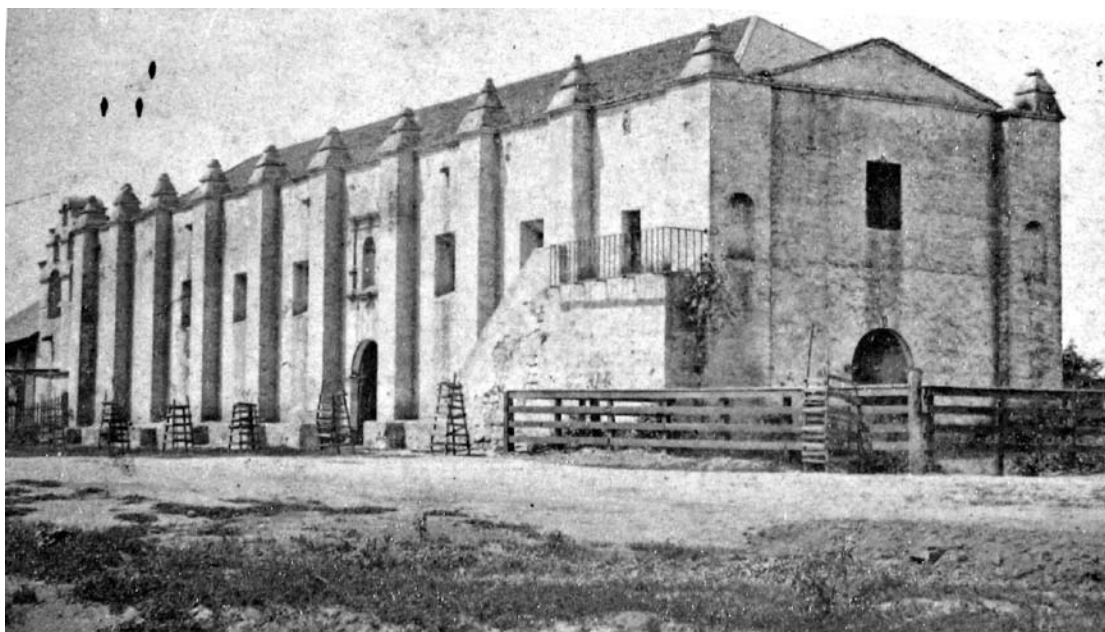




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Mission San Gabriel in the 1870s. (Courtesy the Workman and Temple Family Homestead Museum)

## **"Give Them the Whole or None"**

### **The Mission San Gabriel Land Grant Claim, 1846-1864**

*By Paul R. Spitzzeri*

Among the more controversial aspects of the American conquest of California was the disposition of hundreds of land grants made under Spanish and Mexican rule. One of the more interesting land claims from the Los Angeles region involved the ranch lands of the Mission San Gabriel. The claim, and its final adjudication, touch upon matters of governmental authority to grant church lands, squatters and other residents of lands within

the area of the grant, and gives some insight into the process of adjudicating claims.

Although Nicholas Trist, the American negotiating envoy for the Treaty of Guadalupe Hidalgo which ended Mexican-American War hostilities, agreed to a treaty provision which would have guaranteed existing land grants, President James K. Polk and Congress moved

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*The Branding Iron* is always seeking articles of  
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tions from both members and friends are welcome.

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## Editor's Corner . . .

The California Land Claims Act of 1851 had a major impact on the history of Southern California for decades, as demonstrated in Paul Spitzzeri's article on the lands of the former Mission San Gabriel and my own, on the Warner Ranch of San Diego County.

Sadly, we mark three passings in this issue of *The Branding Iron* — Past Sheriff Donald Duke, longtime member Bob Kern, and Dawson's Book Shop, which closed as a "brick and mortar" store this summer (though it will survive as an online business under third-generation owner Michael Dawson).

Each was unique in their own way, and we will miss them all.

Phil Brigandi  
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## Give Them the Whole . . .

(Continued from Page 1)

moved quickly and decisively to have this stricken from the final document.

In 1851, Congress passed an "Act to Ascertain and Settle the Private Land Claims in the State of California." A commission of three persons was established to hear cases, with claimants submitting all documents and providing witnesses who could attest to the ownership of the grant. Appeals to the federal district and supreme courts were eventually made automatic, greatly extending the length of the proceedings. In fact, procedural and bureaucratic delays, costs of procuring lawyers and surveyors, national political problems such as the Civil War, the decline of the Gold Rush, and, in the Los Angeles area, the devastation wrought by floods and droughts in the first half of the 1860s, made the land claims process highly burdensome for those grantees who were able to hold on to their lands. Others were affected by property taxes they could not pay, mortgages and foreclosures, fraud by lawyers and surveyors, and squatters who proved to be intractable and difficult to evict. The average claim took seventeen years to prosecute and many grantees simply did not live long enough to see the process through.

The Mission San Gabriel was secularized in the 1830s, converted to a parish church, and lost its vast ranch lands stretching east to San Bernardino. On June 8, 1846, a grant to the lands of the ex-mission was made by Governor Pío Pico to British expatriates and San Gabriel Valley ranchers Hugo Reid and William Workman.

The transaction was made because, as the grant stated "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 [Alta California]." That is, the two men provided "sums which at different periods they have advanced to the departmental government, binding themselves to satisfy the debts against said mission." Now the repayment of their loans was to come in the form of the grant to

Mission San Gabriel, which "those *Señores* have solicited for their personal benefit, and that of their families." The grant included "all its lands, [and] improvements of town and country."

There were two conditions included in their grant. First, "they will pay to the creditors of the mission the sums which may be provided at the farthest in the term of two years at most." Second, "to assign a proportional part of sum for the maintenance of the ministering fathers, who may live there, and for the preservation of the divine worship."

There is no reason to believe that much happened to change everyday activities at San Gabriel, which continued its function as a parish church. Reid was closely tied to the priests and to Eulalia Perez de Guillen, the major layperson at the mission, through whom he met his wife. He was obviously trusted to manage the affairs of the mission, as called for in the grant – if he and Workman did actually fulfill the terms of the grant.

