Politics and the Courts: The Struggle Over Land in San Francisco 1846-1866

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I. INTRODUCTION

The struggle over land constitutes one of the most persistent and important themes of California's nineteenth-century legal history. Ultimately that struggle pitted those who had philosophical objections to the concentration of land in a few hands, against those who believed in the sanctity of vested interests; those who recognized the letter and spirit of treaty obligations to Mexico, against those with an antipathy toward Hispanics; real estate speculators against those concerned with protecting the public's welfare; and the civil law against the common law tradition.

While San Francisco's experiences may not have been representative of California land disputes, these experiences involved virtually all the problems confronted in quieting title and exemplified the complexity of the resolution of what was ostensibly a legal issue. Moreover, the resolution of San Francisco's land disputes brought California's principal federal judges into conflict and provides insight into the dynamics of the state's federal judiciary in the latter half of the nineteenth century.

California's federal judiciary became directly involved in the struggle over land because of the congressional response to the Treaty of Guadalupe Hidalgo. This treaty established the terms of the Mexican cession of lands to the United States following the Mexican War of 1846. The treaty guaranteed that Mexican ownership of "property of every kind" within the territory "[should] be
inviolably respected." The treaty thus committed the United States to recognize the legitimate ownership of substantial tracts of land in the new state held by individuals under Spanish and, for the most part, Mexican grants. To implement the treaty, Congress adopted the California Land Act of 1851 to identify the legitimate land claims that would be recognized by the United States.4

The Act of 1851 (the "Act") differed from other methods that Congress had used to resolve land titles held under foreign governments in areas that subsequently became part of the United States, such as Louisiana and Florida. The difference lay in vesting final authority to resolve such disputes in the federal courts rather than in Congress.5 The Act established a three-man federal board of land commissioners before whom "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present . . . such documentary evidence and testimony of witnesses as the claimant relies upon in support of such claims."6 The Act thus placed the burden of proof on the grantee to establish title, and if the grantee could not meet this burden, the claimed land would become public property and open to settlers. Both the claimant and the United States could appeal the decisions of the land board to the appropriate federal district court and to the United States Supreme Court.

The Act also provided that if a claimant unsuccessfully presented a claim to the federal courts or failed to present a claim within two years of the Act, the land automatically became part of the public domain of the United States. Successful grantees, on the other hand, could receive a federal patent after presenting a certification of confirmation and a survey duly approved by the United States Surveyor General of California to the General Land Office in Washington. Under the Act, however, adjudication of grants only dealt with the issue of title conflict between the United States and the claimants. The interests and rights of third parties were specifically reserved.

Although most of the land claimed under the Act consisted of Mexican ranchos, title to many other types of land, including

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"pueblo lands," hinged on the outcome of these federal procedures. Integral to the complexity of the struggle over land in San Francisco was the city's right to 18,000 acres of pueblo land that it claimed under Mexican law. Each pueblo was entitled to four square leagues, a right that San Francisco claimed as the successor to the Mexican town of Yerba Buena. The Act of 1851 allowed corporate authorities of California towns to present their claims for pueblo lands.

The conflict over land in San Francisco included such diverse interests as: Mexican grantees; lot-holders tracing title to American civil and military grants and land sales; settlers claiming under pre-emption laws; individuals who claimed land under execution sales against the city, and people who simply took what they could and held it through intimidation. Competing with each other, as well as with the city, were a half-dozen individual claimants of Mexican land grants—including Jose Y. Limantour, a man who claimed title to half of San Francisco. The city as a municipality sought to accommodate the adverse claims to this land and, not surprisingly, moved erratically toward a final solution. The United States, as a party to the litigation, technically had a rather narrow interest in protecting federal government sites in the city, so the city of San Francisco had the most to benefit from a judicial determination of the pueblo land claim. It was the resolution of the city's pueblo title that brought a final settlement to most of the landed interests in San Francisco.

In many respects San Francisco's experience mirrored many of the tensions involved in state land settlement. The resolution of San Francisco's pueblo title provides a good example of the types of land solutions that were forged by federalism. Under the Act, the segregation of public from private land was technically the exclusive province of the federal government in its examination of Mexican land grants. In practice, however, the state courts' early involvement with land issues affected how the federal courts exercised their "exclusive" jurisdiction. Further, the struggle over land in San Francisco offers a microcosm of the elements that affected the pace, nature, and

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7. The earliest towns or pueblos established in California were entitled to "pueblo lands" under Spanish law. Some of these pueblos were associated with neighboring missions while others were associated with presidios or military outposts. See W.W. Robinson, Land in California 33-43 (1948).

8. Yerba Buena was the settlement on San Francisco Bay that ultimately became the city of San Francisco. Established in 1835, the town was renamed San Francisco in 1847. It was this succession that allowed the city to claim its right to pueblo lands.

ultimate outcome of California land litigation in general.

The final resolution confirming the pueblo was hardly as inevitable and naturally beneficial as its proponents asserted. Few of those who struggled for land in San Francisco possessed clear-cut legal or moral equities favoring their particular claims. Opponents of San Francisco's pueblo title—along with adversaries to any particular land struggle in California—were branded "speculators" or "squatters," depending upon the size of their investment. While there were unscrupulous gains to be made by some who sought the defeat of the city's title, the hands of many who would profit from confirmation were not clean either. The final solution merely represented the political and legal success of certain groups of speculators over others.

More than anything else, the struggle over the pueblo title offered a view of the contrasting judicial styles of Ogden Hoffman and Stephen J. Field, the two federal judges who played a central role in resolving the San Francisco land disputes. Both men held strong, but divergent views regarding litigation of San Francisco land. Each also had extensive judicial experience with this major issue.

By the early 1860s, Hoffman, as judge of California's northern district court, had already heard many appeals from the land board. Field, as a member of California's Supreme Court from 1857 until his elevation to the United States Supreme Court in 1863, was also influential in settling land titles within the state. The relationship and differing approaches of Hoffman and Field not only shaped the eventual settlement of San Francisco's pueblo title in 1866, but also influenced the character of federal justice in California until Hoffman's death in 1891.

II. THE LURE OF SAN FRANCISCO REAL ESTATE

A. Early Speculation

Years before the gold seekers reached San Francisco by the thousands, a smaller group of men began laying the foundations to their fortunes in San Francisco real estate. The four-year period between the American conquest of Mexico in 1846, and California's statehood in 1850, saw the sale or transfer of much San Francisco land that later became the extremely valuable prize over which so many would struggle. During this period, most of the land which was granted or sold comprised what is now the commercial and downtown areas of San Francisco. Between 1846 and 1848, some
1,200 lots in the heart of the city were granted or sold. This disposition of land also included areas which were part of San Francisco Bay. For instance, the so-called "beach" and "waterfront" lots had the promise of great value, but were originally mud flats that were later converted into solid ground.

The influx of population which accompanied the Gold Rush greatly inflated the value of property that many early residents had purchased for speculative purposes. One lot in the center of the developing city that had cost $16.50 in 1847, sold in early 1849 for $6,000, and at the end of the same year sold for $45,000. The dispensation of public land provided an important source of revenue for the city and was always popular with potential speculators.

This early disposal of San Francisco's most valuable municipal lands bore the marks of greedy speculation, irresponsibility, and fraud. Some of the earliest to profit from San Francisco land investments were members of the American military stationed in California in the mid-1840s. For instance, Army Captain Joseph L. Folsom, who served as chief quartermaster at San Francisco beginning in 1847, was only one of the individuals who capitalized on land purchases in the city. In 1847, town lots were sold for as little as sixteen dollars each, but each individual was limited to a single purchase. William T. Sherman, a West Point classmate of Folsom's, then also stationed in California, recalled that Folsom "had got his clerks, orderlies, etc., to buy lots and they, for a small consideration, conveyed them to him, so that he was nominally the owner of a good many lots." Indeed, Folsom's efforts were so successful that when he died in 1855, many believed him to be the wealthiest man in the state. One observer, however, noted that Folsom's property was
"all held by titles more or less uncertain" and that during his last five years, he had been "engaged constantly in lawsuits and broils, worried, vexed, and harried to death."¹⁶

A principal vulnerability of these early land speculations was their uncertain title. Apart from such frauds as Folsom's utilization of "straw-men," many contemporaries expressed doubts about the legitimacy of land sales in the city.¹⁷ In 1850, Henry H. Haight, a San Francisco lawyer and the future governor of California,¹⁸ detailed the different "tenure and titles" to land in San Francisco, determining that virtually all the land granted or sold after 1846 was "of dubious legality" if not tainted by "fraud and corruption."¹⁹ He found that the sale of water lots was "not authorized by or in conformity to law," but noted "the general expectation that they will be sanctioned" by Congress because of the valuable improvements made on them.²⁰ Another San Francisco lawyer, John McCrackan, noted that the city had "no good right or title" to lands it received from an American military governor before statehood.²¹ Rather, he believed that "the land held by our city, as her own, is held under the squatter title, [through] possession and improvement."²² Thus, McCrackan observed, "In one sense of the word, we are all squatters."²³

Indeed, even those like Haight and McCrackan, who were trained lawyers and aware of the suspect titles, could not resist the lure of San Francisco real estate: both subsequently invested in city lots.²⁴ McCrackan, who had been retained to validate title to several

¹⁸. Henry H. Haight served as the tenth governor of California from 1867-71.
¹⁹. See Letter from Henry H. Haight to Fletcher M. Haight (July 17, 1850) (Henry H. Haight Papers, Huntington Library, San Marino, Cal.).
²⁰. Id.
²¹. See Letter from John McCrackan to his sister Mary (Aug. 18, 1850) (John McCrackan Papers, Bancroft Library, Univ. of Cal., Berkeley).
²². Id.
²³. Id.
²⁴. Two and a half years after his scathing attack on land titles in the city, Haight and his partner bought six water lots for $22,000. See Letter from Henry H. Haight to Joseph B.
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of San Francisco's water lots, noted a circumstance that made his task easier: "[O]ne of the most favorable features of the case is in the fact [that] every lawyer in town, being a grantee, . . . consequently [is] interested in having [the titles] sustained." Lawyers were hardly the only group interested in such lands, but their heavy involvement strengthened the argument that ownership of city land deriving title from sales or grants between 1846 and 1850 involved legitimate investments and not unscrupulous speculations.

