
Statement of the case.

class of cases where confirmation has been refused, because there was no record evidence to support the claim. *United States v. Cambuston*, 20 How., 59; *United States v. Teschmaker*, 22 Id., 392; *Fuentes v. United States*, 22 Id., 443; *United States v. Osio*, 23 Id., 280; *United States v. Bolton*, 23 Id., 341; *Luco et al. v. United States*, 23 Id., 515; *Palmer et al. v. United States*, 24 Id., 126; *United States v. Castro*, 24 Id., 346; *United States v. Neleigh*, 1 Black, 298; *United States v. Knight*, 1 Id., 229; *United States v. Vallejo*, 1 Id., 541; *United States v. Galbraith*, 2 Id., 394.

But the present case, in one respect, is much stronger than any one of those which have preceded it. All of the preceding decisions rest upon the ground that there was an entire want of record evidence to support the claim, but in this case the record evidence itself, if there be any, shows that the supposed grant was never issued. Our conclusion, therefore, is, that the decree of the District Court is correct, and it is accordingly

AFFIRMED.

UNITED STATES v. WORKMAN ET AL.

The Governor of California had no power, on the 8th June, 1846, either under the colonization law of August 18, 1824, and the regulations of November 21, 1828, nor yet under the despatch of March 10, 1846, from Tornel, Minister of War, nor under the proclamation of Mariano Paredes y Arrilaga, President, *ad interim*, of the Mexican Republic, dated March 13, 1846—these two last made in anticipation of the invasion of California by the forces of the United States—nor under any other authority, to make a valid sale and grant of the mission of San Gabriel in California.

APPEAL by the United States from a decree of the District Court for the Southern District of California, confirming a decision of the Board of Commissioners appointed by the act of March 3, 1851, for the settlement of private land claims in the State just named, by which decision an estate known as the ex-mission of San Gabriel was confirmed to Workman

Statement of the case.

and Crosby, appellees in the case. The petition represented that "on the 8th day of June, 1846, Pio Pico, then Governor of California, in the name of the Mexican nation, by virtue of authority in him vested by the laws of Mexico, the authority given him by the *Departmental Assembly* for the alienation of the missions, and the instructions and authority conferred upon him by the Supreme Government, as well as the laws and customs of the country, and also to pay debts of the government, sold and conveyed unto the said Workman and one Perfecto Hugo Reid the said ex-mission, with the appurtenances which at that time were considered as appertaining to the same, whether of lands, improvements, real estate, or cattle; that juridical possession was duly given to said Reid and Workman, and that they remained in peaceable possession until they were forcibly ejected by soldiers under command of officers of the government of the United States; that at the time of the grant, the said Reid and Workman were large creditors of the Mexican government, and that the sale of the mission to them was in all respects fair and for its full value, at that time honestly paid by them." The appellant Crosby claimed by transfer from Reid.

The alleged grant as translated was substantially in these words, and, as presented below, had written upon it an undated proclamation; all as here printed.

"PIO PICO, CONSTITUTIONAL GOVERNOR, &c.

"Having been first authorized by the most excellent the *Departmental Assembly*, for the alienation of the missions, as well as for paying their debts, and avoiding the total ruin of the same, and to provide resources that may assist in case of foreign invasion, which according to self-evident data is very near happening, in which case the government of the department has received ample powers from the supreme one of the nation; considering that the Señores Reid and Workman have rendered valuable services to the government, and furnished eminent aid for the better protection and security of the department under the guarantee of a just indemnification when the general treasury should be unembarrassed, and whereas those Señores have solicited for their personal benefit,

Statement of the case.

and that of their families, the mission of San Gabriel, with all its lands, improvements of town and country, in payment of the sums which at different periods they have advanced to the departmental government, binding themselves to satisfy the debts against said mission, &c., as also to assign a proportional part or sum for the maintenance of the ministering fathers, who may live there, and for the preservation of the divine worship: Having seen and considered all that it behooves to see and consider: *In the exercise of the powers wherewith I find myself invested*, I make a real sale and perpetual alienation forevermore to the Señores, &c., of the mission of San Gabriel, with all the appurtenances, recognized as thereunto belonging, consisting of lands, improvements, real estate, or self-moving property.

"The following conditions are imposed:

"1st. They will pay to the creditors of the mission the sums which may be proved at the farthest in the term of two years at most.

"2d. They will advance on their own account the necessaries for the subsistence of the father minister, who at any time may live there, as also for the preservation of divine worship.

"In consequence by these present titles, that the above-named are legitimate owners of the said mission of San Gabriel jointly, on the terms, and under the conditions above stated.

