CASE NO.
275
NORTHERN DISTRICT

SAN ANTONIO GRANT

ENCARNACION MESA et, al.

CLAIMANT:

LAND CASE 275 ND PAGES 199

267

Duplicate

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 269

Encarnacion Mesa, et, al, CLAIMANTS

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"San Antonio"

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* Eleventh day of June, *Anno Domini One Thousand Eight Hundred and Fifty=* two, *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 Encarnacion Mesa et al; *for the Place named* "San Antonio" *was presented, and ordered to be filed and docketed with No.* 269 *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 17 1853.

In Case no. 269, Encarnacion Mesa et al for the place named "San Antonio", the deposition of Antonio Maria Pico, a witness in behalf of the claimants, taken before Commissioner Thompson Campbell, with documents marked "F. C. Nos. 1 & 2" annexed thereto, was filed;

(Vide page 5 of this Transcript)

San Francisco, April 5th 1854.

In the same Case the deposition of William T. Lewis, a witness in behalf of the claimants, taken before Commissioner Peter Sott, with a map marked Exhibit No. 1. A. P. S. annexed thereto, was filed;

(Vide page 8 of this Transcript.)

San Francisco, November 28 1854.

Case no. 269 was ordered to be placed at the foot of the 3rd class Cases on the Trial Docket.

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San Francisco December 19' 1854.

Case no. 269 was submitted under the Rule of March 21st 1854.

San Francisco December 30' 1854.

In the same case the Counsel for the Claimants filed the following Stipulation, to wit:

(Vide page 46 of this Transcript)

San Francisco January 30' 1855.

In the same case Commissioner R. Aug. Thompson delivered the Opinion of the Board confirming the claim:

(Vide page 48 of this Transcript.)

And the following order was made, to wit:

(Vide page 57 of this Transcript)

A.

The United States for the confirmation of
California Land Claims.

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Petition

To the Honorable the Commissioners of the United States for the adjudication of California land claims.

The petition of Encarnacion Mesa Antonio Mesa Martin Mesa Francisca Mesa Ramon Mesa Cristino Mesa and Secundro Mesa respectfully shows and gives notice. That your petitioners are citizens of the State of California and are the present claimants of the tract of land situated in the County of Santa Clara in said State known by the name of San Antonio bounding on the creek of San Jose Capertino on the East with the Mocher Mountain of Santa Cruz by the west with the low hills and to the North with the creek of Matadero containing one Square leagues more or less

That your petitioners are the only surviving heirs at law of Pedro Mesa their father a native born citizen of Upper California who was the original grantee of said tract of land and from whom your petitioners derive their claim by descent.

That said tract of land was granted to the said Pedro Mesa in his life time to wit on the twenty fourth day of March One Thousand Eight hundred and thirty nine by Juan B Alvarado then Constitutional Governor of the Departments of the Californias who was at the time of making said grant duly authorized and empowered by law to make said grant in the name and on behalf of the Mexican Nation -

That after the making of said grant the original thereof was wholly in the possession of the said Pedro Mesa the grantee thereof lost, and your petitioners

therefore & believe and refer to a certified copy of said grant which copy is dated the Twentieth day of October One thousand Eight hundred and forty three signed by Manuel Jimeno then Secretary of the Department of the California herewith filed marked "F" with a translation thereof marked "B" and made part hereof.

That after the making of said grant to wit on the twelfth day of October One Thousand Eight Hundred and forty three the said grant was confirmed and recognized by the Assembly of the Department of the California as appears by the original certificate thereof which said certificate marked C with a translation thereof marked "D" are each herewith filed and made a part hereof.

That at the time of the making of said grant the boundaries of the tract named therein were defined by a rough map which is herewith filed marked "E" and that said tract of land has never been surveyed by the Surveyor General of the United States for the State of California.

That Judicial possession of the said tract of land was given to the said Prado Rosa the original grantee with the formalities and legislations of law and that the said Prado Rosa occupied and improved the said tract of land as required by law.

That long after the said grant recognition, Judicial possession and occupation and improvement aforesaid the said Prado Rosa the Father of your petitioners departed this life intestate and left your petitioners his only surviving heirs at law, who have occupied said tract of land since the death of their said Ancestor

That there is no interfering claim

That there is no intervening Claim

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to said tract of land so far as your Petitioners know or have heard.

Your Petitioners only rely upon the documentary Evidence herein filed and Exhibited upon the papers now in the archives of the former Government of California and upon such other Evidence as they may hereafter produce.

And Your petitioners reserving to themselves the right to amend this petition hereafter as may appear necessary pray that the said grant with the Claim of Your petitioners thereupon may be speedily examined adjudicated and confirmed to them and as in duty bound they will ever pray -

Burnett Wallace & Rylund
Attorneys for Petitioners -

Filed in Office June 11, 1852
(Signed) Geo Fisher Secy

Deposition of Anto Maria Pico.

San Francisco Nov 16 1853

On this day before Wm Thompson Campbell Came "Antonio Maria Pico" a witness on behalf of Claimants Encarnacion Prisa et al No 364 and was duly sworn his Evidence being given in Spanish it was translated by the Secretary as follows.

What is your Name age and place of residence?

My Name is Antonio Maria Pico - I am forty two years of age and I reside in San José -

Were you acquainted with Prado Prisa

and if so how long did you know him and when did he die -

I have known him since my boyhood we were raised boys together - I do not recollect the precise time when he died - He lived in the Mission of Santa Clara but he died in the town of San Jose' I have known his rancho It is near the Mission of Santa Clara within three or four leagues of it. The rancho was called San Antonio -

State what facts you know in relation to the occupation and improvements of the rancho called San Antonio by Pedro Chusa.

He built a house on the land and lived in it with his family. He was an Officer Stationed at the Mission of Santa Clara but his family dwelt on the Rancho in the house which he built. his official station prevented him from living on the Rancho with his family, but he went there as often as his official duties would allow. He had corrals and fences. Cattle and horses and some sheep on the rancho and cultivated part of the land.

He settled upon and made improvements immediately after he received the Grant from the government dont recollect the date. He went upon the Rancho about one week after he received the grant.

The house was built and finished within a year from the date of the grant and his family moved into it immediately after it was finished -

What family did he have?

as his wife and children he had.

What family did he have?

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I have known two sons and three daughters his wife died before he died.

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Look at the paper now shown you and marked T C. No 1 annexed to this deposition and state whether the signatures of Manuel Jimino, Jose Abrigo & Jacinto Rodriguez are their genuine signatures - Also look on the paper marked T C. No 2 annexed to this deposition and state whether the signatures of Manuel Buchuteneua and Manuel Jimino where they appear on said paper are their genuine signatures and state your means of knowledge of all the signatures mentioned in this question -

I am acquainted with the handwriting of all the persons whose names are mentioned in the foregoing question and which now appear on the papers now shown me having had official and private correspondence with them - I know all the signatures to be genuine -

A. Forcade Law Agt Present -
Antonio Ma Pico.

Sworn to & Subscribed before me this 14th day of Nov AD 1853
Thompson Campbell
Com.

Filed in Office Nov 14. 1853
(Signed) Geo Fisher Secy

Deposition of W. S. Lewis.

United States of America }
State of California } ss

San Francisco April 5, 1854.

This day personally came before Peter Lott a Commissioner for taking Testimony to be used before the Board of U. S. Land Commissioners in said State William S Lewis a witness on behalf of the Claimants in Case No 269 on the docket of said Board in which Encarnacion Busa et al. are Claimants and the said William S Lewis being duly sworn on oath deposed in English as follows to wit.

The U S Law Agent is present.

Questions by P P Crittenden Attorney for Claimants.

1st Question –

What is your Name age and present place of residence?

Answer.

My Name is William S Lewis My age 42 years. My residence in Santa Clara County California –

2 Question –

Do you or not know the location of the Rancho of San Antonio and did you ever make a Survey of that Rancho. If you look at the Map now shown you Marked "Exhibit 1." accompanying the deposition of Wm S Lewis P L. and state whether that is an accurate delineation of the boundaries of said Rancho and in what way you made that Survey – if made by you?

The Law Agent objects to the introduction of this Map because it was not made by authority of law.

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Answer.

I do know the Rancho of San Antonio I made a Survey of it in March 1851, The survey was made by me as County Surveyor of Santa Clara County under an order of the Probate Court of that County, the Title papers were put into my hands

The paper marked "A" "C. No 1" and paper marked "C Map" book filed in this case.

I made the Survey according to the calls and description in the Title papers.

The Title calls on one side for the arroyo de San Jose' Capurtino that is on the East or on the South East Bounds property. The words in the title are as follows. "bordering on the creek of San Jose' Capurtino on the East with the Brushy Mountain of Santa Cruz by the west with the low Hills and to the North with creek of Matadero". These are the words taken from the Translation of the title filed in this case.

I used the original Spanish document in making my Survey – I surveyed a line from the Capurtino to the Matadero following the base of the Main Mountain of Santa Cruz for the boundary on the side of the Mountain –

I then followed the Matadero to the base of the low hills thence along the base of the low hills to the Capurtino thence up the Capurtino to the place of beginning –

This is a correct map of the Survey made – I believe it to be a correct delineation of the boundaries of the Rancho

The amount of land embraced in the Survey is one league and eighty two

hundredths of a league or 4894 acres. Estimating 4340 acres to a league.

3d Question –

Are the Sierra Madre or Rocky Mountains of Santa Cruz, the Low Hills, the Arroyo de San José Cupertino and the Arroyo Matadero well known natural objects and their locations and form of general notoriety, so that you could without difficulty find and ascertain the boundaries by these land marks as mentioned in the grant? –

Answer.

They are all well known objects there is no difficulty in assigning them. that is the low hills, the base of the Main Range Mountain might be determined somewhat differently by different persons –

There is no difficulty whatever in following the two Arroyo's according to my Judgment the line I run was the real base of the Main Mountain –

In running round some of the Spurs a slight difference of opinion might occur among Surveyors but very small if any. any such difference would not materially affect the general course of the lines or the amount of land embraced within them –

10th Question –

Where do the Arroyo Cupertino and the Arroyo de Matadero head and what is their general direction? –

Answer –

They both head in the Sierra Madre de Santa Cruz or Santa Cruz Mountains and their general course is

Mountains and this general course is

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Northwardly -

Cross Examined by the U S Law Agent

1 Question -

How long have you been acquainted with this Rancho -

Answer.

Since the year 1830.

2d Question -

Who assisted you in the Survey which you made?

Answer.

The Chain men and Axe Men Leonard Frost ~~~~ Prior ~~~~ Stump and ~~~~ Hames. I believe these are all.

3d Question -

What marks guided you in marking your Starting point in making the Survey?

Answer.

I commenced where the Arroyo Capistrano issues from the Mountain Sierra Madre de Santa Cruz, because the grant makes those two objects two of the boundaries of the Rancho.

4th Question -

Why did you select the base instead of the top of the Sierra for your line?

Answer -

Because I did not suppose the grant intended to call for the top -

5th Question -

Why was not that first line drawn to represent the base of the Mountains with their Curves and Sinuosities?

Answer -

It was then to follow the General

direction of the Base of the Mountains –
6th Question –
What is about the distance from the line you run to the Summit of the Mountains?
Answer.
I do not know I was never at the Summit. tho it is probably 7 or 8 Miles –
7th Question –
Does the line you run marked "S 50° 22' W Ch 25.91" present accurately the foot of that Mountain?
Answer –
I believe it does.
8th Question –
Why does the line run by you at the foot instead of the Summit of the Low hills on the North side of the Survey?
Answer.
Because I believed that was the intention of the grant –
9th Question –
Describe those low hills? –
Answer.
The land comprised within the Survey is made up of rolling hills irregular in their form and intersected by streams higher towards the Sierra de Santa Cruz and lower near the North line of the Survey The Low hills to their extent East and west are Embraced in the Survey –
10th Question –
Does the North line of this Survey by you, accurately describe the Natural line of the Base of the Foot Hills?

line of the base of the Foot Hills?

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Answer.

It represents the general direction of the base of the Low Hills, but does not run through the sinuosities of the base of the hills. The line is not drawn in the plain but close along the base of the hills, occasionally the spurs of the hills cross the line as also on the other hand nooks of the low land cross the line inward by on the survey.

Re Examined by Counsel for Claimants.

Question.

Is the base of the Low hills a well defined natural line, or one easily ascertained by a Surveyor?

Answer.

Yes it is, the hills rise at an angle of from 10 to 30 degrees, and their base is distinctly marked.

Wm J Lewis.

Subscribed and Sworn to before me on this 5th day of April AD 1854.

Peter Lott Commissioner &c

Filed in Office April 5, 1854.
Signed,
Geo Fisher
Secy.

Deposition of Thomas E Cornish taken in Case No 706 and made by Stipulation part of this Transcript

Office of the Board of Commissioners &c&c.

This day before Com Alphens Peck came Thomas E Cornish a witness in behalf of Claimants Wm A Dana et al No 706 who after being duly sworn deposed as follows.

Questions by Mr Norton Attorney for the Claimants

1 Question -

What are your name age and place of residence?

Answer -

My name is Thomas E Cornish my age twenty nine years and I reside in San Francisco California -

2 Question -

What is your present occupation -

Answer -

I am clerk in the office of the United States Surveyor General for California and as such clerk have charge of the archives of the former Spanish and Mexican Government in California -

3 Question -

Is the Expediente now here produced by you marked "Expediente Promovido por el Alferez Prado Sobrino el parage Nom Grado San Antonio - 136" a part of said archives?

Answer -

It is a part of the said archives and is one of those embraced in the class of Completed Expedientes -

4 Question -

Please look on the Expediente or

tracing paper now presented marked "A" and also marked "Exhibit No 1 with the initials "A J." and annexed to this deposition and state whether the same is a fac simile copy of said original Expediente and made in the Office of the late Surveyor General of California -

Answer -

I have examined the document It is a true fac simile copy of the original Expediente above mentioned and was made in the Office of said Surveyor General.

Thos E Cornshed.

Mr Crenshaw Associate Law Agent was present at the taking of this deposition but propounded no interrogatories to the witness -

Subscribed and Sworn to before me at San Francisco this thirteenth day of October A D 1853.

Alpheus Felch
Commissioner

Filed in Office Oct 13 1853.
(Signed)
Geo Fisher Secy.

Deposition of Pedro Mesa taken in Case No 706 & by stipulation made a part of this Case -

United States Land Commission
San Francisco Jan 14, 1854.

On this day before Commissioners R. Aug Thompson came Pedro Mesa a witness in behalf of Claimants A Vana et al Case No 706 who after being duly sworn deposed as follows his Evidence being interpreted by the Secretary.

Present Claimants Atty & W S Aspt Law Agent -

Witness states his name is Juan Ruiz a his age is forty six years his residence in the County of Santa Clara.

Questions by Claimants Atty –

Did you know Prado Ruiz if so what was his relationship to you?

Answer –

I knew him he was my brother

Question by same.

Did you know the ranch on which he resided if so state where it is situated?

Answer –

I know said Ranch. It is situated in the County of Santa Clara.

Question by same.

Look at the original Espediente referred to in the deposition of Thomas E Cunshed heretofore filed in this case and marked Espediente "Promovido por el Alferez Prado sobre el parage Nombrado San Antonio" 136. and now shown you and state whether the signature to said the original petition in said Espediente is the genuine signature of said Prado Ruiz or not –

Answer.

I know the hand writing of said Prado Ruiz. I have seen him write and have no doubt that his signature to said document is genuine –

Question –

Is the Ranch described in said petition the same on which said Prado Ruiz lived –

Answer –

It is the same –

first named in said petition. Whether he

It is the same.

Question by same.

State when your brother first moved on said ranch. Whether he resided there before he petitioned for the grant and how long he resided there -

Answer -

It is about 17 or 18 years perhaps more since he first went to reside on it by the permission of the Padres of the Mission and some five or six years afterwards he petitioned for the grant. he continued to reside there until his death which occurred about ten years ago. he left seven children his wife died before him - His children are named Jose Antonio, Encarnacion, Mason Francisca Ramon, Justiano, & Picandro -

Question by same,

What became of the families and what was done with the Ranch after his death.

