

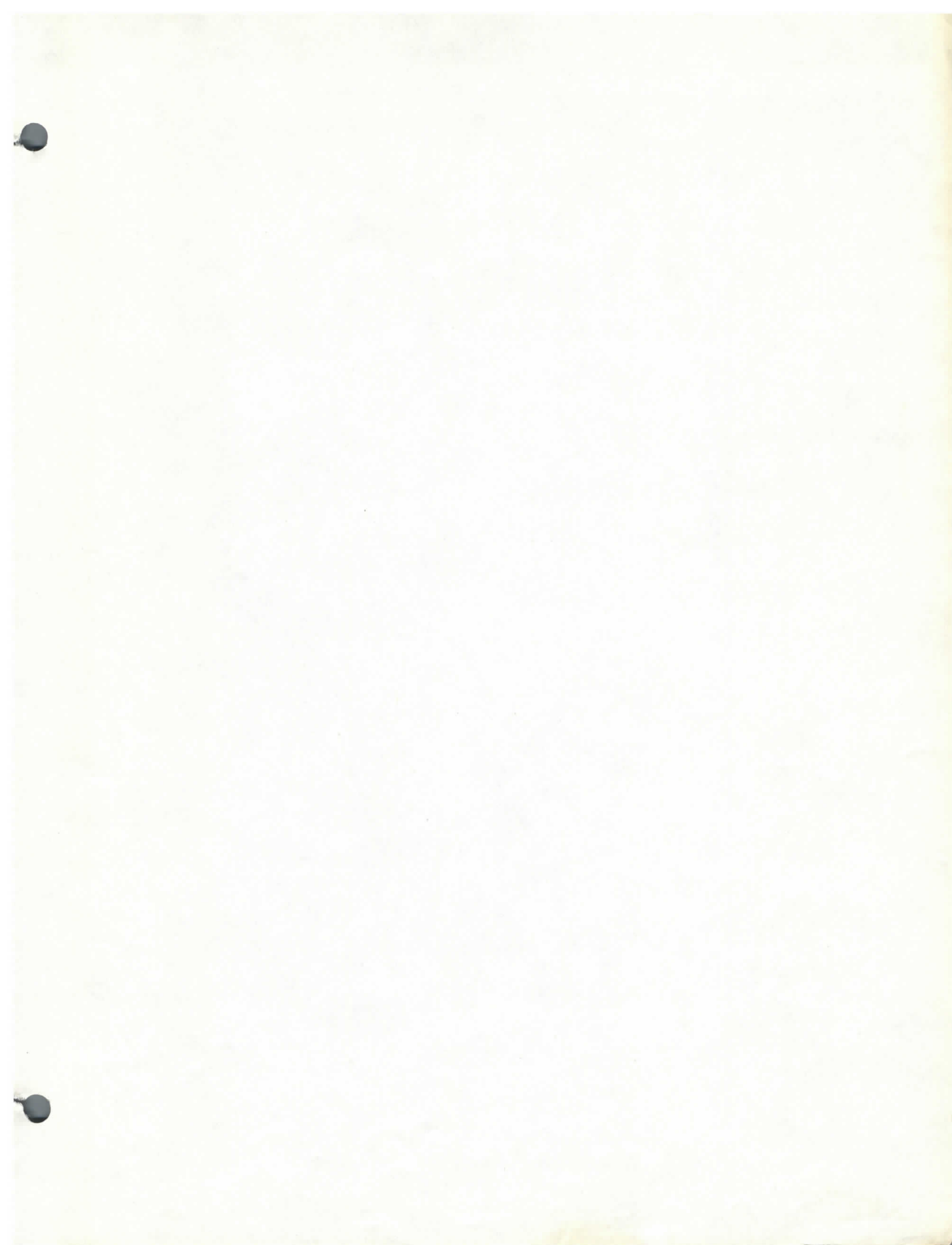
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THE ALMADEN MINE
DURING THE CIVIL WAR/

by
Bernice Monahan
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"Mercury or quicksilver is a metallic element which has been known for many centuries and which is distinguished from other metallic elements by the fact that it is liquid at ordinary temperatures. Mercury occurs native in the metallic form, but by far the larger part of it is obtained by distilling the native sulphide, cinnabar, in a current of air which is regulated so as to burn the sulphur of the sulphide, while leaving the mercury in the metallic state. The metal is chiefly used, in the arts, for the extraction of gold from crushed ore of fine gravel, the ore being washed by a gentle stream of water over a copper plate which is amalgamated with mercury. The gold particles, being heavy, sink through the water so as to come in contact with the copper plate, where they are held by the mercury in the form of a gold amalgam."¹ "As a product indispensable both to gold and silver mining, quicksilver may be deemed of the greatest value to the mining interest after the precious metals. Fortunately, for that interest it was discovered before gold. It is found in various kinds of rock, rotten slate, and some harder rocks. The principal quicksilver mine of California is at New Almaden in Santa Clara county, and produces somewhat less than the amount produced by the Almaden quicksilver mine in Spain, after which it was named."²

The New Almaden Mine in Santa Clara was first used by the Indians, who extracted cinnabar. "Cinnabar was used by the natives to paint their bodies, both in California and Oregon. In 1824, one of the Robles family, having been informed of the existence of the ore by the Indians, revealed

it to Antonio Sunol, who worked it for a short time under the impression that it contained silver. In 1845 a Mexican officer named Andres Castellero was shown some pieces of the ore at the Mission of Santa Clara. Having some knowledge of minerals he detected quicksilver, and remarked to those present, Father Reed and Jacob P. Lease, that if the mine could be proven as rich as those of Spain \$100,000 would be paid by the Mexican government for the discovery. In order to secure the title to himself Castellero proceeded at once to take the steps required by Mexican law for that purpose. Possession was given by the alcalde of the district, with a grant of 3,000 yards (varas) of land in all directions from the mine. Castellero divided the mine into 25 shares, 4 of which he gave to Jose Castro, 4 to the brothers Secundino and Leodero Robles, keeping the remainder for himself, and employing an American from Columbia co., N.Y., to open the mine. This man, William G. Chard, seems to have been a genius from his manner of mining. Taking several gun-barrels, he filled them with bits of the broken ore, stopped the vents with clay, placed the muzzles in a vessel of water, and built a fire around the other end. The heat vaporized the mercury, which passing into the water, was condensed, and precipitated in the form of metal. Chard next tried a furnace, which proved a failure. His third experiment was with six try-pots used by whalers, capable of holding 3 or 4 tons of ore. By inverting one over the other he formed a furnace, and by the application of heat, and conducting the vapor into water, succeeded in saving about 2,000 pounds of quicksilver. This method continued until August 1846, the Mexican government being informed of the facts. Then Chard and his Indian abandoned the mine. The same year T.O. Larkin forwarded information of it to the U.S. During the winter of 1846-1847 Castellero sold a part of his shares to the English house of Barron, Forbes, & Co. of Tepic, Mexico, who dispatched an agent Robert Walkinshaw, to hold the property, who, with a man named Alden, took possession in May 1847. In Nov. came Alexander Forbes with a corps of miners and appliances for mining. Retorts were used until 1850, when furnaces were constructed under the superintendence of H.W. Halleck. It was not until July 1850-1851

that the production of quicksilver for the market was commenced, since which time to 1880 the New Almaden mine had furnished, with the Euriguita on the same property, 54,378,418½ pounds of the metal. The mine was closed from 1858 to 1861 by injunction, the legality of the title being disputed. It was however confirmed to the English company, who sold it in 1864 to a company chartered under the laws of N.Y. and Pa. as the Quicksilver Mining co., with a capital of \$10,000,000 divided into \$100 shares."³

However, during the period from 1861 to 1864, when the mine was sold, the United States government almost became the owners of the New Almaden mine. On Friday evening, July 10th 1863, the citizens of San Francisco read the following report in the Daily Evening Bulletin under the column headed "TELEGRAMS FROM THE INTERIOR". "The morning papers have the following items. SANTA CLARA--July 9, 1863: 'A cavalry company from Benicia arrived to-day at San Jose, and is now camping outside the town. Quite a query is manifested to know what it is down here for. Who knows?' (The explanation is given elsewhere)"⁴ Those readers interested enough to search further for this explanation found this article on the next page. "THE ALMADEN MINE AND THE GOVERNMENT--A report was current on the street today that the Government had taken possession of the Almaden Mine and stationed a company of cavalry there to hold and occupy it. It was known that U.S. Marshal Rand had gone out of town in the direction of San Jose, and that a detachment of soldiers were actually in that neighborhood,---hence the thing looked plausible. The mystery has been explained two ways. Way the first, states the soldiers at San Jose were ordered here from Benicia, and that they came around in that direction in order to scoop up some deserters that were supposed to be in the vicinity. That the detachment of soldiers will arrive here tomorrow, and is the company of cavalry mentioned in the military news elsewhere, as destined for the reinforcement of Camp Drum. Those at the Marshal's office professed not to know exactly where he had gone, but thought he had gone a-fishing.