"By virtue whereof they may take possession of the same from this moment; and for due testimony in all times, I give this instrument as a deed in due form, &c., on the eighth day of June, eighteen hundred and forty-six.

"PIO PICO.

"JOSE MATIAS MORENO,
Secretary ad interim.

"This patent is entered on the respective book.

"MORENO."

The proclamation annexed was as follows, viz.:

"PROCLAMATION.

"PIO PICO, CONSTITUTIONAL GOVERNOR OF THE DEPARTMENT OF CALIFORNIA, TO ITS INHABITANTS:

"Know ye that the country being menaced by the sea and land forces of the United States of America, *which already occupy the towns of Monterey, Sonoma, San Francisco, and other frontier*

Statement of the case.

places north of this department, where already waves the flag of the stars, threatening to occupy the other ports and towns, and subject the same to their laws; and this government being firmly resolved to make all possible efforts to repel the most unjust of aggressions which the latter centuries have beheld made by a nation inspired by the most unheard of ambition."

The authenticity of the grant was proved by a certain Nicholas A. Den, who testified that he knew the handwriting of both Pico and Moreno, having frequently seen them both write, and that the signatures to the grant were genuine. Moreno, who was secretary of state while Pico was governor, testified that a bargain was made between Pico on the one part and Reid and Workman on the other, for the mission in question, and that a written document was given to them in the form of a title; though he did not recollect the date, but thought it was in May or June, 1846.

As respected the power of the governor to grant mission lands, there was no doubt that under what is known as the colonization law of August 18, 1824, and certain regulations of 21st November, 1828, the governor had power to grant *vacant* lands belonging to the Supreme Government. But whether under those laws he could grant lands like these missions, was one of the questions in the suit. [The reporter not having heard this case, which was decided before his appointment, and not finding a reference on his brief to the place where the important language is, is unable here to set it forth.]

The power, though claimed in part as coming under those laws, was placed more particularly upon other grounds, grounds arising from acts relating specially to the missions, or from supreme powers given to the governors about the time of the invasion of the country by the United States, and in order to enable the governors to repel it. On the 17th August, 1833, the Supreme Government passed a decree to secularize the missions of California.

It declared, among other things:

"ART. 1. The government will proceed to secularize the missions.

Statement of the case.

"ART. 2. In each shall be established a parish, served by a secular clergyman, with a stipend, as the government shall decide.

"ART. 3. These parochial curates shall not recover or receive any fees for marriages, baptisms, or under any other name.

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

On the 3d November, 1833, the Mexican Congress passed an act authorizing the executive to adopt the measures necessary for their colonization, and with this view to use the property granted to pious uses, in order to facilitate the operations of the commissions and the transportations of families. On the 16th April, 1834, another law was passed, declaring that "all the missions of the republic shall be secularized." They "shall be converted into curacies, the limits of which shall be designated by the governors of the States where the said missions are." On the 9th August, 1834, certain rules, "agreeably to the spirit" of previous laws and instructions, were accordingly issued for the secularization of the missions, the rules, however, being provisional, and it being declared that "the Supreme Government will, by the quickest route, be requested to approve of them." On the 3d November, 1834, a decree of the Departmental Assembly provided for the colonization of the lands which had been secularized. On the 7th November, 1835, however, a law was passed by the Mexican Congress, enacting that until the curates should take possession, under the second article of one of the previous laws, "the government shall suspend the execution of the remaining articles, and keep matters in the condition in which they were before the passage of the said law." On the 17th November, 1840, Franco, Bishop of the Californias, addressed the Supreme Government on the subject of these missions. His letter, imperfectly translated, contains passages like these:

"From the time that the temporalities, which they created

Statement of the case.