B. Smith Deeds

In 1852, another series of events occurred which resulted in the city of San Francisco losing more of its lands. A number of creditors of the city had sued for money owed to them and had received judgments in their favor. In order to satisfy these judgments against the cash-poor city, a series of execution sales of municipal lands were made. As a result, many thousands of acres were sold for ridiculously low prices. Collectively, these sales became known as the Peter Smith deeds, named after a principal creditor of the city. The deeds became the subject of widespread resentment based on suspicion that collusion among the buyers had kept the bidding low on the extremely valuable property. Ultimately the municipality lost much of its principal asset: land.

Wells (Apr. 22, 1854) (Henry H. Haight Papers, Huntington Library, San Marino, Cal.). For a record of McCrackan's investments, see Letter from McCrackan to his sister Mary (July 29, 1850); Letter from McCrackan to his sister Lottie (Apr. 25, 1852) (John McCrackan Papers, Bancroft Library, Univ. of Cal., Berkeley).

25. See Letter from John McCrackan to his mother (May 24, 1850) (John McCrackan Papers, Bancroft Library, Univ. of Cal., Berkeley).

26. For other instances of San Francisco lawyers investing in such city property, see Jonathan Drake Stevenson Papers, Box 1; Letter from Joseph B. Crockett to Mrs. Joseph B. Crockett (Feb. 28 and Aug. 16, 1853) (Joseph B. Crockett Papers and Deed Portfolio); Hittell Family Papers and Deeds; and Elbert P. Jones Papers and Portfolio (all manuscripts in Bancroft Library, Univ. of Cal., Berkeley).

27. For background on these execution sales, see M. Selvin, 'This Tender and Delicate Business': The Public Trust Doctrine in American Law and Economic Policy, 1789-1920, 183-190 (1978) (unpublished doctoral dissertation, Univ. of Cal., San Diego). At one point, central city lots were purchased for less than eleven cents! Id. at 188.

28. See infra notes 31-36 and accompanying text.


Opponents of the Smith deeds accurately described them as a plunder of municipal lands that were desperately needed for city revenue. These objections, however, also stemmed from the threat that Smith deeds posed to holders of city lots purchased earlier. Joseph Folsom, who had previously acquired many San Francisco lots by dubious means as a soldier, now, as a state legislator, opposed the Smith deeds because he claimed that they meant "utter ruin" to the value of the older downtown lots. Along with Archibald Peachy, another state legislator and a partner in a major San Francisco law firm, Folsom plotted to abolish the Superior Court in San Francisco because it had sanctioned the execution sales. The pair's strategy also entailed securing judges on the California Supreme Court who would favor their position. The threat posed by the Smith deeds was eventually avoided, but through court action rather than through Peachy and Folsom's crusade.

The Smith deeds posed a threat in part because powerful and prominent people had invested in them. Two prominent lawyers held Smith deeds: Serranus Clinton Hastings, the first Chief Justice of the California Supreme Court, and Hall McAllister, the leading advocate of the California bar. But McAllister and Hastings represented only two of the "Peter Smith men" who filed some three hundred thirty-two lawsuits by July 1855. Such lawsuits were instituted in order to remove persons on land which was claimed under Smith deeds. Both men, however, were wealthy and highly respected; in both cases their speculation in Smith deeds represented only part of a wider investment in real estate. Prominent politicians who were also Smith deed holders included David C. Broderick, a leading Democrat in San Francisco and later, a state senator and John McDougal, California's second governor.

31. See Letter from Joseph L. Folsom to Archibald C. Peachy (Jan. 1852); Peachy to Folsom (Apr. 16, 1853) (William A. Leidesdorff Papers, Box 6, Huntington Library, San Marino, Cal.).

32. See Letter from John B. Weller to Joseph L. Folsom (June 18, 1852); Archibald C. Peachy to Joseph L. Folsom (Jan. 31, Feb. 24, and May 31, 1853) (William A. Leidesdorff Papers), supra note 31.

33. See supra notes 31-32 and accompanying text.

34. The Land Litigation on the Confines of the City, 1 WEEKLY L. REV. 14, 14-15 (1855).


C. Squatters

Squatterism posed a final source of difficulty in the struggle over San Francisco land. R.F. Peckham, who arrived in San Francisco in 1846, and later served briefly as district attorney and county judge of Santa Cruz, remembered that in the 1850s,

[S]ociety was divided into three classes; land grabbers, those that had grants for the lands and believed they were the owners; the squatters, who knowing they had no title, would take possession of lots and hold them by making improvements . . . [and] the jumpers, who stood ready to ignore all law either of strict title or prior possession, and to intrude themselves, either by force, stealth or fraud, into another man's possessions and despoil him of improvements.37

Both lot holders and grantees shared a common enemy in the form of settlers and squatters. The squatters were motivated by the prospect of gaining valuable city land by settling upon it and then filing a preemption claim under federal law. The logistics of this process required a rejection of the pueblo title with the implication that such land was part of the public domain.

While some individuals showed a willingness to abide by the federal preemption laws, many squatters made little distinction between the lots held under grants or sales and the land that the city claimed under its pueblo title. If Peckham's categories of land "grabbers," "squatters," and "jumpers" tend to merge into one another, it is because he perceived the one uncontested fact regarding the struggle for land in San Francisco: everyone wanted to get their hands on valuable city property.

To speak of preemption settlers in the quickly urbanizing setting of San Francisco was an anomaly. Few, if any, of the "settlers" who sought 160 acres from the federal government had any intention of working the land by themselves or with their families.38 Such "settlers," along with lot holders and squatters, sought mainly to acquire land that was or might become valuable.39 The possibility of gaining valuable city land through preemption spurred conflict and sporadic violence throughout the 1850s with squatter activity closely mirroring judicial and legislative decisions.40 Initially, squatterism

37. ANON., JUDGE R.F. PECKHAM, AN EVENTFUL LIFE 33 (bound newspaper clippings from San Jose Pioneer, July 28, 1877 on file Bancroft Library, Univ. of Cal., Berkeley).
38. See supra note 5.
39. Id.
40. See H. W. Drummond, supra note 29, at 20; O. L. SHAFTER, supra note 16, at 67;
received considerable support from California's court and legislature as well as from the federal government.  

Confronted by the court decisions supporting squatterism, San Francisco's business community grew increasingly concerned because much land rested solely on possession, and the unoccupied lands which had been purchased during the American period were open prey for squatters. A local San Francisco newspaper, the *Alta California*, placed much of the blame for squatterism on San Francisco's "capitalists." It claimed that "an extensive and systematic organization" for squatterism existed, which was led by "foreigners" who were also "prominent citizens and . . . merchants." Purportedly, the organization existed to induce squatterism on vacant lands in the city, "the capitalists bearing a small proportion of the expense, and the squatters taking all the responsibility." The property, so seized, was later to be sold for the profit of the organizers, with "squatters getting but a nominal consideration, or none at all." The *Alta California* warned against further "public robbery."

Historical evidence tends to bear out the *Alta California*'s assertion that squatterism in San Francisco was not simply a helter-skelter activity of disorganized and disgruntled "settlers." Substantial interests were involved, and while a systematic organization for squatting may not have existed, speculators sought legal advice and

Letter from Montgomery Blair to Mrs. Montgomery Blair (June 11, 1854) (Blair Family Papers, Box 41, Library of Congress); Letter from Elisha O. Crosby to John Bidwell (July 20, 1853) (Bidwell Papers, Box 128, California State Library, Sacramento, Cal.); Letter from Samuel T. Hensley to John Bidwell (Aug. 5, 1852) (Bidwell Papers, Box 130, California State Library); Letter from John McCrackan to his sister Mary (Aug. 18, 1850) and McCrackan to his sister Lottie (Feb. 7, 1851) (McCrackan Papers, supra note 21); W. J. Shaw, *Administration of Justice in the Early Days* 8-11 (San Francisco, 1886) (manuscript dictation on file at Bancroft Library, Univ. of Cal., Berkeley); and 3 T. H. Hittell, *History of California* 677-78, 681-85.

Squatter activity increased following the California Supreme Court decision in Woodworth v. Fulton, 1 Cal. 295 (1850), in which the court denied the existence of a San Francisco pueblo. See San Francisco Alta California, Feb. 25, 1852, at 2, col. 3; *Id.* at July 22, 1853, at 2 col. 1; San Francisco Daily Herald and Mirror, Feb. 25, 1852, at 2, col. 3. Rumor that the board would reject the pueblo title also sparked increased squatterism. See San Francisco Daily Herald and Mirror, May 28, 1854, at 2, col. 1; and San Francisco Alta California, May 31, 1854, at 2, col. 1; *Id.* at June 2, 1854, at 2, col. 1-2; *Id.* at June 6, 1854, at 2, col. 2; *Id.* at June 7, 1854, at 2, col. 1; and *Id.* at June 10, 1854, at 2, col. 2.