Answer.

They continued to occupy the Ranch - I lived there with them for two or three years after my brothers death -

The Eldest daughter is married to Juan Chrysistomo Sota and three of the children live with him, one with the brother of witness on said Ranch the two Eldest boys live in Sonoma.

Question by same -

In what manner did your brother occupy said Ranch and what improvements had he on it -

Answer -

When he first went there by permission of the Padres he built a small wooden house and afterwards another in which he lived with his Family. before his death he

commenced a large adobe house which I completed afterwards. Before his death he had about 500 varas by 200 of the land enclosed which he cultivated also another field which is about 500 by 200 varas. He also had an orchard and about 500 head of cattle at the time of his death and a band of sixty mares.

The same cattle ranged about the creek of Matadero and the wild cattle on the arroyo de San Jose'.

Question by same.

Were there any Known landmarks on the boundaries of said Ranch and if so how did you know them to be such.

Answer.

There were land marks which were shown me by my brothers. On the side of the Matadero there is a hill on which there is a pile of stones raised for a land mark. On the other side the line runs along the road to the arroyo de San Jose' de Cupertino called Colon Arroyo dis Alsecho from thence it runs up the creek and winding thence to a hill called Arrosadero which is one of the land marks.

Question by same.

Do you know the range of mountains called Sierra Nevada de Santa Cruz and in which direction from those mountains do the creeks or arroyos spoken of in your former answer run.

Answer.

I know said mountains the creeks referred to run towards the Embarcadero on the Bay.

[illegible] creeks on the plain or on the hills

on the bay.

Question by Same.

Were the houses built by your brother on the plain or on the hills –

Answer.

The small wooden houses were situated on the Arroyo de San Antonio about 100 yards from it and the adobe house on a small hill about 200 varas from the other.

(A)

Question by Same.

Did Your brother make a will and if so what became of it –

Answer.

He did – I gave it to Guillermo Burks who was then Alcalde. By request of the Judge I took charge of the papers and accounts of the Estate of including the will – I kept them until after the Americans took possession of the Country, after which on the demand of the Alcalde I delivered them to him and took a receipt for them –

Question by Same.

Who were named Executors in said will?

Answer.

His Eldest Son Jose Antonio and my self –

Question by Same.

Look at the document now shown you marked with the initials R. J. and annexed to the deposition of Jose Arriaga as Exhibit No 1 and filed in this Case and state whether the Signature of Antonio Maria which appears thereon is the genuine signature of said Jose Antonio Maria.

Answer –

I have seen him write and I recognize the said signature on said document as

genuine.
Question by same.
Look at the document now shown you marked with the initials R. T No 1 and herewith filed and state whether the signatures of the said Antonio Mesa thereon is genuine or not.
Answer.
I have examined said signature. It is genuine.
Question by same.
Why did you cease to act as Executor to said will?
Answer.
I had a disagreement with the other Executor and the matter was brought before the Alcalde and I resigned.

Pedro Mesa.

Sworn to and Subscribed before me Jan 13, 1854.
R. Aug Thompson
Com

Filed in Office Jan 14, 1854.
(Signed) Geo Fisher Secy

Encomienda
Mesa et al.

Testimonio de la Composicion hecha por el Juez de la maritima del Pueblo de Monterey en el Dia

2/
Encarnacion Mesa et. al. vs. Grant.

Sello Quinto Un Real.
Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ocho cientos cuarenta y tres.
Micheltorena Manuel Castañares

Exhibit J. C. No. 1 annexed to the Deps of Antº Maria Pico.

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J. Mª Juan B. Alvarado Gobernador Constitucional del departamento de las Californias.
Por cuanto el Alferez Prado Mesa ha pedido para su beneficio personal y el de su familia el terreno conocido con el nombre de San Antonio colindante con el Arroyo de San Josè Cupertino por el Oriente con la Reina Madre de Stª Cruz por el poniente con las Lomas bajas y al Norte con el Arroyo del Matadero: practicadas previamte las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas à nombre de la Nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sugetandose à la aprovacion de la Excma Junta Departamental y à las condiciones siguientes.
1ª. Por cha cercarlo sin perjudicar las travesias caminos y servidumbres lo disfrutara libre y exclusivamente; destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.
2ª Solicitara del juez respectivo que le de posesion juridica en virtud de este Despacho por el cual se demarcaran los linderos en cuyos limites pondrà à mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad.
3º. El terreno de que se hace donacion es de un sitio de ganado mayor poco mas ò menos. El juez que diere la posesion lo hara medir conforme à Ordenanza quedando el sobrante que resulte à la Nacion

M&S

para los usos convinientes.
4ª Si contravinere à estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando qe. teniendose por firme y Valedero este titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à bente y cuatro de Marzo de mil ocho cientos tenta y nueve.

Es copia fielmente sacada del ejemplar que existe en el espediente Original que obra en la Ofna de mi Cargo la qe. va fiel y legal, corregida y concertada y para la devida constancia lo firmo con dos testigos de asistencia en Monterey à catorce de Obre. de mil ocho cientos cuarenta y tres.

Manl. Jimeno

De asta.
José Abrego

De asta
Jacinto Rodriguez

Filed in Office June 11th 1852
Geo: Fisher Secy

Seal Fifth. One Real.

B

Translation of Grant

Provisionally authorized by the Principal Custom House of the Port of Monterey in the Department of the Californias for the year Eighteen Hundred Forty three. Pio Pico — Manuel Castanares.

L.S. John B Alvarado Constitutional Governor of the Department of the Californias —

Whereas the Sub Lieutenant Prado Mesa has petitioned for his personal benefit and that of his family the tract known by the name of San Antonio bordering by the Creek of San Jose Cupertino on the East with the Broken Mountains of Santa Cruz by the west with the low hills and to the North with Creek of Matadero having previously practised the necessary preliminaries and Enquiries concerned according to what is declared in the laws and regulations using the faculties that are conferred on me in the name of the Mexican Nation I have determined to grant him the said land declaring it the property of him by these presents subjecting it to the approval of the Most Excellent Departmental Assembly and to the following Conditions —

1st. He shall be able to enclose it together prejudice to the footers paths roads or servitudes he shall enjoy it freely and exclusively destining it to the use or cultivation that may best suit him but for the one year he shall build a house and it shall be inhabited —

2d. — He shall require of the respective Judge that he give him Judicial possession in

virtue of this patent by which the bounds shall be marked in which limits he shall place besides the land marks some fruit trees or wild ones of some use.

3d. The tract of land of which donation is made is of one square league title more or less. He who may give the possession shall have it measured according to ordinance for the uses which may best serve him –

4th. If he should contravene these conditions he shall lose his right to the land and it shall be denounceable by another.

Therefore I command that the title being firm and valid it be recorded in the appropriate book and delivered to the interested party for his keeping and for other purposes.

Given in Monterey on the Twenty fourth of March of One Thousand Eight hundred and thirty nine.

It a copy truly taken from the original which exists in the original petition which forms part of the Secretary's Office of my charge which goes new and legal corrected and compared and for the necessary proof I sign it with two assistant witnesses in Monterey on the 14th of October 1843.

Manuel Jimeno

Jose Hugo Asst
Pablo Rodriguez Asst.

Filed in Office June 11, 1852.

(Signed)
Geo Fisher Secy

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Encarnacion Mesa et Al: San Antonio. C

Approval of the Grant

Sello Quinto Un Real
Habilitado provisionalmt. por la Administracion de la Aduana Maritima del puerto de Monterey en el Departamento de las Californias, para el año de mil ocho cientos cuarenta y tres.

Michel Torena — Manuel Castañares

Sello. Manuel Michel Torena General de Brigada del Ejercito Mexicano Ayudante General de la plana mayor del mismo Gobernador y Comandte. General è Inspector del Departamento de las Californias.

Exhibit No. 6. Annexed to the Depo of Antonio M. Pico

La Excma Diputacion Departamental aprobò en 26 de Marzo de 1840 la concesion que el Gobierno le hizo à D. Pico Meza del terreno conocido con el nombre de San Antonio. Y en confirmacion à la indicada concesion se libra el presente à favor del interesado. En Monterey à doce de Octubre de mil ocho cientos cuarenta y tres.

Manl. Michelta

Manl. Jimeno Seno

Filed in Office June 11th 1852

Geo: Fisher Secy

M&S

Translation of Approval of Sale.

Fifth Seal, One Real.

Provided provisionally by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the Year One Thousand Eight Hundred and Forty Three

Micheltorena Manuel Castanares.

L.S.

Manuel Micheltorena General of Brigade of the Mexican Army adjutant General of the Staff of the Same Governor and Commander General and Inspector of the Departments of the Californias -

The Most Excellent Departmental Assembly approved on the 26th of May of 1840 the grant which the government made to Don Isidro Buisa of the tract known by the name of San Antonio and in confirmation to the indicated grant this present is sent to the interested party -

In Monterey the 12th day of October 1843.

Manuel Micheltorena -

Manuel Jimino
Secretary. S.S.

Filed in Office June 11, 1852
(signed) Geo Fisher
Secy S.S.

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Expediente

281. G. D. R

Espediente

Promovido por el Alferez "Prado
sobre el parage nombrado
Sn. Antonio"

136.

6 Sp Na

2. L.D.R
29

Cop. d.l.

Sta. Clara Mzo. 23 de 1838. — Informe el Administrador de esta Comision Alvarado.

Excmo Sor Gobernador
Prado Mesa Alferez de la Compañia permanente de Sn. Fernando ante V. S. como mejor proceda y el derecho le permite hago presente que habiendo un numero de ganado mayor que se compone de trescientas reses y setenta bestias, he venido à suplicarle me conceda un sitio de ganado en el parage nombrado Sn. Antonio que segun el diseño que acompaño à V. S. se comprende desde el Arroyo de Sn. Josè Capistrano hasta el Arroyo del Matadero distante de esta Comision como tres leguas P. Y. à V. S. suplico se sirva concederme el dho parage para cultivarlo y fomentarlo para la Mantencion y subsistencia de mi crecida familia. Juro lo necesario &c. Por no haber papel sellado lo hago en comun Sta. Clara Mzo. 23 de 1838.

Juan del Prado Mesa.

Sta. Clara 24 de Marzo de 1838.

El parage q. se solicita en esta instancia es conocido por perteneciente à esta Co. Mision pero por mi parte no hay inconveniente en q. se le conceda al Solicitante. V. S. dispondrà lo q. tubiese por conviniente.

Josè Estada

3. L.D.R

Sta. Clara Marzo 24 de 1838

Vista la peticion con q. da principio este espediente el informe del Administrador de dha Comision por el que accede à la peticion del interezado, supuesto que no perjudica al establecimiento à que se infiere pertenecer pr. hallarse Baldio, con todo lo demas que se tuvo presente y convino de conformidad con las leyes y reglamentos de la materia se decreta à Dn. Prado Mesa dueño en propiedad de su sitio de ganado mayor en el parage nombrado Sn. Antonio segun demuestra el diseño adjunto sugetandose à lo prevenido en la ley de 18. de Agosto de 1824. y el reglamento de 21 de Noviembre de 1828. librese el despacho

Noviembre de 1828. Líbrese el despacho

Expdte. Continued

correspondte. tome se razon en el libro que corresponde y dirijase este Espediente à la Exma Diputacion para su aprovacion Asi yo el Gefe politico interino de la Alta California Juan B. Alvarado mando decreto y firmo.

Juan B. Alvarado.

269-1

Monterey 19 de Mayo de 1840.

Dadose cuenta à la C. Junta Departamental acordo en sesion de este dia que pase à la Comision de agricultra Sno.

José Z. Fernandez

En 22 del mismo lo devolvio con el dictamen qe. se acompa. Fernandez.

L. G. D. R

Here follows

Mcd.

5. L. D. R

Juan B. Alvarado Gobernador Constitucional del Departamto. de las Californias
Por cuanto el Alferez Pedro Mesa ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de San Antonio colindante con el Arroyo de San José Capistrano por el O. con la Sierra Madre de Sta Cruz por el P. con las Lomas bajas y al N. con el Arroyo del Matadero: practicadas previamente las diligencias y averiguaciones consecuientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas à nombre de la Nacion Mejicana he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras sugetandose à la Aprobacion de la Excma Junta Departamental y bajo las condiciones siguientes.

1ª. podrà cercarlo sin perjudicar las travesias caminos y servidumbres: lo disfrutara libre y esclusivamente destinandolo al uso ò cultivo que mas le acomode pero dentro de un año à lo mas fabricara Casa y estara habitada.

2ª Solicitara del juez respectivo que le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrà à mas de las mojoneras algunos Arboles frutales ò silvestres de alguna utilidad.

6. L. D. R

3ª El terreno de que se hace donacion es de un sitio de ganado mayor poco mas ò menos segun esplica el diseño respectivo. El juez que diere la posesion lo hara medio conforme à Ordenanza quedando el sobrante que resulte à la Nacion para los usos convenientes.

4ª Si contraviniere à estas condiciones perderà su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendo se por firme y valedero se tome razon de

se hor firme y daledero se tome razon de

32

el en el libro à que corresponde y se entregue al interesado para su resguardo y demas fines.
Dado en Monterrey à 24 de Mzo: de 1839

Y. S. D. R. Gabriel Mon

275 ND
PAGE 32

Sello

Note by the Juez or General
The corresponding page in the original
is nearly obliterated. The details
show the limits of the only portion which
now appears in the same

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Antonio M. Osio.

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S. S. D. R.

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Note by the Surveyor General
The corresponding page in the Original is nearly all Obliterated. The dotted lines show the only legible portion therein.
The words of the last line "Mil ocho cientos treinta y nueve." seem to have been written since the writing has been partially obliterated.

9. S. D. 12

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Prefectura del

la Prefectura
el libro res-

pto 16 de 1840

Clavarulias.

Note by the Surveyor General
The corresponding page in the Original is nearly all obliterated. The dotted lines show the only legible portion thereon.

marítima del puerto de Monterey, en el Do-

10. G. D. R.

Sello tercero Dos Reales:
Habilitado provisionalmente por la Aduana marítima del puerto de Monterey, en el Departamento de las Californias para los años de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno

Alvarado

Antonio María Osio

Sello

Constitucional

mental en senor del
aprobo la concesion
de Marzo ocho

M.
á D. Prado Mesa
Decreto de hoy que ha
lugar á la parte
usos que le convengan
1840.
Alvarado

Manl. Jimeno

Note by the Surveyor General
This page is neither in the Original nor the Minutes of the entry book which now appears in the Dome.

1. G. D. R.

Here follows Map.

12. L. D. R. Excmo Sor.

La comision de Agricultura y Comercio unidas encargadas p.r V. E. de Dictaminar los Espedientes que en la sesion Anterior acompañó el Excmo Sor Gobor. y concedidos p.r el mismo Gobierno y encontrandolos conformes segun lo actuado è informes y demas que vei de haber podido, propone à la Deliberacion de V. E. los Articulos siguientes.

Art.o 1.o Se aprueba la Concesion hecha p.r el Gbno Departamental con fha 24 de Mayo de 1838. en la persona de D. Prado Mesa del parage nombrado Don Antonio 2.o Que se debuelba al Excmo Sor Gobierno el Espediente p.a los fines embnientes

Monterey Mayo 21 de 1840.

José Rafael Gonzales } A. Argüello

13. L. D. R. Monterey 22 de Mayo de 1840.

En sesion de este dia aprobó la E. Junta Departamental los dos Articulos con que concluye el dictamen Anterior 26/ 2.do no V. 22

En Ker.o S. G.

Man.l Jimeno Presd.te } José L. Fernandez Sno.