and augmented with their personal labor and their stipends, were taken away from the missionaries, and that the seculars and their attendants (among whom are some I am acquainted with), and to whom no one would trust anything, entered into the possession of the property of the missions, their destruction was already doomed. In 1836, I notified to the Supreme Government the evils which the missionaries have to contend with, and not the least among these, that the administrators of them took possession of the houses in which the fathers were living,—houses built by the *religiosi*, and in the construction of which they had invested the stipends they were receiving, and the labor of their hands. The fathers have been compelled, as I myself can bear witness, to live there as so many bankrupts, and with great inconvenience. The administrators keep in the habitations certain people who disturb all rest at nights, by their intoxication, gambling, and dancing, which the converts witness with shame. How insupportable is this! And what a miserable life for a few devoted *religiosi*! So much so is it, indeed, that many of them contemplate the abandonment of the missions, and to seek peace and tranquillity of mind in retirement. A tormenting life, indeed, and one which has dissuaded many persons from going to the missions, because they would not expose themselves to such suffering and to such disregard for their character. I well know, and have already communicated it to the government, that within a short time there will be nothing of the property of those opulent missions, which the administrators received when the fathers delivered them over. What missionary father is there who will be willing to labor to increase the property of the unhappy Indians, if experience teaches him that the fruit of his labor is to be taken away from the legitimate owners, and delivered to others, whom it has cost no anxiety or labor, to enjoy? Who is the *religioso* that would desire to build a house or plant an orchard for his recreation and comfort, if he sees that they are to be taken away from him, and to be possessed by the men who before have been supported by alms, the gift of these very missionaries, and that the unhappy fathers have to live at their own expense? What I insist on, and will always insist on, is that the houses and orchards which they or their predecessors have made, and which are contiguous to and in immediate communication with the churches, remain to the benefit and use of the missionaries. The administrators, as they

Statement of the case.

have at their disposition the Indians and property of the missions, can build a house for them, and leave the fathers in peace and quietude. I deem this measure of so great necessity, that if it is not adopted, there will not be any one who will desire to go to serve the missions at all."

To this letter were appended eight different requests, the purpose of which was to give effect to the wishes prece-
dently expressed. And on the day of its date, an order issued from the Ministry of the Interior, reciting that his excellency the President had been pleased "to decree in conformity with everything asked in it;" and stating that an order was issued from the said ministry to the Governor of California, "to restore without delay to the missionary fathers the possessions and property which were under their administration for the conversion of the heathen."

In the year 1843 (June 12th), the Mexican government adopted a new constitution,—*Bases Organica*. Its seventh chapter is entitled, *Gobierno de los Departamentos*, and relates, as its name implies, to the government of the departments. Among the powers given to the Departmental Assembly are these:

"1. To establish the means of meeting their ordinary expenditures, or of making those that are extraordinary, which they may direct according to their powers with the approbation of the Congress.

"2. To decree what may be proper respecting the acquisition, alienations, and exchanges of the property that may belong to the community of the department. With regard to the alienation of lands, they shall observe the existing laws, and whatever is decreed by the laws of colonization."

On the subject of these missions, it appeared that on the 21st April, 1845, Pio Pico being then governor, the Assembly decreed thus:

"The government will demand information of all the persons having charge of the missions, in order that they may give it truthfully, of active and passive debts, showing the resources they have to pay the passive ones.

Statement of the case.

"The government, from the publication of the present decree, will *suspend*, until a convenient time, the *granting of the lands immediately contiguous to the missions*, considering that some of them are indispensable, or reserved and appropriated under the class of common lands."

On the 28th May, 1845, it made this decree :

"The departmental government shall call together the Indians of the missions of San Rafael, Dolores, Soledad, San Miguel, and La Purisima [San Gabriel, it will be observed, is not mentioned], which are abandoned by them, by means of a proclamation, which it will publish, allowing them the term of one month from the day of its publication in their respective missions, or in those nearest to them, for them to reunite for the purpose of occupying and cultivating them; and they are informed that, if they fail to do so, said missions will be declared to be without owners, and the Assembly and departmental government *will dispose of them as may best suit the general good of the department.*"

On the 28th October, 1845, it decreed thus :

"There will be *sold* in this capital, to the highest bidder, the missions of San Rafael, Dolores, Soledad, San Miguel, and La Purisima, which are abandoned by their neophytes. The missions of San Fernando, San Buenaventura, Santa Barbara, and Santa Ynez, shall be *rented* out to the highest bidder for the term of nine years." [Bonds, &c., to be given.]

It will be observed that the mission in question in this suit is not mentioned as among either those to be sold or those to be rented.

On the 30th March, 1846, another decree was passed :

"The government is authorized to carry into effect the object of the decree of the 28th of May last respecting missions; to which end the departmental government will act in the manner which may appear most conducive to obviate the total ruin of the missions of *San Gabriel*, San Luis Rey, San Diego, and the remainder which are in similar circumstances.

"As most of these establishments are owing large amounts, if the property on hand should not be sufficient to satisfy their acknowledged debts, *attention shall be had to what the laws determine respecting bankruptcies, and steps shall be taken accordingly.*

Statement of the case.

"Should government, by virtue of this authority, find that in order to prevent the total ruin which threatens said missions, it will be necessary to *sell them to private persons, this shall be done at public auction, the customary notice being previously given.*"

This decree was soon followed by a letter from the

"MINISTRY OF INDUSTRY AND PUBLIC INSTRUCTION.

