41ST CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 24.

WILLIAM McGARRAHAN.

FEBRUARY 1, 1871.—Recommitted to the Committee on the Judiciary and ordered to be printed.

Mr. PETERS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of William McGarrahan, praying the passage of the following bill—

That the tract of land known as the Panoche Grande Rancho, in the State of California, granted by Governor Manuel Micheltorena, in the State of California, A. D. 1844, *and by said Gomez conveyed to William McGarrahan on the* 22d *day of December,* 1857, *surveyed by the United States surveyor general for California, and approved by him September* 11, 1862, *and which survey is now on file in the General Land Office, be, and the same is in all respects hereby, fully confirmed to said William McGarrahan, upon this condition, however, that the said McGarrahan shall, within twelve months after the passage of this act, pay into the Treasury of the United States the sum of* $1 25 *per acre for the land embraced in the said survey—*

submit the following report:

As the claimant invokes the aid of Congress to enable him to obtain possession of certain lands, the question arises, assuming that Congress has control of the subject, whether he has established such a claim as would justify the special legislation desired. To arrive at a correct conclusion on this question, it may be advisable to present a brief history of the case.

R. C. Hopkins, keeper of the archives of the former Mexican government of California, in his testimony, in speaking of the expediente (record) of V. P. Gomez, the grantor to the present claimant, says:

"This expediente consists of petition of Gomez to Governor Micheltorena, dated March 13, 1844, accompanied by map; marginal order of governor, dated March 14, 1844; order of secretary of state, Jimeno, referring the matter to the justice of the peace of San Juan, also dated March 14, 1844, and the favorable report of José Antonio Rodriguez, justice of San Juan, dated March 20, 1844; and here the expediente stops."

This petition was for three square leagues of land called "Panoche Grande." He further states that he searched diligently through the archives for evidence of the Gomez grant, but nothing could be found save the unfinished expediente.

On March 3, 1851, the Congress of the United States passed an "act to ascertain and settle private land claims in the State of California," &c., and providing for the appointment of three land commissioners to pass upon them, with a right of appeal to the United States district court for California, and also to the United States Supreme Court.

On the 9th of February, 1853, Gomez, by P. Ord, his attorney, presented to the said land commissioners a petition for the confirmation of his claim called "Panoche Grande," of the extent of *four* square leagues, and stated that the grant had been made by the Mexican governor. He filed no documentary evidence of title, stating that the title papers were

destroyed during the occupation of Monterey by the United States forces. In his petition to the land commissioners he claimed *four* square leagues, while in the one to the Mexican governor he asked for only *three*. But there was no record evidence that the Mexican governor made Gomez any grant whatever. He endeavored before the land commission to supply the deficiency of documentary title by parol evidence. Four witnesses were called before the land commission to testify to the existence of the grant. José Abrego testified that in the year 1845 Gomez showed him certain title papers to the land called "La Panoche." Oscar de Grand Barque testified that in the fall of 1845 Gomez offered to sell him a tract of land which he called "Panoche Grande," or something like it, and showed him a map and document which, he said, was a title to the land. J. L. Ord, brother of P. Ord, attorney for Gomez, says that in January, 1847, some old papers found in the custom-house at Monterey were destroyed. José Castro's testimony is to the same effect. The board of land commissioners, after hearing all the testimony, rejected the claim.

Gomez, through P. Ord, his attorney, appealed the case to the United States district court for the northern district of California, and the case was afterward transferred to the southern district, where it more properly belonged. While this appeal was pending, Ord was appointed United States district attorney for the district last mentioned, and his oath of office and good conscience required him to protect the United States against all interests adverse thereto. But in the Gomez claim he betrayed the trust committed to him by the Government, and covertly continued the attorney of Gomez, receiving from him a deed of half of the land in question. This conveyance, for the nominal sum of one dollar, is dated November 24, 1856, while Ord was United States district attorney, and without the shadow of a doubt was the consideration for his extraordinary conduct in securing the confirmation of the alleged grant. The letter of the clerk of the northern district to the clerk of the southern district, inclosing the papers, with the order of transfer, is dated June 1, 1857. It could not have reached Monterey before June 3, probably June 4. On June 5, 1857, Ord procured a brother lawyer to move the United States district court held at Monterey for the southern district of California to reverse the decision of the land commissioners, and confirm the grant. In reply to which motion Ord stated that the United States had no objection to the confirmation. On this statement alone, without trial or examination, the alleged grant was confirmed, but no decree of confirmation was then prepared.

On the 7th of January following, Ord filed a decree which was signed by the court, and entered *nunc pro tunc*, as of the first mentioned date, reciting that having omitted to sign and enter a decree then, it be done *now* for *then*, which confirmed *three* square leagues of land; and on the following 8th of February he procured another decree covering the same land, with an additional square league. This decree was filed also *nunc pro tunc*.

On December 22, 1857, the petitioner, McGarrahan, for the sum of eleven hundred dollars, purchased the interest of Gomez, and thus Ord and McGarrahan became tenants in common in the alleged grant as confirmed. At the time of this transfer there had been no decree entered; it was only "ordered to be entered." It was not entered as amended until February 8, 1858.

Under the law of Congress of March 3, 1851, no patent for a Mexican land grant could issue until final confirmation. This could be had in two ways: First. By the decision of the United States Supreme Court,

accompanied by a mandamus to the district court to carry out the decree, and an order for the survey of the land. Second. Congress authorized the Attorney General in any land grant case where the Government had taken an appeal to the district or Supreme Court, to examine the record, and when satisfied that the claim was legal to dismiss the appeal, and then the inferior court could have the land surveyed, and thus the claimant could get his patent.

In 1858 the Government sent the Hon. E. M. Stanton to California to appeal to the Supreme Court of the United States all cases decided adversely to the Government, and to look after land cases generally. Mr. Stanton, hearing of the fraud of Ord, filed a motion to set aside the decree in the Gomez case for such fraud, and to grant a new trial. This motion was never finally disposed of. Judge Ogier up to that time was not aware of the interest which said Ord had in the claim, Ord not having recorded the deed received from Gomez.

From December 22, 1857, when claimant purchased of Gomez, he and Ord became joint owners. At that time there had been an order for a decree in favor of the claim, but still a survey of the land was required in order to obtain a patent, which could not be had except upon final confirmation. It is clearly evident that a conspiracy was formed, through the contrivance of Ord, to effect a formal appeal to the Supreme Court of the United States in order to have the same there docketed and dismissed without attracting the attention of the United States and others adversely interested. For this purpose a paper, purporting to be the granting of an appeal in this and several other cases, was, without any authority of the court, placed among its files. This paper, purporting to allow an appeal, and in the handwriting of Ord, is pretended by him to have been presented to the court by Colonel Kewen, a member of the California bar, while Kewen's testimony has never been obtained upon this point, and while Ord in his affidavit (which is a part of the testimony in this case) admits of his own knowledge that he knows nothing of it. The clerk of the court and the presiding judge both positively assert that no appeal up to that time was ever allowed, signed, or entered of record.

As the next step in carrying out the purposes of these parties, McGarrahan applied by letter, dated September 2, 1858, to the clerk of the court for a transcript of the record for the purpose of carrying the case to the Supreme Court of the United States. A correct transcript was sent, containing no statement of an appeal, as none had been granted, but containing among other papers the motion made by Stanton as before described. This was returned by McGarrahan to the clerk with a special request to send to him a transcript showing that an appeal had been allowed, and that he would find it among the papers, and also to omit the motion as made by Stanton, and to make it *regardless of expense;* in response to which a deputy clerk, without the knowledge of the court, made out to him what purported to be a transcript of the case, and made in accordance with his wishes, placing therein an appeal as if allowed, and omitting the motion of Stanton.

The petitioner's friends and attorneys carried this transcript to Jeremiah S. Black, then Attorney General of the United States, and endeavored to persuade him to allow the decree of the United States district court to be confirmed. Mr. Black, although he had not yet learned the true status of the case in the California court, having had his suspicions excited from the complicity of Gomez in other land claims which had proved fraudulent, utterly refused to comply with the proposition. Thereupon petitioner went into the Supreme Court of the United States.

One of the rules of this court is, that when an appellant neglects to file his record within twenty days of the next term, the appellee may file the transcript, and upon the meeting of the court the case, on his motion, shall be dismissed for want of prosecution. This the petitioner did, and the court dismissed the appeal, confirmed the decree below, and granted a mandamus to the district court to carry out the same and have the lands surveyed, no person appearing for the United States.

When the mandamus came to be heard in the district court Judge Ogier had it filed and continued, alleging that the Supreme Court must have been imposed upon, as he had never granted an appeal in the case.

The Attorney General, hearing of the falsity of the transcript imposed on the Supreme Court in this case, moved the court to rescind its former action, and that a mandamus be issued to the judge of the United States district court to certify whether any appeal had been taken, and directing the clerk to send up a true transcript of the case. These motions were granted.

The Supreme Court, on inspection and proof of the returns to the mandamus, set aside its previous order of confirmation, (23 Howard, p. 338,) saying, "It is a delicate and most unwelcome task which we are now performing, but it must be done in order that violated justice may be vindicated, and official purity of conduct in our courts may be preserved and be unsuspected."

When Judge Ogier learned of the fraud which had been practiced upon him he vacated his decree of confirmation, commenting with great severity upon the conduct of the party who had been guilty of the imposition. This step left the claim as it came from the commissioners—decided for the United States.

In the spring of 1862 Judge Ogier died, and Judge Haight was appointed his successor. The claimant, McGarrahan, moved to set aside Judge Ogier's vacating order, on the ground that as an appeal had been granted by the district court no decree could be changed after the term at which it had been allowed. Judge Haight granted this motion August 4, 1862; but censured severely the conduct of P. Ord, district attorney, declaring it to be a "gross case of fraud," and stated that it was not surprising that his predecessor, Judge Ogier, had, on learning the facts, set aside the decree of confirmation.

At the same term, August 25, 1862, Judge Haight granted an appeal from this decision to the Supreme Court of the United States.

December 3, 1862, Judge Haight set aside this allowance of an appeal, upon the mistaken theory that he had no right to have allowed the appeal. Before this, on the 22d of September, 1862, Attorney General Bates directed the district attorney to take an appeal from Judge Haight's decision to the Supreme Court and send up the record.

Mr. Wheeler, clerk of the court, would neither make out a transcript of the case nor permit any one else to have access to the records to perform that duty.

The claimant applied for an injunction to restrain the Attorney General from getting a record of the case, which application was, however, refused.

For more than a year the efforts of the Attorney General to obtain a transcript of the case were unavailing. Finally, the attention of the district attorney being called by the Attorney General to an act of Congress which allows the district attorney himself to make up such a record in certain cases, the necessary transcript was obtained.

The case having come before the Supreme Court under this law the claimant's attorneys moved to dismiss the appeal, on the ground that

more than five years had elapsed since the decree was pronounced; which motion was overruled. The decision of the court will be found in 1 Wallace, page 702, where the court says: "In view of the whole case our conclusion is, that the motion to dismiss the appeal must be overruled. The effect of the motion, if granted, would be to leave this decree below in full force and unreversed. That is a result we are not prepared to sanction."

The case was then set down for hearing on its merits. The decision of the court rejecting the claim will be found in 3 Wallace, page 773.

As to the judgment of the Supreme Court on the merits of the case, we have only to say that it is in accord with every decision concerning Mexican land grants; that if this case had never been before that court at all, but stood entirely on its merits, the decision must be adverse to the claimant, as it always has been. Hence, when Judge Ogier set aside the decree procured by the fraud of Ord, and set the case for trial, the claimant never made any demand for trial upon the case. He rested until Judge Ogier died, and Judge Haight was appointed his successor, and then came into court, not to seek a trial on his *rights*, but to take advantage of a technicality and avoid submitting the case on its *merits*.

Attorney General Bates on this point says: "The United States only seek to secure what the claim has never been subjected to—a fair judicial hearing. If that is allowed, we expect to show that the claim is as fraudulent and illegal as the means that have been used to screen it from investigation." The trial of the case before the land commission was one of the first that was had under the law to settle titles protected by the Mexican treaty. The commissioners had not learned the extent of perjury and forgery which was so commonly afterward attempted to be practiced upon them, nor had they become acquainted with the true character of Gomez. But the case has been finally decided by the Supreme Court of the land, and decided upon all the law and the evidence, upon full transcripts and upon full hearing, and the claim has been unanimously rejected.

During the time that claimant was preventing the Attorney General from obtaining a transcript upon which to appeal the case from Judge Haight's decision, he was using extraordinary exertions to obtain a patent for the land from the Interior Department. It seems that the effort was to obtain this before the Supreme Court could get the case again upon its docket.

This plan nearly succeeded. Secretary Smith, of the Interior Department, under date December 29, 1862, says: "The only questions to be decided are, 'has the grant been confirmed by the decree of the proper court and are there any legal proceedings pending to reverse or set aside that decision?' Upon both of these questions it appears to us the answer must be in favor of the claimant." Further, that "the survey is but *prima facie* evidence of true location, and a patent will be but *prima facie* evidence of title," and "should conflicting claims arise, the parties cannot be precluded by a patent," &c.

The Secretary could not have known that Judge Haight had allowed an appeal to the United States Supreme Court, August 4, 1862, and that the Attorney General had ordered the transcript for that purpose, September 12, 1862, for he admits that the subject is one exclusively for the courts and that their action would bind the Department.

Secretary Usher, a few months afterward, and under the same misapprehension, decided that the action of his predecessor was binding upon him, and that such was the precedent and rule of the Department. He, too, advised that the patent should, by way of greater caution, contain

a provision that the description should be *prima facie* evidence only of the true location of the land granted, to be modified or avoided in that respect, if the same should be found to be erroneous.

This last ruling was made March 4, 1863. March 13, 1863, Attorney General Bates notified Secretary Usher that he intended to have the case brought before the Supreme Court for review. Upon which the Acting Secretary directed the Commissioner of the General Land Office to suspend the execution of a patent in the case until further orders.

The petitioner claims that President Lincoln also recognized his alleged rights.

The Honorable D. E. Sickles, "as one of the parties interested in the grant claimed by William McGarrahan and his associates," says in a letter dated January 22, 1867, that in the spring of 1864 he called upon the President for an order directing the patent to issue, and that the President ordered it to be issued; "that it was thereupon engrossed and signed *ready for delivery, but was not delivered*, although promised to me (him) on a day named."

It is clear enough, from all the sources of evidence in the transaction, that it was the spring of 1863, and not 1864, which Mr. Sickles referred to.

It is evident enough that the Executive Department in all its branches was beset and importuned unremittingly in behalf of the owners of the Gomez or McGarrahan claim.

In answer, however, to this parade of executive action and opinion, let it be borne in mind that there is no evidence that there was any knowledge upon the part of such parties that ulterior proceedings were pending or to be had in the courts; that in the patent as draughted the caution was used to insert the important clauses that the survey under which it was draughted should be *prima facie* evidence only of the true location of the land granted, and that "it should not affect the interests of third persons," while the claimant now asks for a confirmation without any such conditions.

Let it be remembered, further, that all the Attorney Generals in whose time of office this claim has appeared have most vigorously and earnestly denounced it, and as soon as the first notice came from the Attorney General's office to the executive branches all executive action has ceased, in order that the Supreme Court could determine the question, which long ago has been done.

Considerable controversy has arisen whether in fact a patent for this grant, which was prepared at the General Land Office, was ever executed. While, as hereinafter stated, the committee do not deem this to be an essential question at all, it may deserve some attention in this report. There is an unexecuted patent in the Land Office which has never been by anybody signed.

The question is hardly raised that any other one was ever made, but the proposition is intimated that this one has been tampered with by a subtraction of its last page, and the substitution of a new one.

If such a thing has occurred, no theory is started as to when, or how, or by whom such a thing has been done. Such a proposition should be supported by evidence the most conclusive.

What is the evidence?

Mr. Sickles in a letter, and not as a witness, says it was signed by the President. He gives no circumstances; he makes a mistake in the year, and says he feels confirmed by the verbal assurance of Mr. Usher, showing that his own recollection was not strong about it, and Mr. Usher has never been called to say any such thing.

Mr. Sickles had in mind the principal fact, which was the engrossing of the patent, and probably not so much the details.

This was said in 1867; the patent was engrossed in March, 1863; but the statement of the petitioner's counsel, made at or about the date of the patent, would be more likely to be accurate, and he would not be likely to give away anything by confession.

R. H. Gellett, of counsel for petitioner, in his written argument to said Usher, dated June 23, 1863, uses these words, "Before the patent *was actually signed* the Attorney General requested that its issuance might be delayed, which was ordered by the Assistant Secretary."

Mr. Stoddard, who was in 1863 secretary to the President for signing patents, testifies in 1871 to signing a patent labelled "Panoche Grande," but knew nothing of its contents, or in whose handwriting it was, or of its particular character; has not had his recollection called to it from 1863 until 1871, though he has been in New York all that time; thought the cover and the ribbon through the cover looked somewhat differently. The committee were not much impressed with the statements of this witness.

W. H. Lowry, who was a clerk in the General Land Office till June 30, 1863, and was conversant of the making and recording this patent, testifies that it was never signed.

J. F. Stoek, who was a clerk under said Lowry in 1863, and who has remained in the General Land Office ever since, testifies that this uncompleted patent was drawn by him on the 13th or 14th day of March, A. D. 1863, and was never signed, and that it has never been out of the Land Office but twice since and then for the inspection of the Judiciary Committees of the House of Representatives; that the reason it was not signed and completed will be found in the following letters.

It will be noticed that while it was made on the 13th or 14th, there could have been no intervening time for its completion from the dates of the following correspondence:

The patent itself is dated March 14th, though patents were, as has been explained, dated sometimes a day ahead of the making.

DEPARTMENT OF THE INTERIOR,
Washington, March 13, 1863.

SIR: The Attorney General has notified this Department that he intends to have the case of the land claim of Vicente P. Gomez, known as the Panoche Grande, brought before the Supreme Court of the United States for review, for the purpose of testing the validity of the grant.

Under these circumstances you will suspend the execution and delivery of a patent, under the decision of this Department of the 4th instant, until further advised in the case by the Secretary.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO,
Acting Secretary.

COMMISSIONER GENERAL LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
Washington, March 14, 1863.

SIR: I have the honor to acknowledge the receipt of your letter of the 12th instant, requesting me to forbid the issuing of a patent for the tract of land in California called Panoche Grande, claimed by Vicente P. Gomez, and to inform you that, in accordance with your desire, I have directed the Commissioner of the General Land Office to suspend the issuing of a patent until further advised on the subject.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO,
Acting Secretary.

Hon. EDWARD BATES,
Attorney General of the United States.

The book in which the patent was recorded in the Land Office, as it stood originally and before its correction according to the fact, reads as if the patent had been signed by the President. This is clearly explained by uncontradicted testimony that it was, and until lately ever had been, a fashion of the Office to record the patent in full with the President's name before it was presented to him for his official signature. However irregular this would seem to be, there were certain conveniences about it which led to such a practice.

There is considerable other testimony of an important character, showing that the unexecuted patent was never signed by the President of the United States, and your committee are of opinion that it never was signed by him.

But supposing it was so signed, was it ever in other respects completed? There is no evidence that it was ever signed by the Recorder of the General Land Office, or that it was ever sealed; and the signing by such Recorder and the sealing were acts in order of time done after the patent was returned from the President of the United States; while, on the contrary, all the evidence, oral and written, tends conclusively to show that such subsequent acts have never been performed. The record before alluded to shows an omission of the recorder's signature. The letter-book of the Land Office shows no record of letters sent either to the President or recorder requesting their signatures, though a patent never goes without such letter, and the letters are recorded. Nor can the Recorder or the President's secretary find such letters to them on their files, or in their possession.

In any view, there can be no claim that this or any patent to this party was ever *delivered.* Sickles says, "*but was not delivered.*" It would be strange indeed if McGarrahan had got a delivery in 1863, and should not know it till 1870! It is too late now to start the pretense that there was such a thing, actual or constructive.

There are deducible from these statements the following propositions:

1. That if there had been a delivery, then the land may have become vested in the patentee, and he needs no legislative aid or confirmation, but can find all his rights in the courts. He should seek his remedies in a judicial tribunal.

2. If not delivered, then it matters not whether the patent was formally completed or not, or to what extent it was completed. It remained the property of the United States.

3. But whether completed or not, or even delivered or not, if the petitioner can avail himself of the land claimed only by congressional action, and the claim is tainted with fraud, in such case he should be denied.

Inasmuch as the patent was suspended, and the record contemporaneously made would be an incorrect one, it has been cancelled by an indorsement by the order of the late Secretary of the Interior in the following words:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
July 25, 1870.

This record, from pages 312 to 321, inclusive, was made in accordance with the custom at the time, in anticipation of the original being submitted to the officers whose duty it is, under the law, to sign land patents, but an order dated March 13, 1863, having been received from the Acting Secretary of the Interior, to "suspend the execution and delivery of the patent under the decision of" the "Department of the 4th" of March, 1863, "until further advised in the case by the Secretary," the form of patent which had been prepared, and from which the aforesaid record was made, was not submitted for signature, and has never been dated, signed, nor delivered.

JOS. S. WILSON, *Commissioner.*

J. N. GRANGER, *Recorder.*

The same thing has been done in other cases. Where can there be any impropriety or want of correctness in an annotation like this? Does the petitioner desire the accidental advantages of a false record, and denounce honest and sworn officials for their endeavors to have all the facts fairly presented and perfectly understood? It would seem as if a cry were raised about these immaterial matters to withdraw attention from the other, and, as far as the claimants are concerned, indispensable parts of their case.

The petitioner persistently claims that he has at least shown some steps taken by Gomez in pursuance of an intention, in 1844, to obtain a grant, and that the record evidence in that direction, to the extent named in the beginning of this report, would constitute a "property" within the language of the treaty with Mexico.

If such a claim had not been abandoned, lying dormant from 1844 until 1853, when the agricultural land began to be considered as valuable for its minerals, and if the case had not been repudiated by the proper judicial tribunal of the country, and further, if the owner of the claim had not been fully estopped by the magnitude of fraud, by which it has been beset in the courts of California, and if it was at this time a fair and open question, the committee find no difficulty in arriving at the conclusion that the position taken is unwarrantable.

The treaty was ratified May 30, 1848. In article 8, page 129, United States Statutes, 9 vol., this provision occurs: "In the said Territories *property* of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners the heirs of these and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with regard to it guarantees equally ample as if the same belonged to citizens of the United States."

This is the only section under which any Mexican or his assignee could claim any interest. The property of Mexicans and Americans was to be protected alike. The sole object of the treaty was to *protect* property, not to *create* it, or add to it in any way.

Congress, in its act of March 3, 1851, section 11, after creating a board of land commissioners, before whom claims for Mexican lands should be submitted, enacted "that the commissioners herein provided for, and the district and supreme courts in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable."

Our Government in good faith fulfilled the obligations of this treaty. The records of the different tribunals of the United States show how fully that stipulation was enforced.

The treaty protects "*property.*" This word is used in its common meaning and acceptation. It does not include inchoate equities or imperfect claims, but perfected rights. It was property "*now belonging* to Mexicans." This was in May 30, 1848. It was not what status they might subsequently acquire as to property, but the limitation was on their right at the date of the treaty.

Congress put a construction upon this section. It provided that the commissioners and the courts, in deciding land claims, should be governed by the "usages and customs of the Mexican government respecting them." What are these usages and customs?

R. C. Hopkins, keeper of Mexican archives, in his evidence, describes fully the manner in which the Mexican archives were kept by that gov-

ernment, as shown by the originals on file in the surveyor general's office. He states that the Mexican records of land grants consists of the expediente, or record of proceedings had in procuring the grant. This record was the petition to the governor, the reference to the alcalde to investigate the facts and ascertain if the land was in a condition to be granted under the laws of colonization, and if the petitioner was worthy to receive the land, and this was accompanied by a map.

When the governor was satisfied of the condition of the land and character of petitioner, he made a decree or order, &c. In case he granted the same, he directed a "titulo" or formal title deed to be made out and delivered to the grantee for his security, and a copy of this "titulo" was attached to the expediente, and this only required the approval of the departmental assembly. Next was the books of record, "Toma de Razon," which were required by the regulations of November 21, 1828, to be kept in the secretary's office. The grant must be recorded therein.

An original index, or list of expedientes, called the Jimeno Index, and the approvals of grants as found in the journals of the departmental assembly, and grants, are often mentioned in official and private correspondence on file in the archives.

Mr. Hopkins continues: "There are on file in the archives 579 expedientes, called complete, because the proceedings shown therein are prosecuted until the grant is either given or refused." He further shows that "said complete grants were all recorded, numbered, and placed in the archives."

He further says: "Besides these 579 so-called complete expedientes, there are 314 called incomplete, because they are not prosecuted until the grant is either given or refused, but were, from some cause, abandoned at different stages of the proceedings before they had reached the point where the governor either made or rejected the grant. In some of these expedientes there is only found the petition; others go so far as the marginal order of the governor requiring report to be made; and some go so far as the report of the justice of the peace or other officer in relation to the condition of the land."

He continues: "The incomplete expedientes are not found entered upon any original index or book of record in the archives, nor are they numbered, save in pencil, and this was done by clerks in the office of the United States surveyor general, about the year 1853, when an index of all the expedientes, complete and incomplete, was compiled for the use of that office. So that as to those unfinished expedientes there is no reference in the archives outside of the documents themselves."

Gomez petitioned for a grant on the 13th of March, 1844, as is claimed, for agricultural purposes. The Americans took possession of the country in 1846. For nine years he failed to prosecute his petition, nor had he possession of the land. All the circumstances tend strongly to show an abandonment of his application. There are on file 314 similar incomplete cases. To confirm this incomplete application would not be in accordance with the laws, usages, and customs of Mexico.

In the case of The United States *vs.* Noe, 23 Howard, 312, the court decided that "where a grantee, under the colonization laws, suffered eleven years to elapse without taking any steps toward the completion of his title, or the fulfillment of the obligations imposed, and there was no expediente in the archives to show the segregation of the land from the public domain, nor any delivery of possession or other assertion of right, he will be deemed to have abandoned the grant."

Nine years, 1844 to 1853, have elapsed without Gomez taking any

steps toward the completion of his title. There is no record of any grant to Gomez in the archives, nor do the archives show any segregation of the land from the public domain; nor was possession ever delivered to Gomez of the land; nor did he ever assert any right thereto during said time.

The Mexican Congress, on the 18th day of August, 1824, (and the regulations thereunder of November 21, 1828,) conferred upon its governors the only power that they had to make grants of the public domain of that country.

Grants, like the one set up in this case, were made, containing the following express conditions:

1st. "That they should be approved by the departmental assembly; that the land should be appropriated to use and cultivation."

2d. "That the grantee should solicit from the proper judge juridical possession, by which the boundaries should be marked by the proper landmarks."

3d. "That the grant should be recorded in the respective books; that a copy should be deposited in the archives, and a copy be delivered to the party interested for his security and other uses." (Rockwell's Mexican and Spanish Law, p. 453.)

There is no evidence that any of these conditions were either performed or undertaken to be performed during the continuance of the premises under Mexican dominion.

To confirm this grant would be to abrogate every requirement of the Mexican Congress, and the regulations thereunder.

Gomez claimed that this grant was made to him in 1844 by Governor Micheltorena.

During this year Manuel Jimeno was secretary of the governor. He is the same officer to whom the governor referred the petition of Gomez.

Jimeno kept a complete and perfect record, called "Jimeno's Index," of all the grants made during that year, (of 1844,) and there is no record in it of any such grant as the Gomez grant.

In the celebrated Limantour case Jimeno was called as a witness by the United States, and proved that there was no record ever made of said alleged grant, which enabled the Government to defeat this gigantic swindle.

There was also a book kept by the Mexican authorities, showing all the land grants made for a number of years, including the year 1844, known as the "Toma de Razon," in which land grants made by Governor Micheltorena are more particularly described. No copy of the alleged Gomez grant can be found in it.

There is not found on the journals of departmental assembly of Mexico any approval of the Gomez grant, or any reference to the same. Nor is it mentioned in the official and private correspondence on file in the archives. (See evidence of R. C. Hopkins.)

In Romero *vs.* The United States, 1 Wall. 721, the Supreme Court decides that "The Mexican record books called the 'Toma de Razon,' and the 'Index of Jimeno,' are public records, which this court may consult, though not put in evidence below."

The court places great value upon these Mexican books of record. (See 22 How., 405; Wall., 742; 1 Black, 349.)

The absence of the alleged Gomez grant from the "Toma de Razon," the Mexican record of land grants for 1844, from "Jimeno's Index" for the same year, kept by the secretary of Governor Micheltorena, no approval of the grant to be found of record in the journals of the departmental

assembly, and no copy of said alleged grant to be found in the Mexican archives, nor any mention of it in any of the official correspondence.

It may be worth while at this place to add a word upon the question of how far a possession under a grant was necessary to its validity. It has been urged that the land commissioners erred in their view of the law in the Gomez claim. We do not admit such an error. While the decision in the Frémont case, so much relied on, admits some departure from the rule, it does not abrogate it.

One of the conditions of every Mexican grant was, that "when the title shall be confirmed, he (the grantee) shall demand of the respective judge judicial possession of it, by which the boundaries shall be designated with the necessary landmarks."

This was necessary to segregate the grant from the public domain. No survey was made until the period of judicial possession. Under the colonization laws of Mexico, settlement and cultivation were indispensable conditions of every grant. This judicial delivery of possession is akin to livery of seizin, and was actual possession made before witnesses. The Supreme Court of the United States decides "that when a doubt arises upon the meaning of a grant, as to the quantity ceded, reference may be had to the judicial *possession* delivered to the grantee." (U. S. *vs.* Pico, 6 Wal., 536.) Hence we see the necessity of this possession in order to make certain the boundaries of grants.

Alvarado, the grantor of Frémont, was prevented from taking possession of his grant, located in a wild and unsettled part of the country, by hostile Indians. The Supreme Court simply say, that the failure to perform an *impossible condition* will not vitiate a grant. Some time since the Frémont case was decided, the Supreme Court of the United States, in Malarin vs. United States, 1 Wall., decided that "judicial *possession after execution* of the grant was essential to the investiture of the title." In the case of Graham vs. United States, 4 Wallace, it reaffirms that decision.

Another point which attracts the attention of the committee, and which we cannot forbear to comment upon as briefly as its importance will permit, is as to the true location of the alleged grant to Gomez.

In the early history of land claims in California, it was found that by means of false surveys, grants of agricultural lands were located upon valuable tracts of mineral lands. These surveys were privately made, at the instance of the claimant, and were sent to the General Land Office at Washington. Thus, it was only by a journey of thousands of miles, at great expense, that an opportunity of contesting the integrity of these surveys could be had by the settlers, or those whose rights were affected by them. To remedy this evil, an act was passed by Congress, June 14, 1860, making it the duty of the surveyor general to give notice for at least sixty days, (afterwards made ninety days,) in some newspaper published in vicinity, of every survey of lands lying in the district of California, the plat being retained for examination in his office at San Francisco, with leave to settlers and others in interest to question its correctness.

June 26, 1860, claimant made application to the surveyor general of California for a survey of the Panoche Grande.

The application was forwarded to the General Land Office. September 4, 1860, the Secretary of the Interior refused permission to make the survey. June 2, 1862, Congress passed a law providing for a private survey of land claimed under alleged grants in California, but making such surveys "*prima facie*" evidence only of the true location of the grant.

The claimant in this case caused a private survey of the alleged Gomez grant to be made under this act within a very few weeks after its passage, under his own personal supervision. It was made by E. H. Dyer, United States deputy surveyor, in July, 1862. Said Dyer testifies that "he did not make the survey from *his own judgment* as to where the grant should be located, but that he made it under the *direction of McGarrahan* and the general instructions of the office," (surveyor general's;) that he was wholly unfamiliar with the country and could not have recognized the boundaries from the papers alone, and that he made the survey in three or four days.

Sherman Day, present surveyor general of California, says "he is familiar with the district of country," &c., "that he became acquainted with it January, 1859; that in April, 1866, he surveyed the New Idria mine and the country about there; that the country about the mine is a series of rough and precipitous mountains and hills, intersected by deep cañons; that the greater portion of it is barren and unfitted for agricultural purposes; it is essentially a mineral region; that the rancho de los Aguilas (one of the boundaries of the alleged Gomez grant) is distant about twenty-four miles in an air line from said mines;" that "he could make a correct survey of the Gomez claim;" that "such a survey would locate it *adjoining the Real de los Aguilas rancho, and not less than thirteen or fourteen miles from the New Idria mines;*" that "it appears from the field notes in his office that the Dyer survey was made between the 24th and 28th of July, 1862;" that "the aggregate length of the exterior lines of the Dyer survey is thirty-six miles and a little over;" that "from his knowledge of the country and experience as a practical surveyor it would take at least a fortnight, and perhaps three weeks, to make the Dyer survey properly."

Laurens Upson, the late surveyor general of California, states that he knows the localities.

He repeats the same statement as Sherman Day about the mountainous character of the country; that he has visited the reduction works of the New Idria Company. He then refers to a map, and says it is prepared upon the application of parties in the surveyor general's office, and the standard and township lines of the public surveys projected upon it, as well as the lines of private land claims finally surveyed and confirmed, viz, ranches Panoche de San Juan y los Carrisolitus and Real de los Aguilas, and the lines and location of these ranches, correspond with the official corrected map of the survey of private land claims in California for the year 1866, and that the survey of Panoche Grande is correctly delineated on said map. He, too, makes the boundaries of the land claimed to be confirmed to Gomez, by the decree, to be sixteen miles distant from New Idria mines.

Cassimer Bielawski, a civil engineer and draughtsman in the surveyor general's office, under Surveyor General Beale, says that, as draughtsman, he made a plat or map of the Dyer survey in September, 1862, under the order of E. F. Beale, surveyor general; it was made from the field notes and data of Dyer's survey; that in examining the field notes and survey, from which he compiled the plat, he found that one-half of the corners of the exterior boundaries of said grant had not been established by the deputy surveyor, on the ground, and for this reason he wrote in pencil on the map, when finished, his remarks to that effect, and advised him (Beale) that the survey should not be approved. He then handed the plan to Mr. William McGarrahan, who submitted the same to Mr. Beale for inspection. Mr. Beale overruled his objections, and on the 11th day of September, 1862, approved the plat and survey.

The boundaries of the Gomez grant do not seem to have been given always alike.

In his petition to the governor, Gomez prays for a grant "north by Julian Ursua, *south by the serrania*, (*mountain range*,) east by the valley of the Tulares, and west by Francisco Arias, containing three square leagues.

