

BREIF ON PUEBLO LANDS

OF SAN DIEGO

"TITLE TO DRY LAND OF SAN DIEGO"

"TITLE TO WATERFRONT"

G. P. TAGGART

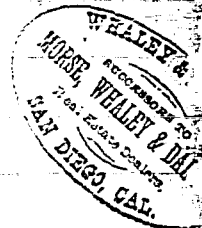
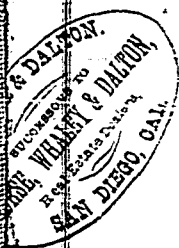
The Pueblo Lands of San Diego.

The Title to the dry lands of the Pueblo.

Title to the Water Front on the bay of San Diego.

BRIEF.

By C. P. Taggart.



The Title Under the Spanish and Mexican Governments.

The first occupation and settlement of California, by the Spanish Government, was under the authority of the Church, and the whole country was divided into Missions governed entirely by the Priests.

The Church had no title in the Mission lands, but held possession for religious purposes.

On the 14th day of May 1769, the Mission of San Diego was established, and in the same year the Presidio of San Diego was organized.

The Presidio was the military part of the Mission, and fixed at what is now known as Old San Diego.

The Mission of San Diego

five miles from the Presidio square, in a North easterly direction, up what is known as Mission Valley.

(see map)

After the 17th. day of August, 1833, the Missions of California were regarded as national property, and held at the disposal of the Government.

Rockwell's Spanish and Mexican Law, page 442.

When it became expedient to change a Mission into a Pueblo, a name was given declaring for its patron the Saint under whose auspices and venerable protection the Mission was founded.

See Article 15. of Extracts from Instructions &c., for San Diego and Monterey, dated, Mexico, August 17th, A. D. 1773.

Ibid, page 445.

The quantity of land to be assigned for the use of the inhabitants of a Pueblo was defined in an order of Pedro de Kerra at Chihuahua, March 22, 1791, in the following language
"Considering the extent of four common
" leagues measured from the centre of the
" Presidio square, viz:
" Two leagues in every direction to be
" sufficient for the new Pueblo to be formed

" under the protection of said Presidios.
" I have likewise determined in order to
" avoid doubt, and disputes in future,
" that said Captains restrict themselves
" henceforth to the quantity of house lots
" and lands within the four leagues
" already mentioned, without exceeding
" in any manner such limits." Ibid, 451.

The Mexican law of August 17th, 1833,
secularizing the Missions in Upper and
Lower California, will be found in full,
in Rockwell, pages 455 and 456.

The Pueblo of San Diego was organized
according to law, in the year 1835. See
the report of Hon. Joseph S. Wilson,
Commissioner of the U. S. General Land
Office.

According to the law of March 22, 1791,
above stated, the Pueblo was entitled
to four common leagues of land,
measured from the centre of the Presidio
square, viz: Two leagues in every
direction; and as soon as the organization
was complete, by operation of law the
title of the Pueblo lands vested in the
Pueblo authorities for the use of the
inhabitants.

Thompson vs. Leely, 5 Wall. 335.

United States vs. Pico, 5 Wall, 540.

Start vs. Burnette, 15 Cal. 542-561.
Grisar vs. McDowell, 6 Wall. 373.

In the year 1845, the Pueblo lands of San Diego were assigned and a map thereof made, by competent Mexican authority. This survey and map were regularly approved by Don Pio Pico, then Governor of California and countersigned by the then Secretary Don Mateo Moreno.

The entire proceedings, in the matter of this assignment were marked by a degree of regularity, according to the testimony of all the witnesses, before the U. S. Land Commission, not often known under the Mexican rule of this country.

See Testimony marked "A."
Under the laws of Spain and Mexico, this assignment was known as a judicial possession, and no further action on the part of the Government was necessary to vest the title to all the lands thus assigned in the Pueblo authorities for the use and benefit of the inhabitants of the Pueblo.

"No other evidence of title than such

assignment was required nor was any other given.

United States vs Pico, 5 Wall. 540.

Nart vs Burnett, 15 Cal. 542.

Mintion vs Brower, 24 Cal. 644.

