CASE NO.

271

NORTHERN DISTRICT

BUTANO GRANT

MANUEL RODRIGUEZ

CLAIMANT:

LAND CASE 271 ND PAGES 211

NOV 1 2 1962

MAR 2 9 1963

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 627.

Manuel Rodriguez CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Butano"

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, that on this twenty fourth day of February, Anno Domini One Thousand Eight Hundred and Fifty-three, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of Manuel Rodriguez, for the Place named "Butano," was presented, and ordered to be filed and docketed with No. 627 and is as follows, to wit;

(Vide page 3 of this Transcript.)

Upon which Petition the following subsequent Proceedings were had in their chronological order, to wit;

San Francisco November 3d 1853.

In Case No. 627, Manuel Rodriguez for the place named "Butano", the deposition of Maximo Martinez, a witness in behalf of the Claimant, taken before Commissioner R. Aug. Thompson, was filed;

(Vide page 5 of this Transcript.)

San Francisco July 25th 1854.

In the same Case the depositions of John H. Watson and Cornelio Perez, witnesses in behalf of the Claimant, taken before Commissioner Peter Sott, were filed;

(Vide pages 6 & 8 of this Transcript.)

San Francisco September 1 1854.

In the same Case the deposition of Blas Antonio Escamilla, a witness in behalf of the Claimant, taken before Commissioner Peter Sott, was filed;

(Vide page 11 of this Transcript.)

San Francisco September 12' 1854.
Case no. 624 on motion of the Counsel for the Claimant, with the consent of the U. S. Law Agent, was ordered to be placed at the foot of the 2d class cases on the Trial Docket.

San Francisco October 17' 1854
Case no. 624 was submitted under the Rule of March 24' 1854.

San Francisco November 28' 1854.
In the same Case the deposition of Gustavus W. Beckh, a witness in behalf of the Claimant, taken before Commissioner Peter Lott, was filed;
(Vide page 12 of this Transcript.)

San Francisco February 6' 1855.
In the same Case Commissioner R. Aug. Thompson delivered the opinion of the Board confirming the claim;
(Vide page 31 of this Transcript.)

And the following order was made, to wit:
(Vide page 36 of this Transcript)

Petition

To the U S Land Commission for the ascertaining and settling of Private land claims in California.

The petition of Manuel Rodriguez respectfully showeth unto your Hon Board that he is the owner of a tract of land known as "Butano" and for further explanation alleges.

That Romana Sanchez in the month of September 1837 made and presented her petition in writing to the Governor of California soliciting for herself the grant of the land called "Butano" and that said Sanchez after all reports having been made in her favor obtained a grant for the same on the 14th Feb 1838.

That said grant not having been executed with all the formalities then required by the Mexican laws said Romana Sanchez on the 8th of November 1844 applied once more to the Government of California for other and more formal documents and that after renewed references and reports, she was declared the lawful owner of said land by Governor McChatonna on the 13th day of November 1844 and obtained the documents confirming title on the following day.

That Your petitioner for a valuable consideration purchased said land on the 22d of March 1852 and is now the owner thereof.

And Your petitioner further saith that all the documents above referred to as petitioners references, reports, the first grant, a certified copy of the second grant and map are on file among the archives of California, now in the possession of the U S Surveyor General for California and that duly

Certified Copies and translations thereof are herewith submitted –

That the original grant has been in the hands of Your Petitioner until a few months ago when your petitioner handed it to one J. H. Watson to bring it to Your petitioners Attorney's; that said Watson alleges to have lost said grant but that Your petitioner is able to prove the location and the contents of said grant.

And your petitioner further saith that said land is situate in the County of Santa Cruz known by the name of "Butano" and bounded on the South by the Rancho of Simion Castro and the West by the sea on the North by the rancho of Juan Bruzales and on the East by the Butano; containing altogether one Square league more or less.

And your petitioner further saith that he is in the quiet and peaceable possession of the lands above described and is not aware of the existence of any title conflicting with or superior to his own.

He therefore claims to be the lawful owner of said land and prays that Your Honorable Body will confirm and validate his claim and title thereto –

Clarke Taylor & Buckh.
Attys for Rodriguez –

Filed in Office Feb 24, 1856
Signed,
Geo Fisher
Secy

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Office of the Board of Commissioners &c &c

Deposition of Maximo Martinez

This day before Comm R. Aug Thompson came Maximo Martinez a witness in behalf of Manuel Rodriguez No 624 who after being duly sworn deposed as follows.

Testimony in behalf of Claimant

Present J Clark Esq atty for Claimant & R. Gumbert Esq Asst Law Agent.

Witness states his name to be Maximo Martinez his age fifty three and his residence Santa Clara County Calif.

Questions by Claimants atty.

Do you know the Rancho called Butano claimed in this case if so state what you know of its occupation and improvement by Romana Sanchez.

Answer.

I know said Rancho it is situated on the Sea Coast in the County of Santa Cruz It was first occupied in 1838 by the Children of Romano Sanchez the widow of Francisco Galindo under a title or from Gov Alvarado. She afterwards in 1844 got a title from Gov Micheltorena –

They built a house on it in which they lived Erected Corals, had a stock of cattle on it & cultivated portions of it –

Two of the said Children died and the remaining one went to live with the Mother, who then sold the land to the present Claimant –

Manuel Rodriguez who has resided on it and occupied it from that time to the present

his
Maximo X Martinez –
mark

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Sworn to and Subscribed
before me Nov 3. 1853.
(Signed)
R. Aug Thompson Comr

Filed in Office Nov 3. 1853.
(Signed)
Geo Fisher Secy.

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Case No 624.

Office of the Board of Commissioners —

Deposition of J. H. Watson

This day before Comr Peter Lott came John H Watson a witness in behalf of Manuel Rodriguez No 624. who after being duly sworn deposed as follows.

The W. & Associate Law Agent is present.

Questions by Claimants Counsel.

1st Qu.

What is your name age residence and occupation —

A —

My name is John H Watson age upwards of 25. residence & my occupation that of a farmer.

2nd Q.

Do you know Manuel Rodriguez the Claimant in this case & if so how long have you known him.

A —

I have known him ever since the Spring of 1851.

3rd Q.

Did he ever place any papers in your hands relative to this Claim and if so when and for what purpose.

A —

About the time of the first assembling of the Land Commission he placed papers

for what purpose.

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A –

About the time of the first assembling of the Land Commission he placed certain papers relative to this Claim in my hands for presentation to the Board. I was then his attorney for that purpose.

4th Quest.

What papers were they?

Ans.

The original title papers of the Butano Ranch.

5th Quest.

What became of those papers?

Ans.

I enclosed them by his order in an Envelope directed to Clarke Taylor and Beck the Claimants Attorneys & sent them by mail to them at San Francisco –

6th Quest –

About what time was that done?

Ans.

About 3 or 4 months after the Commission met, I had then ceased to be Attorney for the Claimants –

7th Q.

Do you know any thing in regard to their receipt by the Claimants Attorney.

Ans.

I know nothing of it. but was informed by the Claimants Attorney that they were not received.

8th Quest –

Were you familiar with the title papers and had you examined them?

Ans.

I had them some three or four months frequently saw them & though I had Spanish

imperfectly at that time I was sufficiently familiar with them to be able to state that the papers on file in this cause certified by the Surveyor General are copies of the title papers I had in my possession.

Having written the transfer from Romana Sanchez to the Claimant and having been on the Ranch as well as from my knowledge of the papers I am fully satisfied on this point.

4th Quest.

Look at the paper on file in this cause purporting to be a conveyance from Romana Sanchez to the Claimant & state what you know of any thing of its Execution —

A —

I wrote the and saw it Executed by her & signed it at her request as an attesting witness & also saw Pruyasa sign it in the same capacity.

Ano H Watson.

Subscribed and Sworn to
before me this 25th day of July AD 1854.
Peter Lott Commissioner
for taking Testimony &c.

Filed in Office July 25, 1854
(Signed)
Geo Fisher Secy

Deposition of Cornelio Sanz

United States of America
State of California } ss.
San Francisco July 25, 1854

This day personally came before Peter Lott Commissioner for taking Testimony to be used before the Board of U S Land Comrs.

in said State, Cornelio Perez a witness on behalf of the Claimant Manuel Rodriguez in Case No 624 on the docket of said Board and said witness being duly sworn deposed in Spanish which was interpreted into English by the interpreter to said Board as follows.

The U S Associate Law Agent presents,

Questions by Claimants' Counsel.

1st Quest.

What is your name age & residence?

Answer.

My name is Cornelio ~~[illegible]~~ Perez My age 43 years, my residence Santa Cruz County California.

2d Question.

Do you know the Rancho "Butano" if you how long have you known it and what do you know of its occupation.

Answer.

I do know it, I have known it since 1834. In that year a son of Romano Sanchez occupied the place for him, he built a house and corral on the place, he had more than 400 head of cattle ~~there~~ and a few horses, he fenced in and planted a portion of the land.

The place was thus occupied for some 8 years when Manuel Rodriguez purchased the place and continued to occupy the place, had cattle and horses, houses fields and cultivated the land, and the place is still owned and occupied by him.

3d Question.

Do you know the boundaries of said Rancho, if you state them?

Answer.

I know the boundaries on the

North. the Arroyo del Butano is the boundary on the East. the Canada de Tejal, on the South and west by the sea and there is also another Canada on the East which has no Name through which the Road from Santa Cruz to San Francisco passes.

4th Question.

How much land is embraced within the boundaries you have mentioned.

Answer.

One League.

5th Question.

On which side of said Rancho does the land of the heirs of Simon Castro lie?

Answer.

In a South Easterly direction –

Cross Examined by W. S. Associate Law Agent.

1st Question.

How do you know the boundaries you have mentioned. have you ever traced them or travelled over them.

Answer.

I know them from what the deceased José Antonio Galindo often told me and from their being recognized as the boundaries by all the Neighbors – I have often been on the boundaries myself and know them well – I never heard of their being disputed by the Colindantes, or any one else and I have been acquainted there for some 17 years.

his
Cornelio X Perez
mark.

Subscribed and Sworn to
before me July 25th 1851.

before me July 25th 1854.

Peter Lott Comr &c.

Filed in Office July 25. 1854
(signed)
Geo Fisher
Secy

Deposition of Blas Anto - Escamilla.

United States of America }
State of California } ss.
San Francisco Sept 1. 1854.

This day before Peter Lott Commissioner for taking Testimony to be used before the Board of U S Land Commissioners in said State. Blas Antonio Escamilla a witness on behalf of the Claimant Manuel Rodriguez in Case No 627 on the docket of said Board and said witness being sworn deposed in Spanish which is interpreted by the interpreter to said Board as follows.

The U S Associate Law Agent is present.

Questions by Judge Campbell Atty of Claimant -

1st Question -

What is your name age and residence?

Answer.

My name is Blas Antonio Escamilla my age 31 years my residence in Santa Cruz County California -

2d Question -

Are you acquainted with the Rancho of Butano claimed by Manuel Rodriguez if you state what you know of its extent and boundaries -?

Answer -

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I know the place have known it ever since 1842 – I have frequently been on the place and passed over it.

I know its boundaries and they embrace about one square league rather less. the Rancho is in Santa Cruz County.

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Cross Examined by W S. Aspinall Law Agent –

1st Question.

What is the shape of the Rancho and how long and wide?

Answer.

It is an irregular oval form wider at one end than the other. It is a little more than a league in length and less than a league wide the widest part is about 2000 varas.

Blas Ot Escamilla

Subscribed and Sworn to before me on this 18 day of September AD 1854.

Peter Lott Comr &c.

Filed in Office Sept. 1. 1854.

(Signed)

Geo Fisher Secy

Deposition of Gustavus W Beck.

United States of America
State of California } ss.
San Francisco Nov 24. 1854.

This day came before Peter Lott Commissioner for taking testimony to be used before the Board of W S Land Commissioners in said State, Gustavus W Beck a witness on behalf of the Claimants (Memorial

Reading filed Rancho [illegible] said Rancho and said witness being sworn

on behalf of the Claimants Counsel

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Pendinge in Case No 627 on the docket of said Board and said witness being sworn deposed as follows.

The U.S. Specials Law Agent is present Questions by Judge Campbell for Claimants.

1st Question -

What is your name age and residence?

Answer.

My name is Gustavus W Beck My age 36 years. My residence San Francisco California -

2d Question -

Were you at the time of the organization of this Land Commission a Member of the Law firm of Clark Taylor and Beck - in this City if yes how long did you continue to be a member of said firm?

Answer.

I was a Member of said firm and continued to be so till July AD 1853.

3d Question.

Were you during that period in the habit of receiving letters and communications addressed to that firm generally and particularly in relation to this business before said Land Commission?

Answer -

I was.

4th Question.

State what you know of any thing relating to the receipt of any title paper or other documentary evidence bearing upon this case?

Answer.

We never received the original grant nor any original papers in this case John H Watson once told me he had had

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the original grant in this case in his possession and had sent it by mail to our said firm from his place which I think was south of this at Monterey or Santa Cruz. But it was never received by me nor by any of the firm to my knowledge.

G. W. Beck.

Subscribed and sworn to before me on this 24th day of November AD 1854.

Peter Lott
Commissioner &c

The foregoing deposition may be read and considered as evidence now the same as though taken before the case was submitted saving however the objection as to the competency of the matter testified to the same, being heard.

J. H. McKeen
U. S. Land Agent

Filed in Office Nov 28. 1854.
(Signed)
Geo Fisher Secy

1ST. G. D. R.

1887.

Espediente

Promovido por Dª Ramona Sanchez en Pretencion del parage conocido con el nombre del "Butano"

N.º

385.

2. G. D. R

Espediente

Promovido por Ramona Sanchez en pretencion del parage llamado

Bolsa del Butano

M 8 vol

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E. L. D. R.

Monterey Septbr. 29 de 1843. Informe el Admra. de la Comision de Sta. Cruz si la interesada en esta solicitud obtiene todos los requisitos legales para ser atendida en su solicitud: si el terreno q. pretende es baldio si no pertenece à la propiedad particular de algun individuo pueblo ò Mision y si se halla en estado de adjudicarse en colonizacion conforme à las leyes.

Evacuadas estos informes volverà el Espedte. al Gobno. para su resolucion.

Alvarado

Excmo Sor Gobernador

Ramona Sanchez viuda del finado Bernardo Salido: ante V. E. como mejor haya lugar y con el debido respeto hace presente que hallandose cargada de familia y con algunos frenes los que no tiene un lugar donde asegurarlos pasa à manifestar q. a distancia de dos leguas apartadas de la mision de Sta. Cruz à la parte del Norte ha visto un sitio baldio a proposito p.a contener en el su ganado y hacer algunos lavores p.a subsanar à la mantencion de su familia; el cual lo demuestra el adjunto diseño que se acompaña y pide una legua de longitud y media de Latitud

y. P. a V. E. reiteradam.te suplica q. haga un uso de sus facultades en obsequio de una desamparada muger, gracia que no duda alcansar y la que vivirà reconocida

S. A. S.

Ramona Sanchez

E. L. D. R.

Sello Quinto Medio Real:

Habilitado provisional.te por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias, para los años de mil Ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco.