42. T. H. Hittell, supra note 40, at 679.

43. San Francisco Alta California, July 22, 1853, at 2, col. 1.

44. *Id.*

45. *Id.*
readily took advantage of the opportunities provided by the early de-
cisions of the California Supreme Court. On June 9, 1853, property
owners who held title to city lands established the “People's Organiza-
tion for the Protection of the Rights of Property and the Mainte-
nance of Order” in order to oppose the “bands of armed men” who
“have been organized in our midst.”46 A “recipe” appearing in the
Alta California on August 4, 1853 indicated the mounting tension:
“HOW TO COOK A SQUAT (‘A short and easy method of ac-
quiring property, by which stealing is not [a] felony, and robbery
becomes a rapid and legal cut to wealth’).”47

The key issue regarding San Francisco land had always been
whether or not the city had inherited the land rights of a Mexican
pueblo.48 The existence of a pueblo seemed necessary in order to
validate grants or sales of city land made after 1846 as well as to
provide a legal basis for the execution sales. The source of the city’s
title to municipal lands was linked both to its vulnerability to execu-
tion sales and its authority to grant or sell lands. The San Francisco
peninsula was the subject of a number of individual claims of Mexi-
can grants in addition to the city’s pueblo claim. On the assumption
that it was entitled to four square leagues,49 San Francisco had
granted and sold its valuable city lots. If, however, the alleged indi-
vidual grants were invalid, and there was no pueblo title, then enor-
mously valuable land became available for the taking.

III. THE ELUSIVE LEGITIMIZATION OF THE PUEBLO TITLE

Initially, in 1850, the California Supreme Court denied the ex-

46. San Francisco Alta California, June 10, 1853, at 2, col. 2.
47. San Francisco Alta California, Aug. 4, 1853, at 2, col. 2.
48. See A. Wheeler, supra note 10, San Francisco Alta California, Oct. 15, 1853, at 2,
col. 1; San Francisco Daily Herald and Mirror, May 28, 1854, at 2, col. 1; San Francisco Alta
California, June 2, 1854, at 2, col. 1-2; Id. at June 16, 1854, at 2, col. 2; Id. at June 18, 1854,
at 2, col. 4; Id. at June 21, 1854, at 2, col. 3; Id. at June 25, 1854, at 2, col. 4; Id. at July 1,
1854 at 2, col. 4; San Francisco Alta California, Mar. 11, 1858 at 2, col. 1; W.C. Jones, The
‘PUEBLO QUESTION’ SOLVED, IN A PLAIN STATEMENT OF FACTS AND LAW (San Francisco,
1860) (pamphlet on file in Bancroft Library, Univ. of Cal., Berkeley); SAN FRANCISCO
BOARD OF SUPERVISORS, 1859-1860 MUNICIPAL REPORTS 148-52 (San Francisco, 1860);
W.J. Shaw & N. Bennett, LAND TITLES IN SAN FRANCISCO: ADDRESSES BY HON. WILLIAM
J. SHAW AND HON. NATHANIEL BENNETT, GIVING THE FACTS AND THE LAW AND
THE CHARACTER AND EFFECTS OF LEGAL DECISIONS THEREON, IN REGARD TO THE LAND
TITLES IN SAN FRANCISCO (San Francisco, 1862) (pamphlet on file in Bancroft Library,
Univ. of Cal., Berkeley); San Francisco Alta California, May 30, 1865 at 2, col. 1; H. H.
BANCROFT, supra note 11, at 565-70.
49. A league was 5,000 varas square and because the length of a vara in California
(after 1855) was 33.372 inches, a square league equalled 4438.68 acres.
istence of a San Francisco pueblo and hence invalidated all claims depending on that title. In 1853, however, the court reversed itself, at least in part, and upheld the pueblo title and the legality of municipal grants made after 1846. The court, however, did not uphold the Smith deeds. By 1857, the same court, with a different composition of justices, reluctantly concluded that it could not reject the Smith deeds unless it was also prepared to reject the pueblo and the post-1846 grants. Confirmation of the suspect Smith deeds seemed to be the necessary price for a pueblo and validation of title to highly developed commercial property.

A. **Hart v. Burnett**

The solution to the legal quandary over San Francisco land titles was reached in the 1860 landmark case of *Hart v. Burnett*. *Hart* addressed the nature and source of San Francisco’s Pueblo in relation to the validity of the Smith deeds. Factually, this case involved a controversy between a person who held a Smith deed, and a settler who claimed 160 acres of open city land. In resolving the controversy, the California Supreme Court established a landmark in the history of the public trust doctrine in the state. On the San Francisco land issue, however, *Hart*’s important contribution was its conclusion that the city could enjoy the benefits of a pueblo without validating the Smith deeds. While the state courts lacked official jurisdiction to settle the pueblo’s Mexican origins, the case provided the blueprint for the final settlement of the issue by federal authorities.

Before advancing its new theory on the nature of San Francisco’s tenure of pueblo lands, the *Hart* court dealt with the extent of

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50. Woodworth v. Fulton, 1 Cal. 295 (1850).
51. Cohas v. Raisin and Legris, 3 Cal. 443 (1853).
52. Welch v. Sullivan, 8 Cal. 165 (1857).
54. *Id.*
55. *Id.*
56. According to one scholar, the public trust doctrine: states that tidelands and certain other lands and waters are held in trust by the citizens of the various sovereign states and municipalities to be used only for the benefit of the general public. The doctrine in its most abstract sense, prohibits the sale or disposition of these resources for exclusively private benefit and dictates that the state or municipality retains the inalienable power to regulate the use of this property, even if it is granted into private ownership.

the pueblo and the consequences of the American conquest of such lands. Rather perfunctorily, the court concluded that San Francisco was "beyond a doubt" a pueblo.\(^5\) It followed that the city was entitled to four square leagues of land.\(^5\) As to the nature of the city's pueblo title, the court reviewed various forms of land tenure and concluded that Mexican law gave "but one sensible answer:" the city's pueblo lands "were not given to them in absolute property, with full right of disposition and alienation, but to be held by them in trust, for the benefit of the entire community."\(^5\) The court concluded that as trustees, the city officials could not allow the execution of city lands to pay debts that such officials created. On the other hand, procedures did exist for selling or granting such lands outright. Therefore, the Smith deeds, which originally stemmed from such executions, were void, while the post-1846 land grants and sales were valid.

The *Hart* decision also revealed the justices' disagreement over the final solution to the pueblo dispute. Justice Warner S. Cope dissented in *Hart* simply on the grounds that the court's earlier decision validating the Smith deeds represented controlling precedent. More importantly, however, the case introduced into the controversy Justice Stephen J. Field, whose forceful will would dictate the end of the dispute. Although Justice Joseph G. Baldwin wrote the majority opinion for the three-member court, Chief Justice Field had apparently contributed significantly to its reasoning, and later wholeheartedly embraced it as a final solution.\(^6\) In the majority opinion, Baldwin exerted considerable effort trying to reconcile *Hart* with the court's prior decision that the Smith deeds were valid.\(^6\) At one point, Baldwin argued that California land law was so chaotic in the previous decade that no precedents existed. Ultimately, however, the court defended its *Hart* decision as necessary to "settle and quiet titles of the larger number [of people] now in possession."\(^6\) The court also postulated that a contrary decision would strip San Francisco of "her magnificent endowment" in favor of speculators who had invested "but a trifling proportion of the value of the property

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58. Id. at 542-43 (1860).
59. Id. at 573.
60. San Francisco v. United States, 21 F. Cas. 365 (C.C.N.D. Cal. 1866) (No. 12,316); Townsend v. Greeley, 72 U.S. (5 Wall.) 326 (1866); Grisar v. McDowell, 73 U.S. (6 Wall.) 363 (1867).
bought."\(^{63}\)

Long before *Hart* was decided, and prior to Chief Justice Field's assumption of an active role in settling San Francisco's land titles, Field had shown his opposition to what he called "the spirit to invade other people's land."\(^{64}\) In prior years, as an alcalde\(^{65}\) in Marysville, California, he had run squatters off town lots, including lots which he owned. His election to the California Supreme Court in 1857 was widely viewed as a setback for the pro-squatter or settler movement in the state. Once on the court, he increased his unpopularity with squatters and would-be settlers with opinions strongly favoring the interests of Mexican grantees over other competitors for land.\(^{66}\) Field described the *Hart* case as a "just and most beneficient judgment" that insured peace "to thousands of homes."\(^{67}\) He attributed the "fierce howl of rage and hate" directed toward Justice Baldwin and himself as stemming from self-interested speculators and a temporarily misguided public.\(^{68}\)

B. The Van Ness Ordinance

While the state supreme court's decision in *Hart v. Burnett* encouraged the settlement of land title disputes in San Francisco, the issue of the city's pueblo title ultimately rested with the federal authorities. By 1854, the city had secured a partial victory before the land board: confirmation of the city's pueblo title, but only for three rather than four square leagues of land. The board's opinion thus reminded the city that it might lose the extra league of land if the pending claims covering much of the San Francisco peninsula (and in competition with the pueblo title) were confirmed. Given the land board's decision, it was inevitable that the city would appeal to the federal district court for the northern district of California.