This assignment was prior to the change of flags, and when the Mexican Government was in full possession and authority of the country. The Americans did not take the country until the 7th, July, 1846. one year after the survey and map made by Henry O Pritch, under the authority of the Mexican Government. See testimony before Land Commission of U. S. Exhibit "A"

The title being perfect it was protected by the following provision of the 8th article of the Treaty of 1848 between the Mexican and United States Governments, to-wit:

"Mexicans now established in Territories
"previously belonging to Mexico^{and}
"which remain for the future within
"the limits of the United States, & as
"defined by the present treaty, shall be
"free to continue where they now reside
"or to remove at any time to the

"Mexican Republic, retaining the property
" which they possess in the said Territories
" or disposing thereof, and removing the
" proceeds whenever they please, without
" their being subjected on this account
" to any contribution, tax or charge
" whatever".

The Pueblo lands were reduced to
possession and the title protected
by this treaty.

Graham vs. United States, 4 Wall. 261.
United States vs. Southerland, 19 How. 363.
United States vs. Wiggins, 14 Pet. 349.
Geschmaker vs. Thompson, 18 Cal. 12.

"The cession of the Territory did not impair
" the rights to private property. They were
" consecrated by the law of Nations and
" protected by the treaty. A right of
" any validity before the cession was
" equally valid afterward".

United States vs. Moreno. 1 Wall. 404.

Beard vs. Federy, 3 Wall. 478.

Geschmaker vs. Thompson, 18 Cal. 12.

From the date of the survey in 1845 it
became a perfect title, including all the
lands on the Ditch map, taking effect
by relation as if the survey had been

made in 1835, the time of the organ-
= ization of the Pueblo.

Landes vs. Brandt, 10 How, 370.

Minterm vs. Brower, 24 Cal. 644.

Grisar vs. McDowell, 6 Wall. 380.

Only unchoate^{and} imperfect titles were
required to be presented to the Board
of Land Commissioners. Perfect titles
were not required to be so presented.

Minterm vs. Brower, 24 Cal. 644

Steinbach vs. Moore, 30 Cal. 507.

Maquire vs. Tyler, 8 Wall. 652

The Action of the U. S. Government.

The claim for the Pueblo lands was how-
= ever presented to the U. S. Land Commission,
appointed under Act of 1851, "To settle
Land titles in California." ^{and} the
following decree was entered to wit:
"In the case, on hearing the proofs ^{and}
"allegations, it is adjudged by the Commission
"that the claim of said petitioners is valid;
"and it is therefore decreed that the same
"be confirmed. The land of which con-
= firmation is made is situated in San
"Diego County, and is known as the Pueblo
"or town lands of San Diego, and is

"bounded as delineated on the map filed
"in this case" and marked 'Exhibit A. H.
"J. B.' to the deposition of Santiago
"Arquello, to which map reference is
"hereby made for a more particular description".

The decree became final by the dismissal
of the appeal by the United States, and it
stands as the final decree in the case.

The map referred to is the Fitch map,
made under the Mexican Government,
approved by Arquello, Sub-Prefect, and
by Governor Pro Pico, and countersigned
by the Secretary of the Department in 1845,
before the change of flags. That is, the
Government of the United States has declared
by its decree that all the land on that map
belonging to the Pueblo of San Diego at
the time of the conquest of the country,
on July 7, 1846. and that its title thereto was
perfect at the organization of the Pueblo
in 1835. as soon as survey was made in 1845.

Higuera vs. United States, 5 Hall. 834.

United States vs. Sepulveda, 1 Hall. 107.

Alviso vs. United States, 8 Wall. 340.

The map is as much a part of the decree
as if recited in it.

United States vs. Sutter, 21 How. 176.

In commenting on the case of the *United States vs. De Aguirre*, 1 Wallace, the Court say - "In other words, the juridical possession was conclusive as to the boundaries and extent of the land granted.

5. Wallace, 539. To the same effect is the case of *Graham vs. United States*, 4 Wall. 259.

The surveying department of the U. S. Government has defined the boundaries of the Pueblo lands of San Diego, following the same exterior lines as fixed by the Mexican Government in 1845. by Henry W. Fitch, except the water line. Instead of running from Point Loma to Las Chollas, in an Easterly direction, as done by Fitch; - see testimony of Moreno and Arguello - the American surveyor, Hayes, followed the meanderings of the bay at ordinary high tide.

The decision of the Hon. Secretary of the Interior settles the question as to the dry lands of the Pueblo, so far as the U. S. Government is concerned.

The Water Front

The surveying department of the Government cannot confiscate the lands of the Pueblo.

