the Junta and of the Secretary, the handwriting of the clerk who drew the marginal notes upon them, and the rubric of the Minister appended, have either been forged, or falsely sworn to have been written at their dates, but a series of *actas* which record the proceedings and resolutions of the Junta must have been fabricated, or extensively interpolated, and the rubrics of the members forged. And, as if reveling in supererogatory crimes, they must also have fabricated the borradores, or rough drafts, from which the clean copies of the minutes were made out—the existence of which would hardly have been suspected, and which it would naturally be supposed had been destroyed.

They must also have prepared a voluminous report to the Minister, in which has been inserted an account of these proceedings, precisely such as, if they had taken place, we should expect to find. The manuscript of this report, which is claimed to have been accidentally left among the private papers of the Minister to whom it was addressed, must have been forged, or the interpolated passages inserted in it, in a manner to defy detection. And they must also, at least as early as 1848, or in the beginning of 1849, before this case was presented or a tribunal constituted to decide upon it, have procured the same interpolations to be made in the printed report of the Minister Lafragua, read to the National Congress in December, 1846,

a copy of which was in the hands of Mr. Benjamin at least as early as the fall of 1849.

After procuring these various forgeries and interpolations to be made, the claimants must have induced numerous witnesses to elaborate and swear to a series of perjuries—minute, circumstantial and plausible—the invention of which displays nearly as much skill and ingenuity as the testimony in regard to them, if false, discloses moral turpitude.

They must have succeeded in suborning, not merely a few nameless and obscure individuals, but numerous persons in high official and social positions; and especially Mr. de Basoco, a gentleman venerable for his years, and respectable for the singular intelligence and amenity with which he sustained the protracted, acute, and most searching cross-examination of the counsel for the United States.

They must also have procured two ex-Ministers of Relations to perjure themselves, not merely by false testimony before a Commissioner in Mexico, but in Court, within our jurisdiction and subject to our laws, with a full knowledge that the Government alleged the claim to be spurious, and that no efforts would be spared to detect and punish those who were concerned in the supposed conspiracy to defraud it.

Again, this vast conspiracy, from its nature, could not have been successfully carried out without the complicity or connivance, not only of nearly all the officials in the various offices at the alleged dates of the papers, from the lowest probationary clerk or "meritorio," up to the Minister of State himself, but also of those officers employed when the forged papers were afterwards placed in the Archives, as well as of all those who still more recently have certified to their genuineness; and yet, from all these persons concerned in or cognizant of the crime, no whisper has been heard betraying the important secret. Mr. Black, the United States Consul, continues to attach his certificate to the papers without suspecting that he might be lending his aid to a conspiracy to defraud his own Government; and Mr. Forsyth, the United States Minister to Mexico, and for some time resident at the Capital, examines the documents at the various Ministries, and states that "they

are found in the several offices where they appropriately belong, were produced by the officers having custody of them, and that he saw nothing whatever to cause him to doubt their being genuine originals."

But the proofs of the genuineness, in part at least, of the documents obtained from Mexico, are obtained from another and an unquestionable source.

Among those documents was found, as has been mentioned, the dispatch of Pio Pico, with the original letter of Castellero of December 10th, 1845, conveying to the Supreme Government the first news of the discovery. There was also produced a traced copy of the borrador of the reply of the Minister.

It is stated by counsel, that the reception of these documents from Mexico first suggested to them the propriety of instituting a search for evidence of the correspondence in the Archives in the Surveyor-General's office.

The search was accordingly made, and there was found the draft of Pio Pico's letter to the Minister, the original of the Minister's reply, together with a letter from Castellero, clearly referring to a previous one of the 10th December.

I am not aware that the genuineness of these documents produced from the Archives in this city is questioned.

It thus appears that the Archives from Mexico are corroborated on the only points where, from their own nature, they were susceptible of corroboration by other records.

The existence of the documents now relied on to establish the title of the claimants, at least as early as the spring of 1847, and prior to the date of the supposed forgery, is also shown by testimony adduced by the United States.

We have already seen, that in James Alexander Forbes' letter of May 5th, 1847, he alludes to "the possession of two sitios ordered to be given by the dispatch of Señor Castillo Lanzas."

In his letter of July 14, 1847, he speaks of the "two leagues conceded to Castellero and socios," and throughout his correspondence frequent and unmistakable allusions occur to the Lanzas dispatch, with reiterated expressions of distrust of its validity.

The same objections made to the document in 1847, are repeated and enforced up to February, 1850, long after the date of the alleged forgeries, but without the slightest intimation that during that interval a second Lanzas dispatch had been fabricated. The document now exhibited is open to all the objections, and liable to every criticism originally made, and so constantly repeated, to the document received by Mr. Forbes in 1847. He complains, in 1850, that his suggestions relative "to the attainment of the important document," explained in his memorandum left at Tepic, in 1849, have not been acted upon. He expatiates upon the insufficiency and discrepancies of the Castillo Lanzas dispatch; but he nowhere breathes a word of reproach or complaint that an abortive and absurd forgery had been committed, the only result of which had been to leave the title as "imperfect and ambiguous" as before.

Had such been the case, we learn enough of Mr. Forbes' disposition from this correspondence to feel sure that reproaches would not have been spared.

There is one other consideration, and it is the last to which I shall advert, which naturally leads us to infer, independently of the proofs, that some proceedings similar to those alleged to have been had, must have taken place in Mexico.

So far back as the Ordinances of 1783, quicksilver had been the subject of distinct and special legislation. The fact that it was indispensably necessary to the extraction of the precious metals, gave to it an exceptional character, and an ample and cheap supply of it had been recognized as essential to the development of the mineral wealth of Spain and Mexico.

It is unnecessary to recapitulate the various decrees and laws of those countries designed to promote the discovery and production of this metal. It is sufficient to say, that out of the public revenues of Mexico a part had been devoted to the formation of a fund called the "Fondo de Azogues," to be used in searching for and developing mines of quicksilver. On every quintal produced a bounty was paid, and to those who should succeed in producing a specified quantity per year, a large sum of money was to be given.

The hope of discovering rich mines of quicksilver within the Republic had led the Junta to institute expensive explorations in various parts of the country, and on all sides it seems to have been considered a national object of primary importance to liberate the Republic from its almost entire dependence on the mines of Almaden, from which the chief supply was obtained.

When, therefore, Castellero discovered a mine of which the "ley" surpassed in richness any that had previously been known, and when shortly afterwards he proceeded to Mexico, it is not conceivable that he should have neglected to inform the Junta of his discovery, and requested of it the assistance in the prosecution of his enterprise which it was one of the most important objects of its institution to furnish. That he would have desired the ratification of his mining possession, and especially a grant of two leagues, we may infer from the fact that he had already solicited a similar grant from the Governor of California.

That the Junta would have received the announcement with the utmost satisfaction, and zealously co-operated with him by recommendations to the Supreme Government, and aiding him by all means in its power, we might conclude even without any proofs of the facts; and proceedings similar to those alleged to have occurred, would have been the natural and almost inevitable consequence.

These proceedings may, it is true, have been interrupted by the breaking out of war and the alarming condition of public affairs; nor do the considerations last suggested authorize us to assume that the dispatch of Becerra, or that of Lanzas, were in fact written at their dates; but they justify the conclusion that the proceedings were initiated, and that the records of them produced from Mexico are at least in part genuine.

Having thus given an imperfect summary of the proofs offered by the claimants, I proceed to consider some of the objections urged on the part of the United States.

It is contended that neither Lazaro Piña, who is alleged to have carried the specimens of cinnabar to Mexico, nor Castellero himself, could have arrived in that city at the time indicated by the documents produced. If this be true, and an *alibi* can be

proved as to those persons, we may well regard with suspicion documents found to be false in so important a particular. But the proofs offered by the claimants on these points are too clear to admit of doubt.

We have already had occasion to notice the letters addressed by Castellero while in this country to Gen. M. G. Vallejo, at the christening of whose child he had assisted, and who thus became his compadre.

In a letter adressed to Vallejo, and dated February 21, 1846, Castellero says: "By the brigantine schooner which brought these communications" [referring to communications spoken of in the preceding sentence of the letter] "we have received information," etc. "*This vessel sails shortly, and will carry communications of what has occurred lately. Myself or Piña will leave in it, or both together. I am only detained waiting the arrival of the division which may touch here in a day or two.*"

In another letter, dated March 11, 1846, to the same person, he says: "Piña embarked on the 4th of this month in Monterey, and was dispatched in perfect order. He will travel post to Mexico."

These letters are produced by General Vallejo. He swears that they were received shortly after they were written. The signature and handwriting of Castellero are not disputed. If antedated, they must have been written by Castellero in Mexico, and sent on to Vallejo to be produced and sworn to by him—a supposition extravagant in itself, and disproved by the intrinsic evidence of the letters themselves, which contain allusions to passing events, and are couched in a style impossible to invent after the lapse of years.

In corroboration of this statement, the consular books of Mr. Larkin, then United States Consul at Monterey, have been produced. They are identified by Mr. Swasey, the consular clerk at the time. From these books it appears that the brigantine schooner "Hannah" was noted as about to sail for Mazatlan on the 4th of March, the day on which Castellero supposed she had actually sailed. It also appears that the Consul, desirous of sending dispatches to the United States, detained her three days, and a note in his memorandum book shows that she in fact sailed on the 7th.

Shortly after the sailing of the *Hannah*, becoming alarmed for the safety of Colonel Frémont, who was then encamped on the peak of Gavilan, and expecting an attack, Mr. Larkin sent by a special courier dispatches to Santa Barbara, in the hope of intercepting the *Hannah* at that port, and of having them conveyed by him to Commodore Sloat at Mazatlan.

That the *Hannah* arrived at Mazatlan on the 1st April, we learn from various sources.

1st. The "Diario Oficial," a newspaper published in the City of Mexico, contains in the number published on the 22d April, under the head of "Marine news. Mazatlan,—arrivals of vessels," a notice of the arrival at Mazatlan, on the 1st April, of "the American brigantine schooner 'Hannah' of eighty-nine tons, Captain Benjamin F. Thusum, and a crew of ten men."

2d. From a letter of Mott, Talbot & Co., merchants of Mazatlan, addressed to Mr. Thomas O. Larkin, and found among his papers since his decease.

This letter is dated "U. S. S. Portsmouth, 1st April, 1846," and informs Mr. Larkin that his letters have this moment arrived "per 'Hannah.'"

3d. Mr. Larkin's letter to Capt. Gillespie, a copy of which is found in his consular book, which Mr. Swasey swears to have written himself.

In this letter Mr. Larkin says: "Capt. Montgomery, of the Portsmouth, being under sailing orders (the 1st or 2d instant), was waiting at Mazatlan for the Mexican mail when Commodore Sloat heard *per brig Hannah*, of the situation of Capt. Frémont near St. Johns, and immediately dispatched the ship; she was twenty-one days from Mazatlan to Monterey."

4th. The positive statement of Mr. Swasey, clerk to Mr. Larkin, that the latter sent dispatches by the brig *Hannah*, in March, 1846, in consequence of which the Portsmouth came to Monterey.

These proofs leave no room for doubt as to the sailing of the "*Hannah*" from Monterey, in the early part of March, with Piña on board as a passenger, unless, indeed, we adopt the theory of the Government, and assume that the letter of Cas-

tillero to Vallejo is forged, and that the latter has committed perjury; that the notes of entries and departures in Larkin's consular book are also forged; that the letter of Mott, Talbot & Co., is forged; that the letter of Larkin to Frémont, of March 8th, as also his letter to Capt. Gillespie of April 23d, are forged; that a number of the "Diario Oficial," purporting to be dated April 22d, has been prepared and procured to be printed, and a false entry of pretended marine intelligence from Mazatlan inserted in it; and, finally, that Mr. Swasey, and probably Mr. Larkin's son, have committed deliberate perjury in swearing to the genuineness of the books and papers of the deceased Consul. All this we must assume on the faith of a single statement made by Captain Paty, of the bark *Don Quixote*, to the effect that "Don Andres Castellero and his servant (*Lazaro Piña, I think, was his name*), were passengers" on board his vessel, on her voyage from Monterey, in April, 1846. But, even supposing that Capt. Paty's memory is accurate, and that Lazaro Piña did not sail in the *Hannah*, but remained to accompany Castellero in April, it only proves that the latter was mistaken when he wrote to Vallejo from Santa Clara that Piña had embarked on the 4th March from Monterey. It may have happened, that in the three days during which Larkin detained the *Hannah*, something occurred to induce Castellero to countermand his orders to Piña, and to send his letters and specimens by another hand; for, it must be borne in mind, that proofs of the precise mode in which a few letters and specimens of ore were sent to Mexico fourteen years ago, cannot reasonably be exacted of the claimants. It is surely enough if they show that a vessel sailed about the time supposed, in which Lazaro Piña, or any other messenger of Castellero, might have been a passenger. If the United States contend that the letters and specimens were not and could not have been received in Mexico at the time indicated in the documents produced from that city, and therefore that those documents are false, it is for them to establish the fact.