14. L. D. R. Monterey 10 de Junio de 1840

En Vista de la Aprobacion otorgada en 26 de Mayo prox.mo pas.do por la E. Junta Departamental librese testimonio de ella à la parte de D. Prado Mesa en confirmacion del terreno de S. Antonio que obtuvo en 24 de Mayo de 1838. El Sr. Dn Juan B. Alvarado Gobernador Constitucional del Departamento de las Californias, asi lo proveyo y firmo de que doy fee.

Alvarado

15. L. D. R. Juan B. Alvarado Gobor Constitucional del Departamt.o de Californias.

Por Cuanto. D. Prado Mesa ha pretendido para su beneficio personal y el de su familia.

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 custody a portion of the Archives of the former Spanish Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby certify that the fifteen preceeding and hereunto annexed pages of haeing paper numbered from One to fifteen inclusive exhibit 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 2nd day of January 1853

Sam. D. King
Surv. Gen. Cal.

Filed in Office March 2. 1853
Geo. Fisher Deery

37

Hearings at the mission of Sitka

38

"B"

Translation of Expediente in No 416. and made by Stipulation a part of this Transcript. No 269.

Expediente

or

Proceedings at the instance of Second Lieutenant Prado in relation to the place called "San Antonio."

addressed

His Excellency the Governor.

Santa Clara, March 23d 1838.

Let the administrator of this Ex-Mission report upon the same.

Alvarado

Prado Busso Second Lieutenant of the permanent Company of San Francisco before Your Honor in the best form and as the law hereto does represent that having a number of cattle composed of three hundred head & fifty beasts of Cuban I have come to request your honor to grant me one Sitio Square land at the place called San Antonio which according to the plat I have with me comprehended from the creek of San José Cupertino to the creek of Matadero about three leagues distant from this Ex Mission –

Wherefore I request your honor to be pleased to grant me the forementioned place that I may cultivate and improve it for the support and subsistence of my numerous family – Making the necessary Oath &c.

There being no stamped paper I write it on this of the common kind

Juan Del Prado Mezo.

39

Santa Clara March 23rd 1838.

Santa Clara March 24th 1838.

The place solicited in this petition is known to belong to this Ex Mission but for my part I find no objection to its being granted to the petitioner —

Your honor will dispose what may be most convenient —

José Estrada.

Sta Clara. March 24, 1838.

In view of the petition at the head of these proceedings the report of the administrator of the said Ex Mission by which he accedes to the petition of the interested party because it does no injury to the establishment to which it is informed it belongs and the fact of its being vacant with every thing else which was considered to bear in the matter in conformity to the laws and regulations on the subject Don Prado Mesa is declared owner in fee of his "Sitio de Ganado Mayor" (one square league) at the place called San Antonio as is shown by the annexed plat subject to the requirements of the law of August 18th 1824 & the regulations of November 21st 1828.

Let the corresponding patent be issued, let it be entered in the proper book and let this expediente be transmitted to the Most Excellent Deputation for its approval.

Thus I the Political Chief ad interim of Upper California Juan B Alvarado Commanded it to be decreed and I signed it —

Juan B Alvarado.

[illegible] to the Executive Department Board

Monterey May 19th 1846.

Having been communicated to the Executive Departmental Board it was agreed in their Session of this day that it be transmitted to the Committee on Agriculture –

Jose S. Fernandez.

On the 22d of the same Month it was returned with the accompanying opinion –

Fernandez.

Mon.

The first Map in the original is missing here.

Juan B Alvarado Constitutional Governor of the Departments of the Californias.

Whereas Second Lieutenant Prado Meza has petitioned for his personal benefit and that of his Family for the tract of land known by the name of San Antonio bounded by the creek of San Jose' Capitino on the East by the "Sierra Madre of Sta Cruz" (Mountain range of Santa Cruz) on the west by the low hills, and on the North by the creek "de Matadero" having previously complied with the requirements & investigations on the subject agreeably to the laws and regulations, Now in the Exercise of the authority in me vested in the Exercise of the authority in me vested, in the Name of the Mexican Nation I have thought proper to grant to him the forementioned tract of land declaring the same to be his property by these presents subject to the approval of the Most Excellent Departmental Junta and under the following Conditions –

1st – He may fence it without obstructing

crossings roads and servitudes, he shall enjoy it freely and exclusively, putting it to such use or culture as may best suit him, but within one year at farthest he shall build a house & it shall be inhabited.

2d. – He shall solicit the respective Judge to give him judicial possession by virtue of this patent by which the boundaries shall be marked out at the limits of which he shall set besides his land marks some fruit trees or else wild ones of some usefulness.

3d. – The land of which donation is made is of one "Sitio de ganado Mayor" (square league) little more or less as is exhibited by the respective plat.

The Judge who may give possession will cause it to be measured usually to ordinance leaving the excess which may result to the Nation for convenient sale.

4th. – If he should contravene these conditions he shall lose his right to the land and it shall be open to denouncement by another.

Consequently I command that receiving these presents as his title and holding it as firm and valid the same be entered in the book to which it corresponds and be delivered to the interested party for his security and further ends.

Given in Monterey on the 24th March 1839.

Note.

The following four pages of the original are so obliterated as to be entirely illegible though they seem to indicate

immediately though they seem to indicate

42

a grant & some consequent proceedings.

After them is to be found in the original a sketch of the land petitioned for by Pedro Musa. Then follow the regular proceedings - viz -

Most Excellent Sir -

The Committee on Agriculture & Commerce invited, charged by your Excellency to pass their opinion on the Expediente which in the preceding Session were transmitted by his Excellency the Governor granted by the same Government finding them in conformity with the acts reports & with every thing else which we have been able to examine do propose to your Excellency's deliberation the following articles -

Art 1st. The concession made by the Departmental Government on the 24th of May 1838 to Don Pedro Musa of the place called San Antonio is hereby approved.

2d. - That the Expediente be returned to his Excellency the Governor for the purposes that may be convenient -

Monterey May 21. 1840.

S Arguello

José Rafael Gonzales

Monterey 22 of May 1840.

In Session of to day the Excellent Departmental Board approved the articles with which the preceding opinion

Concludes.

=26 outlined turned into 22=

Manl Jimino
Prest.

Jose Z Fernandez
Secio

— terrey 11 of June 1841 —

In view of the approval agreed to on the 26 of May ultimo by the Excellent Departmental Board let a testimony of the same be given to the part of Don Prado Mesa in Confirmation of the tract of land of San Antonio which he obtained on the 24th of March 1833.

Senor Don Juan Bautista Alvarado Constitutional Governor of the Department of the Californias thus did provide and sign which I attest —

Alvarado —

Juan B Alvarado Constitutional Governor of the Department of California —

Whereas D Prado Mesa has petitioned for his personal benefit & that of his x x x x x x x x x x x x x x x x x x x x + + + + + + + + + + + +

x + + + + + + + + + + + +

Filed in Office March 2 1853.
(Signed)
Geo Fisher Secy.

44

No 766.

Encarnacion Mesa & others
vs.
The United States

275 ND
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Affidavit

Mafin Mesa being sworn deposes and says that he is one of the Children and heirs of Juan Prado Mesa deceased and one of the Claimants in this case that he has made diligent search and inquiry for the original grant mentioned in the petition from Juan B Alvarado to Juan Prado Mesa deceased of the land claimed in this case but has been unable to find it that he is informed and believes that said paper was lost or destroyed during the life of said Juan Prado Mesa.

Mafin his ✗ mark Mesa

Sworn & Subscribed before me this 24th day of Nov 1854 as witness my hand & official seal.

Seal

S. Alexander Quilt
Notary Public

Filed in Office Jan 4, 1854.
(signed)
Geo Fisher Secy.

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Encarnacion Mesa & others
vs.
The United States

275 ND
PAGE 44

Affidavit

John Gontz being duly sworn deposes and says that he is the administrator of the Estate of Juan Prado Mesa deceased duly appointed by the Probate Court of Santa Clara County and has been acting as such administrator for about one year & six months that he has made diligent search amongst the papers of the Estate for the original grant mentioned in the petition from Juan B Alvarado to Juan Prado Mesa of the land claimed in this case and has enquired for said original grant of the persons previously in charge of said Estate as also of the heirs and others likely to know where said paper was to be found that he has not been able to find it but is informed and believes that said paper was lost or destroyed during the life of said Juan Prado Mesa and while in his possession.

John Gontz.

Sworn & Subscribed
before me the 27th of
November 1854.

As Witness my hand and
Seal

Seal

J. Alexander Gould
Notary Public.

Filed in Office Nov 4. 1854.
(Signed)
Geo Fisher Secy

46 Encarnacion Mesa et als.

Geo Fisher Secy

46

On Cuanacion Mesa et als.
vs.
The United States

275 ND
PAGE 45

Stipulation
in.

It is stipulated that the following papers shall be considered as filed by the Claimants and as part of the Evidence offered by them in Support of their Claim at the time the Case was Submitted viz -

The deposition of Pedro Mesa taken and filed in Case No 416 William S Rantz et als vs The United States Excepting however the last five questions and answers contained in said deposition and the deposition of Thomas G Ewinshid taken & filed in said Case No 416 - together with the Especiments therein referred to and which also is filed in said Case -

The said papers with the Exception aforesaid are to be taken as part of the record in this case

S. H. McKee
U. S. Law Agent.

A. P Crittenden
Atty for Claimants

Filed in Office Dec 20. 1854
Signed
Geo Fisher
Secy.

47

U.S. Barranca Mesa et al

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275 ND
PAGE 46

Opinion by
Comm
Thompson.

En canonacion Meza et al
vs
The United States
"San Antonio"

This is a claim by the Heirs of Prado Meza for a tract of land in the County of Santa Clara containing one square league a title more or less purporting to be founded on a grant made by Governor Juan B. Alvarado on the 24th of March 1839 and confirmed by the Departmental Assembly on the 20th of May 1844. The original grant is not produced and affidavits are filed by one of the claimants and by John Ontz Administrator of the Estate of Juan Prado Meza deceased setting forth that they have made diligent search for among the papers of the deceased grantee and enquiries for said grant of the persons formerly in charge of the Estate of and also of the heirs and others likely to have knowledge of the same but have not been able to find it –

In the absence of the original the claimants have introduced a copy duly certified by Manuel Jimino and two assisting witnesses as true and legal from the original Expediente in the Office of the Secretary dated October 14, 1843.

Also an original certificate signed by Manuel Michetorena Governor and Manuel Jimino Secretary dated October 12, 1843, certifying that the grant made by the Government to Don Prado Mesa of the tract known by the name of San Antonio was approved by the Departmental Assembly on the 20th of May 1844 and directing the same to be delivered to the

interested parties in confirmation of his grant.

They have also introduced a traced copy of an Expediente from the Archives in the Office of the United States Surveyor for California containing the original petition of Pablo Cruz for a grant of the lands claimed dated March 23d 1838 together with a Mapa or diseño of the land solicited and the subsequent proceedings of the government thereupon including the governors original decree of concession the proceedings of the Departmental Assembly approving the same the governors certificate in confirmation of the grant and a copy of the grant or title deed = ended to the grantee -

These documents are all proved to be genuine and authentic and are sufficient to invest the grantee with the title to the lands described in them.

The conditions of the grant appear to have been fully complied with and the boundaries are described in the grant with sufficient certainty to segregate the lands granted from the public domain the quantity embraced by them is shown to be between one and two square leagues -

The rights of the claimants under the grant are fully established by the testimony and a decree of confirmation will be entered.

Filed in Office Jan 30. 1855.
(signed)
Geo Fisher
Secy.

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Encarnacion Mesa et al
vs
The United States } "San Antonio"

Decree.

In this Case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the petitioners 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 Clara and is known by the Name of San Antonio being the same which was granted by Governor Alvarado to Prado Mesa by his Grant dated the 24th of March 1835 and has been held and occupied by him and those claiming under him ever since and is bounded as follows.

On the South by the Arroyo de San Jose Cupertino on the East by the Sierra Madre de Sta Cruz, on the West by the low hills and on the North by the Arroyo del Matadero. Containing one Square league a little more or less.

For a more particular description reference to be had to the Certified copy of the Grant and Maps contained in the true copy of the Expediente filed with the Evidence in the Case.

Alpheus Felch
R Aug Thompson
S. B. Farwell
Commissioners

Filed in Office Jan 30. 1855.
(Sgd.)
Geo Fisher Secy.

57

Order

And it appearing to the satisfaction of this Board that the lands hereby adjudicated is situated in the Northern District of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case and of the 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 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 following Fifty one pages, numbered from 1 to 51, 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: 269 on the Docket of the said Board, wherein Encarnacion Mesa, et al, are Claimant against the United States, for the place known by the name of "San Antonio"

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

Geo: Fisher
Sec.

U. S: DISTRICT COURT,

Northern District of California.

No. 275 — 275

THE UNITED STATES,

ND

vs.

Encarnacion Mesa, et al.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 269

Filed, October 1st 1855

C. A. Monroe,

Clerk.

Office of the Attorney General of the United States,

Washington, 10. October, 1855.

269. "San Antonio" —

Emmanuel Mesa, et al. Claimants —

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 14th 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. 275

United States Dist. Court
Northern Dist of Cal.a

United States
vs
Encarnacion Mesa, et al;

Notice of Appeal in
Case no. 269.

Filed Nov: 22. 1855.
by Chevers
Deputy.

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

The United States
Appellants
vs.
~~William Gordon~~
Encarnacion Mesa et al
Appellees.

No 275.

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 Commissioners whereby the Claim of the said Appellees 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 1st day of May 1855 That a notice of Appeal was filed on the 1st day of Aug. 1855 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 & that this Court deem the said title to be invalid. Respectfully &c

S. W. Inge
U. S. Dist Atty.

No 275.

U.S. Dist. Court

The U. States

v

~~Wm Gordon~~

Encarnacion Mesa et al

Petition

Filed March 3. 1856,

J. Chever

Deputy

275 ND

PAGE 54

Glassell

No 275

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

The United States
vs Appellants
Encarnacion Mesa et als
Appellees –

The appellees deny all the allegations of the appellants petition except that their claim has been confirmed, that the transcript has been filed in this Court, and that the land lies in the Northern District of California –

They say that their claim is valid and pray that the decision of the Board of Land Commissioners be affirmed –

A R Lullender
Atty for Appellees –

No 275

U. S. District Court

The United States
vs Appellants
Encarnacion Mesa
et als —
Respondents
Answer.

A P Crittenden
Atty for Respondents

275 ND
PAGE 56

Filed March 3, 1856
J Ahern
Clerk

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

No 275 - The United States Appellants
vs
Encarnacion Mesa & others - Respondents -

It is agreed that the last five questions and answers of the deposition of Pedro Mesa, contained in the transcript of the record in this case, shall be considered as stricken out and as forming no part of said transcript, the same having been inserted improperly and contrary to the stipulation of the counsel in the case, which stipulation appears in the transcript -

March 3, 1856.

A P Crittenden
Atty for Respondents -
A Glassell
Asst U.S. Dist Atty.

No 275

U. S. Dist. Court

The United States
vs Appellants

Encarnacion Mesa
others
Respondants

Stipulation to
omit testimony

Filed March 4, 1856,
By Coherce
Deputy

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

The United States. vs Appellants Encarnacion Mesa, Antonio Mesa, Majin Mesa, Francisca Mesa, Ramon Mesa, Justiano Mesa & Nicandro Mesa	No 275 – Decree Stated Term March 10th 1856. Appeal from the final decision of the Commissioners to ascertain and settle private land claims in the State of California.

