

White Vs. United States

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Respondent : United States

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White v. United States

68 U.S. (1 Wall.) 660

APPEAL FROM THE DISTRICT COURT FOR

THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

Where there is no archive evidence of a California grant, and its absence is unaccounted for, and there has been no such possession as raises an equity in behalf of the party, and especially where, in addition, the expediente produced is

tainted with suspicions of fraud, the claim must be rejected.

The appellant, White, claimed a tract or rancho of land known as *San Antonio* under a grant alleged to have been made to one Antonio Ortega. The United States, appellees in the suit, claimed it under a grant alleged to have been made by the same authority to a certain Juan Miranda. One question, therefore, was as to the validity of the respective documentary titles thus set up. But this question was complicated by other questions: one of actual occupation, another of agency or representation, and a third of abandonment. Ortega had married the daughter of Miranda, and both Ortega and Miranda had occupied the tract -- Miranda and his family being sometimes in occupation, as Ortega and his wife were at others -- and the additional question therefore was whether Ortega was occupying under Miranda or Miranda occupying under Ortega -- a question made more difficult to solve by the fact that Ortega and his wife were in hostile relations, leaving it uncertain when *she* was in possession,

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as she was at times, whether she was occupying under her husband or under her father. In consequence of his domestic difficulty, moreover, Ortega left California in 1843 for Oregon, remaining there till 1847, between which years Miranda got *his* grant, and a question was whether Ortega had *abandoned* the property. Ortega's title was partly of a documentary kind and partly of an equitable sort, and resting on *parol* evidence. *The documentary title* consisted of a sheet of paper containing:

1. Petition to the governor, Alvarado.
2. A marginal order of reference.
3. An informe; and
4. A decree of concession.

There was also produced a map of the land solicited, though *when* made was a question in the case. The petition was in the name of Ortega, and was dated June

12, 1840. The marginal order was in the handwriting of and signed by Governor Alvarado and dated June 20, 1840; this date, however, being an *altered* one, as hereinafter stated. The informe was signed by M. G. Vallejo, and dated July 30, 1840. The decree of concession was dated August 10, 1840, and, translated, in its important parts as follows:

"I grant to Don Antonio Ortega the land petitioned for, with the understanding that in order to obtain the issue of the respective titulo, and to regularly make up the necessary expediente (by which the boundaries should be marked), and the necessary proceedings be taken, he *shall* make a map as required by law, which he shall present without delay, together with this instancia, which shall serve him as security during the further proceedings indicated."

These documents were produced, together with the map, *from the custody of the claimant*. It did not appear that they were at any time on file in the public archives. *The oral* testimony came from a great number of witnesses.

Governor Alvarado, who was twice examined, testified that he executed and delivered this grant to Ortega at the time it bears date, and that sometime afterwards, in the last of 1840 or first of 1841, Ortega brought to him the original

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expediente and map and left them with him, and that he kept them for Ortega until about 1848, when he gave them up to him.

As respected the date of the diseno, now produced by the claimants under the title of Ortega, testimony of Alvarado, given on his second one, was as follows, Ortega himself testifying also to the same effect as to the diseno:

" *Question 23.* You have said that Ortega twice presented himself to you in Monterey in 1840 in relation to this grant; state what papers, if any, he presented to you on the occasion of his first visit and what papers on the occasion of his second visit."

" *Answer 23.* My recollection is that he brought with him each time the same papers, that is the petition, but the first time without any map; the second time the petition and diseno together. He might have come other times, but I only recollect those two times."

It was at the *second* interview *that the "concession" was given.*

General Vallejo, agent of colonization under the Mexican government, testified that in 1838 or 1839, Ortega applied to him, as was customary, with his petition for permission to settle upon this rancho; that he gave him the permission asked for, and he immediately moved on the rancho, taking with him his father-in-law, Juan Miranda, and his family; that he built a house and corrals, [[Footnote 1](#)] and stocked the place with horses and cattle; that he (Vallejo) furnished him with stock for that purpose; that Miranda occupied the land for Ortega; that Ortega obtained the grant from Governor Alvarado in 1840; that he saw the grant himself; and that he never gave Miranda any license or permission to occupy this rancho, or any portion of it.

