

**United States Vs. Pico**

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**Court :** US Supreme Court

**Decided On :** 1859

**Appeal No. :** 64 U.S. 321

**Appellant :** United States

**Respondent :** Pico

**Judgement :**

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**United States v. Pico**

**64 U.S. (23 How.) 321**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED*

*STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA*

## **SYLLABUS**

Where the archives of California show that a petition for land was presented to the justice of the peace and military commandant at New Helvetia in 1846; that a favorable report was made on the 1st May, 1846; that the prefect certified, on the

18th May, 1846, that the land was vacant; that the governor, on the 11th of June, 1846, made an order for a titulo in form, and the claimant produced from his custody a titulo dated at Los Angeles on the 20th of July, 1846, there is a departure from the regular and usual mode for securing lands under the colonization laws.

The titulo bears date on the 20th of July, and the 7th of July, 1846, is the epoch established by the act of Congress of 1851 and the decisions of this Court at which the power of the Governor of California, under the authority of Mexico, to alienate the public domain, terminated.

The evidence that the claimant occupied the land in 1847 is not satisfactory, or that he made any assertion of claim or title until the presentation of the claim in 1853 to the board of commissioners.

The nature of the claim is stated in the opinion of the Court.

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The appellee, a Mexican by birth, obtained a decree of confirmation in the district court for a parcel of land known as Las Calaveras, containing eight square leagues, and situated in Tuolumne County in California.

His testimony is an expediente, existing in the archives, in the custody of the Surveyor General, from which it appears that the claimant presented, to the justice of the peace and military commandant at New Helvetia, a petition, representing that he desired to obtain a grant for the land described in his diseno, and, to expedite his purpose, he requested a favorable report. One was made bearing date the 1st of May, 1846. A similar representation was made to the same officer in the District of Yerba Buena, who declined to act because the place was not within his jurisdiction. The prefect of that

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portion of the department certifies, on the 18th of May, 1846, to the capacity of the claimant, and that the land was vacant. The governor, on the 11th of June, 1846, made an order for the issue of a titulo in form.

Here the expediente terminates, but the claimant produces from his custody a titulo bearing date at Los Angeles the 20th July, 1846.

To strengthen his case, he adduces the testimony of a witness to the effect that the witness had built a house upon the land in 1847 and had occupied it as tenant from that date, that there were people who inhabited and cultivated the land for the claimant, and that before 1847 the disturbances in the country hindered any improvement or settlement.

This testimony is contradicted by a witness produced on the part of the United States who testifies with precision and seems to have had every opportunity of acquiring exact information. He says that he came to reside in the vicinity of the land in 1848 and that there had been no improvement or occupation of it, and that the cattle seen upon the land did not belong to the claimant; that he had never heard of a claim by the petitioner until 1853.

There are grave objections to the allowance of this claim. There is a departure from the regular and usual mode for securing lands under the colonization laws. There is some reason to believe that the governor was not at Los Angeles at the date of the order, and there is a failure to show, in any satisfactory manner, any assertion of claim or title under it, until the presentation of the claim, in 1853, to the board of commissioners. The claimant is a kinsman of the governor, and we should expect to find on the part of the governor the most exact attention to the laws prescribing rules for his guidance under such circumstances. Besides, the titulo bears date of a day when the conquest of Upper California had been completed by the military occupation of Monterey, Sonoma, Bodega, Yerba Buena, and the region of the Sacramento and American rivers, by the forces of the United States.

The commandant in that portion of the Department was making a rapid retreat to Lower California, leaving the country

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to the control of the United States. From the capture of Monterey on the 7th July, 1846, till the surrender of Los Angeles and the organization of a territorial government by Commodore Stockton, under the United States, there was scarcely six weeks. The Californian government, for all practical purposes, was subverted by the capture of Monterey and the country north of it.

In the act of Congress of 1851, and the decisions of this Court, that day is referred to as the epoch at which the power of the Governor of California, under the authority of Mexico, to alienate the public domain, terminated. Previously to that date, the claimant did not acquire a title to the land, nor has he acquired an equitable claim to it by any act done upon the land in the fulfillment of the colonization policy of the state.

Upon the whole case, our opinion is that the appellee has not sustained the validity of his claim, and that the decree in his favor must be

*Reversed, and his petition dismissed.*

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