In his petition to the land commissioners to confirm the same alleged grant, he bounds it: "North by the lands of Julian Ursua, *south by the lands of Francisco Arias*, west by the barren hills," (no eastern course given,) "of the extent of *four* square leagues."

Claimant purchased the undivided one-half of three square leagues, and his deed recites the boundaries as "being the same lands for which a decree of confirmation has been entered in favor of Gomez. This decree gives them, northerly by the lands of Julian Ursua; easterly by the valley of the Tulare; westerly by the lands of Francisco Arias, and southerly by the hills."

Claimant asks Congress to confirm to him the Dyer survey in all respects as the boundaries of the alleged grant. That makes the boundaries "north by Julian Ursua; westerly by the lands of Francisco Arias; east by the Tulare Valley, and south by the Santa Anna River."

It will be seen that the alleged grant to Gomez was of an agricultural tract, and for agricultural purposes, while petitioner's claim is now essentially upon lands valuable only for its minerals; that while the valleys in that country are the only fit spots for agriculture, he has chosen his location mostly upon a mountain nearly 5,000 feet above the level of the sea, and 3,000 feet and more above the surrounding valleys, taking his location in a grotesque form, so as to throw upon a small portion of valley what acres he had left, after using up the valuable hills; that, as surveyed by Dyer, he is a great many miles away from the neighbors upon whom his calls would adjoin him in all the descriptions which he has heretofore given.

But particular attention is due another position in this connection.

McGarrahan asks Congress to confirm his grant as located on the face of the earth by the survey of Dyer, while, under the act of 1862, such location would only be *prima facie* evidence, leaving other parties to contest it, if not correct; and while the alleged patent now in the Interior Office, whether finished or not, contains a provision that the description shall be *prima facie* evidence only of correctness, the petititoner asks that Congress shall make this survey to him final and conclusive. The petitioner does not ask for the land which he claims was granted to Gomez, but such as was granted to Gomez and *surveyed to him by the private survey under the law of* 1862, thereby asking from Congress what he would not have obtained had the patent in the Department of the Interior been fully finished and delivered to him.

A word upon matters somewhat personal may not be objectionable in this report. In view of the appeals which have been made to us in behalf of the claim of petitioner, it may not be improper to remark that while the claim is pushed nominally by, it does not belong exclusively to, Wm. McGarrahan.

It seems that a quicksilver mining company has been erected to work upon this grant, incorporated by the laws of the State of New York, with a capital stock of ten millions dollars, but whether owned by few or many is a matter which should have no claim upon either our prejudices or sympathies.

The greatest latitude of argument was indulged in before the committee toward the United States Supreme Court, and especially in

regard to the conduct of several of the Attorneys General. The committee can see nothing in the official services of these gentlemen, upon whom much aspersion was heaped, which was not in accordance with the strictest integrity and a conscientious desire to perform, without fear or favor, the trusts which fell to them.

The committee do not consider it necessary to determine what rights upon the premises in question may or not belong to the company called the New Idria. Such a question has not been before us, only as incidentally bearing upon the main question as to the rights of the petitioner. While their claim is for 480 acres only, the petitioner's claim is for upward of 17,000 acres. The New Idria claim that they are the representatives of three-quarter sections, taken by settlers and miners, under the act passed by Congress on July 26, 1866. They claim no favors of special legislation, and ask only such rights as they allege belong to them under the general laws.

They will take their chances before the Departments and in the courts under the provision of the laws, as open to them as to all others, and merely ask that the general statutes shall not be, as to them and others, repealed or modified by invidious special legislation.

From the foregoing review, it seems there never has been a judicial decision in favor of the title of Gomez.

It is said, besure, that the land commissioners decided against the claim upon the law, and for the claim upon the facts, and that the decision of the question of law was erroneous.

It is enough for the present purpose that the decision upon the law and facts was rendered against Gomez.

If he was confident upon the facts at the trial before the land commissioners, neither he nor his successors have been willing to rely upon them afterward, but have constantly trusted to a pretended right founded on the merest technicality.

If the petitioner has sufficient proof of facts upon which to ask Congress for relief, why so unwilling to stand upon such proof before the courts?

Well has Attorney General Black said:

> The struggle, from the beginning of this case to the end of it, as far as I know anything about it, was a struggle upon the one side to get the case into court—to some court of competent jurisdiction, where it would be impartially and *fairly heard*—and upon the other side the struggle was to prevent it from being heard at all.

The committee find that there never was a completed grant to Gomez; that his witnesses are not trustworthy; that he was himself, in sustaining other grants, guilty of fraud and forgery; that the case was attempted to be put through the courts by fraud and gross deception; that the controversy has been fairly brought before the highest tribunal in the land upon its merits, and been fairly and properly decided; that it would be unwise in every view to reopen the litigation; that its effect would be to encourage and awaken numerous other defeated claimants of grants; that it would weaken the public faith in titles obtained under our treaty stipulations, and spread alarm among the multitude of miners and settlers in California, who cannot be heard or represented here; that the land now claimed for the Gomez title was not that covered by the alleged original grant.

In view of all which and for many other reasons, the committee recommend the passage of the following resolution:

A resolution relative to the petition of William McGarrahan.

Be it resolved by the House of Representatives of the United States of America in Congress assembled, That William McGarrahan is not en-

titled to the relief prayed for in his petition, and that the Committee be discharged from a further consideration of the same.

The committee would submit, as indispensable to the correct understanding of the propositions discussed in this report, documents annexed and marked—

Exhibit A, extract from the opinion of the Supreme Court in the case of United States *vs.* Gomez, 23 Howard.

Exhibit B, decision of the Supreme Court United States rejecting the Gomez claim on its merits, 3d Wallace, 773.

Exhibit C, Judge Ogier's return to the mandamus of the Supreme Court as to the fact whether an appeal was taken or not.

APPENDIX.

A.

Extract from the opinion of the Supreme Court in the case of United States vs. Gomez.

The following is an extract from the opinion of the Supreme Court in the case of United States *vs.* Gomez, 23 Howard, page 332:

Mr. Ord was originally the attorney of Gomez before the board of land commissioners, and filed his petition there as such on the 9th February, 1853. He was not then district attorney, but he became so on the 1st of July, 1854, before the land commissioners decided the case against his client. After his appointment, and after an order had been obtained, at his instance, to remove the cause from the northern district of California to the southern, of which he was the district attorney, and while the cause was pending in the latter, he took from Gomez, for the nominal consideration of one dollar, a transfer to himself for one-half of the land in controversy. This Mr. Ord admits in his affidavit, presented to this court by counsel. The conveyance to him bears date on the 24th of November, 1856. It was acknowledged on the same day by Gomez, before a notary public of the county of San Francisco, and was, at the request of Mr. Ord, recorded in the county of Merced on the 26th November, 1857; was also filed for record in the county of Fresno on March 26, 1858, and again recorded by Mr. Ord, in Monterey County, the 3d May, 1858. A copy of that conveyance is now before us. These dates show that no record of the conveyance to him was made until after the claim had been confirmed by the district judge, upon his representation that, as district attorney, there was no objection to its confirmation; in other words, that he thought the claim a valid claim, and was within the rulings of the court in other claims of the same kind.

We shall cite the notice in its words; for, as it had been in fact the subject of the court's action, and could not have been so without the knowledge of Mr. Ord, and without his agency, it devolves upon him the task to disprove the declarations of Mr. Hartman of the forgery of the name of the firm of Hartman & Sloan to the paper. We ought to remark, however, that Mr. Sloan, of the firm, is not shown by any paper to have had any personal agency in the matter. The notice is: "Now, on this day came the parties, the appellant by Hartman & Sloan, and the appellee by P. Ord, United States district attorney. Whereupon, on motion of the attorney of the appellant, it is ordered that the transcript and papers transmitted from the northern district court be filed in this court, and that the petition for a review of the same be entered thereon, and that the claimant have leave to proceed in said cause the same as if it had been originally filed in this court." On the same day, a petition was filed for a confirmation of the claim.

After the confirmation of it, in the manner as will hereafter be stated, Mr. Sloan, upon being told of the motion, and that it was signed by the firm of Sloan & Hartman, but, in fact, as if the style of their firm was *Hartman & Sloan*, made his affidavit under a commission instituted by Judge Ogier, that neither as a member of the then firm of Sloan & Hartman, nor otherwise, was he ever retained or employed in the case; that he never wrote nor authorized to be written any petition or other paper in the case; that he never had seen such a petition; that he had never authorized any one to use his own name, or that of the firm of Sloan & Hartman, in the case; and that, if the paper was signed as it is represented to be, it had been without any consultation with him, or his consent or approbation.

* * * * *

The motion made for the removal of the cause to the southern district is said to have been signed by E. W. F. Sloan, esq., and presented by him in open court; and the order said to have been passed recognizes that as a fact. On the same day the firm of Hartman & Sloan is reported in the transcript to have filed a notice of appeal with the clerk of the district court for the southern district. The paper has all of the formality and substance which such a paper should have, but Hartman & Sloan deny the fact of having had any agency in making such a motion; and these separate affidavits would be sufficient to sustain their disclaimer, were it not, so far as Hartman is concerned, that his subsequent conduct in the case shows a connection between himself and Mr. Ord, which throws suspicion upon both; and that is aggravated by Hartman's deposition, by that of other persons, and by the narrative given by Mr. Ord of his conduct in the suit.

Hartman then makes his affidavit, that he had no knowledge who made and caused the petition to be filed, nor by whose authority and direction the same was done. But he states that, while attending the June term of the southern district court in 1857, Mr. Ord, then United States district attorney, asked him if he would do him the favor to present a claim to the court for confirmation, stating it was a case in which there would be no opposition on the part of the Government. That, not suspecting there would be anything wrong about a claim to which the Government had no objection, he consented to do so; that, on the same day, the court being in session, and he being seated at the bar table, Mr. Ord passed to him the transcript in the case of Gomez and the United States, which he read to the court without any remarks, supposing it to be the case of which Mr. Ord had spoken to him; that after he had finished reading it, Mr. Ord remarked to the court that there was no opposition on the part of the Government to a confirmation; whereupon the court replied that there being no objection, the claim would be confirmed as a matter of course. Mr. Hartman continues his narrative of his further connection with the case and with Mr. Ord, six months after, at the December term of the court, when it was held at Los Angeles. He says that when Mr. Ord remarked to him that it had been omitted, at the time of the confirmation of the claim, to have a decree signed by the judge, that Mr. Ord requested him to draw a decree, and to present it to the judge, to be signed *nunc pro tunc*. He says that he did so, without knowing or suspecting that Mr. Ord had an interest in the land claimed by Gomez. This statement by Hartman of his agency in the confirmation of the claim, and in getting a decree upon it six months afterward at the instance of Mr. Ord, is denied by the latter in his affidavit, excepting as to his declaration to the court that the Government had no objection to the confirmation of the decree. The latter he admits in stronger terms than have been given. We shall use the affidavit for other purposes, and will have it printed in connection with this opinion, in justice to Mr. Ord, that the relation between himself and Mr. Hartman may be properly estimated from their respective declarations concerning it, only remarking now that there is proof that Mr. Hartman had subsequently declared himself to have been the attorney of Gomez in the case; that he had been so in all that he had done in the case; and that he had charged and demanded a fee for his services. It is not necessary for us to attempt to reconcile these differences, but it has certainly turned out unfortunately for Mr. Ord, in raising a violent presumption, from the manner in which they acted in the cause, that there was a concert between them to reverse the decision of the commissioners, and to obtain a decree in the district court for the claimant.

B.

Decision of the Supreme Court of the United States rejecting the Gomez claim upon its merits. (3 *Wallace, page* 733.)

Regarding the case as regularly before the court, it becomes necessary to examine the merits of the claim. Some suspicion attaches to it, because it is made for four leagues of land; whereas the only document introduced in support of it, which is of the least probative force, represents the original claimant as having asked for but three leagues. The document referred to purports to be a petition of the claimant to the governor, and there is appended to it the usual *informe;* but there is no concession or grant, nor is there any satisfactory evidence, that any title of any kind was ever issued by the governor to the claimant. He states in his petition to the land commissioners, that he obtained the map or record from the proper officers of the department; but the alleged fact is not satisfactorily proved. Four witnesses were examined by the claimant before the land commissioners, but only one of the number pretended that he had ever seen the grant, and his statements are quite too indefinite to be received as satisfactorily proved.

Instead of proving possession under the grant, it is satisfactorily shown that he never occupied it at all, and it is doubtful if he ever saw the premises during the Mexican rule. The land commissioners rejected the claim; but before it came up for hearing in the district court, his attorney had been appointed district attorney of the United States, and the proof shows that he conveyed two leagues of the land to the district attorney. The circumstances of the confirmation of the claim in the district court are fully stated in the opinion of this court, when the mandate was revoked and recalled. (United States *vs.* Gomez, 23 Howard, 339.) Comment upon those circumstances is unnecessary, except to say that the confirmation was fraudulently obtained.

Although the decree was fraudulently obtained, still, inasmuch as it is correct in form, it is sufficient to sustain the appeal for the purpose of correcting the error. The party who procured it cannot be allowed to object to its validity as a means of perpetuating fraud, especially as he did not appeal from the decree. The decree of the district court is therefore reversed, and the case remanded with directions to dismiss the petition.

C.

Return of Judge Ogier upon the application of McGarrahan's attorneys for a mandamus to compel him to carry out the mandate of the Supreme Court of the United States.

To the Honorable the Supreme Court of the United States:

The undersigned, judge of the United States district court in and for the southern district of California, having been served with a copy of an application to be made to your honorable court for a peremptory mandamus "commanding him,(me,) as judge of said district court, to dismiss a certain motion now pending in said court, for a new trial in a certain cause now remaining in said court, entitled Vicente P. Gomez, appellant, *vs.* The United States, appellee, and numbered on the calendar 393, said United States being the moving party in the motion aforesaid; also, commanding me to do and allow to be done in said cause whatever by right and justice and the laws of the United States ought to be done, and remains to be done therein," the aforesaid application will be made to the Supreme Court on the affidavits and exhibits thereunto annexed, and on the records and files now remaining in the said court in a case lately pending therein, entitled Vicente P. Gomez, appellant, *vs.* The United States, appellee, begs leave to return the annexed certified copies of the files and extracts from the minutes in this cause.

The undersigned would also beg leave to suggest to your honorable court that if he has erred in entertaining the motion for a new trial, and continuing the hearing of the same, the remedy of the party was not by mandamus, but by appeal or writ of error.

I would also most respecfully suggest that the application for a peremptory mandamus, in a case of this character, before the issuance of the rule "*nisi*," is entirely without precedent.

But if your honorable court should decide that this remedy sought for by the party be the proper one, I would most respectfully beg leave to submit the following statement:

This cause came on to be heard before the United States district court in and for the southern district of California, on an appeal from the board of land commissioners.

The transcript in this case was first filed in the northern district of California, and afterward, upon the suggestion of E. W. F. Sloan, and upon the affidavits of Gomez, the claimant, and H. Cambuston and Castro, that the lands claimed were in the southern district of California, the court ordered the transcript and record to be sent thereto.

The transcript of the record before the land commissioners shows that a petition was filed before that board on the part of the claimant by Pacificus Ord, as his attorney, asking for a "confirmation of the lands claimed." The next document of record is the decree of the commissioners rejecting the claim.

A notice or intention to appeal on the part of the claimant is filed in the cause, signed by E. O. Crosby.

The next document which appears of record, and in this court, is a petition for a review in accordance with the practice established by the court, and signed by Hartman and Sloan, (marked in annexed exhibits I, pages 10 and 11,) filed June 4, 1857. No answer thereunto appears on the record of the court.

The extract from the minutes of the court, marked K, page 14, in exhibits hereunto annexed, shows that the case was submitted to the court, and a judgment rendered therein. No decree was entered at the term during which the judgment was rendered.

A motion was made on the 5th day of February, 1858, to enter a decree "*nunc pro tunc*," and a decree was accordingly signed, filed, and entered on that day as of the 5th of June, 1857. On the 15th of March, 1858, E. J. C. Kewen, acting for P. Ord, United States district attorney, filed a motion for leave to take an appeal in this and several other cases, which motion was taken under advisement by the court, as will be seen by reference to page 21, document P, in annexed exhibits. On the 7th of July, 1858, E. M. Stanton filed, as special counsel for the United States, a motion to open said decree, reinstate the cause upon the docket, and for leave to take testimony on the part of the United States; said motion is in annexed exhibits, marked W, page 29.

When, afterward, on the 7th of December, 1858, J. R. Gitchell, United States district attorney, who had succeeded P. Ord, filed his motion for leave to withdraw the motion made on the 15th March, for leave to appeal this with several other cases, which was granted, as will appear by reference to document Q, page 22, of annexed exhibits. Upon the same day, to wit, the seventh day of December, 1858, J. R. Gitchell, United States district attorney, filed his motion and affidavit for reopening the decree, and to reinstate said cause on the calendar; which said motion and affidavit were lost from the files of the court, but refiled "*nunc pro tunc*," January 11, 1860, as will be seen by reference to documents marked A A, B B, and G G, to be found on pages 32, 33, 34, and 44 of annexed exhibits.

On the 4th day of May, 1859, J. L. Brent, attorney of Vicente P. Gomez, appellant,

appeared in open court, and made his motion for leave to file a mandate of the Supreme Court, and for an order to proceed under the former decree of this court as under a final decree; which said motion was, by consent of parties, continued indefinitely, as appears from documents R and S, pages 23 and 24, annexed records.

From document T, page 25, of annexed records, it will be seen that on the 7th of November, 1859, Shafters, Park, and Hydenfelt, and E. W. Taylor were substituted as attorneys of record for appellant in this cause, and on the 8th day of November, 1859, the parties, by their counsel, stipulated that all questions in this cause should be set down for argument and for final submission on Monday, the 9th day of January, 1860, as will be seen by reference to document X, page 30, annexed records.

On the 7th of December, 1859, E. L. Goold appeared as special attorney of the United States, and moved to continue the whole case until the next regular term of this court; which motion was overruled. See extracts from minutes, marked Y, page 31, annexed exhibits.

On the 11th day of January, 1860, J. R. Gitchell, United States district attorney, filed his motion and affidavit for a continuance of this cause until the next regular term of the court; said motion and affidavit will be found, marked C C, pages 33 and 36, annexed records; which said motion was considered and overruled by the court, but said cause was continued by the court on its own motion, for further testimony, as will appear from extracts of minutes, marked I I and J J, pages 46, 47, and 48 of annexed records. In addition to these exhibits are also fied the affidavits of Mr. Hartman, setting forth that the petition in this cause, purporting to be signed by Hartman and Sloan, was never so signed by them, nor either of them, or by any person authorized by them, and that they nor either of them ever appeared as attorneys in this case, except by the request of P. Ord, United States district attorney, as will appear by reference to document E E, pages 39, 40, 41, and 42, annexed records.

The attention of your honorable court is particularly called to this affidavit of Mr. Hartman, and also the deposition of Mr. E. W. J. Sloan.

I have filed in this cause a record of the whole proceedings in the case, voluminous, and somewhat, perhaps, irrelevant; but I have done so for the reason that in arresting the case in its present stage on my own motion, I have taken a course outside of the usual and ordinary practice of courts of justice.

The rules of the United States district court in and for the southern district of California require that, after the filing of a transcript from the board of land commissioners, and a notice of intention to prosecute the appeal, a petition should be filed by the party seeking a review of the decision of the board of land commissioners, and that a copy thereof shall be served upon the opposite party or their attorneys, before the cause can be brought to a hearing.

The rules of this court, adopted on the 14th day of June, 1855, are annexed to the documents filed in this case, and marked Y Y.

It will be seen from the record evidence heretofore referred to, that P. Ord was the attorney of the claimant before the board of land commissioners; and that he afterward became United States district attorney for the southern district of California.

The notice of intention to appeal in this case was filed by one E. O. Crosby. This, so far as the claimants are concerned, seems to be all that was ever done in their behalf, or by their sanction. A petition for a review of the proceedings of the board of land commissioners was filed on behalf of claimants, purporting to be signed by Hartman & Sloan. The affidavit of Mr. Hartman is to the effect that no such petition ever was signed by either Mr. Sloan or himself, or by any other person authorized by them to sign the same. The affidavit further shows that they never were employed by the claimants in this cause, or authorized to take any steps therein.

An answer to said petition was filed in the clerk's office of the United States district court in and for the southern district of California, by P. Ord, United States district attorney, but by whom signed is not known, as the said answer is now missing from the records of the court.

On the 5th of June, 1857, at a term of the court held in Monterey, Mr. Hartman appeared, and presented this cause to the court, merely stating the title of the cause and the number upon the docket. Mr. Ord appeared upon the part of the Government, stating that there was no objection to a confirmation upon the part of the United States, and, as a matter of course, a judgment of confirmation was entered. Supposing, as the court did, that Mr. Hartman was the attorney of record for the claimants, and duly authorized to represent them in said cause, and Mr. Ord being the United States district attorney, an officer of the United States Government empowered to attend to the interest of the Government in these causes, and consenting to said confirmation, without an examination of the papers, I, as judge of the court, ordered a decree of confirmation to be entered.

No decree was entered at the term at which judgment was rendered, nor was any motion for appeal on the part of the United States made. At a subsequent term of the court, held at Los Angeles, commencing on the first Monday in December, 1857, to wit, on the 15th day of March, 1858, during said term, E. J. C. Kewen, acting for P. Ord,

United States district attorney, made a motion for leave to appeal this cause with several others. At that time, counsel employed in the land cases in California were in doubt whether an appeal could be taken after the expiration of the term at which judgment was rendered, and, at the suggestion of Mr. Kewen and other counsel engaged, the question was taken under advisement by the court to await the decision of a case then pending before the Supreme Court, in which it was suggested to this court that this point would be settled. Intermediate to the motion of Mr. Kewen for leave to appeal from the judgment of confirmation, a decree had been offered to the court by Mr. Hartman, Mr. Ord thereunto consenting on the part of the United States, and signed by me, as judge, confirming the claim.

On the 7th of July, 1858, Mr. E. M. Stanton, special attorney for the Government, filed his motion before referred to for a rehearing in this case, unaccompanied by any showing, which motion was filed in the clerk's office, and no action had upon it by the court.

At the commencement of the term, to wit, on the 7th day of December, 1858, J. R. Gitchell, United States district attorney, who had succeeded Mr. Ord, filed his motion for leave to withdraw the motion heretofore made by Mr. Kewan for leave to appeal this and several other cases; and also filed a motion for a rehearing in this case, accompanied by an affidavit, substituting the same for the motion of Mr. Stanton.

It seems from the records and from the affidavits of the clerk of the United States district court in and for the southern district of California, and his deputy, that something purporting to be a record of proceedings in this case was obtained from the clerk's office by one William McGarrahan, and filed in the clerk's office of your honorable court, and the cause called up upon what purported to be a record of the proceedings of this court, and dismissed, and the mandate of your honorable court issued, commanding me to allow the parties to proceed under the decree heretofore entered in the United States district court in and for the southern district of California, as under a final decree.

When this mandate was offered by Mr. J. L. Brent to be filed, together with the order for carrying it out, it was resisted by the United States district attorney on the grounds that no appeal had ever been allowed, and the records of this court were produced in support of his objections. Under these circumstances, I was induced to examine the case thoroughly, and for the first time finding, from the transcript filed from the land commission, that Mr. Ord had been the attorney of the claimants before that board, and that the notice of intention to appeal the cause to the United district court was also in his (Ord's) handwriting, although signed by one E. O. Crosby; that the answer to the petition of review, which was then in the records of this court, was also in the handwriting of Mr. Ord; and there appearing upon the records of the court no attorney for the claimants, that the court had been imposed upon and induced to issue its decree of confirmation by the false representations of Mr. Hartman and Mr. Ord, I entertained the motion. Your honorable court will see, from the record evidence filed in this cause, that when the day, fixed by consent and stipulation of all the parties, for the hearing of all the motions pending in this case, had arrived, to wit, 11th day of January, 1860, Mr. J. R. Gitchell, United States district attorney, made a motion for a continuance, accompanied by an affidavit setting forth that the decree of this court heretofore entered had been improvidently made and fraudulently obtained, inasmuch as the United States district attorney, P. Ord, had, before the rendition of the judgment and entering the decree of the court in this cause, become interested in the claim by virtue of a deed of conveyance from the claimant, Vicente P. Gomez, to him, (Ord,) for two square leagues of the land claimed, and that he (Ord) had collogued and conspired with the said Vicente P. Gomez, or his assignees, and for his own interest, to permit said judgment to be entered without contest on the part of the United States.

The deed from Gomez to Ord did not accompany the affidavit, but it was admitted by counsel for claimant that said deed existed, and it was stipulated that a copy of said deed might be filed in this cause as evidence; which has since been done, and a copy thereof annexed to accompanying records.

This motion of the district attorney for a continuance was refused for reasons which I stated from the bench, and which were, that his remedy was not by a motion for a rehearing, but by motion for leave to file a bill of review; but while I refused the continuance on the motion of the district attorney, I felt it my duty, convinced by the proof shown by the records, that I had been induced improvidently to make the decree in this case, and to continue it on my own motion, in order to obtain the testimony of Mr. Sloan as to his connection with the cause.

A commission was issued, and the deposition of Mr. Sloan taken in it. He denies all connection with the case whatever, except so far as having made the motion before the district court of the northern district of California to send the transcript in this case to this court, which he avers he did, as a matter of courtesy, on the application of some attorney, (he believes Mr. Ord.)

Under these circumstances, I have felt it my duty to keep the case open, in order that the parties interested may have an opportunity of fairly presenting their inter-

ests before this court. The whole record shows that Mr. Ord was representing both interests in this case; that he had been the attorney of the claimant from the inception of the cause before the board of land commissioners, up to the time the decree was entered in this court; and that the appellees in this case had really never been represented; and when this fact was brought to the notice of the court by the present district attorney, Mr. Gitchell, sustained by the record proofs, it seemed to me the only course left, in order that justice might be done, was to keep the case open.

As to the merits of the claim, I have carefully abstained from examining into them. The course pursued by me can under no circumstances work permanent injury to either party. If the claim be meritorious, the parties in interest have only to have it properly presented, and I am sure your honorable court will feel the same indignant disapprobation of the conduct of counsel in this case which I have felt, and which has induced me to the course I have pursued.

However, should your honorable court think that I have erred in entertaining this motion, and continuing the same, and so decide, I shall most cheerfully submit to such decision.

Very respectfully,

ISAAC S. K. OGIER,
U. S. District Judge, in and for the Southern District of California.

D.

UNITED STATES OF AMERICA, *Southern District of California, Los Angeles:*

C. Sims, being duly sworn, says he is, and has been for two years, the clerk of the district court of the United States for the southern district of California; that in the case No. 393, wherein V. P. Gomez is claimant *vs.* The United States, for the rancho "Panoche Grande," a transcript was called for by letter signed W. W. McGarrahan, and was prepared and forwarded to him by my then deputy, J. H. Coleman.

Subsequently, and on or about the first week of September, 1858, another letter was sent by said McGarrahan, asking, among other things, that a motion, filed on behalf of the Government by Mr. E. M. Stanton, special counsel, asking for the reopening of the cause, be omitted from the transcript, a true copy of which letter is appended hereto. My said deputy, J. H. Coleman, had been superseded by Mr. W. W. Stetson, who, being fully empowered to open and act upon letters officially directed to me, did act upon the letter just mentioned, and prepared and forwarded to said McGarrahan a transcript in accordance with the terms of said letter, as I afterward ascertained.

When said letter was received, the motion of the Government for an appeal was under advisement by the court. And deponent further says that no appeal to the honorable the Supreme Court of the United States has ever been allowed by this court in the case of V. P. Gomez, claiming "Panoche Grande," No. 393 of the docket, and that the said motion of the Government for such appeal has been withdrawn by the present district attorney of the United States for the southern district of California.

And further deponent saith not.

C. SIMS.

Subscribed and sworn to before me this 8th day of December, 1859.

ISAAC S. K. OGIER,
U. S. District Judge for the Southern District of California.

41ST CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 24, pt. 2.

WILLIAM McGARRAHAN.

FEBRUARY 1, 1871.—Ordered to be printed.

Mr. BINGHAM, for the minority of the Committee on the Judiciary, submitted the following as the

VIEWS OF THE MINORITY.

The minority of the Committee on the Judiciary, to whom was referred the memorial of William McGarrahan, dissent from the conclusions of the majority, and beg leave to make the following report:

The memorialist claims that in 1844 the then governor of Upper California, in accordance with the laws and customs of Mexico, granted to one Vicente P. Gomez a tract of land known as the rancho "Panoche Grande," situated within what is now the State of California; and that on the 22d December, 1857, for a valuable consideration and in good faith, he purchased the premises from Gomez. By the treaty of Guadalupe Hidalgo, entered into by the United States with Mexico February 2, 1848, it was provided that "property of every kind now belonging to Mexicans shall be inviolably respected;" and that "the United States should pass such laws as would give effect to the treaty stipulations." (United States Stat. at Large, vol 9, pp. 929–931.)

In pursuance of these treaty obligations, the United States, March 3, 1851, provided by law for a board of land commissioners, and further, by the same law, provided "that each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners, when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim." (United States Stat. at Large, vol. 9, p. 632, sec. 8.)

On the 9th of February, 1853, Gomez, in accordance with this act of Congress, presented his petition to the said board of commissioners of the United States, alleging the grant to him by the Mexican governor of Upper California of the rancho Panoche Grande, and praying a confirmation of his claim to the same, which petition is as follows. The board of commissioners, having fully heard the evidence, made the following finding and decision:

To the board of commissioners for ascertaining and settling private land claims in the State of California:

The petition of Vicente Gomez, of Monterey County, California, respectfully represents: That some time in the year 1844 M. Micheltorena, governor of Upper California, granted to your petitioner a certain tract of land called Panoche Grande, of the extent of four square leagues, (now lying and being in the county of San Joaquin,) bounded

as follows: On the south by the lands of Francisco Arias; on the north by the lands of Julian Ursua and the low hills; and on the west by the barren hills, as explained by the map hereto annexed. Your petitioner alleges that for some time before the military occupation of Monterey, California, by the American forces, July 7, 1846, he was a clerk in the commissary's office of Monterey, and that, at that time, he had his original title papers for said tract of land deposited in his desk in said office of the commissary. That shortly before the naval forces of the United States took possession of the town of Monterey he had left the town with some of the Mexican troops to assist in the defense of the country.

That when he so left Monterey he left his said original grant of said land in his desk, at the office of the commissary as aforesaid, and believing it to be in a secure place. That upon his return to Monterey he found it in possession of the United States troops, and the public buildings, offices, and papers were all in possession of and guarded by American soldiers. Your petitioner made application without delay to the American officer who had charge of the office and papers where his said original title for said tract of land was deposited as aforesaid, but the said officer (Lieutenant Maddox, of the United States marine troops) refused to deliver any paper or papers then in possession or under his charge. Your petitioner alleges that the map herewith presented is the map which accompanied the original expediente, and that the grant made as aforesaid by Governor Micheltorena was the land delineated by this map.

Your petitioner became possessed of this map by permission of the proper officers for the purpose of having a copy made for his use and benefit, and he had taken it to his present dwelling-house a short time before California fell into the hands of the American authorities. Since he got possession of the map as aforesaid it has always remained in his hands. He has made application to the person in charge of archives of the former government, which was taken at Monterey, for information in relation to this grant and title made to him as aforesaid; but it could not be found, nor was the original expediente found.

Your petitioner has heard, and believes and alleges, that many original papers and documents belonging to the government archives taken at Monterey on the 7th of July, 1846, have been since lost or destroyed. If such be the fact, his title papers and the expediente must have been among the papers and documents so lost or destroyed.

Your petitioner hopes that, after such proof as the nature of the case will admit, your honorable board will confirm his said claim to the said four leagues of land granted as aforesaid, and that he may have a decree accordingly and general relief, as in duty bound.

P. ORD,
Attorney for Petitioner.

Filed in office February 9, 1853.

GEORGE FISHER,
Secretary.

Recorded in vol. 1 of Petitioners, in pages 549 and 550.

GEORGE FISHER,
Secretary.

Vicente Gomez *vs.* The United States, No. 569. Claim for a place called Panoche Grande, containing four square leagues, situated in the county of Monterey.

The petitioner in this case states in his petition that he had a grant for the above-named place, issued in the year A. D. 1844, by Governor Micheltorena, and that the grant was among the archives of the state in Monterey, at the time that the archives fell into the hands of the Americans, in July, 1846, and that it was either lost or destroyed. He has also given satisfactory proof of the existence and loss of the grant, but has failed entirely to offer any proof whatever going to show that he ever occupied, improved, or cultivated any part of the land, or that any one ever did for him, or that he ever saw the land. We are, therefore, of the opinion that the claim is invalid, and a decree rejecting the same will be entered.

Rejected.

Filed in office March 6, 1855.

GEORGE FISHER,
Secretary.

Recorded in record of decisions, No. 2, p. 552.

GEORGE FISHER,
Secretary.

It will be observed, that the board of commissioners find that Gomez had "given satisfactory proof of the existence and loss of the grant, but had failed to show that he had ever occupied, improved, or cultivated any part of the land. We are, therefore," say the commissioners,

"of the opinion that the claim is invalid, and a decree rejecting the same will be entered."

A decree was accordingly entered by the commissioners "that the claim of the petitioner is not valid." The commissioners find that the claimant gave "satisfactory proof of the existence and loss of the grant," but reject and refuse confirmation of his claim, because, and only because, he had not occupied, improved, or cultivated any part of the land. Very soon after this decree of the commissioners, the Supreme Court of the United States in the case of Frémont *vs.* The United States, 17 Howard, 542, ruled that omission to occupy under Mexican land grants did not forfeit or invalidate the grant.

By the act of August 31, 1852, it was provided that, "in every case in which the board of commissioners on private land claims in California shall render a final decision, it shall be their duty to have two certified transcripts prepared of their proceedings and decision, and of the papers and evidence on which the same are founded, one of which transcripts shall be filed with the clerk of the proper district court, and the other shall be transmitted to the Attorney General of the United States; and the filing of such transcript with the clerk aforesaid shall *ipso facto* operate as an appeal for the party against whom the decision shall be rendered; and if such decision shall be against the private claimant, it shall be his duty to file a notice with the clerk aforesaid, within six months thereafter, of his intention to prosecute the appeal; and if the decision shall be against the United States, it shall be the duty of the Attorney General, within six months after receiving said transcript, to cause a notice to be filed with the clerk aforesaid that the appeal will be prosecuted by the United States; and on a failure of either party to file such notice with the clerk aforesaid, the appeal shall be regarded as dismissed." (United States Stat. at Large, vol 10, p. 99, sec. 12.)