Richardson testifies that this rancho was granted to Ortega by Governor Alvarado in the year 1840; that he knew the boundaries of the rancho by seeing the original grant and having it in his possession; that Miranda occupied the rancho

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under Ortega by virtue of a special contract between Miranda and Ortega; that they *both* told him so.

De la Rosa testified that he wrote Ortega's petition for him, and made the very map now exhibited in the case; that he made it in 1839 or 1840; that he saw the grant, saw it in the house of Ortega on the rancho in question; that Miranda occupied the rancho for Ortega; that Ortega's family lived on it during his absence in Oregon; that Miranda applied for a grant of this land to himself while Ortega was absent in Oregon, he (Rosa) drawing and presenting the petition; that a grant to him was written out in the office of the secretary of state, but was never signed by the governor.

Jacob Leese, alcalde of Sonoma at the time Miranda applied for a grant, testified that he gave him the certificate found in his expediente wholly upon the allegation set forth in his (Miranda's) petition, and from the fact that he (Miranda) lived upon the land. He also says:

"But the fact of the former grant (to Ortega) being concealed or contradicted by the petition, I was deceived, and if the grant was obtained from the governor through the deception practiced upon the alcalde, that grant would be fraudulently obtained, and would be void."

Father Accolti, a priest, testified that he became acquainted with Ortega in 1845 in Oregon [to which place, as mentioned, Ortega went in 1843, remaining there till 1847 or 1848], and at that time Ortega urged him and some other priests and some sisters of Notre Dame to come to California and establish a school, stating that he would give them, together with "that piece of land, half of his stock of cattle on the land." He stated that he had the grant to the rancho from the Mexican government. The offer was made on condition that he would educate his (Ortega's) children. He also testified that the original title papers in this case, viz., the expediente and map, together with a deed subsequently given by Ortega to Brouillet, were all placed in his possession in December, 1849.

Father Brouillet, another priest, the person just mentioned by Father Accolti, testified that he made an agreement

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with Ortega in 1849 to educate his children, and that in consideration thereof, Ortega made a deed to him of all this rancho, excepting one league. He identified the original deed as the one delivered him by Ortega. He also testified that he was put in possession of this rancho by Ortega May 1, 1849, in the presence of one Miller and Theodore Miranda, a son of Juan, who was also present as a witness, and acquiesced to the possession given in his presence by Ortega. This possession was given on the rancho, and at the same time the deed from Ortega was delivered to him, as well as the original title papers of the rancho. He also

testified that the title papers, viz., the expediente and map, are the same which were delivered to him by Ortega, May 1, 1849, on this rancho, in presence of Miller and Theodore Miranda; that before he delivered to Ortega his contract to educate his children, he consulted General M. G. Vallejo as to the validity of Ortega's title, and that Vallejo assured him the title was genuine; that in the same year he took the said Ortega's expediente and map to Monterey, and there showed them to Governor Alvarado, and that Alvarado, at that time, assured him that the said title to Ortega's rancho was genuine; that there was but one question that could be raised in it, which was that the Departmental Assembly had not acted upon it, but that he did not think that would be any objection in the courts of the United States.

Miller, the person mentioned by Brouillet, confirmed this account of delivery of possession

Bojorques testified that Ortega owned this rancho as early as 1841, was in possession of it in 1839, and had a small house on the creek of San Antonio; that Juan Miranda and his son, Teodoro Miranda, occupied the rancho for Ortega; that he obtained his information from Ortega and *both the Mirandas*.

Walker testifies that he knew Ortega in Sonoma in 1843, that he told him at that time that he owned this rancho, and that he often heard him talking about his rancho in the presence of others, and he "never heard it denied or contradicted that it was his rancho," and that it was generally

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reported to belong to Ortega. He also stated that he went to Oregon in the same company with Ortega; that before leaving Sonoma for Oregon, Ortega went to his rancho and brought stock away from there, and that he saw him driving the stock, and he said he had taken them from the rancho for the purpose of driving them to Oregon, and, when in Oregon, he often heard Ortega say that he intended returning to his rancho of San Antonio and to his family.