The other story, and probably the true one, as it comes from proprietary sources that would probably be pretty well posted in all that was going on concerning their mine, is as follows: Marshal Rand, accompanied by Leonard Swett, went out to the mine to take possession of it for the Government, notifying those in possession, that in case of resistance he had an armed force at hand to enforce his authority. But that this morning a telegram was received from the President, commanding a stay of all proceedings in the matter until further advices from him, and that so the case stands. The deserters, they say, was only a pretext and the soldiers were actually there for the purpose of enforcing Marshal Rand's will."⁵ Which story the San Franciscans believed remains to be questioned, but the fact that troops were sent to San Jose does not, as evidenced by the ensuing military order.

SAN FRANCISCO, July 8, 1863

COL. H.M. BLACK:
Benicia, Cal.:

"The detachment of cavalry at Benicia will proceed without delay to San Jose, fully prepared for active service. The detachment will camp near the latter place and await further orders. Seven days' rations should be sent, and early departure is desirable."

R.C. DRUM
Assistant Adjutant-General⁶

The next day, Saturday, July 11, 1863, the financial community was made aware of the situation at the New Almaden mine by an article in the Daily Bulletin, which read; "Commercial and Financial Summary, Mining Interests.--Both the yield and export of Quicksilver have been large this year. We have no details from the various mines, but the increased shipments indicated increased production. We are just informed that the Federal Government has taken possession of the New Almaden Mine, and placed it in charge of a keeper, ejecting the Company who have been in possession and wrought it successfully for many years past. The mine has been our

chief source of supply and if its operations are suspended by the present proceedings, the market value of the article will doubtless be affected--it has in fact, already advanced. The action of the Government, and especially the manner of it, has caused a profound sensation in this community." ⁷Indeed, the news had caused great excitement in the community, enough excitement to reach across the country to Washington and to the President as indicated by the following military orders, and telegrams.

SAN FRANCISCO, July 9, 1863
(Received 2.50 p.m., 10th)

MAJ. GEN. H.W. HALLECK:
General in Chief;

"In the present critical state of affairs on this coast, it is respectfully submitted that the President's order to take possession of the Almaden Mines, be deferred for the present. If seized now, great excitement will result."

G. WRIGHT,
Brigadier-General, U.S. Army, Commanding. ⁸

WASHINGTON CITY, D.C. July 9, 1863

HON. LEONARD SWETT,
HON. F.F. LOW,
San Francisco, Cal.:

"Consult together and do not have a riot or great difficulty about delivering possession."

A. LINCOLN. ⁹

SAN FRANCISCO, July 10, 1863
(Received 5 p.m., 11th.)

ABRAHAM LINCOLN,
PRESIDENT:

"If not already done, telegraph General Wright to suspend execution by military force in regard to Almaden Mine. No injury can accrue to the government by delay, and the result will be deplorable if the order is carried into immediate execution. The mining interest are so large and so sensitive that this proceeding will give the

secessionists every advantage. Don't I pray you, let anything be done to involve this State in difficulty. Judge Field and General Wright concur with me in my views. Let me know your decision by telegraph."

F.F. LOW¹⁰

SAN FRANCISCO, CAL., July 10, 1863.
(Received 5.25 p.m. 11th.)

MAJ. GEN. H.W. HALLECK
General-in-Chief:

"A company of U.S. soldiers is at San Jose to take forcible possession of the works--mine and private property--by order of General Wright. See the President and have the order revoked, at least until the rights of conflicting claimants shall be determined by the courts. "

JOHN PARROTT 11

The Daily Bulletin true to its policy of adding coals to the fire, also ran these articles on Saturday, July 11, 1863. "THE NEW ALMADEN EXCITEMENT"--"The attempt to take possession of the New Almaden mine on behalf of the U.S. Government has been arrested. President Lincoln having telegraphed for a stop of proceedings until further orders. At Washington--we do not mean in the Cabinet, but in Congressional and Departmental circles, there prevails the impression that there is a terrible swindle as to this famous mine--that a monopoly controls it with immense pecuniary advantage to itself while the property actually belongs (and has by the courts been so decided) solely to the Government. There an impression prevails that the mine is Uncle Sam's and that any hesitation to eject those now working it and take possession is a criminal neglect. No doubt it has been presented to the President solely in that light--so, on the 8th of May last he directed, by missives which arrived on the last steamer, the United States Marshall to take possession, and, if necessary, to avail himself of the forces stationed in his department to enforce it. Although the messenger, to whom the President entrusted this mission, is authorized to announce, as we hear, that this action was not to be considered as a precedent in regard to any other mines in the country, it naturally creates alarm. Collector

Low, in view of the injury that would be inflicted on our mining interest by stopping the supply of quicksilver, telegraphed to Secretary Charse on Wednesday last, asking him to inform the President at once of the way in which our people would regard it. He also consulted with General Wright, who took the same view of the action that had been commenced and at once stopped the military from rendering any assistance to the Marshal until further orders.

The President had taken such action as he supposed must result in continuing the work at the mine. He had not been informed, which is true, that the hacienda of the present company is outside of the land which is in dispute, and that without their works on the hacienda, the quicksilver cannot be prepared for the market. His action was well intended and doubtless seems right as they tell the story at Washington; but the people of California see clearly that if it had been carried into effect, immense mischief to our mining interest would result, for the same reasoning that gives New Almaden to the Government, gives the Gould & Curry and all the rest. So soon as he was informed by parties here in whom he trusts, to the effect of his order, he instantly stopped proceedings, and we are told there is no danger that they will be resumed. Robert J. Walker, Secretary Stanton and ex-Attorney-General Black, know a great deal about these mines. They are probably the parties who have endeavored to use the President's fingers to rake the chestnuts out of the fire. It is creditable to his good intentions that so soon as he sees how he is being used, he drops the chestnuts and stops proceedings." ¹²

"The Almaden Mine and the United States Government" The excitement of the day is found in the attempt of the Government to take possession of the Almaden mines, and the consequent rumor, which grew and multiplied on the street. There was such a commendable relucence displayed yesterday by everyone who might be supposed to know anything of the facts involved and

the proceedings actually taken that it was impossible to gather in a full sheaf of truth. The parties applied to, all shook their heads sagely and looked as though they knew a great deal but declined to say anything. Yet the outline of the case which was given in 1st evening's Bulletin, proves to have been essentially correct and now in the full light of subsequent revelations, we are enabled to write up the authentic history of the affair.

A writ dated the 8th of May, and directed to the Marshal of this district, arrived in this city a few days ago. It was issued by President Lincoln and commanded the Marshal to seize the Almaden mine--and to employ armed force if necessary.

Commencing with the beginning we will endeavor to explain under what supposed authority the writ was issued and then to work out the story in its natural order. By a Congressional act of 1807, the President is authorized to direct the seizure of all public lands which are occupied without authority or title from the United States, and to empower the Marshal to use military force if necessary. This act has been used in this community before, we believe, once when Captain Keyes, (now General Keyes) took possession of the land on which the Marino Hospital stands, with a file of soldiers, turning off the squatters, and later in occupying and keeping possession of the Presidio grounds. In relation to mines, the letter of the act has never been enforced, as it seems merely to have been contemplated to cover the lands belonging to Government and prevent squatters from taking possession of them and buying the timber. But a different and arbitrary construction seems to have been placed upon the law at Washington and the writ to the Marshal here, directed him to take possession of the mine, the land about it and the hacienda--3,000 yards in every direction from the mouth of the mine, was specified--and in case of necessity to call military force to his assistance. The mine when taken possession of, was to be turned

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over to the custody of Leonard Swett, an old law-partner of Mr. Lincoln's, who came out on the last steamer. Marshal Rand accompanied by Mr. Swett, went out to the Almaden mine, day before yesterday and demanded the surrender of the mine and its appurtenances. This was declined, at least until telegraphic communication could be had with the interested parties resident in San Francisco. The Marshal stated that if it were not surrendered, he would march in a file of 100 soldiers and take military possession, the soldiers then being in San Jose for that purpose. And here it must be explained that though the Marshal had not the authority to order the soldiers to move, he had only to telegraph to the headquarters of when the order would be granted. The people of the mine and in the vicinity, in the meanwhile, had become much excited. The mine was barricaded by some 170 armed men, and a collision seemed evident. All this while however, the pot was carefully watched by prudent eyes and not permitted to boil over. The authorities at Washington were telegraphed to; and while the Marshal, the military and the miners were preserving an armed neutrality, a dispatch came from the President, to the proper hands, to stay all proceedings and the calvery company was ordered to this city. The people of San Jose who were much excited, received this news with cheers and general demonstrations of gratification. So the matter stands at the present.