It is also suggested that Castellero was not in Mexico at the time at which he is alleged to have presented himself before the Junta de Fomento.

The evidence relied on by the United States to support this assertion, consists of a publication in an evening paper in Mexico, of the 6th May, 1846, of the receipt by the Government at the last moment before the paper went to press of important intelligence from California. As this intelligence was undoubtedly contained in the dispatches sent by the vessel which carried Castillero, it is inferred that he could not have arrived in time to be present on the 6th at a meeting of the Junta; and therefore that the actas are false.

That Castillero might have reached Mexico in the first days of May, is evident from the fact that he left Acapulco on the 24th April.

As to the precise time at which the dispatches of which he was the bearer, or which had been sent by the vessel which conveyed him to Acapulco, arrived in Mexico, we have no means of ascertaining, except from the publication referred to.

The paper purports to have been published at 3 o'clock, P. M. of the 6th; as the dispatches were addressed to the Government, and not to the newspaper, it may be assumed that they were first delivered at the appropriate Ministry. What the diligence or energy of Mexican journalists may be, in obtaining the latest news, and how long an interval would probably elapse before they would possess themselves of the contents of a Government dispatch, we are wholly uninformed. That the news was communicated to the newspapers shortly after 12 M. of the 6th, may be inferred from the fact that it was in print at 3 P. M. It is not surely unreasonable to suppose that the dispatch reached the Government on the previous evening, or early on the same morning. I see no reason why Castillero might not, after delivering his dispatches, have presented himself to the Junta on the same day. It appears from the minutes of the session of the 4th, that having learned the result of the assay, the Junta had made a reply to Castillero, asking him what aid he required, Castillero would naturally therefore have presented himself to the Junta immediately upon his arrival; for, besides the invitation of the Junta, and his other reasons for expediting the business, he had engaged the master of the "Don Quixote" to remain for him

at Acapulco on her return voyage. This Captain Paty testified he did. But after waiting at Acapulco from the 21st April to the 18th May, he received news that Castellero would meet him at Mazatlan or San Blas. He touched at those places, but heard nothing of him. The circumstance, apparently unimportant, that Castellero determined to rejoin the vessel at Mazatlan, and not at Acapulco, as originally intended, is in precise accordance with the arrangement alleged to have been entered into by him with the Junta, viz: that he was to receive the sum of \$5000 in the form of a draft on Mazatlan.

The importance of this incidental corroboration is perhaps not great. It seemed, however, worthy of mention.

But with regard to the inferences sought to be drawn against the genuineness of the actas, from conjectures as to the probable time of the arrival of the dispatches in Mexico, it seems to me obvious, on any hypothesis, that those dispatches must have been delivered, and Castellero have arrived in Mexico, in time for him to present himself before the Junta on the 6th, as their minutes show.

From the foregoing, it appears that the evidence on the part of the United States is insufficient, not only to disprove, but even to raise a doubt as to the fact of the reception of Castellero's letters and specimens, or of his own appearance before the Junta at the dates mentioned in the actas of that body.

But it is objected that the documents produced from Mexico are not admissible in evidence.

This objection is based on the ground that all muniments of title are incident to the land, and pass with it as if a part of it.

That, therefore, all Archives of Mexico relating to the disposition of public lands in California, were included in the treaty and passed to the United States with the cession of the soil. It thus became the duty of the political power to execute the treaty with reference to the muniments, as well as the land, and until that is done, and the political power obtains those muniments and presents them to the Courts, the latter cannot judicially recognize their existence.

No authority directly in point has been cited in support of this position, but a vivid picture has been drawn of the possi-

ble evils which might result if adverse claims to the lands of the United States were allowed to be set up, founded on alleged public records existing in a foreign country, and proved by the depositions and certificates of foreign officials.

It will be seen that this objection would apply, although the genuineness and the sufficiency of the documents to convey title were undisputed. If a public and formal grant of a certain tract had been made, to establish which and to show the proceedings which led to it, evidence from the Mexican Archives were necessary—if the Congress had by law conveyed a title to an individual, of which the only evidence existed in the reports of committees and the journals of that body, the principle contended for would require the Court to reject all such documentary evidence, no matter in what way proved or authenticated; for they are to be rejected, *not* because their genuineness is doubtful, but because they *are* Archives and muniments of title to land.

It is admitted that, as a general rule, the right to muniments of title passes with the land, and he who owns the latter is owner of the evidences of his title to it.

But in the cases submitted to this Court under the Act of 1851, the inquiry always is,—who is the owner, the United States or a private individual?

The United States, in consenting to be sued, and in submitting her rights to the determination of Courts, has abdicated, *pro tanto*, her prerogatives as a sovereign, and appears before the Court precisely as any individual who asserts an ownership in land.

To say, then, that all muniments of title belong to the United States as owners of the land, and cannot be noticed by the Courts until commended to them by the Political Department of the Government, is to assume the very point the suit was instituted to determine; for the question is—does the United States own the land? The claimant avers that she does not, and never did, and in support of his claim he produces muniments of title which, on the very principle contended for, belong to him and not to the United States, for they are the muniments of title to his own land.

I cannot perceive, therefore, that the familiar doctrine of the common law, which regards title deeds as incident to the land, and as passing with it, has any application.

In the argument submitted by the counsel for the United States, the distinction seems to have been lost sight of between the political rights of the United States as a sovereign and her purely proprietary rights as an alleged owner of land, which are alone passed upon in this class of cases.

In defining the boundaries of the Territorial Sovereignty of the United States; in determining whether a particular tract is within the limits of a territory, the sovereignty of which has been ceded by treaty to the United States, the Courts must always adopt the construction given to the treaty by the Political Department (*Elam vs. Neilson*, 11 Peters R. 282). But when the United States consent to appear merely as a suitor in the Courts, and to litigate her rights with an adverse private claimant, the rights of both must be determined by the application of the ordinary rules which prevail in actions between private individuals.

It is remarked by the counsel for the United States: "If the Judiciary were authorized to say what land was intended to be transferred, and what papers as muniments of title and incidental to the land, it might designate land and accredit papers which the political department did not, and thus conflict might arise within the Government itself."

But this is precisely what the highest authority of the Nation has, by the law of 1851, enjoined upon the Courts to do. The very object of that law was, that the Courts *should* ascertain what lands passed to the United States by the Treaty, and what lands were private and did not pass. The question, by that law, was converted from a political into a judicial one, and no conflict could possibly arise, for the political and all other departments are by law required to be governed by the decision of the Court, which determines what is public land belonging to the United States, and what is private land belonging to individuals.

There is something repugnant to reason and justice in the idea that the United States, after consenting to appear as an

ordinary litigant before the Courts, and submit her proprietary rights to their determination, should suddenly, in the midst of the suit, throw off her character as a mere party to a suit respecting the ownership of land, or rather, without ceasing to be such, should resume and assert her sovereign rights, and announce to her antagonist that evidences of title he offers, though genuine and conclusive, shall not be admitted by the Court unless presented to it through and by herself; while, at the same time she refuses to obtain them from the foreign Government, or to receive them if offered, or to present them to the Court if received.

Compared with such manifest injustice, the evils which might result from possible impositions practiced on the Courts by means of forged archives, etc., are insignificant.

I think the general objection to the admissibility of the documents because they are Mexican archives, not recognized as such by the political department of the United States Government, cannot be maintained.

Assuming, then, the documents from the archives of Mexico to be genuine and admissible, I proceed to consider their legal effect:

1. As to the alleged ratification of acts of the Alcalde Pico. This ratification is supposed, by the claimants, to be contained in the dispatch of Becerra to the Junta, of May 20, 1846, and in the marginal "acuerdo" on the letter of Vicente Segura, signed with the rubric of the same Minister.

The dispatch of Becerra announces, as we have seen, to the Junta, that "His Excellency [*i. e.* the President] has been pleased to approve, in all its parts, the agreement made with that individual [*viz.* Castellero,] in order to commence the working of said mine."

The "acuerdo" on the margin of Segura's communication is as follows: "Granted, in the terms which are proposed, and with respect to the land, let the corresponding order issue to the Minister of Relations for the proper measures of his office, with the understanding that the Supreme Government accedes to the petition."

An "acuerdo," or order on the margin of a letter, petition

or communication of any kind, is merely an expression of the determination of the Minister or other functionary to whom it is addressed, in regard to its subject matter. Its chief use was to direct the clerks or other subordinates in the preparation of the reply, or in taking other action with regard to it. If the proceeding has been interrupted after the "acuerdo" is affixed, but before the dispatch is written or title issued as directed, it may be regarded not unreasonably as a species of equitable title, or as sufficient, coupled with other equitable circumstances, to justify the party in asking the completion of the proceeding so initiated. But when the title has issued, or the dispatch been written in pursuance of the "acuerdo," when the latter has been submitted to the Minister, and approved and signed by him, the dispatch so approved and signed is the highest and best evidence, not only of the action of the Government in the premises, but of the true intention of the "acuerdo;" for, surely, no argument is necessary to prove that an official reply, signed by a public officer, is better evidence of his resolution with regard to a particular application, than a direction to his subordinates as to the form in which the reply is to be drafted.

Dismissing, then, the "acuerdo," or rather treating it as intending precisely what the dispatch prepared in obedience to it expresses, let us consider the true import and effect of the latter.

It will be observed that the dispatch of Becerra does not, in terms, profess to ratify any mining possession or grant, either of lands or of pertenencias. Nor does it announce that the President has been pleased to make any such ratification. It merely informs the Junta that His Excellency has approved an agreement made by the Junta with Castellero.

It is not pretended that any such agreement was, at that time, or afterwards, formally entered into between the parties. The propositions of Castellero are dated May 12th. The communication of the Junta is dated May 14th, and Castellero himself, in the preamble to the statement of his propositions, expresses his persuasion that the Junta will accede to his request "so far as may be within its powers, and that it will send up to the Supreme Government with a recommendation that which may require the decision of the latter."

From the communication of the Junta it is evident, that the authorization of the Supreme Government was necessary to enable it to furnish Castellero with the iron retorts and flasks belonging to it, as also to make him the loan he solicited of five thousand dollars, payable in quicksilver at one hundred dollars per quintal, and without the five per cent. premium per annum which the law required it to exact.

Until the approval of the Supreme Government of this proposed arrangement could be had, no formal contract could be entered into. It was, therefore, not until May 25th, and after the receipt of Becerra's communication approving the proposed contract, that the Junta resolved "that the proper judicial agreement be drawn up immediately, and that application be made for the draft for the five thousand dollars on Mazatlan or Guadalajara," as appears by the *Actas* of that day.

That the agreement was never so drawn up and executed is admitted ; and on the 29th May an order was made for the payment of the Notary Calapiz "for proceedings relative to it," its consummation having been prevented by the order suspending all payments out of the quicksilver fund.

The language of the dispatch is, therefore, evidently inaccurate in speaking of the approval of the agreement *made* or "*convenio celebrado*" with Castellero. Its evident intention was to signify the approval by the Government of the agreement proposed to be made, and which the Junta had expressed its willingness and even anxiety to enter into.

What the agreement was, which, after the approval of the Government had been obtained, the Junta and Castellero had fixed upon and nearly consummated by a formal act before a Notary, we learn from the Report of the Junta of Nov. 17th, 1846, produced by Señor de Bassoco, and embodied in Mr. Lafragua's report in December of the same year.

In this report, the Junta, after giving an account of the presentation of cinnabar ore, etc., by Señor del Moral, of its assay, and of their inquiry of Castellero what aid he required, proceeds as follows :

"The Señor presented his petition in due form, and it hav-

ing been very attentively examined by the Junta, he made his propositions, to which this Junta agreed, to wit: That there should be delivered to him five thousand dollars in money, eight iron retorts of those which the Junta ordered to be made for the examinations previously made, and all the quicksilver flasks it had in the negotiation of Tasco; Señor Castellero obligating himself, on his part, to repay said advance in quicksilver at the rate of one hundred dollars per quintal, within six months from his leaving the port of Mazatlan. This agreement was approved by the Supreme Government on the 20th of the same month; but on account of the declaration of blockade made by the United States of the North, when he was about to receive the draft on Mazatlan, the Ministry issued the order of September 19th of this year, directing the suspension of all payments of the branch of quicksilver, except those for the support of the College and the expenses of the office."

In this account of the cause, and the date of the abandonment of the agreement with Castellero, the Junta are evidently inaccurate; for their own Actas show that the communication informing them of the blockade of Vera Cruz and Tampico, and directing the suspension of all payments for the extraction of quicksilver, was dated on the 27th May, and received by the Junta on the 28th; and on the 29th, the Notary Calapiz was paid for his proceedings in relation to the intended contract.