"MOST EXCELLENT SIR :

"His Excellency, the President, has received information that the government of that department has ordered that the property belonging to the missions thereof be put up for sale at public auction, which your Excellency's predecessor had ordered to be returned to the respective missionaries for the direction and administration of their temporalities; therefore he has deemed proper for me to say that the said government will please to report upon these particulars, *suspending immediately all proceedings respecting the alienation of the aforesaid property till the determination of the Supreme Government.* I have the honor, &c.

"GOD AND LIBERTY.

"MONTESDEOCA.

"MEXICO, Nov. 14, 1845.

"To his Excellency the Governor of the
Department of the Californias."

On the other hand, reliance was had, among other things, on a circular public letter, or authority, as follows:

"MINISTRY OF WAR AND MARINE.

"TO THE GENERAL COMMANDER OF CALIFORNIA :

"The preparations which the United States are making, and the approach of the naval forces towards our ports, leave no doubt that war with that power is about breaking out, and as his Excellency the President *pro tem.* is resolved to sustain the rights of the nation, he wishes that in all the ports of the republic where the enemy may present itself a rigorous defence be made, capable of giving honor and glory to the national flag. For that object, and until the Supreme Government appropriates and sends you the necessary means, it relies upon *your patriotism and fidelity* to dictate the measures which you may judge necessary for the defence of that department, for which purpose you and his Excellency '*are invested with full powers.*' And I

Argument against the sale.

have the honor to transcribe the same to you for your cognizance, hoping that you on your part will leave *no* efforts to preserve entire the rights of the nation.

“GOD AND LIBERTY.

“TORNEL.

“MEXICO, March 10, 1846.”

And also a proclamation of President Paredes y Arillaga, of which the important part was :

“MARIANO PAREDES Y ARILLAGA, GENERAL OF DIVISION AND PRESIDENT
AD INTERIM OF THE MEXICAN REPUBLIC.

“TO THE INHABITANTS THEREOF. KNOW YE :

“That, on account of the actual state of the country, threatened with a foreign war, and a large and important part of its territory invaded, considering that the time has arrived to act with the greatest activity and energy, to repel the most unjust aggressions, to recover the usurped territory, and to preserve the glory and honor of the nation ; and convinced that, for the accomplishment of objects so grand, it is necessary to secure order and peace within ; in the exercise of the powers vested in me, &c., I have thought proper to decree the following :

“The attention of the governors of the departments is called to the circular of the 24th December of last year past for the punctual observance thereof, wherein is conferred upon them *the extension of the powers* granted to the Executive by the decree of Congress, dated the 21st of the same month, in conformity with the 198th article of the organic law.

“The governors of the departments are authorized to act *expeditiously in extraordinary cases*, and with due justification to preserve the great interests of the independence and the integrity of the national domain, and to secure tranquillity and public order, without which these inestimable blessings cannot be sustained.

“MARIANO PAREDES Y ARILLAGA.

“NATIONAL PALACE, MEXICO,
March 13, 1846.

“To Don Joaquin Maria Castillo y Lanzas.”

Messrs. Bates, A. G., and Wills, for the United States :

1. The deed is *not genuine*, but has been fabricated, and this after the date at which it purports to have been exe-

Argument against the sale.

cuted. It purports to have been made *June 8, 1846*. The governor's proclamation, which forms part of the expediente, and must have been contemporaneous with the grant (else why should it be connected with it?) recites the capture and "occupancy of the towns of Monterey, Sonoma, San Francisco, and other frontier places north of this department, where already waves the flag of the stars." These events we know, historically, occurred after *July 7, 1846*. The proclamation was added to the expediente in order to furnish evidence of the public exigency under which the grant was made,—a sale made, as it was pretended, to raise money for the public defences. But the appended proclamation proves the very fraud which it was invented to conceal.

2. Supposing the deed genuine, it is not formally proved. No evidence of the authenticity of the grant has been offered, but secondary evidence of the handwriting of the governor and secretary, no legal basis having been laid for its introduction. Moreno, the secretary, did not testify to the genuineness of *this* grant or of his signature, but spoke of "*a bargain*" and "*a title*."

3. There is no evidence of the performance of the conditions of sale. In *United States v. Bolton*,* where the Mission Dolores had been sold on condition of paying its debts, evidence of this kind was held to be necessary, and its absence regarded as evidence of the fraudulent character of the grant.