The popular impression has been, that the writ which it was proposed to enforce, was issued by the Courts. Not so; it emanated directly from the President, under a literal construction of the letter of the act of 1807, before referred to, and the supposition on his part, of course, that the property belonged to the United States. This latter point seems not to be very definitely established yet, as there are two claimants for the property in the field under private titles. But admitting it to be the property of the Government, stripping it of all other titles and placing the mine in undisputed Government possession, would it be policy for the Government to exercise its authority? Virtually the Government has consented to the occupancy of its grounds by miners, as the best way of getting to the gold dug out from the earth and the easiest way of

settling a question of title, which would otherwise have been productive of endless trouble. The Almaden miners who have had undisputed possession of their mine for 17 years would still have a right to the property under the unwritten but recognized mining laws of this district, holding their claim by the same title that other miners have to theirs. Such action on the part of the Government would breed a very natural fear on the part of miners generally, that their long-vested rights were to be interfeared with and themselves summarily dispossessed of their claim by an armed force. For nothing would remain but for Uncle Samuel to step in and pocket Ophir and Gould & Curry, as well as all the wild-cat stock in the market.

All fear on this score is groundless. Seeing the question in this light the President will never consent to throw such a fire-brand into the midst of an excitable people, or to interfere in a matter which has long been regarded as settled. He already stayed action in the premises, and there is no reason to apprehend that military possession of any mine will again be attempted.

There is another interesting point in which the seizure of the Almaden mine would present itself to the popular view. The consumption of quicksilver in Nevada Territory equals 1,000 flasks per month, and it is supplied to miners at 60 cents a pound. If the Almaden mine were seized, within three weeks every mine on the coast would be obliged to suspend working until a supply of quicksilver could be brought from foreign countries, at a much higher rate, as there is said not to be a supply sufficient for a month's consumption in the country. The New Idria mine below San Juan is suspended, having been served with an injunction. The Enriqueta Mine in Santa Clara county has worked itself out or lost the vein and the Napa mine is producing nothing. Consequently a stoppage of the Almaden works would interfere seriously with the interests of every gold and silver mine in the country. These facts have been

presented to the President and that in their full light, he will permit any further action to be taken in the matter or allow the military process to supercede the civil action of the courts, is not for one moment to be apprehended." 13

The "dropping of the chestnuts" by the President may have been influenced not a little, by the following telegrams which burned up the wires, that hot Saturday in July, 1863.

WASHINGTON, D.C. July 11, 1863
10.10. p.m.

JOHN PARROTT ESQ.,
San Francisco:

"There has been no military order to interfere with the New Almaden Mine. No such military interference is authorized by the War Department, nor will any be permitted."

H.W. HALLECK
General-in-Chief 14

SAN FRANCISCO, July 11, 1863
(Received 5.40 p.m. 13th)

MAJOR-GENERAL HALLECK:

"President sent a warrant to take possession of Almaden and 3,000 boras (sic) and instructed Marshal to enforce with military. Marshal demanded possession and soldiers reached San Jose, when the proceedings were suspended till President could be consulted. There is great excitement and unless the mandate is revoked the State is in danger of being lost (to) the Union. The law of 1807, under which the mandate is issued, does not apply until Hoffman's decision is changed. Mine is on Berryessa Ranch. Even if it did, President should not force to get possession of a mine--the people will not stand it. If the mandate is not revoked there certainly will be great trouble. See the President and answer."

FREDERICK BILLINGS. 15

SAN FRANCISCO, July 11, 1863, 12. m.

BRIGADIER-GENERAL WRIGHT:

"I am from Washington with a writ from the President to take possession of Almaden Mine. The writ is reported to have been

countermanded. Have you received any message from the President?
If so, does it countermand previous order?"

LEONARD SWETT 16

Virginia City, July 11, 1863
(Received 6 p.m., 13th)

His Excellency, ABRAHAM LINCOLN

PRESIDENT of the United States:

"I implore you, Sir, in the name of the loyal people of Nevada,
to do nothing toward taking possession of any mines on the
Pacific Slope."

Geo. Turner
Chief Justice 17

WASHINGTON, July 11, 1863, 10.10p.m.
(Received 6.p.m. 13th)

BRIGADIER-GENERAL WRIGHT,
San Francisco, Cal.:

"I am directed by the Secretary of War to say that he has no in-
formation of any military order to take possession of New Almaden
Mine. If there be any such order it has been surreptitiously
obtained. You will obey no order of this kind that does not
come through the proper military channels. If you have done
anything in the matter, you will withdraw and restore every-
thing in the condition in which you found them."

H.W. HALLECK
General-in-Chief 18

The military organization in California, had apparently
intuitively sensed that this would be the attitude of the
General-in-Chief, as the troops had already been withdrawn
from San Jose, as evidenced in the following directive.

SAN FRANCISCO, July 10, 1863

LIEUTENANT BURNETT,
San Jose

"You will march to this city via Redwood and San Mateo,
reporting at the provost-marshal's office."

R.C. DRUM
Assistant-Adjutant-General 19

Again, on Monday evening, July 13, 1863, the Bulletin discussed the President and his "chestnuts", in an article entitled "THE ALMADEN EXCITEMENT" and it read as follows: "General Rand and his forces returned to town on Saturday, looking rather dusty, but all in good fighting, or at least, marching order. There were rumors to-day, on the street, that a supplemental order had been received from the President, revoking his former order for a suspension of hostilities, and directing an immediate advance upon the Almaden Works. But chasing this rumor through all its channels to the fountain head, not a drop of truth can be found in the well. So we feel authorized to report "everything quiet on the Rappahannock." (A river which separates Falmouth from Fredericksburg. The Union troops were encamped in Falmouth that night waiting to cross over to Fredericksburg.) "The contending parties to the mining claims were in amicable conference at last date, and a peaceable arrangement of the difficulty is apprehended. Mr. Swett has found probably, that the attempt to take military possession of a mine in California involves more preparation than was originally bargained for, and the question of what is Butter-worth, may be regarded as definitely settled." (This is a play on words, as the name of the President of the Quick-silver Mining Company of New York, was Mr. Butterworth. Mr. Swett was thought to be trying to gain possession of the mine, in order to turn it over to the Quicksilver Mining Co.) "Late news from Almaden states that 200 miners came down from Calaveras county, armed rudely but effectively, to assist the Almadeniers in giving battle to the invaders. The President, however has been persuaded to drop the chestnuts and he probably has sagacity enough to tell his friends to rake them out of the fire for themselves, if they again attempt to make a cat's-paw of him. As a supplement to the Almaden affair the following telegram just received from Washington may not be without interest."

WASHINGTON, July 11, 1863, 10.p.m.

Received at San Francisco, July 13, 12.m.

TO JOHN PARROTT, ESQ.,

"There has been no military order to interfere with the New Almaden Mine. No such military interference is authorized by the War Department, nor will any be permitted."

H.W. HALLECK,
GENERAL-in-Chief ²⁰

Had the Bulletin had access to these telegraphic communications, of the next few days, perhaps they would not have dismissed Mr. Swett and his efforts to take possession of the mine, so presumptuously.

WASHINGTON D.C. July 13, 1863
9.15 p.m.

F. BILLINGS,
San Francisco:

"The order for a military occupation of New Almaden was surreptitiously obtained. The Secretary of War has directed General Wright to suspend operations, to restore everything as he found it and to obey no orders, which do not come through the proper channels."

H.W. HALLECK
General-in-Chief ²¹

SAN FRANCISCO, July 14, 1863
OCCIDENTAL HOTEL
(Received 2.10 p.m., 15th)

His Excellency, ABRAHAM LINCOLN,
PRESIDENT, United States:

"General Halleck has telegraphed the following dispatch, which has been published here."*

*Halleck to Billings, July 13, 1863

LEONARD SWETT ²²

ABRAHAM LINCOLN,
PRESIDENT, United States:

SAN FRANCISCO, CAL., July 14,
1863

"After full consultation with owner and attorney at mine, it was determined no actual resistance should be offered. In a

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short time I would have had peaceable possession, but when your dispatch came, the Marshal was telegraphed that you had ordered to wait. Your order can yet be executed. If you determine to do it, telegraph me giving discretion and I will be responsible for consequences. If you do not think best to execute the order, let the Attorney-General authorize me by telegraph to obtain an injunction and receiver. In my opinion the injunction had better be applied for. The Government owes it to its own dignity to do one of these things. I have offered the company the same terms proposed by the Quicksilver Company, and they positively refuse to do anything"*

LEONARD SWETT²³

*(Sent to Secretary of Interior.)