This cause came on to be heard at a stated term of the Court on appeal from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California under the Act of Congress approved on the 3d of March AD 1851, upon the transcript of the proceedings and decision of the said Board of Commissioners and the papers and evidence on which the said decision was formed and the petition of the appellants and answer of the appellees, and it appearing to the Court that the said transcript has been duly filed according to law, and counsel for the respective parties having

been heard, it is by the Court hereby Ordered, adjudged and decreed that the said decision be and the same is hereby in all things affirmed; and it is likewise further ordered, adjudged and decreed that the claim of the Appellees, the said Encarnacion Mesa, Antonio Mesa, Majin Mesa, Francisca Mesa, Ramon Mesa, Juliano Mesa and Nicandro Mesa, is a good and valid claim and that the said claim be, and the same is, hereby confirmed to the extent and quantity of one square league; the land ~~of~~ to which their said claim is confirmed being that known by the name of San Antonio and the same described in the grant and maps appearing in the transcript in this case. Provided that the said quantity of one square league now confirmed to the claimants be contained within the boundaries called for in the said grant and maps, and if there be less than the quantity within the said boundaries, then such less quantity is confirmed to the claimants.

Ogden Hoffman Jr
U. S. Dist Judge

No 275.

U. S. Dist. Court

The United States
vs Appellants
Encarnacion Mesa
& others -
Appellees

Decree -

Filed March 10. 1856.
W. H. Chevers,
Deputy.

Entered - p. 257

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 13th day of March in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v
Encarnacion Mesa et al

D. C. 275 : L. C. 269.

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case; and a stipulation to that effect having been entered into by the U. S. Attorney:

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

Ogden Hoffman
U. S. Dist Judge

275

United States District Court, Northern District of California.

The United States

vs.

Encarnacion Mesa et al

ORDER.

Vacating appeal

Filed March 13, 1857

John A. Monroe,

Clerk.

By W. H. Chevers

Deputy.

California Land Claims.

Attorney General's Office
9 January 1857.

Sir:

In the case of the claim of Encarnacion Mesa et al: confirmed to the claimants by the Commissioners, case no. two hundred and sixty-nine (269), appeal will not be prosecuted by the United States.

I am
Respectfully,
Cushing

Wm T Blanding Esq
U.S. Atty, San Francisco.

In the District Court of the U. S.
For the Northern Dist of California

The United States
v
Encarnacion Mesa et als.

D. C. 275: L. C. 269.

In pursuance of a notice from the U. S. Attorney General, ~~of~~ 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 Mar 12. 1867

Wm Blanding
Dist Atty

A P Crittenden
Atty for Appellees

275
269

U. S. District Court

The United States

v

Encarnacion Mesa
et al

Stipulation

Filed March 13. 1857
W. H. Chevers,
Deputy Clerk.

275 ND
PAGE 67

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court House, in the City of SAN FRANCISCO, on Wednesday the 31st day of August in the year of our Lord one thousand eight hundred and fifty-nine,

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States, vs. E. Mesa et al.	L. C. 269. D. C. 275.

It being represented to the Court, by Counsel, that there is a contest in regard to the survey made, and approved by the U. S. Surveyor General, for California of the land claimed herein, Now on motion of Mr Clarke, it is ordered by the Court that the said Surveyor General return into this Court the plat of the survey, by him approved, in this case.

No. 275

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States

vs.

C. Mesa, et al

Order to Return Survey.

Filed Aug. 31, 1859.

W. H. Chever Clerk.

By

Deputy.

275 ND

PAGE 67-A

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

Clerk's Office,

I hereby Certify the foregoing to be a true copy from the Minutes of the said Court.

Clerk.

By

Deputy.

The United States
vs
Encamacion Mesa et al

No. 275
Claim for the Tract called San Antonio

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

The Petition of Edward Norton and William H. Davenport respectfully showeth that the title of the above entitled claimants has been finally confirmed to the tract called San Antonio to the extent of one square league, that petitioners are the owners by purchase of the interests of said Encamacion Mesa and the others of said confirmed in the said tract confirmed, and that a survey purporting to be a survey of said tract made by the late Surveyor General of the U.S. for California was approved by him, on the 15th day of July 1857.

That publication of said Survey was made by the present Surveyor General for the first time on the 26th day of September 1860 in the City of San Francisco, and in the San Mateo Gazette newspaper the place of publication of which is nearest said land on the

29th day of September
That as Petitioner is advised and believes said survey is erroneous in this, that whereas said tract was confirmed to the extent of one square league, and whereas the northern boundary of said tract specified in said deeds was the Maladero Creek said survey contains only 898 44/100 acres of land and is not extended to within two miles of said Maladero Creek — Petitioner therefore asks that said survey may be returned to this Court for examination and correction, — that the same may be set aside and a new survey ordered which shall extend to the Maladero Creek or so far in that direction as to contain one square league of land

J. Clarke

William F. G. Davenport being duly sworn deposeth and saith that the matters set forth in the foregoing statement, touching touching his interest and that of Edward Norton in the lands in said statement mentioned are true

Wm F. Davenport

Sworn to and subscribed this

Sworn to, and subscribed this
29th Sept: 1860. before me,
W. A. Cheever,
N. P. Com.

U. S. Dist. Court
275.
Northern Dist. of Cal.

The United States
vs
Encarnacion Mesa et al

Petition of
Wm. H. Davenport

Filed Sept. 29. 1860.
W. H. Chevers,
Clerk.

Ret. 31st Oct.

J. Clarke,
Atty. for Pet.

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. 275, to Encarnacion Mesa et al, known as "San Antonio", and situated in the County of San Mateo 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 31st day of October 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 29th day of September A. D., 1860.

W. H. Chevers,

CLERK.

The within Monition was received by me on Saturday *the* 29th *day of* September *186*0*, 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* 3rd *day of* October *186*0*; and for* 4 *consecutive Saturdays, in the* San Mateo Gazette *a paper published nearest the land, commencing on the* 6th *day of* October *186*0*.*

Dated San Francisco, October 31st *186*0

P L Solomon
U. S. Marshal.

No. 275

UNITED STATES DISTRICT COURT,

Northern District of California.

IN LAND CASES.

THE UNITED STATES.

V.

Encarnacion Misa, et al.

MONITION.

Returnable 31st. October *186*0.

Issued Sept. 29th *186*0.

Filed Oct. 31 *186*0.

W. H. Reves
Clerk.

275 ND
PAGE 74

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 29th day of September in the year of our Lord one thousand eight hundred and sixty.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

v.

Encarnacion Mesa et al,

IN LAND CASES.

District Court No. 275

Land Com. No. 269.

AND now at this day on application of Jeremiah Clarke Attorney for Wm. H. Davenport IT IS ORDERED, that the Surveyor General of the United States for California return into this Court, on or before Wednesday, the 31st day of October A. D. 1860, his Official Survey and Plat of the land finally confirmed in the above entitled cause, known as "San Antonio" and situated in the County of San Mateo, 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.

No. 275

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Encarnacion Mesa et al.

ORDER TO RETURN SURVEY.

Returnable 31st October 1860.

Issued Sept. 29. 1860.

Filed October 9th 1860.

W. H. Chevers

Clerk.

275 ND

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Surveyor Generally by copy on
S. W. Brannick U. S. Surveyor
General for California

San Francisco
Oct 29. 1860.

R. Lawson
Attorney
By R. Robinson
Clerk

District Court of the U. States
Northern District of California

The United States
vs
Encarnacion Musacbal
Claimants

No 275

The Claimants herein, and Edward Norton, and W. H. Davenport, successors interest to certain of said Claimants, by J. Alcalde their Attorney, excepts to the survey heretofore returned by order of this Court and filed in this Cause, for this — That, whereas, the claim of said claimants was confirmed in this court to the extent of one square league of land, yet that said survey and the plat thereof returned by said Surveyor General, embrace but eight hundred and ninety eight acres and a fraction; and these claimants insist that although said survey could not have been extended any further southerly, for the reason that the whole of the land adjoining said survey to the South or South East, have

No 275

U. S. Dist Court
North: Dist of Cal.

The U. States
vs
Encumacion Murcelo

Filed Oct: 31, 1860.
W. H. Chevers,
Clerk

Exceptions to
Survey

275 ND
PAGE 77

J. Clarke Clk

which have been furnished by the U.S.
to other persons under similar circumstances, yet they are no greater
in regard to the large adjoining
rancho owned by the petitioners
and they are entitled to have
their claim confirmed in the same
manner as other claims of the
same character in this case to
make a degree, with the 8,948 acres, and
they insist that the surveyor
exceeded his authority in making
a survey of 9,000 acres, and
to do so he embraced in the
exterior lines of said survey
J. Coldwell Atty

275 ND
PAGE 78

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 31st day of October in the year of our Lord one thousand eight hundred and sixty.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

v.

Encarnacion Mesa, et al,

IN LAND CASES.

District Court No. 275

Land Com. No.

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 ..... Attorney for ..... 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 appeared for the U. S. and Jeremiah Clarke for the Claimants. No other party appearing

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

No. 275

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

E. Mesa et al.

ORDER ON RETURN OF MONITION.

Filed October 31, 1860.

W. H. Chevers,

Clerk.

275 ND

PAGE 79

The United States
vs
Encarnacion Mesa
and others.

No. 275.
February 2nd. 1861.

This case comes up on objections to the survey of the Surveyor General —

By the original decree of confirmation there was confirmed to the claimant a tract of land of the extent of one square league & included within the boundaries mentioned in the grant and delineated on the diseño

In the survey submitted to the Court there is ~~from~~ assigned to the claimant a tract of only 898 acres —

The reason for thus departing from the decree of the Court is the fact that in an entirely independent proceeding certain parties claiming title under the original grantee had obtained a confirmation of a certain

tract by specific bounds which has been surveyed to them & for which it is said a patent has been issued -

As the land so confirmed was within the boundaries of the original grant, and as the delineation of title to those claimants appeared regular the Court had no alternative (after ascertaining the validity of the grant) but to confirm the title claim

But to that proceeding the present claimants were not parties. They had no opportunity either to contest the validity of the derivative title set up in that case, or to object to the decree which gave to those claimants a specific tract without hearing other parties claiming either the whole or a portion of the land originally granted as to its proper location -

~~If a patent has been granted by the.~~

But in the suit prosecuted by them they set up and established their right to the whole tract originally granted viz one league — and the only question that arises is Are their rights to the land confined to be in any way affected by the fact that a part of the land has been confirmed to some one else in a proceeding to which they were not and could not have been parties.

The difficulty that arises in this case presents a striking illustration of the impolicy of allowing several claims to be submitted for different portions of land originally ~~granted~~ conferred in a single grant — All ~~difficulties~~ embarrassment might have been avoided had ~~all suits under~~ claims under the same grant been re

quired to be presented together or consolidated if presented separately — and if the proceeding had been in the name of the original grantee and the decree been in favor of him and his representatives whom they might be —

But the claims were allowed by the Board to be presented separately — and as these might be comprised within the boundaries of the grant a much larger ~~quantity~~ extent of land than the quantity ~~that be~~ signaled in it ~~and to which he was entitled if~~ it might well occur that the Court would confirm to subclaimants the various parcels amounting in the aggregate to more than was originally granted — or it might confirm these parcels by specific boundaries when it might be impossible to include all of them in any location of the origi

grant which should be in one in the tract

When then for these various parcels ~~are~~ came to be surveyed two alternatives ~~be~~ would be presented either to give to each confirmee the land confirmed to him and thus under a grant of 5 leagues to confirm perhaps 6 or 8 or 10 leagues — or else ~~to~~ after hearing all parties to locate the quantity originally granted leaving those not included in such location wholly unprovided for But in fixing such location there would often be much difficulty — For the grantee ~~or his representatives~~ had in general the right to elect ~~what~~ they location he desired within his extensive boundaries — Various delicate questions would thus arise as to the time when and the manner in which he should make the election — and whether he should be stopped to change ~~an election~~ a location

fixed by his deeds to ~~some~~ bona fide purchasers — by his settlements by his declarations and the like. But whatever might be the difficulty of making a just location we should ~~at least obtain the advantage~~ object of ~~confirming only that restricting the quantity finally patented to that originally granted~~ if ~~all~~ ~~the~~ a single claim in the name of the original grantee were alone presented, at least avoid the possibility of confirming and issuing patents for a greater quantity of land than that ~~was~~ expressed in the grant. In the case at bar the claimants have been adjudged to be entitled to one league of land. If a portion of the league so confirmed to them has in another proceeding ~~been con~~ to which they were not parties been confirmed to other persons claiming like themselves under the original grant, I see

7 no alternative but suffer the ~~second~~ location under the present decree to overlap or include the land already located and patented leaving the parties to litigate their respective rights before the ordinary tribunals.
This result is the necessary consequence of a system which permitted the various claims to be separately presented —
But it may happen that within the exterior boundaries enough land will be found to satisfy both claims, and the present claimants exercising their right of ~~location~~ election may so locate their league as not to include any portion of the tract already patented to others.
If such location be fairly within the limits of the election they are entitled to exercise —
If the out league selected by them be not only within the exterior boundaries of the grant

but be the tract occupied and settled by them — and we short be the fair and proper location of the one league granted I cannot see how under the final decree of obtained by them they can be deprived of the right so to locate their land — The fact that the U. S have seen fit to recognise & issue a patent for another tract assumed without hearing these claimants to be within or a part of ~~a~~ the league originally granted cannot affect their rights — ~~They~~ Those rights vested at the date of the Treaty — They have done nothing, ~~and~~ ~~neither~~ by which they have been forfeited They have presented their claim and obtained a confirmation ~~How~~ Then have their rights been lost If the first claim had not been patented — and the location under it ~~had not been~~ ~~pat~~ were now before the court

9 it might be ascertained after hearing all parties whether the particular tract specified in the first decree be within the limits of the one league granted when the same is located as ~~may be just~~ under all the circumstances it ought to be But the fact that before that question was determined the U. S have issued a patent for the particular tract can not affect the rights of those claimants ~~now~~ to insist that a just & proper location of the league granted be now made — notwithstanding that the effect of so doing may be to show that the tract patented is not within it ~~the one league when~~

~~I the~~ For these reasons I am of opinion that the ~~pres~~ survey should be set aside and a new survey made of the league of land to be located within the exterior boundaries mentioned

bound in the grant and delineated on the diseño at the election of the claimants.

When that election shall have been made and the new survey returned, it will be for the Court to determine whether the right to elect ~~same~~ has been properly exercised and on hearing all parties finally to decide what is the just location of the one leagues granted and confirmed to the claimants

~~Then sen~~

An order must therefore be made setting aside the survey shown before the Court and requiring a new survey to be made as is herein directed said new and amended survey to be returned into Court for ~~finale~~ examination and final approval —

275

U. S. Dist. Court.

The United States.

— vs —

E. Mesa. et al.

Opinion respecting survey, and ordering re-survey, etc.

Filed Feby 2, 1861.

W. A. Cheves,
Clerk

20
4
8,000
U.O

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 first day of May in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,
v.
Encarnacion Mesa, et al.

D. L. 275.
L. L. 269.

This cause coming on to be heard upon exceptions to the official survey of the land confirmed herein, a certified copy plat whereof was filed on the 27th November, 1860, and counsel for the respective parties having been heard, and due deliberation had, it is hereby ordered, and adjudged that the said survey is erroneous, and the same is hereby annulled, and set aside. And it is further ordered that the Surveyor General of the U. S. for California, cause a new survey to be made without delay in conformity with this order, and return a plat of the same for confirmation, and approval. And it is further ordered that the said survey shall be made as follows, of one league of land to be located within the exterior boundaries mentioned in the grant, and delineated on the diseño

at the election of the claimants
And it is further ordered that a
certified copy of this order be served
upon the Surveyor General of the U. S.
for California, by the Marshal of
this District.

Ogden Hoffman
Dist Judge

275.

UNITED STATES DISTRICT COURT
Northern District of California.

The United States,
v.
C. Alexander et al.

Order re Notice
Survey & directing
a re-survey.

Filed May 1st 1861.
W. H. Chevers, Clerk.

275 ND
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U. S. District Attorney
Northern District of California.

I certify that I have made personal service of the
within by serving on Chas. Clark of San Francisco,
U. S. Surveyor General, in the city of San Francisco, on
the 1st day of May 1861.