If the tide lands in the bay of San Diego were assigned to the Pueblo in 1845, before the change of flags, and if such lands could be granted by the Spanish and Mexican Governments, then the grant was protected by the Treaty of 1848 and the action of the surveying department of the U. S. Government in excluding these lands from the survey, under the decree of the Land Commission of 1851, is a nullity so far as the Pueblo and those claiming under it are concerned.

The survey must conform to the decree in all respects else it cannot stand.

Passath Case, 2 Hall. 649.

United States vs. Hallee, 1 Hall. 439.

Graham vs. United States, 4 Hall. 260.

Lanfear vs. Nunley, 4 Hall. 208.

It will not be questioned at this day but that the Spanish and Mexican Governments had the power to grant and did grant land below ^{high} water mark and covered by the ocean. out to deep water or ship's channel.

Pollard's Lessee vs. Hogan et al. 3 How. 210.

Geschmacker vs. Thompson, 18 Cal. 12.

Ward vs. Mulford, 32 Cal. 366.

The tide ^{and} submerged lands in the bay of San Diego being described on the map, which is made part of the decree of confirmation are as much a part of it as though mentioned by name.

Commissioner Stilson concedes,
"That the title to the lands bounded by the sea is primarily based upon Spanish laws, ordinances ^{and} usages and not upon English or United States Common or Statute law" That being so it follows that the Spanish law must govern in this case and not the English common law.

The case of the United States vs. Pacheco, 2 Stall. 590 ^{and} the authorities in 3d. Kent 427 announce the English common law and therefore are not in point in this case as to title.

The Spanish ^{and} Mexican law govern the grant having been made ^{and} perfected by the Mexican Government.

When this country passed under the American flag on the 7th. July 1846, the tide lands in the Bay of San Diego belonged to the Pueblo by the judicial survey of 1845. When the State of California came into the Union there

were no tide lands in San Diego Bay, fronting the Pueblo, that had not been disposed of by the former Government.

Beechmaker vs. Thompson, 18 Cal., p. 12.

The San Francisco case is not parallel because there never was an assignment of the Pueblo lands under the Mexican Government. Its claim was imperfect, needing some Act of the new Government to perfect the title.

Grisar vs McDowell, 6 Wall., 373.

At her the State of California came into the Union the title to the lands on the bay of San Francisco vested in the state, because there had been no assignment of the lands by the Mexican Government; but there was an assignment in the San Diego case. The title of the city to the tide lands and the Island does not depend upon whether there is a line drawn from Point Loma to Chollas Valley on the map, as indicated in Mr. Stilson's report. Point Loma and Chollas Valley are natural objects laid down on the map as calls in the survey —

"Moreno one of the witnesses, testifies that the "starting point of the survey was Point Loma, from thence we ran "in an Easterly direction to Challas Valley - the distance being about two "leagues - the shape of the land being "a triangle."

It makes no difference whether there is a line or not on the map; the law fixes the line. for, "It is a "universal rule that where a line "is given in a deed as running "from one monument to another "it is always to be taken in a straight "line if not otherwise described. If "the monuments are given they must "be joined by the most direct line."

2 Wash., on Real Property, and numerous cases cited, 632.

Easterly means in a line due East. Ibid.

But it is conceded that there is a line across one of the maps and some sort of tracing across the other; with the law as above stated neither is required. On measuring across from Point Loma to the Challas Valley the distance is found to be about two leagues, but if

The meanderings of the Bay are followed it is nearly five leagues.

The direction is nearly due East to go straight across, but if the shore line is followed the direction taken for the first league will be nearly due North.

The Pueblo and City authorities have disposed of a great quantity of these lands and the owners have been paying taxes on some of them for more than twenty years. The tide lands at La Playa were sold in January, 1850, and some as early as 1849. Those in front of Middletown, out to low water, in June, 1850. A part of those in front of New San Diego in March, 1850; while a strip on the south of New Town was sold to Clark and others in June, 1850, and since sold to Horton and Morse. The authorities have always exercised control and jurisdiction over these lands, and have reduced them to possession as much as was possible and consist-
=ent. The State has never set up any claim to them or any part thereof.

On March 28, 1868, a law was passed by the State Legislature "To provide

"for the management and sale of the lands belonging to this State."
Statutes 1867-68. page 574.