As Mr. Swett mentioned in his telegram to President Lincoln, sent from the Occidental Hotel, the Bulletin did publish General-in-Chief Halleck's correspondence with Mr. F. Billings, in an article entitled "THE NEW ALMADEN PROCEEDINGS", dated Saturday evening, July 14, 1863, which stated as follows: "Statement of the Case by A.C. Peachy and C. Temple Emmet." "The several accounts of the recent proceedings of the United States Marshal at the New Almaden mine, being somewhat inaccurate, we have thought it proper to publish a correct statement of what occurred.

One Thursday last, C.W. Rand, United States Marshal for the Northern District of California, proceeded to New Almaden and demanded from the superintendent possession of the mine and the reduction works, under a so-called warrant, of which the following is a copy;

'To C.W. Rand, Esq, Marshal of the United States for the Northern District of California--WHEREAS, It has come to my knowledge that one Andres Castellero, and divers persons acting or claiming to act under him as his agents or assigns, have, under, and by virtue of a pretended grant or grants from the lawfully constituted authorities of the Republic of Mexico,

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occupied and taken possession of, and made settlement on, a portion of public lands of the United States situate in the County of Santa Clara and State of California, commonly called and known as the New Almaden Quicksilver mining property, and embracing about three thousand varas of land in all directions from the mouth of the mine, commonly called and known as the New Almaden Quicksilver Mine, and have for a long time past, by extracting valuable minerals therefrom and converting the same to their own use, by erecting buildings and other improvements thereon and by other unauthorized acts, used and enjoyed the said portion of the public lands as if they were the lawful owners thereof; all of which acts have been without the consent and against the rights of the United States.

AND WHEREAS, By the decision of the Supreme Court of the United States in the case of Andres Castellero against the United States at the December term of the Court, last past, it has been adjudged that the grant or grants from the lawfully constituted authorities of the Republic of Mexico, under which the said Andres Castellero and the persons claiming under him as agents or assigns have claimed and pretended to hold the said described portion of the public land, is or are fraudulent and void, and conferred no right whatever to the said described portion of the public lands or to the minerals thereon, whereby it appeared that the said Andres Castellero and the persons claiming under him as agents or assigns, now in possession of said described premises, are intruders thereon without right; And whereas, The said described portion of the public lands has never been surveyed and opened to settlement and sale under the laws of the United States,

Now therefore, I, Abraham Lincoln, President of the United States, by virtue of the power and authority in me vested by the Act approved the 3rd day of March, A.D., 1857, chap. 46 entitled "An Act to prevent settlements being made on lands ceded to the United States, until authorized by law," do hereby order and direct you to enter upon that portion of the public lands situated in Santa Clara country, in the State of California, commonly called and known as the New Almaden mining property,

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embracing about three thousand varas of land in all directions from the mouth of the mine commonly called and known as the New Almaden Quicksilver mine, and to remove therefrom any and every person or persons who shall be found on the same and deliver the said premises, with all the appurtenances of whatsoever kind to the possession of Leonard Swett, an agent who has been duly authorized by me to take possession of and hold the same for the United States; and also that you take such measures and call to your assistance such military force of the United States in California as may be necessary to execute this order.

In witness whereof I have hereunto affixed my hand this 8th day of May, 1863.'

ABRAHAM LINCOLN.

The Marshal stated that he came prepared to take possession by military force, if necessary. The Superintendent, on receiving this demand, requested sufficient time to communicate with his principals in San Francisco, which was acceded.

On Friday morning the Marshal, accompanied by Mr. Leonard Swett the person named in the warrant, called for a final answer to his demand, when he was informed that the property mentioned in the warrant had been declared by the judicial tribunals of the United States to be private property. That the owners and present possessors had been in possession thereof for 17 years, and that even if the mine was on public land they held it by the same title that every other miner on the public lands in California held.

The Marshal was further informed that the proprietors had been advised that the warrent as regarded the property mentioned in it was altogether illegal and void, and did not confer upon him even color of authority. That they (the owners) would regard him, and any soldiers he might bring with him, as mere trespassers who would be resisted to the extent of their ability. To which the Marshal replied that he would execute any warrent of the President without inquiring into its legality. Mr. Swett then expressing a desire to avoid a collision, asked what military force would be regarded by the owners of the property

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as sufficient to render resistance useless. He was informed that at least 100 soldiers would be necessary.

After an ineffectual attempt on the part of the Marsahl to obtain a stipulation that a less force would answer the purpose, he left, announcing his intention of using a military force to execute the warrant.

At the time of this interview there were, we are told, a company of infantry and another of cavalry in the city of San Jose, ordered there to be at the disposal of the Marshal in the execution of the warrant.

We also learn that before the Marshal had time to set the force in motion, an order was received by him suspending further proceedings.

A.C. PEACHY.

C. TEMPLE EMMET.

San Francisco, July 14, 1863

The following telegram by Gen. Halleck presents the latest phase of this interesting matter.

WASHINGTON, July 13, 1863

TO F. BILLINGS--To order for a military occupation of New Almaden was surreptitiously obtained. The Secretary of War has directed Gen. Wright to suspend operations--to restore everything as he found it, and to obey no orders which do not come through the proper channel."

H.W. HALLECK, General-in-Chief 24

On Sunday, July 15, 1863, General Wright felt the need to make his position on the matter and subsequent actions clear to his superior in Washington, and did so by sending the following dispatch:

HEADQUARTERS, DEPARTMENT OF THE PACIFIC
SAN FRANCISCO, July 15, 1863

MAJ. GENERAL H.W. HALLECK,
Washington, D.C.;

"SIR: I have the honor to acknowledge the receipt of your telegraphic dispatch of the 11th instant. I infer from your dispatch

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that the Department was under the impression that I either had or was about to take possession of the New Almaden Mine by a military force, whereas I was only furnishing the U.S. Marshal with such military force as he might deem necessary to execute the orders of the President, dated May 8, 1863. The orders of the President authorized the Marshal to call to his assistance the forces of the United States in California. The Marshal called for a force, but before any decisive action was taken, I was called upon by the Hon. F.F. Low, U.S. Collector, and other gentlemen, who earnestly requested that the seizure of the mine should be deferred until further instructions could be received from Washington. Concurring with these gentlemen, I requested that the seizure of the mine should be deferred until further instructions could be received from Washington. Concurring with these gentlemen I requested the Marshal to suspend action in the matter. Mr. Low, has already telegraphed to the Secretary of the Treasury on the subject, and the reply which was sent in cipher through me, was addressed to Mr. Low and Mr. Swett, in which those gentlemen were requested to consult together on the subject. Although the Government disavows any intention of seizing or in any way interfering with the mining interests on this coast, further than taking possession of the Almaden Mines, yet designing politicians, inimical to the Government, will endeavor by every means in their power to create an impression in the public mind, that the tenure of all the mining interest is at the mercy of the United States government.

With great respect, I have the honor to be, your obedient servant."

G. WRIGHT²⁵
Brigadier-General, U.S. Army, Commanding

During the next few days several telegrams were sent and received, which were to solidify the government's public position on the situation.

WASHINGTON CITY, July 15, 1863

HON. L. SWETT,
San Francisco, Cal.:

"Many persons are telegraphing me from California begging me,

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for the peace of the State, to suspend the military enforcement of the writ of possession in the Almaden case, while you are the single one who urges the contrary. You know I would like to oblige you, but it seems to me my duty in this case is the other way."

A. LINCOLN²⁶

SAN FRANCISCO, CAL., July 16, 1863

GENERAL H.W. HALLECK
Washington, D.C.:

"I have received your telegraph of 11th of July. No order to take military possession of the mines has been received. The Marshal was authorized by the President to call for a military force if necessary. All quiet. I have written you fully."

G. WRIGHT²⁷
Brigadier-General, U.S. ARMY,
Commanding

SAN FRANCISCO, CAL., July 16, 1863
(Received 6 p.m. 18th)

A. LINCOLN
PRESIDENT:

"I am here waiting instructions. The only fact I can communicate is that while at the mines, the Almaden Company claimed the mines to be on Lyresa Ranch. Since we come from there, so far as I know, they claim it to be on Government land. I have no doubt the Government ought to show, through the court of chancery, by an injunction, that it has neither tyrannically nor foolishly issued this order."