Micheltorena Pablo de la Guerra

Sello

Excmo Sor Gobernador

José Antonio Carrillo natural de este Departamento y vecino de la jurisdiccion de Sta. Cruz, ante

Monterey Nov.e 9 de 1844. Informe el J. Juez del distrito pacho tomando los q. crea

michelt.a ½ Que desde el año de 1838. estamos

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necesario. V. E. con el mas debido respeto dice
Michelt.a Que desde el año de 1838. estamos
poseando el parage conocido con
el nombre del "Butano" mi Madre D.a Ramo
na Sanchez y yo como su primer hijo mayor
emancipado, segun demuestra el adjunto
documento provisional que se espidio por
E. S. ex. Gobernador D.n Juan B. Alvarado
antecesor de V. E. quien desde aquel tiempo
nos adjudico el mencionado terreno. P.r ll.
A. V. E. pido y suplico à nombre de mi Se
ñora Madre se me conceda la revalidacion
del titulo respectivo para solicitar la pose
sion juridica de Estilo y trabajar anhe
losamente en union de mi espresada Madre
pareciendo no ser de malicia y lo necesario
V.e Monterey Noviembre 8 de 1844
José A. Salindo

A.
Espedt.e
continued

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5. S. D. R

Señor Gobernador.
por el titulo provisional que acompaña
el interesado y por los buenos informes que tambien
es adjunto; verà V. E. que no hay inconveniente
para que se le conceda el titulo en propiedad
teniendo por lindero presisam.te el Rancho
de los herederos del finado D.n Simeon
Castro: La superior disposicion de V. E.
serà lo que mejor convenga.
Monterey Noviembre
Sello Quinto Medio Real:
Habilitado provisionalm.te por la Aduana
Maritima del puerto de Monterey en el
Departamento de las California para
los años de mil ocho cientos cuarenta y cua
tro y mil ocho cientos cuarenta y cinco.
Micheltorena Pablo de la Guerra

6. S. D. R

Sello C 13 de 1844.
Man.l Jimeno
Monterey Nov.e 13. de 1844.
Revalidase
Michelt.a
Monterey Nb.e 13 de 1844.
Vista la peticion con que da principio este
Espediente los informes que aparesen en

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en este mismo con todo lo demas que se tubo presente y ver conviene de conformidad con las leyes y reglamentos de la materia declarar a Dª Ramona Sanchez dueña del paraje nombrado Potrero colindante con el Rancho de los herederos del finado Simeon Castro con la sierra y el Mar. Líbese el correspondiente despacho tomese razon en el libro respectivo El C. S. Gobernador asi lo mando decreto y firmo

W. L. D. R

S. L. D. R

Here follows

Map

19 q. L. D. R Si à V. S. le parese bien puede darle el terreno que solicito la interesada pertenese de esta mision pero no se Ocupó para nada es baldio y de temporal.

A. Sta Cruz Octubre 11. de 1833.

Espediente Juan Gonzales

Monterey Febro. 19 de 1838.

Continued Visto el informe que antecede del Admor de la Comision de Sta Cruz con esta fha se concedio provisionalmte à la interesada un sitio de Ganado Mayor el paraje repeti do sugetandose al resultado de este espedte despues de haber cumplido los tramites corresponDientes.

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Alvarado

10. L. D. R Monterey Marzo 16 de 1839.

Informe el Sor prefecto del primer distrito sobre el contenido en esta instancia

Alvarado

Pueblo de S. Juan de Castro Mzo. 20 de 1839

El prefecto del 1er Distrito informa que estando baldio el terreno que solicita la parte de Da Romona Sanchez debe adjudicursele.

José Castro

(Sello) Juan B. Alvarado Gefe Supor político mte. de la Alta California

Por cuanto Ramona Sanchez ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre del Butano segun consta del Espediente respectivo, practicados los informes convenientes en decreto de este dia he venido en concederle el mencionado paraje con estencion de un sitio de ganado mayor entendiendose dicha concecion provisional y sugetandose à la Aprovacion ò desaprobacion de la Excma Diputacion.

Codado en Monterey del departamento de las Californias à diez y nueve de Febro. de mil ocho cientos treinta y Ocho

Juan. B. Alvarado

2112. L. D. R. El Cno. Manuel Michelt.a General de Brigada del Ejecito Mejicano Ajudante Gral de la plana Mayor del mismo Gobernador Comdt.e Gral é Inspector del Departamento de las California.

Por Cuanto D.n Romana Sanchez ha pretendido para su beneficio personal y el de su familia la revalidacion del titulo provicional que se le dio desde el año de 1838. del terreno que se le concedio nombado el Butano, colindante con el Rancho de los herederos del finado D. Simeon Couto con la con la Senania y el Mar practicadas previam.te las diligencias y averiguaciones concernientes segun lo dispuesto p.r leyes y reglamentos usando de las facultades que me son conferidas á nombre de la Nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sugetandose á la aprovacion ó desaprovacion de la C. Asamblea Departamental y bajo las condiciones siguientes.

1.a No podra venderlo enagenarlo ni hipotecarlo, imponer sobre vinculo franza ni otro gravamen alguno.

2.a No podra cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara libre y escusivamente destinandolo al uso ó cultivo que mas le acomode.

3.a Cuando se le conforme la propiedad de el solicitara del juez respectivo que le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en sus limites pondra á mas de las mojoneras algunos Arboles frutales ó silvestres de alguna utilidad.

El terreno de que se hace donacion es de un sitio de ganado mayor. El juez que diere la posesion lo hara medir conforme á Ordenanza quedando el sobrante que resulte á la Nacion para los usos convenientes.

4.a Si contravinere á estas condiciones perdera su derecho al terreno y sera de

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13. L. D. R.

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=nunciable por otro.

En consecuencia mando que sir=
viendole de titulo el presente y teniendose por fi
me y valedero se tome razon de el en el libro à
que corresponde para su resguardo y demas
fines. Dado en Monterey à catorce de Nbre
de mil ocho cientos cuarenta y cuatro.

Manuel Michelta

Manuel Jimeno Sno.

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Queda tomada razon de este Despacho à
fojas 12. Jimeno

Office of the Surveyor General of the United States for California.

I, Samuel D. King Surveyor General of the United States for the State of California and as such now having in my Office and under my control and custody a portion of the Archives of the former Spanish and Mexican territory or Department of Upper California do hereby certify that the thirteen preceeding and hereunto annexed pages of tracing paper numbered from One to thirteen inclusive and each of which is verified by my initials (S. D. K) exhibits true and accurate copies of certain documents on file and forming part of the said Archives in this Office.

(Seal) In testimony whereof I have hereunto signed my name Officially and affixed my private seal (not having a seal of Office) at the City of San Francisco Cal. the 26th day of January 1853.

Saml. D. King
Survr. Genl. Cal.

Filed in Office Febry. 24th 1852
Geo: Fisher Secy

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Translation of Espediente.

1839

Record of Proceedings at the instance of Da Ramona Sanchez soliciting the location known by the name of Butano.

385.

Excmo Sr Governor.

D. Romana Sanchez widow of the deceased Bernardo Galindo in the last Manner and with due respect represent before you.

That being burthened with a family and some stock for the safe keeping of which I have no place I proceed to show that at a distance of two leagues from the Mission of Santa Cruz towards the North I have seen a vacant sitio adapted to keep my Cattle on and carry on some husbandry for the Maintanance of my family which land is delineated in the adjunted sketch I accompany, and I ask for one league in length and half a league in breath and therefore I humbly pray your Honor to make use of your powers in favor of an unprotected woman a concession which I dark doubt to obtain and for which I shall remain much obliged to you.

Your Obedient Servant.
Romana Sanchez.

1 In the Margin,

Monterey September 24th 1834.

The Administrator of the Mission of Santa Cruz will report whether the interested party in this instance is possessed of all the legal qualifications for her solicitation being admitted whether the land she solicits is vacant whether it does not belong to

any particular property of any individual pueblo or Mission and to which it is in a State of being adjudicated to Colonization conformable to law.

This report being concluded the Expediente will be returned to the Government for its resolution.

Alvarado.

Excellent Sgr Governor.

Jose Antonio Galindo a Native of this Department and resident in the Jurisdiction of Sta Cruz with the highest respect says before you.

That since the year 1838 we have been possessed of the location known by the Name of "Butano" Namely My Brother Da Romana Sanchez and I as the first son having attained Majority and been Emancipated as is shown in the annexed provisional document which was made out by the by Governor Dn Juan B Alvarado Your Excellency's predecessor, who from that time adjudicated us the mentioned land.

Therefore I ask and pray your Excellency in the Name of My Brother to grant me a Ratification of the respective title in order to solicit the presented Juridical possession and to work Energetically in union with My said Brother –

I swear there is No Malice herein and to what else necessary etc.

Monterey November 8th 1844

Jose M Galindo.

(In the Margin)

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Monterey Nov 9th 1844.

The Secretary of State will report taking those other reports he may deem necessary.

McKeltonmd -

Sir Governor.

By the provisional title - and which the interested party accompanies and by the favorable reports appearing in the Expediente which also is annexed your Excellency will see that there is no obstacle to granting him the title and of ownership having for boundaries precisely the Rancho of the heirs of the deceased Dn Simion Castro.

Your Excellency's superior determination will however be such as best to suit.

Monterey November 13th 1844.

Manuel Jiménez.

Monterey November 13th 1844.

Be it ratified -

McKeltonmd -

Monterey November 13th 1844.

In view of the petition with which this Expediente commences the reports appearing in the same with whatever else to be borne in mind and was to the purpose in conformity with the laws and regulations on the subject, I declare Da Ramona Sanchez owner of the location called Botano bordering on the Rancho of the heirs of the deceased Simion Castro on the South and the sea -

Let the corresponding document be issued and entered in the respective book

The Governor thus ordered decreed and signed it.

If it appears Expedient to give the interested party can be given the land she solicits. It belongs to this Mission but it does not occupy it for anything. It is vacant and irrigated seasonably.

Santa Cruz October 11. 1834.

Juan Gonzales.

Monterey Feby 10th 1838.

In view of the foregoing report of the administrator of the Ex Mission of Santa Cruz the interested party was under this date granted provisionally one Square lagoo in the said locality while the result of this Expediente falls out after the corresponding process having been carried on.

Alvarado.

Monterey March 16th 1839.

The Prefect of the 1st District will report on the contents in this instance.

Alvarado.

Pablo de San Juan de Castro
March 20th 1839.

The Prefect of the 1st District reports that the land solicited by the party Da Romana Sanchez being vacant, it ought to be adjudicated to her.

Jose Castro.

Juan B Alvarado Superior Political Chief administrator of Alta California.

Whereas Romana Sanchez has solicited for her personal benefit and

that of her family the land known by the name of Butano as is shown in the respective Expediente after having taken the necessary reports I have in virtue of this day's date concluded to grant her the mentioned location in extent one square leagues (Sitio de ganado Mayor) said concession being understood to be provisional and subject to the approbation or disapprobation of the Excelent Deputation.

Given in Monterey in the Department of California on the 8th of September 1838.

Juan B Alvarado.

The Citizen Manuel Richetonna Brigadier General of the Mexican Army Adjutant General of the Plaza Mayor, Governor Commander General and Inspector of both Californias -

Whereas Dn Romana Sanchez has solicited for his personal benefit and that of his family the ratification of the provisional title given her from the year 1838 to the tract of land granted her called Butano lording on the Ranche of the heirs of the deceased Dn Simon Castro on the Soquina and the Sea after having previously taken the necessary action and made the necessary investigations according to the requirements of law and regulations in exercise of the powers vested in me in the name of the Mexican Nation I have concluded to grant her the mentioned land declaring it her property by the present letters patent subject to the approbation or disapprobation of the Excellent Departmental Assembly and under the following conditions.

1st - She shall not have the power to

sell alienate or mortgage it nor to subject it to rent entail, tough or any other encumbrance.
2d She may fence it without prejudice to the crossings roads or servitudes. She will enjoy it freely and exclusively appropriating it to the use or culture that best may suit her.

3d. When the ownership shall be conferred to her she will solicit of the respective Judge to give her judicial possession in virtue of this document by whom the boundaries are to be marked with the extremities of which besides its land marks she will plant some fruit trees or wild ones of some utility -

The land donated is one square league (Sitio de Ganado Mayor) The Judge who shall give the possession will cause it to be measured conformably to ordinance, leaving the surplus that may result to the Nation for convenient purposes.
4th - If she should violate these conditions she will lose her right to the land and may be denounced by some other party.

Consequently I order that these presents serving her as a title deed and being held firm and valid - it be entered in the corresponding book for her security and other purposes.

Given in Monterey on the 14th of November 1844.

Pablo Vallejo
Manuel Jimeno Secretary.

Entered this document on folio 12.
Jimeno.

Filed in Office
(signed) Geo Fisher Secy

29

"6"

Deed
From
Sanchez
to
Rodriguez

271 ND
PAGE 29

San José March 22. 1852

Santa Clara Cty }
State of California }

This Indenture Entered into between Romano Sanchez of the County and State aforesaid of the first part and Manuel Rodriguez of the Second part City & State aforesaid. Witnesseth. That for and in Consideration of the sum of Two thousand dollars in hand paid the receipt whereof is hereby acknowledged the party of the first part hath granted bargained and sold unto the party of the Second part his heirs and assigns forever All her right title interest and Claim in and to the following described premises viz. One league of land situate in the City of Santa Cruz bounded on the South by the Rancho of Simeon Castro on the West by the Sea, on the North by the Rancho of Juan Bautista on the East by the Monterey said league was granted by Manuel Micheltorena in the Year Forty four to the party of the first part. To have and to hold all the above described premises together with the appurtenances thereunto belonging unto the party of the Second part his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year aforesaid.

Romano x Sanchez (Seal)
his
Mark.

Signed Sealed & delivered
in presence of
Jno H Watson.
Onto Gnofasa.

30

State of California
County of Santa Clara } ss

On this 24th day of March AD 1852 personally appeared before me a Notary Public in and for the County aforesaid John H Watson the first subscribing witness who, as personally known to me, and who being first sworn by me upon his oath said that he was present at the execution of the above Indenture in this City on this day and that the said witness having fully explained the contents thereof to Romano Sanchez she freely and voluntarily signed the same for the uses and purposes therein mentioned -

271 ND
PAGE 30

Given under my hand and private seal (no official seal having yet been provided) on the day and year first above mentioned, at the City of San Jose

Seal

Thos L Vermenta
Notary Public.

I hereby certify that the foregoing is recorded in the Book of Deeds &c Vol 1 pages 305 & 306 of the records of the Recorders office of County of Santa Cruz California. and was filed March 30th 1852 at 10. o'clock A. M.

Peter Tracy
Cty Recorder.

Filed in Office Feb. 24, 1853
(signed)
Geo Fisher Secy.

31

Opinion of the Board. by Com. R. A. Thompson.

Manuel Rodriguez vs The United States } Claim for one square league of land called Buliano in Santa Cruz County.

The petitioner as evidence of his title has introduced and proved, a deed to him for the premises claimed, executed on the 22d of March 1852 by Romana Sanchez to whom he alleges an informal grant of the land was made by Governor Alvarado on the 19th of February 1838 which grant was subsequently ratified and confirmed and a title in due form of law issued to her by Gov. Micheltorena on the 13th of November 1844. The original grant is not produced, but it is alleged in the petition that the same was in the possession of the claimant until within a few months of the filing of his claim, that it was then handed by him to One J. H. Wallace to be transmitted to his Attorneys, that said Wallace declares he has not the same, and he therefore lacks proof of the then existence and contents of the said grant.

John H Wallace whose deposition is taken and filed in the case deposes that about the time of the first assembling of the Commission, the claimant, Manuel Rodriguez placed in his hands, the original title papers of the Buliano Ranchos for presentation to the Board. That he enclosed them by order of the claimant in an envelope directed to Clark, Taylor & Beckh his Attorneys, and sent them by mail to them at San Francisco, about three or four months after the Commission met, and that he has since been informed by said Attorneys that they never received them.

Gustavus M Beckh deposes that he was a member of the firm of Clark Taylor & Beckh from the time the Board of Commissioners was organized up to the month of

July 1853, that during that period he was in the habit of receiving letters and communications addressed to that firm generally and particularly in relation to their business before said Land Commission. That he was informed by John A. Wilson that he had had the original grant in this case in his possession and had sent it by Mail to their said firm, from his place either at Monterey or Santa Clara, but that neither the said original grant, nor any original papers in said case were ever received by him, nor by any other member of said firm to his knowledge. This is all the proof the claimant has adduced of the loss of his original title papers. It is not so full and satisfactory as could be desired, but under the circumstances it is considered sufficient to lay the foundation for the introduction of secondary evidence. The rule of law as laid down in the books on this subject is that, the object of the proof is to establish a reasonable presumption of the loss of the instrument and it may be either direct when the loss or destruction is positively proved, or circumstantial as when the instrument was deposited in a particular place or with a particular person and due search and inquiry has been made in the place, and of the person with whom it was likely to be found. This evidence is addressed to the sound discretion of the court in view of all the circumstances of the case to decide whether the non production of the original has been sufficiently accounted for to warrant the introduction of secondary evidence. In 4th. Wn & Mills Notes to Phillips on Evidence, page 405 the fact that the instrument was put into the mail, ceased to a particular person and never reached its destination is stated as a sufficient ground to raise a presumption of its

lop. In the present case the fact that the document was deposited in the mail and directed to the law firm of Clark Taylor and Beckh is distinctly proved, and although the Evidence of its non reception by them is not so complete as it might be, yet in view of all the circumstances, and in the absence of any suspicion of fraud or any possible motive on the part of the claimant or his Counsel to withhold the document we think it is sufficient for the purpose for which it is introduced.