The commissioners supposing the land to be in the northern district of California, sent the transcript of their proceedings in this cause to the northern district court. The order was as follows:

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered, that the transcript of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same were founded, be made out and duly certified to by the secretary. One of which transcripts shall be filed with the clerk of the United States district court of the *northern district* of California, *and the other transmitted to the Attorney General of the United States.*

The claimant also filed his notice of appeal as follows:

District court of the United States for the northern district of California.

Vicente Gomez, by his attorney, hereby gives notice that it is his intention to prosecute the appeal in the above-entitled cause, from the decision of the commissioners to ascertain and settle the private land claims in California, rejecting his said claim, the transcript of which was filed in the clerk's office of said district court on the 1st of October, A. D. 1855.

E. O. CROSBY,
Attorney for Appellant.

Filed March 18, 1856.

W. H. CHEEVERS,
Deputy.

Filed 6th June, 1857.

A. S. TAYLOR,
Deputy Clerk.

It subsequently appearing that the lands of the Panoche Grande were in the southern district of California, the court certified and transferred the cause to the southern district by their order, as follows:

At a stated term of the district court of the United States of America for the north-

ern district of California, held at the court-room, in the city of San Francisco, on Monday, the 9th day of March, in the year of our Lord one thousand eight hundred and fifty-seven. Present, Hon. A. McAllister, circuit judge, and Hon. Ogden Hoffman, district judge.

THE UNITED STATES *vs.* V. GOMEZ. } D. C. 278, L. C. 569.

It being represented to the court that the lands claimed in this case lie in the southern district of California, now, therefore, on motion of E. W. F. Sloan, esq., made in open court, ordered by the court that the clerk of this court send to the clerk of the district court for the southern district of California said transcript, together with a certified copy of this order.

(Indorsed.) Filed March 7, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the original, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court this 1st day of June, A. D. 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Filed June 4, 1856.

C. SIMS, *Clerk.*
A. S. TAYLOR, *Deputy.*

Next follows the petition for a review of the decision of the land commissioners, as follows:

Petition for review.—Proceedings, &c., in southern district, June term, A. D. 1857.

VICENTE GOMEZ, appellant, *vs.* THE UNITED STATES, appellees. } Docket No. 393. Transcript No. 569.

To the honorable the district court of the United States for the southern district of California, on transfer from United States district court, northern district of California.

The petition of Hartman & Sloan, attorneys for Vicente Gomez, or those claiming under said Gomez.

That this case is an appeal from the decision of the board of United States land commissioners to ascertain and settle private land claims in California.

That the land claimed for by your petition is the land described in the expediente making a part of the evidence, proceedings, pleadings, &c., in the transcript No. 569 of said board of land commissioners above alluded to, together with the accompanying map or diseño, filed and indorsed in said transcript; and that the said land is known as the "Rancho Panoche Grande," and is within the jurisdiction of this honorable court.

That after considering the claim of your petition and the proofs filed in support thereof, said board, on the 6th day of March, 1855, decided the claim to be invalid.

That a transcript of the record of said proceedings was filed in this court on the 4th day of June, 1857, being transferred by consent of this court from the district court of the United States for the northern district of California, and that said transcript record was filed in said northern district on October the 1st, 1855, and a notice of appeal filed in said northern district court on the 18th March, 1856, by E. O. Crosby, said claimant's attorney.

Your petitioners pray that such decision of said board may be reversed, and that this court may confirm his title to said land.

HARTMAN & SLOAN,
Attorneys for claimant and those under him.

Filed 4th June, 1857.

A. S. TAYLOR, *Deputy Clerk.*

On the 5th of June, 1857, the said United States district court for the southern district of California, made the following order in the case:

Now, on this day, this cause coming on to be heard, the parties appearing by their respective attorneys, the appellant by Sloan & Hartman, esqs., and the appellees by P. Ord, United States district attorney, and, after argument by counsel aforesaid, the same is submitted to the court for final adjudication.

Whereupon the court, being fully advised in the premises, delivered its opinion, confirming the claim of the appellant to the extent called for in the transcript and papers; three leagues or sitios de granada magor, and a decree was ordered to be entered up in conformity to said opinion.

Afterwards the court made the following decree:

In the district court of the United States, southern district of California.

VICENTE P. GOMEZ, appellant, *vs.* THE UNITED STATES, appellees. } Case No. 393.—"Panoche Grande." Transcript No. 569.

This cause coming on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3, 1851, on a transcript of the decision and proceedings of said board, and the papers and evidence upon which said decision was founded, and the other evidence adduced by the appellant before this court, and it appearing to the court that said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard:

It is ordered, adjudged, and decreed that the decision of said board of land commissioners be and the same is hereby reversed, and that the claim of appellant is good and valid, and the same is hereby confirmed to him as follows, to wit: Three leagues of land, more or less, situate in the county of Monterey, State of California, bounded on the north by the lands of Julian Ursua; on the south by hills; on the east by the valley of the Tulares; and on the west by the lands of Francisco Arias, as is more fully set forth and described in the title issues for the same, and the diseño accompanying the same.

But it appearing to the court that on the 5th day of June, A. D. 1857, the lands in this case described had been confirmed by the court to said claimant and appellant, and it having been omitted to sign and enter a decree therefor at this date last aforesaid, it is ordered that the same be done now for then.

ISAAC S. K. OGIER,
United States District Judge.

Filed this 7th day of January, A. D. 1858.
Nunc pro tunc, (5th June, A. D. 1857.)

C. SIMS, *Clerk.*
Per J. H. COLEMAN, *Deputy.*

On February 4, 1858, on motion of Sloan & Hartman, it was ordered that the appellant have leave to amend the decree by substituting another in its stead. This was the final decree:

In the district court of the United States for the southern district of California—Decree filed February 5, 1858, as of June 5, 1857.

VICENTE P. GOMEZ, appellant, *als.* THE UNITED STATES, appellees. } Case No. 393.—"Panoche Grande." Transcript No. 559.

This cause came on to be heard on appeal from the decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3, 1851, on a transcript of the decision and proceedings of said board, and the papers and evidence upon which said decision was made, and the other evidence adduced by the appellant before this court; and it appearing to the court that said transcript and notice of intention to appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged and decreed that decision of said board of land commissioners be, and the same is hereby, reversed, and that the claim of said appellant is good and valid, and the same is hereby confirmed to him, as follows, to wit: The tract of land situated in the county of Fresno, State of California, known by the name of "Panoche Grande," bounded northerly by the lands of Don Julian Ursua; southerly by the Serrania, easterly by the valley of Tulares, and westerly by the lands of Don Francisco Arias, containing four square leagues of land and no more; provided that quantity is contained within the boundaries aforesaid, that confirmation of such less quantity is hereby made to said claimant; and for a more particular description of which said land reference is hereby made to the map contained in the transcript in this case; and it also appearing that heretofore, to wit, on the 5th day of June, A. D. 1857, at a regular term of this court, holden in the town of Monterey, State of California, the claim of the appellant in this case had been confirmed by this court, but that it

had been omitted by the court to sign the decree of confirmation at the time the same was made, it is therefore further ordered by this court that the same be signed now as for then.

Given under my hand, in open court, 5th day of February, A. D. 1858.

ISAAC S. K. OGIER,
U. S. District Judge for the Southern District of California.

Filed this 5th February, 1858, for the 5th June, 1857.

C. SIMS, *Clerk.*
Per J. H. COLEMAN, *Deputy.*

At the December term, 1857, an appeal was ordered, on motion of the United States attorney, to the Supreme Court of the United States, as follows:

In the district court of the United States for the southern district of California, Los Angelos, December term, 1857.

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court that appeal to the Supreme Court of the United States be allowed the United States in the following cause, viz, No. 393, Vicente P. Gomez *vs.* The United States, decided June 5, 1857.

C. SIMS, *Clerk.*
Per J. H. COLEMAN, *Deputy.*

Filed March 15, 1858

Something has been said of the decree being but for three leagues, and afterward amended so as to decree four leagues. It is answered that the order for decree, June term, 1857, confirmed the claim of Gomez "to the extent called for in the transcript and papers." The extent called for in his petition to the commissioners was four leagues. The words of his petition, which is part of the transcript and papers, are: "That some time in the year 1844 M. Micheltorena, governor of Upper California, granted to your petitioner a certain tract of land called Panoche Grande, of the extent of four leagues," &c., and prays that the board "will confirm his said claim to the said four leagues of land granted as aforesaid," &c.

His original petition concludes as follows:

Your petitioner hopes that, after such proof as the nature of the case will admit, your honorable board will confirm his said claim to the said four leagues of land granted as aforesaid, and that he may have a decree accordingly and general relief, as in duty bound.

P. ORD,
Attorney for Petitioner.

Filed in office February 9, 1853.

GEORGE FISHER,
Secretary.

Recorded in vol. 1 of Petitioners, in pages 549 and 550.

GEORGE FISHER,
Secretary.

It is sufficient to add further that the original decree of the court was for "three leagues of land more or less."

This appeal to the Supreme Court of the United States was perfected, and the same, after full consideration by the then Attorney General, Black, was, with his consent, docketed by the counsel of McGarrahan in the Supreme Court, December term, 1858, and dismissed thereby for want of prosecution on the part of the United States, and a mandate was issued by the Supreme Court to carry the decree into effect.

The following is the decree of dismissal and the mandate issued thereon:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the district court of the United States for the southern district of California, greeting:

Whereas lately, in the district court of the United States for the southern district of

California, before you, in a cause between Vicente P. Gomez, appellant, and the United States, appellees, wherein a decree was rendered in favor of said appellant, whereupon the said appellees prayed an appeal, which was allowed by the said district court, to remove the said cause to the Supreme Court of the United States, as by the inspection of the transcript of the record of said district court, which was brought into the Supreme Court of the United States agreeably to the act of Congress and the rules of the said Supreme Court in such case made and provided, fully and at large appears; and whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-eight, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and it appearing that the appellants (the United States) have failed to have their cause filed and docketed in conformity with the rules of this court, it is now here ordered and decreed by this court that the appeal from the district court of the United States for the southern district of California be, and the same is hereby, docketed and dismissed, and that this cause be, and the same is hereby, remanded to the said district court, January 31.

You, therefore, are hereby commanded that such proceedings be had in said case as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

[L. S.]

WILLIAM THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

[Indorsed.]

No. 393, No. 299, December term, 1858. Mandate of Supreme Court United States. United States *vs.* Gomez.
Filed May 4, 1859.—C. Sims, clerk.

C. SIMS, *Clerk.*

In the district court of the United States for the southern district of California.

VICENTE P. GOMEZ, appellant,
vs.
UNITED STATES, appellee.

And now comes Vicente P. Gomez, appellant herein, and files in open court the mandate of the Supreme Court of the United States, held on the 1st day of December, 1858, and rendered herein.

Whereupon it is by the court ordered, adjudged, and decreed, that the said mandate be carried into effect; that the said Gomez proceed under the decree of this court, heretofore rendered, as under a final decree.

Thus done and signed in open court this May, A. D. 1859.

[Indorsed.]

No. 393. Vicente P. Gomez *vs.* United States. Final orders of court upon filing mandate of the Supreme Court of the United States.
Filed May 4, 1859.

C. SIMS, *Clerk.*

That Attorney General Black was fully advised and privy to this proceeding is apparent from the fact that the appeal was docketed in his office by him as Attorney General, and the further fact that before the appeal was docketed in the Supreme Court he addressed the following letter to T. F. Meagher, esq., of counsel for McGarrahan:

ATTORNEY GENERAL'S OFFICE, *December* 18, 1858.

DEAR SIR: I gave General Shields an answer day before yesterday, which he promised to convey to you, and which I supposed you had received. I now repeat the substance of it when I say that, as at present advised, it is impossible for me to dismiss the case. But I have assented to let it stand until Mr. Stanton comes home, in the hope that it may then appear to be included within a rule which will enable me to gratify you, as I am extremely anxious to do. Mr. Stanton is expected by the next steamer from California, and I am very sure that he will come then, unless the illness of his son prevents him. You may, therefore, confidently expect a reply about the last of the present month, but not before, unless you would prefer a decision against you to the suspense of waiting that length of time.

Very respectfully, &c.,

J. S. BLACK.

T. F. MEAGHER, Esq.

After this letter the case was docketed in the Supreme Court, the appeal dismissed, and decree entered as above. The mandate issued by the Supreme Court was received in the district court of the United States for the southern district of California, and entered on record at its December term, 1858, to wit, in May, 1859, as appears by the record above. Thus the decree of the district court was made final.

By virtue of this final decree under the laws of the United States, McGarrahan, as grantee of Gomez, was entitled to have a survey of the land by the United States surveyor general of California. (See Statutes of 1862, vol. 12, p. 410.)

He applied to the United States surveyor general of California for a survey of the tract Panoche Grande, which officer caused a survey to be made, and approved the same September 11, 1862. This survey was transmitted immediately thereafter to the General Land Office and a patent for the property was demanded. The New Idria Mining Company appeared and resisted the issuance of this patent, though up to this time the said company had no color whatever of title to the premises and were mere trespassers.

Hon. Mr. Smith, then Secretary of the Interior, ordered the patent to issue to Gomez, which order is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, December 29, 1862.

SIR: I have carefully examined the papers accompanying your communication of 29th October last, relating to the application for a patent for the Panoche Grande Mexican claim of Vicente Gomez, in California.

From these papers the following facts are established: Vicente Gomez made his application before the board of land commissioners in California for the confirmation of an alleged grant by the Mexican authorities in 1844, of four square leagues of land in Monterey County, California, which grant he alleged was lost or destroyed at Monterey when that city was captured by the American army.

On the 6th March, 1855, the commissioners decided that the claimant had "given satisfactory proof of the existence and loss of the grant, but has failed entirely to offer any proof whatever going to show that he ever occupied, improved or cultivated any part of the land, or that any person ever did for him, or that he ever saw the land." The commissioners therefore rejected the claim as invalid.

From this decision the claimant appealed to the district court for the southern district of California. After the appeal was taken, and before the trial of the case by the court, the Supreme Court of the United States decided that neither improvement nor occupancy was necessary to give validity to grants made by the Mexican government before the annexation of California to the United States. From this decision it appears that the land commissioners found all the facts which were necessary to give validity to the claim. Had this decision been made before the commissioners decided the case it is evident they would have confirmed the grant.

On the 5th June, 1857, the district court for the southern district of California made an entry upon their minutes that, "being fully advised in the premises, delivered its opinion confirming the claim of the appellants to the extent called for in the transcript and papers, three leagues or sitios de ganada, and a decree was ordered to be entered up in conformity to said opinion."

No formal decree was signed and entered upon the record at that term; but on the 5th of February, 1858, at the next term of the court, a full and final decree was signed by the court and entered upon the records, which described the land by boundaries, and decreed that the decision of the land commissioners was reversed, and that "the claim of said appellant is good and valid, and the same is hereby confirmed to him." The decree also recited that the claim had been confirmed on the 5th June, 1857, by the court at a regular term, but it had been omitted by the court to sign the decree at the time it was made. It was therefore ordered that the decree be signed "now as for then." This was a decree *nunc pro tunc*, and had relation back to the time when the order of confirmation was made by the court.

On the 21st March, 1861, several regular terms of the court having intervened, the court made an order setting aside all previous proceedings in the case and placing the same on the calendar for trial *de novo*. On the 4th day of August, 1862, the court at a regular term made an order vacating the previous order granting a new trial, and ordering that it "be and the same is hereby vacated and set aside." These several

decrees and orders constitute a confirmation by the court of the grant of the claimant, and entitle him to a patent unless it shall be apparent that some proceedings have been instituted on behalf of the United States by way of appeal or otherwise, which will require a review or reëxamination of the case.

The case was docketed in the Supreme Court at the December term, 1858, as an appeal from the district court of California, and the appeal was dismissed on the motion of the appellee, and a mandate granted to the district court to execute the decree of confirmation. At the December term, 1859, on motion of the Attorney General, the order dismissing the appeal was vacated and the mandate was recalled. The effect of this order was to leave the case as though no appeal had been taken, and to authorize an appeal on behalf of the United States.

No appeal appears to have been subsequently taken until the 25th of August last, when an order for an appeal to the Supreme Court of the United States was made by the district court of California. On the 4th of the present month the district court vacated the order allowing the appeal, and set aside the motion of the district attorney asking leave on behalf of the United States to take an appeal to the Supreme Court from the final decree of confirmation, and denied the same.

This proceeding appears to me to be final and conclusive in the case. The time within which, by law, an appeal may be taken has elapsed, and the decree of confirmation made by the district court therefore fixes and determines the rights of the claimants.

It appears, from the opinion of the Supreme Court of the United States before referred to, that the district attorney, who represented the United States when the decree of confirmation was made, was interested in the claim at that time, and it is alleged that he fraudulently assented to the decree. Questions of fraud which have been raised in the case cannot be examined or determined by this Department. The only questions to be considered are: has the grant been confirmed by the decree of the proper court, and are there any legal proceedings pending to reverse or set aside that decree? Upon both of these questions it appears to me the answer must be in favor of the claimant.

The act of 14th of June, 1860, which requires the surveyor general to publish for a given time the fact of the survey, with a view of affording to persons interested an opportunity to contest the boundaries fixed by the survey, is directory to that officer The law directs this proceeding before the survey shall be reported to the General Land Office. The survey having been reported in this case, the presumption arises that the surveyor general has performed all the prerequisite duties enjoined by the law. Besides, by the law of June 2, 1862, the proper officers are required to survey such grants upon the application of the claimants, they paying or securing the expense, and such survey is declared to be but *prima facie* evidence of the true location of the land claimed or granted. Of course it is the duty of the surveyor general to report such survey to the General Land Office, which has been done in this case. The survey is but *prima facie* evidence of the true location, and a patent will be but *prima facie* evidence of title. No notice has been presented of any conflicting claim, and should such arise the parties cannot be precluded by a patent.

The order of Secretary Thompson against the issue of a patent in this case, based upon the letter of Attorney General Black, was founded upon the assumption that further proceedings would be instituted to reverse the decree of confirmation of the district court. No such proceedings are now pending, and the time within which any further appeal can be presented has elapsed.

My conclusion is, that the decree of the district court for the southern district of California confirming the grant has become final. The United States has no longer any interest in the controversy. No claim of third parties has been interposed. The suggestions of fraud in the grant, or in the manner of procuring its confirmation, are *res adjudicata*, and I am unable to discover any reasons why a patent should not be issued in conformity with the decree of the court and the survey.

You will, therefore, issue a patent for the land, in accordance with the survey as reported by the surveyor general.

The papers pertaining to the case are herewith returned to your office.

Very respectfully, your obedient servant,

CALEB B. SMITH,
Secretary.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

(Sen. Ex. Doc. 48, P't 3d, p. 22, 40th Congress.)

From some cause the execution of this order was delayed until the retirement of Mr. Smith, then Secretary, from the Department. The application was renewed by McGarrahan to Mr. Usher, the successor

of Mr. Smith as Secretary of the Interior, who, on the 4th of March, 1863, made the following order that the patent should issue:

DEPARTMENT OF THE INTERIOR.
Washington, March 4, 1863.

SIR: I have considered your communication of the 3d of January, 1863, relative to the issuing of a patent for the Panoche Grande claim in California. My predecessor having determined that the title was in the grantee named in the grant, the only question for my decision is, whether a patent shall issue upon a survey returned by the surveyor general, made under the act of June 2, 1862.

The view which I have taken of that act is, that it modifies the acts of March 3, 1851, and of June 14, 1860, so far as to allow the survey to be made at the instance of the party claiming the land, and making that survey only *prima facie* evidence of the true location of the land claimed. If the survey had been made under the acts of March 3, 1851, and June 14, 1860, and advertisements had been made and all things done in pursuance of the last-named act, the acts of the surveyor, if the same had remained, without having been caused by an interested party to be certified to the court, or the adjudication of the court, if the same had been so certified, would have been conclusive as to the *locus* fixed by the survey.

Whereas the act of June 2, 1862, makes the survey made under that act *prima facie* evidence only of the true location of the land claimed or granted, and as the survey was necessarily made under that act, I am of the opinion that the latter act modifies the former acts in this particular only, and that they are in force so far as they direct patents to be issued. I think, therefore, that the decision of my predecessor—directing the patent—was correct, and that it should issue. I would advise you, however, to cause to be inserted in the patent, by way of recital, the fact that it was issued upon a survey made under the act of June 2, 1862. And also, by way of greater caution, to insert a provision that the description of the land therein conveyed was to be taken against the United States, or any person making claim to the land, as *prima facie* evidence only of the true location of the land granted, and to be modified or avoided in that respect, if the same should be found to be erroneous.

Respecting the payment of the survey, or for the survey, I think it may be fairly presumed that his fees have been paid, or he would not have returned the survey. To strengthen this presumption, two certificates of the assistant treasurer of the United States at San Francisco, (No. 3,) one of $545, and the other of 55, have been deposited with me by the claimants, which, with the papers, are returned to you. The sums mentioned in these certificates, it is alleged by the claimants, and I may fairly presume, were deposited for this survey,

Very respectfully, your obedient servant,

J. P. USHER, *Secretary.*

Hon. J. M. EDMUNDS,
Commissioner of the General Land Office.

That it was manifestly the duty of the Interior Department to make these orders, is apparent from the express provisions of the law. See act of 1851, to ascertain and settle private land claims in California, vol. 9, pp. 631–34, sec. 13, which provides that "for all claims finally confirmed by the said commissioners, or by the said district or Supreme Court, a patent SHALL issue to the claimant upon his presenting to the General Land Office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor general of California."

That this claim was so finally confirmed by the district and Supreme Court at the time and before the date of the Secretary's order is not to be questioned. The facts are recited in the order of Secretary Smith, as they appear in Senate Ex. Doc. 48, part 3, Fortieth Congress. It is also a fact appearing therein, page 16, that the surveyor general of California, E. F. Beal, did make the plat and survey as of date September 11, 1862, in pursuance of the act of June 2, 1862, United States Statutes at Large, vol. 12, pp. 410, 411. It also appears, from the letter of D. E. Sickles, p. 96 of Senate Ex. Doc. 48, part 3, Fortieth Congress, that the President ordered that the patent should issue, and that the same was thereupon engrossed and signed, ready for delivery.

These orders having been made, it was by law made the duty of the

General Land Office to make a record of the same. (See Brightly's Digest, vol. 1, p. 463.)

The act of 1836, section 4, provides that the recorder of the General Land Office shall certify and affix the seal of the General Land Office to all patents for public lands, and shall attend to the correct engrossing, sealing, and transmission of such patents; and by act of March 3, 1841, vol. 5, section 2, p. 417, "it shall also be the duty of the recorder to countersign all patents."

Accordingly, a record of the patent to Gomez was made, as hereinafter shown; but, for reasons never explained, the fact of the record was concealed and the knowledge thereof withheld by the Commissioner of the General Land Office.

That the original patent never was delivered does not affect the question now before us; for without delivery the record is *prima facie* evidence of title.

In Opinions of Attorneys General, vol. 3, p. 654, Mr. Crittenden says:

> The patent was issued by authority and direction of law; and upon general principles, where the patentee does not expressly dissent, his assent and acceptance are to be presumed from the beneficial nature of the grant. But it is hardly necessary to resort to such presumptions; because, in this and all such cases, the acts required to be done by the claimant, and actually done by him in the preparation of his claim for patenting, are equivalent to a positive demand of the patent, and amount to an acceptance of it. The patent, in the meaning of the act referred to, is granted to the patentee from its date, though he may never actually see or receive it, and is valid and effectual to pass the title of the land."

By direction of the Judiciary Committee of the House, as appears by Senate Ex. Doc. 48, part 3, p. 79, Fortieth Congress, third session, its chairman, James F. Wilson, addressed to the Commissioner of the General Land Office the following letter:

> THIRTY-NINTH CONGRESS UNITED STATES,
> HOUSE OF REPRESENTATIVES,
> *Washington, D. C., January* 17, 1867.
>
> SIR: Will you have the kindness to send me, for the use of the House Judiciary Committee, at as early an hour as possible, a copy of the patent which was prepared and executed, but never delivered, in the case of the Panoche Grande land grant?
>
> Yours truly,
>
> JAMES F. WILSON.
>
> Hon. JOSEPH S. WILSON,
> *Commissioner General Land Office.*

On the 18th of January, 1867, the Commissioner, Joseph S. Wilson, replied to this letter as follows:

> DEPARTMENT OF THE INTERIOR,
> *General Land Office, January* 18, 1867.
>
> SIR: Pursuant to your request of yestesday, received this morning, I have the honor to inclose herewith the original *unexecuted* patent for the Panoche Grande rancho.
>
> With great respect, your obedient servant,
>
> JOS. S. WILSON,
> *Commissioner.*
>
> Hon. JAMES F. WILSON,
> *Chairman Judiciary Committee House of Representatives.*

Why did the Commissioner not furnish the record, knowing, as he did, that the law made it evidence conclusive of a patent duly executed by the President?

Early in July, 1870, the committee were notified by counsel for McGarrahan that a record had been discovered of an executed patent for this Gomez grant in the record of the General Land Office of the United States, and on the 7th of July, 1870, the Judiciary Committee of this House, having requested the production of the record, were duly

notified that the record should be sent to the committee, which was accordingly done on the 8th of July, 1870. Volume 4 of the records of California Mexican confirmed land grants contains a grant to Gomez as follows:

1 THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come, Greeting:

Whereas, It appears from a duly authenticated transcript, filed in the General Land Office of the United States, that pursuant to the provisions of the act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An Act to ascertain and settle the Private Land Claims in the State of California," Vicente P. Gomez, as claimant, filed his petition on the ninth day of February, 1853, with the Commissioners to ascertain and settle the private land claims in the State of California, sitting as a Board in the city of San Francisco, in which petition he claimed the confirmation of his title to a tract of land called Panoche Grande, of the extent of four square leagues, situated in the County of San Joaquin, and State aforesaid; said claim being founded on a Mexican grant to the petitioner, made in the year 1844, by Manuel Micheltorena, then Governor of Upper California;

And whereas, the Board of Land Commissioners aforesaid, on the 6th day of March, 1855, rendered a decision rejecting said claim, which decree or decision was, on appeal, reversed by the District Court of the United States for the Southern District of California, by decree rendered as follows:

"Vicente P. Gomez, appellant, vs. The United States, appellee; case No. 393, 'Pano-
"che Grande.' Transcript No. 569. Decree. This cause came on to be heard on appeal
"from the decision of the United States Board of Land Commissioners to ascertain and
"settle the private land claims in the State of California, under an Act of Con-
2 "gress approved March 3, 1851, on a transcript of the decision and proceedings
"of said Board, and the papers and evidence upon which said decision was made,
"and the other evidence adduced by the appellant before this Court, and it appearing
"to the Court that said Transcript and notice of intention to appeal have been duly
"filed according to law, and counsel for the respective parties having been heard,
"It is ordered, adjudged, and decreed, that the decision of said Board of Land Com-
"missioners be, and the same is hereby, reversed; and that the claim of said appellant
"is good and valid; and the same is hereby confirmed to him as follows, to wit: the
"tract of land situate in the County of Fresno, State of California, known by the name
"of 'Panoche Grande,' bounded northerly by the lands of Don Julian Ursua, southerly
"by the hills, easterly by the valley of the Tulare, and westerly by the lands of Don
"Francisco Arias, containing four square leagues of land and no more, provided that
"quantity is contained within the boundaries aforesaid, and provided also that if a
"less quantity is contained within the boundaries aforesaid, that confirmation of such
"less quantity is hereby made to said claimant, and for a more particular description
"of which said land reference is hereby made to the map contained in the Transcript
"in this case.

"And it also appearing to this Court that heretofore, to wit: on the 5th day of June,
"A. D. 1857, at a regular term of this Court holden in the town of Monterey, State of
"California, the claim of the appellant in this case had been confirmed by this Court,
"but that it had been omitted by this Court to sign the decree of confirmation
3 "at the time the same was made: It is therefore further ordered by this Court
"that the same be signed now as for then.

"Given under my hand in open Court this 5th day of February, A. D. 1858

"ISAAC S. K. OGIER,

"*U. S. Dist. Judge for the S. Dist. of Cala.*"

And whereas, it further appears from a duly certified extract on file in the General Land Office, from the minutes of the Supreme Court of the United States, that this cause being brought by appeal before the said Court at the December term, 1858, the following proceedings were had therein: "Now on this day this cause coming on to be "heard, the parties appearing by their respective attorneys, the appellant by Sloan & "Hartman, Esqs., and the appellees by P. Ord, U. S. Dist. Atty., and after argument of "counsel aforesaid, the same is submitted to Court for final adjudication. Whereupon "the Court being fully advised in the premises, delivered its opinion confirming the "claim of the appellant to the extent called for in the Transcript and papers, three "leagues or sitios de gañada major, and a decree was ordered to be entered up in con-"formity with said opinion;" and thereafter, to wit, at the December term, 1859, of the Supreme Court of the United States the following order was made in this case: "The "United States, appts, vs. Vicente P. Gomez. Appeal from the District Court of the "United States for the Southern District of California."

"On consideration of the motion made in this cause on a prior day of the present "term, to-wit: on Friday the 27th day of January, A. D. 1860, by Mr. Attorney Gen- "eral Black, to rescind the order and decree of this Court of the 31st day of January, "1859, docketing and dismissing this appeal, and to revoke and cancel the man- "date issued by this Court to the District Court of the United States for the 4
"Southern District of California, and of the argument of counsel thereupon had "as well in support of as against the said motion: It is now here ordered by this "Court that the aforesaid decree of this Court docketing and dismissing this appeal be "and the same is hereby rescinded and annulled, and that the mandate issued by this "Court to the District Court of the United States for the Southern District of Califor- "nia in this case be and the same is hereby revoked and canceled; and it is further "ordered by this Court that the Clerk of this Court do forthwith send a certified copy "of this order to the aforesaid District Court of the United States for the Southern "District of California."

And whereas, it further appears from a duly certified transcript on file in the General Land Office, that an order having been made in the District Court of the United States for the Southern District of California, granting a new trial in this case, the said Court on the 4th day of August, 1862, on a motion to vacate and set aside said order, made the following order: "Vicente P. Gomez, appellant, vs. The United States, ap- "pellee, D. C. No. 393, L. C. No. 569. 'Panoche Grande.' On this day the Court delivers "its opinion in this case granting the motion heretofore made by the appellant herein "praying the Court to vacate and set aside the order of Hon. Isaac S. K. Ogier, late "Judge, granting a new trial in this cause. And it is hereby ordered that the previous "order of this Court made and entered on the 21st day of March, 1861, setting aside "all proceedings had in this cause, and placing the same on the Calendar for trial *de* "*novo*, be and the same is hereby, vacated and set aside."

And whereas, it further appears from a duly certified transcript on file in the 5
General Land Office of the United States, that an order having been made on the 25th day of August, 1862, in the District Court aforesaid, allowing appeal in this case to the Supreme Court of the United States, the said District Court, at the December term, 1862, made the following order: "Vicente P. Gomez vs. The United States, "No. 393, Panoche Grande. In this case the court delivered an opinion on the motion "submitted the day before yesterday, and ordered that the appeal taken on the twenty- "fifth day of August, A. D. 1862, by the United States to the Supreme Court of the "United States from the final decree of confirmation herein be vacated and set aside, "and it is further ordered, that the order of this Court made on the said 25th day of "August, A. D. 1862, allowing said appeal, be and the same is vacated and set aside, "and the motion of the United States District Attorney for leave to take an appeal on "behalf of the United States to the Supreme Court of the United States from the said "final decree be and the same is denied."

And whereas, there has been presented to the Commissioner of the General Land Office a plat, with a certificate of the survey of the said claim, authenticated by the signature of the Surveyor General of the public lands in California, said survey having been made pursuant to the act of Congress approved June 2, 1862, entitled "An act "for the survey of grants or claims of land," said plat and certificate being in the words and figures following, to wit:

"UNITED STATES SURVEYOR GENERAL'S OFFICE, 6
"*San Francisco, California.*

"Under and by virtue of the provisions of the act of Congress of the 2d of June, "1862, entitled 'An act for the survey of grants or claims of land,' and in consequence "of a certificate of the United States District Court for the Southern District of Cali- "fornia, a copy of which is hereto annexed, by which it appears that a decision of the "said District Court has been had, recognizing and confirming the title claim of "Vicente P. Gomez to the tract of land designated 'Panoche Grande,' the said tract "has been surveyed in conformity with said decision, and I hereby certify the annexed "map to be a true and accurate plat of said tract of land as appears by the field-notes "of the survey thereof made by E. H. Dyer, Deputy Surveyor, in the month of July, "1862, under the direction of this office, which, having been examined and approved, "are now on file therein.

"And I hereby certify that the said tract of land is bounded and described as fol- "lows, to wit:

"Beginning at post in earth mound corner to sections one, two, eleven, and twelve, "township seventeen south, range eleven east of Mount Diablo meridian, from which "post a point on the highest ridge of the Lomas Muert as (a high range of barren and "broken mountains, the eastern slope of which forms the western edge of Tulare "Valley) bears north nine degrees west, distant about two miles.

