

22d August 1854

Hon Jefferson Davis

Secretary of War

Sir:

Your letter of 18<sup>th</sup> instant, communicated for my examination the title deeds under which the United States claim a site for an Arsenal at Benicia, California; which consist of a deed of gift from Mariano Vallejo to Thomas O. Larkin and Robert Semple, bearing date May 19<sup>th</sup>, 1847 for the land therein described; and a deed from Larkin and wife, and Semple and wife, and Phelps to the United States bearing date April 16<sup>th</sup>, 1849, for the land therein described.

No evidence whatever is produced to me to show any title in Vallejo.

It is said that if "Vallejo's title was not good, then the land Must of course, have been, at the time of its occupation by the government, a part of the public domain", and so the title of the United States is perfect. That is not certain; for the Government of Spain by its authorities, in the Government of the Mexican Republic by its authorities in Upper California, may, for aught that appears, have granted the land to some other than Vallejos, who, in the Matter of Making a voluntary gift to Larkin and Semple, might thus be disposing of that which did not belong to him. As Vallejo shows no title, his deed weighs nothing of itself.

The notoriety of the fact, that various grants of land had been made in Upper California before the cession of that territory, forbids my taking for granted that Vallejo had a good title, or if he had not, that then the land had never been granted, and so belongs to the United States.

I regard the conditions in Vallejo's deed, on the whole, as conditions subsequent, and not of necessity raising any question of title as between him Larkin and Company; but still this point deserves inquiry before the validity of the title of the United States can be certified. But the radical difficulty concerns the title of Vallejo.

In addition to this, the clause in the deed from Larkin Semple and Phelps, declaring that "So Much of said land as shall not be occupied by the United States aforesaid, with public Warehouses, Wharves, Arsenals, Barracks, parade – grounds, fortifications, Navy-Yards, docks, lumber yards etc. etc. within the term of ten years from the date of this instrument, shall revert to the said Semple, Larkin and Phelps, present owners of said land," is objectionable. With such a condition annexed, I could not certify the title of the United States to be valid, if there were no other defect in it.

I beg leave to suggest further, that under the very peculiar circumstances of this title it may become important to inquire whether a cession of jurisdiction by the State of California be not requisite, under the Joint Resolution of 1841, before any expenditure on the premises are made by the Government.

I am, Sir, Very Respectfully,

Your Obeat Servt

Signed C. Cushing

----- Biography -----

Caleb Cushing (January 17, 1800 – January 2, 1879) was an American Democratic politician and diplomat who served as a Congressman from Massachusetts and Attorney General under President Franklin Pierce.

He became an associate justice of the Massachusetts Supreme Judicial Court in 1852, and during the administration of President Franklin Pierce, from March 7, 1853, until March 3, 1857, was 23rd Attorney General of the United States. Cushing, a "doughface", i.e., a Northerner with Southern sympathies, supported the Dred Scott decision and to such a degree that Chief Justice Roger B. Taney, who wrote the decision, wrote Cushing a letter thanking him for his support.

Despite having favored states' rights and opposed the abolition of slavery, during the Civil War, he supported the Union.

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**CURTISS, Samuel Ives**, educator, b. in Union, Conn., 5 Feb., 1844. He was graduated at Amherst in 1867, and at Union theological seminary in 1870, engaged in missionary work in New York, and in 1870-'2 was connected with the Fifth avenue Presbyterian church. He travelled in Ireland and Scotland in 1872-'3, was ordained by the New York presbytery in 1874, and in 1874-'8 was pastor of the American chapel at Leipsic, of which he was one of the founders. While in Leipsic he attended lectures at the university, receiving the degree of Ph. D. in 1876, and was afterward made a licentiate by Berlin university. Iowa college gave him the degree of D. D. in 1878, and in the same year he became professor of biblical literature in the Congregational theological seminary, Chicago. In 1879 he was transferred to the chair of Old Testament literature and interpretation. He is the author of "The Name Machabee," his doctor's thesis (Leipsic, 1876); a translation of Bickell's "Outlines of Hebrew Grammar" (1877); of Delitzsch's "Messianic Prophecies" (Edinburgh, 1880); and "Old-Testament History of Redemption" (1881); "The Levitical Priests" (1877); "De Aaronitici sacerdotii atque thore Elohistice origine," his licentiate thesis (Berlin, 1878); "Ingersoll and Moses" (Chicago, 1879); and contributions in the "Current Discussions in Theology" (1883 *et seq.*).

**CURWEN, Samuel**, loyalist, b. in Salem, Mass., 28 Dec., 1815; d. there, 9 April, 1802. He was graduated at Harvard in 1735, and studied for the ministry, but became a merchant in his native place. In the winter of 1774-'5 he was a captain in Sir William Pepperell's expedition against Louisburg. In 1759 he became impost officer for Essex county, Mass., and in 1775 was judge of the admiralty court. From 1775 until 1784, as a loyalist, he resided abroad, returning to his native place in the autumn of 1784. His "Journal and Letters" (New York, 1842) contains interesting and valuable information concerning the lives of loyalist exiles while abroad.