The claimant has also introduced a true Copy from the archives of the Mexican Government in California certified by the United States Surveyor General, containing the petition of the Original grantee for the grant, and the proceedings of the government thereon, concluding with the original possessorial grant issued by Governor Alvarado, dated Sept 19th 1838 and a Copy of the formal title issued by Gov. Micheltorena on the 14th of November 1844. John H Wallace swears that he had the Original title papers to the land in his possession some three or four months and was sufficiently familiar with them to be able to state that the papers on file in the case certified by the Surveyor General are Copies of the same — Although the Evidence on this point is exceedingly loose and unsatisfactory, yet taken in Connection with the full and minute record of the proceedings of the Mexican authorities in relation to the grant — the Original possessorial grant issued by Governor Alvarado and the Copy of the more formal title from Gov. Micheltorena Concurrence in the Evidence together with the Continued occupation and cultivation of the premises by the parties from a period anterior to the first grant down to the year 1852 when she sold it to the present claimant, we think it is sufficient

to establish the due Execution and delivery of the grant and to entitle the petitioner to a Confirmation —

The boundaries of the land are well defined and the quantity shown to be less than that called for by the grant

A Decree of Confirmation will be entered.

Filed in Office Feb. 6 — 1855

Geo. Fisher Secy

Recorded in Record of decrees Vol 3 page 517

Geo. Fisher Secy

35 Decree

Manuel Rodriguez
vs
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the said petitioner is valid and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the County of Santa Cruz being the same which was granted to Romana Sanchez in 1844 and held and occupied by her until she sold to the present claimant in 1853. It is known by the name of Butano and is bounded as follows. By the Rancho of the heirs of the deceased Simon Castro, by the Soquel and by the sea, containing one square league. For a more particular description reference to be had to the copy of the original grant and map contained in the expediente in the archives in the custody of the United States Surveyor General for California, a true copy of which is filed among the papers in the case.

Alpheus Felch
R. Aug. Thompson
S. B. Farwell
Commissioners

Filed in Office Feb 6. 1855

Geo. Fisher Secy

Recorded in Record of decisions Vol 2. page 520

Geo. Fisher Secy

And it appearing to the Satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California, It is hereby Ordered that two transcripts of the proceedings in this case and of the decision, and papers and evidence upon which the same are founded be made out and duly certified by the Secretary, one of which transcripts shall be filed with the Clerk of the United States District Court for the Northern Judicial District of California and the other be transmitted to the Attorney General of the United States

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Thirty six — pages, numbered from 1 to 36, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 027 on the Docket of the said Board, wherein Manuel Rodriguez is — the Claimant against the United States, for the place known by the name of "Butano" —

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this Tenth — day of August A. D. 1855, and of the Independence of the United States of America the ~~seventy~~ eightieth.

Geo: Fisher

Sec.

Buttano

U. S. DISTRICT COURT,

Northern District of California.

No. 271 — 271

THE UNITED STATES,

vs.

ND

Manuel Rodriguez.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS.

In Case No. 627

Filed, August 11 1855

J. A. Brown,

Clerk

No. 1271

7

Office of the Attorney General of the United States,

Washington, 10 October, 1855.

627 "Botanas"

Manuel Rodriguez, Claimant.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 27th day of August, 1855, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Cushing

Attorney General.

No. 271

United States District Court

United States
vs
Manuel Rodriguez

Notice of Appeal in
Case no. 627.

Filed Nov: 22. 1855,
by Chevers,
Deputy.

District Court of the United States for the Northern District of California

The United States
Appellants
vs
Manuel Rodriguez
Appellee
} No. 271

Manuel Rodriguez the above named Appellee by his Attorney, denies all and singular the allegations in the Petition contained, and especially the invalidity of the title of the said Appellee.
Wherefore Appellee prays that the decision of the Board of Land Commissioners be confirmed, and that the said title be decreed to be valid.

J. Clarke Atty for Claimant

U. S. District Court

No 271

The U. S. states

vs

Manuel Rodriguez

Answer

Filed April 1, 1856.
Chevers,
Deputy.

271 ND
PAGE 41

To the Honorable District Court of the United States in and for the Northern District of California.

The United States
Appellants
vs
Manuel Rodriguez
Appellee
} No. 271

The petition of the United States by their Attorney represents: that this cause is an application for a review of the decision of the Board of Land Commissioners whereby the claim of said Appellee was confirmed as appears by reference to the Records in the case. That a transcript of the said Records was filed in this Court on the day of that a notice of appeal was filed on the day of and that the land claimed lies in the said District.

That the said claim is invalid.

Wherefore appellants pray that the said decision of the Board be reversed and that the Court decree the said title to be invalid

2

U. S. District Court

No. 271

The U. States

vs

Manuel Rodriguez

Petition

Filed April 1, 1856,
Chenes,
Deputy.

At a stated term of the District Court of the United States of America for the Northern District of California held at the Court room in the city of San Francisco on Wednesday the 19th of November A.D. 1856.

Present The Hon. Ogden Hoffman District Judge

The United States vs Manuel Rodriguez } D.C. No 271 L.C. No. 627

This cause came on to be heard on appeal from the decision of the Board of Commissioners to ascertain and settle private Land ~~titles~~ claims in the State of California, under the act of Congress approved March 3d A.D. 1851. upon the transcript of the proceedings and decision of said Board and the papers and evidence on which said decision was founded and it appearing to the Court that the said Transcript has been duly filed according to Law. and the cause having regularly come to a hearing, it is by the Court here ordered, adjudged and decreed. ~~that~~ that the said de

decision be and the same is in all things affirmed. and it is hereby ordered adjudged and decreed ~~that~~ that the claim of the appellee is a good and valid claim and that the same be and is hereby confirmed

The land of which confirmation is hereby made, is situated in the County of Santa Cruz being the same which was granted to Romana Sanchez in 1844 and held and occupied by her until she sold to the present claimant in 1852. It is known by the name of "Butano and is bounded as follows. By the Rancho of the heirs of the deceased Simeon Castro by the Lomarica and by the sea. containing one square league: for a more particular description reference to be had to the copy of the original grant and map contained in the Expedients in the archives in the custody of the United States Surveyor General for California. a traced copy of which was filed among the papers in the case before said Board

Ogden Hoffman
U. S. Dist. Judge

The above decree is correct
Wm Blanding
Dist Atty.

271 3

N. S. Dist. Const.

The United States,

— vs —

Mr. Rodriguez.

Decree.

Filed November 19, 1856.

W. F. Cherrie,

Deputy.

Quebery

The United States
vs
Manuel Rodriguez

103.

271 ND

The claim in this case was confirmed by the Board. An appeal having been taken on the part of the U. S. the cause has been submitted to this Court without argument or the suggestion on the part of the appellant of any objection to the validity of the claim. The claimant & those under whom he derives title appear to have been in possession of the premises in question for nearly 20 years and tho' the original title delivered to the interested party has recently been lost we agree with the Board in considering the secondary evidence of its contents as sufficient ~~satisfactory~~. In all these cases the evidence from the archives is perhaps even more satisfactory than that afforded by the production of an alleged

riginal title — for the facilities of this single paper for the commission of a forgery are far greater ~~with the regard to this single paper~~ than are offered for the perpetration of the same crime when numerous documents have to forged & subsequently introduced among the archives — A list of the latter has long since been made — and no new expedite could now be ~~introduced~~ placed amongst them without imminent risk of detection. In this case the record of the proceedings is full and minute — and the character of the documents and the number of the signatures affords ~~evidence~~ intrinsic evidence of genuineness — If to this be added the fact of long continued possession from a date anterior to the ~~first~~ provisional grant we are unavoidably led to the conclusion that the grant must have issued at the time & in the terms alleged

3

by the claimants
be think a decree of
confirmation should be
entered —

Nov. 14. 1856

271

By

Manuel Rodriguez

Opinion

Nov. 19, 1856

Attorney General's Office
14th February 1857

Sir:

You are hereby instructed to dismiss the appeal in the case of Manuel Rodriguez vs The United States, numbered 627 on the docket of the Land Commissioners.

Respectfully
Cushing

Wm Blanding Esq
U. S. Attorney
San Francisco
Cal

In the District Court of the U. S.
for the Northern District of Cala

The United States
v
Manuel Rodriguez } D.C. 271 : L.C. 127

In pursuance of a notice from the U. S. Attorney General, hereunto annexed, it is hereby stipulated and agreed that no further appeal be taken in this case on the part of the United States, and that claimant have leave to proceed under the decree of this Court heretofore rendered in his favor, as under Final Decree,

San Francisco June 12th 1857

Wm Blanding
Dist Atty
J. A. Clarke Atty
for Claimant

271 4
627

U. S. District Court

The United States
v
Manuel Rodriguez

Stipulation

Filed June 12. 1857.
W. H. Chevers,
Deputy.

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Friday the 12th day of June in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v
Manuel Rodriguez

D.C. 271 : L.C. 627

The Attorney General of the United States having given notice to dismiss the appeal in this case, and a stipulation to that effect having been entered into by the District Attorney:

On motion of the District Attorney it is Ordered adjudged and decreed that claimant have leave to proceed under the decree of this Court heretofore rendered in his favor as under Final Decree.

Ogden Hoffman
N. D. Dist. Judge

271 4/2

United States District Court, Northern District of California.

The United States

vs.

Manuel Rodriguez

ORDER.

vac appeal

~~Final Decree~~

Filed June 12 1857

John A. Monroe,

CLERK.

By W. H. Chivers

DEPUTY.

United States District Court
Northern District of California

The United States
vs
Manuel Rodriguez
No: 271

The Petition of Lorenzo Cohen, Jeremiah Clarke, and Daniel Clarke, respectfully shew that petitioners have purchased from Manuel Rodriguez, the claimant in this cause, the tract of land claimed and confirmed in this cause, by the name of "Butano", and that petitioners are now the sole owners of the same, through said purchase

That said tract was finally confirmed to the extent of one square league, bounded South by the Claim of Simeon Castro, East by the Mountain and West by the Ocean, no North ern boundary being mentioned in said decree

That on the 14th day of November 1860 the Surveyor

General of California approved an official Survey, purporting to be in pursuance of, and in conformity to, said final decree of confirmation - but Petitioners state that said Survey is erroneous in that it embraces but Three thousand and twenty five acres instead of one league, there being no obstacle or difficulty in the way of extending said survey so as to embrace the quantity of one league, as confirmed

Petitioners state that the first advertisement of said Survey, pursuant to the Act of Congress in such case made and provided, was made by publication in the San Francisco Herald on the 20th day of November 1860.

Petitioners therefore ask for an order of this Court, requiring said Surveyor General to return said survey to this

Court for adjudication and correction

J. Clarke
Atty. for Petitioners

Jeremiah Clark, one of the Petitioners above named makes oath that the statements in the foregoing petition touching the interest of petitioners in the trust therein mentioned are true.

J. Clarke

Sworn to and subscribed this 22nd Nov. 1860 before me,
W. H. Cheever,
N. S. Comr.

5

U. S. Dist Court

No 271—

The U. States
vs
Manuel Rodriguez

Petition for
return of binnacle
Filed Nov: 22. 1860,
W. A. Adams
Clerk

J. Clark

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the CITY OF SAN FRANCISCO, on Thursday the 22nd day of November in the year of our Lord one thousand eight hundred and sixty.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

v.

Manuel Rodriguez.

IN LAND CASES.

District Court No. 271.

Land Com. No. 627.

AND now at this day on application of Jeremiah Clarke, Attorney for himself and others IT IS ORDERED, that the Surveyor General of the United States for California return into this Court, on or before Wednesday, the 26th day of December A. D. 1860, his Official Survey and Plat of the land finally confirmed in the above entitled cause, known as "Butano," and situated in the County of Santa Cruz in said District; AND IT IS FURTHER ORDERED, that the United States Marshal for this District serve upon the said Surveyor General, without delay, a certified copy of this order, and make due return hereon.

6

No. 271.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Maul: Rodriguez.

ORDER TO RETURN SURVEY.

Returnable Dec: 26th 1860.

Issued Nov: 22d 1860.

Filed Dec: 5, 1860

W. A. Chevers
Clerk.

San Francisco Nov 23/1860

Service of this requires by copy on the U. S. District Surveyor General in San Francisco Nov 23/1860

P. Solomon
U. S. Marshal
By J. Lantis
Deputy

United States of America,) ss.
Northern District of California.)

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Marshal of the United States for the Northern District of California,

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 271, to Manuel Rodriguez known as "Buitano", and situated in the County of Santa Cruz in said District.

NOW THEREFORE YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the District Court of the United States for said District, sitting in Land Cases, on or before Wednesday, the 26th day of December A. D. 1860, at 11 o'clock, A. M. (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

WITNESS, the Hon. OGDEN HOFFMAN, Judge of said Court, at San Francisco, in said District, this 22nd day of November A. D., 1860.

W. H. Chevers.

CLERK.

The within Monition was received by me on Thursday the 22d day of November 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for 4 consecutive Wednesdays, in the San Francisco Herald, commencing on the 5th day of December 1860; and for 4 consecutive Saturdays, in the Monterey Union a paper published nearest the land, commencing on the 1st day of December 1860.

Dated San Francisco, November 30 1860.

P. L. Solomon
U. S. Marshal.

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No. 271.

UNITED STATES DISTRICT COURT,
Northern District of California.
IN LAND CASES.

THE UNITED STATES.

v.

M. Rodriguez.

MONITION.

Returnable Dec. 26th 1860.

Issued Nov. 22 d 1860.

Filed January 2nd 1861.

W. H. Rivers
Clerk.

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the CITY OF SAN FRANCISCO, on Wednesday the Second day of January in the year of our Lord one thousand eight hundred and sixty-one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

v.

Manuel Rodrigues.

IN LAND CASES.

District Court No. 271

Land Com. No. 627

AND now at this day the United States Marshal having made return upon the Monition heretofore issued in this cause, that he had given due notice as therein commanded; on motion of J. Clarke, Attorney for Claimants, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and intervene for the protection of such interest; the U. S. Atty for the U. S. and Jeremiah Clarke for the Claimants. Mr Whittenden appeared in his own behalf. Isaac Graham. No one else appearing,

whereupon IT IS ORDERED, that the default of all parties not appearing as aforesaid be and the same is hereby entered.

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No. 271.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

M. Rodrigues,

ORDER ON RETURN OF MONITION.

Filed January 2, 1861.

W. H. Chevers,

Clerk.

District Court of the United States, for the Northern District of California.

The United States vs Manuel Rodriguez } No. 271

"Bulano"

Loren Coburn, Jeremiah Clarke and Daniel Clarke, Successors in interest to the Claimant in said cause, except to the Survey returned in this cause, pursuant to the order of this Court, made at their instance; for this. That whereas, the claim in said cause was finally confirmed for one league, by a decree specifying only the Western, Southern and Eastern boundaries of the tract confirmed, the said Surveyor has surveyed and returned, as if pursuant to said decree, only three thousand and twenty five (3,025) Acres,

whereas, within said boundaries, and without interfering with any prior Grant, the full quantity of One League could, without difficulty, have been located and surveyed; and these Excepters insist that it was erroneous in said Surveyor to limit the land surveyed in this cause, to that shown by the diseño filed therein, for they say that said diseño, although showing the land asked for by the original Grantee, in his Petition to Governor Alvarado, was not referred to in his Petition to Michiltorena, and that the Grant of One league by the latter, was not limited to the land shown by said diseño, but embraced a league in quantity within the said boundaries therein designated, and that said Grant was, in terms, confirmed by the final decree of this Court, which should have been followed and conformed to by said Surveyor, in the making of said Survey.

They ask, therefore, that this Court may reform said Survey and plat by adding thereto, upon the North and

East thereof, Fourteen hundred and

East thereof, Fourteen hundred and thirteen acres, making the whole amount One League, as specified in said Grant and decree.