Under this law a few persons attempted to locate the strip of tide lands between ordinary high tide and ordinary low tide in front of the Pueblo lands in the Bay of San Diego, at the rate of \$1 per acre.

The surveys were made by the County Surveyor of San Diego County and returned to the State Surveyor General's office. Protests were filed to these surveys by those claiming the lands under the city title.

No action was taken by the Surveyor General until the 4th Nov. 1871, when the Surveyor General approved the surveys and on the 10th of the same month issued a certificate of purchase for the lands.

On the 6th of November, 1871, the City of San Diego and those claiming title under the City for a part of the tide lands commenced a suit in the District Court.

of San Diego county against a part of these State Locators to set aside the certificates of purchase and the surveys. A restraining order was issued and the case is now set for trial on the 16th of October, 1872.

Prior to the approval of these surveys and the issuance of the certificates of purchase, and during the pendency of the matter in the State Surveyor General's office, that is on the 4th day of April, 1870, the Act of March 28th, 1868, offering to sell this class of lands was amended in the following manner:

Section seventy is amended as follows:-

" All the swamp and overflowed, salt,
" marsh and tide lands within one
" mile of the State Prison at San Quentin;
" within five miles of the city and county
" of San Francisco; within five miles of
" the corporate limits of the city of
" Oakland, and within two miles of any
" town or village, are hereby excluded
" from the provisions of this Act."

Act 1869-70, p. 872.

If this class of lands was ever offered

for sale by the State, under the Act of March 28, 1868, then, I claim that the same was withdrawn by this enactment; and as the State has the right to withdraw its lands at any time before the sale is complete, and since the State Locators had secured no vested rights in the lands. Prior to the passage of the amended Act, the action of the Surveyor General in approving the surveys and issuing the certificate of purchase, in 1871, was without authority of law and passed no title — the lands being within two miles of a town of this State; in fact directly in front of the town of San Diego.

Hutton vs. Friebe, 37 Cal. 478

Montgomery vs. Whitney, 40 Cal. 298.

Whitney vs. Friebe, 9 Stalk. 187.

After the repeal of the law by amendment, the jurisdiction of the Surveyor-General ceased.

Butler vs. Palmer, 1, Hill.

Sedgwick on Construction, 131.

Ex parte McBardle, 7 Stalk. 507.

The Supreme Court of the State of }

California, at the July Term, 1872.
in the case of Bonally vs. Mon Ching,
has disposed of these State locations
in very emphatic language. The
opinion of the Court is signed by
all the Judges.

The Court holds:

"It is already seen that
the lot in controversy lies between
ordinary high and low water mark,
and that the whole land covered by
the patent is a narrow strip situated
on the margin of Napa Bay, having
one of its sides bounded by a line
drawn along the 'bank' of the bay
and the other by the line of low water
mark at Spring tide.

"Tidelands are not reclaimable within
the meaning of the word, as used in
People vs. Merrill, because they may
be filled in till the surface is
raised above the water, and they
are thus made available. Such
lands are called made lands and
not reclaimed lands.

"It is apparent, we think, that the
Act of 1858 did not authorize the

sale of the lot in controversy, and that being between ordinary high and low water mark, it was not capable of reclamation, and therefore, the sale of it was not ratified or authorized by the Act of 1861.

If this be so, the patent to this lot, at least, was issued without authority, and may be attacked collaterally in an action of ejectment.

(Patterson vs. Skinn, 11 Wheat, 380; Dole vs. Meador, 16 Cal. 324.)

The State locations are void, and the title of the water front is either in the city by reason of the juridical possession of 185⁴⁵~~4~~, or in the State.

At the last session of the Legislature an Act was introduced in the Senate by the Hon. James Mc Leay, State Senator from the San Diego District, releasing all the title of the State to the tide and submerged lands in the Bay out to ship's channel to the city and those claiming under it. It passed the Senate by a two thirds

vote and was lost in the Assembly for want of time. It is clear to my mind that the title of these lands is in the city, In case the Courts should hold otherwise, there will be no trouble in getting the State to release to the City at the next Session of the Legislature, as such has been the course of the Legislature in several cases of this kind, where there was no claim of title under the Mexican law.

See California Statute.

Titles from Pueblo^{as} City Authorities

According to the doctrine established by our Supreme Court in the case of *Hart vs. Burnett*, 15 Cal. 540. the title of the Pueblo lands was held in trust by the Alcades^{as} and Ayuntamientos for the use of the inhabitants under the Spanish^{as} and Mexican Governments.