Soon after the land board's decision, however, the city of San Francisco moved to take advantage of the partial but favorable ruling and struck a compromise between the holders of post-1846 grants

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63. *Id.* at 610.
65. An alcalde was a leading civil officer of local government in a Spanish (and later Mexican) municipality, and functioned as a combined mayor and justice of the peace. In the short interim between military conquest of California and the adoption of the state constitution, numerous Americans, such as Stephen J. Field, occupied the office.
67. S. J. Field, *supra* note 64, at 159.
68. *Id.*
and the squatters and settlers. On June 20, 1855, the city council passed the Van Ness Ordinance which was later ratified by the state legislature in 1858 and by Congress in 1864.\textsuperscript{69} The ordinance relinquished San Francisco's claim to all land within the city limits "to the parties in the actual possession thereof, by themselves or tenants," who lived there on or before January 1, 1855.\textsuperscript{70}

Moreover, holders of post-1846 grants to lands lying east of Larkin street and northeast of Johnston street\textsuperscript{71} were "deemed to be the possessors of the land so granted, although the said lands may be in actual occupancy of persons holding the same adverse to the said grantees."\textsuperscript{72} The practical effect of the Van Ness Ordinance was to protect those landowners who held land under title in the older, commercial, and developed parts of the city. At the same time, the ordinance legitimized squatting in the vast area west and southwest of Larkin and Johnston streets—the area which included most of the land claimed under Smith deeds.\textsuperscript{73}

C. Individual Claims Adverse to San Francisco's Pueblo Title

Neither the Van Ness Ordinance, nor the land board's 1854 decision, however, settled the issue of the pueblo title. Other individual claims still conflicted with the city's pueblo claims. In addition to Jose Y. Limantour's notorious claim to most of San Francisco,\textsuperscript{74} there were dozens of other claims that threatened the city's right to major portions of city land.\textsuperscript{75} While the Limantour case was certainly the most dramatic, two other claims figured even more importantly in directing the course of San Francisco's pueblo claim. The adjudication of the Bolton claim and the Sherrebeck claim resulted in

\begin{itemize}
\item \textsuperscript{69} J.W. Dwinelle, \textit{The Colonial History of San Francisco} addenda no. 112, addenda no. 146 (4th ed. San Francisco 1867) (photo. reprint 1978). Several ordinances were involved and passed in 1855 and 1856, but they soon were called in the aggregate "The Van Ness Ordinance."
\item \textsuperscript{70} \textit{Id.} at addenda no. 112.
\item \textsuperscript{71} South of the intersection at Market Street, Larkin Street was called Johnson Street. Now it is called 9th Street.
\item \textsuperscript{72} \textit{Id.}
\item \textsuperscript{73} Anon., \textit{The Land Litigation on the Confines of the City}, 1 \textit{Weekly L. Rev.} 14, 15 (1855); J.S. Hittell, \textit{A Brief Statement of the Moral and Legal Merits of the Claim Made by Jose Y. Limantour to 15,000 Acres of Land in the City and County of San Francisco} (San Francisco, 1857) (pamphlet on file in Bancroft Library, Univ. of Cal., Berkeley).
\item \textsuperscript{74} For Limantour's extraordinary claims to San Francisco land, see K. Johnson, \textit{Jose Yves Limantour v. The United States} (1961).
\end{itemize}
judicial confirmation of claims that were adverse to the city's pueblo title.\textsuperscript{76}

1. The Bolton Claim

The Bolton claim presented a classic confrontation pitting the interests of settlers and squatters against those of the land grant claimants. Bolton alleged that certain land had been granted to a Mexican priest in 1846. A conflict arose because the claim to land under this grant overlapped with much of the city land already claimed by Limantour, and also overlapped with the desirable lands adjacent to the commercial areas.\textsuperscript{77} When the grant was filed with the land board in 1852, it was no longer owned by Hispanics, and by 1853, it was owned by the San Francisco Land Association, a land speculation venture headquartered in Philadelphia.

Before the Bolton claim could be filed with the board and in the wake of the Gold Rush, many individuals acting in good faith had settled on the land. By 1851, an English traveller described the area as "fully cropped with the preemption squatters."\textsuperscript{78} The number of people attracted to the area continued to increase even after Bolton filed the claim, in large part because many people believed the claim to be as fraudulent as Limantour's.\textsuperscript{79} Yet, the land board confirmed Bolton's claim in 1855. This unexpected result "produced a perfect howl among the squatters."\textsuperscript{80}

The board's confirmation of the Bolton interest also initiated a bitter five-year struggle that pitted local settlers and land speculators against large corporate speculation involving east coast and European investors.\textsuperscript{81} The San Francisco Land Association refused to compromise on easy terms. A large sum of capital had been invested in the association, and the land board's confirmation induced a new issuance of stock.\textsuperscript{82} The squatters and individuals on the land were

\textsuperscript{76} The Bolton claim was filed on Mar. 1, 1852 (81 Bd. 338 N.D.) and the Sherrebeck claim on Mar. 3, 1853 (795 Bd. 356 N.D.) (case files for both claims on file in Bancroft Library, Univ. of Cal., Berkeley).

\textsuperscript{77} Claim for Mission Dolores (81 Bd., 338 N.D.) (casefile in Bancroft Library, Univ. of Cal., Berkeley).

\textsuperscript{78} 2 W. KELLY, AN EXCURSION TO CALIFORNIA 33 (London, 1851).

\textsuperscript{79} Id.


\textsuperscript{81} Letter from William N. Walton to John Center (July 16, 1855) (John Center Papers, Box 1, Huntington Library, San Marino, Cal.).

\textsuperscript{82} SAN FRANCISCO LAND ASS'N, ARTICLES OF ASSOCIATION AND AGREEMENT OF THE SAN FRANCISCO LAND ASSOCIATION, WITH PROCEEDINGS OF THE MEETINGS OF
faced with the prospect of either being forced to leave, or to repurchase the land at inflated prices. The struggle reached its peak when the case went to the federal district court. Here, Judge Hoffman, with no more evidence than that introduced to the land board, entered a summary confirmation of the claim in 1857 which was designed to avoid the merits of the case and to expedite review at the Supreme Court. The United States Attorney General Jeremiah S. Black, later remarked that Hoffman's decision resulted because the judge was "without those tests which the archives have since furnished." 88

The adverse effect of the Bolton claim spurred settlers and others interested in mission lands to organize and raise a legal fund with which to resist the Bolton claim. They produced additional evidence demonstrating potential fraud with regard to the grants upon which the Bolton claim relied, and they agitated for a reconsideration of the claim before Hoffman's court. When it became clear that the case would only be resolved through a decision by the United States Supreme Court, a petition with ten thousand signatures was sent to the Supreme Court and all members of Congress, urging the defeat of the claim on the grounds of fraud. 84

Attorney General Black and his special counsel, Edwin Stanton, were accused of being Pennsylvanians under the influence of the San Francisco Land Association. They were further charged with accepting bribes to dismiss the appeal. 85 Indeed, Black was pressured by his Philadelphia friends to make a quick decision favorable to their interests. 86 Moreover, Stanton had once represented the Associ-
ation, and Black had secretly written to one of the settler’s lawyers to arrange the attorney’s services as special counsel for the Bolton case in Stanton’s place.87 Black believed that the Bolton claim was fraudulent but dismissed the accusations against himself and Stanton as “a sheer fabrication” and branded their accuser as “a cold blooded and deliberate liar.”88 Still, Black aggressively developed evidence necessary to defeat the claim.89 On May 4, 1860, the United States Supreme Court reviewed the voluminous testimony in the case and rejected the Bolton claim on the grounds that an insufficient degree of evidence had been presented to prove the grant.90 Beyond this failure to establish a legal basis for the claim, the Court felt that equity favored the “thousand settlers on the land,” who, in the Court’s opinion, had bought such land from American officials after the conquest, without notice of an adverse private claim.91

2. The Scherrebeck Claim

An even greater threat to San Francisco’s pueblo title was posed by Peter Scherrebeck’s claim. This claim involved the land known as El Rincon which comprised part of the downtown section of the city, adjacent to the bay and slightly south of Market street. In support of his claim, Scherrebeck introduced evidence showing that El Rincon was a part of the common lands of the pueblo of Yerba Buena and an authorized Mexican grant. Although the government’s lawyer did not challenge the claimant’s testimony, the land board rejected the claim ostensibly for lack of evidence to prove that the grant was within the pueblo’s common lands. The board’s decision rejecting the claim revealed reluctance to exclude such valuable commercial property from San Francisco’s pueblo, and it rejected the claim on November 6, 1855.

On appeal to the federal district court, Judge Hoffman seemed equally reluctant to validate the claim, but felt bound to decide the

87. Letter from Jeremiah S. Black to Louis Blanding (June 16, 1858), collected in California Land Claims, supra note 82; Letter from Nathaniel Bennett to Jeremiah S. Black (Jan. 16, 1860), collected in Black Papers, supra note 85.
88. Letter from Jeremiah S. Black to Isaac N. Thorne (July 17, 1858), collected in Black Papers, supra note 85. See also Letter from Jeremiah S. Black to Peter Della Torre (Mar. 3, 1859), collected in California Land Claims, supra note 82.
89. Letter from Jeremiah S. Black to Peter Della Torre, sent to R.C. Hopkins, Surveyor General (June 2, 1859); Letter from Jeremiah S. Black to J.W. Mandeville, Surveyor General (Jan. 16, 1860), collected in California Land Claims, supra note 82.
91. Id. at 352.
SAN FRANCISCO LAND DISPUTES

IV. From Judicial Rivalry to Title Certainty

By the early 1860s, the legal position of San Francisco as successor to the rights of Yerba Buena to pueblo lands was still a matter of considerable controversy. During this time, San Franciscans could perceive subtle but important differences in the attitudes of two of

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92. United States v. Sherebeck [sic], 27 F. Cas. 1062 (D.C.N.D. Cal. 1859) (No. 16,275).
93. Id.
94. EXPENDITURES, supra note 83, at 30-40.
95. Hoffman's decision was vacated on June 2, 1860. See O. HOFFMAN, REPORTS OF LAND CASES 106 app. (San Francisco, 1862).
96. MINUTES, United States District Court, Northern District of California (Mar. 30, 1857).
California’s federal judges toward the pueblo title. Judge Hoffman seemed to be dubious about the existence of the pueblo, and his approach to the land grant adjudication emphasized the technical requirements of the pueblo under Mexican law. On the other hand, Judge Field clearly indicated his support for the existence of a pueblo by signing the majority opinion in Hart v. Burnett. Moreover, Field’s approach to the issue seemed much more pragmatic and attuned to the economic and political realities of the situation.