4. The power to grant lands under the *colonization* law of August 18, 1824, and the regulation of November 21, 1828, has always been considered to apply to vacant lands; and the lands which came within the scope of these provisions were not the subject of *sale*, but of *colonization*. Under those provisions the sale cannot be sustained. Neither is there anything in any of the decrees, &c., which gives such power as Pio Pico, supposing his grant genuine, has attempted to exercise. The sale of the missions was extremely odious to the Catholic clergy, as the letter of the Bishop of California shows; and the *project was arrested*, as the letter

* 23 Howard, 353.

Argument in favor of the sale.

of Montesdeoca also shows. To assert that under the loose powers given by Secretary Tornel's circular of March 10, 1846, the governor was vested with absolute ownership of all lands in Mexico, as well those which had been scrupulously withheld from sale as those that had been granted, claims too much for it, and the case is not aided by the subsequent proclamation of Paredes. Abundant effects can be given to both papers to answer every requisition of their language without giving the immense, despotic, and unjust power here asked for by the counsel of the claimants.

Messrs. Butterworth and Walker, contra:

1. The fact that on the back of the office copy of the grant there is found a rough draft of an official proclamation, which, from its terms, appears to have been written after the 7th of July, is an evidence of the integrity of the grant. It makes the fact clear that the document *was at that time remaining in the secretary's office*. It is known and proved that the government was then destitute of funds and of all necessities. This writing upon the back of the grant may have been from accident or want of paper.

2. The proof of handwriting is not secondary evidence. Precedent establishes this. The objection will not be made, it is to be hoped, after this term.*

3. The payment of the debts of the missions was but a charge upon the estate, which the creditors may enforce at any time, if they have not already done so.† If a condition, it was a condition subsequent, and no law of denunciation exists to forfeit the estate.‡

Although the grant of the mission was made on sale, it is nevertheless a colonization grant. Sales were one of the most effective means of colonization. It cannot be pretended that, if in addition to settlement, the governor had received money from the grantee, that that fact would avoid the grant. Even if the officer had exacted it illegally and wrongfully,

* See *United States v. Moreno*, *ante*, 403.—REP.

† *Taft v. Morse*, 4 Metcalf, 528; *Sheldon v. Purple*, 15 Pickering, 528.

‡ *Fremont v. United States*, 17 Howard, 542.

Argument in favor of the sale.

in addition to settlement and occupation, there is no pretence for saying it would have avoided the grant; much less, when it is shown that the money so received went into the treasury or to the necessary use of the government. The governor in his grant recites that he acts in virtue of *all* the power he possessed from whatever source derived. The title recites that the grantees "have rendered considerable services to the government, and also lent good assistance for the better preservation and security of the department, under guarantee of just recompense, whenever the general treasury should be released." The ninth article of the colonization law of 1824 expressly makes services a good consideration for a grant. This court recognizes such service as a good consideration for a grant.* The same consideration is recognized in the Sutter case,† as to the defence of the frontier and the civilization of the Indians,—things not specially mentioned in the colonization laws. The colonization law does not define the character of the services. They may be either personal or pecuniary. "*Servicio*" is the word used both in the law of 1824 and in these grants. It is defined by Newman: "Services, utility, benefit, advantage; a sum of money voluntarily offered to the king; service to the kings in war." It is thus evident that it includes pecuniary service, and was so intended by the act of 1824.

The Departmental Assembly seems always, in conjunction with the governor, to have exercised a large jurisdiction over the missions. They were clothed with the power of administering them as a branch of the public revenue, and as a subject of public property. It is notorious that they granted the agricultural and pastoral lands once occupied by the missions at pleasure. The regularity of these grants was always recognized by the Supreme Government of Mexico. The acts of Governor Alvarado in this respect were expressly approved in 1840. Their validity has been declared by this court.‡

* United States v. Larkin, 18 Howard, 557.

† Same v. Sutter, 21 Id., 170.

‡ Same v. Cruz Cervantes, 18 Id., 553.

Opinion of the court.

It cannot be doubted that the 7th chapter of the Constitution of 1843, *Bases Organica*, gave very ample powers to the Departmental Assembly. The first article confers the largest power which any government can have, that of providing the means of meeting the expenses of the government, both ordinary and extraordinary. With the power to provide for ordinary and extraordinary expenses of the government, and raise revenue and means for those purposes, does it admit of doubt that the public domain might be resorted to, so that the general object of colonization and the settlement of the country were secured in these alienations? It is also well known to the court and the case shows that a decree was passed by the Supreme Government, when the war broke out, enlarging the powers of the governors of departments. In March, 1846, the government of Mexico was nearly absolute in the hands of the Federal Executive. On the 10th of that month the President directed to the Governor of California an order instructing that officer to prepare for a vigorous defence; for which purpose the governor was invested "*with full powers*" to do what *he* "*judged necessary*" for the defence of California. This left the means of raising funds entirely within the discretion of the governor, and operated as a repeal of the order of 14th November, 1845, known as the "*Montesdeoca Decree*." Besides which, the word "*property*" (*bienes*), used in the latter decree, referred only to the personal property, church and curate's lot. It never was intended to apply to the agricultural and grazing land formerly in use by the mission.