But Reid accumulated a major indebtedness to Aaron Pollard, a native of Massachusetts who had been a merchant in Chile before coming to California during the Gold Rush. Perhaps during Reid's tenure in the north, he met Pollard and arranged to borrow nearly five thousand dollars. By early 1852, this sum had not been paid and over two thousand dollars in interest had accumulated. Pollard foreclosed and the District Court in Los Angeles executed an order in Pollard's favor that February. Sheriff James R. Barton then advertised in early March for a public auction in which he noted "I have levied upon all the right, title, and interest of said Hugo Reid in and to the Mission San Gabriel...." These sheriff's sales were often mere formalities to satisfy the execution ordered by the court and Pollard took formal possession of Reid's half interest in the ex-mission lands.

In September 1852, just prior to Reid's death, Pollard formally introduced himself to his new partner, writing William Workman, "I see by the archives that you are half-owner of Mission San Gabriel. Having purchased one half (i.e.) the interest of P. Hugo Reid, I wish to advise with you on the subject." The Land Commission had, just that month,

met briefly at Los Angeles, but Pollard and Workman quickly made arrangements to file their claim, which was made on February 11, 1853. According to J.N. Bowman's *Index to California Land Claims*, the claim – known as SD (Southern District) 342 – was for three leagues (a little over 13,000 acres) "on the basis of a sale of the mission lands for \$20,000." Presumably, this was the amount forwarded to Pico and the Alta California departmental government in 1846.

Meanwhile, a new player entered the field: attorney Elisha O. Crosby, a native of upstate New York, who had considerable experience in arguing land claim cases. It is apparent that, in agreeing to represent William Workman, Crosby was given a half share of Workman's interest in the San Gabriel claim.

So a second claim to Mission San Gabriel lands was filed in the name of Workman and Crosby. Known as SD 345, this filing was also for three leagues and, according to Bowman, was "in payment of a state debt and the purchasers to pay the mission debts." Why exactly there were two claims has not been explicitly determined to date, although it seems likely that the original grant was divided into these separate filings because of the new partnership with Crosby.

Matters involving ownership were further complicated by the introduction in 1854 of a new partner: Volney E. Howard. Born in Maine, Howard was a legislator and lawyer in Mississippi and Texas before accepting the job of counsel to the California Land Commission. Recognizing that money was to be made representing claimants, Howard resigned his position and argued land claim cases, including for Workman or Pollard in the San Gabriel case.

In July 1854, Pollard wrote to Workman, "I have communicated with Mr. V. Howard (late of U. S. Land Comn) and he accepts your proposition." Pollard went on to specify that "I have made the same arrangement with Mr. Howard, one quarter," which seems to imply that a similar deal was made as with Crosby, the other successful counsel brought in by Pollard and Workman.

Included with Pollard's missive was a short letter to Workman from Howard, stating

"Mr. Pollard has shown me your letter of the 5<sup>th</sup> inst. in relation to the prosecution of your claim before the U. S. Land Co. f[o]r the Mission of San Gabriel, I have concluded to accept your proposition." Exiled from San Francisco because of his role in fighting the 1856 Vigilance Committee, Howard moved to San Gabriel and later was a District Attorney and Superior Court judge in Los Angeles.

Controversies soon arose over both land claims. People who had settled (or rather, squatted) on the lands of the ex-mission and were naturally very concerned about presenting their case. One of the more vocal was Daniel Sexton, who migrated to California with William Workman in 1841. In a February 1855 letter to the *Los Angeles Star*, Sexton wrote:

*[I]n case the Read [sic] and Workman claim is confirmed, I think they will have a happy time in having their lines defined, for the grant does not specify natural boundaries or number of leagues claimed.... The Mission of San Gabriel claimed all the land from the Arroya [sic] Seco to the San Gorgona [sic] Pass, which is about one hundred miles. I contend they have just as much right to all the vacant lands in San Bernardino County as they have about the Monte [El Monte] or the Mission of San Gabriel.*

In April 1855, John Forster, brother-in-law of Pío Pico, testified before the Land Commission about the San Gabriel sale. According to the *Star*, "the witness said that he understood from Pío Pico that the last Missions he sold were disposed of, for the purpose of prosecuting the war . . . I have heard it said that there were means arising from the sales of the Missions which were applied to the prosecuting of the war." Forster gave the example of funds received from the sale of Mission San Fernando, but had evidently not been directly privy to the results of the San Gabriel alienation.

In June, the Commission rendered its decision on the two claims, approving claim 345 to Workman and Crosby, but rejecting 342 to Workman and Pollard. No opinions in

these cases were published, which, to the *Star*, in a 7 July editorial, meant that “the decisions render the question far from being definitely settled.” Noting that an appeal to the federal district court was forthcoming, the paper did conclude its piece by noting that “if the grant should finally be confirmed to Mr. Workman, we have no reason to doubt the proprietor would act in a spirit of liberality, and enter into satisfactory arrangements to give a legal title to every *bona-fide* settler who may desire it.” What distinguished a “*bona-fide*” resident from a squatter was not explained.

Another interesting decision was made in December 1855 for a claim submitted by Bishop Joseph Alemany of the Roman Catholic Church, in which the Commission approved the claim for the mission structures, surrounding gardens, and cemeteries and made a crucial distinction between “mission property” and “church property.” The former was viewed as “comprising the large tracts used for the ordinary purposes of the community,” while the latter were “smaller tracts devoted to the use of the church, the purposes of worship, and the support and comfort of the ministers.” In November 1859, President Buchanan signed a patent that confirmed that the “church property” of Mission San Gabriel was to be immediately returned to the Roman Catholic Church.