LEONARD SWETT²⁸

As everyone else had made their position clear to their public and private minions, in print, Mr. Swett too, felt compelled to enlighten San Franciscans as to his rights and responsibilities in the matter. The following article was entered in the Daily Bulletin July 22, 1863, under the heading "The Government and the New Almaden Mine." "Statement of the Case by Leonard Swett." "EDITOR BULLETIN.-So much misunderstanding has arisen in the public mind in relation to the intentions of the Government, in its proposed possession of the land embracing the New Almaden Mine, that I consider it proper under my instructions, to make public the facts within my knowledge in relation to it.

It is well known that in each mining district there are local laws enacted by the miners, regulating the extent of each claim.

The land and the mineral are conceded to be legally the property of the United States, but notwithstanding this ownership, the Government waives its rights, and recognizes and adopts these laws as the governing law, under which valid rights are acquired. This is one class of mining title. Another class arises as follows: When this country was acquired from Mexico, the United States obligated themselves by treaty to respect and enforce private rights. To carry out this stipulation a board of commissioners was created by an act of Congress before whom parties might present their claims to land, and whenever these claims have been finally confirmed, the United States have issued patents to the land in question. There is a distinction between the two classes of titles in this; that under the mining title the occupant gets only an equitable share of the mineral. This system divides the mineral fairly, develops the resources of the country, offers a liberal reward to industry; and so far as I know the Government never did, and does not now propose, in any regard, to interfere with it. Under the Mexican grants the claimant gets the full amount of his claim, in violation of mining regulations, even though the claim might embrace an entire county.

While the Government cheerfully accords to every claimant the full measure of his rights under treaty stipulations, it conceives it a duty to mining, as well as all other interests, to see that no one through fraudulent claims appropriates large and valuable tracts of land, whether agricultural or mineral. In 1852, the New Almaden Company filed their petition, for a confirmation to them of about 3,000 varas of land, in every direction from the mouth of their mine. Pursuant to the Act of Congress, they set forth in their petition their claim of title which was a pretended grant from Mexico. The Supreme Court, at its last session, decided this title to be fraudulent and void.

Under these circumstances, what is expected of the Government? To say there is no distinction between a fraudulent claim, and a valid mining claim, under mining laws, is to say that the laws in any mining district may be evaded, and

claimants may appropriate much more than their legal right, through pretended claims against the Government. If the holder of a large fictitious claim, retaining possession during the period of his litigation, may, when that is decided against him, still hold possession, a premium is offered to fraudulent claims; because the claim may be made as large as the party pleases, and because, when found to be fraudulent, the party may still hold it.

The policy of the Government is, as I am instructed, to resist, such claims, but to recognize to their fullest extent the mining claim. To show this I quote from my written instructions from the Secretary of the Interior:

"In the discharge of the responsible and delicate trust confided to you, it is expected that it will be so conducted as not to cause it to be believed by the people of California that it is the purpose of the Government to interfere with, or forcibly dispossess miners who acknowledge the title of the United States in the mines wrought by them, but only those who set up fraudulent and fictitious titles, as was done in this case by the New Almaden Company.

"* * * * * In the event that it shall become necessary for you to execute the writ, you should be active in promulgating the views of the government as above announced, in order that its action may not cause any undue excitement, or apprehension that the rights of the meritorious class of persons who have manifested so much enterprise in developing the mining resources of California will be invaded."

It is not true that the order in question was issued by the President without a full knowledge of its contents and intention. The only fact pertaining to the case, which I think may not have been known, is that the present occupants now claim, because in setting forth their title under the Act of Congress, the Almaden Company only claimed under a Mexican Grant.

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In contemplating possession of this mine, the Government desired that the business might be so conducted as not to stop its working. Therefore an arrangement was in contemplation with the Quicksilver Mining Company, by which, under the supervision of the Government, the mine would have been temporarily worked by them. Subsequently I offered to make the same arrangement with the Almaden Company, through their attorneys, but it was declined.

I have detailed these facts, and given the views of the Government, as explained to me at the time of the delivery of the order, so as to remove any reasonable apprehensions as to its future course."

LEONARD SWETT 29

SAN FRANCISCO, July 22, 1863.

San Franciscans were advised in the Bulletin, the following evening, Thursday, July 23, that several misstatements had been made by Mr. Swett, which the newspaper "Alta" would attempt to correct in an article headed "The New Almaden Controversy, which read as follows: "EDITOR ALTA--The Bulletin of last evening contains a communication from Mr. Leonard Swett, touching the recent proceedings of the Government in relation to the New Almaden mine.

We think it proper to correct several misstatements made by Mr. Swett. He says:

The Supreme Court at its last session decided this title to be fraudulent and void.

The following extracts from the opinions of the Judges of the Supreme Court, will show what truth there is in this assertion.

Mr. Justice Clifford, delivering the opinion of a majority of the Court, in speaking of the documents from Mexico, says: "They consist, if will be remembered, so far as that part of the claim is concerned, of the communications from the claimant to the Junta de Fomento, their report or recommendation to the Minister of Justice, his reply to the same, together with

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the decree made by him in the margin of their communication, and his despatch to the Minister of Relations, and the despatches of the Minister of Relations of the 23d of May, 1846, to the Governor of the Department where the land was situated. Forty witnesses or more, mostly from the City of Mexico, were examined by the claimant to prove the authenticity of those documents or the corresponding originals on file in the archives of the Supreme Government and various other proofs in the form of exhibits were also introduced for the same purpose, filling a large space in the transcript which contains more than 3,500 pages of closely printed matter.

Such testimony and proofs were regarded as essential, because it was and is insisted by the United States that the documents were fabricated, but in the view we have taken of the case it will not be necessary to decide or consider that question, and consequently neither the testimony of the witnesses or the exhibits on that point will be reproduced.

He also says:

Strong, however, as our impressions are that the evidence fails to show that anyone of the four expedientes introduced by the claimant, is entitled to credit, still we are disinclined, in view of the great complication of the evidence upon the subject, to rest the decision of the case upon that ground.

The opinion then proceeds to dispose of the case upon the question of the power of the Alcaldes to receive denuncements of mines, and whether the denouncement in the present case complied strictly with the forms prescribed by the laws of Mexico.

Justice Catron, delivering a dissenting opinion (with whom Justice Grier concurs,) holds the following language:

Much stress has been laid on the fact that James Alexander Forbes proposed to his associate to forego a title to this mining property. Forbes apprehended that Castillero's claim was not valid, because the proceeding to acquire a legal interest was irregular. But no step was taken to fabricate an

apparent title; nothing was done towards its accomplishment. The proposition died in its conception, and as a controlling circumstance in the case, the fact is worthless.

Mr. Justice Wayne's decision is as follows:

I concur with Mr. Justice Catron and Mr. Justice Grier, for reasons given by them, and for other reasons expressed in the printed opinions of Judge McAllister and Judge Hoffman, in dissenting from the judgement of this Court just announced in this case.

I think that the claim and title of the petitioner, Andres Castillero, to the mine known by the name of New Almaden, in Santa Clara county, Northern District of the State of California is a good and valid claim and title, and that the said Andres Castillero and his assigns are the owners thereof, and of all the ores and minerals of whatsoever description therein in fee simple. In my judgement, also, I concur with the learned Judges of the District Court, ect. ect, that the said mine is a piece of land embracing a superficial area, to be measured on a horizontal plane, equivalent to seven pertenencias, each pertenencia being sold, of a rectangular base, 200 Castillian varas long of the width, established by the Ordianza de Minería of 1783, and in depth, extending from and including the surface, down to the centre of the earth; said pertenencias to be located in such manner as the said Andres Castillero or his assigns, may select, subject to the following conditions; First, that the said pertenencias shall be contiguous that is to say, in one body; and secondly that within them shall be included the original mouth of the mine known as New Almaden.

Having thus fully expressed my concurrence in the decree rendered by the District Court in favor of Andres Castillero and his assigns, and my dissent from its reversal by this Court, I will add that, in my opinion it is fully shown by the testimony and documents in the record that in no thing done by Castillero or his assigns, in connection with the mining claim, is there any proof of fraud; and I believe from the testimony and from those documents, that the petitioner and his assigns have rights under the 8th article of the treaty with Mexico, of which they cannot be

deprived by any judgement rendered by this Court or its proceedings upon the record brought into this Court by appeal.

I adopt and herewith annex to this dissent the opinion of his honor Ogden Hoffman, District Judge, (as embodied in the record,) as the best way of showing my appreciation of the law and merits of this case, and of his judicial learning and research in connection with it.

It will be preceived from these extracts that Mr. Swett altogether misrepresents the ground upon which the opinion of the Supreme Court proceeded.

