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Lounsbury: Records of Mexican Land Claims in California
Title to more than 8,950,000 acres, nearly 14,000 square miles, of the best land in California is based on 588 grants which were made originally by the Spanish or Mexican authorities between 1769 and 1846, and subsequently confirmed by the Government of the United States. While these grants comprised less than nine percent of the total land surface of the state, they were situated in what are now its most populous and highly developed regions.

Although records of these grants are of historical interest, they possess even greater legal significance. Litigation concerning titles to these properties began immediately after California was ceded by Mexico, and has persisted ever since. A long process of adjudication, involving more than 600 claims, was undertaken by the Board of California Land Claims Commissioners, 1851-1856, and by the courts of the United States. Some claims were not determined finally until the 1880's, and even today there are cases pending which involve interpretations of grants made in Spanish and Mexican times. Economic importance of the lands has resulted in disputes concerning authenticity, validity, terms, and extent of concessions made previous to the American occupation. These controversies have affected local, state, and national politics;

1 The total area claimed was over 12,000,000 acres, more than 19,000 square miles, according to Homer Cummings and Carl McFarland, Federal Justice (New York, 1937), 123. The figure cited above is the total acreage of confirmed grants, and is taken from Benjamin J. Hibbard, A History of the Public Land Policy (New York, 1939), 28, which in turn is based on the Report of the United States Public Lands Commission, 1902, Senate Doc. No. 139, 53d Cong., 2d sess., 40.

and in a few instances have penetrated into the realm of international affairs, becoming questions for diplomatic consideration between the United States and Mexico.

As a result of this litigation, a considerable body of records concerning the processes of making grants and adjudicating claims based upon them has accumulated in several Federal agencies. Some records are in California; while others in Washington are in the files of both houses of Congress, at least three executive departments, and the Supreme Court of the United States. Beside many disparate items interspersed throughout the general files of these agencies, there are five series which relate specifically to grants and claims. These are the land records of the Spanish and Mexican Archives of California; documents deposited in support of claims filed with the Board of Land Commissioners, 1852-1856; Record of Proceedings of that Board, 1851-1856; the Attorney General's transcripts of Land Commission cases, 1852-1856; and records of cases appealed to the Supreme Court from the United States District Courts in California. From these it is possible not only to obtain a perspective of the tenurial question in California, but also to trace individual grants from the earliest times down to their final disposition by the Federal Government.

I

THE HISTORICAL BACKGROUND OF LAND

TENURE IN CALIFORNIA

Before Upper California was conquered by the United States in 1846, it was largely a pastoral region. The principal wealth of its inhabitants
was in cattle which were raised for hides and tallow. Land was used primarily for grazing which entailed extensive holdings, sometimes comprising tens of thousands of acres and incorporating much of the best land. These tracts were granted by the Governments of Spain and Mexico under definite systems of law and administrative procedure, and recorded officially in the Archives of Upper California. Consequently, when the United States undertook to settle claims based upon these early concessions, constant reference had to be made to the land records which formed part of the Spanish and Mexican archives of California. Official records of the former governments were assembled between 1846 and 1856, and because of their intimate connection with the land question were preserved for many years in the office of the United States Surveyor General in San Francisco. After many vicissitudes the remnant of this collection, consisting principally of land records, is now deposited in The National Archives in Washington, D. C.

Despite serious losses, it still retains legal significance and historical interest.

Authority to dispose of the royal domain in New Spain was vested in the viceroy, who sometimes exercised his powers directly. More often, however, the presidios, missions, and pueblos were established under his orders, their locations being designated by local officials. In Upper

3 Interior, 1875-1876, I, 265.

California, grants were made by the military commandant, who also acted as civil governor of the province. Common lands were assigned to the communities; and individual town and village lots as well as farms and range lands were distributed by the governor or his subordinates to officers, soldiers, and settlers. However, because Spanish occupation of California was a defensive measure, encouragement was given primarily to compact settlements, few large private estates being conceded.

Although grants made during the period of Spanish dominion, 1769-1821, were in accord with colonial law, special administrative provisions were decreed to meet the peculiar frontier conditions of Upper California. Moreover, no systematic method of recording grants was developed during this time. The authorities issued both permits of occupancy and grants. In 1849, descendants of grantees were reported to possess title papers which were not recorded in the provincial archives, and it was believed that many holdings were based upon oral rather than written permission. Such permits were accorded apparently on condition that the occupant should apply later for formal recognition of his title. This was often neglected, and continuous occupancy came to be regarded by both neighbors and officials as indicating clear title. After Mexican independence, the Republic appears to have recognized this type of tenure, although many holders of Spanish grants took the precaution of having them confirmed.

5 Jones, Report, 23.

under Mexican law. Despite the paucity of entries in the provincial
archives concerning land concessions, these are sometimes found in the
local records of pueblos and presidios which also contain items about
subsequent transfers of property.

A few grants were made during the last years of Spanish rule in
Upper California, 1810-1822, and during the short-lived empire established
by Agustin Iturbide in 1823. However, during this period, disturbed
internal conditions both in Spain and Mexico precluded maintenance of a
consistent land policy. The reorganization of tenurial institutions
had to await the establishment of the federal republican form of govern-
ment in 1824.

A legal basis for disposal of Mexican public lands was laid down
during the formative days of the new government. In fact, consideration
of the land question by the National Constituent Congress was contempor-
aneous with its discussion of the new constitution. Under the federative
system, as defined by the Congress in January 1824, Upper California was

the Spanish Period (New York, 1921), 393, cited hereafter as Chapman,

Owen C. Coy, Guide to the County Archives of California, Publication
of the California Historical Survey Commission (Sacramento, 1919), 48-50,
cited hereafter as Coy, County Archives.


Territorial status was conferred upon the region by the acta con-
stitutiva of the Mexican Federation, Jan. 31, 1824, and subsequently by
the Constitution adopted on Oct. 4, 1824, Jones, Report, 5. Translations
of the texts of Arts. II and V of the Constitution of 1824 are found in
Mathew G. Reynolds, Spanish and Mexican Land Laws (St. Louis, Mo., 1895),
124, cited hereafter as Reynolds, Land Laws. A description of the varying
political status of Upper and Lower California is given in Hubert Howe
Bancroft, Works, XVI (North Mexican States and Texas, II), 705-712.
designated a territory. Subsequently, the colonization law of August 18, 1824, ascribed the disposition of public lands in the territories as a function of the central government. This act authorized the supreme executive power to promulgate regulations for territorial settlement. Accordingly, rules governing primary distribution of the public domain in the territories were issued over four years later on November 21, 1828.

Despite subsequent changes in the form of the Mexican Government and the creation of the Department of the Californians in 1836, the law of 1824 and the regulations of 1828 appear to have remained the basis of land settlement to the end of Mexican rule. However, owing to civil disorder, no extensive grants were made until after General Jose Figuerca became governor in January 1832.

The act of 1824 authorized grants of not more than eleven square leagues, about 50,000 acres, to families or individuals, but permitted larger ones to empresarios intending to colonize many families. According to the regulations of 1828, the territorial governor was given the


14 Jones, Report, 3.

exclusive faculty of making grants within the terms of the law. Con-
cessions to individuals and families were required to have approval of
the territorial legislature in order to be considered valid. In case
the assembly refused its concurrence, the governor might appeal to the
supreme government in favor of the concessionaire. Furthermore, all
grants to empresarios required the sanction of the supreme government.

The method of obtaining a grant was set forth in the regulations of
1823. The applicant was to petition the governor for a specified quantity
of land in a designated locality. The petition was to be accompanied by a
plat (diseno) to show the shape and position of the land desired in
relation to other tracts or to natural objects. However, this practice
was not always followed, many of the later petitions containing nothing
more than a verbal description.

The governor referred the petition to the prefect of the district
wherein the land lay or to some other nearby local official. Record of
this act was noted by entering an order of reference in the margin of the
petition. In the marginal order of reference the governor requested
information as to whether the desired land was vacant, whether it could be
granted without injury to third persons or to the public, and sometimes
required the local officer to verify the petitioner's account of himself.
"The reply (informe) of the prefect, or other official, was written upon
or attached to the petition, and the whole returned to the governor."

16 Jones, Report, 5.
17 Ibid., 3.
18 Jones, Report, 3-4.
Petitions were sometimes addressed to the prefect of the district, who
ordered his subordinates to render an informe. Usually, however, the
petition was transmitted to the local officers through the Secretary of
the Department, who also appended his report upon the case before re-
turning the papers to the governor. Reference was never requisite, for
if the governor already possessed the necessary information, he could
issue the grant on receipt of the petition. If the information was favorable and all other conditions complied
with, the governor made the grant. Occupancy customarily anticipated
formal concession. The only conditions or limitations which might affect
validity were those sometimes set by the governors requiring the grantees
to make improvements within a fixed period, usually one year. Failure to
comply did not invalidate title, but exposed it to denunciation by other
persons. Limitations were not always imposed, nor were they required by
law. Furthermore, it does not appear that any reservations of mineral
rights were incorporated in the law of 1824 or the regulations of 1828.

19
Land Office Report, 1887, 543.

20
G.L.O., Record of Proceedings, Board of Calif. Land Commrs.,

21
Jones, Report, 4.

22
Ibid., 4, 22.

23
Ibid., 22. Foreigners, however, were not permitted to settle
within ten leagues of the coast or twenty leagues of an international
boundary, according to the law of 1824, but naturalization overcame this
handicap.
Mexican record keeping was more systematized than the Spanish. A definite procedure of filing documents and recording grants was developed in Upper California after 1828. The original petition and any other preliminary papers, such as the informe, together with the governor’s order of approval or rejection were filed in the archives by the Departmental Secretary. The documents pertaining to each concession were filed together to form a dossier of the entire proceedings. A file concerning a single grant was called an expediente. A title paper based verbatim upon the decree of concession was signed by the governor and secretary, and issued to the grantee. From 1833 to 1856, grants were also registered in a book kept in the archives, as prescribed by the regulations of 1828. Afterward, however, only brief memoranda were kept, but the expediente was always filed. Grants were sometimes registered by the prefect of the district wherein the tract was situated, but these records were not intended to be permanent.

The final act necessary to procure valid title, was legislative approval. The governor was required to communicate to the assembly the fact that a grant had been made, accompanied by information concerning it. The legislature referred the matter to a committee, either that on vacant

24 Jones, Report, 4, states that the papers formed one document, but it would seem that dossier is more accurately descriptive of the file. See also G.L.O., Record of Proceedings, Board of Calif. Land Commrs., Journal, II, 270-340, passim, especially p. 315. See also Ogden Hoffman, Reports of Land Cases Determined in the United States District Court for the Northern District of California, ... 1853 ... 1858 Inclusive, (San Francisco, 1862), I, 164, cited hereafter as Hoffman, Reports of Land Cases. Only Vol. I was published.

lands or on agriculture, which reported at a later session. If a favorable report was rendered, the requisite legislative approval was forthcoming. Indeed, sanction was usually given. It was customary for the secretary of the assembly to deliver a certificate of approval to the grantee, on application, and the action was also recorded in the written proceedings of the legislature. However, records of the assembly were too imperfect to be sure guides to this phase of the procedure; and entries in the titles were, and for this reason, done up in a legal as a certificate was not always applied for, it is difficult to determine particularly whether or not a certificate was actually issued. Indeed, to just how many grants received legislative authorization. A completely laying out of the grant, and the all the usually granted at once, and perfect title, therefore, rested upon compliance with all provisions of the law and regulations concerning colonization, including legislative acts and approved charters, the grantee was supposed to obtain a certificate of juridical or

Until 1835, the legislature was called the territorial deputation (deputacion territorial), when it became the departmental assembly (asamblea departamental), Jones, Report, 3-4. See also Hoffman, Reports on Land Cases, i, 41.

Many grants were passed upon in the winter and spring of 1846, which were recorded as loose memoranda but never entered permanently in the journal of the assembly, Jones, Report, 4-5. It was alleged that Governor Pico issued certain titles after United States troops occupied California, July 7, 1846. These grants were antedated, but never were confirmed by the departmental assembly which adjourned on July 8, 1846, nor were they recorded in any book in the Mexican archives, although it was reported that entries had been made. Halleck, Report, 180. A list of grantees whose concessions received legislative approval is in Interior, i, 912-916. The total is 279, but the number of grants was considerably less as several persons were frequently co-proprietors. See also G.L.O., Bd. of Calif. Land Commrs., Record of Proceedings, Journal, II, 74, 164, II, 361-362; also Halleck, Report, 180-181; and Hoffman, Reports on Land Cases, I, 41.

Jones, Report, 5.
judicial possession from a local official. It was usually issued by
the alcalde, and implied registration of title in the local records,
and official supervision of the location of the grant upon the ground.
Technically, the certificate was supposed to be issued prior to occupancy
of the land; and the property could not be alienated legally until this
had been done. Frequently, certification was based on the verbal des-
cription in the title papers, and location was determined in a most
perfunctory manner. Cadastral instruments were seldom employed in
laying out the grant, and the alcalde usually guessed at course and
distance. Indeed, no formal public surveys were ever made in Spanish
and Mexican times, nor was there an official surveyor prior to the
American conquest. Exactitude in location or limits were unnecessary
in a sparsely settled country where cattle bearing many brands grazed
together on the range. Neighbors seldom disputed about boundaries,
controversies over water rights being much more frequent. Although
juridical possession does not constitute a part of the granting process,
it is important in relation to descent of title and subsequent surveys
of the properties by the Government of the United States.

Although imperfections of survey and description were of little
significance in Mexican times, they caused endless difficulties subse-
quently. When accurate surveys were made, many old grants were found to

29
Ibid., 5.

50
Interior, 1873-79, I, 382.

31
Jones, Report, 5.

32
interferes with one another, while some included much greater quantities of land than had been applied for, or than the former government had intended to concede. Consequently, with the great increase in population which followed closely upon annexation, controversies arose between the newly arrived settlers and those who claimed their lands by virtue of Spanish and Mexican titles. Precision in description and limits was demanded by the newcomers as property values rose and the economic life of California became increasingly diversified. It was this situation, compounded of confusion and ill-feeling, which led to the creation of a Board of Land Commissioners in 1851, charged with the duty of ascertaining and settling the validity and extent of the old grants.