J. G. Stevens
U. S. Marshal
By John Williams
Deputy

In the matter of the Survey of the Rancho San Antonio confirmed to E. Mesa. et. al.

The decree dated May 1st 1861 in this case declares the survey approved by my predecessor to be erroneous, and orders a resurvey to be made as follows; "of one league of land to be located within the exterior boundaries mentioned in the grant, and delineated on the diseño, at the election of the claimant."

In surveying operations, the Surveyor General of California occupies a somewhat anomalous position, viz; that of working under two distinct systems.

In the one, the general decree of the U.S. Court governs, and the Surveyor carries out the same in accordance with the rules laid down in the instructions of the department of the General Land Office, with regard to details.

In the other, the decree being so specific as to indicate the precise lines to be surveyed, the surveyor is instructed to conform therewith, in all its terms, without regarding the aforementioned rules.

The decree before me in this case, dated May 1st 1861, rejecting the former survey is in its terms a general decree, and to carry out the same, the instructions of the department applicable to this case have to be observed.

Upon an examination of the papers and records of this office, I find the following facts, bearing on the survey of the one league of land

under this decree. On the 3d of March 1856 in case No 383 W. A. Dana, et. al. vs. U. S. a decree was entered declaring the claim of the appellants valid, and confirming to them the Southern Half of the Rancho of San Antonio, "as the same is described and bounded in the deposition of C. S. Lyman on file in this case", provided, the land so described, be contained within the tract known as San Antonio, the boundaries whereof are described in the grant and map, in the expediente of Prado Mesa, and the extent of which is of one square league.

This decree is specific, and a survey was had of the Southern half of the San Antonio, in accordance with the description in the Lyman deposition, and as a portion of the one league originally granted to Prado Mesa.

The Court having thus on the 3d of March 1856, decreed that Dana was entitled to a portion of the Mesa league to be specifically surveyed, the Surveyor General obeyed the decree, and found the tract so confirmed to contain 3541 acres.

On the 10th of the same month and year, the Court further decreed, that the claim of the heirs of Prado Mesa was valid, and confirmed to them, one league of land originally granted to Prado Mesa, 3541 acres of which seven days previous, had been declared the property of Dana, holding under the title of said Prado Mesa.

It is therefore clear to my mind, that the tracts mentioned in both decrees, being in the aggregate, of the extent of one league, and the District Court

having declared Dana's title good on the 3d of March, for 3541 acres thereof, that there only remains 897 acres, a little more or less, to be surveyed to the Mesas, under the decree of 10th March 1856.

The one league originally granted would then have been segregated by decrees of the District Court, as follows.

Prado Mesa	Dana, et. al.	3541	acres
do	heirs of	897	do
	One League	4438	do

I also find, that on the 17th April 1856, the District Court confirmed the claim of Juana Briones, to the tract called La Purisima Concepcion, one league of land; within certain distinct and well known boundaries, and covering that part of the Mesa Grant and disencumbering lying between the Arroyo San Antonio on the South, and the Arroyo Matadero on the North.

In carrying out the survey of the decree of 1st May 1861, the same being in general terms, I must be guided by the instructions of the department applicable thereto, which may be summed up as follows.

1st The original grant being for one square league a little more or less, I could only segregate that amount of land, had both decrees been for one league each.

2d The decree of the U.S. Court having given to Dana, under Prado Mesa, by specific decree 3541 acres, and the same having been a sale to Dana, this must be regarded as a selection so far as it extends, of the location of the original one league granted to Mesa.

3rd The survey of the Purisima Concepcion lying between the Arroyo San Antonio on the South and the Arroyo Matadero on the North, being had under a final decree of the District Court, the Arroyo San Antonio becomes a final line of the Purisima Concepcion, beyond which, I cannot extend the lines of an other claim, under the instructions without a decree from the District Court, so specified as to unmistakeably carry the survey so as to overlap the previous survey of the Purisima Concepcion.

4th The instructions calling for compactness in form, would require the survey of the remainder of the league, (belonging to the heirs of Prado Mesa,) as a tract adjoining the formerly surveyed tract of Dana.

Complying with the decree and instructions, I would therefore be obliged, to return a survey which the Court has, in the decree of May 1st 1861, already pronounced erroneous.

But the claimants under the last decree, in this case state, that the opinion of the Court intimates a right of selection, within the original grant and diseño, to the full extent of one square league, and therefore claim the right to extend their lines beyond the Arroyo San Antonio, and as far north as the Arroyo Matadero, thus embracing within their lines the final survey of the "Purisima Concepcion" in almost its whole extent.

I have therefore thought proper without further expense to the United States in the field, to place before you, the accompanying Exhibit, showing the surveys heretofore made, and the selection of

the claimants under the decree of May 1st 1861; so that, if the view of the claimants meet the approbation of the Court, the decree can be made so specific, as to warrant the departure from the General Instructions heretofore alluded to.

In this event, the quantity of land segregated to Prado Mesa, under his grant for one league or 4.438 acres will be,

Dana, et. al 3541 acres
E. Mesa, et. al. 4438
7.979 acres

Very Respectfully
Your Obt. Serv't.
E. F. Beale,
U.S. Surv. Gen'l. of
California

Hon. Ogden Hoffman,
U.S. District Judge
Northern District, Cal.

275.

U. S. Dist. Court.

The United States.

— vs —

Encarnacion Mesa, et al.

Remarks of U. S. Sur: Genl: accompanying new Survey.

Filed Sept: 2d 1861.

W. Ar. Overall, 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 first 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.
Encarnacion Mesa, et al.

275.

On motion of the U. S. Atty. it is ordered by the Court that he have ten days to file exceptions to the new survey, and on motion of Williams & Thornton, it is likewise ordered that Juana Briones have leave to intervene herein for the protection of her interests, and ten days are hereby allowed ~~for~~ her to file exceptions to said survey.

275.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

E. Mesa, et al.

Order allowing U. S. 10 days to expt to serve, & Juana Briones to intervene, etc.

Filed October 1, 1861.

W. H. Chevers,

Clerk.

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

The United States
vs
Encarnacion Mesa et al
} No 275

And now comes
Juana Briones

and excepts to the survey in this case as modified, ~~[illegible]~~ and assigns as grounds of exception:

1st That said survey is not in accordance with the grant or decree of confirmation.

2nd That said survey includes lands not granted to the said claimants or any one under whom ~~they~~ they claim

3rd Because said survey includes lands granted to the Indian Gregorio by the Mexican Government, under whom the said Juana Briones

claims, and which lands have been finally confirmed to ~~him~~ her.

4th Because said survey ~~does not~~ includes ~~any~~ lands north of the Arroyo San Antonio, ~~which~~

said Lands belong to the Rancho Purisima de la Concepcion, and were granted to the said Indian as aforesaid, and by him sold and conveyed to her the said Juana Briones —

Juana Briones
by her attys
Williams & Thornton

No 275 —
The United States
vs
Encarnacion Mesa et al
Exceptions of Juana Briones to Survey —

Filed Oct. 10. 1861.
W. H. Chevers
Clerk

In District Court of the United States of America in & for the Northern District of California

The United States
agt
Encarnacion Mesa
et. al.

No 275

And now come the United States, & except to the Survey filed in this case as modified & assign as grounds of Exception

First - That said survey is not in accordance with the grant or decree of confirmation herein -

Second - That said survey includes land not granted to said Claimants or to any one under whom they claim -

Third - That Pedro Mesa, under whom said Claimants claim made his election of the land granted and that said election was of the land embraced in the first survey filed herein.

Fourth - That said Pedro Mesa sold and transferred all the land granted to him by virtue of the

grant herein ~~and~~ ~~ex~~ with the exception of Eight hundred & fifty six acres and the patent of the United States has issued to said grantee –

Wm H Sharp
U. S. Attorney.
Northern District
of California.

No 275.

The United States

vs

Encarnacion Mesa
et. al.

Exceptions
of
W. S. to Survey.

Filed Oct: 11. 1861.
W. H. Chenes,
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 Friday the 11th 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.
Encarnacion Mesa, et al.

No. 275.

And now at this day on motion of the U. S. Atty. and John. J. Williams. it is ordered that the U. S. and the intervenor Juana Briones have 20 days time to take testimony herein. with leave. at the end of said time to apply for an extension of time.

275.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

v.

E. Mesa, et al.

Order giving U. S. & Briones 20 days to take proofs, etc

Filed October 11, 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 Wednesday the Sixth day of November in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States.
v.
Encarnacion Mesa, et al.

No. 275.

And now at this day, on motion of John J. Williams, Esq. Counsel for the intervenor Juana Briones, it is ordered by the Court that he have fifteen days further time to file exceptions to the Survey, take testimony herein,

275.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

v.

E. Mesa, et al.

Order allowing 15 days further time to Juana Briones to take testimony, ~~except to swear~~.

Filed November 6, 1861.

W. H. Chevers,

Clerk.

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Encarnacion Meza et al.

IN LAND CASES.

Dist. Court No. 275

Land Com. No. 269

BE IT REMEMBERED, that on this 16th day of November A. D., 1861, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared José Fernandez a witness produced in behalf of the Intervenor Juana Briones in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Clinton Palmer a sworn interpreter. Taken by consent. Notice admitted.

PRESENT: J. J. Williams Esq. for Intervenor Briones et al. S. Clarke Esq. for claimant and W. H. Sharp Esq. U. S. Atty for the U. S.

QUESTIONS IN BEHALF OF THE Intervenor Briones et al.

Question 1st,

What is your name, age and place of residence?

Ans.

My name is José Fernandez my age is sixty two years, I reside

at the Mission of Santa Clara.

2.

Are you acquainted with the ranchs granted to Juan Prado Mesa in the present County of Santa Clara, if so how long have you known it?

Ans.

I know the ranchs, and have known it since 1836.

3.

Are you acquainted with the ranch adjoining known by the name of "La Purissima Concepcion" claimed by Juana Briones, if so state how long you have known it?

Objected to on the ground that it assumes that the one tract adjoins the other, whereas the fact is that one covers and embraces the other.

Ans.

What was called La Purissima Concepcion was the creek — the creek dividing the ranchos of Prado Mesa, and the Indian

Gorgonio

Do you know the rancho in Santa Clara County which was granted to the Indian Gorgonio, now claimed by Juana Briones?

Objected to as assuming that a grant was made to Gorgonio that being the contested fact.

Ans.

I do.

5.

State if you know what is the dividing line between these ranchos, and if you know state how you acquired the knowledge?

Objected to as attempting to prove by parol, what should be proved by documentary evidence

Ans.

I knew that the arroyo La Purrisima Concepcion now known by the name of the arroyo San Antonio was the dividing line between the ranchos of Prado Mesa and

Gorgonio, because when Prado Mesa asked the possession of it from Dolores Pacheco who was then Alcalde, I was Pacheco's secretary and we went to give Mesa the possession. One Antonino Buelna presented himself as the attorney in fact (apoderado) of the ranch of Gorgonio - then Prado said Well! measure the ranch to me by (por la parte) the part of the creek adjoining that of Gorgonio. ~~then~~ Then they were going to measure Antonino Buelna said You shall not pass the creek to the side of that of Gorgonio, then Antonino Buelna took out a document - I don't know by whom it was signed - and said the Indian had had possession of this ranch since 1834. I then read said document publicly and neither Buelna nor Prado Mesa would agree ~~to it~~ and possession was not given. They had a war of words, possession was not given and we returned to town.

6.

Where did the Indian Gorgonio reside?

Ans.

I knew him from the time I came to the Mission in 1836. He lived on a little knoll about a thousand varas from the crossing of the Arroyo San Antonio, to the North of the arroyo.

7.

State how long he, Gorgonio resided there?

Ans.

I saw him there in 1836, he lived there until he sold the rancho to ~~Bucleno~~ Prisines and he there died.

8.

Where does Juana Prisines now reside, and how long has she resided there?

Ans.

On the self same rancho of Gorgonio a little further to the North of where Gorgonio had his house. I cannot state the exact time she has lived there

but it is five or six years.

9.

What improvements had the Indian Gorgonio on the ranche, and what was the character of his occupancy and possession?

Ans.

He had his house there, corral, and used to plant corn wheat and beans, He had some cattle, horses and sheep, also on the place. He lived there with his family by virtue of the document of which I have before testified, but I don't remember by whom that document was signed.

10.

What improvements has Juana Briones on the ranche, and what was the character of her occupancy and possession?

Ans.

She has an adobe house and corral, fenced in a piece of ground and cultivated it, she also has horses and cattle on the ground, and had possession

con by virtue of a purchase she made from Gorgonio

11.

When was it that Dolores Pacheco and yourself went as stated by you at the request of Prado Mesa to give him ~~his rancho~~ possession of his rancho?

Ans.

It was about the month of August or September 1840.

Cross Examination

Questions by Counsel for Claimant.

Ques: 12.

What sort of a house was it that Gorgonio lived in?

Ans.

It was built of upright sticks cemented with mud and thatched with tules, ~~&~~ the houses were generally built in that way, and even in towns the houses were built

13.

What is the distance from the house of Gorgonio to the house ~~of Prado Mesa~~ now occupied by Juana Briones?

Ans.

In my opinion it would be about four or five hundred varas. I have never measured it.

14.

Do you know the house where Prado Mesa lived, state where it was, and whether it is still standing?

Ans.

It stood on a little knoll to the Southward of the San Antonio Creek – a little over one hundred varas distant, and near some chemical. I don't know whether any of the still standing, the last time I saw it, the walls were crumbling.

15.

Was this dispute of which you have spoken between Prado Mesa and Buelna, at or near the house of Mesa?

near the house of Mesa?

Ans.

Prado Mesa had no house at that time, we were at the side of the place where the creek spreads out, and where the ford used to be that led up into the hills.

16.

Had Prado Mesa got his grant at that time?

Ans.

He did not exhibit any, and I did not see any.

17.

Did he speak of his grant at that time?

Ans.

I don't remember.

18.

What tract of land was it that you and Dolores Pacheco were going to give Prado Mesa juridical possession of?

Ans.

The rancho that was called El Rancho de las Borregas de la Mission de Santa Clara. It was one league of land

that we were going to give him possession of. The whole of the place was called La Purisima de la Concepcion. Prado Mesa afterwards gave it and the creek the name of San Antonio.

19.

Did Prado Mesa come to the place where you and Pacheco were living, to get you to give him the possession of the land?

Ans.

Prado Mesa came to the Pueblo of San José and requested Pacheco to come and give him possession.

20.

How long had you been Secretary for Pacheco at that time?

Ans.

A whole year. I was Secretary ~~went there~~ in January 1840.

21.

Who was Pacheco's Secretary in 1839?

Ans.

I don't recollect exactly, it was either Salvio Pacheco or myself

22.

Look at the document now shown being the expediente No 136, to the grant of Prado Mesa, and state if any part of the expediente was written by yourself?

Ans.

The part commencing at the bottom of the second page commencing with "Sta. Clara 24 de Marzo de 1838" and down to the signature of José Estrada, excluding the latter was written by me.

23.

Was that written at the time it bears date?

Ans.

It was.

24.

By whom was the Governor's decree immediately following written?

Ans.

I don't know. It looks likes the handwriting of Carrillos. The signature is that of Juan B. Alvarado

25.

Was Alvarado in Santa Clara at that time?

Objected to, this and the foregoing questions in regard to the expediente as ~~pe~~ not pertaining to any matter upon which the witness was examined in chief

Ans.

I know that Alvarado was there because I lived in Santa Clara, but I cannot state the particular time.

26.

In what capacity were you acting when you ~~signed~~ wrote the Informe signed by Jose Estrada?

Same objection as the last.

Ans.

Estrada was the Administrador and I attended to his official business

27.

How long did you continue to act in that capacity?

Ans

Ans.

From the ~~beginning~~ year 1836 until the fourth or fifth month in 1839, and until Ramon son of José Estrada came and took my place.

28.

What was your occupation from the time that you ceased to be employed by Estrada until you came to be employed by Pacheco?