Mr. Justice CLIFFORD delivered the opinion of the court.

Appellees, in their petition to the commissioners, represented that Governor Pio Pico, on the eighth day of June, 1846, granted, sold, and conveyed in full property unto the first-named appellee and one Perfecto Hugo Reid, the mission of San Gabriel, with all the appurtenances appertaining to the same, whether they consisted in lands, improvements, or cattle; and they also alleged that the juridical possession was duly given to the grantees of all that property, whether

Opinion of the court.

buildings, vineyards, orchards, gardens, or land, and that the grantees remained in peaceable and quiet possession of the premises until they were forcibly ejected from the same under the orders of an officer of the United States. Representation also was, that the grantees at the time of the purchase were large creditors of the Mexican government, and that the sale was in all respects fair and genuine, and for the full value of the property. Other appellee claims title as grantee under the other original purchaser, and the record shows that a copy of that conveyance was filed with the petition.

I. Claimant introduced the grant described in his petition as the foundation of his claim, and it bears date as represented in the petition, and purports to have been signed by the governor as therein set forth and alleged. Recitals of the document show that the grantees solicited the grant for their own benefit and that of their families, and yet the record furnishes no trace of any such petition. None such was introduced, nor was there any attempt made at the hearing to account for its absence. Authority to grant the property of the missions, as specified in the instrument, is claimed to have been derived from the Departmental Assembly. Reasons assigned for the exercise of the power were, that it was necessary both for the payment of their indebtedness, and to prevent their total ruin, and as if those reasons were insufficient or unsatisfactory, it is added, "and to provide resources that may assist in the common defence in case of foreign invasion, which, according to self-evident data, is very near happening." Theory of claimant is, that the sale was a public sale, but there is no evidence of the fact; and the presumption, if any, from the recitals of the grant, is clearly the other way. Had the sale been a public one, then it would have been of no importance whether the purchasers were worthy or unworthy persons, provided they were the highest bidders and competent to take, and actually paid or secured the consideration. But the representation is, that they had "rendered valuable services to the government, and furnished eminent aid for the better protection and secu-

Opinion of the court.

rity of the department, under the guarantee of a just indemnification when the general treasury should be unembarrassed," and these representations are evidently put forth as considerations which influenced the granting power in acceding to the application of the grantees, and in making the grant for their own benefit and that of their families.

II. All that was necessary having been considered and examined, the recital in effect then is, that the governor, in the exercise of the powers with which he was invested, decided to execute a real sale and perpetual alienation of the mission in question to the original grantees, "with all the appurtenances recognized as thereunto belonging, consisting of lands, improvements, real estate, or self-moving property." Principal conditions were: 1. That the grantees should pay to the creditors of the mission the amounts presented against it, and properly proved within the period of two years. And 2. That they should thereafter and forever provide for the support of the father minister residing at the mission, and for the preservation of divine worship. Authenticity of the grant was proved before the commissioners by the testimony of one Nicholas A. Den, who testified that he was acquainted with the handwriting both of the governor and that of the secretary appearing on the document, and that the respective signatures were true and genuine. Evidence to show a compliance with the principal conditions is entirely wanting, or that the grantees ever went into the possession of the property under the grant. Grant bears date on the eighth day of June, 1846, but it is accompanied by a proclamation, signed by the governor, which, from its contents, though without date, must have been written at least a month later. Last-named document recites that the forces of the United States were then in the occupation of the towns of Monterey, Sonoma, San Francisco, and other frontier places north of the department, "where already waves the flag of the stars." Our forces took possession of Monterey on the seventh day of July, 1846, and the governor of the department well knew when that event occurred, for on that day the Mexican forces fled from that city, and never afterwards had posses-

Opinion of the court.

sion of the place. Commissioners confirmed the claim, and the United States appealed to the District Court.

III. Deposition of the secretary of the governor was then taken by the claimant, and the witness ultimately testified that there was a written document given to the original grantees in the form of a title, but he admitted that he could not recollect the date.

United States resisted the confirmation of the claim upon several grounds. *First*, they contended that the grant was antedated and fraudulent. *Secondly*, that the evidence introduced to establish its authenticity was incompetent and insufficient to justify a finding in favor of the claimants. *Thirdly*, that the governor had no authority under Mexican law to warrant him in making the grant, and consequently that the same was void.