The confirmation of the Workman and Crosby claim was appealed by the government to the federal district court in Los Angeles, presided over by Isaac Stockton Keith Ogier. The matter, however, did not make it before the court until at least 1859. In June of that year, the case was submitted to Judge Ogier who took it under advisement, meaning that the attorneys on both sides had made their arguments but Ogier was not ready to make a decision. On April 2, 1861, Ogier finally ruled on the case and confirmed the grant.

Ogier’s ruling was related in great detail in the *Star* about two weeks later. In particular the judge stated that “the genuineness of all these documents are [sic] fully proven” and he also addressed the main objection on the part of the federal government “that the grant is fraudulent and ante-dated.” To this, Ogier referred to sworn testimony by the



William Workman, circa 1851-52.  
From a portrait by the famed Mathew Brady. (Courtesy the Workman and Temple Family Homestead Museum)

Alta California governmental secretary, José Matías Moreno, that the grant was recorded in the *Toma de Razón*, which was the record kept of these items, although the book was admittedly lost.

As to the claim of fraud, the judge ruled that “a mere state of war between two nations does not suspend the power of either within its own territories and between its own citizens.” As such, the judge continued, “fraud cannot therefore be inferred merely from the fact that the grant was made during the war, and only a short time before the occupancy of the country.”

Also of significance is Ogier’s statement that, in Pico’s grant, “he sets forth his belief upon credible information that invasion is about to take place.” This is connected to another point of contention, which was that Pico did not have the authority to dispose of the Mission lands. In answer to this, a March 10, 1846 letter from the Mexican Minister of War and Marine to Pico was cited for its general statement that, in the face of an imminent American invasion, while “the Supreme Government is preparing for your Excellency the requisite aid, he shall rely

upon your patriotism and loyalty, to *devise the means that you may judge necessary for the defense of the department* [italics added for emphasis]." This, presumably, included the granting of San Gabriel to Workman and Reid in return for money to assist in the defense of California. Ogier accepted the argument that Pico's powers were broadly extended and that "he had power to make grants of this character" even if "the document did not give him such an express power."

The U.S. government, however, cited a November 1845 letter from the Ministry of Industry and Public Instruction to Pico in which the question of alienating mission lands, a process begun by Governor Micheltorena, was addressed. It stated that Pico was "to report on these particulars, *suspending immediately all proceedings respecting the alienation of the aforesaid property* [italics added for emphasis] until the determination of the Supreme Government." With the ensuing threat of war, it appears no further investigation or action was taken by Mexico City in regard to the question of granting mission lands. According to Ogier though, "it is not necessary to comment on that. It does not refer to the vacant lands which the Supreme Court of the United States have repeatedly decided were subject to grant, and those lands are what are intended to be confirmed to claimants." Consequently, the judge ordered the claim confirmed.

From Ogier's confirmation of the claim the appeal then went to the United States Supreme Court. Prior to that hearing, Daniel Sexton issued another, more strident defense of his rights and those of his neighbors occupying former mission lands. In an April 1863 letter to U. S. Attorney General Edward Bates, Sexton contended "the Title Papers call for all vacant land that belonged to said Mission at the time the grant was made, how far from East to West the mission extended one hundred and fifty miles, from North to South thirty miles, embracing some four thousand five hundred square miles." This was hardly the case, as the claim was only for about 13,000 acres. In another highly questionable point of argument Sexton and compatriots then suggested to the Attorney

General that "sir, you probably are not aware of the bought decision which was finally rendered by a drunken judg[e] of this District."

Sexton then got back to a more grounded reality in suggesting to Bates,

*thousands of acres of this Claim are now temporarily inhabited by good industrious and enterprising men, who are willing and anxious to devolope [sic] the resources of the Country, and make for themselves permanent homes, who have as yet defered [sic] making any permanent improvements not knowing what day they may be ejected under an Order of Court confirming the Claimants title, while many other have made valuable improvements firmly believing that justice will be meted to them.*

The summary of the letter is embodied in a simple plea to "give them the whole or none, at least do not give them our 56 homes, and not our neighbors that are equally exposed."

It was highly unlikely that this letter had much influence on subsequent events, but in April 1864, word was received in Los Angeles that the claim for the lands of the Mission San Gabriel had been reversed by the U.S. Supreme Court. The court based its ruling on the fact that "the Governor of California had no power . . . to make a valid sale and grant of the mission of San Gabriel in California."

The position of the United States rested on three contentions: first, that the grant was antedated and fraudulent; second, that the evidence introduced at trial was incompetent, including Secretary Moreno's admission that he did not know the date of the grant; and finally, that Pico lacked the authority to make the grant.

Justice Nathan Clifford wrote in the opinion that "we are all of the opinion that the sale was made and the grant issued without any pretence of authority."

Their first point was that Mexican land laws of 1824 and 1828, while conferring authority to grant lands were "restricted to the granting of unoccupied public land." When it came to the missions, and city and town properties,

the matter was very different.

In reviewing the secularization process, the Court expressed the view that, despite the acts of secularization of the missions passed by the Mexican Congress in 1833 and 1834, another act of November 7, 1835 amounted to a suspension of secularization until Roman Catholic curates took possession of the former missions as parish churches as stipulated in the initial secularization act of 1833. The Court also recognized that the Bishop of California, Francisco Garcia Diego y Moreno, petitioned the Mexican Government on November 7, 1840 which led to a decree from President Anastasio Bustamente calling for the return of all possessions and property of the mission fathers. According to Justice Crockett's opinion, "proof is entirely wanting to show that that order was ever annulled. On the contrary, the clear presumption is that it remained in full force at the treaty of peace between the two countries."

The opinion then turned to the matter of decrees by governmental authorities in California regarding the missions. The first was a decree by the Departmental Assembly on April 21, 1845 that collection of information about mission debts should be concluded "and will suspend until a convenient time the granting of the lands *immediately contiguous* [italics added for emphasis] to the missions." An October 28, 1845 decree authorized the sale to the highest bidder of certain missions, but San Gabriel was not among them. A more vague decree of March 30, 1846 authorized Governor Pico to, with respect to San Gabriel and other missions, "act in such a manner as may appear most conducive to prevent their total ruin." It is to this, the opinion continued, that "reference is doubtless made in the grant ... as the foundation of the authority for making the sale."