"Thence according to the true meridian, the variation of the magnetic needle being "fifteen degrees thirty minutes east, over rolling land to the north of a small

7 "valley called Vallecito, north forty chains to post in earth mound on quarter "section corner between sections one and two. Station.
"Thence west eighty chains to quarter section corner on line between sections two "and three. Station.
"Thence north forty chains to post in earth mound, corner to sections two and three "on fourth standard line south. Station.
"Thence west, at forty chains quarter section post in earth mound eighty chains to "post in earth mound corner to sections three and four on fourth standard line south. "Station.
"Thence through township sixteen south, range eleven east, north forty chains to "station.
"Thence through middle of sections thirty-three and thirty-two, west one hundred "chains to station.
"Thence south, at forty chains intersects fourth standard line south twenty chains "west of post corner to sections four and five; thence with a variation of fifteen "degrees thirty-five minutes east through township seventeen south, range eleven east "parallel to its eastern boundary; at sixty chains enters Vallecito Valley, course north-"west and south of east one hundred chains to station.
"Thence east twenty chains to station on line between sections four and five, thence "south, at thirty chains leaves small valley, thence over broken hills near southern "edge of said valley, sixty chains to quarter section corner between sections eight and "nine. Station.
"Thence east, eighty chains to quarter section corner between sections nine and ten. "Station.
"Thence south, forty chains to corner to sections nine, ten, fifteen and sixteen. "Station.
8 "Thence east, one hundred and twenty chains to quarter section corner between "sections eleven and fourteen. Station.
"Thence through section fourteen, south sixty chains to station.
"Thence east twenty chains to station.
"Thence south, twenty chains to station on line between sections fourteen and "twenty-three.
"Thence on section line east, sixty chains to quarter section corner on line between "sections thirteen and twenty-four. Station.
"Thence through middle of sections twenty-four, twenty-five, and thirty-six, over "high and rough mountains, south two hundred chains to center of section thirty-six. "Station.
"Thence east, at forty chains quarter section post in earth mound on line between "ranges eleven and twelve east; thence through township seventeen south, range "twelve east, eighty-two chains and fifteen links to center of section thirty-one. "Station.
"Thence south, at forty chains quarter section post in earth mound on line between "townships seventeen and eighteen south, sections thirty-one and six, on top of a ridge "course northwest and southeast, thence through township eighteen south, range "twelve east, two hundred and eighty chains to quarter section corner between sec-"tions eighteen and nineteen. Station.
"Thence on section line, west twenty chains to station.
"Thence through section nineteen, south sixty chains to station.
"Thence east, twenty chains to station.
"Thence south, twenty chains to quarter section corner between sections nineteen "and thirty. Station.
"Thence on section line east, sixty chains to station.
9 "Thence through section twenty, north sixty chains to station.
"Thence east, twenty chains to station.
"Thence north twenty chains to quarter section corner between sections seventeen "and twenty. Station.
"Thence on section line east twenty chains to station.
"Thence through section seventeen, north forty chains to station.
"Thence east, twenty chains to quarter section corner between sections sixteen and "seventeen. Station.
"Thence on section line, north eighty chains to quarter section corner between "sections eight and nine. Station.
"Thence through section nine east forty chains to center of section nine, from which "the Panoche Grande Peak bears south fifty-six degrees east, distant about seventy "chains. Station.
"Thence north at forty chains quarter section post in rock mound on line between "sections four and nine, from which a pine tree bears north fifty-two degrees east, "distant twenty-four links, another pine tree bears south fifteen degrees west, distant "nineteen links, and the San Carlos Peak in the northeast quarter of section four bears

"north twenty-two degrees east; thence through section four, at fifty-four chains and "fifty links across Arroyo Panoche Grande, course northwest sixty chains to station.

"Thence east twenty chains to station.

"Thence north twenty chains to station.

"Thence east, twenty chains to quarter section post in earth mound on line between "sections three and four. Station.

"Thence on section line with a variation of fifteen degrees fourteen minutes 10
"east, north; at forty chains and forty links intersects line between townships "seventeen and eighteen south, range twelve east, at post in earth mound corner to "sections three, four, thirty-three and thirty-four; thence through township seventeen "south, range twelve east, over high and broken mountains with a variation of fifteen "degrees thirty-eight minutes east, eighty chains and forty links to quarter section "post in earth mound between sections thirty-three and thirty-four. Station.

"Thence through section thirty-three, with a variation of fifteen degrees twenty-"seven minutes east, west forty chains to center of section thirty-three, from which a "marked cedar tree, eight inches diameter, bears west, distant forty chains. Station.

"Thence through middle of sections, with a variation of fifteen degrees thirty-eight "minutes east, north at forty chains post in earth mound at quarter section corner "between sections twenty-eight and thirty-three one hundred and twenty chains to "post in earth mound at quarter section corner between sections twenty-one and "twenty-eight, two hundred chains to a sandstone twelve inches long, ten inches wide "and eight inches thick, in a rock mound in deep rocky gulch, from which a steep "rock cliff bears north forty-five degrees east; said sandstone is set for quarter section "corner between sections sixteen and twenty-one; thence over alkali hills two hun-"dred and eighty chains to quarter section post in a mound of alkali soil between "sections nine and sixteen. Station.

"Thence with a variation of fifteen degrees fifty-nine minutes east, west forty 11
"chains to post in mound of alkali soil, corner to sections eight, nine, sixteen, and "seventeen. Station.

"Thence on section line with a variation of fifteen degrees thirty-eight minutes east, "north forty chains to quarter section post in mound of alkali earth. Station.

"Thence through section eight, with a variation of fifteen degrees fifty minutes east, "west forty chains to center of section eight. Station.

"Thence with a variation of fifteen degrees thirty-eight minutes east, north forty "chains to a sandstone rock twelve inches long, ten inches wide and eight inches thick "in mound of alkali earth, quarter section corner on line between sections five and "eight. Station.

"Thence on section line with a variation of fifteen degrees fifty-four minutes east, "west at thirty chains thirty-eight links enters the narrow valley of the Arroyo Pan-"oche Grande, at thirty-nine chains eighty-eight links across Arroyo Panoche Grande "fifty links wide course north ten degrees east; thence over low hills, forty chains and "thirty-eight links to post in mound at corner to sections five, six, seven, and eight; "thence on section line with a variation of fifteen degrees thirty minutes east, eighty "chains and thirty-eight links to quarter section post in earth mound, one hundred and "twenty chains and thirty-eight links to post in earth mound at corner to sections one, "six, seven, and twelve on line between ranges eleven and twelve east; thence through "range eleven east, one hundred and sixty chains and thirty-eight links to quar-"ter section post in mound two hundred chains and thirty-eight links to point 12
"of beginning, containing seventeen thousand seven hundred and sixty-eight "and seventy-seven one-hundredths acres, and being designated in the plat of public "surveys as lot number thirty-seven, township sixteen south, range eleven east, lot "number thirty-seven, township seventeen south, range eleven east, lot number "thirty-seven, township seventeen south, range twelve east, and lot number thirty-"seven, township eighteen south, range eleven east, all of Mount Diablo meridian.

"In witness whereof I have hereunto signed my name officially, and caused
[SEAL.] "the seal of my office to attached, at the city of San Francisco, this eleventh "day of September, one thousand eight hundred and sixty-two.

"E. F. BEALE,

"*U. S. Surveyor General, California.*"

And whereas, application having been made for the issue of a patent upon the 13
foregoing survey, the Secretary of the Interior, under date of 29th December, 1862, rendered his decision, in which, upon recital in substance of the proceedings had in the matter and review, it is held as follows: that "the decree of the district court for the southern district of California, confirming the grant, has become final;" that "the United States has no longer any interest in the controversy;" that "no claim of third parties has been interposed;" that "the suggestions of fraud in the grant, or in the manner of procuring its confirmation, are *res adjudicata*," and he is "unable to discover any reasons why a patent should not be issued in conformity with the decree of the court and the survey," and ordered the issue of "a patent for the land in accordance with the survey as reported by the surveyor general."

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the provisions of the acts of Congress and decisions aforesaid, have given and granted, and by these presents do give and grant unto the said Vicente P. Gomez, and to his heirs, the tract of land embraced and described in the foregoing survey, with the stipulation that said survey under the aforesaid act of June 2d, 1862, shall "be taken as *prima facie* evidence only of the true location of the land granted," and with the further stipulation that, in virtue of the 15th section of the said act of March 3d, 1851, the confirmation of this said claim and this patent "shall not affect the interest of third persons."

To have and to hold the said tract, with the appurtenances, unto the said
14 Vicente P. Gomez, and to his heirs and assigns, forever, with the stipulations aforesaid.

In testimony whereof, I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this fourteenth day of
[SEAL.] March, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

By the President: ABRAHAM LINCOLN.

By W. O. STODDARD, *Secretary*,
Acting Recorder of the General Land Office.

This record is marked "examined," in this form "ex'd." The record having been completed and marked examined as aforesaid, has pencil lines drawn over the words "fourteenth March, sixty-three, and eighty-seventh;" and has also pencil lines drawn over the names "Abraham Lincoln, W. O. Stoddard," and the word "acting;" and has also written on the margin of the page, in pencil, the words "not signed." It is not indicated by anything upon the record of the patent when and by whom these obliterations by pencil lines were made, or these words in pencil, "not signed," were written. An unexecuted patent, corresponding in all respects with this record, except the words and names erased in pencil, as before mentioned, and the words "not signed," was exhibited to the committee by the Commissioner of the General Land Office. It will be observed by the House, that the Commissioner of the General Land Office, Joseph S. Wilson, in certifying an authenticated copy of this record, states in his certificate of the date of July 25, 1870, among other things:

> That on the said record pencil lines are drawn across the date, the name of the President and the President's secretary, and the words "not signed" are written in pencil in said record.

The House will notice that at that time the Commissioner says nothing of the pencil line drawn across the word "acting" on the record, while the authenticated copy has a pencil line drawn across this word. The House will also observe, that in said certificate the said Commissioner certifies that the patent is unexecuted and unsigned both by the President and recorder; whereas he testifies on oath before the committee that he does not know whether that certificate is true, and is not prepared to swear that the said patent was never signed by the President.

On the same 25th of July, 1870, after the inspection of this record had been called for by the committee, and after Congress had adjourned, the matter still pending before this committee for its final decision under the order of the House, the following was written across the face of the record of said grant to Gomez, to wit:

DEPARTMENT OF THE INTERIOR,
General Land Office, July 25, 1870.

This record, from pages 312 to 321, inclusive, was made in accordance with the custom at the time, in anticipation of the original being submitted to the officers whose duty it is, under the law, to sign land patents; but an order, dated March 13, 1863, having been received from the Acting Secretary of the Interior to suspend the execution

and delivery of the patent under the decision of the Department of the 4th of March, 1863, until further advised in the case by the Secretary, the form of patent which had been prepared, and from which the aforesaid record was made, was not submitted for signature, and has never been dated, signed, nor delivered.

JOS. S. WILSON, *Commissioner.*

J. N. GRANGER, *Recorder.*

It is provided by law, as above shown, that all patents for public lands shall be duly sealed and recorded. It is also provided that a secretary shall be appointed by the President, with the advice and consent of the Senate, whose duty it shall be, under the direction of the President, to sign in his name and for him all patents granted for lands under the authority of the United States; and it is further provided that it shall be the duty of the Commissioner to cause to be prepared a certificate, under the seal of the General Land Office, and such copy of the records on file in his office as may be applied for, to be used in evidence in courts of justice.

It is reasonable to conclude that no record would be made, as this record manifestly was made, complete in all respects, save the name of the recorder, unless the same had been signed by the President and sealed, for the law does not authorize it. Having been marked "examined," the record manifestly imports that what was there recorded had been compared with the original, and was found to be a true record thereof in all respects, including the dates, the seal, and the name of the President and his secretary as therein written. It was the duty of the recorder to countersign this patent, made so by positive law. It is to be presumed he did his duty.

It is useless, and worse than useless, to suggest that the examiner, who was authorized by the law to indorse, as he did indorse, "examined" on this record, did so after the obliterations by pencil lines, and the indorsement of the words "not signed" in pencil, had been made on this record. Such a certificate of record that it had been examined after such mutilation, and the indorsement also, "not signed," was not only useless, but unauthorized by any law whatever.

The minority insist that no record or grants can be made until signed by the President, and, when made, such record cannot be impeached or avoided by lines drawn over its face by any one, and especially by one in the employ of parties who have an interest to be advanced by the concealment or mutilation of the record.

We submit to the consideration of the House the provisions of the act of March 3, 1843, (5 Statutes at Large, pages 627 and 628,) and which, among other things, provides—

> That literal exemplifications of any such records which have been or may be granted in virtue of the provisions of the seventh section of the act approved on the 4th day of July, 1836, entitled "An act to reorganize the General Land Office," shall be deemed and held to be of the same validity in all proceedings, whether at law or in equity, wherein such exemplifications are adduced in evidence, as if the names of the officers signing and countersigning the same had been fully inserted in such record.

The undersigned submit to the House that both the certificate authenticating the transcript of said record, before the committee, and herewith published, and the indorsement written across the face of said record, each bearing date the 25th of July, 1870, were not only unauthorized by law, but in direct contravention of the above-recited act and the act of 1836. (United States Stat. at Large, vol. 5, page 107.) It will also be borne in mind that this record was made in the year 1863, and it is presumed to have been made on the day of its date, the 14th of March, 1863. At that time Joseph S. Wilson, who makes this certificate, was not Commissioner of the General Land Office, nor was he

such Commissioner for years thereafter. Nor was Mr. Cox Secretary of the Interior. This being understood, we inquire again by what authority of law Joseph S. Wilson thus mutilated the record by writing across its face, on the 25th of July, 1870, the words:

> The form of patent which had been prepared, and from which the aforesaid record was made, was not submitted for signature, and has never been dated, signed, nor delivered.

We submit that when a matter within his jurisdiction was passed upon by the head of the Department, as in this case, and also by the President, no order short of that of the President himself, who made it, could authorize any such interference in the premises. Chief Justice Taney, as Attorney General, vol. 2, Opinions of Attorneys General, p. 463, says:

> Unless claims finally decided by the proper Department shall, in general, be considered *res judicata*, every change in the officers thereof will produce a new hearing of the same, and the accounts of the Government will remain open and undecided.

The Attorney General further says in this opinion, that from the decision of the head of the Department, "the party may carry his appeal to the President, who may affirm or reverse the decision;" and from his decision, he adds, an appeal may be had to Congress.

And in the United States *vs.* Arredondo *et al.*, 6 Peters, 729, the Supreme Court of the United States say:

> If any jurisdiction is given, and not limited, all acts done in its exercise are legal and valid; if there is a discretion conferred, its abuse is a matter between the governor and his government, &c. (King *vs.* Picton, late governor of Trinidad, 30 St. Tr., 868–871.)
>
> It is a universal principle, that where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the acts done and the public, or any person denying its validity, are, power in the officer and fraud in the party. All other questions are settled by the decision made or the act done by the tribunal or officer, whether executive, (1 Cranch, 170, 191,) legislative, (4 Wheat., 423; 2 Pet., 412; 4 Pet., 563,) judicial, (11 Mass., 227; 11 S. & R., 429, adopted in 2 Pet., 167, 168,) or special, (20 J. R., 739, 740; 2 Dow. P. Cas., 521, &c.,) unless an appeal is provided for, or other revision, by some appellate or supervisory tribunal, is prescribed by law.

In point of fact this certificate of Commissioner Wilson is not only contradicted by the record, but is contradicted by the testimony before this committee of William O. Stoddard, who was in the year 1863 the secretary of Abraham Lincoln, President of the United States, duly appointed by the President and confirmed by the Senate of the United States to sign patents under his direction in his name. He swears before the committee that he signed a patent in the name of Abraham Lincoln, and as his secretary, for Panoche Grande in the spring of 1863; that he remembers there were *three* patents, brought about the same time, and that he recollects it was in March, 1863. He also states that the other *two* patents brought about the same time were patents for the Honcut and Canard Deparle. He further testified that the record as originally made up shows the signing of the President's name and his own in the manner that "was the customary way of appending the signatures;" that he examined the grant for Panoche Grande at the time he signed it, and called the attention of others to it at the time, and that it was done at the office of the Executive Mansion. We submit, however, this testimony, together with all the other testimony bearing upon this point, for the consideration of the House, and ask that it be printed herewith.

Mr. Granger, the recorder, being sworn before this committee, states that he was recorder at the time named in the record in 1863; that he does not know, and could not say, whether the patent for Panoche Grande was ever presented to him or not, to be countersigned; that he kept no record of California land grants, except the letters of transmission from the Commissioner of the General Land office; that he keeps these letters on file in his office; that upon an examination last summer, being called upon to know if there was any such letter, he made some examination, and since that time, upon a further examination, he found that in 1863 there were no letters from January down to June remaining on his files; that the files for that year from July until December were all there; that he knows letters of transmission, between January and June, 1863, had been received by him; that there were fifty-one letters of transmission of land grants between January and June, 1863, and there must have been more patents than that, as sometimes a single letter would inclose a large number of patents; that there must have been taken at least fifty-one letters of transmission from his office, which came to him from January to June, 1863, and he has no knowledge what has become of them; that he kept the letters locked in a case in his office; that he attached his name to the certificate written across the face of the record of date July 25, 1870; that he does not know that the statement of the certificate, signed by him, and written across the face of the record, is true; that he does not know that the patent from which the record was made never was dated or executed; that he so stated at the time he signed the certificate; that he signed the certificate under the written order of Secretary Cox, and verbal order of Mr. Wilson, the Commissioner, that he should sign it as written.

Joseph S. Wilson, the Commissioner of the General Land Office, testified before the committee that he had no knowledge on the subject whether the patent recorded for Panoche Grande was ever signed; nor does he know whether it was signed, sealed, and dated or not; neither does he know whether it was ever presented for signature or not, and has no knowledge that will enable him to swear that it never was presented for signature.

It may be noted here that reference is made to a letter of Acting Secretary Otto, dated 13th March, 1863, directing the Commissioner to suspend the execution and delivery of the patent.

As the patent recorded bears date March 14, 1863, being subsequent to the order of Acting Secretary Otto, and was signed by the President himself, as sworn to by his private secretary and evidenced by the record, it must be presumed that the President's act superseded the order of Mr. Otto, and enjoined upon the officers of the Land Office the duty of recording the patent as required by law.

It is not to be overlooked that an effort is made by some of the witnesses to show a custom violative of the statutes herein referred to, and violative as well of the rights of the people of the United States, to wit: that records may be made of grants before any grant has, in fact, been signed by the President. It is simply an effort, which happily has failed, to establish a special custom against the positive requirements of the law. This cannot be tolerated. But we ask attention to the law as to special customs:

> Special customs must be immemorial, continued, peaceable, reasonable, certain, compulsory upon every person, and consistent with general customs and the statute law. (1 Black. 77, 78.)

The minority, without professing to review all the testimony, call especial attention to the further fact, sworn to by himself, that William

H. Lowry, who was employed by the New Idria Mining Company about the year 1867, and has remained in the employ of said company ever since, states that about the date of the pencil mark, or the pencil date on the record, he compared the record; that he erased the name of the said secretary in the record, by crossing it in pencil, and writing on the margin in pencil "not signed;" that they remained until lately, and are probably there still; but he added that he did this on comparing the record and receiving an order to withhold the patent. On the inquiry being made, "Is there any pencil date to it?" he answers: "There is a pencil date on the record, and that is the only way I can identify the time."

The minority respectfully submit that there is no pencil date upon the record and never was. This witness further states that he knows of no case other than this marked "examined" on the record, which was without the seal of the General Land Office, the name of the President, and date.

The record was not marked examined by Mr. Lowry, but by Mr. Stoek.

As to any proceedings in the Supreme Court between the United States and Gomez, subsequent to the action herein before stated of the Executive Department, and after the 14th March, 1863, we do not deem it necessary to say anything in relation thereto. But we deem it important to notify the House that the contest which has been continued against the action of the Executive Department upon this claim, while it has been ostensibly in the name of the United States, has been, in fact, carried on at the expense of the United States for the exclusive benefit of the New Idria Mining Company. The company was organized about the year 1858, in the State of California, and wrongfully, about that time, entered upon, and has since wrongfully occupied as mere trespassers, the tract of land in dispute, and now seeks to obtain a grant from the Government of the United States for 480 acres thereof, which includes the mines, and is supposed to be the chief value of the tract, for the paltry sum of $2,400, when its estimated value, as stated by a late attorney general, is perhaps three million. This last proposition of the company to take all, or nearly all, that is valuable of the tract for $2,400, when the memorialist, in accordance with the action of this House, in the Fortieth Congress, tendered $22,000 to the Government for the land, is only another illustration of the care with which the New Idria Company guards the interests of the United States.

The counsel who appeared before the committee on behalf of the company, the Hon. Mr. Evarts, stated in his argument (on page 18) when speaking of this tract of land, that "we (meaning the company) have no title, and knew that we had no title." Yet it is claimed that by reason of the occupancy and improvement under the act approved 26th July, 1866, (Stat. at Large, vol. 14, pp. 251, 252, 253,) the company may rightfully demand of the Government a patent for 480 acres of the tract.

In our opinion there is no color of right in the New Idria Company to make this demand of the Government. It has occupied the land, as we said, only as trespassers, and has more than reimbursed itself for all the improvements it has made, and has never paid to the United States anything whatever for the same. The act of 1866 opens the mineral lands only "to citizens of the United States, or those who have declared their intentions to become citizens." Surely this provision does not contemplate an occupancy by aliens and non-residents.

On the 24th of January, 1868, D. O. Mills testified as to the persons constituting the company, as follows:

D. O. MILLS sworn and examined.

By Mr. LAKE, counsel for the New Idria Quicksilver Mining Company:

Question. You are a resident of California, and the president of the Bank of California?—Answer. Yes, sir.

Q. Can you state some of the principal stockholders of the New Idria Mining Company?—A. Barron & Co.—consisting of W. E. Barron, Thomas Bell, Joseph Barron, (all foreigners,) and some others whom I do not know, *being in foreign countries*—own, perhaps, half the stock. I own about one-eighth of it, and Mr. Rawston owns about one-eighth.

By Mr. WOODBRIDGE:

Q. What, in your judgment, is the property worth?—A. I should think it is worth from $500,000 to $750,000 in gold. That may be over-estimating it.

By Mr. ELDRIDGE:

Q. How much of the mining estate do you include in that?—A. I include the whole mining estate; the whole Idria mines proper.

Q. What do you claim that that covers?—A. The mine as developed does not cover nearly what the company has put in for. The company has put in for 3,000 or 4,000 acres.

It appears from this testimony that one-half of the stock of this company is owned by aliens.

The second section of the act provides that upon occupation and improvement of the mineral lands, and an actual expenditure thereon of an amount not less than $1,000 by the person or association of persons so occupying, "and in regard to whose possession there is no controversy or opposing claim, it shall and may be lawful for said claimant or association of claimants to file in the local land office a diagram of the same, &c., and to enter such tract, and receive a patent therefor, granting such mine, together with the right to follow such vein or lode with its dips, angles, and variations, to any depth, although it may enter the land adjoining, which land adjoining shall be sold, subject to this condition."

We have shown that from the time the New Idria Mining Company occupied, in regard to their possession of the premises there has been and still is controversy and opposing claim.

It is further provided in section four of said act that not more than 3,000 feet shall be taken in any one claim by any association of persons, and yet this company has filed its survey for 480 acres, and demanded a patent therefor, without color of right.

This company has employed the agents of the United States to defend its wrongful possession, and secure to itself the proceeds of the land in controversy, ever since the decree was rendered in favor of the memorialist in the United States court, in 1858, as of June 5, 1857.

E. L. Goold, of counsel for the New Idria Company, testified before the committee of this House, January 25, 1868, as follows:

WASHINGTON, D. C., *January* 25, 1868.

E. L. GOOLD sworn and examined as a witness: I have before me a letter dated March 3, 1861, from Edwin M. Stanton, Attorney General, to me, stating that I was employed in this case. I made the assignment on the back of it to Beale, in order to have it collected either by his brother-in-law, Evans, or himself, I forget which. Beale did not come, for reasons which I now forget, and I collected the money myself when I was in this city the following year. I have here a letter from the Treasury Department, stating the date at which the money was paid to me personally, which is as follows. I collected this bill for myself.

By Mr. WOODBRIDGE:

Q. In your examination of the case, did you satisfy yourself as to the ground upon which the land commission decided this case?—A. Yes; upon the ground that there was no possession; they said that they were satisfied there was a grant, but there had been no possession.

Q. But between their decision and the decree of the court, the decision of the Supreme Court in the Mariposa case had taken place?—A. Yes.

Q. Was Mr. Whiting, the district attorney for the southern district of California, from New York?—A. He was.

Q. Where did he attach his certificate?—A. In San Francisco.

Q. Was San Francisco in the southern district?—A. No, sir; in the northern district. Information came to San Francisco that the Secretary of the Interior would issue a patent for this land. *Mr. Casserly*, (now one of the new Senators from California,) who at that time represented Mr. Gibbs's interest, and *myself*, sent a dispatch to Mr. Latham, then Senator from California, to employ Judge Black; that they would allow him $5,000 in the event the motion to dismiss the appeal was refused. Judge Black drew the draft on me personally, at which I was a little surprised. My clients, however, were not then in a condition to pay it, and I had to go round to get it.

Q. Do you know how McGarrahan got hold of that private dispatch?—A. I do not; I think, if I mistake not, that is a true copy of a dispatch sent to me.

By the CHAIRMAN:

Q. During the time you were acting as special counsel for the Government of the United States, were you also counsel of the New Idria Company?—A. Yes, I became so because of my connection with Mr. Stanton; Mr. Stanton wanted to go home and left the case to me; he believed I would be zealous, as I had clients who are strongly interested against the claimants in this case.

By Mr. MCGARRAHAN:

Q. Is there not a claim of Judge Black's still pending before the New Idria Mining Company for his services?—A. I know he had such a claim last year. Whether it has been paid or not I do not know.

By the CHAIRMAN:

Q. You have said you were counsel both for the Government and for the New Idria Company. Were you employed by the Government because of your connection with that company?—A. Because I was counsel for Thompson, which was pretty much the same thing.

Q. Was that prior to the passage of the act by which persons were permitted to purchase and preëmpt lands?—A. Yes, of course.

Q. Did you receive compensation both from the Government and the New Idria Company for this service?—A. From Mr. Thompson; the same thing in substance, though not in form.

By Mr. MCGARRAHAN:

Q. Did you at any time state to John O. Wheeler that this was a valid donation or grant; that the only question was as to its proper location?—A. I never did; I stated to Judge Black, in the Supreme Court, that the petition was genuine; I recollect Judge Black stated it was a forgery; I have no doubt the petition, so far as it went to the governor for this grant, was genuine, but the governor was about that time driven out of that country in consequence of his taking with him three hundred or four hundred convicts from Mexico into California, and I think it very likely he went before Gomez got his grant. I am not at all certain that if Gomez had made his petition in time, he would not have had the grant. He was employed by the governor as a clerk, and was said to have been rather a favorite of his.

Mr. Goold, who thus testified before the committee of this House, on March 20, 1858, addressed the following letter to Attorney General Black:

SAN FRANCISCO, CAL., *March* 20, 1858.

Hon. JEREMIAH BLACK, *Attorney General of the United States:*

SIR: I beg leave to call your attention to two land claims, namely, that of *Francisco Arias*, No. 628, *vs.* United States, claiming the rancho Real de los Aguilas, and that of Vicente Gomez, claiming the rancho Panoche Grande, No. 569 of the land commission, both of which were rejected by the land commissioners, but which, I am informed, have been confirmed by the United States district court for the southern district of California. *There are grave reasons to doubt the genuineness of these grants.*

If the appeals in these cases have not already been dismissed, I have to request in the name of the parties interested, as well as the Government, in the rejection of the claims, that you will not *dismiss the appeals* until an opportunity is afforded to obtain such information, which I am now engaged in seeking, and which will be promptly communicated to you.

His testimony, above given, shows the parties interested, in whose

name he wrote the above letter to Attorney General Black, were the New Idria Mining Company.

On May 19, 1858, he wrote a second letter to Attorney General Black, in which he speaks of "my clients" as follows:

SAN FRANCISCO, *May* 19, 1858.

SIR: Referring to my communication of the 20th of March last, concerning the two land claims of *Francisco Arias*, No. 628, and Vicente Gomez, No. 569, I have to say that information has been obtained rendering it almost certain that the latter-named claimant (Gomez) was not in possession of the land claimed by him prior to the change of flags, and at the next term of the court I shall make to the judge such suggestions as will lead him to open the decree of his own motion.

With regard to the other claim, my clients have failed to learn anything, as they expected to, tending to create a doubt of its genuineness.

Your obedient servant,

E. L. GOOLD,
Counsellor at Law.

Hon. JEREMIAH BLACK,
Attorney General of the United States.

The following letter of the late Mr. Stanton shows that Mr. Goold, was employed by authority of Attorney General Black as special counsel for the United States in the case of Gomez, for which service he was paid $1,000 from the Treasury of the United States, ostensibly for services rendered the United States, but in fact rendered for his "clients," the New Idria Mining Company:

In the district court of the United States, southern district of California.

THE UNITED STATES *vs.* VICENTE GOMEZ. } Claimant of the rancho called "Panoche Grande," southern district of California.

ATTORNEY GENERAL'S OFFICE, *March* 1, 1861.

SIR: While I was in California in the year 1858, as special counsel of the United States in law cases, you were employed by me, under authority of the Hon. J. S. Black, Attorney General, to act as special counsel of the United States in the defense of the case, and to aid the district attorney of the United States in reversing the confirmation of the claim in the district court. And it was stipulated that you should be paid by the United States for your services as special counsel the sum of $1,000. This retainer and employment you accepted, and agreed to make your professional services to the United States for that sum; that arrangement has been and is again ratified by this office.

Yours, &c.,

EDWIN M. STANTON,
Attorney General.

E. L. GOOLD, Esq.,
Counselor-at-law.

After Mr. Black retired from the Attorney General's Office, he, too, became special counsel for the United States against the Gomez claim, but in fact, and with Goold, the counsel as well for the New Idria Mining Company, as appears from the following letter and telegraph:

WASHINGTON, *April* 7, 1864.

SIR: You will oblige me by ordering me to be furnished with a copy of your letter addressed to the Secretary of the Interior on the subject of the patent applied for by the claimants of the Panoche Grande ranch, in California. One of the letters is dated October 29, 1862, the other on January 3, 1863.

I am counsel for the United States, and desire to use the letters for the purpose of an argument in the Supreme Court, where a question concerning this title is now pending.

I am, most respectfully, yours, &c.,

J. S. BLACK.

Hon. J. M. EDMUNDS,
Commissioner of the General Land Office.

Attention is now asked to the following telegram by Mr. Black, sent

to Goold immediately upon the refusal of the Supreme Court of the United States to dismiss the appeal in the Gomez case in 1864, as follows:

> The Gomez title is as good as dead. I told you so. The court denied the motion to dismiss. I have drawn on you for $5,000 in gold coin, payable at sight, which you promised to pay in the event of the motion to dismiss being denied. Attend to my draft without delay or mistake.
>
> J. S. BLACK.

It is the opinion of the minority that it is unjust alike to the United States and to the claimant of the land, that the New Idria Company should be defended at the expense of the United States, in its wrongful possession and use of this property.

In view of all that has been stated herein, and all the testimony that has been before the committee; and in view of the color of title that is in McGarrahan, that he purchased the land in good faith after the United States Commissioner had found that Gomez had made satisfactory proof of the existence and loss of the grant of this tract, and after the United States district court had ordered a decree confirming the grant to Gomez to the premises in question; and of the fact that the New Idria Mining Company took possession thereof, without any color of title, and have employed the agencies of the United States to defend them in their trespass at the expense of this Government, and have in their employment the person who has obliterated the record, in violation of the law, according to his own sworn testimony, we submit to the consideration of the House the following joint resolution as a substitute for the report of the majority of the committee:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, directed to cause the record on pages three hundred and twelve to three hundred and twenty-one inclusive, in volume four of "California Land Claims," of the patent of a tract of land known as the "Panoche Grande," as set forth therein, to be transcribed into the records as the same stood on the record book of the General Land Office at the time it was examined, without any mutilation or erasure whatever, so that the legal effect of the record so transcribed shall be the same as if the original record had never been interfered with or mutilated; and when such record shall have been so made, as herein provided, it shall be marked *examined*, as it was originally marked. And the President of the United States is hereby authorized and required to do in the premises whatever may, in his judgment, be just and equitable; without regard to any action or proceeding had subsequent to the 14th day of March, 1863, the date of the patent recorded.

NOTE.—The minority of the committee, for the information of the House, further ask that the report of the Judiciary Committee of the Fortieth Congress, Honorable James F. Wilson, chairman, may be published with this report, together with the bill thereto annexed, which bill passed the House, but was never finally acted upon by the Senate.

MAY 8, 1868.—Mr. Wilson, from the Committee on the Judiciary, made the following report:

The Committee on the Judiciary, to whom was referred a bill for the relief of William McGarrahan, respectfully submit the following report:

The history of this case is composed of such a multitude of circumstances, spread over a period extending from the year 1844 to the present time, that to give it in detail would be to present a report so voluminous as to defeat the very object contemplated by the House in submitting it to the committee—that of information to its members.

It has, therefore, been deemed advisable to exhibit leading and controlling facts, rather than minute and unimportant particulars.

The effort has been to give the present paper a synoptical rather than argumental character, as it is believed a plain but abbreviated narrative will be sufficient to satisfy all inquiries that the bill herewith reported should pass.

An impartial statement of the facts and of prominent proceedings is, in the judgment of the committee, all that is needed to show that Mr. McGarrahan is entitled to the relief he seeks, and to the land in question, as described in his original memorial presented to the House during the Thirty-ninth Congress.

In the year 1844, Manuel Micheltorena, the then governor of Upper California, in accordance with a Mexican custom to confer lands upon deserving officials and citizens, granted to Vicente P. Gomez a tract of land, then, it would seem, considered almost valueless, and situate in the present counties of Fresno and Monterey, State of California. The property was then, and is now, known as "Panoche Grande rancho."

The making of this grant has been denied, and this denial constitutes the principal ground from which has sprung the prolonged and exhausting litigation in the case, extending over a period of more than thirteen years.

The proof of the existence of the grant is satisfactory. It is found mainly in the following facts:

I. The deposition of José Castro, who filled the office of political chief of California, and was also prefect and commandant general, which states that Gomez, with whom he was well acquainted, desired him (Castro) to inform him (Gomez) of a suitable place to petition for or secure, and that he recommended the Panoche Grande.

II. The petition of Gomez to Governor Micheltorena, March 13, 1844, requesting a grant of the rancho.

III. A marginal entry made by the governor, March 14, 1844, on the petition of Gomez, that the proper secretary should cause the necessary investigations to be made and make report.

IV. A declaration of the same date, by Manuel Jimeno, the secretary, that the petition of Gomez had been transmitted to the first justice of San Juan, in order that he should report what would be just in the matter.

V. The report of the justice, dated March 20, 1844, stating that the land was vacant, and that there was no reason why the same should not be granted.

VI. A map of the land, filed in pursuance of the justice's report.

VII. The affidavit of Valentine Gajiola, employed in the Presidial Company of Monterey in 1848, showing that Gomez applied to him to make a map of the rancho; exhibited to him the title papers duly executed, and that he made the map as desired.

VIII. The deposition of José Abrigo, the head of the commissary department, and resident in Monterey, proving that Gomez was a clerk in his office, and that in 1845 he (Gomez) showed him a title to the land named, together with a map of the property; that the papers were signed by the governor and secretary, and that he was well acquainted with the signatures of these officers, having often seen them write; that the archives in which their papers were, passed into the possession of the American army, July 7, 1856.

IX. The testimony of Abrigo, Dr. James L. Ord, a surgeon in the United States Army, and others, proving the destruction of the archives in Monterey, and the fact that such destruction is generally admitted.