J. Clark
Atty for Claimants
and Executors

271 10

U. S. Dist. Court

The United States

vs

Manuel Rodriguez

Claimant's.
Exceptions to Survey

Filed January 2, 1861,
W. ~~A~~. Chevers,
Clerk.

District Court of the United States for the Northern District of California.

The United States vs Manuel Rodriguez	Dist. Ct. No 271 L. C. No 627 "Butano"

A. P. Crittenden being sworn says upon his information and belief that Isaac Graham of the County of Santa Cruz, is the owner of a tract of land called "Punta de Año Nuevo", which ~~adjoins and~~ ~~a~~ was finally confirmed to Manuel Castro and others, the heirs of Simeon Castro dec^d and a patent therefor issued to them by the United States; that said Graham holds the same under deeds of conveyance from said heirs of Simeon Castro, dec^d; and that according to said patent and the survey therein recited, the said tract called "Punta de Año Nuevo" not only adjoins, but as deponent is informed and believes, includes the land called "Butano" as

the same has been surveyed by the authority of the Surveyor Genl of the United States according to the survey thereof returned to this Court.

And defendant says that he is one of the attorneys of said Graham, and that he is informed and believes that said Graham is absent from the City & County of San Francisco.

A. P. Cutlenden

Subscribed and sworn to, before me this 26th day of December A.D. 1860
J. H. Higgins
Notary Public

No 271. 11

U. S. District Court

The United States
vs
Manuel Rodriguez

Intervention of
~~A P Crittenden~~
Isaac Graham

Filed January 2, 1861.
W. H. Chevers,
Clerk.

In the Dist Court of the United States for the Northern District of California

United States
vs
Manuel Rodriguez } No 271. DC. 627. S.C.

Isaac Graham an intervenor in the above cause, comes by Crittall & Crittenden his attorneys & excepts to the Survey made by the United States Surveyor General for California, of the lands mentioned in the decree of confirmation in the said cause & avers that the said survey, a plat whereof has been returned into this court, is erroneous & ought to be set aside & for cause of exception he alleges & sets forth the following to wit

1st That the said survey does not conform either to the original grant or to the decree of confirmation, & embraces lands which were not embraced in the said grant or confirmation, & which belong to the said Graham, under & by virtue of mesne conveyances from the heirs at law of Simeon Castro deceased, to whom the said lands have been duly confirmed & patented.

2nd That the said survey is erroneous in this to wit, that it locates & embraces a large

body of lands south & West of the Bolinas creek, whereas it ought properly to have embraced only lands North & East of the said creek. The lands South & West of said creek, which are embraced in said survey, being embraced in an older grant, duly made to Simeon Castro, by the Governor of California, & which have been duly confirmed & patented to the heirs of said Castro, from whom the said Graham, has derived title to the said lands by mesne conveyances duly executed & recorded.

3rd That the said survey is erroneous in this point that the Southern line thereof should run from East to West in a right line, whereas the said line runs from a North Westerly in a South ~~Westerly~~ Easterly direction & not in a right line.

4th That said survey embraces more land, than is warranted either by the original grant or the decree of confirmation.

5th That the said survey is in other respects erroneous & variant from the original grant, diseño & decree of confirmation & embraces a large body of land which ought not to have been embraced therein, and which belong to said Graham under & by virtue

of conveyances from the heirs of Simeon Castro deceased, to whom the same have been confirmed & patented —

Wherefore he prays that said survey be set aside & reformed

Crosbie & Cuttenden
attys for Isaac Graham.

No 271. 12

U. S. District Court.

The United States

vs

Manuel Rodriguez

Exceptions to Survey by Isaac Graham.

Crockett & Crittenden Attys for Graham.

Filed January 12, 1861.
W. A. Shearer,
Clerk

271 ND
PAGE 75

District Court of the United States for the Northern District of California.

The United States vs Manuel Rodriguez } No 271 D. C. No 627 L. C. "Butano."

It is stipulated and agreed that the following records and papers shall be considered as given in evidence on the trial of this case on the question of survey and that in the event of an appeal to the Supreme Court of the United States from the decision of this Court the said records and papers together with this stipulation shall be copied into and form part of the record of the case on appeal.

1st. The Record in this Court in the case of The United States vs Juan José Gonzales - No 104 D. C. - No 334 L. C.

And it is admitted that there is more than three quarters of a league of land included in the boundaries mentioned

in the grant to said Gonzales (~~and the diseño therein referred~~), which grant (~~and diseno~~) appears in said Record.

2d. (The Record in this Court in the case of The United States vs Maria Antonia Pico et als - No 70 D. C - No 315 L. C.

3d The Patent issued by the United States to the said Maria Antonia Pico, the widow of Simon Castro, decd. and Juan Castro and others the Children and heirs of said Simon Castro which patent bears date the 3d day of December AD 1857.

(And it is admitted by the claimant Rodriguez that the said patent and survey with the exception of a small piece of land to the North East of the upper part of Butano Creek thereon set forth by a tract the all of which lies within the boundaries specified in the decree of confirmation in said case land ~~confirmed~~ in the case of the The United States vs Maria Antonia Pico et als and include the whole of the land embraced in the survey of the tract called "Butano" confirmed to Manuel Rodriguez).

4th The Record in this Court in

X

the case of The United States vs Sebastian Rodriguez No 229 D.C. - No 192 L.C; and it is stipulated that the deposition of Jose Jesus Pico which appears in said record, and all other depositions appearing in any of the Records herein referred to shall be considered as taken in this case, and that all papers appearing in said Records shall be considered as properly in evidence in this case -

And it is admitted that all the title and interest which the said Maria Antonia Pico et als, the widow and heirs of Simeon Castro, decd, took under the grant to said Castro, and the confirmation and patent to themselves is vested in Isaac Graham.

5th - The original paper marked "Exhibit A PLC" hereto annexed and of which a translation may be hereafter filed - Its execution is admitted and it

is admitted that the Manl Rodriguez whose name is signed to the certificate appearing therein is the same person who is the claimant in this case.

San Francisco – February 6th 1861.

Crockett & Cutten
Attys for Isaac Graham

J. A. Clarke
Atty for Claimt

271. 13

U. S. Dist. Court.

The United States
vs
Manuel Rodriguez.

Stipulation that certain records etc. may be used in evidence.

Filed February 6, 1861.
W. H. Chevers
Clerk

SELLO CUARTO DOS REALES

Habilitado provisionalmente por la Aduana marítima del puerto de Monterrey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

Micheltorena. Pablo de la Guerra.

Certificamos: que es publico y notorio en la villa de Branciforte que el terreno llamado Punta de Pinos Nuevo pertenece á los herederos del finado Simeon Castro hace año y medio poco mas ó menos: que Eugenio Soto fue á fundarle por cuenta y consentimiento de D. Manuel Castro, quien tambien ha llevado y tiene en él ganado y caballada de su fierro; y que dicho terreno se ha respetado por aquella comunidad como propiedad legal de los espresados herederos; y para que conste damos esta á su instancia en Monterey á 25 de Marzo de 1844.

Jose Comes
Angel Soria
George Chapell
Ignacio Jorrejaine
Ventura Hernandez
Robert King
Jose Berloff

= Manuel Rodriguez Alcalde primero de la jurisdicion de Branciforte certifico: que lo que contiene el documento anterior es conforme lo notorio del publico del vecindario de aquella villa pues es verdad y me consta que el terreno que se menciona es propio de los herederos del finado Simeon Castro y que está ocupado y no baldio hace mas de año con fincas rusticas ganado y caballada. Y para los usos que convengan al interesado doy este á su pedimento en Monterey á 21 de Marzo de 1844.

Manl. Rodriguez

Exhibit A P.C.

271.

U. S. Dist. Court.

The United States.

vs

Manuel Rodriguez.

Exhibit A. P.C.

Filed February 6. 1861.
W. H. Chevers.
Clerk.

114/15

The United States
vs
Manuel Rodriguez

No. 271. ND

March 2. 1861.

~~The case~~ This case comes up on objections to the survey filed by the claimant.

By the decree of this court there was confirmed to the claimant ~~as~~ the land called "Butano" bordering on the rancho of the heirs of Simeon Castro the Serania and the sea — of the extent of one square league —

The ~~only~~ principal point in controversy is ~~the~~ as to ~~what was~~ the location of the boundary of the rancho of the heirs of Simeon Castro —

~~In the~~ To ascertain that boundary resort must be had to the expediente.

In Castro's petition the land ~~called~~ is described as the tract called "Punta del Año Nuevo" from the boundary of Slavio

2

" Buena to those of Juan
" Gonzalez which will be four
" leagues a little more or less
" and from the sierra to the
" sea shore which will be
" one league as shown on
" the accompanying sketch."

On the diseño attached to the original petition of Romana Sanchez for the land confirmed to the claimant the Butano creek is represented as the Northern boundary of the land solicited and as the Southern boundary of the Gonzalez tract. And the same creek is delineated on the Gonzalez diseño, and mentioned in his grant as forming his southern boundary.

If then the description in the Castro grant be construed as referring to the southern boundary of Gonzalez as shown by the grant of the latter, no ~~law~~ location whatever

3 can be made of the league granted to the claimant — For his northern boundary is the Butano creek and his southern boundary the land of Castro — ~~But the land of Castro extends to the land of Gonzales~~ But the northern boundary of Castro is the same Butano creek — Hence the Ranchos of Gonzales and Castro adjoin and the claimant can take nothing.

~~separate header~~

~~But~~ It is contended that the northern boundary of the Punta del Año Nuevo rancho, which by the terms of Rodriguez grant constitutes the southern boundary of the land of the latter is not the arroyo del Butano but another creek called Arroyo de los Frijoles — or Bean Hollow — we have already seen that the Año Nuevo rancho is declared in the grant to be bounded by the Rancho of Gonzales on the North — and that ~~this~~ ~~the rancho is~~ southern boundary of this latter as shown by his grant is the arroyo del Butano — as appears from the diseño & grant ~~on the~~ Gonz ~~by the state~~ & from the diseño in the case at bar.

Gonzales

It is urged however that when the Governor in the Año Nuevo grant referred to the boun

dary of Gonzales as constituting the northern limit of the land he was then granting to Simeon Castro he ~~the~~ intended, not ~~the~~ the Gonzales boundary as mentioned in the grant of the latter, but that boundary as delineated on the diseño of the Punta del Año Nuevo rancho. ~~and as that is designated as our northern boundary.~~

~~The~~ ~~In support of this view~~ On referring to this diseño ~~of the Punta del Año Nuevo grant~~ we find a tract delineated lying between ~~only~~ the ocean and the Sierra and ~~[illegible]~~ ~~an~~ chiefly contained between two arroyos represented as running ~~at~~ from the mountains ~~into~~ the sea at a short ~~distance~~ distance to the North & south of these brooks respectively lines are drawn ~~[illegible]~~ of which the southern is marked "Linderos de Bilaño

13 Bachna" – and the northern "Lindero de José Gonzales" –
If the brook near which this boundary of Gonzales is drawn had any name inscribed upon it the position of this line and consequently the northern limit of the Punta del Año Nuevo rancho, as indicated by the diseño could be ascertained ~~to the~~ beyond controversy – But it is merely marked "Arroyo" ~~without~~ and may be ~~extended~~.
~~But~~ The delineation however of the line of the coast affords very important indications as to the particular brook intended
The Rancho of Punta del Año Nuevo was made up of two Ranchos one of which had been granted to Bernardo ~~Arguello~~ ~~for~~ ~~years~~ who surrendered ~~the~~ his rights to Castro by whom a final grant for both under ~~the~~ one name was obtained
These two Ranchos were the

14 Punta del Año Nuevo, propa
and the Rancho called Rincon ~~Punta de~~ de la Balle
na —

On the diseño under consideration
pony which the ranchos derived their names
these two points are
laid down ~~and~~ ~~[illegible]~~
~~[illegible]~~ and by comparing
the diseño with the official
map of the coast attached
to the patent obtained by the
successors in interest of Castro
~~the two points~~ they are readily
identified — The Punta del
Año Nuevo, as ~~the~~ "New Years
Point" (being its former name trans
lated) — and the Punta de la
Ballena as another point near
which is a rock marked
"Stone house Rock"

As to the identity of Punta
del Año Nuevo with New Years
Point there is no question —
and it is equally clear that
the Punta ~~de~~ de la Ballena
must be the Point near Stone
house rock for there is none

other on the coast which could have been intended.
~~But another point was identified~~
It is stated by one of the witnesses in the Sebastian Rodriguez case, the record of which has been made evidence in this that the Punta de la Ballena is about six miles north of the Punta del Año Nuevo, and this is precisely the distance as shown by the map between the Rocks the New Years Point and the Stone House Rock point.
If then this latter point be the "Punta de la Ballena" of the diseño, the arroyo drawn on that diseño a short distance to the north of it cannot be the arroyo del Butano: for ~~that~~ the arroyo of the diseño is represented as falling into the ocean at a distance from the Punta de la Ballena ~~of a~~

16 of about one third the whole length of the Rancho ~~on in other~~ whereas the arroyo del Butano ~~is~~ falls into the sea at least as far North of the Punta de la Ballena as the Punta del Año Nuevo is South of it — In other words, if the arroyo of the diseño be taken to be the arroyo del Butano the Back Punta del la Ballena will be into about the middle of the tract instead of being at about one third of ~~the~~ the whole length from North to South —

But ~~as~~ to the North of the Punta de la Ballena there is an arroyo, called arroyo de los Tejoles which in all respects corresponds with the arroyo of the diseño It is at about the requisite distance North of the point and if it be assumed to be the arroyo of the diseño it

makes the Rancho about 4 leagues in length - which is corresponding in that respect with the description in the petition, of the tract solicited

It is also urged that the diseño attached to the original petition of Bernal who obtained as has been stated, a grant for the Rincon de la Ballena and whose ~~surrendered~~ rights were surrendered to Pico and by him to Castro by which latter a grant for that and the adjoining rancho, was obtained show what was intended to be the northern boundary of the original Rancho of Rincon de la Ballena - and consequently what must have been intended to be the the northern boundary of the consolidated Rancho of Refugio del Año Nuevo -

In the diseño attached to the original petition of Bernal

~~and which~~ in the record of the Sebastian Rodriguez case which was rejected by the Board the Bueon or corner is represented as comprised within the arroyo

de la laguna and the sea
this arroyo is evidently the
same as the arroyo de los
Tejoles - which as appears from
the official map terminates
at its mouth in a laguna
of some size
Here and on the Bernal des
no it is represented as forming
the Northern boundary of the
Rincon de la Ballena - and
on the north of it the land
is described as that of the
citizen José Antonio Galindo -
the same person who ~~[illegible]~~
~~[illegible]~~ obtained for himself and
his mother the grant in the
case at bar -
I think it clear therefore that
the Rincon de la Ballena pe
titioned for, by Bernal and de
lineated on his Diseno was
intended to be bounded towards
the North by the arroyo de la
laguna or de los Tejoles - which

was regarded as forming the Southern boundary of the Galindo Rancho

That these were the limits of the Galindo tract is also apparent from the diseño in the case — for by comparing the Bunal diseño with that in the Galindo expediente it will be seen that the two tracts are represented as adjoining each other — The Galindo tract ~~tract~~ being bounded on the South by the Arroyo de la laguna or de los Frijoles and the Bunal tract being bounded on the North by the same stream —

~~Was perhaps the strongest~~

An additional argument in favor of the location contended for by the claimants is found in the fact that if the Gonzales boundary mentioned in the Castro grant be the boundary described in the Gonzales grant

~~Lands in the Gonzales grant~~
to-wit the Butano creek - ~~the~~
we must suppose the Government
to have committed the absurdi
ty, not to say injustice, of making
a grant to Galindo under which
he could take no land
whatever - For his Northern boun
dary is the Bay as shown by
his diseño is the Butano creek
and his southern boundary the
rancho of Castro - But if the
same creek is the northern
boundary of Castro, there will
be no land between the two
~~gran~~ ranchos of Gonzales and
Castro to be appropriated to
Galindo - That the Government
may sometimes have accidentally
granted the same land to two
persons is not impossible - But
such an accident is highly im
probable, and the ~~strongest~~
clearest evidence ought to be re
quired before we can be justified
in considering it to have occurred