The communication of the 19th September ordered that the assets of the quicksilver fund should *continue to be used merely for the support of the College*, and it demanded a loan of twenty-five thousand dollars from the Dotal fund. This was strenuously opposed by some of the members, on the ground that the Dotal fund was the private property of the creditors of that fund. As these discussions occurred less than two months previous to the date of the report of the Junta, and were no doubt fresh in its recollection, and as the report was prepared in great haste, only eight days being allowed for the purpose, the Junta fell into the error of ascribing the breaking off of the negotiation with Castellero to the order of September 19th, instead of to that of the 28th May.

But with respect to the agreement made with Castellero, and

approved by the Supreme Government, the report is very explicit. It sets forth the terms of that contract with a clearness which leaves no room for doubt as to what it was that the Supreme Government approved.

The agreement thus entered into embraced all the subjects upon which the Junta had authority to act. Nor can it be said that the approval of the Supreme Government was only required as to those propositions of Castellero which related to the ratification of his mining possession and a grant of two leagues, for we learn from the letter of the Junta that that body had no authority, without the approval of the Government, either to sell the retorts and flasks desired by Castellero, or to lend him a large sum without interest, to be repaid in quicksilver. But with the granting of lands the Junta had nothing to do, and whatever might have been the resolution of the Government on Castellero's seventh and eighth propositions, it would never have been communicated to the Junta in the form of an approval of an agreement into which they were supposed to have already entered.

Some stress has been laid on the use of the word "concedido," or "granted," in the marginal "acuerdo" of Becerra.

Had this word appeared alone, and been written on the margin of Castellero's petition, it might, perhaps, have been considered evidence that the whole prayer of the petition had been granted. But it is written on the margin of the Junta's letter, and clearly imports that its request was granted, viz., that the proposed agreement was approved, as is unequivocally shown by the official dispatch written on the same day, and in pursuance of the marginal order of the Minister.

We shall presently see that the petition of Castellero was for land, and not for additional mining *pertenencias*.

The *acuerdo* therefore adds:—

"With respect to the land, let the corresponding order issue to the Minister of Relations, for the proper measures of his office, with the understanding that the Supreme Government accedes to the petition."

The corresponding order did issue—we have it in Becerra's dispatch to the Minister of Justice. The proper measures

were taken in his office—we have them in his dispatch to the Governor of California; and from it alone can we learn what was done by the Government “with respect to the land” petitioned for by Castellero.

It has already been stated that the Act of Possession of the Alcalde Pico embraced two distinct objects: first, the judicial possession of a mine, with the number of *pertenencias* allowed by law—but how many, both the Alcalde and the parties seem to have been uncertain; secondly, a grant of a tract of land extending three thousand varas in every direction, as a “*gracia*” or gift to Castellero. The distinction between these two acts of the Alcalde is not only admitted but strenuously insisted on by the counsel for claimant, and it is contended that the first was legal and valid, while the second is conceded to be utterly nugatory and void.

When, therefore, Castellero asked that the Junta would recommend the approval by the Supreme Government of the possession which had been *given him* of the mine, in the same terms as those in which he then held it, he must have intended to ask either for a ratification of the possession of the mine, or for an approval of the grant of three thousand varas of land, or for both.

That he did not ask for three thousand varas to be given him as additional *pertenencias*, is admitted by one of the able and eminent counsel who argued the cause for the claimant.

In the printed report of his argument, he is asked by Mr. Randolph, of counsel for United States:

“You argue, then, that the Junta, misunderstanding this document of Castellero’s, supposed it to be for additional *pertenencias*, and as such recommended its confirmation?”

Mr. Benjamin.—“Certainly.”

But this was not the only error into which the Junta fell; for they not only supposed that Castellero was seeking additional mining *pertenencias*, and not merely a tract of land for his hacienda, etc., as well as two square leagues to supply wood for his burnings, but they supposed the three thousand varas so desired, would only amount to fifteen *pertenencias*, whereas they would amount to nine hundred. The Junta evi-

dently supposed that Castellero solicited a tract three thousand varas long, and of the width of one pertenencia. As a pertenencia is two hundred varas in length, a tract three thousand varas long would comprise exactly fifteen pertenencias. They overlooked the fact that the tract was to be three thousand varas "*in every direction,*" or six thousand varas square, making nine hundred pertenencias.

If, then, the Supreme Government had formally and unequivocally signified its assent to this recommendation of the Junta, and ratified the possession as represented by them, it may well be doubted whether in a Court of Equity it could be deemed to have ratified any more than a possession of fifteen pertenencias, which was all that Castellero, speaking through the Junta, demanded.

But the fact, that the Junta thought it necessary to devote so much time, and to suggest so many arguments, to induce the Supreme Government to ratify a supposed mining possession of fifteen pertenencias, justifies the supposition that had they known it to have comprised nine hundred pertenencias, they would probably have withheld their recommendation.

That both the Junta and the Supreme Government were willing to assist the enterprise of Castellero by every means in their power, is evident. Their object in so doing, was not to confer a favor on Castellero personally, but to promote the production of quicksilver in the largest quantities and at the cheapest rates possible.

The same policy would have forbidden them to give to a single miner nine hundred mines, of one pertenencia each, and thereby to exclude from so large a tract all miners who might otherwise have discovered and developed new mines in the vicinity, and increased the production and diminished the price of the metal the Government was so anxious to obtain.

It has appeared to me that the very considerations urged by the counsel of the claimant with regard to the policy and interest of Mexico in promoting the production of quicksilver, render it impossible that it could, consistently with that policy, have consented to a monopoly by a single miner of a mining tract of such enormous dimensions.

It is clear, therefore, that the Supreme Government could not have intended to ratify the possession of the three thousand varas as mining *pertenencias*.

But we have already seen that the approval by the Government of the agreement made by the Junta, is conclusively shown not to import a ratification or grant of any *pertenencias* or lands whatsoever; for the terms of the agreement so approved are disclosed to us by the Junta itself, and can be ascertained as exactly as if the formal instrument had been executed by the parties, the approval of the Government appended to it, and were now before us.

It does not appear that the Act of Possession of Pico was ever exhibited either to the Junta or the Supreme Government. If it had been, it would have disclosed the fact that the mine had been denounced and possession of it given, as on the lands of José Reyes Berreyesa. It would also have been seen that the Alcalde had assumed to grant a tract three thousand varas in every direction from the mouth of the mine, which must have included a large portion of the land of a private individual, even supposing that the mine itself might not have been within his limits. Adopting the obvious construction of the Act of Possession contended for by the claimants, and regarding that act, and the ratification asked for by Castellero, as referring to a tract of land and not to additional *pertenencias*, and assuming with the distinguished counsel for the claimants, that the Junta was mistaken in supposing that any number of additional *pertenencias*, whether fifteen or nine hundred, were asked for, we may well doubt whether the Supreme Government, if informed that this tract would in great part include private property, would have so readily made the grant. We have no reason to suppose that, as between individuals at least, rights of property are not as scrupulously respected and enforced by the Mexican as by other nations.

Again, it is contended that in addition to the grant of three thousand varas in every direction, made by the Alcalde and approved by the Supreme Government, there were also granted to Castellero two square leagues of land, to be measured in like manner from the mouth of the mine.

The mode adopted and the precautions observed by the Supreme Government in signifying its willingness that such a grant should be made, will hereafter be adverted to.

Our only concern with it at present is to observe, that on the claimant's theory, the Supreme Government first ratified a concession of six thousand varas square, or more than a league and a quarter in extent, and then issued orders for a further grant of identically the same land, with three-quarters of a league in addition. Its resolution with regard to the latter is formally and regularly communicated to the Governor of California, who was directed to take the proper steps to carry out the intention of the Government; while with regard to the former, its determination is supposed to be expressed in a declaration that it approves a contract, the terms of which we know, and which has no reference, nor could it have had, to grants of land; and the approval of which, if it could by possibility be construed to mean an approval of all Castellero's propositions, would import a grant of the two sitios, as clearly as it would import a ratification of the concession of the six thousand varas square.

But the dispatch of Becerra to the Minister of Relations informs us to what part of Castellero's petition the President thought proper to accede, in language too explicit to be misunderstood.

After transcribing his letter to the Junta, Becerra says: "And I have the honor to transcribe it to your Excellency, to the end that with respect to the petition of Señor Castellero, to which His Excellency the President *ad interim* has thought proper to accede, *that* there be granted to him two square leagues as a colonist," etc.

It is insisted by the counsel for the claimants, that the words "*that there be granted to him two square leagues as a colonist,*" are descriptive of the petition of Castellero to which the President acceded. The observation is just. Such is no doubt the true construction of the dispatch, and it establishes beyond doubt, that in acceding to the petition the President meant only to accede to that part of it which asked for a grant of two leagues as a colonist, without expressing

any resolution as to the application for a ratification of the concession of three thousand varas.

As, then, the supposed ratification is not contained in the approval of the contract of the Junta, nor in the acceding by the President to the petition for two leagues in colonization, it must be found, if at all, in the word "concedido" or "*granted*" in the acuerdo. But for the reasons given above, I am satisfied that no such signification can be attached to that word in the face of the dispatches written in pursuance of the acuerdo, and which embody and explain its meaning.

But if any doubt could remain as to the true intention and effect of the approval of the Junta's contract, it would be dissipated by the evidence afforded by the acts of the parties, of the construction placed upon it by themselves.

Throughout the whole negotiation for the purchase of barras or shares in the mine, conducted by Mr. Negrete on behalf of Mr. Forbes with Castellero in person, the latter, though urged to exhibit his documents of title, produces only the dispatch of Castillo Lanzas for two leagues. In the instrument of ratification the mine is spoken of as of three pertenencias in extent, and Castellero "cedes in favor of the contractors of supply (aviadores), and for the sixteen years of this contract, the two square leagues of land of which the Government has made him a concession, as shown by the official document which he presents, that it may be inserted at the end of the present instrument."

The Lanzas dispatch is accordingly copied in the instrument, but not the slightest allusion is made to any other grant of three thousand varas in every direction made by an Alcalde, and approved by the Supreme Government.

In all the transactions between the parties, the idea is but once suggested, that the approval of the Junta's contract with Castellero imported a ratification of the Alcalde's concession of three thousand varas.

It occurs in Alexander Forbes' letter to James Alexander Forbes of February 3, 1850. In that letter Mr. Forbes says:

"We think at present it may be the best plan to get an authenticated copy of the approval by the Mexican Government

of the three thousand varas given by the Alcalde on giving possession of the mine. As a doubt may be started as to whether the Alcalde, acting as the Juez de Minería, had a right to make this grant, yet, if approved by the Mexican Government before the possession of the country by the Americans, there could be no doubt on the subject. This takes in our hacienda, and *unless opposed by the Berreyesas*, would, I should think, settle the question. *Castillero says such an approval was given*, and that on his arrival in Mexico he will procure a judicial copy of it. *This is the plan we shall adopt*, if we hear nothing from you to alter this resolution.

“Since writing the foregoing, I have looked over your private letter to William Forbes, dated 18th October, in which you state the limits or boundaries as follows: ‘The boundaries must be expressed as joining on the north and northwest by lands of the ranchos de San Vicente and de los Capitancillos; and the east, south and west, by Serranía or Tierras baldías.’

“Castillero is *not certain of accomplishing this latter plan*, but thinks the first, *that is the three thousand varas, the best.*”

It will be observed that this letter unmistakably discloses the “plan,” which James Alexander Forbes had suggested and Alexander Forbes adopted, of obtaining fraudulent and antedated documents from Mexico expressing the boundaries of the two sitios, etc. No reliance can therefore be placed on the statement that Castillero said the approval was given.

But whatever he may have told Mr. Forbes, the approval and the agreement approved are before us, and we have already seen that they contain no allusion to any concession of land by an Alcalde.

The silence of Castillero during his negotiations with Mr. Negrete, is far more significant than any statement made four years afterward to Mr. Forbes; nor can it be said that at the time of those negotiations he was ignorant of the action of Government; for the Castillo Lanzas dispatch, then in his possession, and inserted at the end of the contract of ratification, recites the Becerra dispatch, which contains the approval of the contract. The parties were in Mexico; the public offices were accessible, and it would have been easy to ascertain what was the contract approved. That Castillero knew what that contract was cannot be doubted; and yet he and all the other parties, through a series of years, treat the dispatch as a conces-

sion of two leagues, but never suspect it to contain evidence of, or to be in itself, a ratification of the Alcalde's gracia, or gratification. Even so late as the date of Mr. Halleck's affidavit, James Alexander Forbes, with the notarial copy of the Lanzas dispatch in his possession, never seems to have imagined that the dispatch of Becerra inserted in it, and announcing the approval of the Junta's contract, constituted the ratification he so much desired of the Alcalde's grant of three thousand varas.