The tension between the two judges heightened and assumed an increasingly personal dimension after Field’s federal appointment in 1863. Having served as a federal judge for twelve years and thus longer than any other federal judge in California, Hoffman undoubtedly hoped and expected that he, rather than Field, would be elevated to the United States Supreme Court. Under the circumstances, some degree of animosity might have been expected between the judges, but in 1864 a sensational treason trial in San Francisco served to widen and greatly personalize the gulf between Hoffman and Field. Indeed, the animosity and public furor caused by the case spurred the subsequent settlement of San Francisco’s pueblo title.

A. The Ridgely Greathouse Case

The case involved Ridgely Greathouse and two other Confederate sympathizers in San Francisco who had been indicted and convicted for treason. They had been convicted for their roles in conspiring to raid the gold shipments leaving San Francisco for the eastern states. The trial, held in late September 1863, was Field’s first case as newly appointed United States Supreme Court Justice presiding over the federal circuit court, although joined by Judge Hoffman. After a two-week trial and four minutes of jury deliberations, the prisoners were found guilty. On October 16, Field gave the conspirators the maximum sentence of ten years in prison and a $10,000 fine. Shortly thereafter, Field left for Washington D.C., having only partially satisfied the public outcry for retribution against the “pirates.”

98. In particular, Hoffman would have insisted upon strict compliance with the conditions often made part of the Mexican grants, usually land habilitation and land improvements. See, e.g., United States v. Cruz Cervantes, reprinted in O. Hoffman, Reports of Land Cases 2 (San Francisco, 1862).


100. See R. Chandler, The Release of the Chapman Pirates: A California Sidelight on Lincoln’s Amnesty Policy, 23 Civil War History 129 (1977); B. Gilbert, Kentucky Pri-
Less than two months after Greathouse's conviction, his lawyers sought his release on the basis of President Lincoln's amnesty proclamation of December 8, 1863. However, Lincoln had primarily Southerners in mind when he offered a full pardon to "all persons who have, directly or by implication, participated in the existing rebellion," excepting certain classes such as high ranking Confederate civil and military officers, who "shall take and subscribe an oath" to henceforth support the United States. Nonetheless, lawyers for Greathouse indicated their plan to move for his release. This intent was communicated quickly back to Washington D.C., where President Lincoln, Justice Field, and Senator Conness were alerted to the situation. To head off Greathouse's potential release, Lincoln telegraphed Hoffman on December 15, explaining that his proclamation was "intended for those who may voluntarily take it, and not those who may be constrained to take it, in order to escape actual imprisonment or punishment."

Hoffman quickly replied by contending that nothing in the language of the proclamation excluded persons who were already confined or convicted. He reasoned that "it is a public official document which a court is compelled to construe according to its terms," and Hoffman suggested that Lincoln "declare by an equally formal document the intention of the Executive in making it." With no clarifying proclamation forthcoming, and with great reluctance, Hoffman released Greathouse on a writ of habeas corpus on February 15, 1864. While Hoffman's decision did not come as a complete surprise, it was widely denounced. Even newspapers normally supportive of Hoffman called his decision "an absurdity" and declared that "very queer things are done in the name of justice." Less sympathetic papers spoke of the perversion of Lincoln's proclamation "through a Copperhead judge." The Sacramento Union went so far as to call for the abolition of Hoffman's court.

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\begin{footnotes}
\item[101] Proclamation, Dec. 8, 1863, 13 Stat. 737.
\item[103] Id. at 67-68.
\item[104] Id.
\item[105] In re Greathouse, 10 F. Cas. 1057 (C.C.N.D.Cal. 1864) (No. 5,741).
\item[106] San Francisco Alta California, Feb. 16, 1864, at 2, col. 1. See also San Francisco Bulletin, Feb. 15, 1864, at 2, col. 1.
\item[107] St. Louis Democrat, Feb. 23, 1864, reported in Sacramento Union, Mar. 17, 1864, at 2, col. 4.
\item[108] Sacramento Union, Feb. 20, 1864, at 2, col. 1.
\end{footnotes}
Both Judge Field and Senator Conness showed little tolerance for what had been a difficult decision for the Republican Hoffman. Field, like Conness, was strong Union Democrat, and both were incensed at the result of Hoffman's decision. In addition, Field could not help but view the decision as a legal hair-splitting repudiation of his own first decision as California's circuit justice. The connection between that incident and the city's land claim became evident in the wake of Hoffman's decision to release Greathouse. If Hoffman could not be trusted to do the right thing in a case involving secessionist privateers, how could he be trusted with San Francisco's pueblo title? Field and Conness took advantage of Hoffman's unpopular and easily misunderstood decision by attempting remove Hoffman as a factor in resolving the pueblo issue. Indeed, Hoffman was to become the target of punitive legislation designed by Conness and Field.

B. Legislative Efforts to Undercut Judge Hoffman and to Confirm San Francisco's Pueblo Title

An ally of Hoffman accurately described the legislative "programme" that Field and Conness aimed at Hoffman as "very comprehensive and thorough." Together they worked to eliminate Hoffman's judgeship and to insure that San Francisco's pueblo title was confirmed. While they failed in the first objective, they achieved considerable success with the latter.

The first effort to guarantee confirmation of pueblo title began even before Hoffman released Greathouse, but at a time when the outcome of the case was clear. On January 12, 1864, Senator Conness introduced a bill which would transfer all proceedings respecting claims "to land situated wholly or in part within the city and


110. One San Franciscan noted the general impression that Conness was "moved by personal hostility to Judge Hoffman and the desire to have one of his own friends appointed in his place." Letter from William Norris to Montgomery Blair (Mar. 22, 1864) (Blair Family Papers, Box 7, Library of Congress, Washington, D.C.).

111. Letter from John B. Williams to Ogden Hoffman (May 12, 1864) (Huntington Manuscripts, Huntington Library, San Marino, Cal.). See also San Francisco Alta California, Mar. 17, 1864, at 2, col. 1; San Francisco Bulletin, Mar. 17, 1864, at 2, col. 2; Id. at Mar. 23, 1864, at 2, col. 3, Id. at Apr. 18, 1864, at 5, col. 6, Id. at July 6, 1864, at 2, col. 1-2; Sacramento Union, Apr. 16, 1864, at 1, col. 4-5.
county of San Francisco” from the northern district court to Field’s circuit court. The bill also made the clerk of the circuit court ex officio clerk of the district court. Hoffman declared himself “somewhat indignant at this attempt to deprive me of the right to select an officer with whom I am necessarily on terms of daily confidential intercourse.” That indignance was aggravated by the fact that Hoffman heard the bill had been prepared by Field. Ultimately, however, the impact of that legislation was undermined by amendments to the bill in the Senate judiciary committee. The legislation that passed the Congress dealt solely with details of the circuit court’s operation. Even though Hoffman’s and Field’s relationship up to that point had been reported by Hoffman as “friendly and cordial,” it was destined to become increasingly strained.

A more ambitious and successful effort to wrest control of land rights cases from Judge Hoffman arose through an intimate collaboration between Conness and Field. On February 9, 1864, Conness introduced a bill ostensibly designed “to expedite the Settlement of Titles to Lands in the State of California.” In effect, the bill functioned to repeal an 1860 act that had given California’s federal district courts the authority to adjudicate surveys in the land cases. Conness’ proposed bill shifted this authority from Judge Hoffman in San Francisco to the General Land Office in Washington. According to a critic of the plan, that shift would result in “Conness’s man, as Surveyor General, giving Conness and Field control of that department in a great measure.” Conness inserted another proposed section, eventually rejected, that would have had a direct impact on the pueblo issue in San Francisco. Conness proposed that in determining the validity of land claims under the 1851 Act, both the district courts and the Supreme Court “shall be limited to such objections as shall be specifically stated” by the United States attorney prior to the hearing. Although a technical rule, such legislation would have assumed great practical importance in limiting the issues surrounding the pueblo case, especially given the predisposition of

112. CONG. GLOBE, 38th Cong., 1st Sess. 582 (1864).
114. As passed by Congress on Feb. 19, 1864, the bill dealt solely with the details of the circuit court’s operation.
118. Letter from John B. Williams to Ogden Hoffman, supra note 111.
119. CONG. GLOBE, 38th Cong., 1st Sess. 1311 (1864).
the United States attorney to see the pueblo title confirmed.

Field's contribution to the proposed bill consisted primarily of sections designed to give the circuit court control over land cases including the San Francisco pueblo case. Section four of the bill mandated transfer of land cases into the circuit court whenever the district judge "is interested in any land" that is part of the claim before him. Moreover, the same section permitted district judges to transfer any claim to the circuit court that dealt with the title to lands within towns or cities—an indirect reference to the San Francisco pueblo case. Another section drafted by Field ratified the Van Ness Ordinance, and thereby relinquished most of the federal government's claims to land within the charter limits of San Francisco.121

The final and most sweeping congressional attempt to undercut Hoffman came on February 24, 1864, when Conness introduced a bill "to consolidate into one district for judicial purposes the northern and southern districts of California."122 Its title notwithstanding, the bill was quickly and accurately perceived as an attempt to oust Hoffman from his judgeship under the guise of reorganizing California's federal judiciary. The bill provided that as of January 1, 1864, the state of California would have one federal district court, and both existing district courts would transfer all pending cases to the newly created court. The proffered rationale for such consolidation was that it would provide judicial economy. Even so, that effort to consolidate the courts was feeble, and it remained clear that the negative reaction to Hoffman's "extraordinary decision" in the Greathouse case lay behind the bill that "will legislate out of office both the present judges."123 Hoffman himself understood the significance of the "great clamor" over his release of Greathouse; he stated, "It has been said that that decision would cost me my office."124

But Conness's consolidation bill was much more than an attempt to oust Hoffman: it played an integral role in furthering Field and Conness's legislative "programme" to control the outcome of the pueblo case. One of Hoffman's agents in Washington noted that passage of the consolidation bill would permit Field to appoint a "devoted friend." This would result in making Field, in effect, the judge of the district court. San Francisco lawyer John B. Williams explained that

122. CONG. GLOBE, supra note 119, at 786.
123. Sacramento Union, Mar. 18, 1864, at 1, col. 6.
the consolidation bill intended that the Pueblo title should be confirmed, for the new judge, knowing nothing about land cases, would, under the Act [1864] to repeal the Act of 1860, have transferred the case to the Circuit Court and Field would have confirmed it. Then, the appeal of [the] U.S. to [the] Supreme Court would have been dismissed, or failing in that, Field’s position as Supreme [Court] Judge would have great weight in confirming it.125

Only one of the three bills Conness introduced met with success (i.e. the one which stripped Hoffman of jurisdiction over surveys). In fact, the most dramatic curtailment of Hoffman’s court, Conness’s consolidation bill, never emerged from committee. This fact demonstrated the extent of Hoffman’s political and popular support even in the face of his extremely unpopular decision in the Greathouse case.