In addition to this and other similar testimony, it appeared that the French traveler, *Duflot de Mofras*, who was in California in 1841, in his published *Exploration du*

Territoire de l'Oregon, des Californies &c., [[Footnote 2](#)] a work whose general good authority had been recognized by this Court, [[Footnote 3](#)] in giving the names of the owners of ranchos in this region, includes Ortega among them. The passage in De Mofras' book, translated, reads thus:

"At the bottom of the great *anse* of Sansalito, to the north of the tongue of land which divides, and at two leagues to the east of Richardson one meets with the rancho of the deceased Irishman, Read. . . . Behind the farms of Richardson and of Read, to the north and the west as far as the sea, arise the small ranchos of Las Gallinas, Berry, Garcia, and Ocio, near the Punta de los Reyes, and Bojorques, the nearest to the port of La Bodega. Finally, more to the north and the east, ORTEGA, Martin Pituluma, the Vallejos, Dorson, and Mackintosh, the most northern establishment of the Mexican territory. Five miles to the north of the rancho of Read, one meets, not far from the shore, with the mission of Saint Raphael. . . . The lands of the mission are excellent. We saw in its gardens superb plants of tobacco, cultivated by a man named ORTEGA."

Ortega, who had at the time of the suit no interest in the result, was himself examined. After testifying positively to having obtained the grant in 1840, he said thus:

"After the making of the decree of Governor Alvarado, and during the same year, I went to Monterey, and applied to Alvarado

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for a full and formal title, but it was during the recess of the Departmental Assembly, and I could not obtain it. *I did not occupy the land in person*, but my father-in-law, Juan Miranda, occupied it for me in the year 1840. Miranda occupied the land by placing his son there, who remained there six years, having a hut there, and he had fifty cows there. I applied to Governor Alvarado, with the paper before mentioned, and presented a map, *and then I went to Oregon*, leaving the papers with the governor."

"My father-in-law occupied the land on my account for the whole six years, *but never paid me anything whatever for the use of it*. I think my father-in-law died in 1845; I went to Oregon in 1843, and was there four years, and he died the year before I returned. I do not know whether Juan Miranda obtained a grant of the land to himself or not. Teodoro Miranda, a son of Juan Miranda, was occupying the land when I returned from Oregon, the same that was occupying it when I went. He continued occupying the land from 1841 to 1848. *I do not know who occupied the land after 1848*. I claimed the land after I came back from Oregon; I went to Alvarado and got the papers for the purpose of establishing my claim. This was *after* the country had been taken by the Americans. I kept the papers about a year, and then delivered them to a French priest by the name of Brouillet; I made a *present* of the land to the priest in pay for the education of my children for eight years. *I never received judicial possession of the land*. I have no interest in the success of this claim or the want of it."

" *Question*. Did you ever demand of Teodoro Miranda the possession of the land?"

" *Answer*. I did not; I went to his *mother*, who had the control, and demanded *it of her*. She told me the rancho *belonged to her*; that she had a paper from Murphy, and from Leese, the *alcalde* of Sonoma. I did *nothing afterwards* towards getting the occupancy of the land, but went to Alvarado and got the papers before mentioned."

On the other hand, the Miranda title was thus supported:

The expediente of Miranda. This was found in the archives, duly numbered and entered on Jimeno's Index. It consisted of:

1. A petition of Miranda, dated February 21, 1844.

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2. A certificate by Jacob Leese, *alcalde* of Sonoma, that the land had been occupied several years and that it did not belong to any pueblo or corporation.

Dated February 20, 1844.

3. A report by Jimeno dated May 2, 1844, that the land had been occupied for four years by the party interested, by cultivation, and by having a house thereon, with all his goods, and that it does not belong to anyone in particular.
4. An order that the title issue, signed by the governor and dated May 30, 1844.
5. A decree of concession dated October 8, 1844, declaring Juan Miranda owner of the place called Arroyo de San Antonio and directing the corresponding title to be made out and entered in the respective book, and the expediente to be sent to the departmental assembly for its approval.
6. Two copies of the formal grant or titulo, dated October 8, 1844, but unsigned.

The grant to Miranda, however, was not consummated by delivery of the title paper, it not having been signed, said the witness, De la Rosa, "on account of the civil disturbances and the breaking out of the revolution about that time," though Miranda's daughter, the wife of Ortega, swore that her father was taken sick and could not attend to it.