I think it clear, therefore, that the dispatch of Becerra cannot be construed to import a ratification of the action of the Alcalde, either in respect to the possession of the mine, or to the grant by him of three thousand varas.

As to the alleged grant of two leagues. It cannot be denied, that if the documents produced by the claimants be genuine, they show that Castellero presented a petition for two square leagues of land; that this petition was by the Junta de Fomento submitted to the Supreme Government; that the Junta was formally apprised by the Minister of Justice that the proper communication had been sent to the Minister of Relations, that suitable orders might be issued by him with respect to that part of Castellero's petition; that a communication was accordingly sent to that Minister, informing him that the President had acceded to Castellero's petition, and requiring him to issue the corresponding orders; and that the Minister of Relations, in pursuance of these instructions, transcribed the communication to the Governor of California, in order that in conformity with what the laws and dispositions on colonization provided, he might put Señor Castellero in possession of the said two leagues.

It is manifest that this dispatch of Castillo Lanzas does not by its terms grant the land solicited. It contains no words translative of title; it is not addressed to the supposed grantee, but to the Governor of California; it cannot have been intended to serve as a muniment of title to Castellero, for otherwise it would have contained formal words sufficient to vest the estate in him. It is merely an official communication addressed by one executive officer to another, which, for aught

that appears, might as well have been sent to the Governor of California by a courier as by the hands of Castellero. It contains, however, an unequivocal official declaration that the President of the Republic had thought proper to accede to Castellero's petition, and an order to put him in possession conformably to the laws on Colonization.

The case thus resembles in some respects that of United States *vs.* Lecompte, 11 How. 124, where the claimant had obtained an order from the Lieutenant-Governor directing the Procurador del Comun to put him in possession, if in so doing no prejudice would result to third persons.

The petition solicited two leagues at the place called Llana-coco, to be located so as to include the entire prairie of that name. The Supreme Court held that the order of the Lieutenant-Governor could not be construed to signify an absolute unconditional grant of any specific land; and, as it was never presented to the Procurador, and the land had never been severed from the public domain by that officer, and no occupation was shown which could supply the deficiency by giving certainty and definiteness to the claim, it was rejected.

If the reasoning of the Supreme Court be attentively considered, it will be seen that they refused to treat the order of the Lieutenant-Governor as an absolute grant, for two reasons: 1st. Because it directed the petitioner to be put in possession, "if in so doing no prejudice could result to third persons," and the matter was referred to an officer, to whom the duty was confided of ascertaining the means, etc. of the petitioner and "judging of the propriety of the grant." And 2d. Because the land was not severed from the public domain by the description in the concession, or by an authorized survey, or by any definite occupation.

It may, I think, be inferred from the whole opinion, that if the concession had described any tract which could be identified, and the petitioner had occupied it, the claim would have been confirmed, notwithstanding the omission to present the order to the Procurador. In the case at bar, the Governor is ordered to put the petitioner in possession "*in conformity with what is prescribed in the laws and dispositions on colonization.*"

The 2d article of the law of 1824, declares that "those lands of the nation, which are not the property of any individual, corporation or town, are the subject of this law, and may be colonized."

The first step to be taken by the Governor, in execution of the order, would have been to ascertain whether the land was within the colonization law—that is, whether it was the land of the nation, or belonged to any private individual; precisely as the Procurador was to ascertain whether by putting the petitioner in possession, any injury would result to third parties.

To construe this dispatch as an absolute grant of a specific tract, we must suppose Castellero to have practised on the Government a gross fraud, either by concealing or misstating the facts. For, even admitting that he had reason to believe that the mine itself was not within the limits of Berreyesa, he must have known that a tract of two leagues measured in all directions from the mouth of the mine, would certainly have included a portion of his land.

The counsel for the claimants, feeling, no doubt, the force of this objection, suggested that it was intended that inquiry should be made by the Governor, and the two leagues were to be located in such a way as not to include private land. But this admission proves that the duties to be performed by the Governor, were exactly those assigned to the Procurador del Comun, in the case referred to; and if the order to put in possession was not a grant in that case, neither can it be so considered in this.

The case at bar is, in some respects, stronger than that reported; for here, the order was addressed to the Executive of a Department to whom, by the laws, in conformity to which the order was to be executed, it belonged to issue the formal title for the land, while the functions of the Procurador were merely to inquire into and report the circumstances of the petitioner, and to mark off and sever from the public domain the land granted.

Had the Governor and Departmental Assembly, in ignorance of the application of Castellero, and the action of the Supreme Government upon it, regularly granted the same land to ano-

ther person, in strict conformity with the colonization laws, I cannot doubt that his title, though subsequent in date to the dispatch of Lanzas, would have prevailed; and on the reception of that dispatch the Governor would either have refrained from executing it at all, or would, more probably, have allowed Castillero to take his two leagues out of the nearest body of ungranted land.

In the very ingenious brief filed by the counsel for the United States, it is observed:

“The theory of government for the Mexican Territories or Departments was, that all the powers of government were exercised immediately by the local Political Chief or Governor, through whom the will of the Supreme Central authority at the City of Mexico was transmitted, and by the action of which functionary, and not otherwise, it became operative on persons and things. It was a government of governments—the plan which Spain established in the beginning for the government of the Indies, and which Mexico continued to this extent without a change. Its model was the organization of an army. It was the same whether the Sovereign’s will was expressed in the form of a general law, or some particular disposition like a grant; all were alike instructions to an inferior officer. They were not binding on him until known, nor effective until obeyed—until he had done or suffered another to do that which was required.

“The local representative of the National Sovereignty was invested with all the active powers of Government in this Department. He, alone, could manifest the grantor’s will, and from Mexico no more could come than the impulse which should move him to act. In these titles, nothing was done here, even the mining title being an original grant in Mexico. The local representative has never acted, and therefore there has been no expression of the grantor’s will.”

In this lucid exposition of the general theory on which the vast governmental machinery of the ancient Spanish monarchy, and measurably that of Mexico, were constructed, I entirely concur. But if it be argued that because the will of the Sovereign was ordinarily communicated to and executed by subordinate agents, he had no power himself directly to act upon persons and things without the intervention of the local authority, I cannot assent to the conclusion; for the will of

an absolute sovereign can be manifested in whatever form he may choose to adopt; and had the King of Spain seen fit to make, under his own hand and seal, a grant to a subject in a remote province, I cannot suppose that the royal patent in the subject's hands would not have been respected by the subordinate authorities, notwithstanding that the title had been transferred, and the grant consummated without their intervention.

Nor is it certain that the order of the Sovereign to a subordinate to make a grant to a subject, or do any other act in the performance which he is interested, is a mere nullity, until known to and obeyed by the inferior officer.

If, as is admitted, the impulse which moves the subordinate to act, rightfully proceeds from the central authority—if the subordinate has no discretion in the premises, but must obey, and his duties are purely ministerial and executive, it would seem that the sovereign disposition which required him to act, cannot be regarded as a mere nullity, even though never in fact obeyed.

Such, I understand to have been the ruling of the Supreme Court in a recent case, where an order to the Governor that a particular island should be assigned to an individual was held itself "to adjudicate the title;" the formal issuing of the title papers being a merely ministerial act to be performed by the Governor.

It is true, that, in that case, the order was received and obeyed and the title issued. But, the language of the Supreme Court is explicit, that the dispatch "operated of itself *to adjudicate the title to the claimants.*" This case will be more fully considered hereafter.

But whether a notice of the *superior will* must have been given to the local representative of the Government, and that will must have been obeyed before it could affect the rights of persons, or the condition of things; or whether, as seems to be considered by the Supreme Court, the sovereign disposition, though unknown to, and unobeyed by, the local authority, had an immediate and independent operation, it is clear that by the uniform practice of the Spanish and Mexican Governments, the

dispositions of the sovereign authority always contemplated the instrumentality of the local subordinate.

If, therefore, in this case the Government had known that the tract solicited was public land, and that no objection whatever existed to making the grant, it would have been a signal departure from its ancient and established practice to issue the grant directly to the applicant.

In treating, then, this dispatch as an order to make a grant, we suppose the Government to have conformed to its immemorial and traditional usages. While to consider the dispatch as itself conveying the title, and containing merely an order to the Governor to put the claimant in possession of land already granted to him by the direct act of the Supreme Government, is to suppose the latter to have adopted an exceptional mode of proceeding, inconsistent with that pursued in the *Islands* case, and with the theory on which the whole system of Government was organized.

For these reasons I cannot regard the dispatch of Lanzas as a direct grant of the two leagues referred to.

Taking this view of the dispatch, we can account for the very explicit declarations of the Mexican Commissioners, that no grants had been made of land in California subsequent to May 13, 1846.

For, even if their researches had extended to the official correspondence Ministers of Relations who had held office from the date of the declaration, and they had discovered the dispatch of Lanzas, they regarded it but as an order to the Governor to make a grant, which they knew could never have been acted on. The truth of their declarations, therefore, to the American Commissioner, is thus entirely consistent with the genuineness of the documents, while, if the dispatch be considered to import an absolute and present grant, we are driven to choose between two alternatives—one, that the Commissioners were guilty of a deliberate falsehood—the other, that the dispatch itself is a forgery.

But the dispatch, though not itself a grant, is, nevertheless, evidence that the Supreme Government acceded to Castillero's petition; and it is, at least, an order that a grant should be made

to him by the Governor of California, in conformity with the colonization laws, *i. e.* if the land were vacant and no other insuperable objection existed.

Giving, then, this construction to the dispatch, let us consider its legal effect—and here we are fortunately not without authority to guide us.

In the case of *Andres Castellero vs. The United States*, for the Island of Santa Cruz (23 How. 464), the claimant relied on a dispatch of the Minister of Interior, in many respects resembling that of Castillo Lanzas.

In that dispatch the Minister informs the Governor, that in consideration of the services and merits of Castellero, the President directs him (the Minister) “to recommend Castellero very efficaciously to your Excellency and the Departmental Junta, in order that before proceeding to the distribution which should be made conformably to the laws, and as is directed in the order of this date, of the lands of the islands adjacent to that peninsula, there be assigned to that individual the one which he may select of those nearest to the place where he should reside with the troops under his orders.”

It will be noticed that the terms of this dispatch are not in some respects so strong as those of the dispatch of Lanzas.

It is not said that the President has acceded to a petition for any particular island or tract of land. Castellero is merely “recommended very efficaciously to the Governor and the Departmental Junta,” and this recommendation is made in order that there be “*assigned*” to him the island he may select, etc.; contemplating, evidently, the execution and delivery by the Governor of the formal title for the island so selected. In the Lanzas dispatch the President’s assent to the petition is communicated to the Governor, “in order *that he may put Castellero in possession* of the land”—an expression which has afforded room for the construction that no further title paper was designed to be issued. . . .

In the Santa Cruz Island case, the Supreme Court held that “the dispatch of the Government operated to adjudicate the title.” Its language is:

“They [the Governor and the Junta] were accordingly

directed not to proceed to make adjudications under the previous order until the assignment of the title to this claimant was perfected, but they were *not required to make the assignment or to cause it to be made.*

“To accomplish that purpose, and to carry into effect the command of the President, two things only were necessary to be done; one was to be performed by the claimant, and the other was a Ministerial act. It was the claimant who was to make the selection, and if it was a proper one, near the place where he was stationed with his troops, nothing remained but to make the assignment as described in the dispatch. Emanating as the dispatch did from the supreme power of the nation, *it operated of itself to adjudicate the title to the claimant, leaving no discretion to be exercised by the authorities of the Department.* Neither the Governor nor the Assembly, nor both combined, could withhold the grant after a proper selection, without disobeying the express command of the Supreme Government. *Nothing, therefore, remained to be done, but to issue the title papers, and that was the proper duty of the Governor as the Executive organ of the Department.*”

This language would seem too clear for misconstruction. It seems to me an express decision, that an order of the Supreme Government directing the Governor of a Department to make a grant, operates to adjudicate the title to the land specified. It could not, however, have been meant that the order itself was an absolute grant; for it is evident that the formal grant was to be made by the Governor, and besides, it did not refer to any particular island, but to such island as Castellero might select; and it was only after the selection was made and found to be a proper one, that the title attached to any particular piece of land.

If such were the effect of the order of Pesada, I am unable to perceive why the Castillo Lanzas dispatch must not be considered to have had a like operation. The direction in that dispatch to the Governor to put Castellero in possession in conformity with the laws and dispositions on colonization, confided no more discretion to him than the duty of seeing that the island selected was a proper one, confided to the Governor in the case before the Supreme Court; and if the issuing of the title papers in that case was a “merely ministerial act,” to be done in respect of lands, the title of which had already been

adjudicated to the claimant, the same view must be taken of the action, which, construing the Lanzas dispatch least favorably for the claimants, Governor Pico was in this case ordered to take.