1. Judge Hoffman’s Defense

After the initial shock of the Greathouse decision, San Francisco’s legal and business communities rallied to defend Hoffman, especially with the news of the attempt to displace him. Hoffman’s integrity and past services as a judge made it easier to accept the unpopular decision. The San Francisco Alta California, which had at first joined in castigating the district judge, later queried: “Is it not better that the judge should be righteous than right?”126 The newspapers focused on the danger posed to the independence of the judiciary if the senator’s political maneuvering were permitted. The Alta California warned: “If Judge Hoffman has committed errors, let him be impeached. This thing of legislating him out of office . . . is a deadly blow aimed at the Federal Judiciary everywhere.”127

During the month of March 1864, an active campaign was launched with the purpose of rehabilitating Hoffman in the eyes of the potentially hostile members of Congress. On March 17, the San Francisco Chamber of Commerce adopted a series of resolutions, signed by over fifty prominent California businessmen who asserted their “implicit confidence in the loyalty and patriotism of Judge Hoffman.”128 They protested “any legislation which looks to the re-

125. Letter from John B. Williams to Ogden Hoffman, supra note 111 (emphasis in original).
126. San Francisco Alta California, Mar. 26, 1864, at 1, col. 4.
127. Id. at Mar. 17, 1864, at 2, col. 1.
128. Letter from William Norris to Montgomery Blair, supra note 110; San Francisco Alta California, Apr. 6, 1864, at 2, col. 1; Id. at Apr. 14, 1864, at 1, col. 2, June 28, 1864, at 2, col. 1; Sacramento Union, Apr. 15, 1864, at 2, col. 2; Id. at Apr. 16, 1864, at 1, col. 4-5; Id.
moval” of Judge Hoffman as unconstitutional. Copies of the resolutions were telegraphed to other chambers of commerce in New York and Boston, where they were published. They were also sent to members of the New York and California congressional delegations in Washington D.C. In addition, letters of support and petitions from members of the California bar and the California Supreme Court were made available to Hoffman's defenders in Congress.  

Hoffman, himself, also took a major role in his defense and in securing congressional support. Shortly after learning of the consolidation bill, Hoffman wrote a letter of protest to Senator William P. Fessenden (R. Maine), the powerful chairman of the Senate Finance Committee. Hoffman explained that he was “not tenacious” of his judgeship, but added that he would not “submit to be the victim of a political intrigue.” Hoffman noted that Conness, since his election to the Senate as a Union Democrat, had sought to punish those who had not favored his election; as a Republican, Hoffman presented a plausible target. Hoffman’s own lobbying efforts and those of his supporters were successful, and on April 14, 1864, the chairman of the Senate Judiciary Committee informed Hoffman that Conness’s bill had been rendered harmless through amendments.

2. The Act of 1864

Hoffman’s substantial success in fighting off the consolidation bill was not equaled in his challenge of the bill altering jurisdiction over surveys and “expediting” the settlement of land titles. Before the Senate debated this bill jointly conceived by Conness and Field, California citizens learned of the attempt to repeal the act that gave Hoffman jurisdiction over land surveys. Those who opposed the repeal stressed the expense and inconvenience of moving the locus of authority for resolving titles from San Francisco to Washington. They also intimated that Conness sought the jurisdiction of the Land Office over such matters for political reasons.

When the Senate finally considered Conness’s bill on March 28, 1864, it rejected the portion of the bill which permitted California
courts only to consider those defects in the title assigned by the United States attorney. This section of the proposed bill led Senator James Harlan of Iowa to predict: "[I]f the Government should unfortunately appoint a blundering lawyer to act as district (that is, United States) attorney who would not file very perfect pleadings, the interests of the United States would be prejudiced by compelling the court to follow the pleadings."\textsuperscript{133} Besides, if all other cases came to the Supreme Court on the whole record, observed Senator Thomas A. Hendricks of Indiana, why should "we establish a different rule for the cases coming up from California?"\textsuperscript{134} Conness, however, professed an inability to see "what possible injury can take place or occur to any interest under this section."\textsuperscript{135} Responding to the suspicions entertained by some senators over his plan to confine the duty of the federal district courts, Conness denied the presence of "a covert purpose in this section which is to produce the confirmation of titles to land."\textsuperscript{136} Nonetheless, the Senate struck the section from the bill.

After striking that section, the Senate moved to consider the bill as it stood. Senator Reverdy Johnson of Maryland, who had enjoyed a lucrative law practice arguing appeals in California land cases, questioned the necessity of repealing the Act of 1860. Settlement of titles involved two steps: confirming or denying the claim, and locating the claim.\textsuperscript{137} The General Land Office, he declared, had neither the talent nor the independence to decide questions "involving thousands and millions of money." Since the location of surveys was so intimately connected with the validation of claims, Johnson felt that both issues should be undertaken by the courts, which were "free from all extraneous influences which may be brought to bear upon their decision, either by an appeal to ignorance or an appeal to cupidity."\textsuperscript{138} He questioned, "[What] particular mischief from the effect of the act of 1860" made it necessary to "dispense with courts altogether and leave these questions to be decided by the executive officers?"\textsuperscript{139}

Conness, on the other hand, characterized the determination of
surveys to be a "ministerial or administrative question." He claimed that giving the courts authority over these matters had simply brought delay. He further expressed the belief that judicial incompetence to adjudicate surveys had produced grants which caused "wonder to any intelligent person." Conness also exaggerated Field's support by intimating that the entire Supreme Court supported the bill. He claimed that "they ask, without doing it officially, that the provision of the existing law be repealed or changed." The bill drafted by Conness and Field became law on July 2, 1864; however, the portion confining the courts to considering defects in the title raised by the United States attorney was conspicuously absent.

Under the terms of section 4 of the 1864 act, Judge Hoffman was only required to transfer a land case to the circuit court if there existed a conflict of interest in adjudicating the case. Hoffman, himself, had suggested such a conflict provision earlier, and while it was a beneficial reform, its passage in 1864 served mainly as a means of effecting the transfer of the pueblo case to Justice Field. Because he denied a conflict of interest in the case, Hoffman might have resisted a transfer of the pueblo case to the circuit court, but it was not in his nature to do so. Knowing that Field had actively participated in an effort to obtain jurisdiction over the case and that Congress had apparently concurred in such action was probably sufficient to sway Hoffman. On September 5, 1864, Hoffman ordered a transfer of both the Sonoma and San Francisco pueblo cases to the circuit court after providing the following interpretation of section 4: "The language of this provision is evidently not mandatory. But it is advisory, and I consider it the duty of the court to follow a suggestion of this nature, emanating from the National Legislature."

Transferring the pueblo case did not necessarily preclude Hoffman's participation, since Field could still invite Hoffman to sit with him on the circuit court. Under the circumstances, such an invitation

140. Id.
141. Id.
142. Id.
143. Act of July 1, 1864, ch. 194, 13 Stat. 332; see also supra note 116. Some thought Field's legislative involvement highly inappropriate. See San Francisco Bulletin, Mar. 23, 1864, at 2, col. 3; 7 H.H. Bancroft, HISTORY OF CALIFORNIA 231 (1890); C.E. Pickett, LAND-GAMBLING VERSUS MINING-GAMBLING: AN OPEN LETTER TO SQUIRE P. DEWEY, RELATIVE TO HIS PARTICIPATION IN THE LAND-GAMBLING OF SAN FRANCISCO IN THE EARLY DAYS FROM ONE WHO KNOWS 7 (San Francisco, 1879) (pamphlet on file in Bancroft Library, Univ. of Cal., Berkeley).
144. San Francisco Alta California, Sept. 6, 1864, at 1, col. 5.
was hardly politic and Field was not in any mood to seek Hoffman's participation. In fact, Conness later took credit for the resolution of San Francisco's title on the grounds that he had known in advance that Field would confirm the claim, and thus the passage of the Act of 1864 was, if effect, a summary confirmation of the city's claim in the circuit court. The *Alta California* professed itself "unable to see any good reason for authorizing the transfer [of courts]," although it mentioned the rumor that Hoffman probably would have rejected and Field probably confirmed the city's claim.

C. *Justice Field Takes Charge*

Once he obtained jurisdiction over the pueblo case, Field lost little time in fixing an early date for the final submission of briefs. Since the city's brief, a scholarly production that had taken years to assemble, was already on file, San Francisco was prepared to go to trial immediately. However, the government's case proved somewhat more difficult to prepare since attorneys ostensibly on the same side were working at cross purposes. The lawyers appearing for the federal government fell into two major camps: one headed by Delos Lake, the United States Attorney, and the other headed by John B. Williams, special counsel for the United States and an advocate for the settler interests. In the internal conflict to come in California's federal judiciary, Lake proved as strong an ally to Justice Field as Williams did for Judge Hoffman.