Among the perplexing questions that originated under Spanish and Mexican rule in California was that concerning estates belonging to the missions. These ecclesiastical lands were not held as grants from the crown. Missionaries enjoyed no other proprietary rights other than those emanating from occupation and use for religious purposes; and at the pleasure of the government.

At first the missionaries, the Franciscans, nominally occupied all of the royal domain in Upper California except lands granted to presidios. However, with an increase in the number of secular communities, each of which received lands from the crown, the area of the mission holdings, though still large and consisting of much fertile land, was very much reduced in extent. Each mission consisted of a religious center, around which were grouped at varying distances, villages of converted Indians.


34 Jones, Report, 6.
These communities were subject to the missionaries in spiritual matters, but theoretically under the political authority of the provincial governor.

The primary objectives of missionary effort were conversion of the natives and pacification of the country through the creation of sedentary Indian communities. Once this was accomplished, the villages were considered to be ready for participation in civil affairs, and for spiritual guidance by the secular clergy. Mission status was, therefore, considered as temporary, and was supposed to last for only ten years, but in practice the period was usually much longer. Eventual secularization, as the process was called, was anticipated at the time the missions were founded.

In Upper California, however, as in other frontier districts of New Spain, the process of transforming the missions into secular communities had been long delayed. When the question was finally considered, the normal procedure of secularization was transformed into a movement for the sequestration of church lands. By a decree of the Spanish Cortes, September 13, 1815, mission lands were considered as a branch of the public administration. Subsequently, the Mexican Government always asserted its proprietary rights to missions. The first act of this nature was a decree of the General Congress of August 4, 1824, which asserted that all temporalities were national property. This was followed by another act of July 7, 1831, which made a like assertion, but which went a step farther,

35 Jones, Report, 7-9
36 Ibid., 10-11.
37 Ibid., 9. See also McBride, Land Systems of Mexico, 109.
38 Jones, Report, 11 and notes.
placing ecclesiastical lands under the administration of a director
general. Furthermore, according to the colonization regulations of
1828, mission lands in the territories were temporarily excluded from
settlement pending determination of the titles of Indian converts and
Mexicans already dwelling thereon.

Sequestration of the mission lands was advanced even further by
the act of the Mexican Congress of August 17, 1855. This law affirmed
that the missions of Upper California were national property, which
could be disposed of by the territorial government only in accordance
with the federal law of 1824 for the colonization of the territories,
the regulations of 1828, or under some subsequent special act of Con-
gress. Acting on the authority, which this legislation presumed to,
convey, the assembly of Upper California empowered the governor to
convert some of the missions into pueblos, to sell some, and rent others.
Thereafter, the governors proceeded to act in conformity with national
and territorial legislation, establishing conditions controlling disposi-
tion. Those missions which were not disposed of remained the property
of the Mexican Government down to the occupation of the country by the
United States in 1846.

In contrast to the Spanish period when only about twenty large
private grants were made, the Mexican Government in Upper California
conferred broad estates upon individuals and proprietary groups with a
lavish hand. It is estimated that about 670 grants were issued between

59

Ibid., 11. See also Reynolds, Land Laws, 141-143.

40

Halleck, Report, 129-130 passim. See especially items 1-4, and 15.
He gives a detailed account of secularization, pp. 125-130, and provides
translations of several official documents in Appendices Nos. 15-22, pp.
149-168. See also Jones, Report, 6-20.
1822 and 1846, of which all but 19 were in the period following
secularization of the mission properties in 1833. These, together
with grants made under Spanish authority, were the basis for later
adjudication of 813 claims considered by the Board of California Land
Commissioners and the courts of the United States.

The transfer of Upper California from Mexican to American sover-
egnty had a profound effect upon the question of land tenure. The
United States declared war on Mexico on May 13, 1846. Less than two
months later, July 7, 1846, American military forces occupied Monterey.
Within a short time all the inhabited parts of the department, approxi-
mating the area of the present state, were in American hands. A military
government was established in the summer of 1846, which continued to
administer civil affairs of the territory until December 1849. Meanwhile,
peace had been concluded with Mexico, and California had been formally
ceded to the United States in February 1848. A state government was
organized in December 1849, and California was formally admitted to the
Union on September 9, 1850. During these years there were many rapid
changes in the political, economic, and social life of the region. The
gold rush of 1849 produced serious complications. Nowhere was the
impact of new forces felt more than in connection with the land question.
However, despite pressing need to determine the status of public lands
and private claims, no Federal administrative or judicial agencies
empowered to cope with such problems were erected until 1850 and 1851.

Upper California was ceded to the United States by the Treaty of

Land Office Report, 1886, 488.
Guadalupe Hidalgo, February 2, 1848. As drafted it contained elaborate guarantees of civil and religious rights, including those of property. However, the Senate of the United States simplified the language of Article IX, and deleted Article X altogether. Provisions affecting property were contained in Articles VIII and IX of the definitive treaty.

According to Article VIII, Mexicans established in the ceded territories were free to continue to reside there, or to remove at any time to Mexico. Those choosing to leave might retain their property in the transferred regions, or dispose of it and remove the proceeds without being subjected to any contribution, tax, or charge. Those preferring to remain might either retain Mexican nationality or acquire American citizenship. However, their choice of citizenship had to be made within one year of the date of exchange of ratifications of the treaty. Those persons who remained in the ceded territories after the expiration of that period, without declaring their intention of retaining Mexican nationality, were to be considered as having elected American citizenship.


43 Article IX was made to conform more closely to the terms of the Louisiana Purchase Treaty of 1803. Article X would have guaranteed without question the validity of all Mexican land titles in Texas prior to Mar. 2, 1836, and in New Mexico and California prior to May 13, 1846. These amendments were accepted by Mexico, but articles explaining these and other changes were incorporated in the protocol of exchange, Queretaro, May 30, 1848, Miller, Treaties, V, 404-408.
Property of every kind in the ceded territories belonging to non-resident Mexicans was to be inviolably respected. The present owners, their heirs, and all Mexicans who should thereafter acquire property by contract, were to enjoy as ample guarantees as if the property belonged to American citizens.

Article IX provided that Mexicans who remained in the ceded territories, but who did not choose Mexican citizenship, should be incorporated into the Union and admitted at the proper time, as determined by Congress, to the enjoyment of all rights of citizens of the United States. In the meantime, they were to be "maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

Immediately upon the American occupation of California, the Mexicans evinced uneasiness with respect to their land titles. Commodore John D. Sloat's proclamation of July 7, 1846, recognized the validity of titles to real property derived from Mexican authority. This pronouncement was issued at Monterey and circulated widely throughout the territory. Further assurance was contained in a proclamation issued by General Stephen S. Kearny, Governor of California, March 1, 1847, which promised the inhabitants that their property rights would be respected. The

44 9 State., 929-950.
47 Department of State, California Territorial Papers, The National Archives. Printed in Vol. 9, Senate Executive Doc. No. 18, Slat Constr.
military authorities generally assumed that all Mexican laws, which were in force at the time of the conquest, were still operative, provided they were not repugnant to the Constitution and laws of the United States. George W. Crawford, Secretary of War, considered them "the whole code of laws now in force in California." In tenurial matters, the territorial authorities appear to have followed Mexican precedents wherever possible.

The United States Military Government took the stand that all lands not included within the limits of grants made prior to July 7, 1846, constituted part of the Mexican public domain. Therefore, following the conquest, there was no immediate legal change in the condition of land titles. American governors refused to determine the validity of Mexican grants; recommended that interested persons should await the erection of a competent tribunal for the adjudication of their claims; and, in the meantime, advised claimants to have their tracts surveyed by a capable surveyor.

The military government performed a number of administrative acts relating to lands, although it attempted no radical departures which altered the status quo ante of Mexican tenurial law. Among the most outstanding actions was that of General Kearney in connection with beach and water-front lots of San Francisco. After choosing certain tracts for military purposes, the territorial governor, assuming to act as the representative of the supreme Government of the United States,


49 Halleck, Report, 214.

50 Ibid., 124.
released to the town those lots which were not required, in order that the local authorities might dispose of them as municipal lands. Kearny based his action on Article V of the Mexican Colonization Law of August 13, 1824, wherein the general government reserved the right to make use of any lands for military purposes which lay within ten leagues of the coast.

In authorizing release of the unused lands, the governor did not consider that he was making a grant, but merely relinquishing title to the town in conformity with Mexican law. However, San Franciscans questioned the legality of this act, and the waterfront properties possessed clouded titles until they were finally cleared by an Act of Congress in 1864.

It was also necessary for the military government to supervise the disposal of municipal lands (propried) belonging to various towns, because a number of irregularities were discovered. A former alcalde at Sonoma was investigated and found guilty of making fraudulent grants and falsifying records of sale. At San Jose, municipal officers exceeded their authority in selling lands. They not only disposed of tracts which did not belong to the pueblo, but also subdivided and distributed the common lands (eridos). In some towns the local officers had made grants from

51 Ibid., 124, 125, and 147.

52 "An Act to expedite the Settlement of Titles to Lands in the State of California", July 1, 1864, 13 Stats., 332-334.

53 Halleck, Report, 125, 147-148.

54 Ibid., 125, 148-149.
the public domain situated beyond the limits of the communities.

There was a constant tendency toward encroachment upon mission lands. This was resisted by the territorial government, which ruled that all such properties which had not been granted in conformity with the law previous to July 7, 1846, were to be considered as government property, and, therefore, subject to disposition only according to law. Owing to questionableness of title to mission lands which had been antedated by Governor Pico after the American conquest, General Kearny decreed on March 22, 1847, that missions claimed under Pico's grants were to remain in possession of the priests until validity of title could be established in a court of law. However, claimants in actual occupancy of mission properties were allowed to remain pending final determination of their rights. Furthermore, most lessees of mission properties were left undisturbed. The governor had to nullify sales made by one priest; and invalidate the acts of an alcalde at Santa Barbara who attempted to give juridical possession to holders of doubtful titles to mission lands.

The newly organized state government assumed control of civil affairs in December 1849, although California was not admitted to the Union until nearly ten months later. During this interval, a movement was inaugurated to gain control of the public lands for the state. In April 1850, the California Constitutional Convention transmitted a memorial to the Senate of the United States requesting that this be done, and citing the example

55
Ibid., 125.

56
Ibid., 130, 169.

57
Ibid., 130, 169-170.
of Texas. However, the Act of Congress of September 9, 1850, admitting California to the Union imposed a condition on its admission which stipulated that the people of that state, either through their legislature or otherwise, should never interfere with the primary disposition of the public lands therein; should pass no law nor take any action impairing or questioning the title of the United States or the right of the Federal Government to dispose of them; nor lay any tax or assessment upon the public domain; nor tax non-resident proprietors who were citizens of the United States higher than residents of California. Six months later, Congress took the first step toward quieting claims based upon Spanish and Mexican grants.

Adjudication of land claims had to await the organization of Federal administrative and judicial agencies in California. Essential machinery was set up between September 1850 and March 1851. The laws and judicial system of the United States were extended to California by an Act of Congress of September 28, 1850; and provision was made for a Surveyor General in the Appropriation Act of March 3, 1851. The latter act was contemporary with one providing for the investigation and settlement of claims based on grants made by the former governments of Upper California.


An Act for the Admission of the State of California into the Union, Sept. 9, 1850, 9 Stat., 452-453, Sec. 5, especially.

9 Stat., 521-522, 617.
The fundamental basis for the adjudication of claims derived from land grants made under the Spanish and Mexican governments was laid down in "An Act to ascertain and settle the private Land Claims in the State of California", which was approved on March 3, 1851. For this purpose, Congress constituted a "Board of Commissioners to Ascertain and Settle Private Land Claims in the State of California", consisting of three members to be appointed by the President by and with the advice and consent of the Senate. The Board was to hear and determine all claims presented to it, in accordance with provisions of the act. The Commission was to appoint its own secretary, "skilled in the Spanish and English languages." He was to act as interpreter and also, "to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission". No more than five clerks were to be appointed.

The commissioners were to hold their sessions at such time and places as the President might direct. Their meetings were to be announced duly and publicly; and they were to have the services of a deputy marshal, appointed by the United States Marshal of the district wherein the board was sitting. The commissioners, when sitting as a board or separately,

61 Stats., 631-634.
62 Ibid., 631, Sec. 1 (unnubmered).
63 Ibid., 631, Sec. 2.
64 Ibid., 631, Sec. 3.
65 Ibid., 632, Sec. 5.
were empowered to administer oaths and examine witnesses. All testimony was to be taken in writing, and recorded and preserved in bound books. The secretary, on application of the law agent, district attorney, and claimant or his counsel, was to issue subpoenas commanding attendance of witnesses before the board or any commissioner.

The method of presenting claims and the board's procedure were then described. All persons claiming lands, "by virtue of any right or title derived from the Spanish or Mexican governments," were required to present their claims to the commissioners sitting as a board, together with written evidence and oral testimony to substantiate them. When a case was ready for hearing, the commissioners were to examine it on the basis of the claimant's evidence, and also upon that produced in behalf of the Government; and then to decide upon its validity. In deciding the validity of claims, the board was to be governed by the Treaty of Guadalupe Hidalgo; the law of nations; the laws, usages, and customs of the government from which the claim was derived; the principles of equity; and, the decisions of the Supreme Court of the United States, so far as they were applicable.

All lands, the claims to which were finally rejected by the board, or which should be invalidated eventually by the District or Supreme Court; and all lands for which claims had not been presented to the commissioners within two years after the date of the act, were to be held

66
Ibid., 632, Sec. 6.

67
Ibid., 632, Sec. 7.

68
Ibid., 632, Sec. 8.

69
Ibid., 633, Sec. 10.
to be part of the public domain. When a claim was finally confirmed, either by the commission or the courts, a patent was to be issued to the claimant. In order to procure a patent, it was necessary for the claimant to present an authentic certificate of confirmation to the General Land Office. He was also to submit a plat or survey which had been certified and approved by the Surveyor General of California. Furthermore, it was the duty of that officer to cause all confirmed claims to be accurately surveyed, and to furnish plats of the tracts.

In locating the claims, the surveyor general was to have the same power and authority as that conferred by section 6 of the Act of March 3, 1851, upon the Register and Receiver in Louisiana.