X. The deposition of Oscar De Grandé Basque, stating that Gomez, in 1845, showed him title papers for the rancho, and proposed a sale of the land to him.

XI. The affidavit of J. Marno Bonilla, secretary of the superior tribunal of justice in Monterey, stating that Gomez, in 1844, applied to him for stamped paper, to be used in procuring a title to lands; and that in 1845 he saw memoranda of grants of land, among which was that of Panoche Grande to Gomez.

XII. The affidavit of Matias Moreno, secretary of state of Upper California, stating that in 1846 he knew Gomez had obtained a grant for Panoche Grande, and that he saw the grant.

XIII. The affidavits of Maricio Gonzales, José Fernandez, Gabriel de la Torre, Joaquin S. Escamilla, and others, tending to prove the existence of the grant.

XIV. Statement of E. L. Goold, esq., before the Judiciary Committee, that he believed the petition of Gomez was a genuine document, and that he based his opinion on his knowledge of the facts and circumstances connected with the case of said Gomez against the United States, which involved the validity of the grant upon which this case is based. Mr. Goold was of counsel in said case in opposition to the grant, and appeared as a witness before the committee on behalf of the opposing parties.

XV. The grant by Governor Micheltorena, in the year 1844, to Don Julian Ursua, of the tract known as the rancho "La Panoche de San Juan and Los Carrisalitos," wherein the tract is described as being bounded on the south by the mine of "Los Aguilas" and "La Panoche Grande."

XVI. Statement of Henry D. Cooke, esq., that when he was in California, in the

years 1847–'48–'49, it was common report that Gomez had received a grant of a rancho near San Juan from the Mexican government.

XVII. In 1845 the board of land commissioners, at the hearing on the evidence, as required by the laws of the United States, decided that Gomez had given satisfactory proof of the existenee and loss of the grant.

1. In the treaty of Guadalupe Hidalgo, entered into between the United States and Mexico, February 2, 1848, it was provided that property of every kind belonging to Mexicans should be inviolably respected, and that the United States should pass such laws as would give effect to the different stipulations of the treaty, and always thereafter regularly enforce them. This feature was introduced to secure all landed and other interests that might in any way be affected by a change of jurisdiction over the territory embraced in the treaty. (9 Stat. at L., pp. 229–231.)

2. The law contemplated was passed March 3, 1851, (9 U. S. Stat. at L., p. 631,) creating a board of land commissioners, and declaring among other things, "that each and every person claiming lands in California, by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners, when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claim; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and within thirty days after the said decision is rendered to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered." (Sec. 8.)

3. February 9, 1853, Gomez, in accordance with the provision of the act of March 3, 1851, presented his petition to the board of land commissioners, praying a confirmation of his claim to the rancho Panoche Grande.

4. The board, having fully heard the evidence of the grant, decided that the claimant had given satisfactory proof of the existence and loss of the grant, but had failed entirely to offer any proof whatever going to show that he ever occupied, improved, or cultivated any part of the land, or that any one ever did for him, or that he ever saw the land; and on the ground of non-occupancy decided the grant invalid.

5. In the case of Frémont *vs.* The United States, (17 Howard, 542,) decided at December term, 1854, the Supreme Court of the United States held that, in the case of Mexican land grants, omission to take possession of the land did not of itself forfeit the right or grant. Had this determination preceded the action of the board of land commissioners, the grant to Gomez would certainly have been pronounced valid, as the board decided against the grant on the ground that the grantee had not entered upon and possessed himself of the land granted.

6. The decision of the board of land commissioners made an appeal necessary, which was accordingly taken by Gomez, and June 5, 1857, the district court for the southern district of California confirmed his claim, and a decree to that effect was pronounced. But through what is claimed to have been a clerical mistake, and which the party asserts was unobserved for some months, the decree was for three leagues of land instead of four, as claimed, and as proved by the deposition of José Abrigo, used before the board of land commissioners, and in the court, to have been comprised in the grant, and was unsigned by the judge.

7. Thus, as Gomez, his counsel, and all interested might well have supposed, the question of title was settled, subject of course to the right of appeal. The records of the district court presenting Gomez as owner of the rancho in accordance with the finding of the board of land commissioners, the decree of the said district court, and the decision of the highest court in the Frémont case, Mr. McGarrahan, December 22, 1857, bought the property from Gomez in good faith, and for a valuable consideration.

8. The alleged error in the quantity of land stated in the decree of June 5, 1857, being discovered, an application was made to the court to correct it; whereupon, February 8, 1858, an amended decree was entered *nunc pro tunc*, (that is as of June 5, 1857,) covering the four leagues, and duly signed.

9. About the time Mr. McGarrahan purchased from Gomez, some persons having prospected the land, discovered mineral deposits, (a fact unknown to Mr. McGarrahan when he purchased,) and finding it had been sold by Gomez, they, as "squatters," took possession of and held it, as they still hold it, either in person or by assignees, cognizant of the facts, and without title.

10. March 15, 1858, the United States appealed from the decree of the district court, as it seems was their practice to do in all cases adjudicated against them, and on July 8, 1858, thirteen months after the final decree of confirmation, a motion was made by special counsel of the United States in the case, as it seems, without notice to the claimant to have the decree opened.

11. Mr. McGarrahan having been advised that the appeal to the Supreme Court had been taken by the Government, without examination as to its merits, in accordance with the uniform practice, made application through counsel to Hon. Jeremiah S.

Black, the then Attorney General, (a certified transcript of the case being presented to him,) to have him examine the case and determine whether he would persist in the appeal.

12. After full argument before the Attorney General, that officer directed that the appeal should be docketed and dismissed; and on January 31, 1859, it was so entered upon the books of his office, and upon the records of the Supreme Court. Whereupon, in March, 1859, the Supreme Court issued its mandate, which ordered and decreed the docketing and dismissal of the appeal entered in the Supreme Court, and commanded that "such proceedings be had in said case as, according to right and justice and the laws of the United States, ought to be had."

13. The said mandate was filed in the district court, May 4, 1859, whereupon the court ordered, adjudged, and decreed that the said mandate should be carried into effect, and that the said Gomez proceed under the decree of the court as under a final decree.

The effect of this was to perfect the title to said rancho in Mr. McGarrahan, as the grantee of Mr. Gomez.

At this stage of the case the most vigilant lawyer consulted by client, and required to examine records, could have given no other opinion upon the state of the records than that a fee-simple interest in the rancho was vested in Mr. McGarrahan.

From this time the parties occupying the property, without title or rightful claim, resorted to divers expedients to defeat McGarrahan's title; accordingly the "squatters'" interest, so called, which vested in the New Idria Mining Company, appealed to controlling officers of the Government. This is shown by the following facts:

1. A consultation between Mr. E. L. Goold, counsel for the "squatters" upon the property alluded to, with the Attorney General, and immediately thereafter that officer making a motion in the Supreme Court to recall the mandate before spoken of, on the ground of fraud and want of jurisdiction.

2. The alleged fraud was declared to consist in the fact that a conveyance of an undivided half-interest in the property had been made by Gomez to Pacificus Ord, then representing the United States as district attorney, and that he had consented to the propriety of the original decree of June 5, 1857.

3. It is shown that Mr. Ord, after his appointment to the office he held, not only revealed to the Government the fact that he was interested in the claim, but requested the Government to employ other counsel to attend to its interests.

4. This the Government did not do; the consequence of which was, that Mr. Ord, at the time of the original decree, having no evidence militating against the validity of the grant, acquiesced in its confirmation; and, so far as this committee can discover, the representation then made by Mr. Ord was in accordance with facts.

5. At this point in the proceedings, it appeared that some influence, unknown to the committee, had caused the file-marks and indorsements on the final order of the district court, made in obedience to the mandate of the Supreme Court, to be erased from the record, as well as the filing of the mandate itself. This seems to have been done on the 18th of January, 1860, more than eight months after the order had been filed. It also appears that certain entries in the books of the Attorney General's Office respecting the original appeal in this case, and the action of the Government in other appeals, embraced in the same order, were not known to the court or to McGarrahan's counsel in time for them to avail themselves of the benefits thereof, on the hearing of the case in the Supreme Court, on motion by the Attorney General to revoke the mandate. It will be remembered that it was upon the conclusive evidence of his order that the Supreme Court had directed the proper entry to be made upon their record, and that their mandate was issued.

6. This failure to disclose the facts to the court, by the Government, undoubtedly had much to do in securing the order of the Supreme Court revoking their mandate of 1859, and which order was strangely withheld until June, 1862, when it was filed by the present claimant for the purpose of again lodging jurisdiction of the case in the court below.

7. But in the mean time, (March 21, 1861,) the district court annulled its original decree. This extraordinary action on the part of the court seems to have been taken without notice, either to the claimant or his known counsel, and in the absence of both.

8. As soon as this condition of things was ascertained, an application was made to the court to restore the decree, and upon full hearing, the order, as requested, was made on the 4th of August, 1862.

9. Thus matters rested until the 25th August, 1862, when the then district attorney, contrary to express stipulation entered into between himself and the counsel for the claimant, in their absence, and without notice, obtained an order of appeal to the Supreme Court.

10. The impropriety of this proceeding is made apparent for the reason that, in order to give the Supreme Court jurisdiction, a citation should have been first issued, signed by the judges, served on the claimant, and formal return made, with proof of service.

11. The law is very clear upon this point; the acts of 1789 and 1803, which regulate

appeals, (the appeal not having been taken in open court at the June term in 1857, when the original decree was pronounced, nor at the December term in 1857, when the decree was entered *nunc pro tunc*, or, in other words, within five years, as directed by the statutes,) demand a notice to the opposite party, and the proceeding was therefore clearly wrong. The court, upon a full hearing, reached this determination, and accordingly decided, December 4, 1862, that the appeal allowed August 25, 1862, be vacated and set aside, and that an appeal on behalf of the United States to the Supreme Court be denied.

Here, for the second time, the record evidenced a perfect title in the claimant.

It having been twice judicially determined by the action of the courts that Mr. McGarrahan was the legal owner of the Rancho Panoche Grande, the aggressors upon his rights resorted to a new line of action.

1. As seen, after nine years of litigation, Mr. McGarrahan, the present claimant, succeeded in acquiring two distinct confirmations of his title. It was then, in accordance with the act of Congress of June, 1862, he applied to the United States surveyor general of California for a survey of the said tract of land, and which officer caused the survey to be made, and approved September 11, 1862. This survey was transmitted immediately thereafter to the General Land Office, and a patent for the property was demanded.

2. Here, again, he was confronted by the New Idria Mining Company, before referred to. The Secretary of the Interior at that time, (Hon. Caleb B. Smith,) after argument in the case, ordered the patent to issue.

Thus again, for the third time, the title to the Panoche Grande was found to be in Mr. McGarrahan. Some unknown cause delayed the execution of this order, and the patent was not issued. This neglect, or refusal, was persisted in throughout the remainder of Mr. Secretary Smith's term. The matter was then brought to the notice of Mr. Usher, the new Secretary, before whom it was again argued, and by whom a patent was directed to be issued. Neither the order of Mr. Smith nor Mr. Usher was obeyed, for some reason not yet divulged or ascertained.

For the fourth time, the title of Gomez and his grantee was decided to be good and available in law. A request was then made by the claimant of President Lincoln that he would make an examination of the case, and determine it upon its merits. This he consented to do. Printed briefs were laid before him; and, upon full consideration of all the facts and circumstances, he directed the Secretary of the Interior to cause a patent to issue to Mr. McGarrahan. And thus, for the fifth time, Mr. McGarrahan was declared to be entitled to the property or rancho, and that neither the United States nor any other person had lawful claim to the same.

In accordance with this order of the President of the United States to the Secretary of the Interior, a patent was actually made out; but, for reasons not fully explained, never delivered to him for signature.

To recapitulate:

1. The proof of a legal grant from the Mexican Government to Gomez and the transfer of title to McGarrahan are clearly and indisputably shown.

2. The district court of the United States for the southern district of California confirmed the grant.

3. The Attorney General of the United States declared the title to the lands to be in Mr. McGarrahan, and caused an entry to that effect to be made on the books of his office and in the Supreme Court.

4. Hon. Caleb B. Smith, Secretary of the Interior, after examination and consideration of the case, ordered a patent to be issued to Mr. McGarrahan.

5. Mr. Usher, the successor in office of Mr. Smith, similarly decided.

6. Mr. Lincoln, after inquiry, decided the grant to be genuine, and that a patent should be issued to Mr. McGarrahan.

From the time when the district court pronounced its decree of confirmation, (June 5, 1857,) and the President's action on the case, (in the fall of 1863,) it will be observed, over six years had elapsed, and, in consequence of the lapse of time, an appeal could not be had according to law, unless something should appear to avoid the limitation.

In December, 1863, a paper, purporting to be a transcript of proceedings as they appeared on the records of the district court, was prepared in the Attorney General's Office in Washington, District of Columbia, forwarded to the district attorney in California, certified by him out of his district, without comparison with the record, and merely from memory, and from which transcript were omitted material parts of the record, and returned to Washington.

Upon the transcript thus made up, the case was again brought before the Supreme Court, which being discovered by the claimant, a motion was made to strike off the appeal, which was refused, although it, as it seems to the committee, was out of time, and the transcript had been made up without reference to the actual records of the district court.

Notwithstanding the Supreme Court refused to strike off the appeal taken in the

manner indicated, a new transcript was obtained, 1865, from the clerk of the district court, and filed at December term, 1865, eight years and a half after the decree of the district court confirming the title was first pronounced, and more than three years after the period had elapsed within which the law allowed an appeal to be taken in the case, unless some exception takes it out of the limitation. Upon this appeal the Supreme Court, in March, 1866, decided the case against the claimant, and thus matters now stand.

The committee have bestowed a great deal of time and labor upon this case, in order to arrive at its real facts and merits. The claimant and the parties resisting his claim have been heard patiently and at great length.

In presenting the conclusion at which the committee have arrived, they do not wish to be understood as undertaking to review and reverse the action of the Supreme Court relative to the case. Under and by virtue of the right of petition, the claimant has presented his case to Congress, and the House of Representatives directed this committee to inquire into the grounds of his complaint. This has been done. Many facts have been presented to the committee which were not placed before the court. Additional evidence has been submitted, and circumstances disclosed which have induced your committee to conclude that the relief prayed for by Mr. McGarrahan ought to be extended to him; and this may very readily be done. The title to the land claimed, and which he asks that he may be allowed to purchase, is now vested in the Government of the United States, and it is merely a question whether he shall be permitted to secure that which, in the judgment of your committee, he acquired title to by virtue of the Mexican grant aforesaid, or it shall fall into the hands of a corporation, known as the New Idria Mining Company, which has been resisting his claim for years, and paying the expenses of the efforts of said company out of the proceeds of the mines, the title to which rests in the United States.

It is clear that McGarrahan purchased the property in good faith, and for a valuable consideration, when it was regarded as of but little value. His interests have been attacked and his title resisted, nominally, by the United States, but really by the New Idria Mining Company. The name of the United States, their officers and money, have been used to resist his claim, and all to the end that this property, valuable as it now undoubtedly is, may pass into the hands of parties who are wholly unknown to the record of the proceedings had in the courts of the United States respecting the title to the land in question, through all its years of transit from the board of land commissioners to and through the Supreme Court of the United States.

The company aforesaid placed before the committee a memorial, in which the case is stated as follows:

"The real parties who contested the grant were your memorialists, for against them only were the efforts of the owners of the 'Panoche Grande rancho' directed. For the New Idria mines, and for the fruits of the labor of those who have developed them, the owners of the 'Panoche Grande' are now seeking congressional interference in their behalf. It may well be doubted whether the 'Panoche Grande' would ever have been heard of in the district court of the United States or in Congress but for the hope of robbing your memorialists of the fruits of their years of labor and vast expenditures of money."

This extract shows that the United States have no interest as between these parties beyond that of preserving its faith as pledged in the treaty made between this Government and that of Mexico. And as to the allegation of robbery, &c., made by said company, it may be remarked that one of its stockholders of large interest testified before the committee that after paying all of the expenses of said company, including every outlay, a balance would be left in its treasury on account stated.

The precedents are numerous where the Congress has afforded redress in cases of an analogous character. The following are referred to:

1. The Soscol act, 12 U. S. Stats., p. 808.
2. The Bolsa de Jomales act, 13 U. S. Stats., p. 136.
3. Ex-Mission San José act, 13 U. S. Stats., p. 534.
4. Laguna de Santos Calle act, 13 U. S. Stats., p. 372.
5. Baron de Bastrop act, 9 U. S. Stats., p. 597.

In addition to which we have the act of June 21, 1860, and the act of March 1, 1861.

In view of all the facts developed in the case, and believing that justice and equity demand that the relief prayed for by the claimant be extended to him, the committee recommend the passage of the bill herewith reported.

Mr. JAMES F. WILSON, on leave, introduced the following bill:

A BILL for the relief of William McGarrahan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the tract of land known as the Panoche Grande rancho, in

the State of California, granted by Governor Manuel Micheltorena to Vicente P. Gomez in the year 1844, and by said Gomez conveyed to William McGarrahan on the 22d day of December, 1857, surveyed by the United States surveyor general for the State of California, and approved by him on the 11th day of September, in the year 1862, and which said survey is now on file in the General Land Office, be, and the same is in all respects, hereby fully confirmed to said William McGarrahan, upon this condition, however, that the said McGarrahan shall, within twelve months after the passage of this act, pay into the Treasury of the United States the sum of $1 25 per acre for the lands embraced within the said survey.

SEC. 2. *And be it further enacted*, That upon the payment of the said sum of money to the Treasurer of the United States by said McGarrahan, the said Treasurer shall give a certificate therefor, and upon the presentation thereof to the Commissioner of the General Land Office, a patent shall be issued to said William McGarrahan for said lands.

ERRATA.

Page 31, line 8, letter of W. T. Otto, of July 6, 1870, after the word "any," insert the word "such."

Page 31, line 4, letter of Jos. S. Wilson, of July 7, 1870, for "Colofornia," read "California."

Page 31, line 5, letter of Jos. S. Wilson, of July 7, 1870, for "1853," read "1863."

TESTIMONY

TAKEN BEFORE

THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES

IN

The matter of the memorial of William McGarrahan.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 6, 1870.

SIR: I have the honor to acknowledge the receipt of your letter of this date, requesting that the Judiciary Committee of the House of Representatives may be furnished with volume four of California Mexican confirmed grants, containing the records of March, 1863, and also with any unexecuted patent to William McGarrahan, and to inform you that it has been referred to the Commissioner of the General Land Office, who has been directed to send an officer of his Bureau with the record requested, for the inspection of the committee, and also to send any draught of patent, such as you refer to, if any exists.

I am, sir, very respectfully, your obedient servant,

W. T. OTTO,
Acting Secretary.

Hon. JOHN A. BINGHAM,
Chairman Judiciary Committee, House of Representatives.

DEPARTMENT OF THE INTERIOR,
General Land Office, July 7, 1870.

SIR: The Secretary of the Interior has referred to this office the communication to him, dated the 6th instant, from the honorable chairman of the Judiciary Committee, House of Representatives, desiring that there be "sent to the committee on Friday next, at 9½ o'clock a. m., from the Land Office, records of California Mexican confirmed grants, volume four, containing the records of March, 1853, for the inspection of the committee, and also desiring that there be sent to the committee, at the same time, any unexecuted patent to William McGarrahan."

Pursuant to the Secretary's direction, that the record be sent by an officer of the bureau, and also the draught of patent, I have the honor to transmit herewith by the hands of Mr. Calver, of the General Land Office, the aforesaid record and draught of patent, respectfully requesting of the honorable committee the return of the same by the bearer when no longer required.

With great respect, your obedient servant,

JOS. S. WILSON,
Commissioner.

Hon. JOHN A. BINGHAM,
Chairman Judiciary Committee, House of Representatives.

WASHINGTON, D. C., *July 8, 1870.*

THEODORE F. STOKES sworn and examined.

By the CHAIRMAN:

Question. Please state your full name.—Answer. Theodore F. Stokes.

Q. Are you employed in the General Land Office of the United States?—A. Yes, sir.

Q. How long have you been there?—A. Since 1861.

Q. Will you look at the record made on page 321, volume 4, of the General Land Office, and state to the committee who made that record?—A. I should think I wrote that.

Q. Have you any doubt about it?—A. No, sir; not at all.

Q. State when you did it.—A. I could not do that; I would have to take this date. It was on or about the time of the date here given.

Q. State what you made that record from.—A. It was made from the field-notes of the report of the surveyor general.

Q. What did you make the last entry on the page, 321, the signature of the President and Secretary, from?—A. It was a printed form that is made out, and the names were not on the printed form.

Q. What did you write the names from?—A. It is the usual course of doing such things in the office.

Q. Did you find them on any original grant?—A. No, sir.

Q. Who ordered you to make up the record?—A. The chief clerk, at that time, Mr. Lowry.

Q. Did he order you to do it?—A. It was sent down in the usual way.

Q. Is he in the office now?—A. No, sir.

Q. What is he engaged in?—A. I believe he is in the Treasury Department now.

By Mr. BUTLER:

Q. Where did you get the dates?—A. When they send down the papers they send word to the recorder, telling him what dates to put in.

Q. They say, date the patent at such a date?—A. Yes, sir.

Q. Do you date back or forward?—A. Never back.

By Mr. DAVIS:

Q. Did you make the patent before it was executed?—A. No, sir. We generally make out the patent and then have it copied.

Q. Have you any recollection so as to be able to say whether there was or not a patent from which this record was made?—A. No, sir; I have not.

Q. Is this in your handwriting?—A. No, sir. That is in Mr. Stoek's handwriting. Sometimes they wrote the patent first.

Q. What was the general practice about that time?—A. It was both ways.

Q. Was it more frequent to make the patent first, and then the record?—A. I could not say.

Q. When you made the record first did you make it complete, as if it were a completed patent?—A. Yes, sir. We always filled in the names of the President and Secretary.

Q. Although they had not been annexed to any patent?—A. Yes, sir.

By Mr. BUTLER:

Q. Why was that left blank? (pointing to a particular record.)—A. I suppose Mr. Granger was away, and they did not know who would sign it.

By Mr. ELDRIDGE:

Q. Do you put on the seal before the signature is put on?—A. I never saw it done. That is the last thing that is done.

By Mr. PETERS:

Q. Who fills it in?—A. The person who records it puts it all in.

By Mr. BUTLER:

Q. Is the place of the seal put in before it is executed?—A. We generally make a scroll for the seal before.

By the CHAIRMAN:

Q. Do you understand that the chief clerk ever ordered a patent to be made before it was submitted to the Commissioner?—A. The Commissioner does not order the patent. The head of the division sends word down to make the record.

Q. Do you know of a case that a patent was issued that had not been ordered to be issued by the head of the Department?—A. I have not known any.

WASHINGTON, D. C., *July* 8, 1870.

THOMAS CALVER sworn and examined.

By the CHAIRMAN:

Question. Give your full name if you please.—Answer. Thomas Calver.

Q. State whether you are employed in the General Land Office of the United States.—A. Yes, sir.

Q. How long have you been there?—A. I have been in the Department four years last past; the first six or seven months I was detailed in the office of the Secretary of the Interior.

Q. You were not in the Land Office in 1863?—A. No, sir.

Q. Have you any knowledge who made the record on page 321 of volume 4 of Land Office?—A. I could not swear to it. I have understood that a gentleman by the name of Stokes made the record, and it looks to me like his handwriting. He is in the pre-emption division of the General Land Office now.

By Mr. LOUGHRIDGE:

Q. What is the custom in regard to drawing up the patents?

[Mr. Eldridge objected to this question, and it was withdrawn.]

By the CHAIRMAN:

Q. State whether you have been a recorder of patents or grants of land in the Land Office?—A. I have. When I first went into the office I was a writer and recorder of patents. Subsequently, for a time, I was detailed in the Secretary's office; and then I went back to the General Land Office.

Q. You have been a recorder since that time?—A. Yes, sir; I have recorded them since that time.

By Mr. LOUGHRIDGE:

Q. What was the custom when you first went into the office, and what has it been since, in relation to recording these patents before they were actually executed?

[Mr. Eldridge objected to this question, because the patent purports to have been executed in 1863, before the witness was in the office.]

[The objection was overruled by the committee.]

A. In answer to the question, I would state that in 1866, for the sake of convenience, so that if any changes were to be made, or any mistakes occurred, it was customary to write the record first, giving a certain date, because the patent could not have any erasures or be scratched, but the record might be changed. The date was usually placed something ahead, when writing up a lot of patents, in order to secure the date properly. It was a matter of choice among the patent writers whether they would write the records or the patents first. I do not know about that to-day. When it is ascertained that mistakes have been made, the record is sometimes canceled. It is now the custom in our division—that is the division of private land claims—in issuing these patents, to secure the signature of the President and Secretary to the record before the patent is issued.

By Mr. DAVIS:

Q. Has it ever been the custom to record the instrument as a completely executed one before it was in fact executed?—A. Yes, sir.

Q. And the name of the Secretary?—A. Yes, sir.

Q. How could you ever presume by what Secretary it would be executed?—A. In some cases the records have been canceled, as I know to have been the case when Mr. Edward D. Neil was removed and another person appointed. These mistakes have been make, and the records have been canceled.

Q. Is there any such case in this book, to your knowledge?—A. I do not think there is any in that book; I do not recollect any.

By the CHAIRMAN:

Q. Do you know of any instance of any record being made of a patent or grant, in the book of records of the General Land Office, without an order first to make such a record or patent?—A. I am not aware of any patent recorded within my personal knowledge as having been complete, without an order; that is, without the matter having been submitted to the Commissioner. It is the business of the chief clerk of the private land claims to prepare a patent, and to have a form of the patent recorded. Subsequently it is his business to place the matter before the Commissioner with the papers, and then the Commissioner decides whether the patent shall issue or not. It is sometimes recorded before the Commissioner examines it.

By Mr. DAVIS:

Q. When the recording proceeds, the recorder would always have the instrument there, of course, to copy into the book?—A. Certainly.

Q. Do you make the instrument from the book?—A. In case the record is made first, the patent is copied from the record. It is the general custom, in the private land claims, to write the patent first, and write the record from the patent.

Q. When the book is completed first you would not be very likely to leave out of the instrument the date which you had entered in the book?—A. Sometimes we might; when there was no certainty as to the time when it was signed.

Q. Would you make a complete record, dates and all, in the book, and then make a copy to be executed from that, leaving out the dates?—A. I think that would be an oversight to do so. I was speaking of the custom in the private land claims, in the records division.

Q. I am asking you what would be done. Do you make a complete record of the in-

strument; and then for the purpose of having it transcribed, do you leave out the dates?—A. I think if left out in that case it would be an oversight.

By Mr. COOK:

Q. Do you know in whose handwriting these words, "Not signed," are?—A. I have been informed that it is the handwriting of the chief clerk of the private land claims. His name is W. H. Lowry.

Q. Is he in the city now?—A. I have been so informed; I do not know.

By Mr. DAVIS:

Q. I observe that the concluding sentence is, "Acting Recorder of the General Land Office;" but in this other book the word "acting" is left off. Why is that?—A. The reason is, we have a recorder; and in his absence, the law provides that the principal clerk shall be the acting recorder.

Q. Why was the word "acting" left off when writing in the book?—A. The recorder may have been writing from the patent or the original papers. In comparing, there are three different persons holding the three different classes of papers—the record, the patent, and the original papers, and they are all examined.

Q. These are to be examined and compared?—A. Yes, sir; and then a note is made to indicate that they are correct.

Q. What is that note?—A. It is written in ink, over the top of the patent, E. X. D.

Q. When is that done? After the patent is completed, or before?—A. It is generally done before; always, in fact, before the patent is signed. It means that the substance of the patent agrees with the record and papers. At present it is our custom to write the name and date after it passes from our hands, for if there were a blunder in it, it would have to be written over, because the law allows no erasures. This cannot be done after the seal is affixed, therefore it must be examined before it is submitted to the President and Secretary.

Q. That note, then, simply means that the blank patent has been examined and found to be correct?—A. Yes, sir.

By Mr. ELDRIDGE:

Q. Do you know what the custom was in 1863?—A. No, sir.

Q. Did you know anything about it between 1863 and 1866?—A. No, sir; except from hearsay.

Q. What is the authority upon which a patent is made out?—A. It is the final confirmation of the thing by decree of the court.

Q. Where do you get your authority, as recorder, for recording it?—A. I would have the papers placed in my hands by the person in charge of the division. The transcript decrees of the court would be my authority.

Q. You get your authority from the head of the division?—A. Yes, sir.

Q. Where does he get his authority from, decrees of the court, or by order of the Secretary?—A. He may from the transcript of the court, and still have orders not to issue the patent.

Q. Does the chief clerk or head of the division act in making out patents on his own judgment, or does he have authority from the head of the Land Office?—A. He has authority.

Q. From whom?—A. The Commissioner. The principal clerk of the private land claims has charge. The Commissioner exercises a supervisory power. If the clerk has executed his duty to the best of his knowledge and belief, he places the papers in the hands of the Commissioner; nothing of the kind ever passes without the authority of the Commissioner.

Q. Are the records and patents all made out without authority of the Secretary of the Interior, or of the Commissioner of the General Land Office?—A. Yes, sir; without any authority in the particular case. But they are not signed by the President and Secretary until the Commissioner has revised them.

Q. I am inquiring where you get your authority?—A. If I were the principal clerk I should say I get my authority by appointment and confirmation.

Q. Who gets the decisions of the courts and original records upon which the patents are made out?—A. They are sent by the surveyor general to the Commissioner of the Land Office, and he sends them to the principal clerk of the private land claims, and they are filed in his office.

Q. And then he acts upon these?—A. Yes, sir.

By Mr. BUTLER:

Q. At what time is the seal affixed to the patent?—A. After the President and Secretary sign it.

Q. Never till then?—A. No, sir.

Q. Now, I observe that all the records—take the one on page 369 for example—have the indorsement, "J. W. Granger, recorder, General Land Office?"—A. Yes, sir.

Q. Is that a copy or a genuine signature?—A. He does not sign it. It is signed by the clerk who makes out the patent.

Q. Here, again, I find, (examining the book,) "Granger, recorder," and here, again, I find it in a different handwriting?—A. Yes, sir. It is written by a different clerk.

Q. Why should the clerk put "Granger?"—A. The clerk who writes the record puts it in. (After examining the record.) In that instance, in all probability the names were left blank and written subsequently.

Q. Here we find "Granger," (still examining the records,) in a similar place, in a different handwriting? There is an unsigned patent, but still it is "Granger?"—A. The President himself signed that.

Q. Here I find "Martin Buel, acting recorder." But what I observe, is this, in every completed patent the acting recorder or somebody certifies it?—A. Yes, sir.

Q. He is a different officer from the land grant secretary?—A. Yes, sir.

By Mr. KELLOGG:

Q. When you went into the Land Office, Mr. Edmunds was Commissioner?—A. Yes, sir.

Q. Do you know this person's handwriting? (Pointing to the book of records.)—A. Yes, sir.

Q. The seal, you say, is not applied until the patent is signed?—A. No, sir; it is not.

Q. The seal not being there, in this case, is an indication that it never was signed?—A. Yes, sir.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 19, 1870.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, requesting to be furnished with an authenticated copy of the Gomez grant for the rancho "Panoche Grande," and to inform you that it has been referred to the Commissioner of the General Land Office.

I am, sir, very respectfully, your obedient servant,

J. D. COX, *Secretary.*

Hon. JOHN A. BINGHAM,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 26, 1870.

SIR: In compliance with the request contained in your letter of the 14th instant, I have the honor to inclose herewith a certified copy of the records of the General Land Office relating to the California private land claim known as "Panoche Grande."

I am, sir, very respectfully, your obedient servant,

J. D. COX, *Secretary.*

Hon, JOHN A. BINGHAM,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
General Land Office, July 25, 1870.

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify that the annexed, on pages one to fourteen inclusive, is a true and literal exemplification of an *incomplete* record of an *unexecuted, unsigned* patent now on file in this office for an alleged private land claim in California, known as the rancho "*Panoche Grande*," said record being found on pages three hundred and twelve to three hundred and twenty-one, inclusive, in volume four of "California Land Claims," the said record being *incomplete* in this:

First. That it does not bear the name of either the recorder or acting recorder, the recorder's name or acting recorder's being by law and custom essential to the completion of the patent; and,

Second. The said patent is *unexecuted* and *unsigned* both by the *President* and *recorder*, as shown by the original of the said patent now on file in this office; and,

Third. That on the said record pencil lines are drawn across the *date*, the *name of the President* and *President's secretary*, and the words "*not signed*" are also written in pencil on said record.

In testimony whereof I have hereunto subscribed my name, and caused the seal this office to be affixed at the city of Washington on the day and year above written.

[SEAL.] JOS. S. WILSON,
Commissioner of the General Land Office.

1 THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come, Greeting:

Whereas, It appears from a duly authenticated transcript, filed in the General Land Office of the United States, that pursuant to the provisions of the Act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An Act to ascertain and settle the Private Land Claims in the State of California," Vicente P. Gomez, as claimant, filed his petition on the ninth day of February, 1853, with the Commissioners to ascertain and settle the private land claims in the State of California, sitting as a Board in the city of San Francisco, in which petition he claimed the confirmation of his title to a tract of land called Panoche Grande, of the extent of four square leagues, situated in the County of San Joaquin, and State aforesaid; said claim being founded on a Mexican grant to the petitioner, made in the year 1844, by Manuel Micheltorena, then Governor of Upper California;

And whereas, the Board of Land Commissioners aforesaid, on the 6th day of March, 1855, rendered a decision rejecting said claim, which decree or decision was, on appeal, reversed by the District Court of the United States for the Southern District of California, by decree rendered as follows:

"Vicente P. Gomez, appellant, vs. The United States, appellee; case No. 393, 'Pano-
"che Grande.' Transcript No. 569. Decree. This cause came on to be heard on appeal
"from the decision of the United States Board of Land Commissioners to ascertain and
"settle the private land claims in the State of California, under an Act of Con-
2 "gress approved March 3, 1851, on a transcript of the decision and proceedings
"of said Board, and the papers and evidence upon which said decision was made,
"and the other evidence adduced by the appellant before this Court, and it appearing
"to the Court that said Transcript and notice of intention to appeal have been duly
"filed according to law, and counsel for the respective parties having been heard,
"It is ordered, adjudged, and decreed, that the decision of said Board of Land Com-
"missioners be, and the same is hereby, reversed; and that the claim of said appellant
"is good and valid; and the same is hereby confirmed to him as follows, to wit: the
"tract of land situate in the County of Fresno, State of California, known by the name
"of 'Panoche Grande,' bounded northerly by the lands of Don Julian Ursua, southerly
"by the hills, easterly by the valley of the Tulare, and westerly by the lands of Don
"Francisco Arias, containing four square leagues of land and no more, provided that
"quantity is contained within the boundaries aforesaid, and provided also that if a
"less quantity is contained within the boundaries aforesaid, that confirmation of such
"less quantity is hereby made to said claimant, and for a more particular description
"of which said land reference is hereby made to the map contained in the Transcript
"in this case.