**CUSACK, Mary Francès**, philanthropist, known as the Nun of Kenmare, b. near Dublin, Ireland, 6 May, 1830. She spent most of her early life in England, and began to write when very young. She entered an Anglican religious sisterhood, soon afterward became a Roman Catholic, and, returning to Ireland, joined at Newry, in 1859, a community of Franciscan nuns, known as the Irish Poor Clares, engaged in teaching poor girls. Two years later she established a convent of the Sisters at Kenmare, one of the most destitute parts of Ireland, and in 1884, in a personal interview with Pope Leo XIII., obtained permission to leave the Poor Clares and found a new order, the Sisters of Peace, intended for the establishment and care of homes for friendless girls, where domestic service would be taught and moral habits be inculcated. She opened the first house of the new order at Nottingham, England, and in 1885 a similar house in Jersey City, N. J., the first foundation of the Sisters of Peace in the United States. Her active efforts for the relief of the wretched peasants of Kenmare brought her into controversy with the Marquis of Lansdowne, the Earl of Kenmare, and some others of the greater landlords of that region, and with a section of the Catholics of England; but she seems to have enjoyed from the beginning the sympathy of most of the leading Catholics, lay and clerical, of her own country. She was in the United States in 1886. She has published more than fifty works, chief among which are a "Student's History of

Ireland"; "Woman's Work in Modern Society"; lives of Daniel O'Connell, St. Patrick, St. Columba, and St. Bridget; "The Pilgrim's Way to Heaven"; "Jesus and Jerusalem"; and "The Book of the Blessed Ones."

**CUSHING, Caleb**, statesman, b. in Salisbury, Mass., 17 Jan., 1800; d. in Newburyport, Mass., 2 Jan., 1879. He was graduated at Harvard in 1817, and for two years was a tutor in mathematics and natural philosophy. He then studied law, was admitted to the bar, and settled in Newburyport. He rose rapidly in his profession, and, although busily engaged with his practice, found time to devote to literature and politics, and was a frequent contributor to periodicals. In 1825 he was elected a representative to the lower house of the Massachusetts legislature, and in 1826 a member of the state senate. At this time he belonged to the then republican party. In 1829 Mr. Cushing visited Europe, and remained abroad two years. In 1833 he was again elected a representative from Newburyport to the Massachusetts legislature for two years, but in 1834 was elected from the Essex north district of Massachusetts a representative to congress, and served for four consecutive terms, until 1843. He supported the nomination of John Quincy Adams for the presiden-

cy, and was a whig until the accession of John Tyler. When the break in the whig party occurred, during the administration of President Tyler, Mr. Cushing was one of the few northern whigs that continued to support the president, and became classed as a democrat. Soon afterward he was nominated for secretary of the treasury, but the senate refused to confirm him. He was subsequently confirmed as commissioner to China, and made the first treaty between that country and the United States. On his return he was again elected a representative in the Massachusetts legislature. In 1847 he raised a regiment for the Mexican war at his own expense, became its colonel, and was subsequently made brigadier-general. While still in Mexico he was nominated by the democratic party of his state for governor, but failed in the election. From 1850 till 1852 he was again a member of the legislature of his native state, and, at the expiration of his term, was appointed associate justice of the state supreme court. In 1853 President Pierce appointed him U. S. attorney-general, from which office he retired in 1857. In 1857, 1858, and 1859 he again served in the legislature of Massachusetts. In April, 1860, he was president of the Democratic national convention in Charleston, S. C., and was among the seceders from that body who met in Baltimore. At the close of 1860 he was sent to Charleston by President Buchanan, as a confidential commissioner to the secessionists of South Carolina; but his mission effected nothing. Mr. Cushing was frequently employed during the civil war in the departments at Washington,



*Cushing*

and in 1866 was appointed one of the three commissioners to revise and codify the laws of congress. In 1868 he was sent to Bogotá to arrange a diplomatic difficulty. In 1872 he was one of the counsel for the United States at the Geneva conference for the settlement of the Alabama claims, and in 1873 was nominated for the office of chief justice of the United States; but the nomination was subsequently withdrawn. A year later he was nominated and confirmed as minister to Spain, whence he returned home in 1877. His publications include a "History of the Town of Newburyport" (1826); "The Practical Principles of Political Economy" (1826); "Historical and Political Review of the Late Revolution in France" (2 vols., Boston, 1833); "Reminiscences of Spain" (2 vols., Boston, 1833); "Growth and Territorial Progress of the United States" (1839); "Life of William H. Harrison" (Boston, 1840); and "The Treaty of Washington" (New York, 1873).