The California act also contained a proviso, that if title of the claimant was contested by another person, the latter might submit a petition to the district judge for the district in which the lands were situated, setting forth his right to the property; and praying the judge to hear and determine it. A copy of the petition was to be served upon the adverse party thirty days before the date of the hearing. The judge,

Ibid., 635, Sec. 12. The Act of Mar. 3, 1851, "An Act to create the office of public lands for the state of Louisiana", Sec. 6, 4 Stats., 494, provided that when confirmed claims conflicted or interfered with each other in any way, the register and receiver should be bound in their decision by such conditional lines or boundaries as might have been agreed upon by the parties. The register and receiver were authorized to decide between the contestants in any manner consistent with the principles of justice. The surveyor general was to survey and plat the tracts in accordance with the decision. However, it was provided that those decisions and surveys should not be considered as in any way precluding legal investigation, and decision by the courts between the parties, but was to operate only as a relinquishment by the United States to all the land in question.
on hearing the petition, was empowered to grant an injunction to restrain
the claimant from obtaining his patent until title had been finally deter-
mined. A copy of the order was to be transmitted to the Commissioner of
the General Land Office. Consequently, no patent could issue until the
question had been settled or, in the judge's opinion, sufficient time
had been allowed for obtaining a decision, after which the injunction was
to be dissolved.

The provisions of this act concerning presentation of claims did not
extend to individual lots held under grants from any corporation or town
to which lands had been given by the Spanish or Mexican governments, or
granted by the lawful authorities of such communities; nor did it apply
to lots in any cities, towns, or villages which were in existence on
July 7, 1846. Claims to such properties, however, were to be presented
by the corporate authorities, or where the land on which the community
was located had been granted originally to an individual, the claim was
to be presented by him, or in his name. Proof of the existence of the
community on the above-named date was to be considered prima facie
evidence of a grant to the corporation or individual under which the lot
holders claimed. When the community was in existence at the time of the
passage of the act, the claim might be presented by its corporate
authority.

The act stated that final decrees rendered by the commissioners, or
by the Federal Courts; or any patent issued under the act, were solely

71 9 State., 633-634, Sec. 13.

72 Ibid., 634, Sec. 14.
conclusive between the United States and the claimants, and were not to affect the interests of third persons. It was also to be the duty of the commissioners to report to the Secretary of the Interior on the tenure of mission properties; those lands held by civilized Indians, engaged in agriculture or labor; and those lands occupied by "Pueblos" or "Rancheros" Indians.

The Board was to continue for three years from the date of the act, unless discontinued before that time by the President. However, owing to pressure of business its life was twice extended, and it did not conclude its work until March 3, 1858.

Beside prescribing the Board's functions and the method of presenting claims, the act also made provision for protecting the Federal Government. To supervise the interests of the United States, the President was authorized to appoint an agent "learned in the law," and also well acquainted with both English and Spanish. The law agent was to be retained so long, as in the President's judgment, the public interest might require. His duties required attendance at all meetings of the Board, to collect testimony in behalf of the Government, and to be present whenever a claimant should take depositions. No deposition of a claimant, or one made

73 Ibid., 634, Sec. 15.

74 Ibid., 654, Sec. 16. Compensation of the commissioners, secretary, and clerks; and fees of the secretary and his assisting clerks are prescribed in Secs. 17 and 18, p. 634.

75 Ibid., 631, Sec. 1 (unnumbered). Extensions were provided by the Act of Jan. 18, 1854, 10 Stats., 265; and Jan. 10, 1855, Ibid., 605.
in his behalf, could be used as evidence before the commissioners, the
district court, or the Supreme Court of the United States, unless the
law agent or the district attorney had received notice of the time and
place sufficiently in advance to enable the agent to be present. When
the Government took depositions, it was also required to give similar
notice to the claimants. In 1852, Congress empowered the President to
appoint an associate law agent to assist in protecting the interests of
the United States. His duties were, however, identical with those of the
law agent.

Procedure in taking appeals from the Board's decisions to the
United States District Courts was set forth in detail in the Act of
March 3, 1851, but was altered by an amendment of the following year.
Within thirty days after a decision had been rendered, the commissioners
were to certify it, together with the reasons on which it was based, to
the District Attorney for the district in which the decision had been
made. The party adversely affected had the right to appeal to the
district court. An amendment contained in the Civil and Diplomatic
Appropriation Act of August 31, 1852, simplified the method of appeal.
It provided that the Board should prepare two certified transcripts of

76
9 Stats., 631-632, Sec. 4.

77
10 Stats., 99.

78
9 Stats., 632, Sec. 9.

79
Ibid., 632-633, Sec. 9.

80
10 Stats., 76-100, especially p. 99.
every case in which it rendered a final decision. These were to include official copies of its record of proceedings, decision, and the papers and evidence upon which the decision was based. One of the transcripts was to be filed with the clerk of the proper district court; the other was to be transmitted to the Attorney General in Washington.

The filing of the transcript with the clerk of the court was ipso facto to operate as an appeal for the party adversely affected. If the decision was against the claimant, he was obliged to file notice within six months of his intention to appeal. If the decision was against the United States, the obligation of filing intention to appeal devolved upon the Attorney General, who was to notify the clerk within six months after receiving the transcript. Failure of either party to file intention was to be regarded as dismissing the appeal.

The district court was to render judgment on the pleadings and evidence in the case, and upon such further evidence as the court might order to be taken. On application of the party against whom adverse judgment was rendered, the district court was to grant an appeal to the Supreme Court of the United States. The appellant was required to give security for costs of litigation in the Federal Courts, unless the

Transcripts sent to the district attorneys of both the northern and southern districts of California are now deposited with the Clerk of the United States District Court for the Northern District of California, San Francisco, in accordance with the provisions of 14 Stats., 300. A majority of the Attorney General's transcripts are now in the National Archives; a few, however, are still in the files of the Department of Justice.

10 Stats., 99. See also Cummings and McFarland, Federal Justice, 128-141, for a discussion of the part played by the Attorney General in adjudicating the Spanish and Mexican land claims.
district court was satisfied that appeal should be allowed without it. Thus a plan for full judicial consideration of Spanish and Mexican land claims was laid down in the Act of March 3, 1851, but modified somewhat by a subsequent amendment.

In the course of the Board's existence, several other Acts of Congress were passed relative to its work. Among them were two acts concerning individual claims. The first was the public act of February 25, 1854, which granted additional time to Henry C. Boggs and his associates to present their claims. The other was a private act of July 17, 1854, permitting Juan M. and Jose L. Lugo to present a claim on the same basis as it had been filed before March 3, 1853. Meanwhile, the Act of March 3, 1853, which opened the public lands in California to settlement, specifically reserved from preemption those tracts claimed under foreign titles.

The two acts extending the life of the commission contained amendments to facilitate adjudication. The first, that of January 18, 1854, permitted the Board to appoint from one to three commissioners of oaths to assist in taking testimony. The second, that of January 10, 1855, authorized the land commissioners, acting together or separately, to issue subpoenas for the attendance of witnesses; and conferred upon the Board the same

83 9 Stng., 633, Sec. 10.
84 10 Stts., 268.
85 Ibid., 784.
86 Ibid., 244-248, especially Sec. 6, p. 246.
87 Ibid., 265.
powers to inflict punishment for contempt for refusing obedience to its
summons, as were possessed by the district court.

As originally constituted, the commission comprised Hiland Hall,
chairman, Harry J. Thornton, and James Wilson. During the first month of
the board's activities, the Secretary was John B. Carr. However, he was
succeeded by George Fisher, who served throughout the rest of the commis-
sion's existence. A reorganisation was effected in 1853, new appointments
An important feature of the instructions, one that related to
being made by the President to fill the vacancies caused by the resignations
of the original members. The commissioners who brought the work to a
successful conclusion were Alpheus Felch, chairman; Robert Augustus Thomp-
son, and Samuel B. Farrell. During the period from 1851 to 1856, there
were also several changes in the personnel of the law agents.

Next in importance to the act creating the board were its instructions.
Issued by the Secretary of the Interior on September 11, 1851, they pre-
scribed in detail the objectives and duties of the commission. They
emphasized the commission's primary object, which was to "ascertain,
settle and recognize" all valid titles; and "forever put to rest, all

10 Stats., 603, Secs. 1 and 3. Sec. 2 provided for assistant
counsel for the district attorney of the Northern District.

G.L.O., Board of Calif. Land Comrs., Record of Proceedings,
Journal, I, 83. See also appointment papers in the files of the Secretary
of the Interior, Appointments Division, Land Offices, Woodruff File,
No. 52, The National Archives.


A record copy of the instructions is found in G.L.O., Private Land
Claims Letter Book 17, 339-349. They are printed in the Report of the
No. 26, 32d Cong., 1st Sess., 2-6.
fabricated, fraudulent, or simulated grants." The board's method of proceeding in the cases presented to it was set forth, and the legal precedents and texts to guide its decisions were also stated. These included Halleck's Report of 1849, and that of the Military Affairs Committee of the Senate, February 23, 1849, which contained information about alleged fraudulent claims.

An important feature of the instructions was that which related to the use of Spanish and Mexican archives of California. These records were in the custody of the Surveyor General at San Francisco. That official was directed not only to give the commissioners access to the archives, but also to furnish them with either synopses or facsimile copies of documents needed by the commission when operating away from San Francisco. The instructions also stipulated that claimants were to file written petitions, or notices. The commission was also directed

92
Vol. 4, Senate Executive Doc. No. 26, 32d Cong., 1st Sess., 2. The instructions were issued to the original commissioners, Hall, Thornton, and Wilson. They were prepared by J. Butterfield, Commissioner of the General Land Office, and approved by Alexander H. H. Stuart, Secretary of the Interior, Sept. 11, 1851.

93
Vol. 1, Senate Reports, No. 75, 30th Cong., 1st Sess., 12ff.

94
The Surveyor General's custody of the archives of the former governments of California will be discussed subsequently.

95
Instructions, as cited in note 92, supra, 2-6, passim.
to report on the tenure of Mission and Ranchero Indian lands.

The Board of California Land Claims Commissioners was organized formally at San Francisco on December 8, 1851. Regulations governing its proceedings were adopted on January 21, and February 9, 1852. These were based upon the Act of March 3, 1851, with respect to presentation of claims; and almost identical with stipulations contained in the instructions. Since its organization was completed, the Board has been in active operations.

Regulations required the claimant to file with the secretary a written "notice" or petition. This document was to contain the names of the original grantee, and the present claimant; the nature of the claim; the dates of the original grant, and of subsequent assignments or conveyances; the names of persons to whom the grant was transferred afterward; the name of the granting officer issuing the original title, and whence he derived his power to act; the quantity of land, and its location; if surveyed and certified by the surveyor general, the dates of such acts; and the nature and extent of every known interfering claim. Attached to the petition was to be a copy of the original grant, and a translation. If no copy of the grant could be furnished, the petitioner was required to present reasons for his inability to provide it. A claimant desiring to prosecute his case personally, was entitled to the help of a clerk of the Board in preparing his petition. This service was to be performed without charge, and the petitioner was to be allowed all proper facilities in prosecuting his claim. Testimony was to be taken in all cases in conformity with

Ibid., 4-6. Instructions concerning the keeping, use, and later preservation of the Board's records were also included. Those will be discussed later.

provisions of the Act of March 3, 1851, and the Board’s instructions. When the same tract, or part of it, was claimed adversely by two petitioners, either or both were allowed to file a motion to contest the other’s right to confirmation. In the event that the motion was granted, the law agent was to be notified, and evidence taken by the commissioners.

Once its organization was completed, the Board began to consider claims. Cases were heard according to the state of preparedness of claimants’ counsel and the law agent, although this procedure did not follow the numerical order set down in the docket book. Most of the hearings were held in San Francisco, as a majority of the tracts claimed were situated in the northern judicial district. However, sessions were conducted at Los Angeles in the summer and fall of 1852, for the purpose of considering claims in the southern district. Some cases were heard many times; others required only a few hearings; and a small number were withdrawn by petitioners without being heard at all. A similar situation prevailed with respect to decisions. In some cases the commissioners took

These regulations are entered in the Board’s Journal, I, under the dates of Jan. 21, and Feb. 9, 1852. The only other regulation which appears to have been adopted, was that concerning use of books in the Commission’s library, Jan. 20, 1852. A perusal of the four volumes of the Journal in the General Land Office does not reveal that any fundamental changes in the basis of adjudicating claims were made during the period of the Board’s existence. The statutory and administrative provisions were published as a pamphlet of 20 pages, entitled: Treaty Stipulations between Mexico and the United States Act of Congress of March 3, 1851. Instructions of the Department of the Interior to the Commissioners. Regulations of the Commissioners for the Presentment and Prosecution of Claims, San Francisco, 1852.

Order on the Commission’s docket was in accordance with the precedence in filing petitions.
considerable time to make up their minds, while in others they arrived quickly at their final decisions. In general, the new commissioners who took charge of the work in July 1853, appear to have handled cases much more expeditiously than their predecessors.

In the course of its labors, the Commission had occasion to refer frequently to the Spanish and Mexican archives in order to check the authenticity and validity of documents presented in support of claims. The Board not only used copies and synopses provided by the surveyor general, but also to his great concern, borrowed archival materials. Transcripts were used for the hearings at Los Angeles; but synoptic information was called for extensively during the sessions at San Francisco, special printed forms being used to contain the data.

Throughout its entire existence, the Board labored under decided handicaps. The commissioners were all from the East, and unfamiliar with conditions in California. They were unacquainted with the language, laws,

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The work of the Board may be followed in its Journal, Vols. I-IV, passim. For the break in continuity from October 1852 through June 1853, see the G.L.O., Board of Calif. Land Commrs., Record of Proceedings, Letter Book, 28, 30-31, 71-74; and 10 Stats., 94.

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102

A double form letter, consisting of a printed request for data and a page for reply by the surveyor general, was devised for synopses. A sample copy is enclosed in King to Butterfield, San Francisco, Apr. 10, 1852, in G.L.O., Letters Received, Surveyors General, No. B-23, 026.
and customs of the Mexican inhabitants. Furthermore, in order to
determine cases, they were dependent upon crude and often incorrect
translations of title papers; and also at the mercy of interpreters in
hearing oral testimony of witnesses. Their regulations, which required
presentation of written proofs in support of claims, played directly into
the hands of those willing to resort to illegal means of substantiation.