Field and Conness approved of Lake, who was a recess appointment made by President Lincoln in August, 1864, even though, ironically, Lake had represented Ridgeley Greathouse. Williams, a long-time clerk in the United States Attorney's office before joining the bar, had been empowered since 1861 to act as a special agent of the United States, especially in cases dealing with disputes over surveys. In many such cases the United States was only a nominal party, with the real parties in interest, settlers who objected to the survey, paying Williams for his advocacy. His efforts as a government lawyer on behalf of settlers were extensive and brought him into frequent contact with Judge Hoffman's court. In fact, Williams

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145. *Id.* at Sept. 1, 1867, at 5, col. 3.
146. *Id.* at Sept. 6, 1864, at 2, col. 1.
147. 1863-1864, Bd. of Supervisors, San Francisco, Municipal Reports 171-72 (San Francisco, 1864).
148. Letter from John B. Williams to Edward Bates (April 10, 1861); Letters from John B. Williams to Titian J. Coffey (Jan. 8, 1862) and (April 30, 1862), *collected in California Land Claims, supra* note 82.
had prepared the extensive appendix for Hoffman's *Land Cases*.\(^{149}\) Indeed, Williams gave Hoffman strong support during the consolidation bill crisis.\(^{150}\)

Lake, on the other hand, had been a state judge in San Francisco in the 1850s and had upheld the pueblo title. Lake regarded the existence of the city's pueblo as "the fixed law of this state under the repeated decisions," and as Field had placed himself on record as upholding the pueblo claim, Lake did not wish to insult him by requesting his reexamination of the question as a federal judge.\(^{151}\)

These prior decisions, of course, were decided in the state courts and were hence technically not dispositive of the issue. Nonetheless, Lake only insisted that the government have rights to the federal reserves within the pueblo, which Field concluded had been acceptable to the city attorney. Given Lake's concessions, Field declared that the quantity of, and not the actual title to the pueblo land was the sole issue before him.

On October 31, 1864, Field confirmed the city's claim for four leagues in *San Francisco v. United States*.\(^{152}\) He conceded that the appeal opened up the entire question of San Francisco's pueblo title, but held that Attorney General Black's dismissal in 1857 of the government's appeal from the land board's decision constituted acceptance of the city's claim. "The [United States] attorney does not, therefore, deem it within the line of his duty to controvert these positions, but on the contrary admits them as facts in the case."\(^{153}\)

The land board, according to Field, had based its decision on a

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149. Letter from John B. Williams to Titian J. Coffey (June 21, 1862), *collected in California Land Claims*, *supra* note 82.

150. Letter from James F. Shunk to Edwin M. Stanton (Jan. 17, 1861); Letters from John B. Williams to Titian J. Coffey (Jan. 8, 1862), (June 21, 1862), (Sept. 23, 1862), (Nov. 29, 1862), (Mar. 24, 1863); Letter from John B. Williams to J. Hubley Ashton (Dec. 28, 1864), Letter from John B. Williams to James Speed (May 13, 1865), *all collected in California Land Claims*, *supra* note 82. Letter from Reverdy Johnson to John B. Williams (May 10, 1864), John B. Williams to Ogden Hoffman (May 12, 1864), *collected in* (Huntington Manuscripts, Huntington Library, San Marino, Cal.).

151. Letter from Delos Lake to William M. Seward (Dec. 31, 1864), *collected in California Land Claims*, *supra* note 82.

152. *San Francisco v. United States*, 21 F. Cas. 365 (C.C.N.D.Cal. 1864 (No. 12,316).

153. *Id.* at 368. As a lawyer for General Henry M. Naglee in 1863, Lake sought to protect Naglee's commercial property in San Francisco from what Lake termed "*flaw hunters*" and "*rascals*." *See* Letter from Delos Lake to Henry M. Naglee (June 6, 1863) (Henry M. Naglee Family Papers, Bancroft Library, Univ. of Cal., Berkeley).

*Hart v. Burnett* was given widespread authority on the issue of the city's pueblo title. *See* ANON. *LAND TITLES IN SAN FRANCISCO; DECISIONS OF THE SUPREME COURT OF THE STATE OF CALIFORNIA* i-iv (San Francisco, 1860) (pamphlet on file in Bancroft Library, Univ. of Cal., Berkeley).
document, the "spuriousness" of which "is now admitted by all parties." Drawing from *Hart v. Burnett*, Field accorded the city four square leagues. Apologizing for the brevity of his three-page opinion, Field directed those "who desire to extend their inquiries" to read *Hart v. Burnett*. However, the short opinion underscored the fact that the decision in the case was a foregone conclusion. In fact, after his decision, Field informally advised the city's lawyer to detail the manner in which San Francisco's pueblo title had been relied upon and to publish the brief. Such a document, Field suggested, would probably result in the dismissal of any appeal to the United States Supreme Court.

Soon after Field delivered his decision in the pueblo case, he departed for Washington to rejoin the Supreme Court. Meanwhile, Delos Lake appealed the case to the Supreme Court, evidently to attain a quick and final confirmation of the decision. Shortly thereafter, it became evident that John B. Williams' brief disputing the existence of the pueblo had been either suppressed by the circuit court clerk, George C. Gorham, or ignored by Field on the grounds that Williams had no authority to represent the government. A flurry of charges, denials, and counter-charges followed the news that Williams' brief was suppressed or ignored, and Williams attempted to reopen the case for a new hearing. Williams complained that because the clerk had suppressed his brief, Field did not consider his arguments. Williams also claimed that Judge Hoffman criticized Gorham's action as unauthorized. Actually, Field was aware of Williams's arguments but gave them no weight because he believed Williams lacked standing in court. Lake, too, questioned the authority under which Williams had allegedly acted. Thus, neither Field nor Lake included Williams in their "free conversations" over

154. San Francisco v. United States, 21 F. Cas. 365, 368 (C.C.N.D. Cal. 1864) (No. 12,316). The land board had relied on the so-called Zamorano document to establish the city's pueblo boundaries of only three square leagues.

155. Id. at 370.

156. Letter from John W. Dwinelle to Frank McCoppin and Monroe Ashbury (Feb. 9, 1867) (Chipman-Dwinelle Papers, Box 2, Huntington Library, San Marino, Cal.).

157. San Francisco Alta California, Nov. 4, 1864, at 2, col. 2. Three years later Gorham became Senator Conness's candidate for Governor of California. See Bancroft, supra note 143, at 323.

158. J.W. Dwinelle, supra note 69, at addenda 118-122.

159. Id.


161. J.W. Dwinelle, supra note 69, at addenda 121.

162. Id.
the "law and facts" of the pueblo title that took place in Justice Field's chambers before he rendered his decision.\footnote{168}

Field brushed aside the attempt to have the pueblo case decided on its merits, even in the face of considerable evidence that Williams was acting with the approval, if not the direction of the attorney general. In ignoring Williams, Field underscored his determination to settle the pueblo title. In order to avoid a summary denial of the motion for rehearing, Williams urged Attorney General Speed to ensure that the motion be presented before both Hoffman and Field. Hoffman accepted the motion in the circuit court, but refused to rule upon it until Field returned. When Field reached San Francisco in May 1865, he assumed the circuit court bench alone (not inviting Hoffman to join him) and quickly entered an opinion rejecting William's motion for a rehearing. Field denied any wrongdoing on the part of the clerk or himself during the disposition of the case.\footnote{164} While Field frustrated William's efforts in San Francisco, Conness was pressuring United States Attorney General Speed to remove the special counsel from the case and to dismiss the appeal.\footnote{165} Conness was not the only California politician pressuring the Attorney General. Cornelius Cole, a Republican congressman from southern California, and later a United States senator, also urged a dismissal of the appeal.\footnote{166}

The denial of the motion for rehearing prompted an appeal to the United States Supreme Court on May 18, 1865. Field then demonstrated just how anxious he was to confirm the city's title by denying the appeal on the grounds that the United States Supreme Court lacked jurisdiction. Field argued that since the Act of 1864 did not expressly authorize an appeal to the United States Supreme Court, the Court had no appellate jurisdiction in the case. Field also reasoned that the Act of 1864 indicated congressional intent to expedite the settlement of land cases in California and that the finality of the circuit court was implicit in this objective. Field concluded that if the case were "less clear," he might have allowed the appeal pro forma, but having "no doubt whatever" about the finality of his decision, his duty was "plain."\footnote{167}
D. The Struggle Renewed

Although the *Alta California*, and perhaps Field as well, thought that the pueblo issue was “finally settled and confirmed” in 1864, the struggle soon renewed itself. Despite Conness’ efforts, the attorney general insisted on the government’s right to contest the existence of the San Francisco pueblo before the United States Supreme Court. The government sought a writ of mandamus from the Supreme Court, requesting an appeal. In *United States v. Circuit Judges* (1865), the Court, with Justices Field, Robert C. Grier, and Samuel Miller dissenting, overruled Field and granted the writ of mandamus.

The Court rejected the Field’s position that proceedings under the Land Act of 1851 should be treated in a procedurally different fashion than other cases either in law or equity (i.e. final appeal only to the circuit court). Rather, the Court considered such cases to be in the nature of a proceeding in equity, and thus an appeal was the “appropriate mode of bringing the case up to the appellate court for review, and such has been the uniform practice under the act.”

Field’s dissent reiterated the arguments he made as a circuit court judge, characterizing the land cases as administrative matters that “do not become converted into suits in equity because judicial agency is brought in to aid the administrative proceeding.”

Facing the certain prospect of the pueblo claim coming before the Supreme Court and the possibility of its rejection, Conness and Field formulated their final solution. While the pueblo case remained in the Supreme Court docket pending appeal, Conness introduced a bill that undercut any judicial review in the case. The proposed bill provided that “all the right and title of the United States” to the lands claimed under the pueblo title “are hereby relinquished and granted to the City of San Francisco.” The bill passed on March 8, 1866, and effectively ended the ongoing struggle of sixteen years.