District Court affirmed the decree of the commissioners, and the United States appealed to this court. Questions discussed here are substantially the same as those presented in the court below, but in the view taken of the case, it will only be necessary to examine the third proposition, as we are all of the opinion that the sale was made and the grant issued without any pretence of authority.

IV. Ample authority was conferred upon the Governor of California to grant vacant lands belonging to the Supreme Government. Such authority was derived from the colonization law of the eighteenth of August, 1824, and the regulations of the twenty-first of November, 1828, as has been affirmed by repeated decisions of this court. But all of those decisions proceed upon the ground that the authority conferred is limited and restricted to the granting of unoccupied public land. Grants under those laws were required to be made subject to the approval of the Departmental Assembly, and consequently unless such approval was obtained, the title was not regarded as perfect and complete. Public establishments of the department could not be granted under those laws, nor even lands which were in the lawful possession and occupancy of persons claiming provisional title under the government. Repeated decisions of this court have au-

Opinion of the court.

thorized these conclusions, and in *United States v. Vallejo*, 1 Black, 541, it was expressly held that the Spanish system of disposing of public lands differed so widely from that provided for by the Mexican law of the eighteenth of August, 1824, and the regulations of the twenty-first of November, 1828, that the former system must be regarded as repealed, on account of the inconsistency and repugnancy of the latter system. Effect of that ruling is to regard all prior regulations upon the subject as inoperative, but the court went farther, and held that those laws were the only laws of the Mexican Congress passed on the subject of granting the public lands which were in force in that department, with the exception of those relating to the missions and towns, which will presently be considered. All pretence of authority, therefore, may be considered at an end, unless it can be found in the laws relating to the missions, or can be regarded as conferred by the Departmental Assembly, as is assumed in the grant. Appointment of the governor of a territory emanated from the Supreme Government, and all his powers were derived from the same source. Departmental Assembly consisted of seven members, who were elected from districts previously assigned by law. Many duties were devolved upon the governor, and also upon the Departmental Assembly, where each was required to act independently of the other. But other duties were prescribed, in the performance of which the governor and the Assembly were required to act in concurrence. In the latter class the governor could not act separately, though in some instances it was competent for the Assembly to act in his absence. *United States v. Osio*, 23 How., 285. Powers of the governor as such emanated from the same source as that from which he derived his commission, and there is no reason whatever to conclude that his authority over the public lands or public establishments of the department could be enlarged or diminished by the Departmental Assembly. 1 Arrillago Recop., pp. 202-210.

Supreme Government, on the seventeenth day of August, 1833, issued its decree secularizing the missions in California.

Opinion of the court.

Intention of that decree was to make a radical change in regard to the temporalities of the missions, by taking their management and control from the priests, and vesting them in the civil authorities.

V. Congress of Mexico, on the third day of November, 1833, passed an act authorizing the executive to adopt all measures which should secure their colonization, and for that purpose gave authority to use the property donated to pious uses, in order to facilitate the operations of the commissions and the transportation of families. Mexican Government also published another decree of secularization, on the sixteenth day of April, 1834, which provided that the missions of the republic should be secularized; that they should be converted into curacies, the limits of which were to be designated by the governors of the territories in which the missions were situated. Assembly, on the ninth day of August, 1834, adopted certain provisional rules for secularizing the missions and converting them into pueblos; but those rules were made subject to the approval of the Supreme Government. Additional regulations were also promulgated by the governor, on the third of November, in the same year, upon the same subject; but on the seventh day of November of the following year, the Supreme Government issued a decree suspending the Secularization Act until the curates should take possession of their parishes, as had been provided by the second section of the act. Bishop of California, on the seventh day of November, 1840, addressed a petition to the Supreme Government, containing eight special requests, which in effect contemplated the suspension or repeal of the Act of Secularization. Corresponding decree of the President is dated on the same day, and directs that a general order be issued to the governor for the restoration, by means of the subaltern authorities, without delay or impediment, of the possessions and property used by them under their administration for the conversion of the heathen. Proof is entirely wanting to show that that order was ever annulled. On the contrary, the clear presumption is that it

Opinion of the court.

remained in full force at the treaty of peace between the two countries.