Sometimes, when material proofs of descent of title were lacking, docu-
ments were simulated in support of a perfectly legal title; while in other
instances sets of documents were forged to build up claims which were
entirely false, and which did not exist until 1852. Consequently, the
commissioners' ignorance and lack of information made them the victims of
unscrupulous land speculators, with the result that grants were fabricated
by rings of former Mexican officials, who even made false seals and pro-
vided professional witnesses to support these spurious claims.

Another source of difficulty for the Board, was the practice of sub-
dividing and selling portions of the old grants before claims to them were
confirmed. Sometimes claims were entered for subdivisions but none pre-

tered for the entire tract. Confusion resulted, because descriptions in
the deeds of conveyance were often imperfect and conflicting. Such a
state of affairs not only handicapped the Commission, but also imposed
difficulties upon the courts and the surveyor general when later stages
of settlement were reached.

103 Interior, 1875-76, 284-286, especially 285-286.
104 Land Office Report, 1896, 487-491, especially 488.
105 Interior, 1878-79, 1, 303.
The Board considered 813 claims. However, the number of confirmations, rejections, and withdrawals is not given in any contemporary report. The Commission's final report was rendered probably under date of March 5, 1856. It was brief, and beside making a statement concerning disposition of the records and other property, the major portion was devoted to a discussion of land tenure, among the Mission and Ranchero 106 Indians. With the transfer of its records, library, and other property, in March 1856, in accordance with law and instructions, the Board of 107 California Land Claims Commissioners came to an end.

Although the Board of Land Commissioners ended its work on March 3, 1856, the process of adjudicating many Spanish and Mexican claims had just commenced. Beginning in 1853, a very considerable number of appeals were taken either by claimants or the Federal Government to the district courts; and more than sixty cases were not determined finally until they had been carried to the Supreme Court of the United States. Indeed, litigation in the courts endured well into the 1880's, before all appeals had been decided.

Originally, the courts of the United States had jurisdiction over California land claims in two ways: through power to review decisions of the Commissioners; and through their right to issue certificates of confirmation, and hence to interfere in order to decide between rival interests 106

G.L.O., Board of Calif. Land Commrs., Record of Proceedings, Letter Book, 207-214. The only printed copy which the writer has been able to find is that published as "Report of the Commissioners on Missions", Appendix to Case No. 92, The United States vs. Cruz Cervantes, (Supreme Court of the United States), 1-3. The report is signed by Alphous Felch, R. Aug. Thompson, and S. B. Farwell, and addressed to Robert McClelland, Secretary of the Interior.

107 Transfer of the records will be discussed subsequently.
in contested claims. These powers were set forth in enactments of 1851 and 1852. Despite changes in jurisdiction and function of the district courts in California, and alterations in the method of appeal to the Supreme Court of the United States, they remained the permanent basis for judicial intervention in land claims cases. Thus, when a circuit court was established in 1855, the law stipulated that the district courts should retain their special jurisdiction over decisions of the Board of Land Commissioners. Later, in 1858, the Federal courts were given criminal authority in land fraud cases. Furthermore, the Attorney General played an important part in defending the interests of the United States in the adjudication of claims. Fortunately, a considerable number of official records have been produced and preserved concerning various phases of judicial proceedings. Some of these are in Washington, D.C., and others are in California.

The United States District Court was the body immediately above the Board of Land Commissioners to which appeals might be taken. The Act of Congress of March 3, 1851, provided that in all cases of rejection or confirmation by the Board, it was lawful for the claimant, or the district attorney acting in behalf of the Government, to petition the district court for the district wherein the land was situated, asking that tribunal to review the Commission's decision, and to decide upon the validity of the claim.

The process of appeal was simplified by the amendment of August 31, 1852. According to this alteration, the Board was required to prepare

108 10 Stats., 631-632, Sec. 1 (unnumbered), 631. The criminal phases will be discussed subsequently.

109 9 Stats., 652, Sec. 9.
two certified transcripts of the record of every case wherein its
decision was final. These transcripts were to include the proceedings,
decision, and supporting evidence. One transcript was to be filed with
the clerk of the district court, and the other transmitted to the Attorney
General. The filing of the transcript with the clerk was ipso facto to
constitute the transcript part of the court's docket. In order to constitute
operate as an appeal by the party adversely affected. If the decision was
personalties and interests among the attorneys of the legal representatives,
was against the claimant, it was his duty to file notice with the clerk
within six months of intention to prosecute an appeal. If the decision
was against the United States, the Attorney General was to file similar
notice. If either
notified within six months after receipt of the transcript. If either
party failed to notify the clerk within the stipulated time, the appeal
was regarded as dismissed.

In reviewing the Board's decision, the district court was to render
judgment upon the pleadings and evidence in the case as had been considered
the Commissioners, and upon such further evidence as might be admitted.
After the court had decided the case, it might grant an appeal to the
Supreme Court of the United States on application of the party against whom
judgment was rendered.

The Attorney General was responsible not only for representing the
interests of the United States in land cases appealed to the Supreme Court,
but also when they were reviewed by the district courts in California.
Examination of transcripts in all but a few of the 813 cases necessitated
an increase in his official staff. A corps of law assistants was engaged

\[110\]
10 Stat. 99, Sec. 12.

\[111\]
9 Stat. 635, Sec. 10.
to examine each case carefully, and report upon it. The Attorney General
based his subsequent action upon these recommendations, and determined
the course to be pursued by the Government with respect to confirmations,
rejections, or dismissals. Delays were experienced partly because of the
lack of Spanish and Mexican law books in Washington; partly because of the
slowness of transcontinental communications; and partly owing to conflicting
personalities and interests among the Government's legal representatives.

By 1880, the courts had confirmed 612 of the 813 claims originally presented
to the Commission, 178 had been rejected, 19 discontinued, and 4 were still
pending. Many confirmations, however, had been deferred because of the
lack of Spanish and Mexican law books in Washington; partly because of the
slowness of transcontinental communications; and partly owing to conflicting
personalities and interests among the Government's legal representatives.

Contested and interfering claims also permitted judicial intervention,

According to the Act of March 3, 1851, the Federal courts as well as the
Commission were empowered to issue certificates confirming approved titles,
and consequently, the district court was given jurisdiction over contested
claims. On petition of a contestant, the judge might enjoin a confirmee
from obtaining his patent until title was finally determined. An Act of
Congress of June 14, 1860, defined and regulated the powers of the district

Cummings and McFarland, Federal Justice, 128-141, especially 128-
134. See also Alston G. Field, "Attorney General Black and the California
Land Claims", Pacific Historical Review, IV, 235-245.

Cummings and McFarland, Op. Cit., 133, 134-135, and 141. See also
Interior, 1879, I, 362, which gives slightly different figures.

Appeals were facilitated by an amendment to the Act of March 3,
1851, concerning subpoenaing of witnesses from one judicial district to
appear in cases being tried in the other, 11 Stats., 227.

9 Stats., 633-654, Sec. 13.
courts with respect to the survey and location of confirmed claims. It permitted interested parties to intervene to have them set aside or modified by the court, and required the surveyor general to make his survey and location conform to the decree of court. This act not only applied to future cases, but also to those wherein surveys had been made, and approved previously by the surveyor general, or to those still pending in court because of proceedings for contest or modification. However, four years later, "An Act to Expedite the Settlement of Titles to Lands in the State of California," July 1, 1864, made the Commissioner of the General Land Office responsible for certifying approval or disapproval of surveys and locations. Thus, the supervision of the courts in what was largely an administrative matter, was reduced materially, although not entirely eliminated entirely.

During the time that the Board of Land Commission was determining claims, the United States Government became suspicious of the authenticity of a number of cases presented for confirmation, and by the time the Board had completed its labors, it was very certain that a considerable number of confirmed claims had actually been forged. At least 22 definitely false claims were eventually detected, some by the Commission, others by the courts; and at least five more were confirmed for quantities many times in excess of the original grants. For example, the Rancho Prietos y Majalyegua, a Mexican concession of about 1,900 acres, was confirmed to Jose Dominguez for 46,800 acres. Furthermore, as has


117 13 Stats., 332.

118 Land Office Report, 1886, 487-491, especially 489.
already been pointed out, fraud was well organized. Even the archives of Mexico had been used by false claimants, apparently with the connivance of unscrupulous officials of that Republic. Diligent searches carried on in 1858, among the new accessions to the Spanish and Mexican archives in the surveyor general's office, revealed these frauds. Edwin M. Stanton, sent to California as special counsel in fraud cases, was largely responsible for the exposures and prosecution of the forgers.

In order to punish perpetrators of fraudulent claims, additional legislation was necessary. Prosecutions were carried on under "An Act for the Prevention and Punishment of Frauds in Land Titles in California," approved May 18, 1858. This law made it a misdemeanor, punishable by fine and imprisonment, for anyone to make falsely, alter, forge, or counterfeit any written instrument or map for the purpose of establishing a claim against the United States to lands, mines, or minerals in California; or to publish such falsifications as genuine. Similar provisions and penalties were prescribed for those persons specifically offering false documentary evidence in support of claims alleged to be based upon grants made under Mexican authority. Furthermore, the act stated that the


120 11 Stas., 290-291.

121 11 Stas., 290-291, Sec. 1 (unnumbered).

122 Ibid., 291, Sec. 2.
The Spanish and Mexican claims frequently conflicted with grants made from the public domain under various general and special Acts of Congress. Among the problems which confronted the Government of the United States was the necessity of clearing the titles of persons who had bought lands in good faith which were located within the limits of claims subsequently rejected by the Board and the courts. Sometimes special legislation was enacted to cover particular rejected claims; but eventually Congress passed a law in 1866, which covered all such cases. Furthermore, there were frequent instances of interference between the old Spanish and Mexican claims and grants made by the United States from the public domain to the State of California, corporations, and individuals under the transcontinental railroad, mining, timber, grazing, and desert land acts. However, these aspects of the disposal of public lands in California are not immediately concerned with the process of adjudication, although historically there is a close association between them. In 1879, a private Act admitted the claim of Jose and Pablo Apis to La Jolla Ranch to adjudication in the district court upon the same basis as if it had been presented originally to the Board of California Land Commissioners. The last legislation upon the subject of Spanish and Mexican titles was enacted on March 2, 1917.

Special Acts concerning rejected claims are found in 12 Stats., 803; 13 Stats., 69, 136, 143-144, 572-573. See also "An Act to quiet Land Titles in California, July 23, 1866, 14 Stats., 218-221.

20 Stats., 595.

II.

HISTORY OF THE RECORDS CONCERNING SPANISH AND MEXICAN LAND TITLES

There are four principal bodies of records concerning Spanish and Mexican land titles in California. These are the land records in the archives of the former governments of Upper California before July 7, 1846; the documents filed by claimants and the law agent with the Board of Land Claims Commissioners, 1852-1856; the record of proceedings of that Board, 1851-1856; and the judicial records, consisting of the Attorney General’s transcripts, and the dossiers, relating to cases filed with the Federal Courts, wholly outside of their

The Spanish and Mexican archives contain many documents concerning the primary disposition of the public lands prior to the American occupation. From 1824 to 1846, the archives of Upper California were deposited in large part in the office of the Departmental Secretary at Monterey. During times of political quiescence, it was necessary to obtain the secretary’s permission to consult them. However, permission to examine the archives was always granted readily by the secretary, who exhibited any papers requested. Beginning in 1844 or 1845, during the period of political turmoil which preceded the American conquest, no official appears to have had assumed responsibility for the safe-keeping of the records, and everyone had access to them without permission being granted by the authorities.

Meanwhile, other records were accumulating at Los Angeles, technically the capital of Upper California since 1835, but actually not used as political headquarters until 1845. It is not certain whether executive documents were assembled at Los Angeles, but the legislature met there at times. Two boxes of records, purported to contain the archives of the departmental assembly during its sessions there, were delivered to Commodore Stockton by Luis Vigues in August 1847, and placed on board the U.S.S. Congress. Unfortunately, their destination is unknown, although it was probably Monterey.

According to Stewr, the land records at the former capital Monterey, indeed, after the occupation of California, the Government of Upper California comprised four broad volumes and a series of the United States became interested in collecting and preserving the Spanish and Mexican archives, chiefly because of their intrinsic importance in relation to land titles. Therefore, the first official records of the former sovereignties to receive attention were those concerning land grants. In 1847, there were archival groups at both Monterey and Los Angeles, and there may have been others elsewhere. Moreover, some official papers fell into private hands.

Although attempts were made to assemble the archives at Monterey


3 Many references to archives at Monterey, particularly those concerning the disposition of the public domain, and the sale and lease of mission properties are found in Vol. 9, Senate Executive Doc. No. 18, 31st Cong., 1st Sess., passim. The land records at Monterey in 1849, are described in Jones, Report, 5-6.

4 Col. John C. Fremont appears to have removed documents from the archives in 1847. See Vol. 1, Senate Report No. 75, 30th Cong., 1st Sess., 8, 12, and appendices.
between 1847 and 1849, the whole extent of the records located there is not known. It is evident, however, that the reports of Halleck and Jones were both based on archival material, although neither attempted a description of any other documents than those concerning land grants.

The first detailed description of the land records was made by William Carey Jones following his visit to California in 1849. He went to Monterey, San Jose, San Francisco, Los Angeles, and San Diego, but mentions the existence only of records at Monterey. According to Jones, the land records at the former capital of Upper California comprised four bound volumes and a series of expedientes. Among these items were the following:

A. Cuaderno del Registro de los sitios, fierros, y señales que posean los habitantes del territorio de la Nueva California (Record book of the registration of sites, [cattle] brands, and marks which may be possessed by the inhabitants of the territory of New California).  

Vol. 9, Senate Executive Doc. No. 18, 31st Cong., 1st Sess., refers on pp. 180, 181, 272–273, 274, and 278–279 to archives in the possession of Fremont. However, some of these references relate to his administration as governor after the conquest.

Jones, Report, 5–6.