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168. 70 U.S. (3 Wall.) 673 (1865).
169. *Id.*
170. *Id.* at 677.
171. *Id.* at 681.
172. Act of March 8, 1866, ch. 13, 14 Stat. 4. As a result of the act the appeal before the Supreme Court was dismissed. See *Townsend v. Greeley*, 72 U.S. (5 Wall.) 326 (1867).
173. The litigation and conflict surrounding the disposition of San Francisco’s confirmed pueblo was not over. However the key issues (i.e. the existence of a pueblo and the trust nature of the tenure under which the lands were held) had been determined. The remaining disputes to be resolved were rather narrow. See *Report of the Judiciary Committee in Relation to Pueblo Lands in San Francisco* 3 (Appendix to the Journals of Sen-
V. THE LITIGIOUS PUEBLO IN RETROSPECT

The struggle over San Francisco's pueblo and its eventual resolution clearly bore the marks of federalism. While the adjudication of private land grants from the Mexican period was ostensibly the exclusive province of the federal courts, in practice, the state courts played an integral role. California's state courts had considered questions related to San Francisco's pueblo prior to the time that the federal land board and judiciary became involved with the issue. The nature of the pueblo case, involving as it did the validation or rejection of lots held under the post-1846 grants and the Smith deeds inevitably generated case law that contributed to, and in some sense dictated the terms of the debate over the existence of a San Francisco pueblo. Hart v. Burnett marked the culmination of this process, and offered a resolution that incorporated previous state and federal decisions, and also contributed a new element characterizing the city as trustee of pueblo lands. Thus, Hart removed the obstacle of the Smith deeds and provided a solution for the ultimate confirmation of the city's title. The city of San Francisco's promulgation and the state legislature's and Congress's approval of the Van Ness Ordinance provided another example of the joint character of the final resolution. Given the twenty-year struggle over land in San Francisco, it was perhaps inevitable that state court decisions and legislative efforts would have to be incorporated into the final solution fashioned by the federal authorities.

The adjudication of the pueblo case also illustrated the complexities and multiple interests involved in California land controversies and the obstacles to obtaining a quick settlement. Virtually all students of California's early land adjudication have commented upon the harmful effects of extended litigation and assumed that a less legalistic procedure than that adopted under the Act of 1851—such as congressional hearings—would have quieted title more quickly. San Francisco's land experience casts considerable


Paul W. Gates stands nearly alone in asserting that the land act was not the cause of delay, though he mistakenly, in the author's view, assigns the blame on fraudulent claims, greed and slow-moving claimants. See P. Gates, The California Land Act of 1851, 50 Cal. Hist. Soc'y. Q 395, (1971).}
doubt on this assumption, for it would appear that the value of conflicting interests at stake would have insured a rich harvest of litigation regardless of which procedure was involved.

The legal issues—although complex—were hardly so insurmountable as to warrant the length of time spent in litigation. Yet, the San Francisco pueblo remained a live issue for two decades due to the practical consequences of the pueblo's confirmation or rejection. For those claiming land on the basis of possession only, federal preemption laws offered the opportunity to retain such holdings as long as the overlapping Mexican land grant claims (including the city's) were rejected. On the other hand, the Van Ness Ordinance encouraged support for the pueblo claim by many settlers, who were sometimes wealthy men, because the ordinance validated such possessory rights in areas outside of the older, more commercial portions of the city. Lot holders faced a more precarious situation, since absentee ownership of land—always vulnerable to squatters—depended upon the validation of San Francisco's pueblo. As an article in *Alta California* so graphically pointed out, rejection of the pueblo claim might affect the “richest man in the city” by stripping him “in a single day . . . of all else that he was worth.”

Adding to the conflict were the proponents and opponents of the Smith deeds. Whether such claims were valid depended, at least until *Hart v. Burnett*, upon the existence of the pueblo. Finally, Mexican land grants not only threatened many landed interests in San Francisco, but were often held by claimants with substantial resources within and without the city pressing for their confirmation. This constellation of competing interests for overlapping land claims in San Francisco was constantly shifting with each successive judicial decision, legislative measure, or revelation of the weakness or strength of a particular claim. The overlapping and often antagonistic interests in San Francisco land made a final solution difficult to achieve. It required Stephen J. Field's strong will and determination to force a final resolution.

The affirmation of the pueblo title and the manner in which the courts characterized the solution obscured the nature of the San Francisco land dispute. In *Hart v. Burnett*, state supreme court Justice Baldwin justified his decision affirming the pueblo title on the

175. Those who claimed land in San Francisco on the basis of possession were not necessarily simple settlers. The preemption claim in Hart v. Burnett was presented by Jacob C. Beideman, "a merchant and minor politician as well as real estate investor." See Selvin, *supra* note 27, at 185, 259.

176. San Francisco Alta California, June 25, 1854, at 2, col. 4.
grounds that land speculators should not profit at the expense of the city. Casting the Smith deed holders as speculators was accurate enough, but to suggest that they presented the only or primary example of such activity was to distort the early history of San Francisco. From 1846 onward, San Francisco was prey to speculators, be they squatters, purchasers or grantees of city lots.

The essence of the Hart conflict was whether the land speculation would be validated to the detriment of the owners of the initially developed commercial and downtown city lots (and those with possessory interests outside that area), or whether the later Smith deeds would be upheld. By the time Hart was decided and Field became involved, many of the initial purchasers and grantees of the valuable downtown property had conveyed their interest to others. Moreover, even though the chain of title grew longer, the dubious legal and equitable circumstances of the initial acquisition of such lots were commonly known to most San Franciscans. Thus, while the amount of time and money expended on improvements to the downtown property seemed to warrant a confirmation of such titles, the disposal of city lots in the 1840s represented a situation where local government had "laid aside conscience as a useless encumbrance, and plunged headlong into jobbing and speculation." The awareness of the pervasive speculation and a sense of the mixed equities in determining the land titles explains both the ambivalence in contemporary accounts of San Francisco's land disputes as well as the mixed reaction to the Hart case. Ambivalence to the pueblo solution also derived from the individuals who claimed under the Smith deeds. While many were audacious speculators, others were prominent businessmen, lawyers, and politicians. Thus, although their speculations threatened the interests of many San Franciscans, such interests were not casually or easily brushed aside.

When Field later recalled his part in settling the pueblo title, he justified his aggressive behavior and his collaboration with Conness as necessary to expedite the action under adjudication. He pointed to the length of time the case had technically been before the district

179. Anon., Judge R.F. Peckham, supra note 37, at 33; Letter from John McCrackan to his mother (Aug. 15, 1850); Letter from John McCrackan to his sister Mary (Aug. 18, 1850), collected in (John McCrackan Papers, supra note 24). Selvin has noted the mixed reaction of newspapers to the Hart decision but attributes it to a combination of suspicion of the judiciary, charges of corruption and the lack of financial interest in the pueblo lands. See Selvin, supra note 27, at 238-48.
Field's motives, however, warrant closer investigation. The judicial role in quieting title to land in California was not simply to render decisions with dispatch, but to render them correctly. By the late 1850s, the federal government had become increasingly suspicious of quick confirmations of large land grants, and there were differing opinions as to the existence or desirability of a San Francisco pueblo. Even as Field, Conness, and United States Attorney Lake anticipated imminent confirmation of the pueblo title in 1864, suspicion of such title mounted in the attorney general's office. This suspicion was intensified with reports of the transfer of the case to Field and the concessions of Lake.

Faced with the prospect of a renewed struggle over the city's title in the United States Supreme Court and the possibility of its rejection, Field and Conness resorted to extra-judicial means to settle the matter once and for all. The evidence suggests that Field and Conness were more deeply concerned about how Hoffman would decide the pueblo case than with the need to expedite the case. Hoffman's decisions in the Bolton and Scherrebeck cases hardly reassured Field and Conness. Also, Judge Hoffman's highly developed sense of the judicial role, duty, and propriety made him much less susceptible than his opponents to pragmatic considerations of expediency. It made little sense to Field and Conness to risk the rejection of San Francisco's pueblo claim at the hands of the proud, stubborn, and at times literal-minded Hoffman when Field's position supporting the pueblo was well known. Nevertheless, the propriety of Field's conduct in the pueblo case is questionable. The heavy-handed manner in which Field manipulated the decision was not justified on the grounds that Hoffman unduly protracted consideration of the case. In fact, the federal government challenged the city's claim only after the United States attorney in San Francisco had abdicated his responsibility by making concessions that did not have the approval of the attorney general.

Throughout Field's entire judicial career, he apparently believed that "only the courts were capable of resolving allocation problems so as to simultaneously protect property rights, release entrepreneurial energies, and provide all men with an equal opportunity to share in the material fruits of a vigorously-expanding capitalist society." Field's behavior in the pueblo case, however,  

180. S.J. FIELD, supra note 64, at 161.  
suggests that he was hardly adverse to abandoning the judicial process and actively engaging in and manipulating legislation when it suited his purpose.

The ways in which Field and Hoffman viewed their role as judges had a direct impact on the degree of restraint or activism each employed in doing his job. Field had abundant confidence in his ability to accurately perceive the problems inherent in the struggle over the pueblo title and to devise the appropriate solution for it. He proceeded with aggressive determination, and despite the fact that his means were questionable, there is no denying that he ended a troublesome dispute.\(^{182}\) To Field, an aggressive judge, Hoffman’s careful, conscientious, and seemingly plodding approach to judicial questions probably seemed unnecessary, a sign of weakness, or even stupid. On the other hand, Field’s heavy hand in resolving the pueblo dispute, and his legislative collaboration with Conness insulted Hoffman’s pride and estranged the two judges. The differences in judicial style of Field and Hoffman formed an important part of the fabric of federal justice in California as resolution of land questions often wove back and forth between the judiciary and the legislature.

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\(^{182}\) Not only did Field’s resolution of the pueblo case bring criticism, it also brought an attack on his life. See S.J. Field, supra note 64, at 164-69.