**CUSHING, Frank Hamilton**, ethnologist, b. in Northeast, Erie co., Pa., 22 July, 1857. He manifested in early childhood a love for archaeological pursuits, and at the age of eight years began to collect fossils and minerals, made a complete Indian costume, and lived in a bark hut in the woods. He learned from observation that wherever Indian encampments had been long established the soil and vegetation had undergone a change, which materially assisted him in his search for relics. At the age of fifteen he had discovered the process of making arrow-heads from flint by pressure with bone. In 1870 his father removed to Medina, N. Y., where the son's researches found new ground and a greater wealth of material. In the town of Shelby were ancient remains of fortifications rich in relics, and they, with ancient fortifications, burial-grounds, and camp sites in the counties of Madison and Onondaga, were carefully searched, as well as the Hamilton group of rocks. In the spring of 1875 he became a student in Cornell university, but spent most of his time as assistant to Dr. Charles Rau in the preparation of the Indian collections of the National museum for the Centennial exposition at Philadelphia, and was curator of the entire collection until the close of the exhibition, when he was appointed curator of the ethnological department of the National museum. During the summer of 1876 he gained his first knowledge of the Pueblo Indians, and joined Maj. J. W. Powell in his expedition of 1879 to New Mexico, as assistant ethnologist of the U. S. bureau of ethnology, of the Smithsonian institution. The expedition spent two months among the Zuñi Indians, and Mr. Cushing, at his own request, was left there. He adopted the costume, habits, and life of the race, and for three years lived strictly the life of an Indian among the Indians, studying their habits, language, and history. During the second year of his sojourn he had so far made himself one of the tribe, and gained the esteem of the chiefs, that he was formally adopted and initiated into the sacred esoteric society of priests, the "Priesthood of the Bow." In 1882 he visited the east with a party of six Zuñis, who came for the purpose of taking water from the Atlantic ocean, or "Ocean of Sunrise," as a religious ceremony, and carrying it to their temple in the Pueblos. Four of the Zuñis returned, while Mr. Cushing remained with the other two during the summer in Washington, for the purpose of writing, with their aid, his contribution to the bureau of ethnology on Zuñi fetiches. In September of the same year he returned to Zuñi; but, in the spring of 1884, failing health obliged his return for two years to the east.

He brought with him three Indians to aid him in the preparation of a dictionary and grammar of the Zuñi language, and translations of myth and beast stories, hero legends, songs, and rituals. Mr. Cushing's publications and contributions to periodical literature include "Antiquities of Orleans County" (Washington, 1874); "Zuñi Fetiches" (1881); "The Relationship between Zuñi Sociologic and Mythic Systems" (1882); "The Nation of the Willows" (1882); "Adventures in Zuñi" (1883); "Studies of Ancient Pueblo Ceramic Art, as Illustrative of Zuñi Culture-Growth" (1884); and "Zuñi Breadstuff" (1885).

**CUSHING, Jonathan Peter**, educator, b. in Rochester, N. H., 12 March, 1793; d. in Raleigh, N. C., 25 April, 1835. In his boyhood he was apprenticed; but, by skilfully managing the proceeds of his overwork, he purchased a portion of his time, and immediately entered Phillips Exeter academy. By working a portion of each day and by teaching, he paid his way through college, being graduated at Dartmouth in 1817. His health failed, and he went south, became a tutor in Hampden Sydney college in the November following his graduation, and professor of chemistry and natural philosophy two years later. This chair he held for two years, when he became the president of the college. By his exertions, the institution, which had been sadly disorganized and broken down, was built up again; but the labor and responsibility of the enterprise exhausted his strength and hastened his death.

**CUSHING, Luther Stearns**, jurist, b. in Lunenburg, Mass., 22 June, 1803; d. in Boston, 22 June, 1856. He was the only graduate at the Harvard law-school in 1826. For some years after leaving college he was associated with Charles Sumner and George S. Hillard in the editorship of "The American Jurist and Law Magazine" in Boston, when in 1832 he was made clerk of the house of representatives, an office which he held for fourteen years. In 1844 he was chosen a member of the legislature, then for four years was judge of the court of common pleas in Boston, after which he became reporter of the decisions of the supreme court of the commonwealth, and prepared twelve volumes (55 to 66 inclusive) of law reports, extending from 1850 to the time of his death. In 1848 he became lecturer on Roman law in Harvard law-school, and filled the chair until his death. His name is best known in connection with his "Manual of Parliamentary Practice" (Boston, 1844), which immediately became an authority for proceedings in deliberative assemblies. He also published a "Treatise on Trustee Process" (1837); "Treatise on Remedial Law" (1837); English translation of Sarigny's "Recht des Besitzes," law of possession (1838); translation of Pothier's "De la vente," contract of sale (1839); translation of Mittermaier on "Effect of Drunkenness on Criminal Responsibility" (1841); translation of Domat's "Les lois civiles dans leur ordre naturel" (1850); "Reports of Controverted Election Cases in Massachusetts" (1852); "Introduction to the Study of Roman Civil Law" (1854); and "Lex Parliamentaria Americana," a comprehensive work on parliamentary law (1856).

**CUSHING, Nathaniel**, soldier, b. in Pembroke, Mass., 8 April, 1753; d. in Marietta, Ohio, in August, 1814. He joined the forces that went from Massachusetts in 1775, became a lieutenant in Brewer's regiment in July of that year, was advanced to a captaincy in 1777, organized a surprise, and captured forty of the De Lancey loyalists in May, 1780, after many fruitless attempts