Fierro is misspelled in the printed text, but corrected in the Ms. text of the Jones, Report, files of the Senate, The National Archives. Posean is unquestionably an incorrect use of the subjunctive, used in place of the indicative posean. This volume existed in 1880, but was probably destroyed in the San Francisco Fire of 1906. See Interior, 1880, I, 660.
B. Titulos (Titles), a book containing records of grants numbered from 1 to 108, and covering the period from May 22, 1833 to May 9, 1836.  

C. Libro donde se asciertan los despachos detenidos (sic de terrenos) adjudicados en los anos de 1839 y 1840. (Book in which may be found concessions of lands adjudicated in the years 1839 and 1840). This volume contains brief entries by the Departmental Secretary concerning grants. The number of each grant, its date, names of grantee and grant, and quantity of land are given. This volume is intended to reproduce details given in a more complete set of registers that is now at D. A similar book, covering the period between January 8, 1844 and December 23, 1845.

8 Jones, Report, 5. He states that other records of these grants were probably filed in the series of expedientes. However, the descriptions of the grants in this volume as reproduced in Interior, 1880, I, 861 do not correspond with the expedientes Nos. 1-108.

9 Jones, Report, 5-6. This item may be the Toma de Razon [Vol. 1], listed in Interior, 1880, I, 861.

10 Jones, Report, 6. Fremont told Jones that a volume for the year 1846 had formerly existed, but it could not be found in 1849. However, it was probably recovered, as a register for 1846 was later described in Interior, 1880, I, 861.
R. A file of expedientes, numbered from 1 to 579, but actually consisting of records of proceedings in 580 separate grants, except the action of the legislature. The documents relating to each case constituted a separate parcel which bore the number of the expediente and the name of the grant. The numbers bore little relation to the dates of the grants. Furthermore, although one number was used twice, there were a number of parcels missing from the series in 1849. Jones states that the expedientes were not all complete. In some cases the petition appeared to have been refused, in others record of the governor's final action was wanting. "The collection, however, is evidently intended to represent estates which have been granted, and it is probable that in many or most instances the omission apparent in the archives is supplied by original documents in the hands of the parties, or by long permitted occupation." 11

Despite the alleged incompleteness of this series, it was later represented as being comprised of "complete" expedientes, because the dossiers usually referred to a succession of administrative acts which had been complied with, and which were, therefore, officially recorded.

Probably about the time the new state government came into existence in December 1849, the archives which had been held in custody by the military authorities at Monterey, appear to have been removed to the headquarters of the Pacific Military Division 12 at Benicia. Early in 1851, the Secretary of the Interior requested


12 No record of the transfer has been found. However, some of the records remained there as late as 1858.
that the archives relating to land titles he turned over to
13
Samuel D. King, Surveyor General of California.

Transfer of these records to the surveyor general took
place early in July 1851. King sent a member of his staff
to bring them to San Francisco, where they were temporarily
placed for safety in the vault of the collector of customs.
The first accession comprised only two boxes of records. When
one was opened it was found to contain bundles of loose papers of
various kinds and dates. The papers were not arranged, and
were generally unclassified. They were unaccompanied by ident-
ifying lists such as schedules or indexes. King reported that
it would be necessary to examine every paper, before the re-
cords could be identified and their usefulness determined.

Other transfers apparently took place within a short time
after this initial accession. By August 20, 1852, 40 boxes
of Spanish and Mexican records were in the custody of the

13
G. M. Conrad, Secretary of War, to Brevet Maj. Gen. P. P.
127, files of the War Department, The National Archives.

14
S. D. King, Surveyor General, to J Butterfield, Commr. of
the G.L.O., San Francisco, June 30; July 14, 1851, G.L.O.,
Miscellaneous Incoming Letters, including Surveyors General, Surveyor
General of Calif., Nos. 21 (B-8696), and 28 (B-9572), The National
Archives.

15
King to Butterfield, July 14, 1851, G.L.O., Misc. Incoming
Lrs., inc. Surveyors General, S. G. of Calif., No. 28 (B-9572), The
National Archives. Butterfield to King, G.L.O., Private Land Claims
Letter Book, 17, 312-314, See also Land Office Report, 1852, 9.
surveyor general; and an index or schedule of their contents had been prepared. These seem to have been the only accessions received prior to May 1858.

Those records directly concerned with land grants as they existed on September 9, 1857, comprised the following:

16. Comr. Hall and Thornton to King, Los Angeles, Aug. 20, 1852, O.L.O. Board of Calif. Land Comrs., Record of Proceedings, Letter Book, 17, which mentions a list of the archives. A copy of this list is also filed in the O.L.O. It contains "General Index of the old Archives," showing the contents of the 40 boxes; "Alphabetical list of the regularly filed and numbered Expedientes, being 579 cases"; and, "Alphabetical list of the hitherto unclassified Expedientes, being 311 [315] in number, and being those specified in the General Index as being in Box No. 30."

A. One box of expedientes, described as being "unnumbered and generally incomplete." These were without doubt the series which later became known as the 315 "incomplete expedientes, and of which a considerable number are still extant.19

B. Six tin boxes containing 579 expedientes, to which there was a classified index.20 This is the series examined by William Carey Jones in 1849, and the one which is now known as the complete expedientes.21

C. These same boxes also held the Registro de Sitios y Senales (Register of Sites and Marks), which contained some records of both Spanish and Mexican grants; and three unbound volumes wherein similar entries were recorded.22

In California, these boxes of papers containing titles and entries of unnumbered and incomplete expedientes which were not considered.

18 Item 3 in the list of 1852, cited in note 17 supra.

19 Identification Inventory No. 39-102, Accession No. 388, June 5, 1939, The National Archives. See the Alphabetical List of the 315 Incomplete Expedientes, 1 vol., The National Archives. See also Interior, 1880, I, 860ff.

20 See Identification Inventory cited in note 19 supra. See the Alphabetical List of the 580 Complete Expedientes, 1 vol., The National Archives. See Interior, 1880, I, 790-798, and 859ff. This is probably "Jimeno's Index" as continued by Hartnell.

21 Jones, Report, 6.

22 See note 17 supra. The unbound volumes may be the Titulos (Titles) described in Jones, Report, 5-6. None of them appear to exist today.
In addition to records directly concerning land grants, by 1857, the surveyor general had acquired custody of 33 tin boxes containing other archival material of the former governments. Records of the Spanish period were packed in 13 boxes. These included official correspondence dating from 1767, two years before the actual founding of Upper California, down to the end of the Spanish regime in 1822; among these were three boxes of copy books of Governors' Neve, Fages, Arrillaga, Borica, and Sola. There were two boxes of documents relating to presidios, including that of Loreto in Lower California; two others of papers concerning missions; and another of unclassified and incomplete records which were not considered important.

The Mexican archives, other than those relating to lands, consisted of the following: three boxes containing copy books of official correspondence, 1822-1831, and 1838-1844; five boxes of decrees and correspondence, 1821-1846; one each of laws, official communications to the governors from subordinates, 1820-1839, petitions and letters, 1840-1846; communications from alcaldes;

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23 Inventory of 1857, cited in note 17, supra. See also Interior, 1880, I, 924.

24 Inventory of 1857, as cited supra. See especially the description of boxes nos.1-13, inclusive.
official letters from the governments of other political units (states, territories or departments), incoming correspondence from the Revenue Department in Mexico City to the Collector of Customs at Monterey; naturalization documents; sundry "important" documents, unfortunately unspecified; several "unimportant" miscellaneous books; proceedings of the legislative assembly; and, a box of unclassified and incomplete papers, including appoint-
ments, entries and clearances of vessels, etc.

In 1851, Samuel D. King, Surveyor General, was making plans for the use and care of the Spanish and Mexican archives. He pro-
posed to examine them carefully, note their condition on receipt, and take steps to preclude their alteration or mutila-
tion. In order to protect the originals in his custody, he recom-
mended that certified facsimile copies be provided for judicial purposes; that translation be a matter of private concern;

Inventory of 1857, boxes Nos. 14-29, 31, 33, and 34. Box No. 32 contained papers concerning Lower California, 1846-1848. They are probably the same as the volumes called "Mexican Archives, Lower California," 2 vols., 1847-1848, listed in Interior, 1880, I, 924. Presumably, the Lower California records were taken by the United States military forces during the occupation of La Paz, the capital, in the course of the Mexican War. Boxes Nos. 34 and 35, contained records of the U. S. Military Govt., 1846-1849, and, therefore were not properly a part of the Spanish and Mexican archives. Cf. Interior, 1880, I, 924. These will be discussed later.
and that access to them should be restricted by forbidding that they be examined or copied by any one not in the public service, "or who would have the least interest in making improper use of them." Justin Butterfield, Commissioner of the General Land Office, accepted King's recommendation that the records should never be examined or copied except under the foregoing stipulations, and approved the suggestion that the archives should be under the exclusive control of the surveyor general. This appears to have been the sole regulation concerning the care and use of the records which was adopted prior to 1858.

Owing to revelations of fraud and forgery in several California land cases, Thomas A. Hendricks, Commissioner of the General Land Office, issued on May 3, 1858, four more stringent rules concerning access to the archives of the former governments. The first of these provided that none of the materials were to be handled or touched by any one except the keeper of the archives or the clerks in his office. The second stipulated that a person desiring extracts or copies should file an affidavit with the surveyor

26 King to Butterfield, June 30, 1851, as cited in note 14 supra.

27 Butterfield to King, Aug. 13, 1851, as cited in note 15 supra.
general which would show the applicant's interest in the premises and the necessity for the copy. The third set forth that an applicant desiring to inspect any records must satisfy the surveyor general of his interest, but that no one except the keeper of the archives should handle the documents exhibited. The fourth rule prohibited any one but the keeper from making any research or examination for interested persons.

Although the surveyor general was the responsible custodian of the Spanish and Mexican archives of California, they were under the immediate supervision of a clerk who had charge of arranging, classifying, indexing, copying, abstracting, and preserving them. "A gentleman from Central America," was employed in July 1851, to bring some order out of the chaotic condition found to exist when the records were transferred. In 1852, he was given an assistant; and by 1856, there was an archival staff consisting of a "Keeper of the Archives and Translator," who acted as chief of the "Archive Department", and several subordinates. Increase in personnel had been necessitated

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by demands of the Board of Land Commissioners, claimants and their counsel. During the years when the Commission was in session, the surveyor general's office was swamped with requests for facsimile copies, abstracts, and other data from the archives.

Despite the activity of the Federal courts in land cases, and greatly by the passage of an act of February 8th, 1853, ordering the records of the Board of Land Commissioners, the archival staff was diminished in number, in April 1856, and the clerks who retained were obliged to accept reductions in salary. The added responsibilities occasioned by the acquisition of the Secretary of the Board of Land Commissioners, the archival staff in the State of California, was diminished in number, in April 1856, and the clerks who were retained were obliged to accept reductions in salary.

Furthermore, part of the staff was detailed to help the clerk of the Spanish and Mexican governments in California. One of the district court.

At the same time that more stringent rules were prescribed concerning access and use of the Spanish and Mexican archives, the surveyor general was also ordered to collect all public records of the former governments not already in his custody. He was ordered to demand their surrender, and then to deposit them in his office. By direction of the Secretary of the Interior,

29

There are many references to the origin and early development of the archival staff in the office of the surveyor general. See especially, G.L.O., Misc. Incoming Corr., S.G. of Calif., 1851, Nos. 28 (B-9572), and 38 (B-13008); 1856, Nos. 20 (D-39155), 25 (D41201), 42 (D-48582), 43 (D-48533), The National Archives. See also G.L.O., Private Land Claims Letter Book, Vol. 18, 215; and Letters Recd., S.G., Nos. B-28828, B-73026, B-30637, and B-16234, in the files of the G.L.O., Washington, D.C.
United States marshals were enjoined to assist in executing this order. The surveyor general was also requested to transmit a descriptive list with his report on the collection of the archives. The order to collect dispersed archival material was reinforced greatly by the passage of an Act of Congress, approved May 18, 1858, "to provide for the Collection and Safe-Keeping of Public Archives in the State of California." This act, with slight modifications, is still on the statutes, and for many years has constituted the basic law for the accumulation and preservation of the archives of the Spanish and Mexican governments in California. When considered in relation to "An Act for the Prevention and Punishment of Frauds in Land Titles in California", approved on the same day, the Public Archives Act is seen to be an important device for the protection of legitimate land titles and the interests of the Government of the United States.


Ibid., 271. No such list has been discovered either in the files of the General Land Office transferred to The National Archives, or in those still deposited in the Department of the Interior, Washington, D.C.

Stats., 289-290.


According to the Public Archives Act, it was the duty of the Secretary of the Interior to be collected and deposited in the office of the Surveyor General of California, all official books, papers, instruments of writing, documents, archives, official seals, stamps, or dies "found in the unauthorized possession of anyone, which related to or had been used in the administration of government and public affairs in the department of Upper California", which had belonged to the government under Spain or Mexico. Such official records were to be kept "safely and securely" by the Surveyor General in "the archives of his office". Copies of documents in these archives, when authenticated by the officer under his seal, were to be considered as evidence in all cases where the originals would have been acceptable. The Surveyor General was to make a schedule and an accurate description of the records thus deposited, accompanied by a statement of the time and place where they were found, and when deposited in the archives. This schedule was to be certified by him and filed in his office. Certified copies were to be transmitted to the Commissioner of the General Land Office and the Attorney General.

11 Stats., 289, Sec. 1 (unnumbered).
If the surveyor general had cause to suspect concealment of records, he might present an affidavit, showing the facts and circumstances upon which his suspicions were founded, to any Federal judge or commissioner, who might grant a warrant either to the surveyor general or to the United States marshal authorizing him to search for concealed records, take possession thereof, and deposit them in the archives.

The act provided that any one who should remove unlawfully any official records of the Spanish and Mexican governments in the custody of the surveyor general, or who should alter, deface, or mutilate any of them, should be subject, on conviction as a misdemeanor, to a fine of not more than $10,000 or imprisonment for more than ten years. Similar penalties were prescribed for persons convicted of wilfully withholding, refusing to deliver, making away with, or destroying any official records in their possession. Furthermore, any one secretly or wilfully introducing into the archives of the surveyor general "any expediente, book, paper, diseno, map, draught, record, or any instrument of writing"

36 11 Stats., 289-290, Sec. 2.