"And it also appearing to this Court that heretofore, to wit: on the 5th day of June,
"A. D. 1857, at a regular term of this Court holden in the town of Monterey, State of
"California, the claim of the appellant in this case had been confirmed by this Court,
"but that it had been omitted by this Court to sign the decree of confirmation
3 "at the time the same was made: It is therefore further ordered by this Court
"that the same be signed now as for then.

'Given under my hand in open Court this 5th day of February, A. D. 1858.

"ISAAC S. K. OGIER,

"*U. S. Dist. Judge for the S. Dist. of Cala.*"

And whereas, it further appears from a duly certified extract on file in the General Land Office, from the minutes of the Supreme Court of the United States, that this cause being brought by appeal before the said Court at the December term, 1858, the following proceedings were had therein: "Now on this day this cause coming on to be
"heard, the parties appearing by their respective attorneys, the appellant by Sloan &
"Hartman, Esqs., and the appellees by P. Ord, U. S. Dist. Atty., and after argument of
"counsel aforesaid, the same is submitted to Court for final adjudication. Whereupon
"the Court being fully advised in the premises, delivered its opinion confirming the
"claim of the appellant to the extent called for in the Transcript and papers, three
"leagues or sitios de gañada major, and a decree was ordered to be entered up in con-
"formity with said opinion;" and thereafter, to-wit, at the December term, 1859, of the Supreme Court of the United States the following order was made in this case: "The
"United States, appts, vs. Vicente P. Gomez. Appeal from the District Court of the
"United States for the Southern District of California."

"On consideration of the motion made in this cause on a prior day of the present
"term, to-wit: on Friday the 27th day of January, A. D. 1860, by Mr. Attorney Gen-
"eral Black, to rescind the order and decree of this Court of the 31st day of January,
"1859, docketing and dismissing this appeal, and to revoke and cancel the man-
4 "date issued by this Court to the District Court of the United States for the
"Southern District of California, and of the argument of counsel thereupon had

"as well in support of as against the said motion: It is now here ordered by this "Court that the aforesaid decree of this Court docketing and dismissing this appeal be "and the same is hereby rescinded and annulled and that the mandate issued by this "Court to the District Court of the United States for the Southern District of Califor- "nia in this case be and the same is hereby revoked and canceled; and it is further "ordered by this Court that the Clerk of this Court do forthwith send a certified copy "of this order to the aforesaid District Court of the United States for the Southern "District of California."

And whereas, it further appears from a duly certified transcript on file in the General Land Office, that an order having been made in the District Court of the United States for the Southern District of California, granting a new trial in this case, the said Court on the 4th day of August, 1862, on a motion to vacate and set aside said order, made the following order: "Vicente P. Gomez, appellant, vs. The United States, ap- "pellee, D. C. No. 393, L. C. No. 569. 'Panoche Grande.' On this day the Court delivers "its opinion in this case granting the motion heretofore made by the appellant herein "praying the Court to vacate and set aside the order of Hon. Isaac S. K. Ogier, late "Judge, granting a new trial in this cause. And it is hereby ordered that the previous "order of this Court made and entered on the 21st day of March, 1861, setting aside "all proceedings had in this cause, and placing the same on the Calendar for trial *de* "*novo*, be and the same is hereby vacated and set aside."

And whereas, it further appears from a duly certified transcript on file in the 5
General Land Office of the United States, that an order having been made on the
25th day of August, 1862, in the District Court aforesaid, allowing appeal in this case to the Supreme Court of the United States, the said District Court, at the December term, 1862, made the following order: "Vicente P. Gomez vs. The United States, "No. 393, Panoche Grande. In this case the court delivered an opinion on the motion "submitted the day before yesterday, and ordered that the appeal taken on the twenty- "fifth day of August, A. D. 1862, by the United States to the Supreme Court of the "United States from the final decree of confirmation herein be vacated and set aside, "and it is further ordered, that the order of this Court made on the said 25th day of "August, A. D. 1862, allowing said appeal, be and the same is vacated and set aside, "and the motion of the United States District Attorney for leave to take an appeal on "behalf of the United States to the Supreme Court of the United States from the said "final decree be and the same is denied."

And whereas, there has been presented to the Commissioner of the General Land Office a plat, with a certificate of the survey of the said claim, authenticated by the signature of the Surveyor General of the public lands in California, said survey having been made pursuant to the act of Congress approved June 2, 1862, entitled "An act "for the survey of grants or claims of land," said plat and certificate being in the words and figures following, to wit:

"UNITED STATES SURVEYOR GENERAL'S OFFICE, 6
"*San Francisco, California.*

"Under and by virtue of the provisions of the act of Congress of the 2d of June, "1862, entitled 'An act for the survey of grants or claims of land,' and in consequence "of a certificate of the United States District Court for the Southern District of Cali- "fornia, a copy of which is hereto annexed, by which it appears that a decision of the "said District Court has been had, recognizing and confirming the title claim of "Vicente P. Gomez to the tract of land designated 'Panoche Grande,' the said tract "has been surveyed in conformity with said decision, and I hereby certify the annexed "map to be a true and accurate plat of said tract of land as appears by the field-notes "of the survey thereof made by E. H. Dyer, Deputy Surveyor, in the month of July, "1862, under the direction of this office, which, having been examined and approved, "are now on file therein.

"And I hereby certify that the said tract of land is bounded and described as fol- "lows, to wit:

"Beginning at post in earth mound corner to sections one, two, eleven, and twelve, "township seventeen south, range eleven east of Mount Diablo meridian, from which "post a point on the highest ridge of the Lomas Muert as (a high range of barren and "broken mountains, the eastern slope of which forms the western edge of Tulare "Valley) bears north nine degrees west, distant about two miles.

"Thence according to the true meridian, the variation of the magnetic needle being "fifteen degrees thirty minutes east, over rolling land to the north of a small
"valley called Vallecito, north forty chains to post in earth mound on quarter 7
"section corner between sections one and two. Station.

"Thence west eighty chains to quarter section corner on line between sections two "and three. Station.

"Thence north forty chains to post in earth mound, corner to sections two and three "on fourth standard line south. Station.

"Thence west, at forty chains quarter section post in earth mound eighty chains to

"post in earth mound corner to sections three and four on fourth standard line south.
"Station.

"Thence through township sixteen south, range eleven east, north forty chains to
"station.

"Thence through middle of sections thirty-three and thirty-two, west one hundred
"chains to station.

"Thence south, at forty chains intersects fourth standard line south twenty chains
"west of post corner to sections four and five; thence with a variation of fifteen
"degrees thirty-five minutes east through township seventeen south, range eleven east
"parallel to its eastern boundary; at sixty chains enters Vallecito Valley, course north-
"west and south of east, one hundred chains to station.

"Thence east twenty chains to station on line between sections four and five, thence
"south, at thirty chains leaves small valley, thence over broken hills near southern
"edge of said valley, sixty chains to quarter section corner between sections eight and
"nine. Station.

"Thence east, eighty chains to quarter section corner between sections nine and ten.
"Station.

"Thence south, forty chains to corner to sections nine, ten, fifteen and sixteen.
"Station.

8 "Thence east, one hundred and twenty chains to quarter section corner between
"sections eleven and fourteen. Station.

"Thence through section fourteen, south sixty chains to station.

"Thence east twenty chains to station.

"Thence south, twenty chains to station on line between sections fourteen and
"twenty-three.

"Thence on section line east, sixty chains to quarter section corner on line between
"sections thirteen and twenty-four. Station.

"Thence through middle of sections twenty-four, twenty-five, and thirty-six, over
"high and rough mountains, south two hundred chains to center of section thirty-six.
"Station.

"Thence east, at forty chains quarter section post in earth mound on line between
"ranges eleven and twelve east; thence through township seventeen south, range
"twelve east, eighty-two chains and fifteen links to center of section thirty-one.
"Station.

"Thence south, at forty chains quarter section post in earth mound on line between
"townships seventeen and eighteen south, sections thirty-one and six, on top of a ridge
"course northwest and southeast, thence through township eighteen south, range
"twelve east, two hundred and eighty chains to quarter section corner between sec-
"tions eighteen and nineteen. Station.

"Thence on section line, west twenty chains to station.

"Thence through section nineteen, south sixty chains to station.

"Thence east, twenty chains to station.

"Thence south, twenty chains to quarter section corner between sections nineteen
"and thirty. Station.

"Thence on section line east, sixty chains to station.

9 "Thence through section twenty, north sixty chains to station

"Thence east, twenty chains to station.

"Thence north twenty chains to quarter section corner between sections seventeen
'and twenty. Station.

"Thence on section line east twenty chains to station.

"Thence through section seventeen, north forty chains to station.

"Thence east, twenty chains to quarter section corner between sections sixteen and
"seventeen. Station.

"Thence on section line, north eighty chains to quarter section corner between
"sections eight and nine. Station.

"Thence through section nine east forty chains to center of section nine, from which
"the Panoche Grande Peak bears south fifty-six degrees east, distant about seventy
"chains. Station.

"Thence north at forty chains quarter section post in rock mound on line between
"sections four and nine, from which a pine tree bears north fifty-two degrees east,
"distant twenty-four links, another pine tree bears south fifteen degrees west, distant
"nineteen links, and the San Carlos Peak in the northeast quarter of section four bears
"north twenty-two degrees east; thence through section four, at fifty-four chains and
"fifty links across Arroyo Panoche Grande, course northwest sixty chains to station.

"Thence east twenty chains to station.

"Thence north twenty chains to station.

"Thence east, twenty chains to quarter section post in earth mound on line between
"sections three and four. Station.

10 "Thence on section line with a variation of fifteen degrees fourteen minutes
"east, north; at forty chains and forty links intersects line between townships

"seventeen and eighteen south, range twelve east, at post in earth mound corner to "sections three, four, thirty-three and thirty-four; thence through township seventeen "south, range twelve east, over high and broken mountains with a variation of fifteen "degrees thirty-eight minutes east, eighty chains and forty links to quarter section "post in earth mound between sections thirty-three and thirty-four. Station.

"Thence through section thirty-three, with a variation of fifteen degrees twenty- "seven minutes east, west forty chains to center of section thirty-three, from which a "marked cedar tree, eight inches diameter, bears west, distant forty chains. Station.

"Thence through middle of sections, with a variation of fifteen degrees thirty-eight "minutes east, north at forty chains post in earth mound at quarter section corner "between sections twenty-eight and thirty-three one hundred and twenty chains to "post in earth mound at quarter section corner between sections twenty-one and "twenty-eight, two hundred chains to a sandstone twelve inches long, ten inches wide "and eight inches thick, in a rock mound in deep rocky gulch, from which a steep "rock cliff bears north forty-five degrees east; said sandstone is set for quarter section "corner between sections sixteen and twenty-one; thence over alkali hills two hun- "dred and eighty chains to quarter section post in a mound of alkali soil between ', sections nine and sixteen. Station.

"Thence with a variation of fifteen degrees fifty-nine minutes east, west forty 11
"chains to post in mound of alkali soil, corner to sections eight, nine, sixteen, and "seventeen. Station.

"Thence on section line with a variation of fifteen degrees thirty-eight minutes east, "north forty chains to quarter section post in mound of alkali earth. Station.

"Thence through section eight, with a variation of fifteen degrees fifty minutes east, "west forty chains to center of section eight. Station.

"Thence with a variation of fifteen degrees thirty-eight minutes east, north forty "chains to a sandstone rock twelve inches long, ten inches wide and eight inches thick "in mound of alkali earth, quarter section corner on line between sections five and "eight. Station.

"Thence on section line with a variation of fifteen degrees fifty-four minutes east, "west at thirty chains thirty-eight links enters the narrow valley of the Arroyo Pan- "oche Grande, at thirty-nine chains eighty-eight links across Arroyo Panoche Grande "fifty links wide course north ten degrees east; thence over low hills, forty chains and "thirty-eight links to post in mound at corner to sections five, six, seven, and eight; "thence on section line with a variation of fifteen degrees thirty minutes east, eighty "chains and thirty-eight links to quarter section post in earth mound, one hundred and "twenty chains and thirty-eight links to post in earth mound at corner to sections one, "six, seven, and twelve on line between ranges eleven and twelve east; thence through "range eleven east, one hundred and sixty chains and thirty-eight links to quar- "ter section post in mound two hundred chains and thirty-eight links to point 12
"of beginning, containing seventeen thousand seven hundred and sixty-eight "and seventy-seven one-hundredths acres, and being designated in the plat of public "surveys as lot number thirty-seven, township sixteen south, range eleven east, lot "number thirty-seven, township seventeen south, range eleven east, lot number "thirty-seven, township seventeen south, range twelve east, and lot number thirty- "seven, township eighteen south, range eleven east, all of Mount Diablo meridian.

"In witness whereof I have hereunto signed my name officially, and caused
[SEAL.] "the seal of my office to attached, at the city of San Francisco, this eleventh "day of September, one thousand eight hundred and sixty-two.

"E. F. BEALE,
"*U. S. Surveyor General, California.*"

And whereas, application having been made for the issue of a patent upon the 13
foregoing survey, the Secretary of the Interior, under date of 29th December, 1862, rendered his decision, in which, upon recital in substance of the proceedings had in the matter and review, it is held as follows: that "the decree of the district court for the southern district of California, confirming the grant, has become final;" that "the United States has no longer any interest in the controversy;" that "no claim of third parties has been interposed;" that "the suggestions of fraud in the grant, or in the manner of procuring its confirmation, are *res adjudicata*," and he is "unable to discover any reasons why a patent should not be issued in conformity with the decree of the court and the survey," and ordered the issue of "a patent for the land in accordance with the survey as reported by the surveyor general."

Now know ye, that the United States of America, in consideration of the premises, and pursuant to the provisions of the acts of Congress and decisions aforesaid, have given and granted, and by these presents do give and grant unto the said Vicente P. Gomez, and to his heirs, the tract of land embraced and described in the foregoing survey, with the stipulation that said survey under the aforesaid act of June 2d, 1862, shall "be taken as *prima facie* evidence only of the true location of the land granted," and with the further stipulation that, in virtue of the 15th section of the said act of

March 3d, 1851, the confirmation of this said claim and this patent "shall not affect the interest of third persons."

To have and to hold the said tract, with the appurtenances, unto the said
14 Vicente P. Gomez, and to his heirs and assigns, forever, with the stipulations aforesaid.

In testimony whereof, I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this ~~fourteenth~~ day of ~~March~~, in the year of our Lord one thousand eight hundred and ~~sixty-three~~, and of the independence of the United States the ~~eighty-seventh.~~

[SEAL.]

By the President: ~~ABRAHAM LINCOLN.~~

Not signed.

By: ~~W. O. STODDARD~~, *Secretary,*
~~*Acting Recorder of the General Land Office.*~~

NOTE.—The words in the margin, "*not signed,*" and the erasures of the dates, and crossing of the signatures, are in pencil.

[NOTE.—The following paragraph is written in red ink across page 13 of the patent:]

[DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
July 25th, 1870.

This record, from pages 312 to 321, inclusive, was made in accordance with the custom at the time, in anticipation of the original being submitted to the officers whose duty it is, under the law, to sign land patents, but an order dated March 13th, 1863, having been received from the Acting Secretary of the Interior, to "suspend the execution and delivery of the patent under the decision of" the "Department of the 4th" of March, 1863, "until further advised in the case by the Secretary," the form of patent which had been prepared, and from which the aforesaid record was made, was not submitted for signature, and has never been dated, signed, nor delivered.

JOS. S. WILSON, *Commissioner.*

J. N. GRANGER, *Recorder*]

WASHINGTON, DISTRICT OF COLUMBIA,
January 10, 1871.

W. O. STODDARD sworn and examined.

By the CHAIRMAN:

Question. State your place of residence.—Answer. New York.

Q. State, if at any time, you were secretary to the President of the United States, to sign land patents?—A. I was to Abraham Lincoln.

Q. State when you were appointed?—A. I was appointed April 1, 1861, by the President, and afterward, on the 16th of July, 1861, by and with the advice and consent of the Senate. These are the dates of my commissions.

Q. State how long you continued to hold the office of secretary?—A. Until September 24, 1864.

Q. State whether at any time you signed any patents under the direction of President Lincoln, by your own name as secretary, and in his name?—A. I did a number of them.

Q. You will look at the record now shown you, ending on page 321 of California Land Claims, coming to us from the General Land Office, and state to the committee what you know, if anything, about signing a patent corresponding with that there recorded, if you have not already examined it?—A. I take this to be the same record which I have already examined; I have now examined it also. I remember signing a patent for Panoche Grande in the spring of 1863.

Q. State whether, about the same time, you recollect having signed any other patents; and if so, how many by order and direction of the President?—A. I remember the Panoche Grande patent as one of three brought to me about the same time, so that I remember them together.

Q. What month in 1863?—A. March, as near as I can now recollect; and I could not be particular as to the exact date except by having referred to the records.

Q. Can you recollect and state to the committee what the other two grants were? that is, for what tracts and to whom made?—A. I can only recollect one of them without having refreshed my memory by referring to the record, which I have in respect to the other.

Q. State the one you recollect independent of having referred to the record?—A. The name of that is Honecut. The other I find, by referring to the record, is Canard de Parle.

Q. Can you recollect whether you signed all three on the same day?—A I cannot be

positive about that. It was on or about the same date, so that I remember them together in the same connection.

Q. Looking at that record and to the signatures, state to the committee whether that record shows the manner in which you appended the two names to the grant for the Panoche Grande rancho?—A. That was the customary way of appending the signatures.

Q. State whether that is the way in which you signed that grant?—A. I never vary; I was particular about that.

Q. Will you state to the committee whether you made any examination of this grant for the Panoche Grande rancho at the time you signed it; whether you looked into it?—A. I did.

Q. State any reasons which operated upon your mind, which induced you to take notice of it, any circumstances which enables you to remember more particularly about it?—A. I was very apt to examine the large patents, and this one was a large one. I called the attention of others to it at the time. I called Mr. John Hay's attention to it, and I have tried very hard to remember the names of the others who were in the room and whose attention was also called, but I do not remember them at this distance of time.

Q. Where was it you that signed these patents?—A. At the office at the Executive Mansion.

Q. After you had signed do you remember to whom you delivered them, or how you disposed of the patents after they were signed?—A. In almost all cases a messenger from the Land Office came up and took them back. There were a few instances in which I sent down patents by a messenger from the White House; which was done in this case I do not know.

By Mr. ELDRIDGE:

Q. Do you know that it was sent to the Land Office?—A. Only that I was always particular to see that my patents were sent back. I know that I performed my duties regularly. That is all the recollection I have about it.

By the CHAIRMAN:

Q. Look at the copy now shown you of an unexecuted patent brought here from the General Land Office, referring to the same record but without the signatures to it, and state whether you have seen the original draft, or unexecuted patent as it now is in the Land Office, at any time, and examined it before to-day?—A. I have.

Q. State how it compares as to its text, and the material upon which it is written, &c., with the original which you say you signed, as secretary for President Lincoln, for the same tract of land?—A. I have no recollection whatever as to the body of the patent. The material strikes me as about the same in size and general exterior appearance, with this exception: I had a pretty well-defined image in my mind of this lettering on the outside, and this which appears on the outside now does not appear to me to be familiar; it does not seem to be the same.

Q. That is the lettering of the envelope or cover?—A. Yes, sir. On the inside I find a map. There was a map to the patent I signed. I do not find the signature of the President nor the seal of the General Land Office.

Q. Was the seal of the General Land Office on the patent when you signed it.—A. It is my impression that it was; I do not want to be too positive about it; possibly I may be mistaken. It happend about five or six times that the seal was put on by accident, haste, or something of the kind before the patent was brought to me. It may not have been more than three or four times, but it is my impression that this was one of the times, but I cannot be positive.

Q. Look at the concluding page of this unexecuted patent, which you will observe is blank as to dates, and state whether the patent you signed had its dates filled up in writing like the rest of the patent, or not.—A. I think I should have noticed their absence.

Q. Have you any doubt about it?—A. Not at all. I should have noticed their absence. I do not remember ever signing a patent in any case that was not filled up, as to dates, in writing. I think I may safely say I never did.

Q. Have you examined that record? If not, examine it now and say whether the other two patents, to which you refer as having been executed about the same time, are recorded there or not.—A. I believe they are recorded, whether in this book or not I do not know. I asked about that when, and went to the Land Office to examine the record, and I found the date of one was on the 16th and the other on the 14th. That was my recollection, and I found that my memory was correct. I am not sure whether they were recorded in this book or not.

Q. During your term of office, and after the expiration of your term of office, did you have your attention called by anybody again to this patent for the Panoche Grande rancho?—A. I do not know. I would not say I did. I do not remember it.

Q. State, if you please, after examining carefully the body of that unexecuted patent

now before you, whether or not, in your judgment, it differs from the patent you signed, and to what extent and in what particulars does it differ, either as to words or appearances?—A. I should say that the date must have been on the patent I signed. I put the name of the President, Abraham Lincoln, upon it, which is not here, and I put my own name upon it, which is not here; and, according to my recollection, there was a seal, which is not here. That, however, I am not positive about. On all the patents which I signed I wrote, "Abraham Lincoln, by W. O. Stoddard, secretary."

Q. You will notice that on the record it reads, "Acting recorder" of the General Land Office, and on the original brought before us it reads, "Recorder of the General Land Office." Do you remember whether the paper, to which you put the name of the President and of yourself, had "Acting recorder of the General Land Office" upon it?—A. I do not remember anything about it.

Q. State whether you remember that it was the custom at the time, or not, to present patents to you with the name already countersigned, ———, "Recorder" or "Acting recorder" before you signed?—A. I do not recollect any such instance.

Q. State how the patent you signed, for the Panoche Grande Rancho, was bound up, if you recollect.—A. In the usual way for patents of that size and class.

Q. State whether it was bound in the same manner, and with the same kind of material, as the one now before you?—A. I think wider ribbon was used, with long ends to come under the seal. When I saw this patent I noticed that difference and asked the clerk in the Land Office, Mr. Stoek, about it. He said this was what they used sometimes, and sometimes they used a different one. I am inclined to think that at that time they were using a wider ribbon.

Q. Was anything said about using this cover at the Land Office when you were making your examination?—A. Yes; and I told the clerk it did not look familiar in any way. He said, no, I had never seen it before.

Q. Look at this unexecuted patent and say, when you have examined it, whether there are additional perforations in the paper?—A. I examined it in that respect when at the Land Office.

Q. How many did you find without ribbon in them when you examined it?—A. I did not count them; I just saw that there were perforations.

Q. Look at them and say how many appear to be there now?—A. There appear to be five on the outside and nine on the inside. The perforations appear to be through all the sheets except the cover.

Q. State whether upon an examination of the original unexecuted patent, now before you, from the General Land Office, there are perforations not filled with ribbon in all the leaves of the patent, except the cover, and how many are not filled with the ribbon.—A. There are five holes in the cover and nine in all the other sheets.

Q. Are there any holes in the cover which are not filled with ribbon?—A. No, sir.

Q. What number of perforations are there in the leaves of the patent that are not filled with ribbon?—A. Four.

Q. In the last leaf of this unexecuted patent, state how many perforations there are.—A. Nine.

Q. And the same number in each of the other leaves, except the cover, and five in each of the leaves of the cover?—A. Yes, sir.

Q. State, upon an inspection of this paper, whether the four perforations in the other leaves are so made as to indicate that they were to have been filled with ribbon in fastening together or binding the leaves?—A. They seem to have been put there for that purpose. That is all I can say.

Q. You may state now your opinion whether the wrapper and ribbon and indorsement of the wrapper of the unexecuted patent from the Land Office, before the committee, now shown you, are the same as were on the patent to which you signed the President's name, and your own as secretary.—A. My opinion is that they are not.

Q. You have already stated your recollection of the difference between the last leaf of the unexecuted patent, now before you, and that which you signed, the absence of date, seal, &c.—A. I have stated the difference.

By Mr. LOUGHRIDGE:

Q. How many perforations do you think there were in the leaves of the patent which you think you signed?—A. I could not tell. I should never have dreamed of counting them.

Q. Do you know whether there were not just the same number, and just the same number in the cover, as in this?—A. No, sir.

Q. What can you state of the cover or ribbon on the other two patents which you signed about the same time?—A. My impression is the same in regard to them, that there was a brighter ribbon.

Q. Do you mean that the color of the ribbon was brighter?—A. My impression of the patent I signed is, that it had a brighter and wider ribbon than this. That was the kind used at that time.

Q. Was the ribbon on the three you signed at that time lighter in color?—A. I cannot state except from general impression.

Q. Do you remember the color of the other two?—A. I have no recollection of any difference. The impression upon my mind is that a brighter and wider ribbon was used at that time.

Q. How many patents did you ever sign?—A. I do not know.

Q. Give some impression.—A. It would be impossible. In 1861 there were a good many; in 1862, very much less; in 1863, very few indeed, and almost none in 1864. It would be impossible to give any estimate of the number. Sometimes there would not be any for a good while, and then again there would be a rush of them.

Q. Can you remember the color of the ribbon on all those you signed?—A. There was no ribbon on any of those I signed, except the large ones, probably not more than a couple of dozen during the whole time I was in office.

Q. Do you know whose handwriting the patent was in which you think you signed?—A. No, sir.

Q. Do you know in whose handwriting that copy is in?—A. I have been told.

Q. Was the one you signed in the same handwriting?—A. I could not tell.

Q. Why could you not remember that as well as the color of the ribbon and the writing on the back of the patent?—A. I think that answers itself. A man picking up a patent sees the indorsement on it, and sees the ribbon with which it is bound, before he would examine the writing inside.

Q. Did you examine the writing inside?—A. No, sir; I had no occasion to.

Q. And you do not know what was inside at all?—A. Except the signature and dates, and the fact that there were a number of pages of manuscript parchment, as was customary in patents of that kind.

Q. In looking at the dates, would you not be likely to see the handwriting?—A. I would see the handwriting in which the dates were written.

Q. You saw the handwriting in this patent?—A. I presume I did.

Q. Have you any remembrance whether it was the same as that of this copy?—A. I have no recollection about it.

Q. Why would you not be as likely to remember that, when your attention was called to it, as you would the color and width of the ribbon with which it was bound?—A. I do not know that I can answer that question. I do not know.

Q. There is, then, no reason that you can give?—A. None but what would be evident to the eyes of any one.

Q. I understand you to say the only reason you think you signed that patent is that you always signed all the patents presented to you; do you not have any remembrance expressly of signing that paper?—A. That was not the statement I made.

Q. What is your statement?—A. If the clerk will read it, you will see.

Q. You will please state it yourself.—A. That I remember Panoche Grande as one of three patents signed by me in the early part of 1863—in the spring of that year. I think that was my statement.

Q. Did you state positively you remembered having signed it?—A. Yes, sir.

Q. Was that your statement before?—A. That was my statement before; yes, sir.

Q. Who brought that patent to you?—A. It came in the usual way.

Q. From whom?—A. From the Land Office.

Q. From whom in the Land Office?—A. From the officer whose business it was to send these patents to the President. They came to me by messenger, with a letter. That is about all I would know about it.

Q. Who was the letter from?—A. From the Commissioner of the General Land Office.

Q. Do you know in whose handwriting?—A. I only know the signature, which was that of the Commissioner of the General Land Office. I suppose the handwriting was that of one of the clerks in the office.

Q. Was there any clerk in the Land Office whose business it was to enroll such patents?—A. I do not know what you mean by enroll; I have never seen a patent before it was written.

Q. That is witty, but not an answer to my question. Patents are engrossed, are they not?—A. Engrossing is what I would call preparing for signature; if you had said engrossed, I should have understood you. I suppose it was done by some one assigned to that duty in the Land Office.

Q. Was there any one in the Land Office at that time who had that duty to perform specially; and if so, who was it?—A. I do not remember, if I ever knew.

Q. Is your memory good?—A. Not good enough to remember the assignment of clerks to duty in the Land Office.

Q. My question was, is your memory good?—A. I think it is.

Q. Do you know Mr. Stokes in the Land Office?—A. I know a Mr. Stokes.

Q. What was his business in the Land Office?—A. He was a clerk there.

Q. Had he anything to do with enrolling those patents and sending them to you?—A. I think he was a recording clerk, from what I have heard lately.

Q. Are you acquainted with his handwriting?—A. Not so as to identify it.

Q. What was done with that patent when you signed it?—A. I always sent my patents directly back to the Land Office, and this must have gone in the same way.

Q. Then you sent it back to the Land Office?—A. According to my custom, from which I never varied. That is the only recollection I have.

Q. Let me understand what it was you signed. You have sworn that you signed something. What was it that you signed?—A. A patent for lands, such as I was in the habit of signing.

Q. A patent for what lands?—A. That I cannot tell.

Q. To whom was that grant made?—A. That I do not know.

Q. Then what do you know?—A. I know that I signed a patent for lands.

Q. You signed a great many patents for lands?—A. I did.

Q. But you do not know to whom or for what lands?—A. No; of course not.

Q. Can you swear that you read a word inside the leaves of what you say was a patent, or supposed to be one?—A. Of course I can, for I read the signing clause. I glanced at the map. Beyond that, I merely noticed a mass of writing and leaves.

Q. And read none of it?—A. And read none of it, except that, seeing that it was a large patent, I glanced at it to see the number of acres and description, as was frequently my custom in these large patents.

Q. You do not remember the number of acres?—A. No; I recollect that it was a very large and valuable patent. I do not recall any one of the patents I had occasion to examine in which I could recollect distinctly the number of acres; and I do not remember the number of this. I have the general impression of it that it was a very large and valuable one.

Q. Did the others of the three patents you have alluded to contain maps?—A. My recollection is that they did.

By Mr. LOUGHRIDGE:

Q. I understood you to say in answer to my question that you did not look into that patent at all, except to glance at it and see that it was for land.—A. I did not make that answer in that form.

Q. Did you see that patent or read any part of it, except at the end of it where you signed?—A. I have answered that question to the gentleman who spoke last. I cannot swear to any other examination of the patent; but it was my custom to look through these large patents, and I presume I did in this case, because I got the impression that it was a large and valuable patent. That is my answer, and I cannot be more minute about it.

Q. You got that impression from the size of the bundle and the general appearance of it, did you not?—A. I cannot say. That is the very point I am making, that I cannot say how I got my impressions.

By Mr. PETERS:

Q. Did you not state a moment ago that you could not say in whose handwriting that patent was, because you had no recollection of having read it, or any part of it?—A. I have no recollection of the handwriting.

Q. Did you at that time ordinarily know the handwriting of the party in whose hand these patents were written?—A. There were some of the clerks whose hands I knew. Others I did not know.

Q. And you cannot say now whether this particular handwriting was one you were familiar with or not?—A. I cannot. I can say very positively that the handwriting of some of the clerks was familiar to me—I know it when I see it. That of others I do not know. I cannot say whether the handwriting of this patent was familiar to me or not.

By Mr. LOUGHRIDGE:

Q. Did you ever execute the President's name to a patent to William McGarrihan?—A. Not that I know of.

By Mr. KELLOGG:

Q. You spoke a moment ago of a letter from the General Land Office accompanying patents for your signature; did such a letter always accompany each patent?—A. Each patent or package of patents inclosed or transmitted.

Q. Then no patent was practically in form for your signature without a letter accompanied?—A. Certainly not.

Q. And you think a letter from the General Land Office accompanied this particular patent?—A. Certainly.

Q. What was done with that letter?—A. I kept my letters for a long time, and then they were lost or destroyed.

Q. Were letters of that kind lost or destroyed?—A. Yes, sir; I considered them of no further value.

Q. Was a record of this kept in the Land Office?—A. There should have been.

Q. These letters were copied, and there should be a copy in the General Land Office?—A. There should be.

By Mr. PETERS:

Q. Have you looked there to see if there was such a record?—A. I have.

Q. Did you find it?—A. I have been unable to find it.

Q. Was there a book, and did you examine such a book in which such letters were regularly recorded?—A. I examined what I was told was such a book.

Q. Did the book bear any evidence of mutilation?—A. No, sir, no mutilation, but a great many blunders.

Q. Did you discover evidence of a page having been torn out, or anything of that kind?—A. No, sir.

Q. When you say errors, do you mean errors in copying?—A. I do.

Q. When was your attention first called to this matter, since the date of your signing this patent?—A. The first that I recollect, was last summer.

Q. You never were applied to before?—A. I cannot say as to that. I was applied to last summer, and whether I was spoken to on the subject during the intervening time, I cannot say, but I am very sure I never was.

Q. Your attention had never been called to it from the date of your signing it until some time last summer?—A. Not that I now recollect.

Q. Who called your attention to it last summer?—A. I was first called upon by a gentleman of the name of Frank.

Q. Connected with the party petitioner here?—A. I believe he is; I am not sure of that fact.

Q. Was there any particular difference in the size, or shape, or general appearance of the three patents you speak of?—A. My recollection is that this was the larger patent; not larger in the size of the sheets, but having a greater number of sheets.

Q. Was it your practice to sign patents without special direction of the President in each particular case?—A. Yes; but never without an accompanying letter from the General Land Office; I required no other direction or instruction.

Q. So that these patents did not come under his personal observation?—A. Not that I know of.

Q. But if they were executed, it was at the instance of the General Land Office; and they were returned there?—A. Yes, sir.

By Mr. ELDRIDGE:

Q. Who was Commissioner of the General Land Office at that time?—A. J. M. Edmunds, I think.

Q. How long did he remain Commissioner after that time?—A. He was there when I left Washington; when he finally left the office I do not know; I think he was Commissioner when I went away in 1864, if I remember correctly.

By Mr. LOUGHRIDGE:

Q. Have you any interest in this grant?—A. No, sir.

Q. Direct or indirect?—A. None, direct or indirect.

Q. Have you any interest in Panoche Grande?—A. No, sir.

Q. Who was this Frank who talked with you about this matter?—A. I am informed that he is in business for himself, but what his business is precisely I do not know. He is a resident of New York, and a broker of some kind. His office is down in Water street.