Ans.

None whatever. I remained in the Pueblo of San José.

29.

May it not have been during ~~that interval~~ this time, that is during the time that you were employed by Estrada, or during the interval between that and the time you were employed by Pacheco, that you went to give possession to Prado Mesa?

Ans.

When one went to give possession to Prado Mesa, I was not in the Mission, I was ~~employed~~

in the Pueblo. It was when I was employed by Pacheco. ~~I was~~ When I was employed by Estrada I had nothing to do with those matters.

30.

May it not have been in the early part of 1840 that you went to give the possession?

Ans.

No sir. I remember very well because I recollect eating water melons at that time.

José Hernandez

Sworn to and subscribed this 16th day of November A. D. 1861. before me.

W. W. Cheever,
U. S. Comm'r.

No. 275.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

E. Mesa, et al

DEPOSITION OF

José Fernandez

on part of Intervenor

Juana Briones.

Filed April 14, 1862,

W. H. Chears,

Clerk.

275 ND

PAGE 124

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Encarnacion Meza

IN LAND CASES.

Dist. Court No. 275

Land Com. No. 264

BE IT REMEMBERED, that on this 16th day of Nov. A. D., 1861, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared R. C. Hopkins a witness produced in behalf of the Intervenor Briones et al in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: ~~his evidence being interpreted by a sworn interpreter~~.

PRESENT: J. J. McAllister Esq. for Intervenors Briones et al. S. Clarke Esq for claimant. and W. H. Sharp U. S. Atty. for the U. S.

QUESTIONS IN BEHALF OF THE Intvrs. Briones et al.

Question 1st,

What is your name, age, place of residence and occupation?

Ans.

My name is R. C. Hopkins, I

am of lawful age. I reside in San Francisco, and my occupation is that of Keeper of the Spanish archives in the office of the U. S. Surveyor General. in which office I have been for the last six years.

2.

Is there any corresponding expediente to the grant of the Rancho San Antonio claimed in this case?

Ans.

There is, I here produce it.

3.

Please examine that expediente and describe the appearance and condition of each page of it?

Ans.

The ~~first~~ second page contains the petition of Prado Mesa - the marginal reference of Govr. Alvarado, the report of Don Estenda, the third page map, the 4 and 5th pages a copy of grant, the 6 & 7th and 8th pages contain what appears

to have been an original grant, nearly all the writing however appears to have been obliterated by some chemical preparation or liquid. The custom house seal upon said paper remains unobliterated. On the 1st page of this grant on the right hand margin many words are left unobliterated, on the left hand margin of the 2d page and the right hand margin of the 3d page are also words that are legible. On the date of this grant which is found just above the almost obliterated signature of Alvarado the words "Nil Achocientes Triente y Nueva" appear to have been written after the obliterating process. The words "Marzo de" is in the original writing. The 9th page contains a map, which also chemical preparation over it. The three succeeding pages are the proceedings of the Departmental assembly.

4.

In whose handwriting ~~does~~ is ~~what~~ that which is left on the obliterated grant?

Ans.

I think it is in the handwriting of José Maria Covarrubias.

5.

Look at the certified copy filed in this case before the Land Commission, marked "A. J. C. No. 1" as evidence of title and compare it with the said obliterated grant, and see whether enough remains of the latter to enable you to judge whether one could have been an exact copy of the other?

Ans.

The one is not an exact copy of the other. The third clause of the obliterated grant refers to the diseño found in the expediente, which reference is not found in the copy. There are several other discrepancies of single words.

Cross Examination
Questions by Counsel for Claimant

Ques: 6.

Shall if the certified copy of which you have spoken in your last answer purports to be a copy of the original grant ~~which~~ with which you have been asked to compare it, or rather of pages 5 and 6 of the original expediente?

Ans.

It does not purport to be a copy of the original grant but of an exemplification or copy of grant found in the expediente.

7.

On which pages of the expediente appears what purports to be such ~~cop~~ an exemplification or copy of a grant?

Ans.

On pages 5 and 6 of the expediente referred to there is a copy or exemplification of a grant which I suppose is the

one referred to in the certificate.

8.

State if you are acquainted with the handwriting and signatures of all of the expediente except the obliterated grant, or of any and which, state whether they are genuine or otherwise and whether you ~~said~~ consider said expediente with such exception to be genuine?

Ans.

I am acquainted with all the handwritings in the expedi=ente except that of the petition, ~~in~~ the body of the decree of concession, and such as is found in the maps, and the expediente taken as a whole I consider genuine.

9.

State if you are able to decipher in the obliterated grant any correspondences or dis=crepancies, with the said copy of grant found therein, as to the fact of boundaries, if so state such said correspondences or discrepancies, as you are

able to decipher?

as able to decipher?

Ans.

On the obliterated grant I think that the first descriptive call is the word "Arroyo," which I find corresponds with the first descriptive call of the copy. This is all the comparison I can with any degree of certainty make. Immediately below the almost obliterated words "con el arroyo" there is perceptible the letters "ayo" "del" and the commencement of another word which is perhaps however too indistinct to warrant any opinion as to what it may be, it looks as though it might be an "m" "p" or an "s." The preposition and article "del" indicates that the following noun must be in the masculine gender.

10.

What is the ~~[illegible]~~ gender of the expression "Purissima Concepcion", and what is the corresponding preposition and

article preceding it?

Ans.

It is in the Feminine gender, and the preceding article and preposition would be "de la".

Direct examination resumed
Questions by Counsel for Intervenor Brines et al.

Ques: 11.

Compare the said certified copy of the grant with the copy in the expediente on pages 5 and 6, and point out the discrepancies between them if any?

Ans.

The copy found in the expediente refers to the diseño for description, which the certified copy does not. And in the copy in the expediente the conclusion of the third clause are found the words "las mas convenientes" and in the certified copy are found the words, "las mas que mas le convengan". These expressions ~~are~~ have the same meaning and are both in

meaning and are both in common use.

R. C. Hopkins.

Subscribed and sworn to this 16th day of October A.D. 1861, before me.

W. A. Cheever.
U. S. Comm'r

It is stipulated that this deposition and that of José Fernandez this day taken, may be read in evidence in the case of The U.S. vs. J. & S. Robles No. 81. and The U.S. vs Juana Briones No. 130 subject to all legal exceptions.

W. A. Cheever.
U. S. Com:—

No. 275.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

E. Mesa. et al.

DEPOSITION OF

R. C. Hopkins

on part of Intervenor

Maria Briones.

Filed April 14, 1862,

W. H. Chevers.

Clerk.

275 ND

PAGE 134

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Encarnacion Mesa et al

IN LAND CASES.

Dist. Court No. 275

Land Com. No. 269

BE IT REMEMBERED, that on this First day of May A. D., 1862, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Maximo Martinez a witness produced in behalf of the Intervenor Juana Briones in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by A. D. Spalding a sworn interpreter.

PRESENT: Jno J. Williams Esq for intervenor Juana Briones, Jeremiah Clarke Esq for claimants, and U. S. atty for U. S.

QUESTIONS IN BEHALF OF THE Intervenor Briones

Question 1st,

What is your name, age, and place of residence?

Ans.

My name is Maximo Martinez, my age is about 71 years, and

I reside in San Mateo County, where I have resided on my ranch since 1833.

2.

Do you know the ranche of Juana Briones in Santa Clara County, which was originally granted to the Indian Gorgonio and also the ranche adjoining which was granted to Prado Mesa, if so how long have you known them?

Ans.

I have known the ranch of the Indian Gorgonio ever since it was granted to him about the year 1834 or 1835, and the one of Mesa ever since it was granted, one or two years after Gorgonio.

3.

Do you know of any difficulty at any time existing between the owners of these two ranchos in regard to their boundaries, if yes state when it occurred, how it was settled and all you know about it?

Ans.

About the year 1840 or 1841 Prado Mesa asked from Alcalde Dolores Pacheco, juridical posession of his land, and made a map, which contained the land of the Indian Gorgonio, The Alcalde summoned me as a Colindante to assist at the giving of the juridical posession. I knew that I was not a Colindante of Mesa, but I was of the Indian Gorgonio, however as Mesa wished to obtain the land of Gorgonio, he made me his, Mesa's Colindante. I obeyed the call of the Alcalde but before going on the premises I went to Gorgonio and told him how matters stood, and how Mesa wished to deprive him of his land. I also told him to assist at the giving of juridical posession but to bring along all the

papers relative to his land, so as to show them to the Alcalde should he attempt to give Mesa possession of his, Gorgonio's land, he did so and when the Alcalde commenced to give juridical possession he Gorgonio presented his papers and titles to the Alcalde who passed them to the Secretary Fernandez. They immediately saw the papers to be correct and that the land belonged to Gorgonio so the Alcalde told Mesa that he could give him possession of the land to the South of the Arroyo San Antonio, but not to the North as it belonged to the Indian Gorgonio. Mesa then said that if he could not get possession of the land to the North of the Arroyo he did not want any at all, the Alcalde said it

was all right and they parted.

H.

Who occupied the ranch North of the Arroyo San Antonio after that time?

Ans.

Gorgonio always remained in possession until he sold to Juana Prieres.

5.

Do you know whether or not Prado Mesa ever afterwards claimed that land North of the Arroyo San Antonio, or sought to obtain possession of it?

Ans.

He never afterwards attempted to claim or obtain possession of said lands.

Cross Examination
Questions by Counsel for Claimants

Ques: 6

When did Prado Mesa die?

Ans.

I don't remember.

7

Was it several years, or a short time after the occurrence before the Alcalde of which you have spoken?

Ans.

A few years after.

8.

What kind of a house did Prado Mesa live in, and where was it situated?

Ans.

First he had a frame shanty South of the Arroyo San Antonio, afterwards he built an Adobe house on the hill a little further South. The first house was very near the Arroyo, and the Adobe house was about two or three hundred yards from the ~~Adobe~~ Arroyo.

9.

How many cattle and horses had Prado Mesa on his ranch?

Ans.

I never counted them, he had a little band. The Priests of the Mission loaned him at first fifty cows to start with, which cattle must have increased.

10.

Does the Arroyo San Antonio become dry in the latter of Summer?

Ans.

Not above, but it does below.

11.

Did Mesa's cattle pasture as well on the North side of the Arroyo, as on the South?

Ans.

The most of the cattle pastured South, some of them may have strayed North.

12.

Did Gargonis have his land fenced?

Ans.

He merely had it fenced where he had his sowing grounds, and garden, some six or eight acres.

13.

Did Gargonis have at his establishment a Mayor Domo vaqueros, or other employees?

Ans.

He had with him a son and other relations

14.

Don't you know that from 1835 to the year 1840 Gargonis was an unemancipated Indian subject to the Mission Priests?

Ans.

I do not know; what I know is that the ranch was granted to him about the

year 1834 or 1835, and that it would not have been granted had he not been emancipated. The Mission Priests used sometimes to call him to work as a Mason, but always paid him for it.

It was in 1836 that the Mission Priests sent fifty head of cattle to Prado Mesa. Mesa asked leave of Gorgonio to put said cattle on his Gorgonio's ranch, but the Priest told Mesa to look after some land for himself. It was then that Mesa occupied the land South of the San Antonio and placed his cattle there.

13.

How much land did you own about that time, in 1835 or 1836?

Objected to as not pertaining

to any matter brought out on direct examination

Ans.

I had one square league it was called Cañada del Corte de Madera, and it was situate in the Cañada of that name. Its boundary on the South was the Arroyo de Matadero.

16

What were the other boundaries of your one league?

Ans.

You can find them by looking in my patent, and also the juridical possession of 1836.

17.

Was there not granted to you in 1844 an addition of two leagues to your former grant of one?

Same objection as last.

Ans.

Yes, by Michelorena.

18

On which side of the one league were the two leagues granted?

Ans.

On the South, East, and West, — on every side.

19.

What is the name of the creek which is next North-westerly of the Matadero?

Same objection as the last.

Ans.

The arroyo de las Tranzas.

20.

What is the distance from the Matadero to the las Tranzas?

Ans.

I have never measured it I do not know.

21.

How much land is there

between these two creeks?

Ans.

I do not know. I have never measured it.

22.

Is the ~~Bra~~ Francas a branch of the San Francisquito creek?

Same objection as last.

Ans.

The makers of the Francas do run into the San Francisquito.

23.

Did you not represent in your application to Michelorena for an augmentation of two leagues, that the then boundary between your and Gargonio, was the Francas creek?

Ans.

No sir. The arroyo Matadero has always been my boundary on the South.

24.

Look upon the document marked "Exhibit R. C. M. No 3." on file in the case of The U. S. vs. J. & S. Robles, No. 81, and state if that does not so represent it?

Ans.

I cannot read that Exhibit The Arroyo Matadero has always been my boundary on the South. for further information my patent will tell you everything.

I have been able to read a little but not write.

25.

Did you ever see or read that title of Gongonio of which you have spoken?

Ans.

I have seen it when he showed it to the Alcalde but I never read it.

Deposition closed.

his mark
Mariano Martinez

Subscribed and sworn to this 1st day of May A.D. 1862 before me

W. D. Chevers,

U. S. Com.

No. 275

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

E. Mesa, et al.

DEPOSITION OF

Maximo Martinez

on part of Intervenor

Juana Briones.

Filed May 1st, 1862,

W. H. Chevers,

Clerk.

275 ND

PAGE 149

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

The United States
vs
Encarnacion Mesa et al
} No 275

It is agreed that counsel for claimant in the above case may file in evidence herein after argument a copy of such parts of the Baptismal Register of the Catholic Church at Santa Clara as refers to the Heirs of Prado Mesa dec'd. accompanied by the affidavit of the Priest in charge thereof, that the ~~same~~ Book from which such extracts are made is the true Baptismal Register of said church, and that said extracts are full, true and correct extracts from said book. ~~[illegible]~~

J. Belcher
Atty for Clt
Williams & Thornton
Attys for J. Briones

No: 275

The United States

vs

Encarnacion Mesa et al

Stipulation

Filed June 13. 1862
W. H. Clement,
Clerk

275 ND
PAGE 151

In the United States District Court. Northern District of California

The United States
vs
Encarnacion Mesa et als

No: 275 -

It is hereby stipulated and agreed that so much of the records and evidence in following cases, viz United States vs Juanna Briones, No: 130 United States vs Wm B Dana et als No: 383 United States vs T J S. Robles No: 81 - may be read in evidence in this case, ~~so far~~ as are competent and relevant to the issues to be tried herein - such evidence for the purposes of this trial, being considered as having been regularly taken and filed in this cause -

J. Clarke
Atty for Ctts

Williams & Thornton
Attys for J. Briones -

No 275

The United States
vs
Encarnacion Perez
et al

Stipulation

Filed June 13, 1862
W. H. Chevers,
Clerk.

" En 25 de Febrero de 1829. en la Iglesia desta Mision
" bautizé solemnte a un niño de dos dias de nacido Hijo legitimo
" de Juan Prado Mesa soldado desta Escolta y de Miguela Higuera
" naturales desta California a quien puse por nombre José Antonio
" de Jesus. Fueron sus Padrinos Francisco Pacheco y Maria Concepcion
" Albiso solteros los dos, a quienes adverti su obligacion y para que conste
" lo firmo: Fr. José Viadon

" En 19 de Diciembre de dicho año (1832) bautizé solemnemente
" a un niño nacido el dia antes Hijo legitimo del Cn Juan de Prado
" Mesa y Maria Miguela Higuera naturales desta California, al que
" puse los nombres de José y Magin, y fueron Padrinos Pablo Parra
" y Maria Concepcion Albiso y les adverti lo debido: Fr. José Viadon

" En 19 de Dbre de 1837 bautizé solemnemente a un niño
" nacido el dia anterior a qn puse por nombre José Raymundo Dario:
" es hijo legitimo del C. Juan de Prado Mesa y Michaela Higuera:
" fueron Padrinos Dn Marcianos Estrada y Dña Silveria Pacheco
" a quienes adverti su parentesco y obligacion y firmé
Fr. Jn Mn de Jesus Gomez

" En 5 del mismo mes (Julio) y año (1839) bautizé solemnemente
" a un parvulo nacido en el dia anterior por la madrugada a quien
" se le puso el nombre Miguel del Refugio h. l. de Prado Mesa, y
" su esposa Micaela Higuera: fueron Padrinos Dn Jn Estrada
" y Silveria Pacheco, a quienes adverti su obligacion, y firmé
Fr. Jn de Js Mn
Gutierrez

I hereby certify that the above extracts are true copies taken from the Baptismal Register of the Mision of Santa Clara

J. Benedict Picardo S.J.
Assistant Pastor of Santa Clara

State of California }
County of Santa Clara } S.S.