Mr. Swett says: An arrangement was in contemplation with the Quicksilver Mining Company by which, under the supervision of the Government, the mine would have been temporarily worked by them. Subsequently I offered to make the same arrangements with the Almaden Company, through their attorneys, but it was declined.

After Mr. Swett was compelled to give up the idea of a military occupation of the mine, he called upon Mr. Billings, and, in the course of general conversation, asked if the New Almaden claimants would make any arrangements with him, as agent of the Government, in regard to the possession of the mine. Mr. Billings replied that the owners of the New Almaden Mine would not for a moment recognize the right of the Government to interfere with them by agents anymore than by soldiers; and that the mines had been judicially declared to be upon private property, and that no concessions could be made to Mr. Swett nor any conventions entered into relating to the possession of the mine. After this Mr. Swett remarked that he had instructions to turn the mine over to the Quicksilver Mining Company, under certain conditions, and added, generally, that he was ready to enter into some arrangement with the New Almaden Company. He gave, however, no details of any arrangement, and only made the general proposition after his military attempt had failed.

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The arrangement with the Quicksilver Mining Company was made before Mr. Swett left New York. He came out to put it in force, and to give possession to that Company, whose President, Mr. Butterworth, was here to receive it. His proposed arrangement with the New Almaden Company was never made except in general terms, and it looks very much like an after-thought, suggested only for effect, when it was known it could not be entertained.

Mr. Swett further states that the government had not notice of the claim of the present occupants under the Berreyesa title, "because in setting forth their title under the Act of Congress, the Almaden Company only claimed under a Mexican grant."

It is quite immaterial whether the New Almaden claimants are owners of the Berreyessa Rancho or not. What the Government knew, or should know, was that the property, including the mine, had been adjudged by the United States District Court, to be within the general limits of a private grant. This fact (whoever the owners), should have been sufficient to prevent the issuance of the warrant, or the attempt to execute it.

Mr. Swett asserts that the Government, in these proceedings, was influenced by a desire to protect the mines of California against fraudulent mining claims derived from the Mexican Government. Did Mr. Swett or the President know how small would be the sphere of their benevolence, considering the Castillero's case presents the only instance of a mining title, acquired under the Mexican Government, and that the only miners over whom this protecting aegis was to be raised was a Wall Street company, represented in San Francisco by its president, Mr. Butterworth?

We cannot credit Mr. Swett with much sincerity in this statement. On the contrary, we believe that the warrant was obtained from the President to subserve the private interests of an adverse claimant (the Quicksilver Mining Company incorporated in Pennsylvania, and of which Mr. Butterworth is President;) and we will add, that long before Mr. Swett appeared on this coast armed with the President's warrant, we were informed on good authority, and believe, that Mr. Swett held a large interest (as much as 3,000 shares) in this

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adverse company, into whose possession the mine would have been placed, if Mr. Swett had succeeded in wresting it from us. And we believe that Mr. Swett still holds that interest.

We are also informed that while the matter of this warrant was pending before the President, who was strongly urged not to issue it, he finally referred it to Mr. Swett, his former law partner, intending to be guided by his advice; and this was done while Mr. Swett held his stock in the Quicksilver Mining Company. We believe that the President was as ignorant of Mr. Swett's interest as he was of the existence of the Berreyesa title. But we do not believe that Mr. Swett was ignorant of other facts, when he advised the President to issue the warrant or when he delivered it to the Marshal to be enforced. We have thought it proper to confine ourselves in this statement to correcting the misrepresentations of Mr. Swett. As to the real character of the controversy for the possession of the New Almaden mine, we cannot for a moment doubt that it is well understood that the name, influence and power of the government has been obtained and used, not for the benefit of public, but exclusively to further ends of private adverse claimants, represented on this coast by Mr. Samuel Butterworth, under whose orders Mr. Swett, has been acting."

EUSTACE BARRON

WILLIAM E. BARRON.

SAN FRANCISCO, JULY 23d. 1863 ³⁰

By Wednesday evening, August 5, 1863, the Quicksilver Mining Company had been prompted to come to it's own defense, and did so in the following article, which was presented in the Bulletin under the title "The Almaden Case again."

"What the Quicksilver Mining Company have to Say"-**"ENRIQUITA MINE, Santa Clara, August 4, 1863. EDITOR BULLETIN.-**The Quicksilver Mining Company has recently received a large share of your attention. Interested correspondents have had ample opportunity to advertise their alleged wrongs in your columns,

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and pithy and pointed editorials have given their complaints an importance they would not have otherwise possessed. It is not for me to doubt that in all this you have desired not to subvert individual interest, but to arrive at the truth, and that you will be as ready to publish a defense of the Quicksilver Mining Company as you have been to spread these attacks upon it before the people of California. As the oldest stockholder of that Company, the real facts are necessarily within my personal knowledge, and the time has come, when in justice to the Company they should be made public. The promptings of common humanity impel us to submit for a time to the phrenzied ravings of afflicted mourners over their buried hopes, but when carried so far that they become rather injuries to the living than tributes to the memory of the dead, endurance becomes unjust to both.

The leading charge, and to which all the others are subsidiary, is that of attempting, in your own pet phrase to "steal the mine" of the New Almaden Company. The alleged foundation for this is, that a special agent has recently appeared here with instructions to take possession of that mine on behalf of the Government of the United States. The authority under which he acted was signed by the President and lacked no one element of form or substance to clothe it with all the character which should ever attach to the official acts of our Government. It was the legitimate finale to a litigation that had no parallel in our country in the magnitude of the interest involved, or the character of the means resorted to for the purpose of retaining possession of the property, and in which, after justice had done its work and rendered its judgment, the execution followed as a matter of course. Why is it, that after ten years setting the Government at defiance, when at last defeated at every point, with fraud and forgery branded all over their iniquitous defence, by the highest judicial tribunal in our land, that honest and honorable men are found to join in and echo their ravings, because they are not allowed to keep the subject of the controversy precisely to the same extent that they would have done, had the judgement

of the Supreme Court been in their favor? Is it to be believed that these long years of struggle, the hundreds of thousands of dollars expended, the vast array of talent employed have all been thrown away in a Pickwickian*law suit, involving nothing but a contest for mere victory, and that whether they lost or won, the New Almaden Company were to keep that mine." ³¹
*(Pickwickian is a term coined from the Pickwick Papers of Charles Dickens, which was the most amusing burlesque of London life that had ever been written. He began with the House of Commons, which he turned into the Pickwick Club, with pompous speeches and noisy debates and apologies from gentlemen who only wished their abusive remarks to be understood only in "a Pickwickian sense," that is, in a Parliamentary sense. Then he passed on to the law and the courts--pettifoggers who take up civil suits "on Spec," to the examination of witnesses, to the judge's charge to the jury and finally to the debtors' prison. In the famous case of Bardell vs. Pickwick, laughter is turned upon the defendant's counsel.) ³²"I ask you and every honest man among your readers, if during all this long controversy you have not understood that the Almaden mine was the subject of it, and that if defeated in the suit, the loss of the mine inevitably followed? If this be so, of what do you complain now?

But, you may say, the Quicksilver Mining Company have interfered in this matter. I will tell you presently how far this is true, but suppose for one moment that it was admitted? Why, have they not a right to do so? The stockholders are citizens of the United States, and having had better opportunities to know, believe more earnestly than any others, that the claim of the New Almaden Company is one that, neither in law, equity or morals, could be sustained for one moment, without giving the most direct encouragement to all other attempts to rob the Government by fraud and crime. Why should they not use any influence they are supposed to have, to secure the enforcement of a judgement that is in conformity to their ideas of justice and right?

You may reply that this is all very well in theory, but that they were influenced by different considerations, and

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were really laboring for their own benefit, and not for that of the Government. I might admit this, and yet ask, why, having a claim to it that they believe good, they may not do all that is legally in their power to secure their supposed rights in the property? Their opponents do this to retain it. Is there a different rule for them?

The alleged interference of the Quicksilver Company, then amounts to only this: That they have done what they could to have a judgment of the Supreme Court of the United States executed in its letter and spirit, and, that they are endeavoring, in the strict conformity to law, to do that which the New Almaden Company has failed entirely to do--to establish a title to the mine.