The authority to grant such lands was vested in the Ayuntamientos and in the Alcades or other officers who at the time represented it, or had succeeded to its powers and obligations.

This property and these trusts were public and municipal in their nature and were within the control of the State Sovereignty, or State Legislature after the old government was succeeded by the new government.

The power to direct or to say how the trust should be executed vested in the State Legislature after the State of California came into the Union.

Also see, *Payne vs. Dandwell*, 16 Cal. 22.

Grogan vs. San Francisco, 18 Cal. 592.

By the charter of the City of San Diego, passed March 22, 1850, p. 121, the power to "rent, lease or sell," the Municipal lands was granted to the Mayor and Common Council of said City.

On January 30, 1852, the State Legislature passed an Act "To repeal the Charter of the City of San Diego and create a Board of Trustees" which gave to the Board of Trustees authority to sell the city property, including Real Estate, to pay the debts of the city.

The 11th. section provides that "when the debts of the said city are paid, no more

of the city property shall be sold except
by a vote of the inhabitants of said city,
they shall be authorized to do so, but
said Trustees shall hold the property
of the city for the sole use and benefit
thereof." Statutes 1852, page 223.

In 1868, there was a vote of the inhabitants
of the City of San Diego, on the question
whether a sale of the city property should
be made, and decided in the affirmative.

All sales prior to the second Monday in
March, 1868, had been at public auction;
after this vote, the sales were made on
petition to the Board of Trustees.

The "San Diego and Gila" Lands.

On the 30th. day of April, 1855, the Legislature
authorized the "Board of Trustees of the
City of San Diego to convey to the
President and Board of Directors of the
San Diego and Gila Southern Pacific and
Atlantic Rail Road Company, two
leagues of the Pueblo lands to aid in
the construction thereof."

A majority of the Trustees were authorized to make this grant to the Railroad Company; PROVIDED, that a majority of the legally qualified voters of the City of San Diego should vote in favor of the grant; that the company should construct and complete the railroad within ten years from the date of its present charter, and in case of failure so to do, then the land so conveyed should revert back to the City of San Diego. That such election should be ordered by the Board of Trustees of the city within six months after the passage of the Act; that thirty days' notice of such election should be given, stating the object of the same, and to be held and conducted as general elections.

That the lands so conveyed may be either sold, leased or hypothecated for the purpose of raising funds to construct the said road and the procuring of the necessary machinery for the same; but the land so conveyed shall not be sold, leased or hypothecated for any other purpose whatever.

The Act further provides for the survey and platting of the Pueblo lands and the selection of the two leagues for the Railroad Company — "so soon as the survey and plat shall have been completed. The Act provides for the specific manner of selecting the lands and that the conveyance shall be in accordance with the provisions of the Act. but not otherwise. See Statutes of 1855, 206th and 207.

The date of the Railroad Company's organization is November 7th, 1854.

The map and survey of the Pueblo lands by Charles H. Poole "Embracing the lots conveyed by the City Trustees to the San Diego and Gila Railroad Co." is dated 1856.

The election notice on the question of the grant by the Board of Trustees of the city was ordered at a meeting of the Board Sept. 11th, 1855, and the election took place in October 19th, 1855. — in favor of the grant. The selection of the lands was made on the 26th and 27th days of May, 1868, by the President of the Board of Trustees and the President of the

Railroad Company.

The conveyance, signed by only two of the Board of City Trustees, is dated 21st day of December, 1868, and conditioned that the Railroad Company shall complete the road in the time limited by the Act authorizing the grant, otherwise the lands conveyed to revert to the city.

José G. Estudillo, President of the Board of City Trustees, refused to sign the deed.

May 2d, 1861, the Legislature extended the time to the Board of Trustees of the city to convey the two leagues of land to this Railroad Company, to fifteen years from the date of the present charter; that is until the 7th day of November, 1869, and provided that the failure to complete the road should work no forfeiture of any title to any lands specified in Section one of the Act of 30th April, 1855. Statutes 1861, page 270.

March 30th, 1868, the Legislature extended the time to convey the two leagues of land to the Railroad Company by the City Trustees six ^{years} from the 31st day of

March, 1862; and the failure to complete said road before the termination of said period shall work no forfeiture of any title to any lands specified or referred to in said Acts of 1855 and 1861, or any other right conferred by the charter of said Company.