Yet, the opinion continued,

*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 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....*

As to the general powers conferred to Pico prior to the American invasion, cited by Ogier as proof the governor had authority to grant San Gabriel, especially the March 10, 1846 missive and a letter from Mexican President Mariano Paredes y Arillaga three days later confirming departmental governors could "act expeditiously in extraordinary cases," the court dismissed these out of hand. It merely commented that "it is so obvious 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."

It is noteworthy that, in a table of federal high court rulings on land claims in the southern part of the state published in the *Los Angeles News* in June 1864, there are two dozen cases. In 23 cases in which the government appealed the confirmations of claims, nine were affirmed and thirteen were dismissed in favor of the grantees. The sole instance of a claimant's confirmation being reversed was the San Gabriel lands.

When the *Los Angeles Star* reported in May 1864 that the San Gabriel Mission claim had been rejected, it welcomed the news, stating that "it is likely that many other large and valuable tracts of land in Southern California will share the same fate; and thus open many fine localities to settlement and cultivation." Indeed, that was the federal government's hope in automatically challenging all successful confirmations of grants by either the Land Commission or federal district courts. In the case of San Gabriel, Daniel Sexton and other "squatters" were among those who found the high court's decision the redress they desired to legitimize their "settlement and cultivation" of their lands.

## Saying “So Long” to Donald Duke



For a man who didn't consider himself a railfan, Donald Duke will be remembered as just that. Since he was a boy, Duke took pictures of trains, starting with a box camera given to him by his grandmother; developing many a negative in a home-built darkroom off the garage of the home in San Marino, California where he lived nearly all his life.

The most famous of his photographs, however, were seen through the lens of a Graflex D camera and became known to us via his publishing company, Golden West Books, where thousands of train and trolley images came off the pages in a way that gave action to the subjects. Duke's life's work is now housed at the Huntington Library in San Marino, where he ran around as a kid and often reminisced about how, before he was born, the Pacific Electric Railway tracks ran north off Huntington Drive, past Bamboo Junction (off San Marino Avenue), and a private spur went onto the grounds of the renowned gardens and under the home of Henry Huntington himself for his private car *Alabama*.

Duke was a member, editor and judge for the Western Writer's Guild of America for many years and even completed a few screenplays for *Gunsmoke*. However, being the editor of the *Branding Iron* brought him much pleasure and friendships that lasted for more than half his life. Perhaps it was his time at Colorado College which gave him the love of the old west, spending a few summers driving cattle like his father and grandfather had done, or the mere camaraderie in the style of the old west which the Westerners afforded him. In any case, the outspoken curmudgeon loved getting together with his friends the second Wednesday of each month.

Duke felt blessed to be able to write and photograph trains and publish the materials for all to share. Not many in life get the opportunity to do what they love for a living. Those of us who purchased his books got a glimpse into his creative genius and those of us who called him friend got to see the sense of humor and drive that turned out the published material which will endure as a testament to his talent. Duke's last day was spent at the office talking about current events and the next book he wanted to publish; he died at home that evening, September 27, 2010, at the age of 81.

— Steve Crise and Michael Patris



# Law But Not Fact

## Land Tenure and Legal Fiction on the Warner Ranch

*By Phil Brigandi*

Historians are sometimes encouraged to turn to early court cases as a new opportunity for research. But is that always sound advice? Historians search for facts; but in lawsuits, litigants seek to prove their case. Thus the facts – and more importantly, their interpretation – become tools, not an end in themselves.

Two legal cases from the Warner Ranch, in northeastern San Diego County, should serve as cautionary tales about the research value of early court cases. In both instances, the historical facts were ignored in the final judgments. To understand their significance, a little background is necessary.

The Warner Ranch was at an interesting juncture ethnographically, because around the valley were villages from four different tribal groups. The Cupeño occupied the best-known village at Warner Hot Springs, but there were also Kumeyaay villages at Maturagay and San José; Luiseño villages at the two western entrances to the valley, Puerta la Cruz and La Puerta; and a mix of Cupeño and Cahuilla people at San Ysidro, on what is now the Los Coyotes Indian Reservation.

The first known Spanish expedition to enter the valley was in 1795, when Father Juan Mariner and Lt. Juan Pablo Grijalva led a party across the southern end of the valley, searching for a site for what would become Mission San Luis Rey. Father Mariner named the valley the *Valle de San José*.

In the early 19th century, both Missions San Diego and San Luis Rey developed an extensive series of outposts, spread across what is now San Diego and Riverside counties. Mission San Diego's leading *asistencia* was at Santa Ysabel, a few miles south of the

Valle de San José; while San Luis Rey's largest outpost was at Pala, on the San Luis Rey River, which drains out of the valley.

The two missions shared the Valle de San José, with San Diego claiming the southern end of the valley, and San Luis Rey using the northern end, around the hot springs. San Diego used the old name, Valle de San José, while San Luis Rey called their outpost the *Agua Caliente*. The mission buildings at Agua Caliente stood on the little knoll where the Chapel of St. Francis is now located; the outlines of the walls are still quite evident. The chapel itself was built in the early 1890s, though it has often been identified as a Mission Era building.

In 1827, the Mexican Government demanded an accounting of the lands used by the California Missions. In their reply, the padres at San Diego report, "From the Valle de San José to the laguna called El Agua Caliente is a stretch of two leagues [about five miles], on which the cattle of the Mission are pastured and also the sheep. From the laguna farther on and the environs, approach the territories belonging to the Mission of San Luis Rey."

From San Luis Rey, Father Antonio Peyri explained that "To the east ... at a distance of sixteen leagues, there is another district reserved for the sheep, which is famed for its warm springs. There pasture also the flocks of Mission San Diego."