It is contended that the President of Mexico had no authority to make the order for a grant contained in the Lanzas dispatch.

But, 1st, it is apparent, both from the action of the Supreme Government in this case, as well as in that of the islands on the coast, that it exercised the power.

The presumption, therefore, arises, that it had the authority it exercised. "The public acts of public officers purporting to be exercised in an official capacity, and by public authority, are not to be presumed to be usurped, but a legitimate authority previously given or subsequently ratified, which is equivalent."—The United States vs. Arredondo, 6 Pet. 728.

2. The Colonization Law of 1824, while it enjoined upon the States of the Confederation the duty of making laws or regulations for colonizing within their respective limits, committed the whole subject of colonization in the territories to the Supreme Executive.

The 16th article of that law provides, that "the Executive shall proceed in conformity with the principles established to the colonization of the territories."

In pursuance of this authority the Supreme Executive in 1828, framed the regulations which prescribed the mode in which the colonization of the territories should be effected.

It was from the dispositions thus made by the Supreme Executive, that the Governor and Junta in the Territory of California derived all their powers with respect to the granting of land.

Had the President seen fit to confide the authority to grant, either to the Governor alone, to the Prefects of the Partidas, or to local Commissioners, he might have done so, or he might have retained it exclusively to himself.

The regulations, in fact, provided that concessions made by the Governor should not be definitively valid unless approved by the Departmental Assembly; and, in case its approval was not obtained, the Governor was to report to the Supreme Government for its decision.

Grants made to "empresarios" were, by the 7th regulation, not to be held as definitively valid until the approval of the Supreme Government was obtained.

It thus appears, not only that the authority of the Governors with respect to colonization was not immediately conferred by any law of Congress, and owed its existence to discretionary regulations of the Supreme Executive, but that by those very regulations the Executive reserved to itself an important part of the granting power. After the adoption of the Central System, and the division of the whole Republic into Departments, the right to dispose of all the lands belonging to the nation seems to have been confided to the Supreme Executive. The law of 1837 gave to the President authority to sell or pledge them, and by his decree of 11th March, 1842, other important and fundamental changes in the colonization laws with regard to foreigners were made by General Santa Anna.

It is said that by making a grant directly to an individual, or in directing the Governor of a Department to make one, the President violated an existing law, which even an absolute monarch cannot do; for he may abrogate or modify the law, yet while it remains unrepealed he cannot violate it.

The general principle is admitted, but its application to this case is not perceived.

That the President, by the law of 1824, could have reserved to himself the whole right of making grants in the territories, has already been shown. Such a disposition, though not in accordance with the ordinary policy of the Spanish and Mexican Governments, which intrusted the administration of local affairs to local subordinates by whom the orders of the Supreme Government were carried into effect, would, nevertheless, have been legal and within the limits of the discretion confided to the Executive by the law of 1824.

This power he still retained, notwithstanding that he had framed general regulations on the subject for the guidance of the Governments of the Territories; for those regulations were the mere creature of the President, and could not deprive him or his successors of the general powers given him by law, or of the right to act directly in special cases by making the grant himself, or by ordering the Governor to do so.

The Governor of a Department had no power to grant lands by virtue of his office, or conferred on him as such by law.

All his authority to grant was derived from the regulations of the Executive, of whom he was but the agent and the instrument. He was at all times subject to executive instructions, and the President might at his discretion withdraw any lands from colonization, prescribe new qualifications for grantees, or in any other manner modify the Governor's authority with respect to grants, or direct him as to its exercise.

That he did so interpose with regard to certain Mission lands which the Governor and Assembly were about to grant is well known, and this Court has decided grants in violation of the order of the Executive to be invalid. The islands cases and the case at bar furnish additional instances of the exercise of the same power.

I confess myself unable to understand how a grant by the President, still less an order to his local subordinate to make a grant, can be deemed such a violation of the law as no absolute monarch could commit, or indeed any violation of law whatsoever.

3d. The question is decided by the Supreme Court, in the case which has been referred to.

If the Supreme Government had power to direct the title papers to be issued, and the dispatch operated to adjudicate the title in that case, it must be deemed to have possessed the same authority, and a similar operation must be attributed to the dispatch in the case at bar.

But it is urged that a distinction should be drawn between the cases, on the ground that islands on the coast were not within the colonization law of 1824, and therefore might be granted directly by the Supreme Executive, but that he had no authority to act in relation to lands embraced within the provisions of that law, except in obedience to it, and in conformity with the regulations of 1828.

It has already been shown that under the Colonization Law the President had authority either directly to grant or to order the Governor to grant public lands in the territories. But his power to grant islands was also derived from the same law,

and in making the grant of the island of Santa Cruz, the validity of which has been affirmed by the Supreme Court, he acted in strict obedience to it.

It will also be seen that the judgment of the Supreme Court is not based on the supposed existence of any authority in the Executive not derived from the law of 1824; and also that his right to repeal or modify at his will, in a particular case, his own general regulations which imposed rules on the subordinate local authorities, is impliedly recognized in the decisions referred to.

The 4th article of the law of 1824, provides that "the lands embraced within the twenty leagues bordering on any foreign nation, or within ten leagues of the seacoast, cannot be colonized without the previous approbation of the Supreme Executive power."

As by the previous section of the law, the Congresses of the various States were directed to enact laws and regulations for colonization within their respective territories, while by Art. 16 a similar duty was enjoined upon the Supreme Executive with respect to lands within the territories, it is obvious that the 4th article was intended chiefly to restrict the power of the States rather than that of the Executive, whose assent to the grant was all that was required.

In the case of the *United States vs. Arguello* (18th How. 548), it was held by the Supreme Court that the "colonization" spoken of in the 4th article must be construed to mean colonization by foreigners, and not the distribution of lands to individuals and families.

The power of the Governors of California to grant lands within the ten littoral leagues might perhaps have been sustained, even if the 4th article be construed to apply to grants to individuals, on the ground that the absence of any express prohibition in the regulations, and the constant exercise of the power with the full knowledge of the Supreme Government, authorize the presumption that the approval required by the 4th article was in fact given.

However this may be, it is clear that the Governors of California did not assume to grant the islands on the coast without

the previous permission of the Supreme Government. Application for such permission was accordingly made, and it was finally communicated to the Departmental authorities in the dispatch of Pesada of July 20, 1838.

When, therefore, the President ordered a grant of an island to be made, which order the Governor obeyed by issuing the title papers, the grant was in strict conformity with the Colonization laws.

For that law confided to the Supreme Executive, as has been observed, the whole subject of colonization within the territories, nor did it impose any limits on the exercise of his discretion, except that the colonization was to be conducted according to the principles established by the law.

Those principles were of a general character, and fixed nothing as to the particular agencies or mode to be adopted in conferring the title upon the colonist.

In the case of lands within the ten littoral leagues, the law itself forbade their colonization without the previous approbation of the Supreme Executive power. The general regulations, therefore, by which the Supreme Executive authorized the Governors and Juntas of the Departments to grant public lands, were never construed to authorize them to grant the islands on the coast, and as observed by the Supreme Court, the power to make such grants was neither claimed nor exercised by the Departmental authorities prior to the 20th day of July, 1838, when the "previous approbation of the Supreme Executive" required by the law was communicated to them.

That approbation having been thus obtained, the Departmental authorities proceeded to grant; and in so doing, acted in precise conformity with the Colonization laws.

It had appeared to this Court, that the effect of that dispatch was simply to communicate to the Departmental authorities the assent of the Supreme Executive that the islands should be granted, and thus to bring them within the general regulations which prescribed the mode in which all grants should be made.

Those regulations required the concurrence of the Departmental Assembly to give definitive validity to the grant by the Governor; but inasmuch as the Supreme Court had decided

that even without the concurrence the grant was valid, unless the grantee's rights had been forfeited by abandonment, it seemed to me that a similar rule should be observed with respect to the grants of islands which by the previous assent of the Supreme Executive had been brought within the general regulations.

This view, however, the Supreme Court decided to be erroneous, and held that the dispatch prescribed a new rule on the subject, and that the general regulations did not apply to it. The mode of granting indicated in the dispatch of Pesada was, therefore, to be strictly followed, and inasmuch as the Departmental Assembly had not concurred, the grant to Osio was adjudged to be void.

But the reversal of the decision of the District Court on this point, in no way shows that the Supreme Court did not consider grants of islands, when made in pursuance of either the general or special regulations of the Executive, as not made under the Colonization law.

On the contrary, it appears to me manifest, that neither in the case of Osio, nor in that of Castellero, do the Supreme Court base their decision on the idea that grants of islands were not within the Colonization law of 1824; but that they reject the first claim, because in their opinion the grant was not made in the manner prescribed by the Executive, to whom that law committed the whole power over the subject, and they confirm the second claim because the Executive instructions were followed. It is explicitly stated in the opinion that "it is immaterial whether or not the power to grant the islands on the coast was vested in the Governor" (*i. e.* by the General Executive regulations of 1828), for the effect of the dispatch "was to repeal the previous regulations on the subject, and to substitute a new one in their place."

As this power of making regulations with respect to colonization in the territories was conferred, in terms, on the Supreme Executive, by the Colonization law, and was precisely that which it exercised when the general Executive regulations of 1828 were framed, I confess myself unable to perceive how a grant of an island on the coast, made in obedience to Executive in-

structions, was not, in every respect a grant under the Colonization laws, nor can I discover any foundation for the distinction attempted to be drawn between the case at bar and that of the island of Santa Cruz. The lands, in both cases, were open to grant under the general law; and even, if the granting of the islands on the coast to individuals be considered to be embraced within the provisions of the 4th Article, and that grants of lands within the littoral leagues were not, the only distinction between the cases would be, that in one the previous assent of the Executive was necessary, while in the other it was not. Each, when regularly granted, must be held to have been granted under the Colonization laws. When, therefore, in the Santa Cruz Island case, the Supreme Court held that the dispatch of the Minister ordering one of the islands to be assigned to Castillero "operated to adjudicate the title," the same construction must be given to the dispatch in this case, which states that the President has acceded to a petition for two leagues, and orders the Governor to put the petitioner in possession.

As, then, the Lanzas dispatch "operated to adjudicate the title" to the claimant, he must be held to have acquired an inchoate title, which, if founded on such equitable considerations as would have bound the former Government to complete it by issuing the formal title papers, this Government is equally bound to respect.

Had the claimant been an ordinary colonist, and relying on the action of the Supreme Government on his petition, settled upon and occupied the land, building a house upon, and cultivating it, and had the United States found him in the enjoyment of an undisputed possession, it cannot, I think, be doubted that his possession would have been undisturbed and his title confirmed, even though he had neglected to obtain from the Governor the formal grant.

But no such possession was taken in this case, nor was the concession received in California or even known to have been made, until after the subversion of the Mexican authority.

The question therefore arises: Were there any antecedent equitable considerations on which the concession was founded, such as would have bound the conscience of the Mexican Government to perfect it?

That an antecedent consideration, such as the patriotic and public services of the grantee, is one which a Court of Equity cannot disregard, has been expressly decided by the Supreme Court.

In the case of *Frémont vs. the United States* the Court says:

“The grant was not made merely to carry out the policy of the colonization laws, but in consideration of the previous public and patriotic services of the grantee; and although this cannot be regarded as a money consideration, making the transaction a purchase from the Government, yet it is the acknowledgment of a just and equitable claim, and when the grant was made on that consideration, the title in a court of equity ought to be as firm and valid as if it had been purchased with money on the same conditions.”—17 How. 558.

If, then, antecedent considerations of this nature are to be looked to, in determining whether the former Government was under any equitable obligation to perfect the title of the claimant, it is perhaps not easy to imagine a case where the merits of the petitioner and the consideration rendered by him for a small tract of land in a remote department could be greater.

The immense value of the discovery he had made to the great mining interests of Mexico, need not be dwelt upon. Our own experience in California enables us at once to appreciate how indispensable is an ample and cheap supply of quicksilver to the development of mines of the precious metals. But to Mexico the discovery was, as justly observed by one of the counsel for the claimants, “the unsealing of a hidden fountain of wealth, as precious to her as the rains and dews and living streams are to the nations that live by tillage.”

For years it had been the policy of Mexico to stimulate explorations for, and to encourage the working of, quicksilver mines. By the laws of February 20, 1822, and 7th October, 1823, which imposed duties on gold and silver, quicksilver was expressly exempted from contribution.

In 1842, the Junta de Fomento was established, and empowered “to fix the mode in which the working of quicksilver mines was to be supplied, rewarded, stimulated and protected.”