Numerous witnesses were produced to show that Miranda was the reputed owner, and that *he* was in possession for twenty years, positive testimony being adduced that such possession began so far back as 1838. One person swore that he had

"put three hundred head of cattle upon it, thirty wild mares, and some tame horses, branding the cattle with his brand, which he had made at the blacksmith's shop."

It was incontestable that in an expediente of one Padilla, to whom was granted a tract called the *Roblar de la Miseria*, and adjoining the one in question, the tract granted to Padilla was described as bounded on one side by "land of Don *Juan Miranda*, " and the same designation of ownership was on the accompanying diseno or map. In this case, General Vallejo had certified to the alcalde "that the boundaries bordering are the same as those mentioned

in Pailla's petition." The petition, in that case, was dated November, 1844. In another case, a petition and grant to one Bojorques, for the *Laguna de San Antonio*, the former dated August, 1844, and the latter November, 1845, the rancho San Antonio was described in the same way, as "lands of Juan Miranda;" and the same characterization was found on the map of an adjoining rancho, called *Olimpale*. So too it was obvious that the date of the marginal order of Governor Alvarado, on Ortega's petition, had been altered from 1841 to 1840, the ink in which the alteration was made being of a different color from that in which the marginal order was itself written. So it was a fact that by inspection of the papers themselves, the *disenos* of Ortega and of Miranda appeared to be transcripts one from the other, and to have been made by the same person and at the same time. The edges of the paper on which they were made so tallied that they made "indentures."

As respected Ortega himself, while it was testified that he was a man whom one never "heard anything against," it appeared that his life had been of a singularly miscellaneous character. He was a Mexican by birth, and born in 1781, being of course about sixty years old at the date of his petition, as he was seventy-two when he was examined in the case. In 1802-1803 he was living in New Orleans. Afterwards he took holy orders and exercised the office of a priest for about three years. He then entered the Mexican army and served there for about twenty years, rendering, said Governor Alvarado, "many meritorious acts for his country." In 1834-1835, he appears to have been "keeper of the keys" at the mission of Sonoma; "mayordomo" of the same. [[Footnote 4](#)] In 1838 he married

Maria Francisca Miranda, daughter of the Miranda under whose title the appellees claimed -- a handsome woman, greatly younger than himself, who soon fell in love with a man named Salvador. The character of the lady and the nature of the new relations appear in her own testimony, which, in question and answer, was thus:

" *Question.* What is your name, age, and place of residence?"

" *Answer.* My name is Francisca Miranda; *I don't know my age;* I live in Petaluma, California."

" *Question.* Are you acquainted with Leonito Antonio Duque de Ortega?"

" *Answer.* Yes, I *know* him; I am his wife."

" *Question.* How long has it been since you were married to the said Ortega?"

" *Answer.* *I do not know.* I was married to him a long time before he went to Oregon."

" *Question.* How many times, before your husband abandoned you, did you and he quarrel?"

" *Answer.* I never quarrelled with *him*. It was he who did with *me*. "

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" *Question.* Before leaving you, did he not charge you with inconstancy?"

" *Answer.* He never accused *me*; *he* was the guilty one."

" *Question.* Have you been divorced from him or legally separated?"

" *Answer.* After his return from Oregon, he charged me before an American, who was represented to me as the Governor of the State of California, with having a man. I appeared with my witnesses, and he appeared, but had no witnesses, and the matter was dropped."

" *Question.* Since your husband abandoned you, have you had any children, and how many?"

" *Answer.* Since my husband abandoned me, I have had three children besides the one with which I was *enceinte* when he left."

" *Question.* Since your husband left you and went to Oregon, have you ever lived with him?"

" *Answer.* I never have."

In 1841, Ortega kept a little liquor store in Sonoma, cultivating some land, and near the same time "used to be knocking about General Vallejo's (who was Commandant General), as a sort of steward." In 1843, he went to Oregon.

"He said he was going to Oregon to remain; that he had reasons for leaving the country, family reasons; he accused his wife of inconstancy to her marriage vows, and said he was never coming back."