37 Ibid., 290, Sec. 3
purporting to be evidence of title or claim to any land, mine, or mineral; or any other records, should be subject on conviction to a fine of not more than $5,000 and imprisonment for more than three years.

Only part of the Spanish and Mexican archives had been placed in the custody of the surveyor general prior to 1858. Many important records were in the hands of unauthorized officials, some in Mexico, and the surveyor general from time to time of the possession of private individuals, while others were in boxes of papers. However, these "deposited" archives do not "which nobody guarded and which had never been opened." These were found to belong properly to the Spanish and Mexican archives, collected in various towns and pueblos under authority of the Government, and there to acquire additional archival records of the Secretary of the Interior of May 3, and the Public record until the 1830's. In 1873, William H. Allen, Surveyor Archives Act of May 18, 1858, and brought to the surveyor general's General, received from the custodian in the State of California, of office in San Francisco. There the entire archival collection, said many archives of the several governments, to be prepared to bring to comprise in all about 400 volumes, including both old and new acquisitions, was collated and bound. These records were found to be useful, not only in furnishing proof of the falsity of several claims, but they also revealed the whole system of land law and the history of Upper California under Mexican rule.

38 11 Stats., 290, Sec. 4.

The accessions of 1858 were received from Sacramento, Benicia, San Jose, San Francisco, Monterey, Los Angeles, and San Diego. Edwin M. Stanton, special counsel for the United States, was largely responsible for collecting and depositing in Sacramento, over his hill and other... 40... the records in the archives of the surveyor general. A few over to local authorities elsewhere. It is impossible to cast documents concerning Spanish and Mexican land titles were deposited in the archives in this body of records. Deposited with the surveyor general from time to time by interested parties. However, these "deposited" expedientes do not appear to belong properly to the Spanish and Mexican archives. Above, the total for January 1858 in 1858. However, in 1858, no further attempt was made to acquire additional archival material. The figure reported in 1891 and in 1893, only 294 are listed material until the 1890's. In 1891, William H. Pratt, Surveyor General, received word of the existence in Southern California of many archives of the former governments, which he proposed to bring to his office as required by law. He succeeded in getting control of a body of records at San Diego, but owing to the flat refusal of the county officials to surrender them, he was unable to gain custody of those at Los Angeles. This appears to have been the last attempt to add to the Spanish and Mexican archives.


41 Interior, 1880, I, 690, item 31, and 860ff.

42 Land Office Report, 1891, 342.

43 Ibid., 1892, 418. See Coy, County Archives, 49, 241-242.
Indeed, despite efforts to recover missing documents, the archives of Upper California suffered several diminishations. In 1858, sixteen volumes of records of the Presidio of Monterey were transferred to the custody of officials of Monterey County at Salinas, where they still remain. Other series were turned over to local authorities elsewhere. It is impossible to estimate the extent of early inroads on this body of records. Not only were there many unauthorized removals, but there is no agreement as to the number of volumes in the group. As has been shown above, the total was placed at 400 in 1858. However, in 1887, the figure reported is 300; and in 1888, only 255 are listed. A more recent estimate places the total at 302.

Coy, County Archives, 309.

Ibid., 48-49. Coy lists Spanish and Mexican archives as being in the custody of the following counties: Los Angeles, 241-242; Monterey, 309-310; Napa, 317, 321; San Francisco, 410-415; San Luis Obispo, 443; Santa Barbara, 462; Santa Clara, 473; Santa Cruz, 484; Sonoma, 522-523.

The most complete official description of the Spanish and Mexican archives of California is that contained in the report of Theodore Wagner, Surveyor General, for 1880. It gives an extensive schedule of the indexes and other finding media used in his office, and also contains a "Catalogue of the Original Expedientes, or Records, in Relation to Land Claims in Upper California under the Spanish and Mexican Governments," This is an alphabetical list of grantees which gives the date of the concession and the name or location of the tract. In addition, a number of the indexes to the archives of Upper California are included in the report.... Information concerning the land records is most profuse; but that concerning the so-called provincial, territorial, and departmental "state papers" and other documents is disappointingly brief.

47 Interior, 1880, I, 689-924. For the schedule of finding media see p. 690. The following indexes and lists are reproduced: "Jimeno's index of land claims . . .", 790-796; "Continuation of the index . . . since delivery by Jimeno", 796-798; "Catalogue . . .", 859-899; "Alphabetical list of names of ranchos, . . .", 899-912; "Alphabetical list of approvals of grants . . . by the departmental assembly, . . .", 912-916; "List of 580 complete expedientes . . . found arranged in numerical order," 916-920; "List of 315 incomplete expedientes . . . found arranged in numerical order", 920-922; "List of documents relative to land claims deposited in the Spanish archives since the annexation of California . . .", 922; "Additional documents deposited . . .", 922-923; "Grants Recorded in the Books of Titles, Nos. 1 and 2, . . .", 923; "List of unclaimed grants", 923; "List of grants in "Lower California", 923; and, "California Spanish archives in surveyor general's office, San Francisco", 924, listing 272 volumes under various classifications.
By 1879, it was apparent that the land records were becoming so mutilated from constant use that they would soon be worn out. Some documents were so dilapidated as to defy reproduction. Wagner, therefore, asked for a special appropriation to copy, translate, and index the series. He recommended that thereafter only transcripts be used ordinarily; and that the originals be preserved in a fire-proof safe, and used only when necessary to establish the genuineness of a document. The desired appropriation was obtained in 1879, and continued during the ensuing decade. By 1890, the several series of expedientes, as well as other documents and books concerning land grants, had been transcribed and translated. The series of reproductions and translations occupied 28 large folio volumes, and were accompanied by over 600 tracings of original maps. Each volume was indexed. The transcripts of Spanish and Mexican land records were so arranged that their relationship to the cases presented to the Board of Land Commissioners was shown clearly.


49 Land Office Report, 1888, 400-407; Ibid., 1890, 359. Abstracts of some of the series appear to have been made at this time.
About the time that the work of reproducing and translating the land records was nearing completion, the keeper of the archives recommended that the volumes of Spanish and Mexican "historical" archives, and the records of the United States Military Government be indexed in order to make them available to scholars. This project was undertaken in 1888, and appears to have been carried forward at least until 1892. However, there was an interruption of several years because of a vacancy in the post of keeper of the archives. Activity was resumed in 1900, English synopses of the Spanish subject matter being prepared and inserted in each of the volumes.

Meanwhile, interest had widened appreciably in the records of the former sovereignties in California. Between 1866 and 1868, the State appropriated $16,000 for copying and translating the Spanish and Mexican land records in the surveyor general's office. This project extended from September 10, 1866 to May 23, 1871. It included the several series of expedientes, the records entered in the books of Títulos and Toma de Razon; tracings of the plans (diseños), as well as other land records of the American period. These transcripts and translations are indexed, and filed in the State Archives, Department of State, State of California, at Sacramento.

50 Land Office Report, 1892, 418.

51 Ibid., 1901, 485-486.

52 See correspondence with Bert Greer, Archivist of the State of California, Central Files, The National Archives.
Private searches were undertaken in the 1880's and both Bancroft and Hittell, the historians, employed a considerable number of men to investigate and copy records. By 1901, scholars from California and the East were consulting the records increasingly. Scholarly interest in the history of the Hispanic Southwest led to a movement to preserve the old records in New Mexico, California, and elsewhere. In 1903, the Librarian of Congress attempted to gain custody of the Spanish and Mexican archives of California. This proposal aroused considerable local opposition throughout the state. Charles P. Compton, Keeper of the Archives, took a leading part in agitating for their retention. California's pride was not sufficiently aroused to demand greater security for the records than was customarily provided.


54 Land Office Report, 1901, 485-486.

The greater part of the Spanish and Mexican archives of California, as well as most of the transcripts and translations, were destroyed in the San Francisco Fire of 1906. Only the series of expedientes, a few books, lists, indexes, transcripts, translations, and letters kept in the safe, escaped total destruction. Though protected by the walls of the safe from direct contact with the flames, the heat was sufficiently intense to char many papers and burn others beyond recognition. Most of the records which were saved were those relating to land grants. The history of this remnant of the archives of the former governments of Upper California has been similar to that of the extant records of the Board of Land Commissioners. The existing books and papers are now deposited in the files of the General Land Office in The National Archives, where they have undergone restorative treatment.

56

The archives of the Board of California Land Claims Commissioners comprise all the records arising from its proceedings or accumulated by it in the performance of its legally constituted task of adjudicating Spanish and Mexican land claims, between the dates of its inaugural session, December 8, 1851, and the close of its business, March 3, 1856.

The Act of Congress of March 3, 1851, contained several stipulations with respect to the records of the Commission. The secretary was required to act as interpreter and to keep the record of proceedings in a bound book which was afterward to be filed in the office of the Secretary of the Interior. And the Act also stipulated that the law agent was to collect evidence in behalf of the Government. A further provision required that the testimony of witnesses was to be taken down in writing and preserved in bound books. Furthermore, both claimants and the United States were directed to present documentary evidence and

57 Records based on the work of the Commission, but prepared by it for the use or information of other agencies of the Government, although comprising transcripts of portions of its proceedings, are naturally excluded as such reproductions became part of other archival groups. Likewise, any records of another agency to which the Board had access, should not be considered as in any way forming part of the Commission’s archives, although transcripts, facsimile copies, photographs, or abstracts originating elsewhere, would become a part of the archives if introduced therein as a part of the legally prescribed process of adjudication.

58 9 Stats., 631, Sec. 2.

59 Ibid., 631, Sec. 4.

60 Ibid., 632, Sec. 6.
testimony upon which the Commission was to base its decisions.

These provisions comprised the legal foundation for the formation of the archives of the Board.

The instructions were explicit with respect to the keeping in minire of the archives, libraries, and other property consisting of records. Directions applied not only to the record of proceedings but also to documents filed with the Commission. The record of the proceedings was to be kept in the archives, the legal journals of the proceedings were to include the following items: a docket containing entries of papers in each case in regular order; a bound record book with the Secretary General of California in San Francisco, besides entries of the commissi and oaths sworn, that officers being the custodians of the archives of officers of the members, full records of the petitions and evi-dence in support of each claim; the decisions upheld by a succinct and concise presentation "of the leading facts, particulars and principles" upon which the Board reached its final decision in each case. As a case might be acted upon at several different times, the journal and docket were to contain cross references to establish continuity. All the "original" papers, that is the

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9 Stats., 632, Sec. 8.

62 Interior, 1852, 5.
documents submitted to the Commission and accepted in evidence, were to be carefully numbered, filed, and preserved. These items were to be endorsed with the volume and page upon which they were entered in the record of proceedings.

When the Board ended its labors in March 1856, it proceeded to dispose of the archives, library, and other property. According to law, the record of proceedings was to be filed in the office of the Secretary of the Interior. However, the Commission recommended that the documents submitted in support of claims be deposited with the Surveyor General of California in San Francisco; "that officer being the custodian of the archives of the Mexican Government... containing the proceedings upon which those claims are founded." This proposal appears to have been approved. Therefore, on the Board's dissolution, the record of proceedings, comprising 37 volumes; as well as the library, was shipped to Washington. The transfer of the records which were to remain in California was consummated on March 19, 1856. On

Interior, 1852, 5.

64 Commrs. Felch, Thompson, and Farwell to the Secy. of the Interior, San Francisco, Oct. 21, 1855, O.L.O., Board of Calif. Land Commrs., Letter Book, 202-206. The reply to this recommendation has not been located. The Board proposed that the library also remain in San Francisco, but it appears to have been sent to Washington, the same to the same, San Francisco [Mar. 3, 1856], Ibid., 207-214. In 1855, an attempt was made to persuade Congress to require the Board to return all the "original muniments of title" to the claimants. A resolution of the California Legislature to that effect is printed in Vol. 1, Senate Misc. Doc., No. 6, 34th Cong., 1st Sess.

that day, John C. Hays, Surveyor General, received them from the members of the former Board, together with an inventory of the series. The records thus transferred comprised the documentary evidence submitted in the 813 cases which traced descent of title; as well as lists, indexes, and other finding media employed by the Commission in its searches of the Spanish and Mexican archives; and the Board's correspondence. As the latter book was sent to Washington, the correspondence left in California probably comprised the 262 letters written by the secretary and the 284 copies of replies, which are listed as being in the surveyor general's office in 1857. The archives forwarded to the Secretary of the Interior were afterward deposited in the files of the Private Land Claims Division of the General Land Office; and eventually transferred to the General Files Division, where they remain at the present time.

List of papers, documents and books turned over to, and deposited with the United States Surveyor General of California, by the late Board of Commissioners. Receipt executed March 19, 1856, C.L.O., files of the O.L.O., Glendale, Calif., The National Archives. A copy is in the General Land Office, Department of the Interior, Washington, D. C., where it is listed as Book A, D Files, 188.

Schedule of Documents on File in the Spanish and Mexican Archives, included in John C. Hays to Thos. A. Hendricks, Sept. 9, 1857, O.L.O., Misc. Incoming Letters, Surveyor General of Calif., No. 60 (E-6547), The National Archives. This correspondence may have been on the form devised for inquiries and synopses.
Those of the Board's records which remained in California were deposited in the office of the surveyor general in San Francisco. There they were placed in charge of the clerk known as "the Keeper of the Spanish and Mexican Archives." However, the Commission's records were never considered as forming a part of the archives of the former governments, although they were closely associated in content and function with those parts of the records of those governments which remained in the charge of the Board's Keeper of the archives. The early translations of many of the documents filed with the Board were so full of errors that they were unreliable. Perhaps of more importance, however, these documents were those interested in the claims, therefore, often had new ones made. In 1880, the surveyor general reported that the Commission's records, as well as the Spanish and Mexican archives, were being transcribed and translated, in accordance with the special appropriation of 1879. The work of copying, translating, and indexing all the original title papers and documents filed in the 813 land claims was completed by 1888.