By the decree of May 24th, 1843, rewards of \$25,000, and

of \$5 per quintal, were promised to successful miners; and by the decrees of July 5th and September 25th of the same year, the Junta was empowered to work, to supply and protect quicksilver mines, and to cause researches for them to be made throughout the Republic.

When, therefore, Castellero announced the discovery of a mine surpassing in richness that of Almaden in Spain, upon which Mexico had so long been dependent, and desired a grant of two leagues in a department where land was commonly distributed gratuitously in tracts five times as large, he had equitable claims upon the Government far surpassing "the public and patriotic services of Alvarado," which the Supreme Court declares to have been an equitable consideration, as strong as if the grant had been purchased with money.

Compared with the service rendered and about to be rendered to the Mexican nation by Castellero, the consideration on which the ordinary colonization grants were founded was insignificant; for that consideration merely consisted in building a house, cultivating a few acres of an immense tract, and suffering wild cattle to roam at will over the remainder.

The fact that he was working the mine showed that Castellero had already effected a settlement upon the land, and its further development insured an accession to the population of the country far greater than could have been obtained by any other disposition of the public domain.

The purpose for which he sought the land, apprised the Government that it was of a kind not usually fit for cultivation, for it was required to supply wood for his burnings. In thus assisting his enterprise, the nation had as great an interest as Castellero himself, for it was the attainment of an object to which their attention, their efforts, and no inconsiderable portion of their revenues had long been devoted.

It has appeared to me that all these circumstances constitute an equitable consideration for the inchoate title or concession obtained by Castellero, and that they were sufficient to create an equitable obligation on the former Government, and therefore, on this, to complete and make good the inceptive rights he had acquired.

It is urged by the counsel for the United States, that even if the Castillo Lanzas dispatch be considered a grant, it nevertheless is void, because no possession of the land was given before the 7th of July, 1846, when the Mexican authority in California was subverted, and the United States acquired the land by the adverse title of conquest.

It is not denied that, as maintained in the brief of the counsel for the United States, in questions of prize or no prize, the liability of the property captured to condemnation depends upon the fact whether the possession and actual control of it have passed from the hands of the enemy to those of a neutral.

Nor is it questioned that, where territory is ceded by one Sovereign to another, the nationality of the inhabitants of the ceded territory is not changed until the stipulations of the treaty are executed by a formal delivery given, and by possession taken.

It is also admitted that, by the Roman law, and by most systems of jurisprudence, the property in a thing cannot be transferred without a delivery of the possession of the thing, either actual, or feigned and constructive; and that ordinarily, he who first obtains possession shall hold the thing even as against a prior purchaser, to whom it has not been delivered. In the transfer of land the same principle prevailed at the common law, and a symbolical delivery of the land, or livery of seizin, was indispensable to render a feoffment operative.

This, however, is now unnecessary in conveyances under the statute of uses.

In the grants made by the Governors of California, we accordingly find that "the judicial delivery of possession by the corresponding judge" was always contemplated. This proceeding would seem to have been designed for a double purpose: 1st. To complete the transfer of the property, by a formal delivery or tradition of the thing, thus adding the *jus in re* to the *jus ad rem*; and, 2d. To designate and sever from the public domain the tract granted by measuring its extent and establishing its boundaries.

Whether, if the boundaries are distinctly designated in the grant, the judicial delivery of possession was in strictness ne-

cessary to complete the right of property in the grantee, may be doubted; for at common law the King's grant was held to import livery of seizin, and the same principle is said to prevail at the civil law.

But whether technically necessary or not, it is settled by the decisions of the Supreme Court, that the want of a judicial delivery of possession is no obstacle to the confirmation of a grant of lands in California.

The occupation and settlement which, in the Louisiana and Florida cases, were considered to constitute the true grounds of the claimant's equity, were required by the Supreme Court to be shown, not because the technical rule required a formal delivery of possession to complete the transfer of the right of property, but because the petitioner, by occupying and cultivating his land under an inchoate title, and an implied promise of a grant, had rendered to the former Government a consideration which bound its conscience and that of its successors to perfect the title.

The question then, in this and other cases, is not whether a formal and technical delivery of possession has been made, but whether a consideration has been given for the grant, either antecedent by public services, the payment of money and the like, or subsequent, by occupation, settlement, etc., which in equity required the former Government to convert the inchoate title actually obtained into a perfect title. If, at the acquisition of the country, the conscience of the former Government was bound by this obligation, it is equally binding upon us; and the claimant, whether a resident or a foreign Mexican, has a right of property which the United States have agreed by the Treaty to respect.

Whether the consideration rendered, and the equitable claims on the bounty of the Mexican Government possessed by Castillero, are sufficient to create such an obligation, is a question which, perhaps, depends rather on the spirit in which his claims are looked upon, than upon any definite rule of law. It has appeared to me, as before stated, that the consideration rendered by him to the Mexican Government, did not merely constitute a claim upon its bounty; but that when he had

obtained the assent of the Supreme authority to a grant of a specific tract of land, when orders had been issued to make him a grant and to put him in possession, the execution of which was prevented solely by the outbreak of war, the inchoate title so obtained ought to be respected by the United States.

But if the fact of possession and occupation be insisted on as indispensable, it is to be remembered that the land solicited and ordered to be granted to Castellero, was two leagues "on the land of his mining possession."

It is not disputed that early in December, 1845, he had occupied and worked the mine.

Possession of it had been given to him by the Alcalde, in a loose and informal manner, it is true, but still sufficient to give an official sanction to his occupation, more than six months before the conquest of the country; and from December, 1845, he and his assigns have continued to hold it. As, then, the mine was within the two leagues solicited, and as he had already taken possession of, and was working it, he may, perhaps, be considered, after the order of Lanzas was issued, to have been in possession of the lands referred to in that order.

In no cases was any other possession taken by the Californian rancheros of the large tracts—sometimes eleven square leagues in extent—granted to them, than by building a rude house of adobe, cultivating a small portion of the land, and stocking the remainder with a greater or less number of wild cattle or horses.

I am aware that in this view of the claimant's equities, I have the misfortune to differ from the Circuit Judge.

But on the best consideration I have been able to give to the subject, it has appeared to me not only warranted by the decisions of the Supreme Court, but in accordance with the dictates of the enlarged, and, so to speak, generous justice which should animate a great and a conquering nation in dealing with the rights of the vanquished.

But it is said that if Castellero obtained from the Supreme Government a grant of two leagues on his mining possession, it proves one of two propositions,—either that he was guilty of a gross fraud in suppressing the fact that such a grant would

include private land, or that the Supreme Government committed a violation of law equally gross, in attempting to grant the lands of private individuals.

Had the title set up been a formal and absolute grant of two leagues, to be measured in every direction from the mouth of the mine, the observation would have possessed much force. But such is not the import of the Lanzas dispatch; on the contrary, it directs the Governor to put the petitioner in possession of the land solicited "in conformity with the laws and dispositions on colonization," a direction which rendered it certain that in the location of the grant private rights would be respected. Had the Supreme Government known that a tract of two leagues, measured in every direction from the mouth of the mine, would include private land, the precautions used in framing the order to the Governor would have sufficed for the protection of the owner; and the dispatch is, in effect, but the expression of the President's assent to a grant of two leagues on land of the petitioner's mining possession, and an order to the Governor to execute the grant; provided, and so far as it could be done without injury to third persons.

It cannot, therefore, be inferred from this dispatch, either that Castellero practiced a fraud on the Government, or that the latter committed or intended to commit a violation of any private rights whatever.

The last objection to the validity of the Lanzas dispatch which I shall notice, is that contained in the seventh division of the printed argument filed by the counsel for the United States.

The same point had been raised and fully considered by the Court in the case of *Palmer vs. The United States*. As the decisions of this Court have not been reported, it has been thought most convenient to append that opinion to this, adding to it such further observations as may seem appropriate:

"Before proceeding to an examination of the merits of this case, a general objection to the validity of the grant must be considered. The grant purports to have been executed on the 25th June, 1856, subsequently to the declaration of war between the United States and Mexico.

It is contended, on the part of the United States, that on gen-

eral principles of public law, grants made *flagrante bello* when conquest has been set on foot, and actual occupation is imminent and inevitable, have no validity against the subsequent conqueror. The question has not heretofore been presented to this Court. It has been discussed with much ingenuity and ability.

It is urged that in the conduct of war, and the determination of its objects, the political department is supreme; and that the judiciary are bound by the view taken by the political branch of the Government; that, although Congress has alone power to declare war, to the Executive is given the right of shaping it to its ends, or of declaring its objects.

To ascertain its objects, resort must, therefore, be had to executive acts, and as the executive acts in this case unequivocally indicate that a principal object of the war was to acquire California, that acquisition was thus brought within the scope of the war, and must be so regarded by the Courts.

To this point, the case of *Harcourt vs. Gaillard* (12 Wheat.) is cited. Such being the object or scope of the war, it is urged that the intended conquest of California embraced not only the establishment of sovereign rights in the Territory, but also the acquisition of the public property within it.

That the proprietary rights to be acquired by the conquest are as essential, though not as important a part of the fruits of conquest, as the political, the commercial, and other advantages proposed to be obtained, and that no part of these objects of the conquest is to be ignored.

The conquest of California, including the acquisition of the public domain, having been thus shown to have been the object, or brought within the scope of the war, it was urged that any grants of public land made after the conquest was projected, and when it was about to be effected, though before it actually occurred, must be deemed to be in fraud of the rights of the incoming conqueror, and invalid as against him.

The foregoing statement is believed to present the outline of the argument submitted on the part of the United States.

Both the premises and the conclusion must be examined.

If the conquest of California was the object of the war, it must be so considered because that object was avowed by competent authority when war was declared; or because it was made the object of the war, after its commencement, by the political branch of the Government.

It may be admitted that this Government had long regarded California, or the Bay of San Francisco, as an important and desirable acquisition. The instructions of the President to

Mr. Slidell indicate the wish of the Executive to obtain it by purchase and cession, as Louisiana and Florida had been acquired.

It by no means follows that the intention to obtain it by force of arms, or conquest, can be attributed to Congress, still less that such was its object or motive in declaring war.

The law by which war was declared, recognizes it as previously existing by the act of Mexico; and it is known that hostilities arose by the invasion by Mexico of a territory claimed by the United States to be within their limits. Such was not, therefore, the object for which war was declared, or its existence recognized—nor could it constitutionally have been.

It is observed by Mr. Ch. J. Taney, in *Fleming v. Page* (9 How. 614): ‘The genius and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement, but to enable the General Government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens. *A war, therefore, declared by Congress, can never be presumed to be waged for the purpose of conquest or the acquisition of territory.*’

As a limitation upon the power of Congress, this distinction may, practically, be unimportant. As every war in which the country may be engaged must be regarded by all branches of the Government, and even by neutrals, as a just war; and as nations can readily cloak a spirit of rapacity and aggression under professions of justice and moderation, it is at all times easy, should our country be actuated by such a spirit, to declare an aggressive war, to be undertaken in self-defense, and an intended conquest to be desired only as a compensation for past or security against future injuries.

But the distinction is important when a Court is asked to presume that conquest was the object of the war.

Under our Government, at least, such a presumption cannot be indulged.

The conquest of California being thus shown not to have been the object for which war was declared, we may next inquire whether, by the acts of the Executive under its power to conduct the war, it became such, or was brought within its scope, in the sense in which the phrase was used at the bar?

In his annual message to Congress, in December, 1846, the President distinctly states that the war originated in the attempt of Mexico to reconquer Texas to the Sabine. After adverting to the considerations which had induced the Executive to interpose no obstacles to the return of Santa Anna, the latter

being more favorably disposed to peace than Paredes, who was then at the head of affairs, the President observed: 'The war has not been waged with a view to conquest, but having been commenced by Mexico, it has been carried into the enemy's country, and will be vigorously prosecuted there, with a view to obtain an honorable peace, and thereby secure ample indemnity for the expenses of the war, as well as our much injured citizens, who have large pecuniary demands against Mexico.'

Similar declarations are frequently and emphatically repeated by the President in various communications to Congress, and in the correspondence between the American Commissioner and the Mexican authorities.

The object of the war, therefore, as indicated by executive acts and declarations, was not conquest; or, if conquest, it was that of a safe and honorable peace.

It is true, that after the military occupation of California, and after our arms had been everywhere successful, and perhaps at the commencement of hostilities, the Executive and the nation may have confidently anticipated that by the treaty of peace we would acquire California. As Mexico was known to be impoverished, and distracted by civil dissensions, it was obvious that the only indemnity she could afford us for expenses of the war was the cession of a portion of her territory.

The instructions of the Secretary of State to Mr. Trist, show that the extension of the boundaries of the United States, over New Mexico and Upper California, for a sum not exceeding \$20,000,000, was a condition *sine qua non* of any treaty.