But in this case where the pretensions of Castro were founded on a former grant to another person whose rights he had acquired — when the grant & disseno of his predecessor in interest showed that the land asked for did not include the ~~the~~ possession of Galindo held by him under a provisional concession made long previous to ~~other Castro's petition or had by the former grant of the~~ the first application for the Rincon Rincon de la Ballena it is in the highest degree improbable that the Government would have granted ~~or~~ ~~from~~ to Castro the land held by another under so ancient & equitable a title —

The question, then is Did the Government ~~in~~ when ~~granting~~ it declared that the land was bounded by the Rancho of Gonzales intend, that boundary ~~to~~ expressed in the grant of Gonzales or that delineated on Castro's

own design —
I think it very clear that
the latter was intended —
And for the following reasons —

1. The land granted is stated
in the grant to be four square
leagues as shown in the ac
pictured design "sketch" —
By that ~~sketch~~ design as we have
already seen the boundary of
Gonzales is placed a very
short distance to the North
of a creek which is obviously
not the Arroyo del Butano —
but the Arroyo de la Laguna
or de los frijoles —
2. The tract is described in the
petition as four leagues in length
and one in breadth as shown
on the sketch —
The officer to whom it was re
ferred for information reports
that the boundaries of the tract
are the same as are expressed

"in the petition and respective
"diseños ~~and~~ the demarcation
"of which does not comprise
"the land of any other person"
a report which could not
have been made if the land
had been supposed to embrace
the lands already provisionally
granted to Galindo and oc-
cupied by him long before the
petition of Castro or even that
of Bernal to whose rights he
succeeded —

The Governor relying on this re-
port makes ~~his~~ the grant &
designates the rancho of Gonza-
les as the northern boundary.
But the tract he meant to
grant must have been that
~~designated~~ delineated on the diseño
and comprised within the
boundaries there laid down
or ~~there~~ lines thereon marked
as the boundaries of Gonzales
& Bulna — ~~for~~ notwithstanding

that they ~~might~~ may not have seen the actual boundaries of those persons when their own grants are consulted —

Again the land asked for and granted is four leagues in length by one in breadth — this track the alcalde reported to be vacant and this alone the Governor intended to grant —

But if the Bulano creek be taken as a boundary the length of the track will be five leagues — while the ~~the~~ quantity ~~can be~~ can be restricted to the four leagues confined only by making the width of a considerable portion much less than the width expressed in the petition and indicated on the diseño —

And finally it is in a high degree improbable that Castro

intended to which, as it al most impossible that the Gov ernor would have consented to grant any extension towards the North ~~of~~ beyond the bou dary of the former Rancho of Rincon de Ballena the rights to which, Castro represented when by so doing a person would be deprived of land which he had long occupied and enjoyed under a provisional title — and ~~whose~~ his rights to which had been recognised and respected when the Rincon de Ballena had originally been given to Bernal —

I therefore think that the land of the present claimant has been correctly located as bounded by the Arroyo de los Tejolas on the South — & that the objections of the representatives of Castro to that survey must be overruled

It is to be regretted that a patent has already been issued to the latter founded on what I must consider an erroneous survey — But that survey was never submitted to this court and the rights of the present claimants must now be maintained notwithstanding that the U. S. have erroneously patented as part his land to another. When ~~the~~ both shall have obtained ~~their~~ patents they will be in a condition to finally settle the controversy before the ordinary tribunals —

The claimant also contends that there should be ~~allowed~~ surveyed to have one league — notwithstanding that to obtain that quantity he may be compelled to go beyond the Butano creek —

But we have seen that ~~that Butano~~ Creek is the Southern boundary of Gonzales who has

the oldest grant and it is clearly designated in the diseño of the claimant as the northern boundary of the latter. Whether he can in any court crop that creek to obtain the required ~~the~~ quantity — or whether ~~adhering to that creek as a boundary it is~~ following the indications of the diseño the boundary between the claimant and ~~the~~ Gonzales is to be taken to be a line drawn from the mouth of the creek a right angles to the line of the coast and not following the creek which enters the ocean at an acute angle it would be clearly improper now to decide — For the Gonzales claim tho' confirmed by the Supreme Court has not been surveyed and the boundary between his rancho and that of the claimant ought not to be fix

ed until the rights of both grantees can be considered.

An order in conformity with this opinion must be entered.

271.

U. S. Dist. Court.

The United States.

— vs —

Manuel Rodriguez.

Opinion
on
Survey.

Filed March 2. 1861.
W. A. Chevers,
Clerk.

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Thursday the tenth day of October in the year of our Lord one thousand eight hundred and sixty-one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States v. Manuel Rodriguez	No 271. L. C. 127.

This cause coming on to be heard, upon the exceptions to the Survey heretofore made and returned therein, and counsel for all the parties herein having been heard; it is now ordered, adjudged, and decreed that the survey aforesaid, be and the same is hereby rejected, and set aside as erroneous; and it is further ordered, adjudged, and decreed, that the Surveyor General do make a new survey of the tract confirmed herein, locating the same at the election of the claimants, within the boundaries mentioned in the grant herein confirmed, viz: on the East, the Mountains. On the South, the tract called "Punta de Año Nuevo" granted to Simeon Castro, and on the West by the Ocean. And that he make return of said survey to this Court.

Ogden Hoffman
U. S. Dist Judge

271.

16

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

Manuel Rodriguez.

Order respecting Survey, and directing a new Survey.

Filed October 10, 1861.

W. H. Chevers,

Clerk.

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Tuesday the third day of December in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Manuel Rodriguez.

271.

And now at this day on motion of Shorr & Patterson, it is ordered by the Court that they have leave to file the petition of intervention and exceptions to survey of T. W. Moore, et al,

271. 18

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

v.

Manl Rodriguez.

Order to file transcripts and exceptions of S. W. Moore et al.

Filed Dec: 3rd, 1861.

W. H. Reed,

Clerk.

271 ND

PAGE 109

In the United States District Court in and for the Northern District of California
County of Santa Cruz

The United States
vs
Manuel Rodriguez

In the matter of the Survey of the Rancho Bretaña.

Thomas W. Moore, Braddock Weeks, B. V. Weeks, Samuel H. Bybe & A. Moore respectfully represent to this Court

That through divers mesne conveyances from the original grantee of the Rancho called San Antonio, or El Pescadero, they are joint owners with others of the said Rancho & ready to produce their Title deeds thereto.

And Alexander Bailey, James Brennan and John McHugh, represent that they hold Mortgages against divers parties seized upon portions of the said Rancho El Pescadero claiming title thereto from the original grantee of said Rancho

That the said Rancho has been finally confirmed in the name of Juan José Gonzales, the grantee thereof.

That a survey of the said Rancho has been made by the United States Surveyor General for California and returned to this Court and the same was confirmed by this Court on the 28th day of September A.D. 1861.

That the claimants of the said Rancho have taken an appeal from the order and decree of this Court affirming said survey to the Supreme Court of the United States and that the same is now pending and undetermined

That the said Rancho El Pescadero is bounded on the northerly side thereof by the Rancho called San Gregorio - on the Easterly by the mountains - on the Southerly by the Arroyo del Bretano and on the Westerly by the Ocean as is shown by the record and proofs in that case on file in this Court to which your petitioners beg leave to refer.

Your petitioners further show that there has been confirmed by this Court the Rancho called Bretano which in fact lies Southerly of the aforesaid Arroyo del Bretano

and that it does not at any place cross to the northward of said Arroyo del Britano.

That the Expediente in this last mentioned case clearly shows that the said Britano Creek was the boundary line in its entire length between the Rancho El Pescadero and the Rancho Britano

Your Petitioners further show that a Survey was made of the said Britano Rancho, by the U.S. Surveyor Genl. which correctly located the said Rancho - That said Survey was returned to this Court under the order of the Court. That said Survey was set aside, and another Survey ordered which has been made and returned to this Court by the Surveyor General & filed herein on the Second day of December 1861

That this last mentioned Survey is Erroneous in this: that it locates said Britano Rancho entirely to the northward of the said Arroyo del Britano contrary to the grant and proofs and decree in the case

Whereas it should be confirmed in its location to the southward of the said Arroyo

de Britano.

Your Petitioners further show that they did not intervene in the matter of the Survey of the said Rancho Britano prior to the order of this Court for a resurvey thereof for the reason that the said Survey and plat first returned to this Court by the Surveyor General did not Embrace any of the lands of the Rancho El Escadero so claimed by them as aforesaid. And they were advised that under these circumstances it was unnecessary for them to Intervene.

Your petitioners further show that the second Survey as made by the Surveyor General Embraces a large body of land which has been in the possession of some of your petitioners for many years last past. That they have occupied the same claiming title thereto and deriving their title from the said Juan Jose Gonzales.

That they have made permanent and valuable improvements thereon and that during all this period neither the present Claimants nor their

immediate grantor have ever until within the past few weeks made any pretensions of ownership to any of the lands northerly of the said Arroyo del Britaño

But on the contrary your petitioners show that the present claimants of said Rancho Britano are now in the actual possession of the lands covered by the first survey of their said Rancho returned to this Court & that they have the same enclosed by a good and substantial fence

Therefore your petitioners pray that they may be permitted to intervene in the matter of the survey of the said Rancho Britano and that this petition may be filed as their intervention herein. And that they may be allowed to file their exceptions to the said survey of the said Rancho Britano.

Patterson & Slow
Attys for petitioners

State of California
City & County of San Francisco }
W. W. Slow

being sworn says that he has read the foregoing petition and that the same is true according to his information & belief

Sworn to before me this day of Dec 1861

W. T. Stow

Blair Lawrie
Notary Public

271.

U.S. Dist. Court

Northern District

The U.S.

v.

Manuel Rodriguez & c

Petition

and

Intervention

of

J. M. Moore Etal

Filed December 3. 1861.
W. H. Chenoweth
Clerk

Stow and Patterson.
Attys for Petitioner

271 ND
PAGE 115

The United States
vs
Manuel Rodriguez

U. S. District Court
Northern District. Matter of
the Survey of the Rancho
Bolano.

Thomas W. Moore, Braddock Weeks, B. V. Weeks, Samuel H. Piper and A. Moore as owners and Alexander Bailey, James Bennan and John McHue as incumbrancers, of and upon the Rancho San Antonio or El Pescadero, Except to the Survey of the Rancho Bolano, filed in this Court by the United States Surveyor General on the 2d day of ~~November~~ December A.D. 1861 and as ground of exception state—

That the location of the said Rancho Bolano is not in accordance with the final decrees of this Court relating thereto—

That the said location is not in accordance with the Grant in this case.

That the said location is not in accordance with the Deseno in this case.

That the said location is wholly to the northward of the Arroyo Bolano, whereas it should be wholly to the Southward thereof.

That said location is contrary to the evidence and proofs in said cause —

Patterson & Shaw
Attorneys for Exceptors.

271. 19

U. S. Dist. Court

The United States

v

Manuel Rodriguez

Exceptions to Survey
by
J. W. Moore. et al.

Filed Dec: 3. 1861.
W. A. Chevers
Clerk

In the United States District Court for the Northern District of California.

The United States
vs.
Manuel Rodriguez

County of Santa Cruz.

The United States objects to the Survey of the Rancho Butano a Plat of which was filed in this Court by the Surveyor Genl. on the 2nd day of December A. D. 1861. and as grounds of objection says:

First: That the said Survey locates the said Rancho wholly to the Northward of the Creek or Arroyo called Butano, whereas in point of fact it should be located wholly to the Southward thereof.

Second: That said location is wholly upon lands of the United States.

Third: That said location is not

accordance with the Grant, nor the diseño nor the decree of confirmation in this case.

Fourth. That said Survey does not embrace any part of the lands described in the Grant, diseño or decree of confirmation in this case.

Wm H. Sharp
U. S. Atty

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U. S. District Ct.

Northern District of Cal.

The United States

agt.

Manuel Rodriquez

Exceptions to

Survey.

Filed Dec: 3rd 1861.

W. H. Chevers,

Clerk

Wm. H. Sharp

U. S. Atty.

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Saturday the Seventh day of December in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States.
v.
Manuel Rodriguez.

No. 271.

It appearing to the Court that the Surveyor General of the U.S. for California is desirous to amend the report made by him to the Court, in ~~reference~~ the matter of the survey of the land claimed herein, which said report, together with plat of survey were filed in the Clerk's Office of said Court on the 2nd instant, it is ordered by the Court that leave be granted as asked for, and that the said report, and plat be returned to him for that purpose.

271. 21

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

v.

Manuel Rodriguez.

Order to return to Sur. Genl, plat of survey and report, for revision.

Filed December 7, 1861.

W. H. Chevers,

Clerk.

The United States
vs.
Manuel Rodriguez
} D.C. 271 L.C. 627

To the Hon. Ogden Hoffman U.S. Dist. Judge
Northern District California

Sir

A decree for re-survey in the above case has been filed with me, declaring the former survey erroneous and ordering "that the Surveyor General do make a new survey of the tract confirmed herein, locating the same at the election of the claimant, within the boundaries mentioned in the grant herein confirmed, viz; "on the East the Mountains, on the South the tract called "Parenta del Año Nuevo" granted to Simeon Castro, and on the West the Ocean, and that he make return of the survey to Court.

My view of the decree for re-survey is, that the Court intended the Eastern boundary of the former survey should be run as far East as the Sierra, and that should there be found more than one league within those boundaries, that then the claimant should elect as to the quantity of one league of land.

This view is based on an examination of all the original papers in the case as well as those of Gonzales on the North and Castro on the South.

The Attorney for claimant differs materially with

me and contends that the North line of the "Puenta del Año Nuevo" as surveyed is his Southern boundary, and any area at his election between the ocean and the Siena would answer the calls of this decree: As no Northern boundary is mentioned I am unable to determine whether his views are correct or not.

As an officer of your Court called upon to perform a survey under a general decree and report thereon by approval or disapproval, I cannot fail to appreciate the responsibility of seeing that the survey is made in strict accordance with the plain intent thereof both as to locality and area. In this instance in order to fulfil the terms of the decree I am referred to the grant, which grant with the accompanying records found in the archives show the precise purpose of the granting power, by fixing and limiting the location of the specific tract designed to be conceded, and separated from the National domain.

I have therefore returned a plat carefully compiled from the records of this office, in order that the whole may be properly placed before you and the difference between the views entertained by Attorney for claimant and myself decided and settled by some further order from you.

Very Respectfully
Your Obt. Serv't.
E. H. Peale,
U. S. Sur. Gen'l.

271. 22

United States Dist. Court.

The United States.

vs.

Manuel Rodriguez.

Report of U. S. Sur. Genl. on survey.

Filed December 9. 1861.
W. D. Cheever,
Clerk.

23
30

U. S
vs
Manuel Rodriguez

No. 271. ND
Exceptions to Survey

March 15. 1862.

When the first official survey of the land confirmed in this case was before the court it was excepted to on the part of the representatives of Simeon Castro the grantee of the adjoining Rancho on the South on ~~the ground~~ because ~~that~~ the Southern boundary of the Survey was fixed at the Arroyo de Frijoles instead of the Arroyo Butano — It appeared that the Rancho of Gonzales lying immediately north of the Rancho of the claimants was clearly bounded on the South by the Butano — If then ~~that~~ northern same creek ~~were~~ should be taken to be ~~taken to be~~ the northern boundary of the Castro Rancho the effect would be to leave no land whatever between the two Ranchos to satisfy the grant to the claimants of the Rodriguez or Butano Rancho —

After fully examining the decisions and grants in the 8 cases it was now decided by the Court

as that the ~~Southern~~ Northern boundary of the Castro grant and consequently the Southern boundary of the Rodriguez, was ~~not~~ the Arroyo de Tagoles.

It was also considered ~~and the same conclusion has been adopted the~~ clear that ~~by~~ the Arroyo del Butano was the Southern boundary of the Cowsley tract — and as the claim of the latter had been confined to a tract one league in length by 3/4 of a league in breadth he was when the survey was submitted for approval permitted to locate ~~his tract~~ his land running northward ~~along the sea~~ from the Butano creek along the shores of the sea and Eastward so far as was necessary to complete the quantity granted.