The end of the Mission Era was hastened by the desire of certain *Californios* to take over the vast mission lands. With the secularization of the California missions in 1834, the Rancho Era began in earnest. Among the earliest land grants was the Rancho Valle de San José, initially given to Silvestre de la Portilla

in 1834. Portilla's brother, Pablo de la Portilla – perhaps not coincidentally – was then serving as civil administrator of the ex-Mission San Diego. Portilla's grant was confirmed in 1836.

But Portilla did not retain his grant. Shortly after its confirmation, he left California, turning the property over to his brother. Pablo de la Portilla soon sold the rancho to José Joaquín Ortega, who occupied it for several years. Then in 1843, Ortega returned the land to the ex-Mission San Diego in order to receive a grant to the Rancho Santa María, in the *Valle de Pamó*. Ortega was also a mission administrator, serving at San Diego in 1835-40, and San Luis Rey in 1843-45.

In 1840, José Antonio Pico (brother of San Luis Rey administrator Pío Pico) received a new grant to the northern end of the valley. But after about two years he abandoned his Rancho Agua Caliente.

So it was that in 1844, American-born Juan José Warner applied for and received a new grant to the Valle de San José. Warner had first crossed the valley when he came to California as a trapper in 1831. He decided to remain in California, became a citizen, and changed his

given name from Jonathan Trumbull to Juan José. He occupied the rancho for only a few years, but his name has remained attached to the land ever since.

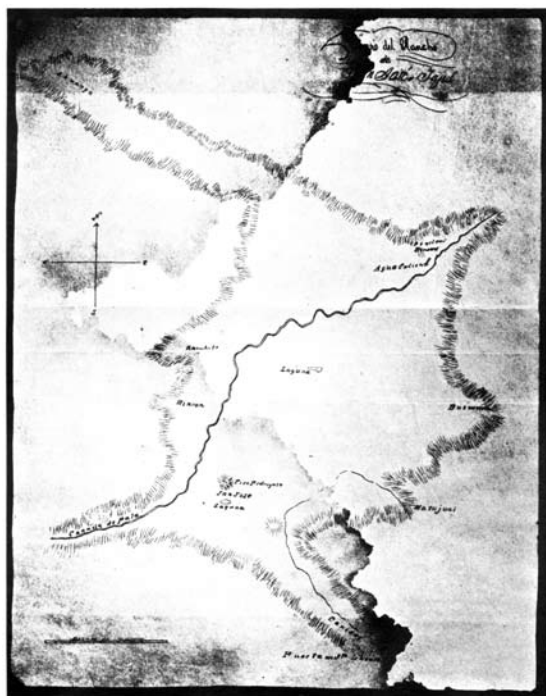
After California passed to American control with the Treaty of Guadalupe Hidalgo at the close of the Mexican War in 1848, the status of the Mexican land grants became a hot issue, especially in Northern California. By the terms of the treaty, the United States had pledged to respect all existing property rights, but just how that would be put into practice was an open question until 1851, when Congress created a Land Claims Commission to review and pass judgment on all California land grants. From there, the Federal District Court, and in some cases the U.S. Supreme Court, could hear appeals on either side. The system was cumbersome, expensive, and time consuming. In some cases, it was more than 30 years before a final patent (deed) was issued.

Warner filed his claim for the Rancho Valle de San José in 1852, and it was approved by the Commission on October 10, 1854.

But five months after Warner, Silvestre de la Portilla – who had only recently returned to California from Mexico – filed his own claim, based on his 1834 grant. His claim was rejected, but not because he had abandoned it and the land had later been returned to the mission, but because the description in his final grant was too vague to identify its exact location.

Now the cases passed to the District Court. Warner's grant was confirmed on February 6, 1856, and after an appeal to the U.S. Supreme Court was dropped by the government, the case was closed on February 24, 1857.

Yet just a day before, the District Court had overturned the Land Commission decision, and confirmed Portilla's claim to four square leagues (about 17,600 acres) of the Valle de San José. "In arriving at its decision," historian Joseph J. Hill explained, "the court disregarded completely the question as to whether or not Portilla had abandoned the property, and hinged its verdict entirely upon the fact that the grant had been made to him...." The Supreme Court dismissed the case in 1863, and the decision was final. (Despite the dual



The Warner *diseño* from 1844 shows four Indian villages in the valley. (from Hill, 1927)

decisions, the final patents for the two ranchos were not issued until 1880.)

Thus Warner lost the entire southern end of the Valle de San José because the courts would not consider any of the history of the Portilla rancho after his final grant in 1836. Yet that history was known to them, through testimony presented before the Land Commission.

Perhaps even before his initial confirmation, Silvestre de la Portilla had sold his rights to his old grant to Vicenta Carrillo, who paid the taxes on it in June, 1857. The actual deed was signed in November, 1858. It was Vicenta and her husband, Ramon Carrillo, who built the adobe which served for years as the ranch headquarters and still stands along County Road S-2, just east of Highway 79.

J.J. Warner's remaining land slowly slipped away through debt. The final portion was sold at auction in 1861. Eight years later, Vicenta Carrillo sold the Portilla share to former California Governor John Gately Downey. By 1880, Downey owned most of the valley.

But Downey's possession was not undisputed. He endured a number of legal challenges throughout the 1880s. Equally vexing to him were the five Indian villages spread across the valley. For more than 20 years, he threatened to do something about these "trespassers." He may have been delayed – and dismayed – by the 1880s lawsuit over the Soboba village on the Rancho San Jacinto Viejo. Eventually, the California State Supreme Court confirmed that under Spanish and Mexican law, the Indians had a possessory right to their lands, even when a land grant had been made. This right, the court held, had been carried over when the United States pledged to recognize all existing property rights in California in the Treaty of Guadalupe Hidalgo. It was an unprecedented decision, and it bought the villagers on the Warner Ranch a little more time.