The extraordinary successes of our arms, the fact that we already held possession of a great part of the territory of the enemy, and virtually of his capital, our great expenditures of blood and treasure, entitled us to retain a portion, at least, of our conquest as the only indemnity we could obtain. But we were willing to restore a considerable part of our possessions, and to pay for that retained by us a large amount of money.

But such views and intentions on the part of the Executive as to the condition on which the war should cease, are very different from waging it with a view to conquest. The war cannot, then, in any just sense, be deemed to have been declared by Congress, or conducted by the Executive, with a view to conquest.

The power of the President in the conduct of the war was that of commander-in-chief of the army and navy. He had authority to direct and control military operations. As part of the treaty-making power, he could determine when and on what conditions a treaty of peace should be made. But he had no power to impress upon the war a purpose different from

that with which it was commenced, and which, as Mr. Ch. J. Taney declares, Congress could not constitutionally entertain. 'The law declaring war,' observes the same great authority in the case above cited, 'does not imply an authority to the President to enlarge the limits of the United States, by subjugating the enemy's country. The United States, it is true, may extend its boundaries by treaty or conquest, and may demand the cession of territory as the condition of peace, to indemnify its citizens for the injuries they suffered, or to reimburse the Government for the expenses of the war.

'But this can be done only by the treaty-making power, or the legislative authority, and it is not a part of the authority conferred upon the President by the declaration of war. His duty and his power are purely military. As commander-in-chief, he is authorized to direct the military and naval forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country, and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of the United States, nor extend the operations of our institutions and laws beyond the limits before assigned them by the legislative power.'

It is true that in the case in which these observations are made, the point to be determined was, whether enemies' territory, which in the course of hostilities had come into our military possession, became a part of the United States, and subject to our general laws. But they are important to this case as defining the power of the President in war, to be merely that of the military commander-in-chief; that territory can be acquired only by the treaty-making and legislative authority, and, consequently, that the fact that hostilities are by the military authority directed against a particular portion of the enemy's territory, cannot be said to make the acquisition of that territory the object of the war.

It is therefore apparent that the war with Mexico cannot be regarded by the judicial department of this Government as commenced, or conducted, with the object of effecting the conquest of California.

The most that can be said is, that its military occupation was effected as a means of crippling and subduing the enemy, and with the expectation, on the part of the Executive, that we would retain and finally insist upon the cession of the territory so subjugated by our arms as an indemnity for our injuries and expenses.

The nature and amount of indemnity to be required, the

extent of territory to be ceded, depended upon the will of the Senate and the Executive as the treaty-making power, and until that will was expressed in the treaty, the intention to effect the permanent acquisition of all California cannot be attributed to the political power, any more than a similar intention with regard to those conquests which at the close of the war were restored.

If, then, it were a principle of public law that all alienations of public domain by a sovereign are invalid as against an enemy who has commenced or is prosecuting a war, with the object of conquering the territory within which the property is situated, or who has set on foot expeditions for the purpose, with sufficient power to attain the end, as proved by the event, the facts of this case would hardly admit of its application.

But assuming the facts as contended for by the United States, we proceed to inquire whether such a rule of law exists. The right of Mexico to dispose of her public domain in California before the war, is admitted. It is not denied that that right ceased, as against the United States, when the latter effected the conquest of the country, and subverted the Mexican authority.

If it ceased before the actual conquest and displacement of the Mexican authority, it must be because the determination of the United States to effect the conquest, and the making preparation to carry out its determination, gave to the latter some inchoate or inceptive right to the territory subsequently conquered, and the title consummated by the conquest relates back by a kind of fiction to the date of its inception.

We have been unable to discover any trace or intimation of such a doctrine in any writer on the laws of war.

The rights derived from conquest are derived from force alone. They are recognized because there is no one to dispute them, not because they are, in a moral sense, rightful and just. The conquest of an enemy's country, admitted to be his, is not, therefore, the assertion of an antecedent right.

It is the assertion of the will and the power to wrest it from him.

Even where a conquest is effected to obtain an indemnity justly due, it is not the assertion of any antecedent right to the particular territory conquered, but only of the general right to a compensation for injury.

The right of the conqueror is, therefore, derived from the conquest alone. It originates in the conquest, not in the intention to conquer, though coupled with the ability to effect his purpose, nor even in the *right* to conquer as means of obtaining satisfaction for injury.

It is the fact of conquest, not the intention or power to conquer, which clothes him with the rights of a conqueror.

The rights acquired by the conquest are temporary and precarious until the *jus post liminii* is extinguished; and if a reconquest is effected, the rights of the sovereign who has temporarily been displaced revive, and are deemed to have been uninterrupted.

The term 'title by conquest' expresses, therefore, a fact and not a right. Until the fact of conquest occurs, the conqueror can have no rights. To affirm that a title acquired by conquest relates back to a period anterior to the conquest, is almost, a contradiction in terms.

Until, then, the conquest is effected, the rights of the existing sovereign remain unimpaired. He can, therefore, dispose of the public property at his discretion, nor can that right be effected by the determination of an enemy to conquer the territory, and by his preparations for the purpose, though the event may demonstrate the conquest to have been practicable.

The case of *Harcourt vs. Gaillard* has been cited by the counsel of the United States in support of the doctrine contended for by them.

The distinction between that case and the case at bar is obvious.

In *Harcourt vs. Gaillard* the question was as to the validity of a grant by a British Governor, of land within a territory claimed to belong to the United States. As our Government had asserted and maintained by arms its title to the disputed tract, the judicial department were not at liberty to declare the claim to be wrongful, and to recognize the right of any other sovereign over the territory in question.

The title of the United States was in no sense acquired by conquest. Her title was antecedent to the war—it was merely maintained by arms and recognized by the treaty of peace.

The question presented was, in the language of the Court, 'one of disputed boundaries, within which the power that succeeds in war is not obliged to recognize as valid any acts of ownership exercised by his adversary.'

Had the claim been that of conquest alone, the case would have presented, says the Court, more difficulty. 'That ground would admit the original right of the Governor of Florida to grant, and if so his right to grant *might* have continued until the treaty of peace, and the grant to *Harcourt* might, in that case, have had extended to it the principles of public law which are applicable to territories acquired by conquest, whereas the right set up by South Carolina and Georgia denies all power in the grantor over the soil.'

The distinction is made still more apparent in a subsequent part of the opinion of the Court: 'War is a suit prosecuted by the sword; and where the question to be decided is one of original claim to territory, grants of soil made *flagrante bello* by the party that fails, can only derive validity from treaty stipulations. It is not necessary here to consider the rights of the conqueror in case of actual conquest.'—(p. 528.)

The latter is precisely the question to be considered in the case at bar.

The argument of the counsel for the United States can, therefore, derive no support from the case referred to.

It is proper, however, to observe that the case of *Harcourt vs. Gaillard* was not cited by the counsel as directly in point. It was thought to establish that all grants of territory brought within the scope of the war are invalid; that the case of disputed boundaries presents one illustration of the general principle, while the case at bar furnishes another.

It has seemed to me, however, that the principle of that decision relates exclusively to the case of disputed boundaries, and that the distinction is clearly drawn between that case and one like the present; that between them the obvious difference exists that the former is a case of 'original claim to territory,' while the other is 'one of actual conquest.'

It is said on the part of the United States, that if a belligerent can, after a declaration of war, grant any portion of his property, he can grant the whole, and thus might, by granting himself away, escape responsibility. The case supposed is an extreme one. It can rarely occur that a nation will seek safety by self-destruction.

But in such case the adversary might refuse to recognize such a voluntary suicide as affecting his rights. For the purpose of obtaining satisfaction he might justly treat the nationality sought to be extinguished as still existing. But in all Courts his rights would be enforced against the successor or grantee of the extinguished sovereign.

The question would then be purely political, for the new sovereign, whether to carry on the war or accede to the demands of the enemy of his grantor, and for the latter whether to prosecute the war against the new sovereign. Little aid, however, can be derived from the consideration of such extreme and improbable cases.

It is further urged, that the doctrine contended for on behalf of the United States is in the prize law.

It may, perhaps, be admitted that a theory of maritime prize formerly obtained, which assumed that a belligerent has a vested right by the declaration of war in all sea-borne private prop-

erty of the other belligerent; that no such property can be the subject of lawful sale; that all contracts of sale touching belligerent property of any sort, though valid on land, are invalidated by the mere fact of such property being embarked on the ocean, and that if transferred to a neutral after the declaration of war it is a lawful prize to the other belligerent.

Such is not now the received law of nations. It is now admitted that the *bonâ fide* sale of the ships of belligerents to neutrals in time of war is lawful and valid unless made *in transitu*.

In the *Johanna Emilia*, 29th Eng. L. and Eq. R., p. 562, Dr. Lushington says: 'It is not denied that it is competent for neutrals to purchase the property of enemies in another country, whether consisting of ships or anything else. *They have a perfect right to do so, and no belligerent right can override it.*'

Such is the doctrine maintained by our Government. See opinion of Mr. Attorney General Cushing, October 8, 1855.

If a sale to a neutral of a ship *in transitu* is held invalid as against a belligerent, it is not by reason of any inchoate right or lien acquired by the latter by the mere declaration of war, or because the right of the enemy to dispose of his property is invalidated by the declaration of war, but because a sale of a ship *in transitu* is taken as proof of collusion and fraud, and as showing that no absolute transfer has, in fact, been made. The soundness of even this rule is doubted by the Attorney General in the opinion referred to.

A sale of a ship not *in transitu* by a belligerent to a neutral is valid as against a subsequent captor, no matter how imminent the danger of capture would have been had she remained enemy's property, and no matter what may be the number of hostile fleets fitted out to cruise against her and similar property of the belligerent.

It appears, then, that the law of nations, with regard to prize of war, does not recognize the principle contended for.

It is urged, however, that this principle lies at the foundation of the doctrine of *post liminî*.

It is argued that a state of war implies the reciprocal denial by each belligerent of all rights on the other.

That each relies upon force alone—force to retain or force to take.

They are thus in *aequali jure*.

The principle, therefore, by which, on a reconquest, the original title revives, and is deemed to have been uninterrupted, is founded on the presumption that the displaced sovereign intended a reconquest when he was displaced, and his title on a reconquest relates back to the time when he is presumed to

have formed such intention. If, then, (it is argued,) the title by reconquest relates back to the time of the formation of the intention to reconquer, the title by conquest must relate back to a similar period; for a state of war implies the negation of all antecedent right on either side. The only difference between the cases being, that in the case of a reconquest the intention to reconquer is presumed until the *jus post liminii* is extinguished, while in the case of conquest that intention must be shown by the political acts and declarations of the conqueror.

The argument is ingenious, but the premises are, I think, erroneous.

It is assumed that a *new* title is acquired by a sovereign who recovers territories from which he has temporarily been driven.

On the contrary, he holds it by his original title, which could only have been displaced by a permanent conquest. But the fact that he recovers the territory, proves that what seemed a conquest was but a temporary dispossession. The invader, therefore, acquired no rights, nor did the original sovereign lose any. He continues to rule, not by a newly acquired title which relates back to any former period, but by his ancient title, which, in contemplation of law, has never been divested.

Nor is it true that war is the reciprocal denial of all rights by the belligerents, with respect to the territories of either.

A conqueror does not deny that the territory seized was at the time of the conquest the territory of his enemy, any more than the attaching creditor denies the property attached to be that of his debtor.

On the contrary, he asserts it to be his. He seizes it as the property of his enemy, and because it is his. He asserts no antecedent title in himself. He declares, not that the territory was his, but that he will make it his by conquest.

The title or right acquired by a conquest is not the same as that of the original possessor.

It is temporary and precarious, and ceases the moment the conqueror is expelled. If, indeed, a title by conquest can be said ever to have existed when the event has proved that the attempted conquest could not be maintained.

The title of the original owner is wholly unaffected by the temporary dispossession, and even during his dispossession it is treated as valid and subsisting until the *jus post liminii* has been extinguished.

The extinction of the *post liminii* is necessary to ripen the temporary and merely possessory right of the conqueror into such an ownership of the territory as neutrals can recognize.

If these views be correct, the case of a reconquest does not

present the instance supposed of a title relating back to the period of the formation of the intention to reconquer.

But the further discussion of this subject would require more time and space than can be devoted to it.

It might, I think, be demonstrated, that a rule which supposes all rights of a sovereign, with respect to territory subsequently conquered, to cease as against the conqueror, *not* when war is declared, but when the war is prosecuted with the object of conquest, when expeditions are fitted out for the purpose, and when the conquest is 'imminent and inevitable,' is not susceptible of practical application as a rule of international law.