I have followed this matter to this length for the sole purpose of showing men who wish to be fair the utter groundlessness of the clamor that interest parties have succeeded in creating. But there is another and more perfect answer to it all. The process issued by the President, and brought here to be executed by Mr. Swett, was not issued in any manner at the instance or behalf of the Quicksilver Company, or of its officers or agents. On the contrary, when advised that it would probably be issued they remonstrated against it in writing, and I refer to the files of the Department of the Interior for the evidence that they again and again protested against any such action of the Government as a violation of their rights, and insisted that the mine was upon lands to which they had a title that had been confirmed by the Supreme Court, and that as against them the Government had no longer any right to dispute their claim. After this protest was made, and after consultation with President Lincoln, the Secretary of the Interior addressed a letter to the President of the Quicksilver Mining Company, in which he said:

'I send by the bearer, the Hon L. Swett of Illinois, a proposed agreement for your inspection and approval, between the Government and your Company in relation to the occupancy of

of the New Almaden Mine, in California, pending the litigation between the Quicksilver Mining Company in the case of Fossat and the United States. I have been induced to propose this arrangement, after consultation with the President of the United States, because of your claim of title to the mine, now before the Supreme Court of the United States for adjudication, I have considered your Company was contingently interested in its proper management and preservation.'

This agreement if it had been executed by the company-- which it was not--only made the company trustees of the property, pending the litigation, obliged them to account to the Government for the proceeds, and secured an object that the President and Secretary both had much at heart--the working of the mine-- so that the great mining interest of the country would not be injured by any diminution in the supply of quicksilver in the market. It was under such circumstances as these, and after mature deliberation, and frequent consultations between President Lincoln, the Secretary of the Interior, and the Attorney-General, that the warrant was issued, and Mr. Swett sent to California to attend to its execution.

Of course, Mr. Swett was not a welcome visitor, or the process he brought with him an agreeable missive to the New Almaden Company. Supposing that after being finally defeated in a litigation originally initiated by themselves, and in which they had invited the controversy over their title, that had resulted so disastrously to themselves, they would no longer desire to continue the controversy, he attempted at first to obtain a peaceable surrender of the property. This was refused, and it was not until he was directly informed that the process would be resisted, and that an armed force would be necessary to execute it, that he took any measures for the purpose of supporting the Marshal in the discharge of his duty. And here, a new artifice was resorted to that was worthy of the skillful and veteran statagists that had grown gray in the service of the New Almaden Company. A telegram was at once sent to Washington, that a "military order" was being attempted to be enforced, and it found in the tem

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years' counsel of the New Almaden Company a recipient shrewd enough to catch at the point and sufficiently unscrupulous to make it available, without regard to any other consideration that the present interest of his employers. 'The military order was surreptitiously obtained', was the quick-witted response of the counsel and witness, whose character and conduct had received so little mercy at the hands of the Supreme Court. He knew--no man better--that no 'military order' had been issued; that the warrant was only a civil process; that the marshal, or in a corresponding case in the State courts, the sheriff, always has the power, in case of resistance, to summon aid in the execution of process, and by representing that a 'military order' was being issued in California, could easily in times like these get an order from the President to stay its execution until he could learn all the facts of the case. This is the whole history of this 'military order', and by the clamor that has been made over it, the object in view has been accomplished. It will take nearly two months for the necessary documents to reach Washington and for the replies to be received here. During that time the large income from the mine will continue to be appropriated by those having no right to it, and to a corresponding extent the true owners will be deprived of their property. I concede that it was shrewdly done; I deny that it was honest.

I have but a word to say to the extracts that have been paraded before the public from the opinions of the three dissenting Justices of the Supreme Court. It is answer enough, that six Justices differed, from them, and pronounced in the most unmistakable language that the claim of the New Almaden Company was founded in fraud and forgery--that it had been attempted to be sustained by perjury, and that it had not one element of honesty or integrity upon which it could stand in a Court of Justice.

I regret that the length of this communication must exclude many extracts that I would wish to make from the opinion of the

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Court. Those who will take the trouble to read it may be surprised at the thorough expose it makes of the enormous fraud that has at last been foiled, and of the crooked and criminal ways in which it was attempted to be carried out. I commend its perusal to those who wish to know where the right really is, and will not willingly be led by any amount of wealth, however acquired, or join in the howl of the vanquished suitors, until they have more than their whining as the evidence that they have been wronged. That the suffers should have a "good opinion of the law," is not to be expected until human nature is radically changed. It is one of their privileges to denounce the Judge that tried them as partial, and the jury that condemned as corrupt. In great cases, as in small, they always exercise it, and the rogue convicted of petit larceny differs in its manifestation in degree only from his rich and powerful neighbor who fails in his 'attempt to steal a mine.'

Not the least amusing feature of this controversy, is the attempt that is making to drag it into the politics of the State! Already one of the leaders of a party and its candidate for Governor at the coming election, has attempted at once to revenge the fancied wrongs of his friends--the New Almaden Company--to injure the Administration, and to protect them from the repacity of the government of the United States. The promise is a safe one! His inability to fill it will be lost sight of in the greater fact that there will be no occasion for the exercise of his power. The Government does not interfere with 'honest miners,' mining upon its lands! It is only when they claim as their own the land to which they have no title, and summoning the Government into Court seek by fraud and forgery to divest it of all its rights, that they have measured out to them the justice, which they themselves invoked. Had the New Almaden Company mined--as 'honest miners' do--without themselves attacking its title, they would have been wholly undisturbed, so far as any Government action against them was concerned, to this day. The attempt to make political capital out of it, for the party that has taken it up, comes with a peculiar grace from a Company of which if I am correctly informed, 20 shares out of 24 are the property of aliens, and all of whose

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pretensions to allegiance to our Government are buttoned up within the tightly-fitting coat of the liberal and public-spirited John Parrott!

A few weeks will place this matter in its true character before the country, and until then I respectfully suggest that all good citizens should be willing to believe that the large number of men who compose the Quicksilver Company, have at least the usual proportion of honorable men among them--that all the virtue in this controversy is not monopolized by the four or five stockholders of the New Almaden Company; that the Supreme Court is not necessarily, or probably corrupt; that its Judges have had a better opportunity to learn the whole truth than any citizen can have, who makes no professional investigation of it; and that it is the duty of every member of the community to be equally ready to acquit those judicially proven to be innocent, as to condemn those who after a fair trial of their own seeking, are adjudged to be guilty. Sympathy with the unfortunate is a virtue, but with the crime of the criminal, is in itself a crime!"

JAMES ELDREDGE.³³

President Lincoln in order to clear up any misunderstanding about the government's relationship with the 'honest miners', of California, sent the following telegram August 17, 1863.

WASHINGTON, D.C., AUGUST 17, 1863

HON. F.F. LOW

San Francisco, Cal.:

"There seems to be considerable misunderstanding about the recent movement to take possession of the New Almaden Mine. It had no reference to any other mines or miners. In regard to mines and miners generally, no change of policy by the Government has been decided on, or even thought of, so far as I know. The New Almaden Mine was peculiar in this, that its occupants claimed to be the legal owners of it on a Mexican grant, and went into court on the claim. The case found it's way into the Supreme Court of the United States, and last term in and by that court, the claim of the occupants was decided to be utterly fraudulent. Thereupon it was considered the duty of the Government, by the Secretary of the Interior, the Attorney-

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General, and myself, to take possession of the premises, and the Attorney-General carefully made out the writ and I signed it. It was not obtained surreptitiously, although I suppose General Halleck thought it had been when he telegraphed, simply because he thought possession was about to be taken by a military order, while he knew no such order had passed through his hands as General-in-Chief. The writ was suspended upon urgent representation from California, simply to keep the peace. It never had any direct or indirect reference to any mine, place, or person, except the New Almaden Mine and the persons connected with it."

A. LINCOLN³⁴

On August 28, Friday evening 1863, rumors were flying again concerning the New Almaden Mine, reported the Bulletin, in the article quoted below:

"The New Almaden Quicksilver Mine again--Rumors on the Street--Much Smoke with a Certainty of some Fire at Bottom." "The street is considerably agitated by the rumor that the New Almaden Company has sold out its claim on the celebrated quicksilver mine to the Quicksilver Mining Company, (the Butterworth-Swett party.) The rumor even goes so far as to indicate the exact price paid--\$1,700,000. Another report, however, gives the figure a higher significance, varying between \$2,000,000 and \$3,000,000. Both parties decline to give any information concerning the affair, but that negotiations have been pending is certain--in fact, this is tacitly admitted. Telegraphic communication has been brisk between this city and the East arranging the preliminaries of a negotiation, so important as to have become almost a State matter. And it may be regarded as an accomplished fact that the New Almaden mine will now pass into other hands--this time without bloodshed of mortal terror of any collision between the people and the military." 35

Apparently the Bulletin was correct in stating that there had been telegraphic communication arranging the negotiations and that the Almaden Mine had changed hands, as evidenced by the following telegram.

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SAN FRANCISCO, CAL., August 28, 1863

His Excellency, A. LINCOLN:
PRESIDENT, United States:

"The Almaden matter has been settled in a manner which it thinks will be satisfactory. Have reported facts to Secretary Usher."