Statutes 1867-68, page 616.

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miles Spanish League

Confirmation of Titles in the City by the State Legislature.

March 26th, 1870, the State Legislature confirmed "all deeds of conveyance or grants of lands in fee, within the limits of the Pueblo lands of San Diego, heretofore made, executed and delivered in good faith to any person or persons, by any Ayuntamiento, Town Council, Alcalde, Syndic or Justice of the Peace of the Town or Pueblo of San Diego, or by any Mayor and Common Council or Board of Trustees of the City of San Diego, or by any person or persons acting as such Ayuntamiento, Town Council, Alcalde, Syndic, Justice of the Peace, Mayor and Common Council or Board of Trustees, are hereby legalized, ratified

and confirmed, and shall be deemed,
held and taken to convey a valid title
in and to the premises therein specified;
provided, that this Act shall be so construed
as to affect only deeds of conveyance and
grants of land made prior to the second
Monday in March, 1868."

Statutes 1869-70, page 409.

March 9, 1872, the Legislature passed a
second Act of Confirmation and Ratifi-
-cation "Confirming all deeds of convey-
-ance and grants of land in fee heretofore
made for and on behalf of the City of
San Diego and the inhabitants thereof,
for a valuable consideration, and signed
by the President and Trustees of said City-
that is to say, by the full board with
the regular corporate seal of the said
President and Trustees affixed after
such seal had been provided; are
hereby legalized, ratified, and confirmed;
provided that this Act shall only
apply to and affect deeds of conveyance
and grants of land made prior to the
twenty-fourth day of November, A. D.
Eighteen hundred and seventy one;
and provided also, that this Act shall
not extend to any tide or submerged

lands situate upon or in the Bay of San Diego below ordinary high water mark." Statutes of 1871-72, page 309.

All conveyances of the Pueblo or city property made by the Ayuntamiento, Alcaldes, or city Trustees, which are included in the Acts of confirmation and ratification above stated vest title in the grantee or grantees.

Branham vs. San José, 24 Cal. 605;

Landes vs. Brant, 10 How, 375;

Nash vs. Burnett, 15 Cal. 540.

It will be seen that the first Act of confirmation did not include the conveyance made to the Railroad Company in December, 1868. That Act only covered conveyances made prior to the second Monday in March 1868.

The Act of March 9th, 1872, does not include any deeds or grants, except those signed by "the President and Trustees of said city, that is to say, by the full Board." This conveyance is only signed by two of the Board of Trustees.

The City Charter of March 7, 1872.

On the 7th day of March, 1872. the Legislature passed "An Act to reincorporate the City of San Diego", and all other acts were by it repealed.

The power to sell and lease the Real Estate of the said city is in the following language under the head of "The General Powers of the Trustees: "To sell and lease the real estate belonging to said city, and to provide by ordinance for such sale or lease; but no sale shall be made except at public auction, after at least ten days' notice, and then to the highest and best bidder for cash." From which it will be seen that the only way the Trustees can sell the lands of the city according to ordinance is "At public auction after at least ten days' notice, and then to the highest and best bidder for cash."

The Power of the City to Borrow Money.

Under the same general head it is enacted in the city charter that the city Trustees

shall have the power as follows: "To borrow money upon the faith ^{and} credit of the city; but no loan shall be made without the consent to such loan of a majority of the real estate owners of the city, residing therein previously obtained.

"If the Board of Trustees desire to effect a loan for any purpose, they shall submit a proposition for effecting such loan, stating the amount of the loan, to the real estate owners of the City of San Diego, at a special election to be held for the purpose, the Board of Trustees giving ten days' public notice of the same; and if a majority of the real estate owners vote in favor of such proposition, the Board of Trustees shall have power to effect such loan, but not otherwise, and pledge the faith of the city for the payment of such loan. No person except an owner of real estate in said city, ^{and} residing therein, shall vote on said proposition."

There is no limit to the power, if the real estate owners of the city declare in favor of the loan. Power is also given "to levy a special tax not exceeding fifty cents

on the one hundred dollars in each year on all property, both real and personal, in said city for the payment of all interest money on any or all sums borrowed by virtue "and authority" of and in accordance with said charter.

Power is also given "To regulate railway tracts in the said city."