Q. What is your business now?—A. I am secretary of the Tehuantepec Railroad Company.

By the CHAIRMAN:

Q. You stated that you noticed a difference in the indorsement on the back of this unexecuted patent from that on the back of the one to which you signed the name of Abraham Lincoln by yourself as secretary; state clearly and distinctly what that difference was.—A. I remember the words "Panoche Grande," but I expected to see it in letters about the size of the indorsement on this, but slanting backward instead of perpendicular, as I find them here. The impression I have may have been wrong or right, but that was the impression on my mind, and what I expected to find.

Q. Have you any doubt on your mind that the indorsement on the patent which you signed was "Panoche Grande?"—A. No, sir.

By Mr. ELDRIDGE:

Q. Did you look at the map so as to fix it in your mind?—A. I did look at it; but I do not recollect anything about it. I expected to have a more distinct recollection of it when I came to see it.

By Mr. LOUGHRIDGE:

Q. Is it not a good while from that time until now to recollect the exact position and slant of letters?—A. Yes, sir, it is.

Q. Do you remember it distinctly, without having your attention particularly called to it?—A. No; I do not think I would if my attention had not been particularly called to it.

Q. What called your attention particularly at the time to the slant of these letters?—A. That I cannot tell. I merely know that my attention was called to it; I cannot tell how.

Q. Particularly called to the slant of the letters?—A. No; to the general appearance of the patent.

Q. But you testify, after this number of years, as to the particular slant of the letters.—A. No; I did not state that. I merely said that I expected to find that.

Q. You did not say the letters of the indorsement of the patent which you think you signed were more slanting in the manner in which the letters were written than it appears on this unexecuted patent?—A. I did not say absolutely.

Q. You cannot swear, then, that they were not just exactly like these?—A. I do not think they were. I do not think it is the same. I could not say more than that, because, as you say, it is a small thing to remember.

By Mr. ELDRIDGE:

Q. Is there anything about this map that resembles the one you saw at that time; is there anything by which you can identify it?—A. I could not identify it at this time.

Q. What is your recollection about it?—A. That it was a map of this general character.

Q. Is there anything else—in the number of acres or otherwise—that would enable you to identify these papers?—A. No; my impression, as I have stated, is, that it was for a large number of acres; but whether that impression was derived from the map or otherwise, I am unable to say.

Q. Had you any other means of gaining information of the number of acres, except from the papers presented to you?—A. Not that I now remember.

Q. Do you recollect distinctly that the patent which you signed was a patent for Panoche Grande?—A. I have already replied to that. I do.

By Mr. LOUGHRIDGE:

Q. Do you say that you remember that that was a patent for Panoche Grande?—A. I have sworn that my recollection is, that it was indorsed "Panoche Grande" on the outside.

Q. That is all you know?—A. I have not said that was all I know. I may have other things in my head that are not distinct enough to swear to.

WASHINGTON, *January* 10, 1871.

JULIUS N. GRANGER sworn and examined.

By the CHAIRMAN:

Question. State whether you are recorder of the General Land Office of the United States.—Answer. Yes, sir; I am.

Q. State how long you have filled that office.—A. I think I was appointed in 1853.

Q. State whether you have been recorder from that date to this.—A. I have.

Q. Under the law you are required to countersign patents for the Land Office?—A. Yes, sir.

Q. You countersigned patents for private California land grants, as well as other land grants?—A. Yes, sir; I have no records of the California land grants, or of private land claims. All other grants come under my charge for record.

Q. State to the committee whether you have countersigned on the face or back of the patent, or whether you are certain in regard to that.—A. It is always done on the last leaf of the patent, although the last leaf sometimes contains nothing more than the attesting clause.

Q. Do you mean that you always countersign on the same leaf or page?—A. I always countersign on the last leaf of the patent.

Q. Do you know whether the patent for Panoche Grande was ever presented to you, or not, to be countersigned?—A. No, sir; I could not say whether it was or was not.

Q. You kept no records of cases for California land grants, which you countersigned, except of the letters of transmission?—A. Nothing, except the letters of transmission.

Q. Are these letters of transmission sent to you by the Commissioner of the General Land Office before you countersign the patent?—A. Yes, sir; always.

Q. Are you prepared to say whether there was or was not a letter of transmission, when the patent for Panoche Grande was sent to you?—A. I could only say that I never signed it without there was a letter.

Q. Are you prepared to swear whether such a letter was sent to you?—A. No, sir; I am not.

Q. Do you keep a file of these letters in your office.—A. I do keep them on file.

Q. Have you made an examination of your files to see whether this letter is there on file?—A. I have.

Q. State whether you can find any such letter.—A. I can find no such letter.

Q. State in what way you keep those letters in your office?—A. I will state precisely: I place them in a drawer in my desk, where they remain until a considerable number has accumulated. I then take them out, bind them, and place them in my book-case.

Q. State whether you have looked in your book-case for this letter?—A. Yes, sir; and also in my drawer.

Q. State whether you have made more than one examination of your book-case, and with what result.—A. The first time I made an examination was last summer, when I was called upon to know if there was such a letter. That was the first I heard anything about it. I looked the letters all over carefully, but did not find this letter. Sometimes the letters would become disarranged, or run over into another year, and I looked through tolerably careful, and noticed that there were letters for that year, 1863, which were missing.

Q. State whether you have made an examination since that time.—A. Yes, sir. I took the letters out and put them together in the year in which they were written, and I found that in 1863 there were no letters from January down to June. The files of that year from July until December were all there.

Q. State whether you are satisfied that between January and June, 1863, there were letters transmitted to you and filed by you in the regular course of business in your office.—A. I know there were such letters. I have taken great pains, for this is something that came unexpectedly upon me, to refresh my mind, and I find that there are fifty-one letters of transmission of land grants, under different acts, for my own division, between January and June, 1863. There were, of course, more patents than that. Sometimes a single letter would inclose a large number of patents. The letter would simply say, "Your signature is requested to series of patents from number such a one to number such a one." That was all there was of the letter.

Q. Then you say there were fifty-one letters of transmission which have been taken from your office?—A. They certainly must have been taken, at least I have had them, but cannot now find them. They are out of my office, I am confident.

Q. And letters coming to you from January to June, 1863?—A. Yes, sir.

Q. Have you any knowledge of what has become of them?—A. I have not.

Q. State to the committee whether from an examination of your desk and lock there is any evidence of there having been any interference with the lock or keys in any way.—A. I could not say that there has been any interference with it. It is a very common lock, which can be opened with a very common key. I always kept it locked. I ascertained this just on Saturday last, and yesterday when I came to my office I wanted to make a careful examination, for I knew there had been a large number missing from the files of the year 1863, and I wanted to see if I had these letters on record.

Q. You made no record of the transmission of private land claims?—A. Never. I kept the letters themselves. When I went to my book-case yesterday morning to look over my files again and compare them with the letter book, I found an old key in the lock, and the lock very much disturbed. The key I found was an old brass key, which was in the lock of my book-case; it had evidently been used to unlock the lock, and then pulled back to get it out again. It remained in the lock.

Q. Was that your key?—A. No, sir. I inquired carefully of others, and could find no one who had any such key.

Q. Where did you find this key?—A. In my book-case, where I keep my files.

Q. And what did you say in regard to its use?—A. It had evidently disarranged the lock, so that the key could not be drawn out without a good deal of trouble.

Q. When did you first make the discovery that these letters of transmission had been taken out of your possession?—A. Last summer; but I had not settled down in my mind that they were really lost. I expected to find them in some other place. I made the discovery in looking, after the adjournment of Congress, in regard to some matters before the courts, and I then had the letters overhauled and put into the files for the year in which they were written.

Q. Have you heard the testimony of Mr. Stoddard before the committee to-day in regard to California land grants?—A. Yes, sir; I heard most of it.

Q. Can you state to the committee whether there is a record of the other two grants referred to by him?—A. No, sir. I never looked over these private land grant records.

By Mr. ELDRIDGE:

Q. Have you found all the other letters in your files?—A. I have not gone through them all to see whether they are all there; but they are all arranged for their respective periods in files of about the same size, and I have run them back in that way to 1856, and judge from the size they are all there except from January to June, 1863.

By the CHAIRMAN:

Q. Look at the indorsement made upon this record book, page 321 of California land grants, volume 4, and state whether the signature "J. N. Granger, recorded," attached to it, is your signature.—A. Yes, sir; it is.

Q. State whether it was written at the date it purports to have been.—A. Yes, sir; it was written July 25, 1870.

Q. What is there written across the face of this record of the Panoche Grande land grant?—A. "Department Interior, General Land Office, July 25, 1870." This record, from pages 312 to 321 inclusive, was made in accordance with the custom at the time in anticipation of the original being submitted to the officers whose duty it is under the law to sign land patents. But an order dated March 13, 1863, having been received from the Acting Secretary of the Interior to suspend the execution and delivery of the patent, under decision of the Department of the 4th of March, 1863, until further advised in the case by the Secretary, the form of patent which had been prepared, and from which the aforesaid record was made, was not submitted for signature, and has never been dated, signed, nor delivered—signed by the Commissioner of the General Land Office and by myself.

Q. State to the committee whether you know it to be true that the form of patents from which this record was made never was dated.—A. No, sir, I do not.

Q. Do you know that it is true that the original patent from which this record was made was not dated?—A. No, sir, I do not know anything about it, and so stated at the time. I signed this certificate under the written order of the Secretary, and the verbal order of Mr. Wilson, that I should sign the certificate as written. I did not like to sign it for the reason that I did not know anything about it; but I took it as a matter of official honor that it was all right.

Q. What Secretary did you refer to?—A. The Secretary of the Interior, J. D. Cox. I was called to the room of the Commissioner without knowing what for. I was shown the order of the Secretary and directed to sign the certificate.

Q. Do you know that the form of patent which had been prepared, and from which the aforesaid record was made, had never been submitted for signature?—A. No, sir, I do not know whether it had or had not been.

Q. Do you know that the form of patent which had been prepared, from which the aforesaid record was made, had never been sent?—A. No, sir; I do not know whether it had ever been sent or not.

Q. You did not know these facts to be true when you signed this certificate.—A. No, sir, I did not. I signed it on the written order from the Secretary requiring me, and signed it under the verbal direction of Mr. Wilson.

Q. You mean Joseph S. Wilson, Commissioner of the General Land Office?—A. Yes, sir.

Q. State whether or not his signature to the certificate was made in your presence?—A. No, sir; it was signed by him before I came into the room.

Q. State anything he said to you when you came into the room.—[Question objected to by a member of the committee and withdrawn.]

Q. Did Mr. Wilson direct you to sign it?—A. Yes, sir; he did.

Q. Did you protest to him that you did not know the facts stated?—A. I made the remark, and I believe Mr. Stoek was present. I took it as a matter of course that it was all right. I did not know the facts because they did not come under my supervision at all. I had never seen the record before and knew nothing about the matter.

Q. State whether you are acquainted with the handwriting in pencil on the margin of this record?—A. I do not know that I am acquainted with it. I may be, but I could not identify it.

Q. Do you know when it was put there?—A. I do not.

Q. It is in pencil, is it not?—A. Yes, sir.

Q. You do not know when the pencil line was drawn across the figures 14th?—A. I do not. I had never seen the record until then.

Q. And you do not know anything about it?—A. No, sir. I might state one circumstance which may have a bearing here, and which may not. It seems from my records that I was absent from the city from the 11th of March, 1863, up to the 1st of May following, and I find from my memoranda that I was with my family, who were sick in New York, and that during this time the acting secretary signed the letters.

By Mr. MERCUR:

Q. Who received these letters while you were away?—A. Mr. Buell, the acting secretary. He continued to act in my place until about the 1st of May; but it had been his custom always to file the letters received by him with me, and I believe he testified, on a former occasion, that he did file them with me on this occasion.

Q. Do you say that he gave the letters, during this period, to you?—A. He was in the habit of doing it. I asked him yesterday if he always returned these letters to me, and he stated that he did. I have no doubt that he did, or believed he had done so.

Q. Can you state how many were recorded in your absence?—A. I could not do that precisely; I took no memorandum. I noticed the date when I commenced signing again; there were quite a number.

Q. I understand you to say that none of the letters are to be found from January to June?—A. None.

Q. Have you any record of the transmission of California land grants?—A. No; I never had any record of them.

Q. This record is marked "acting recorder of the General Land Office;" state in whose handwriting it is made.—A. I believe this to be in the handwriting of Mr. Stoek.

Q. Has he been record clerk long in the Land Office?—A. I think since 1861.

Q. State whether he is a careful and accurate recorder?—A. He is a very careful copyist. When I wanted any copying done with more than usual correctness, in my division, I always gave it to him. He was very careful and followed copy exactly. He was very trusty in that respect, and I think it was because of that reputation he had that he was taken from my division.

Q. What do the letters on this record, "E, X, D," indicate?—A. That indicates that the record had been compared with the patent and found to be correct.

Q. By whom is that comparison made?—A. In my division we have an examining board of three clerks who do it. I do not know how this is done in the records of private land claims.

Q. The object of comparing is to ascertain if there is any decrepancy between the record and the patent?—A. Yes, sir.

By Mr. ELDRIDGE:

Q. When that is done is the patent completed?—A. Yes; it is complete so far as the record is concerned. The seal is not yet on, and formerly there was a custom in the office to sign the patent after the body of the patent and record was "examined."

Q. The date and everything of that kind is filled in?—A. It has been practiced heretofore, to complete the examinations and comparison of the patent and record before the President or recorder's name was affixed, so that no incorrect patent should bear their signatures.

Q. How long did it take to make this record, from page 312 to 321?—A. Mr. Stoek is a very slow writer. He was probably three days making that up; he writes very slowly and very carefully.

By Mr. KELLOGG:

Q. If I understand you correctly, you did not discover that the lock of your bookcase had been tampered with last summer?—A. No, sir; not until yesterday morning.

Q. If there had been all the letters, from January to June, taken out before yesterday, would you have known it?—A. Not unless my attention was called to it.

By Mr. PETERS:

Q. When did you first miss these letters?—A. I could not give the date—shortly after the adjournment of the last session of Congress.

Q. Before yesterday, of course?—A. Yes, sir; and I then made an examination, and arranged the letters carefully myself, so as to become satisfied that they were gone.

Q. Do you recollect making an affidavit on the 27th day of August, 1870, in which you stated "that this deponent has carefully examined the files in his office, and the records thereof, of letters transmitting patents for signature, and that there is no letter, communication, or other paper on said files, or in said office purporting to inclose any patent, or to request or direct the signature of the recorder to any patent for a tract of land in California, known as Panoche Grande, and that there is no evidence in said office that any patent for said tract of land, called Panoche Grande, was ever signed by this deponent as recorder, as aforesaid; and this deponent has no recollection of ever having signed any patent for said tract of land?"—A. I remember that distinctly.

Q. Is it true that you had then carefully examined the files in your office?—A. Yes, sir; I had examined them once, but not as carefully as I have since.

Q. When you have had important patents transmitted to you to sign, have you usually retained a recollection of them?—A. No, sir; I have not; I have signed so many of them, often from thirty-five to fifty thousand a year.

Q. You have no recollection whatever that you have signed a patent for this tract of land?—A. No, sir; my attention is rarely ever called to one of these land claims. Some of them cover very important grants; but I assume they are all right when sent to me from the private land claim room, and I assumed that when I signed this certificate across the face of this record without knowing anything about it, that was the truth of the case.

Q. You believed it to be right?—A. Yes, sir; I believed it to be right as a matter of official honor.

By Mr. ELDRIDGE:

Q. State whether the Secretary or President did not have to sign just as many patents as you did?—A. Yes, sir; just the same number.

Q. And how many do you say you signed?—A. During the war the sales of land became very light; since 1865 they have averaged from 36,000 to 45,000 a year.

Q. And you do not pretend to remember all that you have signed?—A. No, sir.

Q. How many during the war, or about 1863?—A. They ran down to probably 20,000 a year during the last war; I do not remember just how many in 1863; I think not more than 20,000, and probably not so many.

Q. How many of these California land claim patents probably in that year?—A. Probably not one in two weeks. Mr. Stoek, however, could answer that question accurately if you wish it.

WASHINGTON, D. C.,
January 16, 1871.

THEODORE F. STOKES sworn and examined.

By Mr. LOUGHRIDGE:

Question. State whether you made and signed an affidavit dated 29th of August last in regard to this claim?—Answer. Yes, sir. That was taken before Mr. Brown. I have now before me a printed copy of it.

Q. You may say whether the statements in the printed affidavit you have now before you are true or not?—A. They are true. I wish to say, however, that since I made the affidavit this record from the Land Office has had a certificate written across it in red ink, which is not in my handwriting, and which I did not make. I submit the printed copy of my affidavit to the committee as part of my evidence.

Q. Was there ever any other patent prepared in the Panoche Grande case than the one referred to in your affidavit?—A. I could not say.

Q. State whether there was to your knowledge.—A. I have no knowledge of any patent having been made in the office except the one that record is made from.

Q. Could a patent for this land have been made and duly executed, sealed and countersigned, in 1863, without passing through your hands?—A. Oh, yes, sir.

Q. Or without coming to your official knowledge?—A. Yes, sir.

Q. If that patent had been signed and not delivered, where would it have remained?—A. I presume it would have remained in the private land claims division. At the time that record was made I was clerk in the recorder's division. The mode of doing the business in our division was different from what it was in the private land claims division.

By the CHAIRMAN:

Q. You testified before this committee in this matter on a former occasion, did you not?—A. Yes, sir.

Q. Do you remember being asked from what you made the entry in this record of the signature of the President and Secretary?—A. I think I was asked that question, and think I stated that it was made in accordance with usage in the recorder's division.

Q. Do you remember having answered that it was a printed form that was made out?—A. I remember that in all California patents the granting clause was printed.

Q. Do you mean that you made that record from a printed form?—A. I think so. Yes, sir.

Q. Can you furnish that printed form?—A. No, sir; I cannot.

Q. Can you account for the description in the printed form which is in this record of the survey, &c.?—A. I can only say that I followed the copy.

Q. Can you produce the original you made this record from?—A. No, sir; I cannot.

Q. Do you say now that you know there was ever a printed form for California special cases?—A. No, sir; only from the manner in which I generally did business. I have written a great many patents for private land claims, and this form of patent was printed.

Q. You did not write the original from which this record was made at all?—A. I only made the record.

The copy of the affidavit referred to is as follows:

"DISTRICT OF COLUMBIA, *County of Washington, ss:*

"Be it remembered that on this 27th day of August, A. D. 1870, before the subscriber, a notary public in and for the county aforesaid, personally appeared Theodore F. Stokes, who, being first duly sworn, deposes and says that he is a resident of Washington, D. C., and is now and has been continuously since May 1861, a clerk in the General Land Office; that in the month of March, 1863, he was detailed to make a record of the form of patent that had been prepared for a tract of land in California called Panoche Grande; that the record in volume 4 of California private land claims, pages 312 to 321, both inclusive, was made by this deponent, and is in his handwriting; that it was the usage and custom in the recorder's division of the General Land Office, in which division this deponent was then a clerk, to make the record or copies of the patents before the signatures of the recorder and of the President or his private secretary were affixed thereto, and to make said records and copies complete in anticipation of the signatures of said officers, and as though said signatures had been already affixed; that to the best of the knowledge and belief of this deponent the record hereinbefore

referred to was made in accordance with said usage and custom, and to the best of the recollection and belief of this deponent said record was made by this deponent from a form or draught of a patent not signed by the President of the United States, nor by his secretary, nor by the recorder of the General Land Office, nor was the seal of the General Land Office affixed thereto; that this deponent is confirmed in this recollection by the fact that in said record the name of the recorder does not appear, and this deponent left the same blank because he did not know who would be the acting recorder on the day said form or draught of a patent should be actually signed. This deponent further says that he is not now, nor has he ever been, directly or indirectly interested in the claim of the New Idria Company, nor of William McGarrahan, nor of any other person or corporation, to said tract of land called Panoche Grande; nor did he know of the existence of said New Idria Mining Company at the time said record was made, nor for a long time thereafter.

"THEO. F. STOKES.

"Sworn to and subscribed before me this 29th day of August, 1870.

"EDM. F. BROWN,
"*Notary Public.*"

WASHINGTON, D. C., *January* 16, 1871

W. H. LOWRY sworn and examined.

By Mr. LOUGHRIDGE:

Question. You have in your hand a printed copy of an affidavit purporting to have been made by you in August last. Say whether you made that affidavit, and whether the statements it contains are true?—Answer. I made it, and the statements it contains, as printed, are true.

By the CHAIRMAN:

Q. Have you filed a paper in this case brfore this committee, dated August 12, 1868?—A. I do not know that I have filed any paper before the committee.

Q. Look at Executive Document 48, part 3, pages 151, 152, and 153, signed W. H. Lowry, for the New Idria Mining Company, and state whether you filed that paper?—A. This paper, I presume, from its marks, was filed with the Commissioner of the General Land Office. I filed a good many papers from time to time with him on that subject.

Q. Did you file it as attorney for the New Idria Company?—A. Yes, sir.

Q. You were at that time in the employ of this company contesting the title of McGarrahan?—A. I was in the employ of the New Idria Mining Company for the purpose of pressing their claim to a patent, without regard to any other claimant, at that time.

Q. Had it regard to this Panoche Grande rancho?—A. It must have had.

Q. That was an application for a patent to how much land?—A. For a three-quarter section, as I remember.

Q. When were you employed for the New Idria Company?—A. I think about the close of the year 1867.

Q. Have you remained in their employ ever since?—A. Yes, sir.

Q. Did you ever compare this record in volume 4 from the Land Office which is now before you?—A. In regard to Panoche Grande, I did examine it.

Q. I did not say examine it, I said compare it.—A. Yes, I did compare it.

Q. When?—A. It must have been about the date which is indicated by the pencil mark.

Q. Is there any pencil date to it?—A. There is a pencil date on the record, and that is the only way I can identify the time.

Q. When did that pencil date get into ink?—A. I think it is there in pencil now.

Q. Did you compare the record with the patent at that time?—A. I did. It was my duty at that time.

Q. When did you do it?—A. I cannot say exactly the date.

Q. Do you know what month?—A. Yes; I know very well the month, because it must have been about the time the order arresting the issue of the patent came to the Land Office.

Q. Do you know with what order or regularity they make up the records of these patents in that office?—A. I know what was my practice when I was there; I can say nothing of what has occurred since.

Q. Were you, or not, required to make comparison of the record with the original, whether there was an order of arrest or not?—A. I should not have done so, unless they were going to send the patent out to be signed.

Q. Were not all your records compared when made up by the examiner?—A. That was the general custom; but, if I had known that a patent was not going out to be signed I should not have examined the record.

Q. Had there not been an order to make up this patent for issue?—A. There had been two of them.

Q. Did you make this comparison before or after the signature had been affixed?—A. Our practice was to make the record before.

Q. Did you ever know a patent recorded and marked examined without any name appended to it?—A. I think that happened several times in my experience when we employed clerks outside of the division.

Q. Was that ever done without putting your name to it?—A. Yes; when I compared a record made with the patent and found afterwards that it was not issued or signed, I would strike out the signatures and write in pencil "not signed." This happened several times.

Q. Do you know of more than one case in this or any other record for land grants, where the record shows the signature of the President and Secretary and the seal of the Land Office, without the date, and on which the words "not signed," were written in pencil?—A. My attention has only been called to this one; I have no doubt there are several.

Q. Do you know of any other on this record?—A. I cannot call to mind any other special case, but I know it was my custom when I found that a patent had actually not been signed, to strike off the signature and dates.

Q. Do you know when Judge Otto's order to arrest the issue of this patent was received at the Land Office?—A. I do not. The record, I think, shows that it was about the 16th or 17th of March, perhaps. The letters on file also show.

Q. Who ordinarily writes the word "examined" on a record?—A. The man who holds the record for the comparison, and the man who holds the patent, in comparing, writes the same word on the patent.

Q. Has the indorsement on a record of the United States, "examined," any other significance than to certify that it is a true copy of the original?—A. The only significance it had in my experience was to show that it had been compared with the original patent.

Q. Then it meant that there was a patent corresponding with the record?—A. It meant that it was a true copy, except where it was marked otherwise.

Q. I ask you to state now whether there is any instance except the one you are talking about, in which the record of the United States shows "ex'd" on the face of the record, and where there is neither the seal of the office nor the signature of the President to it?—A. I have no doubt there is. That is all I can say about it. If I compared an unsigned patent with the record I marked it as examined. That was understood in the office.

Q. In whose handwriting is the word "examined" on page 312 of this record?—A. It is not mine, and I do not know whose it is; I think it is Mr. Stoek's. I generally held the patent in making the comparison.

Q. You can state no case where this mark is on the record, which has neither the signature of the President, nor the seal, nor the date?—A. I cannot now, from memory, state any particular case. I can only state what was my habit, and that I adhered to to it pretty closely.

By Mr. ELDRIDGE:

Q. Did you, while you were in the Land Office, hold any correspondence with E. L. Gould about this Panoche Grande case?—A. None, whatever, I think.

Q. Did you ever telegraph him?—A. It is possible I may have done so within the last two or three years; I do not remember that I did.

Q. I refer to the time when you were in the Land Office, and before you were in the employ of the New Idria Company?—A. I may possibly have done so; I do not recollect it; and I am pretty positive that I did not while I was in the office. I should have referred any matter requiring an answer to the head of the office.

Q. Did you give any information in regard to the case?—A. I think not; I do not remember having given any, and such was not my habit.

Q. While you were clerk in the office, were you in the habit of having intercourse with Mr. Gould in reference to the state of this title, and the proceedings of the Government in regard to it?—A. Certainly not.

Q. You are sure of that?—A. I am sure of that; I had no knowledge of the existence of this mining claim until long after I left the office; not, I think, until 1868, when I was retained in the case.

The affidavit referred to in the above testimony is as follows:

"DISTRICT OF COLUMBIA, *Washington County, ss:*

"On this 27th day of August, 1870, before me, a notary public in and for the county aforesaid, personally appeared William H. Lowry, who being duly sworn according to law, deposes and says as follows:

"That for several years prior to July 1, 1863, he was a clerk in the General Land Office, in charge of the division of private land claims, in which capacity it was part of

his duty, under the direction of the Commissioner of said office, to superintend the preparation and recording of all patents for private land claims; that the practice of the office in such cases when a patent was ordered was to have it engrossed and recorded, after which a letter was addressed by the Commissioner to the recorder of the General Land Office, and another to the President's secretary to sign land patents, describing the patent, stating the volume and pages where recorded, and requesting the signature of those officers to said patent; the said letters being always recorded in the letter records of the private land claims division, and no patent was submitted for signature unless accompanied by such letter, duly recorded as aforesaid; and deponent further says that he distinctly recollects the claim known as 'Panoche Grande,' and that no patent was issued for said claim up to 30th June, 1863, when he left the General Land Office.

"That a patent was engrossed and recorded for said claim, but never signed, for the reason that before it was sent to the secretary and recorder for signature, an order came directing the withholding of said patent, which was done accordingly, and the said incomplete and unsigned patent remained in the private land claims room, in the custody of deponent while he remained in office, and he is satisfied and believes, from having lately seen and examined it, that the said unsigned patent, known to him by the handwriting, marks, and other evidences, is the unsigned patent still on file in the General Land Office; and deponent further says that the record of said patent was made by a clerk in another division of the General Land Office, who erroneously, and contrary to the practice of the private land claims division aforesaid, inserted in the record the name of the secretary to sign land patents; that in comparing said record with the patent, which was the duty of deponent, and finding the name of the secretary had been inserted in the record, and receiving the order to withhold the patent, he erased the name of said secretary in the record by crossing it in pencil, and writing on the record opposite said name the words '*not signed*,' where they remained lately, and are probably still there.

"Deponent further declares that no other patent was prepared for said 'Panoche Grande' whilst he was a clerk in the General Land Office than the unsigned one now on file in that office, and that none could have been issued for it without his knowledge prior to July 1, 1863.

"Deponent further says that until the year 1868 he had no knowledge of the New Idria Mining Company, or the existence of their claim.

"W. H. LOWRY.

"Sworn to and subscribed before me this 27th day of August, 1870.

"EDM. F. BROWN,
"*Notary Public.*"

WASHINGTON, D. C., *January* 16, 1871.

J. F. STOEK, sworn and examined.

By Mr. LOUGHRIDGE:

Question. State whether you made and executed an affidavit in regard to the matter of this claim on the 22d of August last.—Answer. Yes, sir; I have before me a printed copy of that affidavit.

Q. Say whether or not all the statements in that affidavit are true.—A. I believe it to be the same affidavit I made, and that all the statements are correct. I could not state as to dates without comparing them. The probability is that I did it before that time.

By Mr. ELDRIDGE:

Q. What was the habit of the office in regard to the recording of the business letters of the office; were they recorded on the date of their receipt?—A. Letters received by the office were not recorded at all; they were kept on file; I mean letters transmitting patents to be countersigned by the recorder. It did not necessarily follow that they were recorded on the date which they bore, for other business might come in and crowd them out.

Q. If they were not recorded on the same day, what was done with them in the mean time?—A. They were kept in the division of private land claims.

Q. Where and how were they kept?—A. I do not know. Mr. Lowry was in charge of that division at that time. They were in charge of the head of the division.

Q. Would they not in fact remain on a spindle upon the table of the clerk in charge of the division until a certain number had accumulated for record?—A. No. There was never a spindle in his office that I am aware of. They would, perhaps, have been handed to the clerk, whose duty it was to record them.

Q. Were they recorded in the order in which their dates appear?—A. Yes, sir; they should have been.

Q. Do they not appear now on the record as recorded out of such order, those of later date having been recorded earlier, and those of earlier date later?—A. That was sometimes done.

Q. Was not that frequently the case?—A. I do not know without examining the record.

Q. And in the mean time these letters were kept by the clerk, whose duty it was to record?—A. I only say it is probable they were handed to this clerk. He should have recorded them in the order of their dates.

Q. Did not two, three, and four weeks often elapse from the date of these letters until they were actually recorded?—A. I do not know, without examining the record, one way or the other.

Q. And you cannot answer the question one way or the other?—A. No, sir.

By the CHAIRMAN.

Q. Is there any record of the letters transmitting patents at all by the recorder?—A. I do not know what his practice is. I am only speaking in regard to the division of private land claims. I know nothing in regard to how the records of the recorder's division are kept. I have been in the private land claims division since 1861, and nearly all the time I have been connected with the Land Office, and I, therefore, only speak of the practice in that division.

Q. I mean in that division.—A. The recorder of patents is not in that division at all.

Q. Does he not countersign the patents?—A. Not in the private claims division.

Q. I mean in his own division.—A. Yes, in his own.

By Mr. LOUGHRIDGE:

Q. Who examined this unexecuted patent and marked "Ex'd" upon it?—A. That is my writing.

Q. Is that last page of the record in the same handwriting?—A. It is in the same handwriting.

Q. What do these letters "Ex'd" mean?—A. They mean a comparison of the record with the rough form of the patent which had been prepared.

Q. What were they put there for?—A. Merely to show that the patent before it had been signed by the President's secretary, or by the recorder, and had been compared with the papers upon which it was based.

Q. When were these letters put on it?—A. Before it was sent for signature.

By the CHAIRMAN:

Q. Did you say that these letters were put on that record after the record was made?—A. After the record was made, certainly.

Q. And after the patent was signed?—A. No, sir; not after the patent was signed.

Q. Are there not other instances in that record which show the patent was not signed at all?—A. Yes, sir.

Q. Is any such record marked examined?—A. I do not know. Here is one from page 58 to 63, not signed, and I do not find upon it any mark that it has been examined or compared.

Q. How long since that record has been made?—A. I do not know.

Q. Does not the book show?—A. The book shows that it was made before a certain time. The date is the 9th of August, 1866; but that is merely an evidence that the record was made before that.

Q. It has never been examined?—A. No, sir, it has not, because it has never been executed. I did not usually examine them, unless they were sent for signature.

Q. Look at page 28.—A. Yes, sir; that patent was signed June 9, 1862.

Q. Look at page 52.—A. The patent, a part of which is recorded on 52, appears to have been signed.

Q. State whether the signatures to some of these records do not appear to have been put on afterward in another hand.—A. Yes, sir.

Q. Look on page 466.—A. This is a patent, the termination of which is on page 475, and appears dated, signed, and sent away.

Q. Is it marked as examined?—A. The word "examined" is written on it in full.

Q. Has your attention been called to the fact that there were several other records there, where the name of the President and his secretary have been inserted on the record by another hand altogether than that of the man who made up the record?—A. That is usual; I usually did that myself. I can only speak of the practice since I have been there. I think the first patent in this book is one that has not been examined or compared. The granting clause of this is on page 17; I see, however, a note referring for correct copy of this patent to the pages 88 to , inclusive. I suppose, therefore, that this patent has been executed, but that this is not a correct copy of it. The second patent recorded in the book has the record in one handwriting and signature in another. The next is in my own handwriting, date, signature, and all. On page 69 is another in my own handwriting, date, signature, and all. There is no regularity about the practice, though I think the record is oftener in one hand, and the date filled in by another.

By Mr. ELDRIDGE:

Q. Can you find in that book another record in which the dates, signature, seal, and everything are filled in where the record is marked "examined," and yet where the patent was never issued?—A. I do not know, and cannot answer without looking through the books, whether there is any such record in this book or not.

Q. Look on page 69, and state when, and by whom, this mark "Ex'd" was put there.—A. I do not know when it was put there.

By the CHAIRMAN:

Q. What is the date of the record there?—A. The 19th of August, 1866.

Q. Then the examination must have been made about the year 1866, was it not?—A. It must have been made before that time. When I first came to the office I wrote a great many patents, and recorded them, which were never sent, the rule being not to send out a patent until it was applied for by the claimant or his attorney.

By Mr. ELDRIDGE:

Q. Were these dates put on in your handwriting?—A. I do not know whose handwriting they were in.

Q. Was it the custom to place them there?—A. The practice was to put them on when the patent was signed.

Q. Do you have any knowledge or recollection when that was done in this case?—A. No; I have not.

By Mr. LOUGHRIDGE:

Q. Have you any knowledge at all in relation to this patent on page 69?—A. No; I do not know what it is.

Q. Have you any distinct knowledge in reference to this Panoche Grande record?—A. I have, from the particular circumstances attending it.

Q. Was the President's signature on that record when it was marked "examined?"—A. No, sir; it was not.

By Mr. ELDRIDGE:

Q. When was that mark, "Ex'd" put on?"—A. I cannot tell that. I recorded the patent myself, but the dates are in a different hand from mine.

Q. Can you state when this record was put in the book?—A. I cannot for the reason I have stated. I think the dates were put there by Mr. Sloan.

Q. When did Mr. Sloan come into the office?—A. I think in 1864.

Q. Can you not tell within two years when you made that record?—A. No; I cannot. I do not think it was in 1866 at all, because I was not making up these records then as a rule.