He took with him "one cow and a couple of horses." In 1845, he set off from Oregon to return to California by sea, but the vessel was wrecked, and after losing everything he had, he "returned to Oregon almost naked." He here stayed with a man named Walker, who "gave him blankets, took care of him, fed, clothed, and sheltered him." During his second stay in Oregon, as appeared by a witness who was "head sawyer in a sawmill there, and kept a boarding house for the hands," Ortega's occupation was "that of waiting on the house, bringing wood and water;" he paid nothing for his board, the witness "thinking a great deal of him." "He had an Indian boy who worked all the time for him to endeavor to get money to return to California." In 1848, "he was started off home

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again." In 1849, he was "bell ringer to the church. . . . I don't know," said one witness,

"any occupation he had at that time beside that. He officiated in the church, ringing the bell, attending round there. He was a good deal about General Vallejo's as a sort of steward. He had no property that I know of, except one cow and a couple of horses that were *given to him*, and which he took with him to Oregon."

The court below decided in favor of the Miranda title; assigning among the minor reasons for its opinion the character of Rosa, "as disclosed by his own avowal,

that in 1844 he was endeavoring to obtain for Miranda a grant of lands which he knew had already been granted in 1840 to Ortega, or, as established in the case of *Luco et als. v. United States*, [[Footnote 5](#)] and other cases in which the unreliability of his statements, and those of several other of the claimant's witnesses, have been judicially declared by the Supreme Court," referring also to the fact that other ranchos, granted about 1844, as the *Roblar de la Miseria*, *Laguna de San Antonio*, and the *Olimpale*, referred to this tract, one of their boundaries, as "lands of Juan Miranda;" that the alteration of dates in the case was a circumstance not explained; that the preponderance, both of proofs and probabilities, was that Miranda's possession was not that of a tenant, and that "in 1843, Ortega departed to a foreign country under circumstances from which an intention to abandon his own might well be inferred." The circumstance of the *maps* in Miranda's petition, though this last was presented in 1844, being apparently made at the same date as the one in Ortega's petition, though alleged to be of an earlier date, and both made by one person, De la Rosa, was adverted to as a circumstance indicating that Ortega's map was possibly made *after* the date when it ought to have been, and was inserted posthumously in his papers.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

It would be a waste of time to analyze it, to weigh against each other the parts which are in conflict, or to attempt to explain or reconcile their antagonisms. It will be sufficient to indicate the conclusions at which we have arrived.

The expediente of Miranda was found among the proper archives. It is referred to in Jimeno's Index. The title never passed into a formal grant by the governor, but it is shown that this arose from the illness of Miranda and the disturbed condition of the country. The record is wholly silent as to any objection by the governor or from any other quarter. Ortega testified that he was never personally in possession. It is clearly proved that the possession of Miranda commenced as early as 1838, and continued from that time. The petition of Bojorques in 1844, and the grant to him in

1845; the petition of Padilla in 1844, and the accompanying map, and the diseno of the rancho Olimpale, all refer to the rancho in controversy as "the land of Juan Miranda." These documents show that Miranda was regarded in the neighborhood as the owner, and not as a tenant. We are entirely satisfied from the evidence found in the record that he held in his own right, and not vicariously for Ortega. The petition of those claiming the title of Miranda was withdrawn from before the Board of Land Commissioners. Why does not appear. Whatever the cause, its withdrawal cannot lessen the light which the facts relating to it throw upon the merits of the claim of Ortega.

The expediente of Ortega is confronted by strong suspicions of its *bona fides*. There is no trace of it among the proper archives. It does not appear that any paper belonging to it was ever in any public office before the petition in this case was filed by the appellant's intestate. The Mexicans of the Spanish race, like their progenitors, were a formal

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people, and their officials were usually formal and careful in the administration of their public affairs. Full archive evidence exists in the case of Miranda. Its absence in this case is not satisfactorily accounted for.

Ortega abandoned his wife in 1843 and went to Oregon. He was poor and had been so for years. It does not appear that, from the time of the concession to the period of his departure, he made the slightest effort to consummate his title. He returned in 1847. There is reason to believe that when he left the country, he intended finally to abandon his claim, if he had not done so before, and that such was the understanding of the Mexican authorities.