LEONARD SWETT 36

The following day, August 29, 1863, these two rather oblique telegrams answered one another, crossing the country on the "Magnetic Telegraph."

SAN FRANCISCO, CAL., AUGUST 29, 1863

His Excellency The President:

"Have compromised subject to approval, and under advice of Governor of this State and other leading men. The rights and interests of the Government have been respected. Shall return in September and as the case is complicated would like to have opinion suspended until I can personally explain. You will then be satisfied with my action. I congratulate you on the great victories."

LEONARD SWETT 37

WASHINGTON, D.C. AUGUST 29, 1863

HON. L. SWETT,
San Francisco, Cal.:

"If the Governments rights are reserved the Government will be satisfied; and at all events, it will consider."

A. LINCOLN 38

This is the last reference to any communications between Leonard Swett and President Lincoln, concerning the possession of the Almaden Mine.

It is difficult to sort out the facts in this matter and arrive at a hard and fast conclusion. However many questions have been raised, which we should attempt, in fairness to all concerned, to examine and define.

In 1852 Andres Castillero filed a petition in the District Court for conformation of the title to the New Almaden Mine to him, encompassing about 3,000 varas of land, extending in every direction from the mouth of the mine. Judge Hoffman ruled on the case and found the title to be valid under the

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Mexican grant of private property. The ruling was taken to the Supreme Court, which reversed it, claiming that the evidence used to secure the ruling from Judge Hoffman was fraudulent and invalid. However, at the time, Justice Clifford, disagreed with the judgement of the case on the grounds, that even though the United States strongly held that the evidence was fraudulent, it was not necessary to prove or disprove this fact, because the case could be decided upon the question of the power of the Alcaldes to receive denouncements of mines, and whether the denouncement strictly complied with the form perscribed by the laws of Mexico. Justice Catron delivered a dissenting opinion too, (with whom Justice Grier concurred), that although Mr. Forbes, whom it will be remembered came in Nov. 1847 to the New Almaden mine with miners after Castillero had sold the mine to the English house of Barron, Forbes & Co., tried to gain possession of the mine, by alledgingthat Castillero's claim was not valid because the proceedings to acquire title to the mining property had been irregular, and therefore, Castillero had no right to possession of the mine. However, Forbes did nothing to secure the title to the mine. Therefore this evidence was worthless as proof of a claim against Castillero at this time. Justice Wayne concurred with Justice Catron and Justice Grier and with the opinion of Judge McAllister and Judge Hoffman, who also dissented from the opinion of the Supreme Court. He gave as his reason, the fact that in his opinion, the evidence shows that nothing was done by Castillero that was fraudulent and that Castillero had rights under the 8th article of the treaty with Mexico, to the mine and that the Supreme Court could not overthrow those rights. The other six judges of the Supreme Court disagreed with these three, ruling that the claim was fraudulent. This is how the case stood in 1853 when President Abraham Lincoln and Mr. Leonard Swett, stepped into the picture.

On May 8, 1863, a writ was issued, not by the Supreme Court, but by President Lincoln, based on the judgement of the Supreme Court, citing a law of 1807, which gave the government the right to prevent settlements from being made on lands ceded to the United States, until authorized by law. This law had never before been enforced in relation to any mines. In the writ, Lincoln authorized Leonard Swett to take possession of the New Almaden mine and he authorized the use of Federal troops to enforce the writ. Also an arrangement was made with the Quicksilver Mining Company, by the government, to work the New Almaden mine, temporarily, so that the supply of quicksilver would be sufficient for the needs of the country.

The question of the use of governmental influence and power for private ends must be raised here. The Hon. Leonard Swett, was said at this time to possess 3,000 shares in the Quicksilver Mining Company, and the Quicksilver Mining Company itself, was trying to secure title to the New Almaden Mine. It is also a fact that before the writ was issued by the President, Mr. Swett who was an old law partner of Mr. Lincoln's, was called in to advise him as to whether to issue the warrent or not, and against much opposition, Mr. Lincoln concurred with Mr. Swett and issued the writ.

Mr. Swett subsequently arrived in California and did attempt to take possession of the New Almaden Mine, with the assistance of government military troops, for which action there had never been a military order issued, except for the provision made in the writ, by President Lincoln, that troops could be used to enforce it.

This was the period of the great silver and gold fields and new mining discoveries in California, Nevada and New Mexico. There were two classes of titles to the rich mines which had been discovered. One class was that in each mining district there were local laws enacted by the miners regulating the extent of each claim and the government had recognized these laws and the validity of the claims under them. Under this first type of claim, the United States government issued a

patent to the land in question. The occupant got an equitable share of the minerals. The minerals were divided between the government and the occupant. The government had consented to the occupancy of its grounds by the miners as the best way of getting the gold out of the ground and to the settling of the questions of title. The other class of titles arose when the United States obligated itself by a treaty with Mexico, to respect the private rights of individuals, which had been granted by the Mexican government, to claims in California. Under the Mexican grant, the owner of the title of the mine got the full amount of his claim.

Even if one were to agree with the Supreme Court, that claim to the Almaden Mine, by a Mexican grant was invalid, Castillero had undisputed possession of the land for 17 years. It was felt by the rest of the miners of California and Nevada, that Castillero had a right to the property, under the unwritten, but recognized mining laws of the district, holding the claim by the same title that the rest of the miners held theirs. If the Government could come in with troops, and take possession of the New Almaden mine, then it could, under the same interpretation of the law, and with the same means take possession of all the mines of California and perhaps of the country. The great concern of the citizens of California and Nevada, evidences their fear that this is the very thing that would happen.

Although California was loyal to the Union during the Civil War, there was an element of Southern sympathy in the state, and many others remained only mildly interested in the distant conflict. This loyalty to the Union was reciprocal, in that California wanted and needed the government's help in opening the state to settlement, developing institutions, and the building of a railroad to link it with the rest of the nation. However, in turn, the government needed the great flow of commerce and gold from California to help support the

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ever expanding cost of the war. Being that California was much more interested in it's own development than in the question of the Civil War, had Mr. Swett, under Lincoln's authority, been able to gain and hold possession of the New Almaden Mine, the peace between California and the Government in Washington might have been broken. Had California, and it's great resource of gold, been diverted to the Southern Confederacy, which was certainly in dire need of it, the balance might have been tipped, and the outcome of the War of Rebellion, could have been changed. Remember that during this time, it had become necessary to resort to the draft and that an act had been passed, making all men subject to military service. The law permitted a man to gain exemption by paying \$300, or by employing a substitute. Therefore the draft came to bear heavily upon the poor, and the Eastern Democrats, generally angry because of Lincoln's Emancipation Proclamation, deeply resented what they believed to be the unfair operation of the draft law. General Meade, who was reorganizing his army after Gettysburg, in preparation for another invasion of Virginia, was compelled to detach 15,000 troops to quell a riot in New York, and to put down threats of resistance in other Eastern cities. This combined with the ever increasing taxation of the public, and the unexpected length and cruelty of the war, was beginning to cause some resistance to the Union cause, even in it's staunchest stronghold, the North. What influence the succession of California and perhaps Nevada, would have had in these areas is debatable. However the effect in the South would have been enormous, both financially and morally. President Lincoln, was undoubtedly aware of this possibility and therefore suspended the writ, in his words "to keep the peace."

One obvious question that can not be ignored, is to whether there was a conspiracy to gain possession of the New Almaden Mine, between the government and the Quicksilver Mining Company and to what, if any, extent President Lincoln

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was involved.

From the events that took place in California, it seems evident that an attempt was made to take possession of the New Almaden Mine, with a writ signed by President Lincoln. It is strangely convenient that the man from whom the President sought advice on the matter, was first an old friend of Lincoln's and secondly, rumored to be, a substantial stockholder in a company which was trying to secure a title to the New Almaden Mine for itself. Also, is the fact that the said company, with the consent of the government, was to receive the mine from Mr. Swett and operate it as a trustee of the government. It is difficult for one to conceive that the President, with all the sources available to him, would have been unaware of these and other questionable circumstances pertaining to the matter. The reasons of the President for issuing the writ could also be questioned. It is doubtful that without the friendship that existed between Mr. Lincoln and Mr. Swett, that the effort to take possession of the New Almaden mine, would have received the President's co-operation. One also has to consider that the authority to take possession of the mine, depended upon President Lincoln's unique interpretation of the law of 1807, and his subsequent actions. Therefore the obvious conclusion that one must draw, is that President Lincoln did indeed, actively aid Mr. Swett, to seize possession of the Almaden Mine.

*Why do you say this?
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Subsequent sale of mine in 1845?

FOOTNOTES AND BIBLIOGRAPHY

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