Q. It is probable that this record which appears on page 69 was made before 1863?—A. Yes; it is very probable it was.

Q. And then it was dated in 1866 by another clerk?—A. Yes, sir.

The affidavit referred to in the above testimony is as follows:

"DISTRICT OF COLUMBIA, *County of Washington, ss:*

"Be it remembered, that on this 27th day of August, A. D. 1870, before the subscriber, a notary public in and for the county aforesaid, personally appeared Jacob F. Stoek, who being first duly sworn, deposes and says that he is a resident of Washington, D. C., and is now principal clerk of private land claims in the General Land Office, and, as such clerk, is in charge of the division of private land claims, its files and records, under the direction of the Commissioner of the General Land office; that he was appointed a clerk in the General Land Office in April, 1861, and in the latter part of said year he was assigned to duty in said division of private land claims, and has been on duty in said division continuously from that time to the present date; that he has a distinct and perfect knowledge and recollection of all the facts and circumstances pertaining to the preparation of the unexecuted and incomplete patent, or draught of patent, now in the custody of the deponent in said division of private land claims; that in the month of March, and within a few days of the date written on said form of patent, in pencil, this deponent received instructions from William H. Lowry, then in charge of said division of private land claims, to engross a patent for a tract of land in California known as Panoche Grande Rancho; that in obedience to said instructions this deponent did engross the draught of a patent according to the form furnished to him by said Lowry, and completed the engrossment thereof in his own handwriting, on the 13th or 14th day of March, 1863, as this deponent believes; that said form or draught, when engrossed as aforesaid, required to complete it the signature of the recorder of the General Land Office, and of the President's secretary to sign land patents, or of the President, and the seal of the General Land Office. The date was in pencil. That after said draught of a patent was engrossed, as aforesaid, the same was retained in the division of private land claims in consequence of the receipt from Hon. W. T. Otto, Acting Secretary

of the Interior, dated March 13, 1863, and received in said division on the 14th day of March, 1863, and was not sent to the recorder, nor to the President of the United States, nor to the secretary of the President to sign land patents, for signature; that said draught of said patent has never been out of the General Land Office except on two occasions, once upon the call of the Hon. James F. Wilson, chairman of the judiciary committee of the House of Representatives, on the 18th day of January, 1867, and once to the Hon. John A. Bingham, having been sent in charge of a clerk in the Land Office, July 7, 1870. On the first occasion it remained out of the General Land Office until the 3d day of May, 1867, and was in the mean time sent to the Public Printer to obtain a printed copy as a part of the report of the judiciary committee. It was returned in the same condition it was in when sent to the chairman of said judiciary committee, except that the stitching which bound the leaves had been cut at the printing office for convenience in printing; that the leaves thus loosened were stitched together again by direction of this deponent; that the unexecuted patent thus stitched together by order of this deponent, and now in the division of private land claims, is the identical one prepared by this deponent in 1863, in his own handwriting, and is unaltered and the same in every respect except in the stitching, and that no other form or draught for a patent for said tract of land in California called Panoche Grande has ever been prepared in the General Land Office since the beginning of the year 1862. This deponent is able to make this assertion positively, because of his familiarity with the business of said office, and because no patent was or could have been prepared in said division without the knowledge of this deponent. This deponent further says that in the year 1863 and for a long time thereafter he was ignorant of the existence of the New Idria Mining Company. This deponent further says that he has read the charges made in the 14th section of a "bill in equity between William McGarrahan and the New Idria Mining Company" and others, filed by William McGarrahan in the supreme court of the District of Columbia, and that the same, so far as they relate to this deponent, are utterly false; that he has not now nor has he ever had, directly or indirectly, any interest in said company or in any controversy between said company and said McGarrahan; nor has he ever received any money or other valuable consideration or promise from any person or persons connected with said claimants, or either of them.

"J. F. STOEK.

"Sworn to and subscribed before me this 27th day of August, 1870.

"EDM. F. BROWN,
"*Notary Public.*"

WASHINGTON, D. C., *January* 16, 1871.

MARTIN BUELL sworn and examined.

By Mr. LOUGHRIDGE:

Question. State whether on or about the 27th of August, 1870, you made and signed an affidavit in this case, and whether the printed copy you now have in your hands is a copy of that statement, and whether the facts therein set forth are true.—Answer. I did make such an affidavit, of which the printed copy now before me seems to be correct. The statements made in this affidavit are true.

By the CHAIRMAN:

Q. You were acting recorder in the General Land Office for the purpose of recording patents?—A. I was at that time and before.

Q. When Mr. Granger, the recorder, returned to the city, state whether you delivered to him the letters transmitting patents for him to countersign, which you had received in his absence?—A. That was my custom invariably. As soon as he returned I delivered them to him.

Q. In the meantime, state whether you kept them in the same office which you occupied.—A. I did keep them in the office which I occupied, taking them to his room after he returned.

Q. Was he absent at any time in 1863?—A. Yes, sir.

Q. And you were acting recorder while he was absent in 1863?—A. Yes, sir.

Q. And whatever letters were transmitted to you with patents for signature you handed over to Mr. Granger on his return?—A. Invariably.

The affidavit referred to in the above testimony is as follows:

"DISTRICT OF COLUMBIA, *County of Washington, ss:*

"Be it remembered that on this 27th day of August, A. D. 1870, before the subscriber, a notary public in and for the county of Washington, personally appeared Martin Buell, who being first duly sworn, deposes and says that he is a resident of Washington, D. C., and a clerk in the General Land Office; that from July, 1861, to some time in the year 1869 he was principal clerk of private land claims in said General Land Office, and ex-officio was acting recorder in the absence of the recorder, and signed all

patents in the absence of said recorder; that it is the uniform custom of the office that all patents are prepared for signature by the Commissioner, and sent by the Commissioner to the recorder with a letter addressed to the recorder describing the patent and requesting the signature of the recorder; that said letters transmitting patents for signature are carefully preserved and filed in the office of said recorder, and that while acting as recorder this deponent never signed any patent unless by the direction of the Commissioner of the General Land Office expressed in a letter. This deponent further says that he never, while acting as recorder, as aforesaid, signed any patent for a tract of land in California called "Panoche Grande," and that during the year 1863 no person was authorized to sign patents for land, as recorder, except Julius N. Granger, recorder of the General Land Office, and this deponent, in the absence of said Granger.

"MARTIN BUEL.

"Sworn to and subscribed before me, this 27th day of August, 1870.

"EDM. F. BROWN,
"*Notary Public.*"

WASHINGTON, D. C., *January* 16, 1871.

JOSEPH S. WILSON sworn and examined.

By Mr. LOUGHRIDGE:

Q. State your official position.—A. I am at the present time acting as Commissioner of the General Land Office.

Q. How long have you been Commissioner?—A. Since the 1st of September, 1866. I was also Commissioner from 1859 until, I think, some time in 1861.

Q. You were at the time this unexecuted patent for Panoche Grande was recorded?—A. No, sir; I was not. Mr. Edmunds was then Commissioner.

Q. You were in the Land Office?—Yes, sir; I was chief clerk.

Q. State what you know of the history of this matter.—A. It became a matter of controversy as to whether this title would finally be confirmed in such way as to justify the issue of a patent. My predecessor ruled as his opinion that it would not; but a former Secretary of the Interior, Hon. Caleb B. Smith, decided in favor of the confirmation, and ordered the patent to issue. When Judge Usher succeeded Mr. Smith as Secretary of the Interior he confirmed the same opinion, but at a later period, probably in March, 1863, there came an order to suspend proceedings, and so the matter has remained, as I understand, from that time to this, except in respect to the judicial proceedings which have taken place.

Q. Was that unexecuted patent prepared in your office?—A. That I cannot tell, because I was not in that branch of the office. It was prepared in the private land claims room. I might express an opinion that I have no doubt it was, but I could not say it was from my own knowledge.

Q. Do you know of any patent for this tract of land having been signed by the secretary of the President, countersigned by the recorder of the Land Office, and the seal of the General Land Office attached to it?—A. No, sir; I have no knowledge of any such thing.

Q. Did you make an indorsement upon the record of this patent?—A. The indorsement, I think, was written by one of the clerks in the office. I did not write it. I think it was written in the division of private land claims. It was signed by me and countersigned by the recorder of the office under an order of the former Secretary of the Interior, Mr. Cox.

Q. Was that order in writing?—A. Yes, sir; I think it is here. It is dated July 15, 1870, and I now present it to the committee. It is as follows:

"DEPARTMENT OF THE INTERIOR,
"*Washington, D. C., July* 15, 1870.

"SIR: I have received your letter of the 13th instant, in relation to 'the application, dated the 11th instant, of George W. McGill, as attorney for William McGarrahan, for a certified copy of the record of the Panoche Grande patent.' You inform me that the patent was never signed by the President's secretary to sign land patents, or countersigned by the recorder of the General Land Office, and that the seal of your office was never affixed thereto. As the record is, in your opinion, incomplete, wanting the name of the recorder or acting recorder, you request the ruling of the Department as to whether the copy should be furnished, in view of the provisions of the act of July 2, 1864, entitled, 'An act prescribing the terms on which exemplifications shall be furnished by the General Land Office.' You send me the original instrument and the proposed form of certificate to be attached to the copy asked for, in case such copy should be furnished.

"Your statement is fully established by an inspection of the instrument, and conforms to the evidence which the files of this Department furnish on the subject. I

perceive that, by a letter of the Acting Secretary of the Interior, of March 13, 1863, your office was directed to suspend the 'execution and delivery of the patent until further advised in the case by the Secretary.' No subsequent order or direction in conflict therewith appears. The instrument was never perfected in the mode required by law, and it was, in its incomplete state, improperly admitted to record. It cannot be considered a patent, in the legal sense of the term. A paper writing, purporting to convey lands in fee, if never signed, sealed, and delivered, is not a deed, nor is it effectual to pass the title to the land therein described.

"You informed me in our personal interview that it had been the practice to record these inchoate and imperfected patents, including the name of the President's secretary, before he signed them; and that when they were subsequently so signed the countersigning by the recorder of the General Land Office was afterward affixed to the instruments, and a corresponding change made in the record. I deem the practice to be an objectionable one, and you will give the requisite directions to the recorder to discontinue it. The instrument should not be recorded until it is in all respects complete and ready for transmission to the party who is thereunto entitled. In every instance where record has been made of an uncompleted instrument in anticipation of the due execution of it, and the original is in your office unsigned and unsealed, you will write across the record, in red ink and in legible characters, a statement of the facts, attested by your signature and countersigned by the recorder of the General Land Office; and this statement should appear in the transcript or exemplification of the record of the instrument which you deliver.

"Under the circumstances of this case, I have no objection to your giving the requested copy, attaching a certificate in the form presented to me, upon the applicant's complying in other respects with the statute and regulations of your office. The papers accompanying your letters are herewith returned.

"I am, sir, very respectfully, your obedient servant,

"J. D. COX,
"*Secretary.*

"Hon. JOS. S. WILSON,
"*Commissioner General Land Office.*"

Q. Was it in pursuance of that order of the Secretary of the Interior that that cancellation was made upon the record?—A. Yes, sir, I so understood it.

Q. What is the reason that patent was never signed or executed?—A. The reason, as I understand it, was that there was an order suspending the case by Judge Otto, Acting Secretary of the Interior, which order, as I understand, was made in pursuance of a notification from the Attorney General.

By Mr. ELDRIDGE:

Q. You will please distinguish what you state from your own knowledge and what you state from hearsay.—A. I speak from having seen the order.

By Mr. LOUGHRIDGE:

Q. Was there any other patent prepared for that land?—A. I have no knowledge of any other, and no reason to believe any other was prepared.

Q. If any other had been prepared, would the fact have come to your knowledge?—A. I can only say that it is most likely it would have come to my knowledge. I should have heard of it. Nothing of the kind certainly has come to my knowledge.

Q. How long since you first became connected with the Land Office?—A. I first came in the Land Office in Mr. Adams's administration, and as private land clerk, I think, in 1837.

Q. You have been in the Land Office how many years?—A. Forty years or more.

Q. How much of that time have you been Commissioner?—A. At present, from September, 1866, until to-day. I suppose a few days will relieve me from duty. In 1859 and 1860, I was also Commissioner fifteen or sixteen months. This was near the close of Mr. Buchanan's administration. I was appointed without any solicitation or expectation upon my part, and remained until the incoming administration.

By the CHAIRMAN:

Q. Did you address Secretary Cox any communication about this patent before you received the letter which you have presented here?—A. No, sir; not to my recollection.

Q. Did you communicate your wishes verbally?—A. No, sir; I never waited upon the Secretary in regard to any case unless I was sent for.

Q. You were not Commissioner of the General Land Office at all in 1863?—A. No, sir; I was chief clerk.

Q. Do you know whether the patent recorded here for Panoche Grande was ever signed?—A. I have no knowledge on that subject. From looking at the patent itself I could give you an opinion.

Q. Do you know whether this patent, recorded as dated, signed, and sealed, was signed, sealed, and dated or not?—A. No, sir, I do not.

Q. You do not know whether it was or not?—A. I know from the records. I know nothing about it of my own knowledge.

Q. You do not know whether it was ever presented for signature or not?—A. I do not know that it was ever presented.

Q. And you do not know that it was not?—A. No, sir; only from my general conviction upon the subject. I do not know of any letter having been sent transmitting it.

Q. Personally you have no knowledge that enables you to swear that it never was presented for signature?—A. I have not.

Q. And you do not know that it was ever sealed?—A. I do not know that; I do not know that it was ever sealed, or the contrary.

Q. Where are letters transmitted to the recorder of private land claims—I mean Mr. Granger—for countersigning land patents, recorded?—A. They are recorded in the private land claims division.

Q. Are letters kept by him recorded at all?—A. I could not answer that; it would be very unusual and very unnecessary. I presume he files them in his own office.

Q. State whether in the private land claims office they are recorded in the order in which they are sent or dated.—A. It is their business to record them in their order of date; I do not know personally whether that is done or not.

Q. You have had occasion to look at the records, have you not?—A. I have looked at them generally.

Q. Do the records disclose that they are recorded in the order of their date of receipt at all?—A. I think they do; I may not speak with exact accuracy, however, for I have never overhauled the records in that respect.

Q. You speak of Mr. Otto being Acting Secretary of the Interior; is he created so or not by positive law to your knowledge?—A. I do not know.

Q. Do you know whether there is any such officer as Acting Secretary of the Interior except by special appointment?—A. I do not know whether there is any special statute on the subject or not.

Q. Do you know anything about it?—A. I do not.

Q. It is not usual anyhow, is it, for an Acting Secretary to overrule an order of the Secretary?—A. No, sir.

By Mr. PETERS:

Q. Have you ever found any evidence whatever in the office that a patent to McGarrahan was signed or sealed?—A. I have not.

Q. Have you made diligent search for it?—A. No, I have not; it has not been before me in that form.

Q. Are you sufficiently familiar with the records and proceedings of the office to know it if there was any such evidence?—A. I might know it in one way, and in another I might not. I have never heard of any such evidence.

By Mr. ELDRIDGE:

Q. Are copies of letters transmitting patents retained in the Land Office?—A. That is the rule. It is required that a record shall be made of every letter submitted for signature.

Q. Where should that record have been in this case?—A. In the private land claims division where the patent was made up—in the room in which Mr. Stoek was.

By Mr. COOK:

Q. Regularly, then, the records of the office should show it if a note was addressed requesting the signature of a patent?—A. Certainly, always; that was the uniform rule, and if there was ever an exception, it was an oversight.

By Mr. ELDRIDGE:

Q. How came you to sign the note cancelling this record?—A. I did it upon a letter of the Secretary of the Interior directing it.

Q. You did it upon that order without a personal knowledge of the facts?—A. Yes, sir.

Q. Did you advise the Secretary to make that order?—A. No, sir; I never did.

Q. Were you the instigator of, or did you have anything to do with making or getting up these affidavits?—A. No, sir; I never heard of them until after they were made.

Q. Did you advise Mr. Steck to make his?—A. No, sir.

Q. Did you speak to him on that subject?—A. I do not remember having done so. I spoke to nobody on that subject.

Q. Did you direct Mr. Granger to execute his signature to the cancellation of this record?—A. I handed him the written order of the Secretary, which requires him to sign, and he signed it.

Q. Did you also verbally tell him to sign it?—A. No, sir; I have no recollection that I did.

Q. In answer to a question by Mr. Peters, I understood you to say that you knew of no evidence in the Land Office of any kind whatever that a patent was ever executed

for this land. Is this record itself not evidence of that fact? If there was nothing else showing the contrary, would not that record itself be evidence?—A. I do not know that it would be. The letters and other record evidence would have to be examined in connection with it.

Q. Suppose this record stood unimpeached by any other evidence, would it be of itself evidence to your mind?—A. But it is impeached, and I would not record it as evidence in any event, because it had not the signature of Mr. Granger, the recorder of patents.

Q. Would not the signature of the President, by his secretary, be evidence?—A. Not unless it was countersigned by the recorder. The signature of the recorder must be there.

Q. Would not the signature of the President be conclusive evidence, even without the signature of the recorder? I ask your opinion.—A. I do not think it is conclusive evidence at all; it is only one of the items of evidence.

Q. What was the occasion for the cancellation of that record?—A. That you must ask of the Secretary himself. It was done in pursuance of his order.

Q. Did you think when you were signing that you were signing a cancellation of a record which of itself was no evidence of the patent?—A. I did think so; but in what I did I simply obeyed orders.

By Mr. LOUGHRIDGE:

Q. You have been asked your opinion in regard to this record; let me ask you what is the meaning of the letters "exd?"—A. "Exd" means examined. Whenever a patent is recorded they compare it with a draught from which the record is made, and, finding them to agree, these letters, "exd," are written on it by the clerk in charge.

Q. It would not import that the patent was executed at all?—A. Oh, no, sir; not at all, because it is done before the patent is submitted for signature.

By Mr. PETERS:

Q. Then the patent is usually recorded before it is executed, and instead of being a final act in the usage of your office, it is simply a preliminary act?—A. This was the former usage of the office. The record was made and compared before the patent went up for signature, so as to prevent the necessity of going over the second time after the patent was returned executed.

By Mr. ELDRIDGE:

A. When the patent is returned signed, do you not have to reëxamine the record?—A. No, sir; only to see that the names are properly affixed.

Q. Why were the names of Mr. Lincoln and Mr. Stoddard affixed, and not that of the recorder?—A. That was the rule, because we knew the name of the secretary who alone was authorized to sign, while sometimes the name of the recorder, and sometimes that of the acting recorder was affixed.

Q. Then you put the names of the President and secretary on before the patent was sent to the secretary for signature?—A. That was the rule in Mr. Cox's administration, and, as I said, the name of the recorder was not placed there, because we could not tell whether the recorder or acting recorder would countersign. That, however, was not under my supervision.

Q. Then you know nothing about it, personally?—A. No; I only speak of the practice. I never saw this patent until the matter came up in the way it did. I do not know even the handwriting in which it is recorded.

Q. Who wrote this cancellation in red ink on the face of the record?—A. I do not know the handwriting at all. I think Mr. Stoek wrote it.

Q. The signature is yours!—A. Yes, sir.

Q. Was it written in your presence?—A. No, sir; it was not.

Q. Was there more than one acting recorder at this time?—A. Only one and he is made acting recorder by law.

Q. Was there more than one at any time?—A. Not that I know of.

WASHINGTON, D. C., *January* 16, 1871.

JULIUS N. GRANGER, recalled and examined.

By Mr. LOUGHRIDGE:

Question. Did you ever sign a patent in your capacity as recorder before it was examined?—Answer. No, sir; they were always examined first.

By the CHAIRMAN:

Q. You never signed them at all, did you, unless they had the President's signature?—A. No; the President signs before I do. There may have been cases where there was a large number of patents when I was compelled to leave, in which case I would sign my name before the President's was affixed.

Q. They are not examined until the President's signature is affixed?—A. Not in my division.

Q. What is your division?—A. I have supervision of the military acts, the cash, homestead, and agricultural.

Q. State, if you please, what orders, if any, you received to put your name upon this certificate of cancellation in July, 1867?—A. The first I knew of it was a request by a messenger, or perhaps by Mr. Stoek, to come to Mr. Wilson's room. I went up there and found this record lying upon the table with the certificate upon it written out in red ink. I was requested by Mr. Wilson to sign it, and he at the same time showed me the direction of the Secretary that I should do so.

Q. State whether Mr. Wilson ordered you to sign it?—A. I would not say it was an order. He requested me to sign it.

Q. Who requested you to make the affidavit which has been filed here in print?—A. I think I was requested by Mr. Lowry. I think he first spoke to me about it.

Q. By Mr. Lowry, who has been a witness here this morning?—A. Yes, sir; I think so.

By Mr. LOUGHRIDGE:

Q. Please look over the printed copy of the affidavit and say whether the statements in it are true.—A. I have looked it over. It is correct. I do not desire to change it. The affidavit referred to is as follows:

"DISTRICT OF COLUMBIA, *County of Washington, ss*:

"Be it remembered that on this 27th day of August, A. D. 1870, before the subscriber, a notary public in and for the county of Washington, personally appeared Julius N. Granger, who being first duly sworn, deposes and says that he is a resident of Washington D. C., and the recorder of the General Land Office, and that he has held said office of recorder of the General Land Office continuously, and performed the duties thereof since the year 1853; that he is well acquainted with the usages and customs relating to the transaction of business in the General Land Office, and with the laws of the United States relative to the issue of patents for land; that by provision of law all patents for land are required to be signed by the recorder of the General Land Office, and by the President of the United States, or by his clerk for the signing of land patents, and to be sealed with the seal of the General Land Office; that patents are prepared under the direction of the Commissioner of the General Land Office, and that it is the uniform custom of the office, and one never departed from within the knowledge of this deponent, when patents are ready for signature for the Commissioner of the General Land Office to send them to the recorder with a letter, signed by the Commissioner and addressed to the recorder, describing the patent transmitted and requesting the signature of the recorder; that all letters accompanying patents and requesting the signature of the recorder are carefully preserved in the office of the recorder and filed in said office; that this deponent has carefully examined the files in his office and the records thereof of letters transmitting patents for signature, and that there is no letter, communication, or other paper on said files, or in said office, purporting to inclose any patent, or to request or direct the signature of the recorder to any patent for a tract of land in California known as Panoche Grande, and that there is no evidence in said office that any patent for said tract of land called Panoche Grande was ever signed by this deponent as recorder, as aforesaid; and this deponent has no recollection of ever having signed any patent for said tract of land.

"J. N. GRANGER.

"Sworn to and subscribed before me this 27th day of August, 1870.

"EDM. F. BROWN,
"*Notary Public.*"

WASHINGTON, D. C., *January* 23, 1871.

J. F. STOEK, recalled at his own request, made the following statement:

On examining the printed copy of my testimony before the Judiciary Committee on the 16th instant, I find the following discrepancies and errors in printing, which I respectfully request may be corrected:

1. On page 26. In the first question asked by Mr. Loughridge, the date of an affidavit made by me in August last, is printed 22d of August, while the affidavit referred to, as the same is printed at the close of my testimony, bears date of 27th August. Since discovering the discrepancy, I have examined a copy of the affidavit in question, which I preserved, and find the date to be August 27, 1870.

2. On the same page. In reply to the question by Mr. Loughridge, "Say whether or not all the statements in that affidavit are true," I am reported as saying for part of my answer, "I could not state as to dates without comparing them. *The probability is that I did it before that time.*" What I intended to say was, that while I believed the printed affidavit handed me to be the same made by me in August last, and all the statements therein correct, yet I could not state as to the correctness of the dates of

transactions mentioned in the affidavit, as those dates are printed in the copy furnished me for examination, without comparing them with the records and files of the General Land Office, but had no doubt that the printed affidavit was a true copy of the original.

3. On the same page. The words "I mean letters transmitting patents to be countersigned by the recorder," in my answer to Mr. Eldridge's first question, were a *question* by Mr. Eldridge, and not a part of my answer. The succeeding portion of my answer as printed was the response to that question.

4. On the same page. In answer to the question by Mr. Loughridge, "Is the last page of the record in the same handwriting?" my reply is, "It is in the same handwriting." I meant to be understood as saying, I placed "ex'd" on the first page of the Panoche Grande record, and that the last page of said record is in the same handwriting as the rest of the same record, which was made by Mr. Stokes, and not by me.

5. On page 27. The sequence of question and answer would seem to imply that, in answer to the question by Mr. Eldridge, "When was that mark 'ex'd' put on?" I again testified that I recorded the Panoche form of patent myself, while the fact is that when Mr. Eldridge asked the question he presented to me the record of another patent, as will be seen by the succeeding portion of my testimony.

By Mr. ELDRIDGE:

Question. I find this question put to you by myself: "Can you find in that book another record in which the dates, signature, seal, and everything are filled in where the record is marked 'examined,' and yet where the patent was never issued?" The answer is, "I do not know, and cannot answer without looking through the book, whether there is any such record in this book or not." State whether you subsequently examined the book, and replied that you could find no other such record?—Answer. I did.

WASHINGTON, D. C., *January* 23, 1871.

JOSEPH S. WILSON, recalled at his own request, made the following statement in relation to his testimony before the committee January 16, 1871, as printed:

1. On page 31, in speaking of the time of my incumbency as Commissioner, I wish to say that my first incumbency as Acting Commissioner and Commissioner was about fifteen or sixteen months in 1859 and 1860, and the early part of 1861.

2. In answer to the question by the chairman, "Did you address Secretary Cox any communication about this patent before you received this letter which you have presented here?" I replied, "No, sir; not to my recollection."

I desire this understood as referring to any letter suggesting cancellation of the record; for on reflection and consultation of the record of letters I find we did address a letter (copy herewith) to the Secretary, under date 13th July, 1870, submitting an application of the attorney of McGarrahan for a copy of the record, with a proposed form of certificate of authentication to be attached to said copy in case the same should be furnished. The date of said letter submitting said application was given in the Secretary's letter of July 15, 1870, the original of which was handed to the chairman of the committee.

3. The further question was asked, "Did you communicate your wishes verbally?" The answer was, "No, sir; I never waited upon the Secretary in regard to any case, unless I was sent for."

I mean to say that I had no wishes in the matter, but not as saying that I made no explanations when called upon by the Secretary to do so. When so called upon, I gave such information and explanations as I was able to do from the knowledge I had of the matter.

Referring to the questions on page 31 of the printed copy of my testimony, I find that in answer to questions as to whether I knew whether a patent for Panoche Grande was ever presented for signature or not, I replied, "No, sir; only from my general conviction upon the subject. I do not know of any letter having been sent transmitting it." I desire to add that my conviction, from examination of the unexecuted draught of the patent and from the suspensive orders given, is that it never was signed.

5. In answer to the question, "And you do not know that it" (referring to the Panoche draught of patent) "was ever sealed?" my reply is, "I do not know that; I do not know that it was ever sealed or the contrary." I desire to be understood as saying, I do not know of my own personal knowledge; but from the fact that no seal is found on said draught, I do not believe one was ever placed there, and that I have no knowledge of any other draught of patent for said ranch having ever been prepared in the General Land Office.

6. On page 32 of the printed testimony, in answers to questions as to whether my signature to the certificate of cancellation of the record was placed there "without a personal knowledge of the facts," my answer as printed is, "Yes, sir." I desire to be understood in this as saying that, except as shown in my preceding testimony on this point, I had no personal knowledge of the matter, as the preparation of the form of

patent and record was not under my immediate personal supervision, but of the gentleman in charge of the division of private land claims.

7. Again, on page 32, in answer to the question, "Did you advise the Secretary to make that order?" my reply is, "No, sir; I never did." In this connection I desire to state that I never advised the Secretary to make any order in regard to the cancellation of the record; but in submitting the application for a certified copy, a form of certificate was submitted, as is shown in the letter to the Secretary of 13th July, hereinbefore referred to, and a copy of which, from the record, is herewith filed.

8. Further, on page 32, in reply to the question by Mr. Eldridge, "Then you put the names of the President and Secretary on before the patent was sent to the Secretary for signature?" I find my reply is, "That was the rule in Mr. Cox's administration," &c. What I intended to say was that that was the rule as I understood it, until within a few months of the close of Mr. Cox's administration, to wit, until the time of his order of 15th July, 1870, directing a discontinuance of the practice.

9. Also, in response to the last question on page 32, I say, "I do not know even the handwriting in which it" (the Panoche form of patent) "is recorded;" but since, on recurring to the record itself and comparison with many letters in his hand, I am satisfied it is in the handwriting of Mr. T. F. Stokes, then and now in the office.

"DEPARTMENT OF THE INTERIOR,
"*General Land Office, July* 13, 1870.

"SIR: I have the honor to submit herewith an application, dated the 11th instant, of George W. McGill, as attorney for Wm. McGarrahan, for a certified copy of the record of the Panoche Grande patent, said patent having never been signed by the President's secretary to sign land patents, or countersigned by the recorder of the General Land Office, and the seal of this office having never been affixed thereto, the record being therefore incomplete, wanting the name of the recorder or acting recorder; and respectfully request the ruling of the Department as to whether such copy should be furnished in view of the provisions of act of July 2, 1864, entitled 'An act prescribing the terms on which exemplifications shall be furnished by the General Land Office.' Statutes, vol. 13, p. 375. A copy of the proposed form of certificate to be attached to the said copy, in case the same shall be furnished, being herewith inclosed; also the original unexecuted patent and a copy of the granting clause in the record.

"I have the honor to be, very respectfully, your obedient servant,

"JOS. S. WILSON,
"*Commissioner.*

"Hon. J. D. COX, *Secretary of the Interior.*"

By the CHAIRMAN:

Question. You have said in explanation, as I understood you, that you only advised the Secretary when called on; state now, if you please, whether you were ever called on by Secretary Cox for an explanation in regard to this matter or for advice.—Answer. I made a verbal explanation to him; I gave no advice.

By Mr. MERCUR:

Q. You gave no verbal advice about what?—A. I mean about the cancellation of the record. I merely carried to him the draught of patent, which I obtained from the clerk who had the custody of it. It had not been in my custody at all; then we discussed the form in which the certificate should be appended. I proposed to have it made upon a separate sheet of paper, reciting, in accordance with the knowledge of the office, that the patent had never been signed, and append it to the record.

By Mr. PETERS:

Q. Your interview with the Secretary then was as to how the copy of this record, which you had been called on to furnish, should be made out?—A. Yes, sir.

By Mr. MERCUR:

Q. Who called on you for it?—A. This letter shows that it was McGarrahan's attorney.

By Mr. ELDRIDGE:

Q. In answer to a question by the chairman, "Did you address Secretary Cox any communication about this patent before you received the letter which you have presented here," you say, "No, sir; not to my recollection." He then asks, "Did you communicate your wishes verbally?" To which you reply, "No, sir; I never waited upon the Secretary in regard to any case, unless I was sent for." Yet, in the letter of Secretary Cox which you presented, dated July 15, 1870, he says, "You inform me that the patent was never signed by the President's secretary to sign land patents, or countersigned by the recorder of the General Land Office, and that the seal of your office was never affixed thereto." Did you so tell him?—A. I carried the patent to him and showed it

to him, and told him that, according to my judgment, or that according to my knowledge, it had never been signed or sealed.

Q. Did you have any knowledge on that subject which you have refused to give to this committee?—A. No; none whatever. It was just the traditional knowledge of the office; it had been talked about more or less for several years, that we never knew or heard of this patent having been signed. That is what I meant to be understood as meaning by knowledge on the subject.

Q. Had you ever seen the record which had been produced here, according to which the patent purports to have been signed by the President's secretary?—A. I do not think I had then.

Q. Had you never heard of that?—A. Of course. All patents made out are recorded.

Q. Had you never heard of that record which was produced here purporting that the patent had been signed by Mr. Stoddard, as the secretary of the President?—A. I can only say that I have no specific recollection of that patent having been signed.

Q. Had you never heard of that record?—A. Of course, I have heard of that record.

Q. Had you never heard of this record with the signature of Mr. Stoddard, as secretary of the late President attached, at the time you communicated with Secretary Cox?—A. I have no doubt I had. It was not my business to run round and hunt up every record in the Land Office and look at it, but it was then the rule that every patent should be recorded in advance of its being submitted for signature.

By the CHAIRMAN:

Q. State, if you know, when the straight lines were drawn across this authenticated copy now shown you, and which is printed on page 7 of this testimony?—A. I am unable to say.

Q. Do you know when these cross lines were drawn?—A. Nothing, personally; I only know from the testimony presented.

By Mr. LOUGHRIDGE:

Q. Was it the custom when patents were recorded, if they were not signed, to make any entry on the record?—A. If they were not signed, they were marked "canceled."

By Mr. BUTLER:

Q. Was there such a number of unexecuted patents recorded in your office that any custom prevailed in regard to cancellation?—A. I do not know the number, but that was the practice whenever such instances occurred.

Q. Was there such a number of unexecuted patents recorded as if they were executed that any practice had grown up in your office as to the manner of cancellation?—A. The practice was, whenever an unexecuted patent was recorded as if it had been executed, to mark it as canceled.

Q. Pardon me; besides this, do you know of one other that has been so recorded?—A. There are others so recorded that have not been delivered. I could not say that any special practice grew up in regard to the manner of cancellation.

Q. Pardon me; my question is, do you know of one patent unexecuted—leaving out this Panoche Grande—that has been recorded as executed?—A. I cannot say that I know of any particular one.

Q. Do you know of any such patent having been so recorded?—A. I cannot say that I know of any particular one, but the practice was ——

Q. If you do not know of one, how can you know that any practice has grown up?—A. I answer, that I do not know of any single one, but that in the progress of years there have been many; and that when such instances have occurred, the practice has been to write "canceled" on the record. You will understand that I could not, from memory, go back over a record of thirty or forty years and name individual cases.

By the CHAIRMAN:

Q. Can you give a single case?—A. I could undoubtedly find one.

By Mr. BUTLER:

Q. Will you do me the favor, if on looking over the records in your office you can find any unexecuted patent recorded as executed, and which has been canceled, to bring it before the committee?—A. I think I can do so.

WASHINGTON, D. C., *January* 23, 1871.

THOMAS F. STOKES, recalled at his own request, made the following statement:

I wish to say, that on page 23 of this printed evidence, the question is asked me, "Do you say now that you know there was ever a printed form for California special cases?" to which my answer is, "No, sir; only from the manner in which I generally did business. I have written a good many patents for private land claims, and this form of patent was printed." If I recollect correctly, when I made this answer, my hand lay upon the granting clause of a patent, and not upon the whole record. I did not intend to say that the whole record was printed, but that the granting clause was.

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