68
Interior, 1880, I, 697; 1881, I, 533-599. See also Land Office Report, 1886, 485; 1888, 402-403.

69
Interior, 1880, I, 697.

70
The surveyor general and his staff experienced constant difficulty in controlling unauthorized access to the records. Despite the administrative orders and legislation of May 1858, the problem of safeguarding the archives against encroachment was perennial. From a perusal of the reports of the surveyors 1852-1858, and of those of the auditor, treasurer, and the Surveyor general it is evident that some of these officials took little interest in keeping the records safe and a relatively uncritical history. These active interest in protecting them. Furthermore, for some years prior to the Attorney General in Washington became part of the previous to 1901, there was no keeper of the archives. During that interval, interested parties consulted the Board's records without any supervision. Consequently, many documents were missing. The large majority of the cases were transferred laid or lost. It is not clear whether these records were to have been included in the proposed transfer of the Spanish and Mexican National Archives. A few have been added temporarily by the archives to the Library in Congress in 1903. Nevertheless, they remained in their usual depository until partially destroyed in the San Francisco Fire of 1906.

At the time of the great conflagration, the Commission's "cases" and indexes were in the safe with the complete and incomplete expeditees, and they suffered a similar experience. Following the fire, the remnants of these archival groups were subjected to several removals. In 1925, the Surveyor General's Office became the Public Survey Office, and in 1932, when headquarters were closed at San Francisco, the records were transferred to Glendale.


There they remained until brought to the National Archives in October 1937, together with the remainder of the Spanish and Mexican archives of California.

The transcripts prepared by the Board of Land Commissioners, 1852-1856, for the use of the Attorney General and the Federal district courts have had a relatively uneventful history. Those sent to the Attorney General in Washington became part of the files of his office, although they were always regarded as a distinct archival series. Subsequently, on October 14, 1937, the transcripts were sent to the Division of Records of the Department of Justice to the National Archives. A few have been retained temporarily by the District Court for the Northern District of California. The transcripts sent to the district attorneys in California have been in the custody of the Clerk of the United States District Court for the Northern District of California since 1866. Fortunately, these and other judicial records escaped serious injury in the San Francisco Fire of 1906.

Transfer from the Public Survey Office, Glendale, Calif., to The National Archives took place on October 14, 1937. Correspondence concerning the accession is found in Central Files, see also Identification Inventory No. 39-102, Accession No. 388, June 5, 1939, The National Archives. See Lombardi, "Lost Records of the Surveyor General . . .", Paq. Hist. Rev. VI, 368-371 passim. See also Land Office Report, 1906, 13-14.


14 Stats., 300-301, especially Sec. 3. See also "Private Land Grant Records (Spanish and Mexican Land Grants in California)", a typescript description prepared by the Clerk of the United States District Court for the Northern District of California, San Francisco, [1940], The National Archives.
III.
DESCRIPTION OF THE RECORDS

LAND
A. THE SPANISH AND MEXICAN RECORDS.

As they exist today in The National Archives, the land records of the Spanish and Mexican archives of California consist principally of two series of expedientes: the "complete", and the "incomplete". They are described as follows:

The Complete Expedientes originally comprised a series of 580 dossiers covering that number of separate land transactions of the Mexican Government in California from 1833 to 1846. The dossiers were numbered from 1 to 579, one numeral being repeated. Each expediente contains full documentary representation of every administrative act required in a transaction, and is, therefore, complete. The processes recorded in the expediente do not necessarily imply confirmation of a grant. Indeed, several carry the transaction through to rejection. Their completeness implies a perfected administrative process. This series relates to transactions conducted in conformity with the Colonization Act of August 18, 1824, and the Regulations of November 21, 1828. At present only 45 expedientes are missing from the series. However, owing to the vicissitudes through which they have passed, the integrity of each individual dossier cannot be assumed. As all but 270 of the cases presented to the Board of Land Claims Commissioners in the 1850's were based upon

Identification Inventory No. 39-102, Accession No. 388, June 5, 1939. The National Archives, lists Nos. 70, 422, 448, 497, Nos. 540-579 are also missing, although not so stated in the inventory. See the "Índice de los terrenos adjudicados y personas a quienes se las ha concedido" also described in the inventory. This index corresponds to the so-called Jimeno "Index", printed in Interior, 1880, I, 790-798. Both the manuscript and the published index omit Nos. 330-339. See also the alphabetical list in Interior, 1880, I, 859-899. Indexes are also found within the covers of the 16 portfolios in which they were placed after the San Francisco Fire. These are now in The National Archives. See also Interior.
these records which are, therefore, of considerable legal importance.¹

The Incomplete Expedientes originally comprised 315 dossiers of Spanish and Mexican land transactions. A few are dated prior to Mexican independence, but the majority emanated from Mexican authorities in California. They represent transactions wherein action was suspended indefinitely or unperfected. Therefore, they lack full documentation. They consist principally of petitions for lands with marginal decrees of reference, and reports (informes) of subordinate officials to the governors. Some contain lists, statements, interrogatories, and complaints, and appeals to the governor to settle disputes. For example, one contains a grant of title, another is a supplement to a complete expediente, and a third is a petition for the return of title papers to the grantee. Many refer to unperfected grants, but the series contains a great deal of information of value in determining the validity or invalidity of titles represented in the series of complete expedientes.

At present 78 of the 315 dossiers are missing. Furthermore, there is no assurance that the existing files contain all the documents included in them previous to the San Francisco Fire of 1906.²

¹ Interior, 1880, I, 799-858 passim. A few grants were in Lower California.

² Identification Inventory No. 39-102, as cited in note ¹ supra. The series is indexed in Interior, 1880, I, 860ff. There are indexes inside the covers of the four portfolios wherein they were received at The National Archives. Expedientes Nos. 1-74; 79, 112, 208; and 295 are missing. Some transactions in Lower California are represented in the series.
The contents of the two series may be determined by consulting several lists and indexes, of which a number have been published. Among the oldest is the "*Índice de los terrenos adjudicados y personas a quienes se les ha concedido* (Index of lands granted and the persons to whom they have been conceded)", which was prepared by Manuel Jimeno, Secretary of the Department of Upper California, probably about 1844 or 1845, and continued by William Hartnell after the American occupation. The catalogue printed in the *Report* of the Secretary of the Interior, 1880, is also most helpful in locating land concessions. The names of grantees and petitioners are arranged in alphabetical order. The indexes contained within the covers of the portfolios, which formerly held the two series of expedientes, are useful guides to the contents of individual dossiers.

Two record books of the Pueblo of San Diego, 1834-1839, accompanied by an index, appear to be the only remnants of other portions of the Spanish and Mexican archives. There are, however, a number of copies and translations of documents relating to the expeditions of Juan Bautista de Anza, 1773-1776, together with

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3 The Ms. in the files of the G.L.O., The National Archives, is probably a copy of an earlier original. It has been published in *Interior*, 1880, I, 790-798. See the description of indexes to the records in Identification Inventory No. 39-102, as cited in note 1 supra.


5 Identification Inventory No. 39-102, as cited in note 1 supra.
of Juan Bautista de Anza, 1773-1776, together with correspondence of the keeper of the archives concerning the acquisition of transcripts.

Since these records of the former governments in California have been transferred to Washington, many sheets have been reconstituted in volumes in the order in which they were bound and stored by lamination, but there are still several hundred which, in accord with the order of dates in the volumes, are too charred to be reconstructed. No doubt many of the missing expedientes are represented by these charred remnants of the San Francisco Fire. Eventually, some may be read by the use of infra-red photography. At present the records are deposited in the files of the General Land Office, Department of the Interior, in the National Archives.

B. BOARD OF CALIFORNIA LAND COMMISSIONERS, RECORD OF PROCEEDINGS, 1851-1856.

The Record of Proceedings of the Board of California Land Commissioners comprise 37 folio volumes, covering the period from December 8, 1851 to March 3, 1856. The series includes maps, indexes, a docket, evidence, decisions, petitions, journal, and correspondence. The whole series is in good physical condition, and has been well preserved.

6Identification Inventory No. 39-102, as cited in note 1 supra.

7See correspondence with A. C. Horton, District Cadastral Engineer, Glendale, Calif., and with others concerning acquisition of these records by The National Archives, and their repair on arrival in Washington, Central Files, The National Archives.

8Thirty-six volumes are numbered correctly. The Letter Book is without number. Vol. 37 does not belong properly to the series consisting of photographic evidence in the Limantour case in the U. S. Dist. Court for the Northern District of Calif., 1858.
At present, these records are deposited in the General Files Division, General Land Office, Department of the Interior, Washington, D.C. The series is described as follows:

- Atlases or Maps, Volumes 1-3, three volumes, containing plates mounted on sheets. These are tracings of diseno submitted in support of claims, the originals of which are now in the National Archives. Those contained in Volume 3 are drawn to larger scale. The arrangement followed in the first two volumes is in accord with the order of cases on the Commission's docket, but no regular order prevails in the last atlas.

- Letter Book, unnumbered volumes, contains records of Index, Volumes 4-5, two volumes, wherein the arrangement is in accordance with the docket numbers of the cases. The names of the claimant and the tract claimed are followed by page references to the records of petitions, journal entries, Spanish and English evidence, translations, depositions, maps, and decisions. The index is indispensable and should be used in conjunction with the Docket, Volume 6 of the series.

- Docket, Volume 6, one volume, provides the names of the original and presenting claimants; the nature and date of the claim; the name of the granting officer and the authority under which he acted; the quantity of land claimed; location of the tract; the dates of survey and certification by the surveyor general; and the nature and extent of any interfering claims.

- Evidence, Volumes 7-27, twenty volumes. These records contain both written and oral depositions of witnesses, as well as transcripts of documentary evidence submitted to the Board in behalf of claimants and the Government of the United States with respect to origin and descent of title. This portion of the Record of Proceedings constitutes copies of the documents transferred by the Commission to the Surveyor General of California in 1856, and which are now in the National Archives. Spanish papers are accompanied by translations.

- Decisions, Volumes 28-30, three volumes, containing the decisions of the Board and the individual opinions of the commissioners. These entries follow the order on the docket.

- Petitions, Volumes 31-32, two volumes, containing both original and amended petitions. These documents are not arranged consecutively. The index should be used in finding entries in these volumes.
Journal, Volumes 33-36, four volumes, contains entries from December 8, 1851 to March 3, 1856. In it are entered copies of the commissions of members of the Board, notices of appointment of the secretary, clerks, and law agents; instructions; regulations; and minutes of sessions held at San Francisco and Los Angeles. There are many very full records concerning individual cases, including petitions, evidence, arguments, opinions, and decisions. In the first two volumes the entries are most extensive; in the last two, very concise. At the end of each volume are several pages devoted to omissions and corrections of the minutes and blotters, including rough minutes of proceedings.

The Letter Book, unnumbered volume, contains records of outgoing communications of the Commission. There is an index in the forepart of the book which is apparently pointingly incomplete. Beginning on page 215, are entries of letters sent by the Surveyor General of Oregon, and transferred from the Public Survey Office, Melbourne, California to the National Archives in October 1851. Since arrival in New York, these have been filed as in commission to the
C. LAND COMMISSION RECORDS DEPOSITED WITH THE SURVEYOR GENERAL

As transferred to the custody of the Surveyor General of California in 1856, the Board's records comprised documents presented in support of title; some unattached diaries of Spanish and Mexican grants; a number of indexes and lists of land materials to be found in the archives of the former governments; several docket books; journal blotters, including rough minutes of proceedings; letters, receipts, and other papers. However, many of these records appear to have been destroyed in the San Francisco Fire of 1906, or otherwise lost. The remnant of this body of records was transferred from the Public Survey Office, Glendale, California, to the National Archives in October 1937. Since arrival in Washington, many sheets have been restored by lamination, but the same difficulties have been encountered in repairing this group of records as has been experienced in treating the Spanish and Mexican archives. The existing records are described as follows:

The Land Commission Cases originally consisted of a series of dossiers containing documents relating to each of the 813 cases presented to the Board of California Land Claims Commissioners, 1852-1856. The completeness of

9 List of the papers, documents, and books turned over to, and deposited with the U.S. Surveyor General of California, by the late Board of Commissioners, Mar. 19, 1856, C.L.O., files of the Surveyor General of Calif., The National Archives. There is also a copy in the C.L.O., General Files Division, Department of the Interior.

10 See note 7 supra.
of the series has been greatly impaired by great losses sustained in the San Francisco Fire, and by unauthorized diminutions which have occurred from time to time since 1856. More than 300 separate dossiers are either missing or too badly charred to be identified.

The dossiers contain a variety of documents concerning origin and descent of title. Some of them are title-deeds of grants made by the former governments and issued to the grantees; others are certified or facsimile copies of complete and incomplete expedientes from the Spanish and Mexican archives; still others are either originals or transcripts of deeds, wills, assignments, and other instruments showing descent of title, including decrees and orders of the Spanish Government in the matter; certificates of legislative approval, and of juridical possession; records of proceedings in other claim cases; and diseno. Many of the documents are in Spanish, sometimes accompanied by translations; and there are a few papers in English, most of which are dated after the American occupation of California, 1846. In fact,

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Of the 813 cases the following are missing or so badly burned as to be unidentifiable: Nos. 1-103, all are either missing or so badly burned as to be little more than ashes. The remaining seventeen jackets are numbered 46, 50, 51, 52, 53, 56, 57 (2 jackets), 72, 76, 77, 78, 82, 83, 95, 97, 98. No attempt has been made to laminate or repair these records at this writing. In addition the following are also missing: 124, 139, 145, 149, 155, 168, 171, 172, 176, 178, 179, 183, 187, 192, 204, 207, 219-245, 250-260, 262-279, 281-285, 287-347, 349, 350, 355, 365, 369, 372, 393, 414, 423, 429, 448, 458, 459-464, 466, 469-474, 476, 479-481, 484-486, 488, 491-493, 495-513, 515, 516-521, 523, 543, 547, 561, 568, 574, 576-583, 585-587, 591, 593, 597, 598, 601, 604, 605, 613, 623, 627, 628, 632, 633, 634, 637, 639, 640, 644-647, 649, 652, 653, 655, 657, 658-662, 664, 670, 671, 675-677, 681, 682, 684, 688-690, 693-699, 703, 707-713, 715, 717, 720-733, 735-739, 741, 743, 744, 746, 748, 750, 756, 757, 759, 761-765, 770, 772, 773-777, 779-781, 783-787, 791-794, 796-804, 807. Identification Inventory No. 39-102, Accession No. 388, June 5, 1939, The National Archives.
these documents represent many phases of the question of validity of title. 12

Because of the losses sustained by the series of Land Commission Cases, the documentary integrity of any of the existing dossiers cannot be assumed. Fortunately, transcripts and translations of these papers are to be found elsewhere; in the Record of Proceedings of the Board, now deposited in the General Land Office, Department of the Interior; in the files of the Attorney General, The National Archives, Washington, D. C.; and in the Archives of the State of California at Sacramento. However, as transcripts and translations were often made hurriedly in the 1850's, the two series in Washington should be used with caution. Furthermore, whenever possible, title papers submitted by claimants should be checked against the complete and incomplete expedientes and other land records of the Spanish and Mexican archives.

