of New Orleans, or neutrals residing there, and not affected by any attempts to run the blockade, or by any act of hostility against the United States after the publication of the proclamation, must be regarded as protected by its terms.

It results from this reasoning that the Venice and her cargo, though undoubtedly enemies' property at the time she was anchored in Lake Pontchartrain, cannot be regarded as remaining such after the 6th of May; for it is not asserted that any breach of blockade was ever thought of by the claimant, or that he was guilty of any actual hostility against the national Government.

It is hardly necessary to add that nothing, in this opinion, touches the liability of persons for crimes or of property to seizure and condemnation under any act of Congress.

DECREE AFFIRMED.

[See *supra*, p. 135, *The Circassian;* a case, in some senses, suppletory or complemental to the present one.]

PICO *v.* UNITED STATES.

When a claim to land in California is asserted as derived through the Mexican Land System, the absence from the archives of the country, of evidence supporting the alleged grant, creates a presumption against the validity of such a grant so strong that it can be overcome, if at all, only by the clearest proof of its genuineness, accompanied by open and continued possession of the premises.

APPEAL by Andres Pico from the decree of the District Court of the United States for the Northern District of California, the case being as follows:

Pico claimed a tract of land in California, to the extent of eleven square leagues, under a grant alleged to have been issued to him on the 6th of June, 1846, by Pio Pico, then Mexican Governor of the department. In 1852 he presented a petition, for the confirmation of his claim, to the Board of Commissioners to ascertain and settle land titles in Califor-

nia, created under the act of March 3d, 1851. The board rejected the claim; but on appeal to the District Court, the decree of rejection was reversed, and the claim was adjudged to be valid, and was confirmed. The United States appealed from this decree of confirmation to the Supreme Court, and by that court the decree was reversed, and the cause remanded for further evidence.* Further evidence having been taken, the case was again brought before the District Court for hearing, and by that court a decree was entered, on the 4th of June, 1862, adjudging the claim to be invalid, and rejecting it. From this decree the present appeal to the Supreme Court is taken.

In support of his claim before the District Court, the claimant produced three documents,—the first purporting to be a grant from the Mexican Governor, Pio Pico, dated June 6th, 1846, for the land; the second purporting to be a certificate of the approval of the grant by the Departmental Assembly, on the 15th of June, 1846; and the third purporting to be a communication from the Deputy Secretary of the Assembly to the Secretary of State, informing him that the grant, together with two other grants, had been approved by the Assembly on the 15th of July, 1846.

Of the first two documents there was no trace in the archives, except what is furnished by the third document. There was no evidence that any of the proceedings required by the Mexican Colonization Regulations, preliminary to the issue of a grant, were taken, either by the claimant or the Governor. The journals of the Departmental Assembly showed that no proceedings were had on the 15th of June, 1846, relating to the grant in question; and that there was no session of that body on the 15th of July, 1846. The third document was found among the archives, but was on a separate sheet, unconnected with any other papers. There was no evidence in the case that the grantee ever took possession of the land under the alleged grant, or that such

* See United States *v.* Pico, 22 Howard, 406.

grant was known, or its existence suspected, until long after the United States had occupied the country.

Mr. Gillet, for the appellant.

Mr. Speed, A. G., and Mr. Wills, for the United States.

Mr. Justice FIELD delivered the opinion of the court.

The regulations of 1828, which were adopted to carry into effect the colonization law of 1824, prescribed with great particularity the manner in which portions of the public domain of Mexico might be granted to private parties, for the purposes of residence and cultivation. It is unnecessary to state the several proceedings designated, as they have been the subjects of frequent consideration in previous opinions of this court. All of them, from the petition of the colonist or settler to the concession of the Governor, were required to be in writing, and when the concession was made, to be forwarded to the Departmental Assembly for its consideration. The action of that body was entered, with other proceedings, upon its journals, and these records, together with the documents transmitted to it, were preserved among the archives of the Government in the custody of the Secretary of State of the Department. The approval of the Assembly was essential to the definitive validity of the concession, and when obtained, a formal grant was issued by the Governor to the petitioner. The regulations contemplated an approval to precede the issue of the formal grant; so when the grantee received this document the concession should be considered final. For a long time after the adoption of the regulations this course of proceeding was followed; but afterwards, and for some years previous to the conquest, a different practice prevailed, and the formal title-papers were issued without waiting for the action of the Assembly, a clause being inserted to the effect that the grant was subject to the approval of that body. Of the petitions presented and grants issued, whether before or after the approval of the Assembly, a record was required to be kept in suitable books provided for that purpose.

As will be perceived from this statement, it was an essential part of the system of Mexico, to preserve full record evidence of all grants of the public domain, and of the various proceedings by which they were obtained. When, therefore, a claim to land in California is asserted under an alleged grant from the Mexican Government, reference must, in the first instance, be had to the archives of the country embracing the period when the grant purports to have been made. If they furnish no information on the subject, a strong presumption naturally arises against the validity of the instrument produced, which can only be overcome, if at all, by the clearest proof of its genuineness, accompanied by open and continued possession of the premises.

Tested by this rule, the grant under which the appellant claims was properly rejected as invalid. The archives contain no trace of its existence, with the exception of a communication from the Deputy Secretary of the Assembly, addressed to the Secretary of State, informing the latter that the grant had been approved on the 15th of July, 1846. The certificate of approval produced by the claimant declares the approval to have been made on the 15th of June preceding. The journals of the Assembly destroy all confidence in the statements of both certificate and communication. They show that no session was held on the 15th of July, and that no proceedings with reference to the grant in question were had on the 15th of June. There can be little doubt, therefore, that the communication was introduced among the archives subsequently to the acquisition of the country.

Nor was there any evidence produced, either before the Board of Commissioners or the District Court, that the grantee ever entered into possession of the premises alleged to have been granted, or that the existence of the grant was known or suspected until long after the conquest.

The decree of the District Court rejecting the claim must, therefore, be affirmed; and it is

SO ORDERED.