Conclusions.

1. That the title to all the land in said city as defined by the Fitch map, made in 1845, is in the city "and its grantees."
2. That the tide and submerged lands in the Bay of San Diego, are included in the Fitch map and belong to the city and its grantees.
3. That the State Tide Land Locations are void.
4. That should the Courts hold that the tide lands belong to the State and not to the City, that the next Legislature will release any and all of the State's

on the one hundred dollars in each year on all property, both real and personal, in said city for the payment of all interest moneys on any or all sums borrowed by virtue ^{and} authority of and in accordance with said charter.

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2. That the tide ^{and} submerged lands in the Bay of San Diego, are included in the Fitch map ^{and} belong to the city ^{and} its grantees.
3. That the State Tide Land Locations are void.
4. That should the Courts hold that the tide lands belong to the State ^{and} not to the City, that the next Legislature will release any ^{and} all of the State's

title to the tide lands needed for Railroad purposes in the Bay of San Diego to the Texas and Pacific Railroad Company.

5. That all the conveyances included in the Acts of confirmation dated March 26, 1870, and March 9th, 1872, impart good and valid titles to the grantee or grantees of the lands conveyed.

6. That any conveyance of the San Diego and Gilia Railroad Company of the two leagues of land, by that Company to the Texas and Pacific Railroad Company must be confirmed by the Legislature.

7. That the City Trustees should also convey the said lands to the said Texas and Pacific Railroad Company, which deed must also be confirmed by legislation, unless the lands are not put up at public auction and sold in the manner indicated in the City Charter of March 7, 1872. If sold to the Texas and Pacific Company according to the provisions of the charter then said Act of confirmation will not be required, so far as the city

conveyance is concerned.

8. That the city can grant the right of way in, through, and over any and all of the streets of the city, and over its unsold lands to the Texas and Pacific Company.

W. P. Taggart

Testimony before the U. S. Land Commission of 1851, in the Pueblo San Diego Case.

Exhibit A.

Deposition of Santiago Arguello.

Answer. My name is Santiago Arguello; I am sixty-three years of age, and I reside eighteen miles south of San Diego.

Question No. 2. What official station or office have you filled in California, and for what length of time?

Answer. First, I was Military Commandment in San Diego; I was supplementary Member to the Mexican Congress; I was Prefect of the District of Los Angeles; I was a Member of the Departmental

Assembly when it was a Territory, and also when it was a State. In the year 1845 I was Sub-Prefect of San Diego; from the year 1826 or 1827, I was Military Commandment in San Diego; I was Sub-Prefect in San Diego during a part of the years 1845 and 1846.

Question No. 3. State what you may know about the organization of civil authorities at the Pueblo of San Diego, and the appointment of the First Alcaldes?

Answer. Being Military Commandment of San Diego, my military jurisdiction extended to San Gabriel; as I could not attend to the civil and military, which fact being made known to the Governor, he sent an order to me to take the census of the people, to see if the population was sufficient, according to the Constitution, to form San Diego into a Pueblo, and accordingly San Diego was made a Pueblo, and the first Alcalde was appointed on the 1st day of January, 1835; I was installing him by giving him his staff of office, and who was Juan Osuna.

Question No 4. Is Juan Osuna^{now} alive or dead?

Answer. He is dead.

Question No 5. Was, or not, the boundary of the Pueblo lands run out; if so, when and by whom, and by what authority?

Answer. Yes, they were; I being Sub-Prefect in 1845, gave orders to the Alcalde, that in, conformity to law, to call a meeting and draw up the Act, I being the President, in order that the boundary line should be established.

Question No 6. State the name and rank of the officers of the Pueblo that performed the aforesaid duty, and the names of the private citizens that aided therein?

Answer. The first and second Alcalde Francisco Javier Alvarado first, and Ramon Arguello second Alcalde, myself being President and Prefect; the citizens were Captain Fitch, a nautical man; Captain Smooks; Jose Antonio Estudillo, and Juan Osuna, all of whom are dead: there were also other citizens present as

spectators.

Question No. 7. Who acted as surveyor in running out the boundary line, and was there a map made: if so, by whom?

Answer. The persons whom I have mentioned under the supervision of the Alcalde, are the ones that run out the boundaries of the lands of the Pueblo. It was resolved in that assembly, that Captain Fitch should draw the map, and he accordingly did it, and presented it to me as Prefect.