It resulted that between his Northern & Southern boundaries and to the eastward of the line drawn for quantity a strip of land was left ~~[illegible]~~ ~~[illegible]~~ which, though within the exterior boundaries of the tract

3 was not included in the survey.

~~The claimants in the present case although they zealously contended~~

It is this strip of land which the claimants in the present case propose to appropriate in satisfaction of their grant for one league —

~~By so doing~~ If this location be permitted no part of the land ~~are~~ delineated on the diseño will be included — For the map evidently embraces a tract bounded by the Bata no creek on the north & the Tajoles on the south — while the strip of land asserted to lies wholly to the north of the Butang creek and behind the tract, about one league long & 3/4 of a league wide surveyed to Gonzales —

It is contended that this location is in entire conformity with the language of the grant & decree — The land confirmed to the claimants being "one square league bounded by the Rancho de Punta del Arroyo (Castro Gonzales)

Rancho) "the Sierra and the Sea" —

But it will at once be perceived that ~~by~~ under no construction of these calls ~~of this~~ can the location contended for be permitted to have ascertained, as was done in the previous decision & ~~ascertained~~ at the instance of the claimants, the line of the Punta del Rio Nuevo grant, it only remained to locate one league of land bounded on the South by that line on the East by the Sierra and on the West by the sea. The Northern boundary ~~remained~~ would thus be left to be determined by quantity — provided (and the determination of this point was expressly reserved) the survey could be permitted to cross the Butano creek — ~~But to regulate the second subsidy the line of the Rancho de Punta del~~ It is conceded that the southern line of the Rancho being determined, the calls for the Sierra and the Sea become definite & restricted

5 and must be deemed to refer not to any portion of the sierra or the shores of the ocean to be arbitrarily selected but to such portions of them respectively as would form an eastern and western boundary to a Rancho the southern boundary of which was the line of the Punta del Año Nuevo Rancho — ~~and~~

In the brief signally submitted by the counsel ~~and the of~~ for the claimants in the case at bar it was insisted that the ~~so~~ boundaries of the tract were on the south the arroyo de los Tigoles (claimed to be the line of the Año Nuevo Rancho) on the East the mountain side on the west the ocean and on the north an east and west line drawn one league south of the Rancho of San Gregorio — that space being necessary to allow the location of the Gonzales tract one league long by 3/4 in breadth between the San Gregorio & the Rancho of the claimants

By the claimants own admission therefore the southern boundary of his land must be the Arroyo de los Frijoles or the line of the Castro Rancho the Eastern and western boundaries must be ~~these~~ portions of the sierra & of the sea shore lying contiguous to his southern boundary —

It remains to be determined whether he can be permitted to cross the Butano creek for quantity
~~It has already been stated~~
If the diseño be accepted as a guide it is apparent that the Butano creek was fixed as the northern boundary of the tract solicited — It is equally clear that the same creek was ~~not~~ designated as the southern boundary of the Gonzales ~~land~~ Rancho which was an older grant.

It is said however that the grant was not made with a reference to the diseño — and that the claimants ought not to be confined to the tract thereon delineated

The land was originally solicited by Romano Sanchez — In the petition ~~the~~ it is described "as exhibited on the accompanying diseño and as one league in length & ½ a league in breadth."

On the 29th September 1837 this petition was referred to the Administrator of the Ex-mission of Santa Cruz for his report —

On the 11th Oct. 1837 Juan Gonzales reports that the land is vacant and that it may be granted

On the 19th February 1838 the Governor grants ~~provisionally~~ to the interested party one square league "in the said locality" "provisionally", while the necessary "proceedings are going on"

After receiving a further report from the Prefect of the 1st district the Governor on the 9th September 1838 ~~the Governor~~ makes a more formal grant of the land

In this it is recited that "whereas "Romano Sanchez has solicited the "the land known by the name "of Butano as is shown in the Ex "pediente I have concluded to "grant him the mentioned location

8 "in extent the square league
" said Concession being understood
" to be provisional and subject
" to the approbation or disappro
" bation of the Excellent Deputation.

On the 8th November 1844 —
José Antonio Galindo the son of
Romano Sanchez presented a
petition to Governor Micheltorena
in which after setting forth
that since 1838 they had been
possessed of a location
known by the name of Rincon
under a provisional document
issued by His Excellency's predecessor
he, solicits a ratification of
the respective title in order that
he might obtain Judicial possession
&c

This petition having been referred
to Juneno the latter reports
in view of the favorable reports appearing on the Expediente
that there is no obstacle to
granting the land "having for
boundaries precisely the ~~road~~
~~scheduled by~~ ranchos of the heirs
of the deceased Simeon Castro —
On the 18th November 1844 the
Governor makes his decree of
Concession declaring Doña Ramon

" Sanchez owner of the location called "Butano" bordering on the Rancho of the heirs of Don Simeon Castro the Sierra and the sea on the 16th November of the same year the formal title was issued. In this it is recited that "whereas Doña Ramona Sanchez has solicited the ratification of the provisional title given to her from the year 1838 for the tract of land called granted her called Butano bordering on the Rancho of the heirs of the deceased Simeon Castro the Serrania & the sea, I have concluded to grant her the mentioned land &c"

The 3d condition declares the land granted to be one square league in extent —

It is plain from these proceedings and from the very language of the title ~~of~~ that ~~that~~ that instrument was intended merely as a ratification of the provisional concession of 1838, nor is there ~~is~~ ~~there~~ ~~the~~ any ~~ground~~ reason to suppose that any alteration of the bounda

ies of the tract provisionally conceded in 1838 was intended except that it was to be limited on the South by the rancho of the heirs of the deceased Simeon Castro. To ascertain therefore what was the land the ~~pr~~ title to which was ratified or made absolute by the grant of 1844 we must inquire what land was provisionally conceded in 1838 –

~~The description of the land in the provisionally concession~~

The provisional concession describes the land as "known by the name of Butano as is shown in the Expediente" –

As the petition contained no description of the boundaries of the tract solicited, and the reports or informes make no mention of them the only manner in which the Expediente could have shown the tract conceded was by the diseño which accompanied ~~the~~ it ~~petition~~ and formed part of the Expediente – we are thus ~~compelled by~~ referred necessarily to the diseño to ascertain the limits of the tract known as

11 "Butano", which the Governor conceded in 1838 and the title to which, without changing its name or alteration of boundaries he granted absolutely in 1838.
The diseño thus becomes a part of the grant in this as in other cases.
It appears however that the extent of the land solicited is stated in the petition to be one league in length by 1/2 a league in width — But the provisional concession and the final grant declare the ~~the~~ land granted to be one square league —
It ~~is~~ appears therefore that the Governor granted to the petitioners a tract twice as wide as that solicited and in view of this augmentation he may have adopted the sierra as the Eastern boundary thereby including ~~a~~ ~~sa~~ land not ~~included~~ ~~odis~~ ~~included~~ unpaged within the limits of the diseño.
But I see no reason, whatever, to suppose that he intended in any manner to disturb the location of the northern boundary which was

plainly ~~designated~~ ~~as the~~ ~~for~~ ~~both~~ the Arroyo, at the Butano Creek ~~as the~~ ~~where~~ ~~had also been found in the~~ The same stream having been previously adopted as the southern boundary of the Gonzales Rancho. It will be noticed that all the reports declare the land to be vacant — on the strength of these favorable reports Jimeno recommends that the provisional title be issued — But these reports would not have been made, especially that of Juan Gonzales who it is presumed was the grantee of the Rancho on the north, had it been by any one supposed that the grant of Butano would include any part of the land already granted to Gonzales himself.

It has already been observed that by the terms of the grant the Sierra forms the Eastern boundary. The Arroyo shows that the Butano creek was ~~only~~ intended as a boundary only on the North — But in ascending this stream from

13 the Ocean it is found that its course is for a considerable distance about S.E. that is it flows in a N.W. direction — but on approaching the Sierra it bends to the South running for nearly 1/2 its entire length near the base of the Sierra and nearly parallel with it and with the sea shore — ~~As portions~~ This portion of the stream is not represented on the diseño — ~~nor does~~ Neither does the Sierra mentioned as the Eastern boundary appear upon it —

If then the grant be limited by the Butano the Sierra will not be reached nor will the quantity be obtained —

It has therefore appeared to me on the whole, most just to adopt the Butano creek ~~only~~ as the Northern boundary only, so far as it is delineated on the diseño ~~but~~ & to permit the Surveyor to be extended eastwards for quantity to the Sierra notwithstanding that in so doing it will cross that portion of the Butano which runs near

the base of, and parallel to the Sierra —

I think therefore that the official survey should be set aside — and that a new survey should be made bounding the tract on the South by the Arroyo de los Pinoles — on the West by the Sea on the North by the Arroyo Butano so far as the same is delineated on the diseno, and thence crossing that stream to the Sierra, and on the East by the Sierra so as to include the an area the square leagues in extent —

271.

U. S. Dist: Court.

The United States,

vs.

Manl. Rodriguez.

Opinion

Respecting Survey.

Filed March 15, 1862.

W. H. Chevers.

Clerk.

In the United States District Court
Northern District of California

The United States
vs
Manuel Rodriguez

No 271

This cause coming on to be heard upon the Survey filed herein Dec. 2d 1861 and the Exceptions thereto, it is now ordered adjudged and decreed that said Survey be, and the same hereby is set aside and rejected: And it is ordered that a new survey of the tract herein confirmed be made as follows viz. bounding the tract on the East by the Sierra on the West by the Sea, on the South by the Arroyo de los Frijoles as far as the same is delineated upon the diseño, and thence by the shortest distance to the Sierra, and on the North by the Arroyo Butano, as far as the same is delineated as a boundary upon the Diseño, and thence (crossing that stream) by such line or lines as will include the area of one square League

Ogden Hoffman
U. S. Dist Judge

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U. S. Dist. Court

No 271

The U. States
vs
Manl. Rodriguez

Order rejecting survey,
and
directing new survey.

Filed March 20. 1862.
W. H. Chevers.
Clerk.

25
81.

U. S.
vs
Manuel Rodriguez

No. 271. ND
Stated Term.
July 11. 1862.
" " "

In the opinions heretofore delivered in this case it was decided that the land granted to the claimants was bounded on the South by the Arroyo de los Frijoles — on the West by the Sea & on the East by the Sierra — The Northern boundary is not mentioned in the grants but as that instrument ~~is~~ ~~merely~~ professed to be merely a ratification of a previous provisional concession, and as the provisional concession described the tract as the land of Butano "as shown in the expediente," the map found in the expediente, and which contained constituted the only means of identifying the land provisionally granted was referred to for the ascertainment of the Northern boundary — On this map the Arroyo del Butano is clearly laid down as the Northern boundary of the

2

track, the lands to the north of it being described as those of Gonzales.

On the diseño of Gonzales the Butano is in like manner laid down as the southern boundary, and both the decree of Concepcion and the grant describe his land as bounded by the Rancho of Buelna the Sierra, the coast, and the Arroyo del Butano.

There was much reason to contend that the grant to Gonzales which was older than that to Rodriguez was intended to embrace all the land within his external boundaries. The supreme Court however seem to have thought that he should be restricted to 3/4 of a league to be surveyed within his out-boundaries. ~~The question does not appear to have been~~. But there can be no doubt that the external boundaries within which his land was to be taken were the Rancho of Buelna, the Sierra the Sea and the Arroyo del Butano.

On the diseño of Gonzales the

3 Butano is represented as flowing with a slight curve from the Sierra to the sea On the diseño of Castro the arroyo supposed to be the Frijoles is also delineated as flowing ~~with a curve~~ in a general westerly direction from the Sierra to the sea.
It appears however that ~~both~~ the course of both of these creeks is for some distance not far from parallel to the Sierra after which they deflect to the west and fall into the ocean in such a manner as that their lower portions might conveniently be adopted as the northern and southern boundaries of the Rancho —
As ~~from~~ the grant called for the Sierra as the Eastern boundary, and the quantity granted and confirmed was one square league it appeared to me reasonable to adopt the Butano only so far as it could serve as a northern boundary to the rancho and not by following its ~~entire~~ course where it flows nearly parallel to the Sierra make its sure as

4 the Eastern boundary also thus cutting off the grant from the Sierra called for as boundary. ~~In~~ ~~the~~ The diseño of Rodriguez represents neither the Sierra nor the upper bank of the Butano — It delineates a small and readily identified tract between the 2 streams and the ocean — But the petition which this diseño accompanied was for a ~~tract~~ 1/2 a league in extent — The provisional grant was for a ~~tract~~ of one league and the title which ~~satisfied~~ was for ~~out~~ one league bounded by the Sea the Sierra and the Rancho of Castro on the South —

I therefore considered that in order to meet the call for the Sierra and to obtain if possible the quantity the Northern line should follow the Butano so far as it was delineated on the diseño, where it was evidently intended to represent the northern boundary of the 1/2 league originally solicited, and thence in a direct line to the Sierra crossing the Butano at or near the point where its course in ascending diverges

to the South and becomes parallel with the Sierra —
It is now sought to obtain the quantity not by running from this point easterly to the Sierra but by turning abruptly to the North at nearly right angles to the course of the Buta no and parallel to the sea to include the sobrante of the Gonzales grant left vacant by the restriction of the latter to a tract of only 3/4 of a league. The land so included is clearly within the exterior boundaries of Gonzales — and the survey would include a considerable portion of the Pescadero creek represented on the Gonzales diseño as flowing ~~down~~ diagonally through nearly the centre of the tract. It would embrace land always claimed by Gonzales, included within his boundaries, delineated on his diseño and to the whole of which there is much reason to suppose as contended by his counsel his title should have been confirmed —
That no ~~part~~ portion of it could have

seem intended to be given by a subsequent grant to Rodriguez is manifest — His diseño represents no part of it but recognizes the land on the north of the Butano as belonging to Gonzales — His grant does not call for it — for it merely describes the land as six leagues bounded by the sierra, the sea and the Rancho of Castro — Gonzales himself reports that the land asked for by Rodriguez is vacant which he assuredly would not have done if it had been supposed to include any part of the land previously granted to himself —

I am unable to perceive on what principle or by what authority I can in effect decree an equivalent to Rodriguez for any deficiency of quantity within his exterior boundaries out of a sobrante accidentally found to result within the exterior boundaries of his neighbors

with respect to the southern boundary it is to be observed that the Arroyo Tajolas was at the urgent suggestion of the counsel ~~[illegible]~~ for and owner of the Rodriguez claim adopted as the southern boundary of the latter and the northern boundary of the Castro grant. ~~The grant~~ ~~This latter~~ They lands of Castro unquestionably extended from the Sierra to the sea, and from the lands of Flavio Bulna on the south to an arroyo on the north — This arroyo was delineated on the diseño as running from the Sierra to the sea. After much consideration it appeared to me that the arroyo intended was the Tajolas — notwithstanding that the grant called for the lands of Gonzales as the northern boundary of Castro, and the Gonzales Rancho was confessedly bounded by the Bolinas. Had the ~~the~~ latter stream been adopted as the boundary of Castro the effect would have been to exclude altogether the grant to Rodriguez for the grants to Gonzales & Castro would have been co-terminous

The Arroyo de Los Frijoles having thus been adopted as the Northern boundary of Castro it became of necessity the southern boundary of Rodriguez for as we gather by the grant and suggestion in the report of Simmons who recommends the grant with the express understanding that "it is to be without prejudice to the rights of the heirs of the deceased Simeon Castro"

It is now suggested said that the Arroyo Frijoles in its upper portion is indistinctly traceable and that it could not serve as a boundary for its whole course from the Sierra to the Sea. If this be so it affords an argument against the adoption of that stream as the Northern boundary of Castro, and it may justify the inference that the Court should have taken the Butano as the boundary thus excluding the Rodriguez grant altogether — But it hardly lies in the mouth of the present owner of both Ranchos to make the objection, as the Frijoles was adopted as the dividing

a straight line to the Sierra

line between the Rancho's at his suggestion and in conformity with the argument strenuously urged by himself.
Assuming the decision of the Court to be correct, and any other supposition would prevent any location whatever of the Rodriguez claim, it is clear that the boundary of Castro was a stream flowing from the Sierra to the sea, and as that stream is decided to be the Tajolas the latter must be adopted throughout its whole extent — The survey should therefore be made by ~~determining~~ adopting as the true Northern line of Castro the arroyo de los Tajolas from the Sierra to the sea — ~~His will therefore form the Southern boundary of Rodriguez — his~~ the Eastern boundary is the Sierra — Its Western boundary the sea, & its northern line will be seen by following up the Butano as far as it is delineated on the diseno which is supposed to be not far distant from the point where its course in ascending it deflects towards the South, and thence

If it should be found that the stream ~~[illegible]~~ discovered ~~[illegible]~~ the Tajolas ~~[illegible]~~ the Mexicans is to be adopted by the Court which it appears ~~[illegible]~~ necessary to be to the Sierra and the Southern boundary is to be complied by a drawing

in a straight line to the Sierra. If within these boundaries the quantity cannot be obtained it will be the not very unusual case of where the exterior boundaries contain less than the quantity supposed. If such should prove to be the fact it is no doubt due to the extraordinary and unaccountable circumstance that the Governor in this case appears to have granted twice the quantity of land solicited by the petitioners, delineated on his diseño and in respect to which alone all the informes and reports were given —

The survey herein directed will substantially assume the form of that adopted by the Surveyor General to be in accordance with the opinion of this Court heretofore rendered

The Surveyor General having made two plats since the opinion heretofore delivered and the same having been informally submitted for approval tho' not filed in the Clerks office, and the interested

11 parties having been informally heard in chambers the above is intended as a supplemental opinion for the guidance of the Surveyor General to be taken as a part, and explanatory of the opinion heretofore delivered. Any thing in or contained in the order heretofore made, supposed to be in conflict with the views herein expressed is to be taken as vacated and annulled.