Beside the Land Commission Cases, there are several indexes and lists used by the Board. Many of the record books appear to have been destroyed, nor is it possible to identify all those extant because it is not altogether clear whether some of them belong

12 A list of documents in each of the 813 dossiers forms part of the inventory of Mar. 19, 1856, cited in note 9 supra; and published in Interior, 1889, I, 799-858.

13 Transcripts were made for the State of California between 1866 and 1871. These are now deposited in the Archives of the State, Department of State, Sacramento. See correspondence with Bert Oser, Archivist of the State of California, Central Files, The National Archives.
properly to the Spanish and Mexican archives, or whether they
are copies made for the use of the Commission. The existing
lists and indexes are described below:

No. 1, Index of Spanish and Mexican Archives . . . in
the office of the Surveyor General of California land

No. 2, Index to Land Titles. There are two archival

No. 3, A Key to the Catalogue of the Contents of Box,
No. 30 . . . in the office of the Surveyor General.

In forming a good many tables and indexes relating to
The Indice de los terrenos adjudicados y personas a
quienas se les ha concedido (Index to lands granted and
to the persons to whom they have been conceded) may be
a copy of the Jimeno-Martinez index transcribed for the
use of the Commission.

Both in Washington and in California, Indexes located in the national
Index to Land Holdings is an alphabetical list of
tracts granted.

Index of Land Titles granted between the years 1833
and 1836 is a similar list.

Index to Land Cases gives the docket numbers assigned
by the Board. 14

In general, the lists and indexes reproduced in the Report
of the Secretary of the Interior, 1880, which have been mentioned

14 Identification Inventory No. 39-102, as cited in note
7 supra. Transcripts of a few expedientes deposited with the
Surveyor General were also transferred from the Public Survey
Office, Glendale, Calif. to The National Archives. The originals
appear to have been destroyed or lost.
before, will be found to be of greater help to the searcher than the unpublished finding media.

D. THE JUDICIAL RECORDS OF LAND CLAIMS CASES.

There are a considerable number of judicial records concerning the 813 claims decided by the Board of California Land Commissioners between 1852 and 1856. There are two archival series: one in Washington, D.C., and the other in San Francisco, California; besides a good many books and documents relating to separate cases or particular aspects of the adjudicatory process. These are interspersed throughout several other archival series, both in Washington and in California. Those located in the national capital are to be found in the National Archives and in the files of the Clerk of the Supreme Court of the United States.

The California land claims records in The National Archives comprise one series and numerous separate documents and books in the files of the Department of Justice. They are:

Records of California Land Claims, an archival series comprising certified copies of the records of proceedings in each of the cases considered by the Board of Land Commissioners, 1852-1856. They are the transcripts prepared by the Board and transmitted to the Attorney General in compliance with the amendment to the Act of March 3, 1851, contained in the Civil and Diplomatic Appropriation Act of August 31, 1852. Each transcript is a complete dossier of an individual case. The case numbers follow those on the Commission's docket.

15 10 States, 99, Sec. 12.
Each contains a full record of proceedings including copies of written evidence and oral testimony, translations, opinions of the commissioners, and the Board's decision.

The series was established for the purpose of settling cases according to the rules set forth by the Board of Justice. Physically, the series is in good condition.

The transcripts are on legal size folio sheets, if the Law bound at the top. Formerly, each dossier was rolled, but they are now filed flat. The series is not complete.

Production of the transcripts of the Big Land Commission cases.

At present 79 out of the 813 cases are missing from the files in the National Archives. Eventually, throughout this figure will probably be greatly reduced, as a large number of cases have been removed temporarily by the Department of Justice. This series is sometimes called the "Attorney General's Transcripts." These:

In addition, Docket-Book of California Land Claims Cases, dates many from about 1858. It is closely allied to the case series, and a most useful finding medium. It lists the cases in accordance with the order established by the Commission, giving the names of the claimant in each case; the name and location of the tract claimed, the Board's decision; and the disposition of the case by the Attorney General showing whether it was appealed or dismissed.

Sometimes the case number on the dockets of the district courts are shown, and there are a few notices of appeal to the Supreme Court of the United States.

16 See Identification of Series, Department of Justice, The Board of Commissioners to ascertain and settle the private land claims in the State of California, Records of California Land Claims, 1851-1856, The National Archives. The missing cases are as follows: Nos. 78, 45, 46, 55, 56, 61, 74, 144, 146, 158, 186, 259, 277, 285-289, 307, 392-394, 396, 421, 429, 437, 438, 440, 448, 460, 461, 478, 484, 494-501, 508-516, 548, 554, 569, 612, 613, 626, 640, 648, 650, 653, 662, 676, 682, 695, 740, 743; 748, 750, 755, 756, 764, 765, 770, 771, 776, 778, 784, 809, 810, 812.

17 This volume was among the Letters Received from the Solicitor of the Treasury, recently transferred from the Department of Justice to The National Archives. See the Identification of Series, Department of Justice.
Beside the foregoing records, there are a number of others in the files of the Department of Justice which relate directly to land claims cases. Among them are Case Memoranda of the Law Assistants. These consist of several hundred reports based upon examination of the transcripts of the 813 Land Commission cases. The reports do not form a series, but are interspersed throughout the files of the Attorney General, either in bundles or separate, and often grouped under the names of the men who wrote them.

In addition, the Attorney General's correspondence contains many items concerning land claims. These letters are significant in connection with the general situation in California, but many concern individual cases. Brief summaries of the land cases in the district courts in California, and full transcripts of those appealed to the Supreme Court of the United States are found among the letters Received from the Solicitor of the Treasury, files of the Department of Justice, The National Archives.

There are over sixty transcripts of land claims cases deposited with the Clerk of the Supreme Court of the United States in Washington. Each bears the certification of the clerk of the district court or of the district attorney in California whence appeal was taken to the Supreme Court. They consist usually of the transcript of proceedings, evidence, testimony, and final decree of the Board of Land Commissioners; the notices of appeal, motions for dismissal of appeal, and other documents concerning the action of the district court; including additional testimony and evidence presented in that court, the full opinion of the presiding judge, and the final decree confirming or denying the Board's decision;
the application for appeal to the Supreme Court by the party adversely affected, and the judge's approval of the motion.

Sometimes record of final decision of the Supreme Court is included in the United States District Court for the individual opinions of the consists of cases taken to the court from the Board of justices are never present. Occasionally, there are incidental documents concerning counsel of the opposing sides. Frequently, Records of California Land Cases, 1852-1856, however, the record consists only of the transcript sent on the Southern District of California prior to 1858. From California cases are similar to the foregoing, and were transferred to San Francisco in 1866. The In California, the principal judicial records in land claims cases are those in the custody of the Clerk of the United States District Court for the Northern District of California, at San Francisco. These comprise four series, a register, and several transcriptions: a register transcription of several indexes of the District Court of the Southern District of California, San Francisco, 1855, 1856, San Francisco. These comprise four series, a register, and several transcripts of California, in conformity with the Act of August 31, 1852. In 1866, the Land Commission transcripts and other records of the District Court for the Southern District of California were transferred to the custody of the District Court for the Northern District of California. Transcripts of the Record of the Board of Land Commissioners, 1852-1856, a series of certified copies of the records of proceedings, testimony, evidence, translations, plats, opinions, and decisions in the 813 cases presented to the Commission. These transcripts were transmitted to the district attorneys of both the northern and southern judicial districts of California in conformity with the Act of August 31, 1852. In 1866, the Land Commission transcripts and other records of the District Court for the Southern District of California were transferred to the custody of the District Court for the Northern District Women's Progress Institute, Aurora, Ill., annual numbers, "History of Federal Archives in the States," Series II, Federal Archives in California, San Francisco (1867), 87, 1868.

Many case records have been published in pamphlet form.
where they have remained ever since. The plats have been removed recently from the docket and filed in atlases for protection. Comprehensive card indexes of the series, and of the maps have been prepared in the office of the clerk.

Records of California Land Cases, 1852-1865, appealed to the United States District Court for the Northern District of California. This series consists of cases taken to the court from the Board of Land Commissioners. These cases appear to have been entered on a special docket, and totalled 258.20

Records of California Land Cases, 1852-1866, also and filed appealed to the United States District Court for the Southern District of California prior to 1866. These records are similar to the foregoing, and were transferred to San Francisco in 1866. The total is 399 cases.

There is an index, 3 volumes, from which the plats were removed. Each card gives the case number.

Transfer took place under authority of 14 Stats, § 300-301, Sec. 3. See "Private Land Grant Records (Spanish and Mexican Land Grants in California)" a typescript description prepared by the Clerk of the District Court of the Northern District of California, San Francisco [1940], The National Archives.21

A copy of the Index of Maps, Private Land Claim Cases (Spanish and Mexican), U.S. District Court, San Francisco, Calif., has just been received at The National Archives. It will be described later.

According to the Index cited in note 21 supra.22

Also according to the Index cited in note 21 supra. The Works Progress Administration, Survey of Federal Archives, "Inventory of Federal Archives in the States, Series II, Federal Judiciary, No. 5, California" (San Francisco, 1939), 37, groups together the records of both the northern and southern jurisdictions. Furthermore, the description implies that the series contains only appeals in claims which were unconfirmed by the Land Commission. This volume is cited hereafter as S.F.A., "Judiciary, Calif."
In addition to the foregoing there is a Land Case Register, 1853–1903, and a few loose leaf volumes of Land Case Opinions, 1854–1871, both of which are useful in locating case records.

Recently an extensive card index to all Spanish and Mexican land claims records in the custody of the Clerk of the District Court Department of State, War, and Justice, the land seatment at San Francisco has been prepared. Furthermore, when most of the documents are shown in the index at the General Land Office, the disenos and other maps were removed from the case rolls and filed in the Department of Interior, in Washington. The index includes an atlas, a cross index of maps was prepared. This card index is part of the Commission of the General Land Office, particularly of great assistance not only in locating the maps but also in the latter removed from the Surveys General of California, and showing the relationship of various series of records the record copies of which are found in the files of the from which the plats were removed. Each card gives the case number of the case; type of documents; number; the name of the district court and Land Commission, and expediente number; the case name; map number; type of map, whether diseno, survey plat, or sketch; the date of the map, and the author, when known; as well as cross references to other cases in the Federal courts.

24 S.P.A., Judiciary, Calif., 37, items 190, 191.

25 See note 21 supra.
It will be observed from the citations in the foregoing pages, that there is a considerable volume of documentary material concerning California land claims which is not incorporated in the series described in detail in this report. Although there are a few records pertinent to the question interspersed throughout the archives of both houses of Congress; and the Departments of State, War, and Justice, the most pertinent documents are those in the files of the General Land Office, Department of the Interior, in Washington. The incoming correspondence of the Commissioner of the General Land Office, particularly and the files of maps and land surveys, are published in the letters received from the Surveyors General of California, and the record copies of outgoing letters found in the files of the Private Land Claims Division are significant not only as sources for the history of the adjudication of Spanish and Mexican titles, but also of importance with respect to the survey and patenting of confirmed grants, and the settlement of interfering claims. Furthermore, an extensive series of plats and field notes of California surveys, now deposited in the Survey Division, are of assistance in determining locations and verifying descriptions of individual tracts. Patents of private claims are to be found in the Patents Division, where they are filed according to land districts.

Some of the incoming correspondence of the Commissioner of the General Land Office has been transferred recently to The National Archives. However, a very considerable volume is still in the General Files Division, General Land Office, Department of the Interior.

A collection of private survey papers, the Reeve-Solano Papers, has recently been acquired by the Henry M. Huntington Library and Art Gallery, San Marino, Calif. See correspondence with Miss Hadie Noya, Central Files, The National Archives.
Beside the great body of unpublished material, there is an extensive official literature on the question. Some of the publications have originated in Congress, others in the Department of the Interior, the Department of Justice, and the Federal courts. International aspects, particularly the question of the Pious Fund of the California, closely allied to that of title to the mission lands, have been treated in publications of the Department of State. The various printed finding aids such as in the Check List of Government Documents, the Document Catalogue, and the indexes of Poore and Times reveal many references to published documents. Articles on various phases of land tenure in Upper California and concerning the histories of particular grants have appeared from time to time in the publications of various institutions and learned societies on the Pacific Coast. Furthermore, there are several unpublished theses and monographs upon particular aspects of Spanish and Mexican land tenure and upon the histories of some individual grants deposited in the Library of the University of California at Berkeley.

28

See correspondence with H. F. Raup, University of California, Los Angeles, in Central Files, The National Archives.

29

Several unpublished theses of the Department of History, University of California, Berkeley, are deposited in the General Library of that institution. See correspondence with Harold L. Leupp, Librarian, University of California, Berkeley, Calif., also in Central Files, The National Archives.
The records of Spanish and Mexican land titles in California contain a wealth of legal and historical information, not only respecting individual grants and claims, but also concerning the entire processes of primary distribution of public lands and subsequent adjudication of titles under the successive authority of Spain, Mexico, and the United States. The Spanish and Mexican archives of California, the records deposited with the Board of Land Claims Commissioners, and the Attorney General's transcripts of the cases adjudicated by that Board are now all deposited in The National Archives. Supplemented by the Record of Proceedings of the Land Commission; and other materials in the General Land Office, the United States Supreme Court, and both houses of Congress; as well as the records of the Federal courts in San Francisco, the transcripts of the State Archives of California, and collections in the custody of private institutions, the investigator is presented with a body of source material which should provide a firm foundation for the production of definitive works upon many aspects of the land system of California in its legal, political, social, and economic aspects.

(Signed) Ralph G. Lounsbury