That those rights must continue until the date of actual conquest, or of the treaty of cession, or else must cease at the declaration of war, and that an attempt to estimate the "imminency" of the conquest at any intermediate period, or to try the validity of the exercise of sovereign rights, by calculating the chances of war at a particular moment, would be impracticable and illusory.

On the whole, I am of opinion that the right of Mexico to grant her public domain in California, continued until the conquest of the country by the United States.

It is further urged, on the part of the United States, that grants made after the 13th May are not protected by the treaty of peace, because such was not the intention of the parties.

That the Mexican Commissioners who negotiated the peace, and who represented the claimants as well as the Mexican Government, solemnly, and after special inquiry, declared that none such existed; and that the treaty was negotiated on the faith of this declaration.

It is admitted that such a declaration was made, and embodied in the *project* of the treaty submitted to the Senate.

Had this declaration been contained in the treaty as adopted and ratified, it might very possibly have been regarded as a covenant or stipulation that no such grants should be deemed valid by the United States.

But the clause containing it was struck out by the Senate, not by the general vote which struck out the whole of the 10th Article, of which this declaration formed a part, but by a distinct vote upon the question whether this particular clause should stand as a part of the treaty.

The Court cannot assume, therefore, that the treaty was assented to by the United States on the faith of this declaration by Mexico, else why strike it out? It may, not unreasonably, be supposed that the Senate refused to allow the declaration

to remain, because they were willing that grants made after the 13th May, if any such there were, should be submitted to the courts, and rejected or confirmed, as might be just.

But assuming that the treaty was concluded on the faith of this declaration, the rights of an individual to his property cannot be affected by it.

The stipulation in the treaty by which the property of the inhabitants of the ceded territory was secured, conveyed to them no additional rights. 'An Article to secure this object, so deservedly held sacred in the view of policy as well as of justice and humanity, is always required and never refused.'—(12 Wheat. 536.)

'When such an article is submitted to the courts, the inquiry is, whether the land in controversy was the property of the claimant *before the treaty*.'—(United States *vs.* Arredondo, 6 Pet. 712.)

If, then, the land in controversy was the private property of the claimant when the country was acquired, it must have remained such, though no treaty had been made. The United States do not claim to have acquired the ownership of any other property than the public property of the enemy, nor could they justly have demanded that Mexico should assent by the treaty to the confiscation of any property the right to which was vested in private individuals.

If, then, the United States have been willfully or accidentally deceived, as to the amount of property held in private ownership in the ceded territory, they may have a right to demand a return of some portion of the pecuniary equivalent paid by them.

The fraud or mistake of the Mexican Commissioners can have no effect upon a private right held sacred by the laws and usages of all civilized nations, which was not derived from the treaty, and which, had it been known to exist, the United States would have been bound to respect.

These observations are made with reference to the general proposition maintained at the bar, viz., that the declaration by Mexico that no grants had been made subsequent to May 13, 1846, invalidated all such grants to the same extent as if a stipulation to that effect had been embodied in the treaty."

In the brief filed in the case at bar, the Court is invited to review the grounds of the foregoing opinion; and the question is discussed by the counsel of the United States with characteristic ingenuity and ability.

The authority chiefly relied on in support of the position taken by the counsel for the United States, is Bynkershoek.

“We make war,” says that author, “because we think that our enemy, by the injury he has done us, has merited the destruction of himself and all his adherents; as this is the object of our warfare, it is immaterial what means we embrace to accomplish it.” * * * “A nation which has injured another, is considered, with everything that belongs to it, as confiscated to the nation that has received the injury. To carry that confiscation into effect, may certainly be the object of the war, if the injured nation thinks proper.”

The doctrine here maintained, that in war, poison and every species of fraud may rightfully be used, has received the general condemnation of mankind. It may be that the censure on Bynkershoek is not wholly deserved, inasmuch as he expresses no approval of those practices, but differs from other writers mainly in distinguishing between the absolute rights of war and those voluntary relinquishments of them which are dictated by humanity and generosity.

But if it be admitted that humanity, christianity, and the usages and rules observed by all civilized nations (which constitute public law), forbid even in war the use of certain means, the discussion whether such rights abstractly exist, would seem to be a disputation savoring rather of the subtlety of the schools than of that practical sense which seeks to discover and establish the actual rules by which nations in a state of war are governed.

That the rights of war, as deduced by Bynkershoek, from a consideration of its abstract nature, are mitigated by the laws of war as established by the general consent of nations, with respect to the effects of conquest, as well as to the mode of warfare, is proved by the general recognition of the principle that, on the conquest of an enemy's territory, private rights of property are to be protected.

But if “a nation which has injured another is to be considered as confiscated, with all that belongs to it, to the nation that has received the injury,” this confiscation must extend to private as well as public property.

A declaration of war undoubtedly involves the assertion of the right to measure and forcibly to exact an indemnity for the wrong which has occasioned the war.

To seize, to conquer, or to destroy an enemy's goods, his territory or his armed adherents, are but the means of exacting this indemnity.

As a matter of theoretical speculation, we may consider the seizure, the conquest, or the destroying, as done by virtue of a previous fictitious or hypothetical confiscation of property, or forfeiture of life, incurred at the date of the declaration of war. But the necessity of such a theory is not very apparent. For the right to subdue the enemy being admitted, as a means of obtaining an indemnity for previous wrongs, the supposed constructive confiscation can add nothing to the rightfulness of those acts. It is for this reason said, in the opinion above cited, that "the conquest of an enemy's country, admitted to be his, is not the assertion of an antecedent right. It is the assertion of the will and power to wrest it from him." On which the counsel for the United States observes: "Then all Governments are highwaymen! Forcibly to take without antecedent right is a very good definition of robbery."

The inference is not just. Conquest is, undoubtedly, the assertion of a right, but it is the right to conquer which results from a state of war.

It is not the assertion of a previous *right or title* to the territories conquered.

Whether in so doing the belligerent is acting like a highwayman, depends upon the moral justification for the war, an inquiry into which neither neutrals nor the courts of the belligerent can enter.

The hypothesis of an antecedent confiscation, to enforce which the seizure is effected, in no way affects the question. The moral justification of the supposed confiscation has still to be considered—in other words, the justice and rightfulness of the war.

But whatever be the reasonableness or necessity of supposing this theoretic confiscation by belligerents, of everything belonging to the enemy, it is manifest that by the laws of nations the

confiscation is waived where territory is conquered, so far as respects private property; and especially where the conqueror, by the terms of the treaty of cession, has bound himself to respect all rights of private property existing at the date of the conquest.

To repudiate that obligation with respect to any property held in private ownership on the ground that, though private property when the conquest was effected, it was public property ten or twenty or thirty years before, when the war commenced, and that a writer on public law has said, that the declaration of war is a confiscation of all the property of the enemy, and that the conquest was merely carrying into effect the confiscation, would seem an attempt to justify the breach of a plain and positive obligation, which needs but to be stated to be condemned.

The obvious and natural construction of the Treaty is, I think, manifestly the true one, viz., that all private property *bonâ fide* acquired, and held as such by a legal or equitable title obtained under the former Government, is to be respected by the belligerent, to whom by conquest and treaty the rights of sovereignty have been transferred.

I do not think it necessary further to discuss this question. It is enough to say that I have attentively considered all that is urged by way of argument or illustration in the brief filed by the counsel for the United States. I have found nothing to which the answer did not appear to me easy, or which has shaken my confidence in the justness of the views previously entertained by the Court.

The question might well have been dismissed without argument; for we have an authoritative decision of the Supreme Court on the point. In the case of *The United States v. Pico* (23 How. R. 326), the Court says: "In the Act of Congress of 1851, and the decisions of this Court that day [viz., July 7th, 1846, the date of the capture of Monterey, and, constructively, of the conquest of California], is referred to as the epoch at which the power of the Governor of California, under the authority of Mexico, to alienate the public domain, ceased."

As, however, the point then before the Court was the determination of the precise date of the subversion of the former Government, and to decide upon the validity of acts done under Mexican authority *after* that event—while the validity of acts done previous to it was not questioned, nor does the point raised in this case appear to have been presented to the Court—I have thought it not improper to examine at some length the acute and ingenious argument submitted by the counsel for the United States.

I have given to this case much and anxious consideration. The preparation of this opinion has required more labor than even its great length would indicate.

Voluminous as it is, I am nevertheless aware that it is in many respects incomplete.

To have treated at length every point in the case would have extended it far beyond all reasonable limits.

I cannot conclude my labors on this most important case, without acknowledging the great assistance which the Court has derived from the very able and eminent counsel engaged in it.

Their indefatigable and exhaustive industry has presented to the Court every argument, authority and illustration which profound and patient study, not only of the American and English, but of the Mexican and Spanish laws, could suggest; together with every view of the complicated facts in the case, and of their relations to each other, which could assist the Court in its study of the mass of depositions which have been taken.

To the Court has been left merely the duty of considering the suggestions, and collecting and combining the abundant materials contained in the briefs of counsel.

On the whole case my opinion is:

That the claimants are entitled to seven *pertenencias*, to be measured in the manner, of the form, and of the dimensions prescribed in the *Ordenanzas de Minería* of 1783.

And, also, that they are entitled to two square leagues of land, to be located on the land of their mining possession, but

in such a way as not to include any land granted in private ownership, by competent authority, previously to July 7th, 1846.

DECREE.

At a stated term of the District Court of the United States for the Northern District of California, held at the Court-room in the City of San Francisco, on Friday, the 18th day of January, A. D. 1861.

Present: Hon. M. HALL McALLISTER, Circuit Judge.
Hon. OGDEN HOFFMAN, District Judge.

THE UNITED STATES	}	Dist. Court, No. 420.
<i>vs.</i>		Land Com. No. 366.
ANDRES CASTILLERO.		"New Almaden."

DECREE.

This cause came on to be heard on appeal from the final decision of the Board of Commissioners to ascertain and settle Private Land Claims in the State of California, under the Act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision of the said Board, and the papers and evidence on which the said decision was founded, and upon the papers and evidence filed in this Court; and it appearing to the Court that the said transcript was duly filed according to law, and counsel for the respective parties having been heard, and due deliberation had in the premises, it is by the Court hereby ordered, adjudged and decreed, that the said decision be, and the same is, reversed and set aside: And it is likewise ordered, adjudged and decreed, that the claim and title of the petitioner, Andres Castillero, to the mine known by the name of New Almaden, in Santa Clara county, Northern District of the State of California, is a good and valid claim and title, and that the said Andres Castillero and his assigns are the owners thereof, and of all the ores and minerals of whatsoever descrip-

tion therein, in fee simple: And it is further adjudged and decreed, that the said mine is a piece of land embracing a superficial area, measured on a horizontal plane, equivalent to seven pertenencias; each pertenencia being a solid of a rectangular base two hundred Castilian varas long, of the width established by the Ordenanzas de Minería of 1783, and in depth extending from and including the surface, down to the centre of the earth; said pertenencias to be located in such manner as the said Andrés Castellero or his assigns may select, subject to the following conditions: first, that the said pertenencias shall be contiguous, that is to say, in one body; and secondly, that within them shall be included the original mouth of the said mine known as "New Almaden."

And it is further ordered, adjudged and decreed, as to all other rights, property and interests set out and claimed in the petition filed in this case, that the same are not valid, and are therefore rejected.

M. HALL McALLISTER,
Judge Circuit Court U. S.
OGDEN HOFFMAN,
District Judge.

January 18, 1861.

Filed January 18, 1861,
W. H. CHEEVERS, Clerk.

ORDER GRANTING APPEAL
IN BEHALF OF CLAIMANT.

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 Saturday, the 19th day of January, in the year of our Lord one thousand eight hundred and sixty-one.

Present, the Honorable OGDEN HOFFMAN, District Judge.

THE UNITED STATES	}	No. 420.
<i>vs.</i>		
ANDRES CASTILLERO.		

And now, at this day, on application of A. C. Peachy, in behalf of said claimant, made in open Court, it is ordered, that an appeal from the final decision of the Court rendered in said cause at the present term be, and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause, be sent to the Supreme Court of the United States without delay.

Filed January 19, 1861,

W. H. CHEVERS, Clerk.

ORDER GRANTING APPEAL
IN BEHALF OF THE UNITED STATES.

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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 third day of December, in the year of our Lord one thousand eight hundred and sixty.

Present, the Honorable OGDEN HOFFMAN, District Judge.

THE UNITED STATES <i>vs.</i> ANDRES CASTILLERO.	} } }	No. 420. Order of Appeal for the United States.
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In this case, on the application of Calhoun Benham, United States District Attorney, made in open Court, it is ordered by the Court, that an appeal in behalf of the United States from the final decision of this Court rendered in said cause at the present term be, and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause, be sent to the Supreme Court of the United States without delay.

January 25, 1861.

Filed January 25, 1861,

W. H. CHEVERS, Clerk.

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