But only a little. The lands the Indians controlled were just too valuable. The Cupeño lived around the hot springs, which had been popular with tourists and invalids since the 1850s. It was a natural place for a resort. Meanwhile, the Luiseño village of La Puerta sat at the head of the canyon, where the San

Luis Rey River left the valley. It was a natural dam site, and plans were already being made to dam the river to provide water for the new communities downstream.

So in 1892, Downey finally filed suit against the Indians. After some legal adjustments, the main case of *Downey v Barker*, against the Cupeño and the Luiseño of Puerta la Cruz, was heard in San Diego County Superior Court in the summer of 1893.

Now the tangled claims over the valley would again intrude on legal history. Mexican law demanded that lands could not be granted when they were still in use by the missions – or the ex-missions, which continued under civil administrators after secularization. Since Portilla's grant had eventually passed back to the Mission San Diego, in 1844 J.J. Warner had secured a letter from the *Juez de Paz* in San Diego certifying that the mission had no further use for the valley:

*Office of the First Justice of the Peace*  
*San Diego* }

*In view of the petition which the party interested remits to this office, I beg to state that the said Valle San José is, and has for the past two years been vacant and abandoned, without any goods nor cultivation on the part of San Diego; but said place belongs at the present time to the said mission, and at petitioner's request I sign this, in San Diego.*

*August 6, 1844*  
*Juan Ma. Marron*

Downey's lawyers now produced this letter and argued that it proved that even if the Indians had held a possessory right to their village lands under Mexican law (a point they hotly denied), in this case it did not apply because there were clearly no Indians living in the valley in 1844, two years before the American conquest!

That claim can be refuted in so many ways one hardly knows where to begin. At the time, the court heard testimony from some of the oldest of the Cupeño, describing their long occupancy, along with confirmation from a number of *Californios*, including 92-year-old

Pío Pico, the last Mexican Governor of California, who testified that the Indians had been there since he first visited the valley in 1820.

Better still, J.J. Warner was still alive, and testified on behalf of the Cupeño. He gave a deposition at his home in Los Angeles, with Downey's attorneys present. Even at age 85, he saw right through the attorneys' ploy. He apparently had a map of the rancho in front of him when he was asked about his 1844 grant:

"Let me explain," he began, "sometimes we are misled from not understanding certain facts; and now I will tell you so that you may understand this, both you and your client and anybody else. You see, here is the Agua Caliente and there is El Valle de San José. Now El Valle de San José, so far as the mission of San Diego was concerned, had no connection whatever with the Agua Caliente. When I wrote the petition, I was referring to the southern half of the San José Valley; that is a geographical piece of land."

Yet all that testimony was for naught. Downey's lawyers objected to any testimony or evidence to show that the Indians had any rights to the land, arguing that the Federal patents for the ranchos were the best and conclusive evidence of ownership. The judge agreed, ruling every single piece of the Indians' case inadmissible. Downey's lawyers were now free to mis-interpret the 1844 Marron letter any way they saw fit; and the courts – with no evidence to the contrary legally before them – accepted their view.

The case dragged on for years. Downey died in 1894, and his nephew, J. Downey Harvey, was substituted as plaintiff to represent the family. The San Diego County Superior Court ruled in his favor at the end of 1896, citing the Marron letter as one of the factors in extinguishing any native rights to the land.

The Downey family lawyers then convinced the judge to set the highest possible appeal bond, but to their dismay, it was promptly paid by the Indian Rights Association of Philadelphia, and the case moved on to the California State Supreme Court.

The case of *Barker v Harvey* was heard by



J.J. Warner, photographed shortly before his death in 1895 at age 88.

(*Land of Sunshine*, August 1895)

the court during their fall term in 1899. Once again, the Marron letter is cited as proof that the valley "was vacant and unoccupied at the date of the [Warner] grant." All of the evidence to the contrary, including Warner's testimony, was included in the *Transcript on Appeal*, but of course had been ruled inadmissible. So once again, the Indians lost. The justices who had ruled in favor of the Soboba village in 1888 (including Chief Justice William H. Beatty) again upheld the Indians' possessory right, but were outvoted by a new majority on the court.

Now the U.S. Attorney General's office stepped in to carry the appeal to the United States Supreme Court. Their appeal was heard in the spring of 1901. The decision was the same, with the Marron letter quoted in full, and Justice David J. Brewer writing for the Court that "It thus appears that prior to the cession [of California in 1848], the Mexican authorities, upon examination, found that the Indians had abandoned the land...."

The case was closed. The Downey fam-

ily now insisted the Federal Government remove the Indians from their land. In May, 1903, the villagers from around the Warner Ranch were gathered up and marched off to the new reservation at Pala. Some had argued that armed troops would be needed to evict the families from their homes, but fortunately, cooler heads prevailed.

The Indians' attorneys, Shirley Ward and Frank Lewis, summed things up neatly in their appeal: "*the entire issue between the parties was and is one of law and not of fact.*" [their italics] Three successive courts had ruled that there were no Indians on the Warner Ranch in 1844. Yet all three of them had seen the evidence to the contrary – but were legally bound not to consider it.

The Marron letter was hardly vital to the Downey case. But his attorneys left nothing to chance in their arguments. If they could mis-interpret the letter to their benefit, they would. The fact that they could "prove" their assertion in the highest court in the land should serve as a warning for all historians.

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(See also my articles on the Cupeño removal on my website at [www.socalhistoryland.mysite.com](http://www.socalhistoryland.mysite.com))



The eviction of the Cupeño from Warner Hot Springs in 1903 was perhaps the last Indian "removal" in the United States. (Horace Parker Collection)



**Bob Kern**  
(1928-2010)

Bob Kern, a 36-year member of the Los Angeles Corral, passed away on July 24, 2010.

His grandfather introduced him to railroads as a boy, and it became his life-long interest. As a young man, he often joined Donald Duke and other railfans, taking countless pictures of trains. He amassed a collection of some 16,000 photos, and while he never wrote a book, his photographs have appeared in some thirty railroad publications.