No. 271.

The United States

v.

Manuel Rodriguez.

Opinion on Survey,
Supplemental to opinion of Mch 15/62.

Filed July 11th 1862,
W. H. Chever S.
Clerk

Jeremiah E. Whelan maketh oath, that, as the Deputy of the U. States Surveyor General, he made the third and last of the surveys of the Butano Rancho which have been made under orders of the Court in this cause — that in locating the Southern boundary of said Rancho, he followed up the Arroyo de los Frijoles, to the point where said Arroyo ceases to be represented as a boundary upon the Diseño of the said Rancho referred to in the order of said Court prescribing said survey — that from and immediately above said point said arroyo deflects so much to the South, that its general course is as near as may be parallel to the mountains and the ocean — that in pursuing upward from said point said arroyo very rapidly loses the appearance and ordinary characteristics of an Arroyo proper, and assumes, instead the condition of a cañada or broad open valley, and is known by the name of "Beans Hollow". that at the distance of two miles above said point said valley or cañada is a broad flat

meadow, nearly level, the middle of the same being actually near the ocean, then the larger part of said valley between this and the point aforesaid — that another "hollow" (exhibited upon said Diseño) similar in its general appearance, but smaller than the one last referred to extends in an Easterly direction from said Arroyo, near said point, and that from said hollows, said Arroyo must derive most of the surface water which goes to constitute it — that from and below said point, said Arroyo passes through a deep cañon between the precipitous sides of high hills, commencing with the sugar loaf mount, designated upon the Diseño as "cerito," and ending near the Ocean — that these whole watersheds should be most correctly described or designated, as a cañon, passing or changing into two cañadas, the more Southern and larger of which, gradually widens into a plain and thus loses its identity.

Affiant further states

that the said survey so made by him includes all the land claimed upon the said Disma, or embraced therein, with an addition thereto principally to the North of Butano creek to make up the quantity of one league — that the Eastern line of said survey has been carried as far Eastwardly as the Mountains will permit (said Mountains being the boundary in that direction) — that affiant located the crossing of the Butano required by said order, according to his best judgment in conformity with the requirement of said order — that by locating it higher up the stream, or attempting to complete the encompassment by a single straight line through the mountains, the tract would have been grossly lacking in symmetry and compactness, or wanting in quantity.

J. E. Whitcher

Sworn to and subscribed
before me this sixteenth
day of June A.D. 1862

Henry Dresselford
Notary Public

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U. States
vs
Manl Rodriguez
D. C. 271
Ld. C. 627

affidavit
of Dep. Surveyor

Filed July 17 1862.
W. H. Chevers,
Clerk

In the United States District Court.
Northern District of California.
No. 271.

The United States.
vs.
Manuel Rodriguez.

No. 271. L. C. 627.
"Butano".

The official Survey in this case having been returned into Court on objections filed thereto pursuant to the act of Congress of June 14th 1860, said Survey having been disallowed by said Court and a new survey directed to be made of said Rancho, and said new Survey having been duly returned into Court by the Surveyor General. Exceptions were filed thereto, a new survey was directed to be made and returned to this Court, and the said Surveyor General being unadvised as to the true intent and meaning of the opinion and order of this Court respecting said second survey and ordering a third survey to be made, two plats were informally returned to this Court for its consideration and determination as to which thereof conformed to the opinion last aforesaid. The Court having Examined and considered the same, Counsel having been heard thereon.

It is now ordered adjudged and decreed that the Plat so informally returned as aforesaid. and marked and indorsed.

"Plat of the Rancho Butano, confirmed to Manuel Rodriguez. located by the U.S. Surveyor General. in accordance with the opinion of the U.S. District Court. dated, March 20 1862 containing one square League."-

And also marked and indorsed. "U.S. Surveyor Generals office.- San Francisco California. I certify this to be a correct plat of location. made by me. in accordance with the opinion of the U.S. District Court. of March 20 1862.

(Seal.). E. F. Beale. Sur. Gen.l. Cal.a."

is the correct and proper survey of the land granted and confirmed to claimant and that the same is in accordance with the true intent and meaning of the order and opinion of this Court. heretofore referred to.

It is further ordered that the Surveyor General, make a formal return of the said last mentioned Plat. with a certificate of his approval duly indorsed thereon. that the same may be confirmed and approved by the final decree

of this Court.

It is also ordered that a Copy of this order be served on the Surrogate General

Ogden Hoffman

Dist Judge

U. S. Marshal's Office
Northern Dist. of Cal.

I have served the within Order on E. F. Beale, Esq. U. S. Surveyor Genl. by delivering a certified copy thereof to Edw. Conway, Chief Clerk in his Office, on this the 31st day of July, 1862.

San Francisco, July 31st, 1862. } Wm Rabe, U. S. Marshal
By M R Grant, Deputy

No. 271.

In Ng. Dist Ct.

The United States
vs
Manuel Rodriguez.

Return of Order ~~[illegible]~~ Survey and for a new survey.

Filed July 31, 1862.
W. H. Chevers,
Clerk

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In the District Court of the United States for the Northern District of California. —

The United States	L. C. No 627.
v	D. C. No 271.
Manuel Rodriquez	

Be it remembered that at a regular term of the District Court of the United States for the Northern District of California held at the Court room in the City and County of San Francisco on the eleventh day of August AD 1862. Present Hon Ogden Hoffman Judge.

The United States Surveyor General for the State of California, having on the second day of August AD Eighteen hundred and Sixty two, returned to this Court a Plat and Survey certified and approved by him of the "Rancho Butano" confirmed to the claimant herein, and said Plat and Survey conforming to the opinions of this Court, and to the Orders of this Court filed, and entered herein on the thirty first day of July AD 1862, fixing and determining the boundaries and location of the said "Rancho Butano" —

It is now on Motion of the United States District Attorney and of the Counsel for the Intervenor, (the same being opposed by J. Clark Esq Counsel for Claimant) Ordered, adjudged, and decreed, that the Plat of Survey of the said Rancho Butano, filed herein in this Court, on the Second day of August instant, be and the same hereby is approved as a correct, and true location of the Lands finally confirmed to the claimant Manuel Rodriquez, and it is further Ordered adjudged and decreed that the said Plat of August 2 1862, marked

"Approved August 9th 1862. Ogden Hoffman Dist Judge"
be hereto attached as forming a part hereof for a more particu=
lar description of the Lands so as aforesaid located in accordance
with the act of Congress of June 14, AD 1862.

Ogden Hoffman
Dist Judge

No. 271. ND
627 Bd

U. S. District Court.

The United States.

— vs. —

Manuel Rodriguez.

Decree approving Survey.

Filed August 11th 1862.
W. H. Chevers.
Clerk

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Wednesday the Twentieth day of August, in the year of our Lord one thousand eight hundred and sixty-two,

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,
v.
Manuel Rodriguez,

D.C. 271,
L.C. 627,

This cause having come on to be heard on objections filed to the Survey, and location, by the Surveyor General of the U. S. for California, of the land heretofore confirmed to the Claimants pursuant to the provisions of the Act of Congress approved June 14, 1860, and the said survey, and location having been disapproved by the Court, and a new survey ordered, which has accordingly been made, and by the final decree of this Court, made and entered at the present Term, to wit, on the 11th day of August, 1862, approved, and adopted, now on motion of Mr Jeremiah Clarke, Counsel for the Claimant, it is ordered by the Court, that upon the said Claimant filing Security for costs of appeal in the Sum of Two hundred, and fifty dollars, ($250), an appeal in his behalf from the final decision of this Court be granted to the Supreme Court of the U. S. and that a certified transcript of the pleadings, evidence, depositions,

32

No. 271.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

Manuel Rodriguez.

Order granting appeal in behalf of claimant on giving security for costs in $250.

Filed August 20. 1862

W. H. Chever,

Clerk.

271 ND

PAGE 169

and proceedings in the said cause, be sent to said Supreme Court without delay.

District Court of the United States.
Northern District of California.

Manuel Rodriguez,
vs. Appellant. D.C. 271.
The United States. L.C. 627.
Appellee.

Know all men by these Presents that McJeremiah Clarke, Thomas F. Potter, Jr., and William H. Carlson, of the State of California are held, and firmly bound to the above named United States in the Sum of Two Hundred, and Fifty dollars to be paid to the said United States, for the payment of which well, and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators jointly, and Severally by these presents,

Sealed with our Seals, and dated the 19th day of September, A. D. 1862.

Whereas the above named Appellant has prosecuted an Appeal to the Supreme Court of the United States at the City of Washington, in the District of Columbia, to Reverse

the decree rendered in the above cause by the District Court of the United States for the Northern District of California.

Now therefore, the condition of this obligation is such, that if the above named Appellant shall prosecute his appeal to effect, and answer all damages, and costs, if he fail to make his appeal good, then this obligation shall be void, otherwise to remain in full force, and virtue.

Signed, Sealed, and delivered in presence of
W. D. Chever

Jeremiah Clarke
Thos F. Potter Jr
Wm H Leulon

United States of America,
Northern District of California. } S. S.

Jeremiah Clarke, Thomas F. Potter, Jr., and William D. Chever parties to the above bond being duly sworn, deposes and says, each for himself that he is worth the sum of five Hundred Dollars, over, and above

Sworn to, and

Jeremiah Clarke

of one hundred dollars, over and above

his just debts and liabilities.

Sworn to, and subscribed this 19th September 1862, before me.

W. H. Chevers.
U. S. Commissioner.

Jeremiah Clarke
Thos L Potts
Wm H Lenow

Approved
Oliver Hoffman
Alex P Fridge

No. 271.

U. S. District Court.

Manuel Rodriguez,
Appellant,
v.
The United States,
Appellee.

Appeal Bond.

Filed September 19. 1862.
W. H. Chevers,
Clerk.

District Court of the United States
for the Northern District of California

The United States vs Manuel Rodriguez	No 271, D. C. No. 627, L. C. "Butano".

It is hereby stipulated and agreed that the stipulation heretofore filed in this cause, signed by Crockett & Cutteneau as attorneys for Isaac Graham, and J. Black as attorney for Claimant, shall be amended as follows, viz, In lieu of "The Record in this Court in the case of The United States vs Juan Gonzalez", shall be inserted "The Grant, decree, Decree of confirmation, Mandate from the United States Supreme Court plat of survey, and final decree approving the same, contained in the Record in this Court, in the case of the United States vs Juan Gonzalez".

In lieu of "The Record in this Court in the case of The United

States vs Maria Antonio Pico et al's" and what follows, down to and including "said Records shall be considered as properly in evidence in this case", shall be inserted "the Grant decree, final decree of confirmation in the Record in this Court in the case of the United States vs Maria Antonio Pico et als, No 76 D.C. No 315 L.C. and the final survey made by the United States Surveyor General, pursuant to said final decree: and it is admitted that a Patent was issued, upon said final decree and survey and in conformity thereto on the 3d day of December 1857 by the Government of the United States to the heirs of Simeon Castro, and that said Survey and patent include all the land embraced in the survey, filed herein Nov 27. 1860, of the tract called Butano, confirmed herein to Manuel Rodriguez."

Crockett Centander
Atty. for Isaac Graham
J. Clarke & Clements
Attys and for Guardy
and L. Lohman

U. S. Dist. Court
No 271 D. C.
" 627 L. C.

The U. States
vs
Manuel Rodriguez

Stipulation
that portions of certain records may be used in evidence in this cause.

Filed Sept. 30, 1862.
W. H. Chevers
Clerk

Fourth Seal two Reales.

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Departament of the Californias for the years 1844. and 1845.

Michelorena Pablo de la Guerra

S. S

We certify, that it is of public notoriety in the Villa of Branciforte, that the land named "Punta de Año Nuevo", has for one year and a half, more or less, belonged to the heirs of Simeon Castro: that Eugenio Soto went to settle (fundar) the same, on account of, and with the consent of Don Manuel Castro, who also has cattle and horses of his brand on said land; and that said land has been respected by the community as the legal property of said heirs.

In witness whereof we give this at their request, in Monterey on the 20th of March 1844.

Francº Soria

George ~~Campbell~~ Chapell,
Salvador W Lugues Apolonario Lorenzana
Robert King, Bentura Hernandez
Jose Bolcoff

Manuel Rodriguez, first Alcalde of the Jurisdiction of Branciforte Certifies; that ~~the foregoing document~~ what is set forth in the foregoing document, is notoriously public in the neighborhood of said Villa, since it is true, and manifest to me, that the land mentioned, is the property of ~~said~~ heirs of the said Simeon Castro, and that the same is occupied and ~~is not vacant~~ has not been vacant for more than a year, but for that time, has been occupied by improvements, cattle and horses; And for the use of the interested Parties, I give this at their request in Monterey on the 21st of March 1844.

Manl. Rodriguez.

271

U. S. Dist. Court

The United States
vs
Manl. Rodriguez

Exhibit A. P. C.

Filed Feby 6. 1861
M. H. Chaves
clerk

Translation

No. 271

U.S. Dist. Court

The U. States
v
Manuel Rodriguez

Translation of
"Exhibit A.P.C."

Filed Oct. 7. 1862

Clerk

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Wednesday the Ninth day of November in the year of our Lord one thousand eight hundred and sixty-four.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v.
Manuel Rodriguez

No. 271.

And now at this day comes Delos Lake, Esq. U. S. Attorney, and presents the mandate of the Supreme Court of the United States herein, whereupon it is Ordered, that said mandate be filed and made part of the records of the court, and that such further proceedings be had as are directed by said mandate.

Ogden Hoffman
Dist Judge

No. 271.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

Manuel Rodriguez,

Order to file Mandate U. S. Supreme Court.

Filed Nov. 9 1864

W. H. Chevers,

Clerk.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the District Court of the United States, for the Northern District of California

Greeting:

Whereas, lately, in the District Court of the United States, for the Northern District of California before you, in a cause between The United States appellants and Manuel Rodriguez appellees the decree of the said District Court was in the following words viz:—

Ordered, adjudged, and decreed, that the plat of survey of the said Rancho Butano, filed herein, and in this court, on the second day of August instant, be, and the same is hereby, approved as a correct and true location of lands finally confirmed to the claimant, Manuel Rodriguez. And it is further ordered, adjudged, and decreed, that said plat of August 2d 1862, marked "Approved August 9, 1862, Ogden Hoffman, dist: judge," be hereto attached, as forming a part hereof, for a more particular description of the lands so far as aforesaid located, in accordance with the act of Congress of June 14, A. D. 1862.

as by the inspection of the transcript of the record _____

_____ of the said District

Court, which was brought into the Supreme Court of the United States, by virtue of an appeal

agreeably to the act of Congress, _____

_____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and Sixty three the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: **On consideration whereof,** it is now here ordered adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby affirmed.