It appears that the order of reference made by the governor, which is found in the margin of the petition, was originally dated in 1841, and that this date was subsequently changed to 1840 with ink of a different color. A clerical mistake in writing the date originally, by antedating it a year, is unnatural and improbable. As it then stood it, was subsequent in date to the report for which it called. It has been

suggested that 1841 was the true and proper date, and that the concession was made after the return of Ortega from Oregon, and that it was antedated in 1840 -- the writer not observing that the order of reference was dated in 1841 -- and that, upon this fact's being discovered, the date of the reference was changed to cure the discrepancy. The alteration is unexplained and unaccounted for. The evidence leaves us in the dark as to the time, the motive, and the circumstances.

It seems to be admitted that the diseno of Ortega and that of Miranda were prepared by the same hand and at the same time. Alvarado made the order of reference at Monterey on the 20th of June, 1840, and the order of concession at the same place on the 10th of August, 1840, or 1841. In his last deposition, this passage occurs:

" *Question.* You have said that Ortega twice presented himself to you in Monterey in 1840 in relation to this grant; state what papers, if any, he presented to you on the occasion of his first visit and what papers on the occasion of his second visit? "

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" *Answer.* My recollection is that he brought with him each time the same papers -- that is, the petition; but the first time without any map; the second time the petition and diseno together. He might have come other times, but I only recollect those two times."

Ortega testified to the same effect as to the diseno.

That both are mistaken upon the subject is shown by the concession. In that instrument, which was given at the second interview between them, Alvarado says: "He" (Ortega) "shall make a map as required by law, which he will present opportunely." There was, then, no map present at that time. When was it prepared and added to the other papers? It is claimed on behalf of the United States that it was made when the diseno of Miranda was prepared in 1844, and came into the hands of Oretaga by some means unexplained after his return from Oregon. Upon this subject, as in regard to the altered date of the concession, the evidence is inconclusive and unsatisfactory. The obscurity is increased by the character of

some of the leading witnesses who have testified in support of the claim. But the solution of these difficulties is not necessary to the determination of the case. It has been held by this Court in a long and unbroken line of adjudications that where there is no archive evidence and its absence is unaccounted for, and there has been no such possession as raises an equity in behalf of the party, and especially where, in addition, the expediente produced is tainted with suspicions of fraud, the claim must be rejected. We feel no disposition to relax the rule, and it is fatal to the case of the appellant.

Decree affirmed.

[[Footnote 1](#)]

By this term is meant an enclosure to shelter horses or other cattle. It is originally a Spanish word, but is given in Worcester's English Dictionary of 1860 as a term of our own language.

[[Footnote 2](#)]

Vol. i, 443-445.

[[Footnote 3](#)]

[*United States v. Sutter*](#), 21 How. 170.

[[Footnote 4](#)]

The "obligation of mayordomos," as set forth in certain directions made for them, are of a kind quite peculiar, and though a mention of them is of no great value in this case, it may serve to give a view of the picturesque sort of life common in California before the conquest.

"1. To take care of the property under their charge, acting in concert with the reverend padres in the difficult cases."

"2. To compel the Indians to assist in the labors of the community, chastising them moderately for faults."

"3. To see that the Indians observe the best morality and frequent church at the days and hours that have been customary, in which matter the reverend padres will intervene &c.;"

"To remit to the inspector's office a monthly account of the produce they may collect into the storehouses, of the crops of grain, *liquors*, &c.;, and of the branding of all kinds of cattle. Said account must be authorized by the reverend padres."

"4. To take care that the reverend padres do not want for their necessary aliment, and to furnish them with everything necessary for their personal subsistence, as likewise with servants, which they may request for their domestic service."

"5. To provide the ecclesiastical prelates all the assistance which they may stand in need of, when they make their accustomed visits to the missions through which they pass, and, under the strictest responsibility, to receive them in the manner due to their dignity."

"6. In missions where the said prelates have their residence, they will have the right to call upon the mayordomos at any hour when they may require them, and said mayordomos are required to present themselves to them every day at a certain hour, to know what they require in their ministerial function."

"7. After the mayordomos have for one year given proofs of their activity, honesty, and good conduct, they shall be entitled (in times of little occupation) to have the Indians render them some personal services, but the consent of the Indians must be previously obtained."

[[Footnote 5](#)]

[64 U. S. 23](#) How. 543.