Bob was a Navy man, rising in rank from Common Seaman all the way to Captain in the Naval Reserve. After retirement from active service, he went into the insurance business, where he was very successful.

Bob was a Ranger Active Member this past year, unable to drive at night due to failing eyesight, but he often spoke of his friends in the Corral, and regretted not being able to attend meetings.

I can vividly remember Bob, sitting at the back center table at our meetings, joking with friends and letting a speaker know if he was talking too long. He had an uncanny ability, through subtle movements and low verbal hints of gaining the attention of those who were overly long-winded.

Fortunately, Bob did not suffer as the end neared. I visited him two days before his death; he was resting comfortably.

Bob is survived by his wife, Aileen, his son and daughter, and seven grandchildren.

– John W. Robinson

# *Rendezvous 2010*

*At the Home of Ramon and Mary Ann Otero  
Monrovia, Calif.*



*Featuring dinner,  
book sale and  
auction, and a  
chance for old  
friends and new  
to get together.*



Michael Dawson (left) rings up one of the final purchases during Dawson's Book Shop's moving sale in August 2010.  
(Courtesy Chris Jepsen)

## The Passing of an Era

This year saw the closing of Dawson's Book Shop on Larchmont Avenue in Los Angeles. After 105 years of being open for business, this venerable establishment came to the end of a glorious run in August 2010.

Dawson's began life in downtown Los Angeles under the entrepreneurship of Ernest Dawson. Throughout the years, and a few moves, Dawson's became known as the premier antiquarian book shop in California. There were at one time many others in the business, but Dawson's seemed always to be at the top of the group.

The shop was continually a family affair. The second generation was led by Glen and Muir Dawson, with their wives Mary Helen and Agnes. Some years back, the enterprise was ceded to Muir's son, Michael, to carry on the family tradition. This he did, adding the new dimension of photographic art to all the other works available.

Alas, as we have seen, technology continues its march plowing a path to the future. Along the way there are casualties. Antiquarian book stores are one of them. Only a handful of these noteworthy enterprises are left on the West Coast now. The internet has become the marketplace for books. It is not the same as one of those comfortable old book shops, but it is what we must deal with.

When Dawson's closed its doors, it also closed a chapter in our time. Our best wishes and remembrances to Glen, Agnes, Michael, and all the Dawson family for years of gracious service to us all.

– Jerry Selmer



# Monthly Roundup . . .

August 2010

"An idealistic group of young people longing to make a statement during the early days of the civil rights movement," provided the basis for Dr. Kenneth Marcus' presentation at our monthly dinner meeting. But these were not protestors; they were dancers – ballet dancers.

"I'll grant you," Dr. Marcus admitted, "ballet is an unusual place to make a statement about civil rights," but the First Negro Classic Ballet drew national attention for their work. They were one of the first permanent ballet companies in Los Angeles, and one of the first black ballet companies in the United States.

By 1940, one-third of all the black Americans in the west lived in Los Angeles, and by the end of the war, the population had passed 100,000.

During its ten-year lifespan (1947-1957), the troupe faced skepticism, financial woes, and outright racism. None of the members were able to devote their full time to ballet; many of them had blue collar jobs during the day, and studied dance at night. But some of the members went on to lifelong careers in the ballet, both on stage, and in films.

Over the years, their performances moved from traditional works to more distinctive, and sometimes even original productions that included social commentary in their storylines. Along the way, they had to build an audience for their work among both the black and white communities.

In the end, its ongoing financial troubles finally forced the demise of the First Negro Classic Ballet, but they were still able to prove that "ballet transcends race," Dr. Marcus said, and "provided an example of long-



time interaction in the arts between black and whites."

His interest in the story began when he learned that the Huntington Library holds a rich collection of photographs, clippings, correspondence, and recordings preserved by the founder of the company, Joseph Rickard, a white dance instructor.

September 2010

Consumption, climate, and the city of Sierra Madre came together in Associate Member Michele Zack's presentation, "Sierra Madre: A Case Study in How Illness Nurtured the California Dream."

Zack, the author of the recent *Southern California Story: Seeking the Better Life in Sierra Madre*, explained that the town is "a tiny place, but it plays a big role in the part that sick people played in Western migration." Sierra Madre, in fact, was founded in 1881 as a destination for invalids.



## FROM OUR FILES

**#54 September 1960**

"The October meeting, back at Costa's Grill, featured Westerner Ed Ainsworth, editor and feature writer on the Los Angeles Times. His 'Ghosts on the Field of Honor,' was replete with the editorial wars of yesteryear, settled with guns and gore, on the field of honor."

William R. Gold was welcomed as a new Corresponding Member.

**#160 Fall 1985**

"At the August meeting Corresponding Member Gary Turner addressed the Corral on the Kachina dolls of the Hopi, westernmost of the Pueblo tribes.... Despite Spanish and Anglo invasions, drought and other problems, the Hopi have endured, and the Kachina cult is one of the most enduring features of their religion."

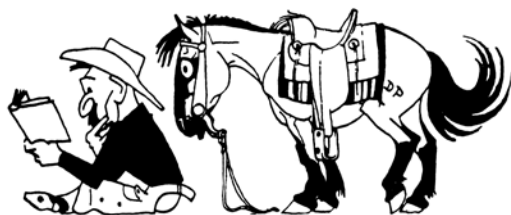
In September, Bob Blew was welcomed as a new Active Member.

Southern California's mild climate was heavily touted in the late 19th century, and once the transcontinental railroad made it easier to head west, thousands of people poured into the Golden State – and perhaps a quarter of them came for their health. Many died anyway, but "at the very least, you could really extend your life by coming to California," Zack said.

In Sierra Madre, almost everyone in town was either ill or related to someone who was ill. In the 1910s, tuberculosis played a role in 84% of local deaths. After the city incorporated in 1907, it tried to shake off its image as a haven for invalids, passing ordinances to ban businesses that catered to the sick. Many of the residents were well off, and cultured folk built a community far ahead of its small size.