VI. Constitution of 1824 did not define the powers of Departmental Assemblies or Territorial Deputations, as they were always called while that constitution remained in force. During the administration of Santa Anna, on the twelfth day of June, 1843, the Mexican Government adopted a new organic act, known as the "*Bases Organica.*" Title seven defines the powers of the Departmental Assemblies, and the provision, among other things, contains the following, to wit: "To decree what is useful and conformable respecting the acquisition, alienation, and exchanges of the property that may belong to the community of the department. With regard to the alienation of lands, the existing laws shall be observed." Those bodies were vested, as will be seen, with the power of acquiring, alienating, and so changing the property belonging to the department; but it is not perceived that they could confer any power upon the governor even upon that subject, while in relation to the alienation of lands, that power was expressly restricted to what was conferred by the laws of colonization, which, as is now well known, was to approve or disapprove of a grant when regularly made by the governor under those laws.

VII. First decree of the Departmental Assembly, under Governor Pio Pico, upon the subject of the missions, is dated on the twenty-first day of April, 1845, and recites that the government will demand exact information as to their debts, and will suspend until a convenient time the granting of the lands immediately contiguous to the missions. Second decree bears date on the twenty-eighth day of May following, and provides for calling together the Indians of certain missions therein named, by means of a proclamation; and also, if they fail to reunite within one month from the day of the publication of the proclamation, that they should be considered as notified that the missions would be declared vacant, and be disposed of as might best suit the general good of the department. Decree of the twenty-eighth of October, 1845, authorized the sale to the highest bidder of

Opinion of the court.

certain missions therein named, which, however, did not include the one in question. Provision was also made in the same decree for renting the other missions, under certain stringent regulations. Third decree was passed on the thirtieth of March, 1846, and purports to authorize the Departmental Government in carrying into effect the object specified in the second decree, so far as respects the missions of San Gabriel, San Luis Rey, San Diego, and any others in similar circumstances, to act in such a manner as may appear most conducive to prevent their total ruin. Reference is doubtless made in the grant to this last-named decree, as the foundation of the authority for making the sale. Information, however, had reached the Supreme Government long before any such pretended authority was exercised, that the governor of the department was devising measures for the sale of these properties. Effective measures were immediately taken to prevent any such abuse of the powers committed to his charge. Those measures consisted in the order of the President suspending all proceedings respecting the alienation of the property till the determination of the Supreme Government, and was accompanied by directions given to the Departmental Government to make a report of all the particulars.

Evidence that these preventive measures were taken, consists of a despatch from the Minister of Industry and Public Instruction, addressed directly to the governor, in which those facts are very formally and fully stated.

VIII. Even suppose such a power had been conferred upon the governor by the Supreme Government, still it was clearly competent to withdraw the power and forbid its exercise; but the truth is, the governor never had any such power. Despatch of the Minister of Industry and Public Instruction was not issued to recall a power previously conferred, but to prevent the attempt to exercise a power never possessed.

Reference is also made to the despatch of the Minister of War, of the tenth of March, 1846, and also to the proclamation of the President, of the thirteenth of March, in the same year, as conferring such an authority; but it is so obvi-

Statement of the case.

ous that neither of the documents will bear any such construction that we do not think it necessary to enter into any argument upon the subject, and only advert to it that it may not appear to have been overlooked.

The decree of the District Court is therefore reversed, and the cause remanded, with directions to

DISMISS THE PETITION.

NOTE.

At the same time with the preceding case, and argued with it on one brief, another case, relating to a different mission, that of San Luis Rey, in the County of San Diego, but so far as respects the law governed by the same principles, was decided. It was thus:

UNITED STATES *v.* CAREY JONES.

The Governor of California had no power, on the 18th May, 1846, either under the colonization law of August 18, 1824, and the regulations of November 21, 1828, nor yet under the despatch of March 10, 1846, from Tornel, Minister of War, nor under the proclamation of Mariano Paredes y Arillaga, President ad interim of the Mexican Republic, dated March 13, 1846,—these two last made in anticipation of the invasion of California by the forces of the United States—nor under any other authority, to make a valid sale and grant of the mission of San Luis Rey.

LIKE the preceding case, this one came before the court upon appeal from a decree of the District Court of the United States for the Southern District of California, and arose originally upon a petition for the confirmation of a land claim, before the Board of Commissioners appointed under the act of the 3d March, 1851. The grant in this case was thus:

“PIO PICO, CONSTITUTIONAL GOVERNOR, &c.

“Whereas, Don Antonio Jose Cot and Don Jose Antonio Pico have presented themselves to this government, petitioning that it shall give them as a legitimate possession the mission of San Luis Rey and the rancho of Palas, with the lands which pertain to them, in payment of \$2000 in money, and \$437 and four reals in grain, with which they have assisted the government in its exigencies; they both obligating themselves to satisfy, in every description of produce, the debt of the said mission of San Luis Rey in the