I Benedict Picardo S.J.

do solemnly swear that I am the Assistant pastor of the Roman Catholic Church at Santa Clara, and as such have in my charge and possession the books containing the registration of births, deaths marriages and ~~baptisms~~ baptisms kept by the former pastors of said church, and that the annexed certificates of the baptisms of José Antonio de Jesus Mesa, José Raymundo Darío Mesa, and Miguel del Refugio Mesa are true copies of the original entries of the baptism of each of said above named persons contained in the register of baptisms of said church.

Subscribed & sworn to before me this 24th day of July A.D. 1862.

Revd Benedict Picardo S.J.
Assistant Pastor of Santa Clara

Saml. A. Wright
Notary Public

U. S. Dist. Court

No 275

L. C. 269

The U. States
vs
Encarnacion Menchaca

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Certified Extracts
from Church Register
+ affdvt.

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

The United States
vs
Encarnacion Mesa et als

275 ND

No. 275.

Objections to Survey — "San Antonio."

The original grant under which the claimants derived title in the above case was issued to Prado Mesa and was for one square league of land. In a portion of this land a claim was presented by Wm. A. Dana et als who derived their title from an alleged sale of one half of the land made by the Executor of Prado Mesa dec'd ~~by order of the Alcalde~~ — ~~The~~ ~~was~~ ~~also produced~~ as the land thus sold was surveyed by order of the Alcalde and a deed was produced signed by the Executor & all the heirs, many of whom were infants conveying the tract surveyed to Record from whom the Mess. Dana derived title.

As there appeared no reason to doubt the genuineness or validity of the original grant to Prado Mesa and the ~~papers~~ ~~the by~~ derivative title set up by Dana appeared formal

fair

2 sufficient the claim was confirmed – It was found however that the tract surveyed by order of the Alcalde and described in the deed by the Executor and heirs was in part beyond the exterior boundaries of the original grant. The ~~tract was~~ claim was therefore confirmed for so much of the tract described as lay within ~~exterior~~ those limits ~~of the original grant~~ –

This decree having become final the land was surveyed and a patent issued for about 3500 acres of land – ~~that quantity being found within the exterior limits~~ –

A claim was also presented in the name of Encarnacion Mesa for the whole tract originally granted to Prado Mesa –

By some oversight the attention of the Court was not drawn to the fact that a specific portion of the same tract had already been confirmed to other parties and a decree in favor of these claimants for the entire quantity

granted was entered—
If there ~~has~~ ~~quantity~~ extent of land within the exterior boundaries had not exceeded the quantity granted no inconvenience would have arisen from these double confirmations. For either party could have applied for an injunction under the 13 § of the act of 1851, and the merits of the conflicting derivative titles would have been determined before the ordinary tribunals—
It happens however that there is ~~the~~ ~~exclusive~~ ~~the land~~ within the exterior boundaries ~~a~~ much more than one league of land.
The heirs of Prado Mexia who are the nominal claimants in the present suits urge ~~that~~ not only ~~our~~ their right to the whole league granted but also their right to locate it within ~~the~~ exterior boundaries at their election—
This right they propose to exercise by ~~to~~ selecting the northern portion of the tract excluding entirely the land confirmed & patented to Dana et als—
If this be allowed it will result that under a grant ~~to~~ for

4 one league then will ~~have~~ be patented one entire league to the present claimants, and in addition the 3500 acres already surveyed and patented to Dana.

~~For instance~~ The objection that the deed by the Executor and heirs ~~of to a specified~~ under the authority of the Alcalde of a specified portion of the tract operated as an election pro ~~to~~ tanto of the location of the tract, and that as against those holding under that deed no other election can now be made is met by the allegation that those proceedings were wholly irregular and void and the deed of the Executor & infants heirs ~~passed no~~ conveyed no estate whatever.

Had the Executive authorities decided to issue a patent to the Confirmee of a part of the rancho until the claims for the remaining portion had been passed upon, the location of the league confirmed might have been determined by the Court on a full hearing of all parties

5

interested in the question ~~But the circumstance~~ a patent for issued for that the specific portion confined to Dana ~~has~~.

But the patents issued to Dana et als for the specific portion confined to them ~~fixes their~~ has vested a title in them - and if the denova tive title alleged by them be adjudged to be invalid, and the ~~whole tract~~ title to the entire league is still in the heirs of the deceased grantee, with the right of electing the location incidental to it the result would be as before stated that under the two patents a tract would be conveyed larger by 3500 acres than the ~~whole~~ tract originally granted -

~~In~~ If then the real claimants in this case were the heirs of Mera & it would seem that the validity of the Executor's sale ~~would~~ must necessarily be examined - & if that sale and the deed under which Dana et als claimed were found to be invalid and as is now alleged a ~~fraud~~ scandalous and fraudulent proceeding, there would be no alternative but to permit the heirs

of the grantee to exercise their right of location precisely as if no such deed had been made or claim under it confirmed and patented.

But it appears that the heirs of Mesa have no interest whatever in the present proceeding. By the written admission of the Counsel it filed in this case it is shown that the Mess. Dana ~~and S. W. Brooks~~ to whom the claim under the Executor's deed was confirmed and patented have since become the owners of all the remaining right title and interest of the heirs of Mesa in and to the rancho in question excepting such title as was in Antonio Mesa on the 2d June 1853 and which if any there was, was conveyed to another party.

It is also ~~appears~~ admitted that the Mess. Dana have acquired the interests of their co-claimants Weeks, and have sold out of the tract confirmed and patented to them ~~25~~ 2353 acres.

It is also appears that the party who has acquired the interest of

7

Antonio Mesa was the Counsel by whom the claim of the Danas was originally presented — and that Antonio Mesa was the eldest son of Prado Mesa, and was the Executor who applied for the order of ~~sale~~ the alcalde and effected the sale, he being at that time about 19 years of age. The Counsel by whom the ~~claim~~ suit of the ~~Danas~~ Danas was subsequently conducted ~~in the same person~~ now appears in the names of the heirs of Mesa, but in the interest of the Danas to object to the official survey, and alleging that the title under which the Danas claimed & have obtained a patent was ~~so~~ fraudulent and ~~void~~ void he asks that they under their new title and in virtue of their newly acquired rights may elect ~~an~~ a location of the grant which will entirely exclude the lands patented to them.

By an early decision of the Supreme Court it was established that where a certain ~~[illegible]~~ quantity

of land was granted by the for
mer government to be taken out
of a larger quantity the boundaries
of which were specified, and where
no judicial measurement had
been effected the claimant had the
right to elect the location of
the lands to which he was entitled.
But the privilege thus liberally ac
corded to him was of course to be exercised
conformably to equity &
justice —

It has therefore been held by this
Court that where the claimant
has sold a portion of his tract
such sale operates as an election
pro tanto of a location, and he
will not be allowed after confirma
tion to locate on the unsold por
tion of the tract and to leave his
grantees without title —
So where by building a house and
treating &c he has indicat
ed his election he will be held to have ex
ercised his right, and be bound
by his acts.

The right of election is not therefore
an absolute right conferred by either

the Mexican or our own law but a privilege conceded by the U.S to the claimants subject to every restriction imposed by equity good faith, and a due regard to the rights of third persons, and those of the Government.

In the case at bar the parties claiming this privilege admit that they have already as the ~~grant~~ representatives of the original grantee elected ~~a~~ the location of the large portion of the land granted. That they have presented to the court what they avowed to be a valid conveyance from the Mexican owners of the land, and on the faith of that title ~~so~~ ~~pa~~ have obtained from the Court a decree and from the Government a patent for the land ~~which~~ they have since in great part sold —

with full knowledge that they had thus by their own act fixed the ~~title~~ location, they proceeded to buy up from the heirs as they successively came of age the title to the remainder of the rancho, and they now assert through

10 the same counsel by whom their first confirmation was ~~obtained~~ that the title they presented to the Court ~~who~~ was wholly void – that ~~they~~ ~~did not~~ the proceedings ~~relating~~ relating to it were fraudulent and scandalous and that they had no right whatever to represent the original grantee or his heirs, or to elect the location of the grants – ~~and~~ But they now that they have since acquired that title, and ~~are~~ now ~~for the first time~~ have the right to make a location No argument can be necessary to prove that a pretension so devoid of justice and repugnant to fair dealing and which if allowed would operate as a practical fraud on the U.S., cannot for a moment be admitted –

As between the U.S and themselves they are estopped to deny the validity of the title and which they obtained a confirmation, or their right to make the location which they have induced the Government to recognise –

Then ~~sub~~ The deed they have ~~since~~

14 obtained

from the heirs since the latter ~~[illegible]~~ came of age must be taken to be but a confirmation and ratification of the deed executed ~~[illegible]~~ by them when infants, but in the hands of these parties and under the circumstances of this case it carried with it no rights ~~of [illegible]~~, to disturb the location already made, and recognized and adopted by the Government.

The same rule must of necessity be applied to the purchase of the alleged interest of Antonio Mesa. As counsel for the Mesp.ts Dana he had full notice of the claim and location insisted on by them. It may well be doubted whether he is now at liberty to claim ~~now desirous~~ that a new location should be made for ~~[illegible]~~ the reason ~~ground~~, that the claim presented by him was wholly fraudulent & void, that the location which was procured to be adopted was entirely unauthorised — and that the U. S. by reason of these proceedings must ~~now~~ issue for the benefit of the parties who instituted ~~[illegible]~~

them patents for a league and 3500 acres — under a grant which calls for but a single league — But at all events as the owner of at most one ~~seventh of the~~ ~~by the necessity of the case~~ Rancho, he is bound by the election ~~and~~ made and the ~~ag~~ location fixed by the acts & proceedings of the owners of the remaining six sevenths —

I have treated this case as if the ~~to~~ controversy were between the U. S. and the claimants alone — and on the assumption that as now assented the deed under which the Mes Dana obtained a confirmation was wholly void —
It is proper to observe however that the new location contended for would embrace lands ~~confirm~~ finally confirmed to one Juana Briones who has intervened in this proceeding — and resists the proposed location.
I do not deem it necessary to inquire whether the charge that her title is invalid and ought not ~~have~~ been confirmed, be true or false — for the same conclusion

13 as to the ~~same~~ location of the grants under consideration would have been reached if the ~~lands~~ adjoining lands had been admitted to be ~~public~~ part of the public domain.

For a similar reason it is unnecessary to inquire whether the deed of the Executors and Infants heirs was or was not inoperative to pass title.

But in order to leave that question open for the benefit of the purchaser of Antonio Mesa's interest ~~whoever~~ ~~has~~ it is necessary that the ~~present~~ ~~location~~ ~~should be~~ survey under the decree in this cause should embrace ~~all~~ the entire league — ~~This~~ which also seems inadmissable under the terms of the decree — The inconvenience of issuing a 2d patent for lands in part covered by a former patent seems to be the inevitable consequence of the former proceedings in the cause — And it will afford to the purchaser of Antonio Mesa's interest the opportunity

17 of procuring a decision from the ordinary tribunals of the question whether he is the owner of one 7th of the whole rancho, or only of 1/7th of the portion not previously sold by his grantee —

I think there should be conveyed to the claimants one league of land to be located so as to include the tract already located under the decree in favor of W. A. Dana et al and patented to them, and extending beyond said tract in a northerly direction and in a compact form within the exterior limits of the grant so far as may be necessary to complete the quantity of one square league —

No. 275.

U. S. District Court.

The United States.

— v. —

Encarnacion Mesa, et al.

Opinion respecting official survey.

Filed October 11. 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 Saturday, the 13th day of December, A.D. 1862.

Present.

Hon: Ogden Hoffman, Dist: Judge.

The United States
vs
Cincarnacion Mesa et al } No: 275

In the matter of the Survey and location of the Rancho "San Antonio" —

This cause came on this day to be heard and was argued by Counsel, And thereupon and in consideration thereof, it is ordered, adjudged and decreed that the new survey made and returned into this Court, under an ordered heretofore entered in this cause directing a new survey, be and the same is hereby disapproved set aside and annulled. And it is further ordered adjudged and decreed, that the Surveyor General cause a new survey to

be made including one league of land, to be so located as to include the tract already located under decree in favor of W. A. Dana et als, and patented to them, and extending beyond said Dana tract in a Northerly direction and in a compact form, but without crossing the Arroyo San Antonio, so as to complete the quantity of one square league, within the exterior boundaries of the grant, without encroaching upon the lands directed to be surveyed under the decree of confirmation to Juana Briones claimant of the Rancho La Purisima Concepcion. And it is further ordered that the survey herein directed be made without delay, and be returned into this court for its approval —

John Hoffman
Dist Judge

275.

U. S. Dist. Court.

The United States.

vs.

Encarnacion Mesa.
et al.

Order refecting survey.
and for new Survey.

Filed Dec: 12, 1862.
M. St. Cheves.
Clerk

At a stated Term of the District Court of the United States for the Northern District of California held at the Court room in the City of San Francisco on the Sixteenth ~~Ninth~~ day of March in the year of our Lord Eighteen Hundred and Sixty Three.

Present Hon: Ogden Hoffman, District Judge.

The United States
vs.
Encarnacion Mesa et al

No. 275.

In the matter of the Survey and location of the Rancho "San Antonio."

This cause came on to be again heard this day and was argued by counsel, and it appearing to the satisfaction of the Court, that the modified survey of said Rancho made by the Surveyor General of the United States for the State of California is in accordance with the Decree of this Court heretofore rendered in this cause and directing said modifications, it is now therefore ordered, adjudged and decreed,—

the counsel for the Government being present and not objecting, - that said modified survey be, and the same is hereby approved and confirmed, as a true and correct survey of said Rancho. The survey hereby approved contains Four thousand, Four hundred and and forty $\frac{31}{100}$ acres of land, a plat of which was returned and filed in the Clerks office of this Court on the Ninth day of March A. D. 1863 and which said plat is hereunto annexed as a part of this Decree, marked

"Approved March 16th 1863
Ogden Hoffman Dist. Judge."

Ogden Hoffman
Dist Judge

No. 275. ND
26939

U. S. Dist: Court.

The United States
vs:
Encarnacion Mesa et al.

Decree approving Survey.

Filed March 16. 1863.
W. H. Clevers.
Clerk.

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101.

The United States
vs
Encarnacion Mesa

275
ND

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The claim in this case was confirmed by the Board - and the original title has been adjudged to be valid by this Court in the case of the United States v. ~~Barcelo~~ Dana et al
For the reasons assigned in that case the claim of the present appellee must be affirmed

No. 275

U. S.

vs

Encarnacion Mesa

Opinion

9

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Encarnacion Mesa et al

Confirmed San Antonio

A. P. Crittenden

1 league Sta Clara Co

The United States
vs
Encarnacion Mesa -

Grant to Prado Mesa -
died - left a will - José Antonio
Mesa sole Executor
In 1848 the executor petitions
Alcalde for sale of land to pay
debts - It is ordered - and a por
tion of the land is sold to Record
It is then surveyed - and all
the heirs subsequently unite in a
deed -
Record sells to Dana - by whom
a claim was filed before the
Board and a confirmation obtained
It was surveyed and a patent
for 3500 acres issued.
It will probably be contended
that the alcalde had no authori
ty to order the sale -

But in the absence of the Judge
of first instance were judges
~~ex~~ Escriche ap. vub. Alcalde

Pena vs Leroy 7. Cal. p. 330.
The very case at bar has re
cently been submitted to the Supreme

2 Court and tho' the point was not decided a strong intimation was thrown that the Alcalde had jurisdiction.

Waterman vs Lawrence 19 Cal.ª p. 218 —
Aynand vs Jones 1. Cal. 488.
2 Kents Comm. 236

A minor may convey his land
Her act is voidable not void
This deed was signed by the Executor and by the minor. —

The representatives of Prado meet have located the league confined to them so as to exclude any portion of 3500 acres sold to Moore and patented to Dana —
But more it includes all the land confirmed to Juana Briones and it is claimed that the latter has no right to object as her grant is a forgery and cannot affect the rights of location of 3d parties.