The impact of TB on California's history is "seriously under-estimated today." "Scholars have a lot more work to do on this," Zack concluded. The health-seekers that lived "became Californians," and "helped to invent this regional culture we have today which is so health-obsessed."

# Down the Western Book Trail . . .



*Fatal Journey: The Final Expedition of Henry Hudson.* By Peter C. Mancall. New York: Basic Books, 2009. 303 pp. Maps, Illustrations, Notes, Note on Sources, Index. Cloth, \$26.95. Order from Basic Books, 387 Park Avenue South, New York, NY 10016-8810; [www.basic-books.com](http://www.basic-books.com).

The search for the Northwest Passage remains one of the most fascinating topics in the history of Western Hemisphere exploration. From the 16th to 20th centuries hundreds of men died in pursuit of what has been termed the “Arctic Grail.” Peter C. Mancall, a professor of history and anthropology at the University of Southern California, examines the expeditions of Henry Hudson, focusing on his fourth and final expedition in 1610. The exact circumstances that led to Hudson’s death have never been fully explained, but Mancall probably comes as close as anyone ever will in investigating the last months of Hudson’s life. Although primary sources are meager, Mancall utilized diaries, correspondence, and contemporary maps, as well as offering careful conjecture, in creating a compelling narrative.

Henry Hudson made a total of four voyages, three of them to the Western Hemisphere, between 1607 and 1611. English and Dutch companies sponsored the expeditions, the primary goal being to find a route to East Asia and access to that area’s spices and trade goods. His initial venture took him across the North Atlantic to the east coast of Greenland and as far north as Svalbard in 1607. In the following year he went to North America, scouting the east coast, going up the river named for him, making both friendly and unfriendly contacts with Native Americans. In 1609 he attempted to find a Northeast Passage above Russia, getting as far as Novaya Zemlya, an island that more than four centu-

ries later would become known as a haven of sorts for merchant marine ships seeking escape from German submarines during World War II.

Hudson’s final voyage took him to the Hudson Strait, the passage between Newfoundland and Baffin Island, and ultimately to Hudson Bay. Battling icebergs and pack ice, experiencing Arctic weather, Hudson hoped that from the huge bay he could find a way across the top of North America to Asia. Mancall observes that Hudson made careful observations of landmarks and drew maps as accurate as he could make them, creating a source of information that would be valuable to later explorers. Unfortunately for Hudson, his crew became increasingly disaffected with their protracted stay in Hudson Bay, as food and supplies ran short. On June 21, 1610, some of the crewmen mutinied. The struggle was brief, and no one was killed or injured. The mutineers put Hudson and the men who stayed loyal to him in a boat that trailed behind the ship which the mutineers headed for Europe. The boat could not keep up with the ship and soon was out of sight. Subsequently, the crew encountered hostile Inuits who killed the ringleaders of the mutiny. The survivors eventually succeeded in returning to England. Hudson’s boat was never seen again. Two investigations were held, but with the mutiny leaders conveniently dead there seemed little choice but to acquit the survivors of wrongdoing.

Mancall draws upon the record kept by Abacuk Pricket for much of the detail as to what happened on Hudson’s final voyage, using this source cautiously since Pricket may have written his account to serve his own interests (which included avoiding the hangman’s rope for mutiny).

In the end there is no closure to Hudson’s final journey. The remains of Hudson and

those who stayed with him have never been found, and what evidence has been located is inconclusive. What we do have is a well-crafted story that will captivate readers who will certainly marvel at the endurance and courage of explorers seeking a phantom route to riches.

—Abraham Hoffman

*The California Missions Source Book: Key Information, Dramatic Images, and Fascinating Anecdotes Covering All 21 Missions*, by David J. McLaughlin. Pentacle Press, 2009. 68 pp. Illustrations, Maps. Paper, \$24.95. Distributed by University of New Mexico Press, 1312 Basehart SE, Albuquerque, NM 87106; (900) 249-7737; [www.unmpress.com](http://www.unmpress.com).

Author David McLaughlin, along with Contributing Editor Ruben G. Mendoza, has created a handy booklet for elementary school teachers (California history in the fourth grade). It is also a useful guidebook for anyone interested in the California missions who may be planning to visit some of them. Spiral bound and with very sturdy covers and pages, this is a book that can withstand lots of page turning. McLaughlin has created a kind of Trivial Pursuit book (without the questions) as he provides a great deal of information about the missions, much of it not trivial at all.

McLaughlin begins with a brief overview of the history of the missions — their founding, relations with the local Indians, and secularization. The main section of the book provides information on each of the 21 missions, in order of founding. Each mission is allotted two pages, and these pages are crammed with details on the founding Franciscans, location, date of founding, patron saint, year secularized, Native people who joined the missions, water source, livestock and agricultural output, art and architecture, special attractions, significant events, and key facts. Each entry has seven illustrations (historical and contemporary) and two maps. An Afterword examines the period following secularization through abandonment during the rest of the 19th century, with just a brief

mention on mission restoration in the 20th century.

Although McLaughlin addresses the issue of Indian resistance and hostility to Franciscan proselytizing, his goal here is to provide those key facts of who, what, where, when, and how rather than the why of California mission history. That history falls into roughly three phases — the Spanish and Mexican era, the neglect and deterioration period following secularization, and the restoration-preservation efforts beginning with the 20th century. This last period is not dealt with in this book, leading to the curious disconnection between modern admiration of mission art and architecture, and an assessment of the missionaries' general failure to convert most of California's Indians to the Christian faith, along with their helplessness in dealing with the high Native mortality rate. It's also important to note that restored missions, complete with gift shops and self-guided tours, do not accurately reflect what would have happened to the missions had not Charles Lummis's Landmarks Club spearheaded a movement to preserve, renovate, and restore the crumbling buildings. Any discussion of these matters is probably too much to expect in a small book that does offer basic information clearly useful to teachers and students.

—Abraham Hoffman