Question No. 8. Did you, or did you not, approve the map as presented?

Answer. I approved it, and left it in the Archives of the Juzgado of San Diego, with the Act drawn up and all the other papers.

Question No. 9. You are here shown Exhibit A. H. and B. and asked if the same is the original above referred to?

Answer. It is the original plan made by Captain Fitch, and I know it is his

handwriting, having had many communications from him; the paper is the same that Captain Fitch generally used; the lines on the map truly represent the boundary of the Pueblo lands.

Question No. 10. State what natural landmarks of notoriety there were on the lines of the aforesaid Pueblo lands?

{ This question was withdrawn by claimant's attorney. }

Question No. 11. What quantity of land was the Pueblo of San Diego entitled to; and from whence did they derive their title to said land?

Answer. Two leagues, north, south, east and west, which made eight sitios ganado mayor, commencing from the center of the plaza; they received their right by law, which is of ancient date, and prescribed the same proceedings as pursued by the Assembly that I convoked; should the center of starting point in the Pueblo lands be near the sea shore, then the land required to make out the necessary complement

is added from the opposite sides, in equal proportions.

Deposition of Jose Matias Moreno.

Answer. My name is Jose Matias Moreno; my age is 36 years; my residence is San Diego, County, California.

2d Question. What office, if any, did you hold in California in 1846?

Answer. I was Secretary of the State Government of the Department.

3d Question. State how long you have lived in San Diego, and what you know of the boundaries of the Pueblo lands of said town, and your means of such knowledge?

Answer. I have known the town of San Diego ever since June, 1843. and have lived there most of the time since that period, in 1843; I learned some of the boundaries mentioned by travelling over them, and by information of the

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Answer. I have known the town of San Diego ever since June, 1843, and have lived there most of the time since that period, in 1843; I learned some of the boundaries mentioned by travelling over them, and by information of the

old inhabitants. In 1845, there was a map of said Puebla made by order of the Prefect, upon which the boundaries of said Puebla are designated; before that they were only known by the common acceptance and general recognition of the people and authorities. There was a copy of that map sent by the said Prefect to Governor Pico, and approved by him, while I was Secretary in 1846, in the latter part of the month of May. The Prefect of San Diego at that time was Santiago Arguello, who forwarded said map to the Governor. The Governor examined the said map and approved it, and signed it as Governor, and it was countersigned by myself as Secretary; one copy was sent, thus approved, to said Prefect, and the other was placed in the Archives of the Department.

Question. Look at the map now shown you, marked "A. O. L." and filed in this case, and state whether it is a copy of the said map which was approved by said Governor, and of which you have spoken?

Answer. It is a copy of that map.

I know it by the handwriting on the map. I was acquainted with the surveyor who made it, and I was with him and assisted on the ground in running the lines here marked; that was in August, 1845.

4th Question. Who made said survey, and drew this map?

Answer. Henry L. Pitch did, since deceased.

5th Question. Describe the boundaries as established?

Answer. From the point marked on the south part of the map, "Punta Loma" we ran in an easterly direction to a place called "Cañada de las Lhojas" also marked on the map, and there the top of the ridge was the boundary of the Pueblo lands, throwing said Cañada outside of the Pueblo lands into a tract now belonging to John Forster. Thence we ran in a northerly direction to a spring, marked on the map "Paso" where the boundary was established between the lands of the Mission and the Pueblo. The spring fell into the

Pueblo side of the line. He continued thence in the same direction to a point on the "Cañada de Soledad," as rather across the said cañada to the high hills on its north side; and from thence we ran in a line about parallel with said cañada to the sea coast, and the coast forms the remainder of the boundary down to the place of beginning, "Punta Loma". The point on the hill north of the Cañada de Soledad, from which we ran westerly to the sea, is the boundary of the Rancho of Perasquitos; and on that line there are 2 other hills which mark the boundary of the Rancho de San Diego.

Question. State as near as you can, the length of each of the lines you ran?

Answer. From the "Punta Loma" to the Cañada de Oborvas is about 2 leagues; from there to the Paso is about 2 leagues; from there to the hill beyond Cañada de Soledad is about 2 leagues; and thence to the coast about $\frac{1}{2}$ league or 1 league; and from there to Punta Loma, the place of beginning, about 5 leagues, as near as I can guess.