18 April

You, therefore, are hereby commanded that such further proceedings be had in said cause,

as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding:

Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and Sixty three

COSTS OF
Clerk..... $
Attorney... $

$

~~Taxed by~~

Leo. Middleton

Clerk of the Supreme Court of the United States.

No 271.

No. 175 December Term, 1863.

MANDATE

SUPREME COURT UNITED STATES.

Rodriguez vs U. States

Filed Nov. 9. 1864.
W. H. Clerke
Clerk

271 ND
PAGE 179-E

My dear Judge,

Will you oblige me with permission to withdraw, for revision, the letter accompanying the return of the "Portland"

Very truly
Your Obt Svt
E. F. Beale,

San Francisco
Dec 7th '61

Rec'd of Mr Chevers
the Survey & Report in
the case of U. S vs
Manuel Rodrigues
J Parsons

U. S.
vs
Manuel Rodriguez

Exceptions to confirmation of survey.

Patterson —
Reads report of Surveyor General
The tract is located on the opposite side of the Bulano Creek from the tract on the Arroyo

"The original occupation by the Partidas — & his deed (p. 28 Trans.) show that the tract claimed was a tract bounded S by Rancho of Simeon Castro — North by Rancho of Gonzales W. by the sea & East by the Sierra"
This is the only tract to which the present claimant has shown any title — If the land granted be different then he has not applied for it and is out of Court
Testimony of Concho Perez & Esteudillo as to boundaries
N by Bulano — W by sea S by Simeon Castro & E by Sierra
Rodriguez (the claimants in this case) in Gonzales case

~~Notes of Testimony~~

Notes of Argument

District Court of the U. States
Northern District of California

The U. States
vs
Manl. Rodriguez

L. C. 627
D. C. 471

The District Attorney will please take notice that on Friday next (Oct 4th) at the opening of the Court, I shall move since Court for a final order directing directing a new Survey, and prescribing the manner thereof, in the above entitled cause.

Respectfully

Oct. 1st 1861

J. Calvo
Atty. for Plaintiff

U. S. Dist. Court

No. 271
L. C. 427

The U. States
vs
Manuel Rodriguez

Notice of
motion

A. B. C.

271 ND
PAGE 184

At a Stated Term of the District Court of the United States of America for the Northern District of California, held at the Court Room in the City of San Francisco on Wednesday the 19th day of November A. D. 1856.

Present.

Hon: Ogden Hoffman, Dist: Judge.

The United States. — D. C. 271.
— vs — L. C. 627.
Manuel Rodriguez.

This cause came on to be heard on appeal from the decision of the Board of Commissioners to ascertain and settle Private Land Claims in the State of California under the Act of Congress approved March 3d. 1851 upon the transcript of the proceedings, and decision of said Board, and the papers, and evidence on which said decision was founded, and it appearing to the Court that the said transcript has been duly filed according to law, and the cause having come regularly to a hearing, it is by the Court here ordered, adjudged, and decreed, that the said decision be, and the same is in all things affirmed

and it is likewise ordered, adjudged, and decreed that the Claim of the Appellee is a good, and valid claim, and that the same be, and is hereby confirmed.

The land of which confirmation is hereby made is situated in the County of Santa Cruz, being the same which was granted to Romana Sanchez in 1844, and held, and occupied by her until she sold to the present Claimant in 1852. It is known by the name of "Butano," and is bounded as follows: By the Rancho of the heirs of the deceased Simeon Castro, by the Pomaria, and by the Sea, containing one square league, for a more particular description, reference to be had to the Copy of the original Chart, and Map contained in the Expedients in the Archives in the custody of the United States Surveyor General for California, a traced copy of which was filed among the papers in the case before said Board.

Ogden Hoffman.
N. S. Dist. Judge.

Endorsed,
Filed November 19, 1856.
John A. Morrow, Clerk,
By W. H. Chevers, Deputy.

At a Called Term of the District Court of the

By W. H. Chevers, Depty.

At a Called Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Upper Room in the City of SAN FRANCISCO, on Friday the 12th day of June in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
—as—
Manuel Rodriguez.

D. C. 271. L. C. 627.

The Attorney General of the United States having given Notice to dismiss the Appeal in this case, and a Stipulation to that effect having been entered into by the District Attorney. On Motion of the District Attorney, it is ordered, adjudged, and decreed that Claimant have leave to proceed under the Decree of this Court heretofore rendered in his favor as under Final Decree.

Ogden Hoffman,
U. S. Dist. Judge.

Endorsed,
Filed June 12th. 1857.
John A. Monroe, Clerk
By W. H. Chevers, Deputy Clerk

I John A. Monroe, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the Writings annexed to this Certificate are full, true, and correct copies of their respective originals now on file, and remaining of record in my Office.

United States District Court, Northern District of California.

The United States,

vs.

Manuel Rodriguez.

Certificate of Decree, and Order vacating Appeal.

Filed 185

CLERK.

DEPUTY.

I, Thomas Brennan, Attorney of the United States for the Northern District of California, do hereby certify that the annexed and foregoing is a true copy of the decree and order in the above entitled cause, as the same appears of record in my office.

Given under my hand this 3 day of April, A.D. 1857.

Thos. H. Brennan
U. S. Attorney, Northern Dist. of Cal.

District Court of the U. States
Northern District of California

Manuel Rodrigues
vs
The United States

No 271
Com's Docket
No 627

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Sup. Court of the United States

No 271

Manuel Rodriguez

vs

The United States

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6 ~~Decd. order " " "~~

7 ~~Mandate~~ Mandate

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9 ~~Mandate~~ Mandate ~~order to return~~ ✗

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In the United States District Court of the Northern District of California

The United States
vs
Manuel Rodriguez

In the Matter of the Survey of the Rancho "Butano."

This case comes up on motion of claimants for a confirmation of the second or re-survey of the Rancho "Butano." I shall contend that the survey is not in accordance with the title papers, nor the Decree of Confirmation, nor with the Order of this Court, directing a re-survey; and that the Plat first returned to this Court showes the true location of the Butano Grant and ought to be confirmed. In passing I will be permitted to suggest that when the case was heard on the first survey the question as to what is the Northern Boundary of the Butano was slightly investigated, the controversy at that time really being between the Butano and the Rancho Punta del Año

Nuevo" and that hence the Court consistently with its own dignity, may consider the case de novo

The United States is interested in this way- the Rancho Gonzales or El Pescadero according to my judgment in its out boundaries embraces about four leagues of land, and that its Southern Boundary was the Arroyo del Butano, in its entire length, the Grant in that case has been limited to three quarters of a league and located, thus leaving to the United States upwards of three leagues, or the surplus.

The Gonzales Grant is older than its colindantes lying to the Southward, that have any relations to this controversy. Hence the determination of its Southern Boundary must fix the Northern boundary of the Butano, or at least establish a line which the Butano cannot pass.

The deseño in the Gonzales case, is entitled to great weight in determining its Southern boundary

The Gonzales petition is dated Nov 26" 1833 and in direct terms does not call for the Arroyo del Butano. But the Petitioner does state that his petition is accompanied by a paper delineating the land sought. On the Deseño the words "Arroyo del Butano" are laid down.

On the 17th Decbr 1833 Govr Figueroa makes a "vista la peticion" in which the boundaries are defined to be "by the Rancho of Antonio Buelna, the Sierra, the Coast, the arroyo del Butano subject the conditions &c".

Decr 24" 1833 the Govr made a Grant to Gonzales and therein bounded the Rancho by the Rancho of Antonio Buelna, the Sierra, the Coast and the Arroyo del Butano

In both of these papers it will be observed, that the Govr designated the Arroyo del Butano, as one of the boundaries. This of course, he could have done only by taking it from the Deseño, for we have seen that Gon-

zales did not expressly use the name of this Creek in his petition

The Decree of Confirmation gives the same calls, and the Supreme Court says that the three fourths of a league, one to be surveyed within the out boundary represented on the deseño.

Under this, and other decisions of this Court Gonzales would have been entitled to locate the quantity confirmed any where within the out boundaries of the Deseño, and might have taken the Butano Creek in its entire length for one boundary, running Northward therefrom only for quantity: thereby leaving the surplus to the United States, entirely at the North of the location instead of at the East as at present. Had Gonzales made this selection instead of the one confirmed to him, the Claimants of the Butano, would not have set on foot this controversy.

Again, I have read with care the Opinion of this Court on the Survey in the Gonzales case and think that the Tendency of the argu-

ment therein is to show that the Butano Creek is the Southern boundary of the Gonzales grant

The Claimants of the Butano, intervened in that case and they should now be estopped and in law are estopped from disputing the line then determined. They raised the issue then for the purpose of making room for the Butano. This Court adjudicated in effect that they could not cross the Butano.

But it may be urged that the Pescadero is now located, and that the Butano may cross to the Northward of the Arroyo of that name, without interference with the rights of Gonzales. This is true, but not without interference with the rights of the United States. However that is not the real question, but it comes up thus: Can can a colindante follow a retreating line? If the surplus of El Pescadero was cut off on the South does that give the right to the Butano to travel Northward until it abuts.

It seems to me clearly not, un-

lefs the colindante who wants to move up, has a Sobrante grant which is not the case here, as I will endeavor to show before concluding

When two grants edge in and are not separated by a natural boundary perhaps the second in location may follow up a floating line. But I know of no case where this Court has held that if Grant A falls back from a natural well defined boundary, between it and Grant B that B may pass the boundary and still abut upon A. Yet this is what is contended for in this case; Even worse; for in making the re-survey, no half way work has been done, the Claimants having gone entirely to the Northward of the Arroyo del Butano, and taken it for their Southern instead of their Northern boundary.

I now ask the attention of the Court to the Record in this, the Butano case. In 1838 five years after the grant to Gonzales, Alvarado made a provisional Grant of "the tract of

"land known by the name of Britano, "as is shown in the respective Expediente"

The Provisional Grant seems to have been upon a petition (without date) which says that the land sought is "exhibited on the adjoined sketch"

In 1844 a petition was presented as follows:

"That since the year 1838 we have been possessed of the location known by the name of Butano as is shown in the adjoined provisional document which was made out by Gov Alvarado, who from that time adjudicated us the mentioned land" wherefore I ask and pray in the name of my mother to grant me an ratification of the respective title in order &c

In the Grant I find the following

"Whereas Ramona Sanchez has solicited for her personal benefit +++ the ratification of her provisional title given to her from the year 1838 to the tract of land called Butano +++ I have concluded to grant her the

mentioned land. xxx

The deseño most unmistakably defines the boundaries of the Butano grant. It clearly lays down the Butano Creek as the Northern boundary

This deseño went with the first petition and was acted upon by Gov Alvarado. The name of Butano applied to a particular District of land, defined by the deseño. In the second petition the one of 1844 - reference is made to the provisional title, and the grant of Micheltorino, makes reference thereto, and is in ratification thereof

"This map or Survey is thus made a part of the patent for the purpose of description" It is that which the deseño attached to the Expediente Expresses. There is no evidence whatever tending to show that with the assistance of this map a Surveyor would find any difficulty in locating it according to its calls" United States vs Sutherland 19 How 365 - 6.

These latter proceedings are entirely based upon the proceedings of 1838 and merely a completing there

of. Nothing more was sought by the Applicant and nothing more conceded. If language means anything this is the proper construction of these papers

In addition to this plain construction of the original papers we have the Claimants own interpretation of his rights. When this case was before the Land Commission the Claimants introduced as a witness Cornelius Perez, who testified that he had been acquainted with the boundaries of this grant some seventeen years, that he knew the deceased Jose Antonio Golinda, and that he never heard of their being disputed by the neighbors This witness says "I know the boundaries, on the North the Arroyo del Butano is the boundary - on the East the "Canada del Frijol" on the South and west by the sea - and there is also another Canada on the East which has no name, through which, the road from Santa Cruz to San Francisco passes."

Another witness in the Land Commission, introduced by Claimant

says, that he has known the place since 1842 that it is, of an irregular oval form, wider at one end than the other. It is a little more than a league in length and less than a league wide, the widest part is about 2000 varas.

This evidence introduced by the claimants ought to operate as an estoppel, not on the ground that it is evidence of a selection or location, but because, it is the evidence of what land was sought in the petition.

Because it was the land actually occupied and claimed by the Grantee for seventeen years prior to 1854 the time when these depositions were taken, because it gives certainty and identification to the tract called Butano, because it is the claimants own particular & practical interpretation of the lands covered by the deseno, and the provisional and final grants; Besides the claimant contended himself with the Decree of the Land Commrs which says that the Arroyo del Butano is the Northern boundary of the tract. This alone ought to be sufficient to

und the Claimants - They made no objection to it. They did not appeal nor did they while the case was pending in this Court on the appeal of the United States introduce any evidence evincing dissatisfaction with the Decree of Confirmation.

It would indeed present a novel case, if a Claimant was to be allowed to locate upon a tract of land that he never asked for, never occupied or had confirmed to him, while, for twenty five years he had been pursuing title to, and holding occupation of, an entirely different tract.

The only merit in this survey that I can discover is that it lies adjacent to the lands granted and confirmed

The complications growing out of the controversy, between the Butano and the Punta del Año Nuevo, cannot properly be brought into this case, the fact that ~~the~~ a patent has been issued to Graham, covering the Butano furnishes no excuse for floating the Butano out of its place, and into a District belonging

to the United States; these claimants must settle their disputes in some other way.

Therefore I ask that the second survey may be rejected, and the first confirmed

Wm H. Sharp.
U. S. Atty.

In U. S. District Court.

No 271

The United States

vs

Manuel Rodriguez

Brief

W. H. Sharp

United States
vs
Manuel Rodriguez } "Butano"

Clark Objections to survey by claimants.

Land granted to Sanchez sold by him to present claimant.

Crittenden The survey lies wholly within a tract surveyed & patented to Heirs of Simon Castro —
There are 4 grants lying on the Ocean the oldest is that of Gonzales made in 1833
It describes the land by reference to natural objects) bounded by "the rancho of Ant. Buchna — the "sierra, the coast and the arroyo "de Butano" — the 3d condition says quantity is "1 league in length by "3/4 of a league in breadth" as shown by the map —
There can be no doubt as to what was intended as the southern boundary of Gonzales — whenever the same

was subsequently referred to other grants.

Subsequently Romano Sanches petitioned for land 1 league in length by one half in width.

The only description is found on the diseño —

It shows the northern boundary to be the Butano creek and the land of Juan Gonzales

February 19. 1838 the land was granted provisionally by Alvarado (p 26 trans) —

19 Dec. 1838 decree of Concepcion

March 16. 1839 order for a report

March 20 report of José Castro

Nov 13 1844 Gomez reports that

p 25 there is no objection to making the grant — the grantee having for boundaries the lands of the Heirs of the dec'd Simon Castro —

The title issued accordingly

27 and the land is granted bordering on the Rancho of the dec'd Simon Castro the Sierra & the sea

containing one square league.

The Heirs of Castro are represented in Court in the case of Maria Antonio Rico et als vs U. S.

p. 26 The petition of Castro dated 3. April 1842 states that he solicited Punta del Año Nuevo in 1839.—
Solicits land from boundaries of Hilario Bulna to those of Gonzales 4 leagues in longitude & 1 in latitude. from sierra to the Sea
p. 29 Decree of Concession recites same boundaries— Grant contains same description.

~~Los~~
Sebastian Rodriguez — vs U. S.
The grant in this case was to Bernal — He exchanged with José Jesus Rico & the latter ~~surrendered~~ exchanged with Castro & Simon Castro petitioned for Rico's land & the Punta del Año Nuevo and got both under the latter name

4

Certificate of claimants in this case that Punta del Año Nuevo belonged to Castro

This is not denied —

271

M. R.
vs
Rodriguez.

Notes Argument.

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims in the State of California.

San Francisco, Aug. 10th 1855

J. A. Monroe Esq.
Clerk of the U. S. District Court for the
Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 627 on the Docket of the said Board, wherein Manuel Rodriguez is —— the Claimant against the United States, for the place known by the name of "Butano" ——

and request your receipt for the same.

I am, Respectfully,
Your Ob't Servant,

Geo: Fisher.