The Indian and Juana Briones who claims under him have resided on the land since 1836

3

In expediente of Maximo Martinez he describes the land as bounded by land of Indian Gregorio — also in diseño — also in grant —

So in Robles case Luna asks to be bounded by lands of Indian Gregorio

The Corrador of the Prado mesa grant which has been obliterated commences Alvarado Constitutional Governor — whereas his commission was dated August 1849 — 4 months after the date of the grant —

Clark —

The survey is objected to on the part of Mr Williams in the interest of Juana Briones & the U.S.
The survey is within the extension boundaries of the grants —
The first objection is based on the ground that a portion of the tract has been transferred and the survey must include that portion —
But all these proceedings irregular as they have only supposed to convey one half of the tract

As to Prado Mesa's claim.
The appearance of the document shows the obliteration ~~without~~ was ~~without~~ accidental. There could have been no motive for it. It was evidently injured by accident returned to the Governor and a new one issued.
The expediente is numbered 135 on Jimeno's index. It shows the Concession and approval of the Departmental Assembly.

But the Juana Briones expediente so called clearly discloses that there could have been no grants.
The petitions says there had been granted to the Indians meaning of course that there had been assigned to them a piece of land — to work.
The object of the petition was to procure their emancipation — not to obtain a grant.
~~It~~ The Governor expressly informs them that the land has been granted to Prado Mesa — therefore let the magistrate go there and extend the measurements towards

5 the San Francisquito Creek.
The expediente of Massino Martinez shows that Gorgonio's boundary was not the Matadero creek but a branch of the San Francisquito.

Even if the Governor had issued this grant it would have been invalid under the recent decisions of the Supreme Court—
But did he make the grant
The paper on which it was written was not used him until 1844—
Why did he write it out himself — why use that kind of paper

The note by Pinno is evidently written at a late date and the signature of Alvarado antedated

Prado Mesa left 7 children
The sale of the land occurred in January 1848—
There was an application purporting to be from Antonio the eldest son dated Jany 7. 1848—
states he was appointed executor — the other having renounced he is now sole executor—

6 He therefor asks that a portion of the land be sold to pay debts. On this the Alcalde orders that Antonio Mesa be authorised to sell one half of the property to such purchaser as will pay the debt.

The next paper is Jany 14th 1848 from Mr Record stating that he has purchased one half of the rancho and that the Alcalde directs the surveyor to set off and measure the 1/2 that belongs to him

The next is an order to Lyman Surveyor to survey the Southern 1/2 of the Rancho

On the 17th the surveyor returns his survey with field notes It follows the San Antonio Creek much too far to the East.

3 months after that a document is gotten up purporting to be signed by all the heirs of Prado Mesa and to sell to Record the land surveyed he contend that on the face of this deed nothing passed

7 The youngest of these children was 8 years old! the oldest 19.

Note

Williams suggests that inasmuch as the Rancho Mesa tille is now represented by E. Norton & others who had notice of the sale of the rancho & who procured its confirmation — he asks time to produce to the Court the names of the present owners

The United States
vs
Encarnacion Mesa

Notes of Argument

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

The United States
vs
Encarnacion Mesa et al } No 275

In the Matter of the Survey and Location of the Rancho San Antonio —

It is admitted in this case that William A Dana and Henry F. Dana Claimants with J. W. Weeks in the case of The United States vs Dana et al No. 382, wherein was claimed and confirmed and since patented to them, the South half of the Land claimed in this case, became the owners by purchase of all the remaining rights, title and interest of all the Claimants in this case, in and to the said Rancho under mesne conveyances dated ~~[illegible]~~ in the years 1854, 1859, 1860 & 1861 prior to the trial of this case, except such interest and title as was in José Antonio Mesa on the 2nd day of June 1853, and which was conveyed, if any there was, at said last mentioned date to Edward Norton. It is further admitted that said Danas have sold to George Lehane and others twenty

three Hundred and fifty three acres of the tract confirmed in said case No: 382, and since patented. The said Dagas having acquired by purchase all the right, title and interest of this co-claimant J. W. Weeks in said land.

J. Clarke
Atty for Cl'nt

No 275

U.S. Dist. Court.

The United States
vs
Encarnacion Mesa et al

Admissions of
Counsel for
Claimants –

The U. States
vs
Encarnacion Mesa et al

This claim was confirmed, as the decree shows, to the extent of one league, "within the boundaries mentioned in the grant and shown upon the diseño". The claimants being the children and heirs of the grantee.

The Surveyor has returned a plat of survey of 8998 acres, as the survey made pursuant to this decree, and at the same time, returns a skeleton plat of another survey of 3440 acres, previously made under a decree of confirmation of that specific parcel of land to "W. A. Dana et al", under the same grant, and evidently returns the survey for the limited quantity (8998 acres) in this case, to comply with a rule of the Land Office against overlapping of Patents, on the one hand, and, on the other, to prevent the Government's parting with its title to more than a league of land

It is very evident however that the present claimants, having had no opportunity to appear in the "Dana" case, either to contest the validity of that survey and therefore their right to confirmation, or to dispute the correctness of their location, are not now bound or even affected by either of those facts, but that

they have a right to locate their one league at their election, within their Coun claims

J. Clark
Atty for Claimants

U. S. vs Francisco Mesa et al

Brief for Claimants

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J. Clark

U. S. District Court

The U. States
vs
Encarnacion Mesa et al

D. C. 275
L. C. 269

The U. S. Dist. Atty will please take notice that on Friday next (Sept. 20. 1861) I shall move the Court at the opening thereof, or as soon thereafter as Counsel can be heard, in behalf of the Claimants in the above entitled cause, for a confirmation and approval of the survey (of the tract confirmed in said cause) returned by the U. S. Surveyor General, and filed in said cause on the 2d day of Sept. inst. and for a final decree in conformity thereto

Sept. 18th 1861

J. Clark
Atty for Claimants

U. S. Dist. Court

No 275

L. C. 269

The U. States

vs

Encumacion Mercado

Notice of motion

J. Clark Atty

275 ND

[By Authority.]

LATE DECISIONS OF THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
v.
ENCARNACION MESA, *et als.* } No. 275.

OBJECTIONS TO SURVEY—"SAN ANTONIO."

The original grant under which the claimant derived title in the above case was issued to Prado Mesa, and was for one square league of land. For a portion of this land a claim was presented by William A. Dana, *et als.*, who derived their title from an alleged sale of one-half of the land, made by the executor of Prado Mesa, deceased. The land thus sold was surveyed by order of the Alcalde, and a deed was produced, signed by the executor and all the heirs, many of whom were infants, conveying the tract surveyed to Ricord, from whom the Messrs. Dana derived title.

As there appeared no reason to doubt the genuineness or validity of the original grant to Prado Mesa, and the derivative title set up by Dana seemed *prima facie* sufficient, the claim was confirmed. It was found, however, that the tract surveyed by order of the Alcalde, and described in the deed by the executor and heirs, was in part beyond the exterior boundaries of the original grant. The claim was therefore confirmed for so much of the tract described as lay within those limits.

This decree having become final, the land was surveyed and a patent issued for about 3,500 acres of land.

A claim was also presented in the name of Encarnacion Mesa, et als., for the whole tract originally granted to Prado Mesa. By some oversight the attention of the Court was not drawn to the fact that a specific portion of the same tract had already been confirmed to other parties, and a decree in favor of these last claimants, for the entire quantity granted, was entered.

If the extent of land within the exterior boundaries had not exceeded the quantity granted, no inconvenience would have arisen from these double confirmations. For either party could have applied for an injunction under the thirteenth section of the Act of 1851, and the merits of the conflicting derivative titles would have been determined before the ordinary tribunals.

It happens, however, that there is included within the exterior boundaries much more than one league of land.

The heirs of Prado Mesa, who are the nominal claimants in the present suit, urge not only their right to the whole league granted, but also their right to locate it within the exterior boundaries, at their election.

This right they propose to exercise by selecting the northern portion of the tract, excluding entirely the land confirmed and patented to Dana et als.

If this be allowed, it will result that under a grant for one league there will be patented one entire league to the present claimants, and in addition the 3,500 acres already surveyed and patented to Dana.

The objection that the deed by the Executor and heirs, under the authority of the Alcalde, of a specified portion of the tract, operated as an election *pro tanto* of the location of the tract, and that as against those holding under that

deed, no other election can now be made, is met by the allegation that those proceedings were wholly irregular and void, and the deed of the Executor and infant heirs conveyed no estate whatever.

Had the executive authorities declined to issue a patent to the confirmee of a part of the rancho until the claims for the remaining portion had been passed upon, the location of the league confirmed might have been determined by the Court, on a full hearing of all parties interested in the question.

But the patent issued to Dana et als., for the specific portion confirmed to them, has vested a title in them; and if the derivative title alleged by them be adjudged to be invalid, and the title to the entire league is still in the heirs of the deceased grantee, with the right of electing the location incidental to it, the result would be, as before stated, that under the two patents, a tract would be conveyed larger by 3,500 acres than the whole tract originally granted.

If, then, the real claimants in this case were the heirs of Mesa, it would seem that the validity of the Executor's sale must necessarily be examined, and if that sale, and the deed under which Dana et als. claimed, were found to be invalid, and, as is now alleged, a scandalous and fraudulent proceeding, there would be no alternative but to permit the heirs of the grantee to exercise their right of location precisely as if no such deed had been made, or claim under it confirmed and patented.

But it appears that the heirs of Mesa have no interest whatever in the present proceeding. By the written admission of the counsel filed in this case, it is shown that the Messrs. Dana, to whom the claim under the executor's deed was confirmed and patented, have become the owners of all the remaining right, title and interest of the heirs of Mesa in and to the rancho in question, excepting such title as was in Antonio Mesa on the second of June, 1853, and which, if any there was, was conveyed to another party.

It is also admitted that the Messrs. Dana have acquired the interests of their coclaimant, Weeks, and have sold out of the tract confirmed and patented to them 2,353 acres.

It also appears that the party who has acquired the interest of Antonio Mesa was the counsel by whom the claim of the Danas was originally presented, and that Antonio Mesa was the eldest son of Prado Mesa, and was the executor who applied for the order of sale to the Alcalde, and effected the sale, he being at that time about nineteen years of age.

The counsel by whom the suit of the Danas was subsequently conducted now appears in the names of the heirs of Mesa, but in the interest of the Danas, to object to the official survey, and alleging that the title under which the Danas claimed and have obtained a patent was fraudulent and void. He asks that they, under their new title and in virtue of their newly acquired rights, may elect a location of the grant which will entirely exclude the lands patented to them.

By an early decision of the Supreme Court, it was established that where a certain quantity of land was granted by the former Government, to be taken out of a larger quantity, the boundaries of which were specified, and where no judicial measurement had been effected, the claimant had the right to elect the location of the lands to which he was entitled; but the privilege thus liberally accorded to him was of course to be exercised conformably to equity and justice.

It has therefore been held by this Court that where the claimant has sold a portion of his tract, such sale operates as an election *pro tanto* of a location, and he will not be allowed, after confirmation, to locate on the unsold portion of the tract and to leave his grantees without title.

So, where, by building a house, cultivating, etc., he has indicated his election, he will be held to have exercised his right, and be bound by his acts.

The right of election is not, therefore, an absolute right conferred by either the Mexican or our own law, but a privilege conceded by the United States to the claimant, subject to every restriction imposed by equity, good faith, and a due regard to the rights of third persons and those of the Government.

In the case at bar the parties claiming this privilege admit that they have already, as the representatives of the original grantee, elected the location of the larger portion of the land granted; that they have presented to the Court what they avowed to be a valid conveyance from the Mexican owners of the land, and on the faith of that title have obtained from the Court a decree, and from the Government a patent for the land which they have since in great part sold.

With full knowledge that they had thus, by their own act, fixed the location, they proceeded to buy up from the heirs, as they successively came of age, the title to the remainder of the rancho, and they now assert, through the same counsel by whom the first confirmation was obtained, that the title they presented to the Court was wholly void; that the proceedings relating to it were fraudulent and scandalous, and that they had no right whatever to represent the original grantee or his heirs, or to elect the location of the grant. But they avow that they have since acquired that title, and now have the right to make a location. No argument can be necessary to prove that a pretension so devoid of justice and repugnant to fair dealing, and which, if allowed, would operate a practical fraud on the United States, cannot for a moment be admitted.

As between the United States and themselves, they are estopped to deny the validity of the title under which they obtained a confirmation, or their right to make the location which they have induced the Government to recognize.

The deed they have obtained from the heirs since the latter came of age must be taken to be but a confirmation and ratification of the deed executed by them when infants, but in the hands of these parties and under the circumstances of this case, it carried with it no right to disturb the location already made and recognized and adopted by the Government.

The same rule must of necessity be applied to the purchase of the alleged interest of Antonio Mesa. As counsel for the Messrs. Dana, he had full notice of the claim and location insisted on by them. It may well be doubted whether he is now at liberty to claim that a new location should be made, for the reason that the claim presented by him was wholly fraudulent and void; that the location which was procured to be adopted was entirely unauthorized; and that the United States, by reason of these proceedings, must issue for the benefit of the parties who instituted them patents for a league and 3,500 acres, under a grant which calls for but a single league. But, at all events, as the owner of, at most, one-seventh of the rancho, he is bound by the election made, and the location fixed by the acts and proceedings of the owners of the remaining six-sevenths.

I have treated this case as if the controversy were between the United States and the claimants alone, and on the assumption that, as now asserted, the deed under which the Messrs. Dana obtained a confirmation was wholly void.

It is proper to observe, however, that the new location contended for would embrace lands finally confirmed to one Juana Briones, who has intervened in this proceeding, and resists the proposed location.

I do not deem it necessary to inquire whether the charge that the title is invalid and ought not to have been confirmed, be true or false, for the same conclusion as to the location of the grant under consideration would have been reached if the adjoining lands had been admitted to be part of the public domain.

For a similar reason it is unnecessary to inquire whether the deed of the executor and infant heirs was or was not inoperative to pass title. But in order to leave that question open for the benefit of the purchaser of Antonio Mesa's interest, it is necessary that the survey under the decree in this cause should embrace the entire league, which also seems unavoidable under the terms of the decree. The inconvenience of issuing a second patent for lands in part covered by a former patent seems to be the inevitable consequence of the former proceedings in the cause, and it will afford to the purchaser of Antonio Mesa's interest the opportunity of procuring a decision from the ordinary tribunals of the question whether he is the owner of one-seventh of the whole rancho, or only of one-seventh of the portion not previously sold by his grantee.

I think there should be surveyed to the claimants one league of land, to be located so as to include the tract already located under the decree in favor of W. A. Dana *et als.*, and patented to them, and extending beyond said tract in a northerly direction, and in a compact form, within the exterior limits of the grant, so far as may be necessary to complete the quantity of one square league.

W. H. Sharp. U. S. Atty
Jeremiah Clarke, for C.
Jno. J. Williams, for intervenor
Juana Briones.

No. 119.

Oct. 29. 1862

U. S. Atty for U. S.

Williams & Thornton & S. L. Johnson for Claimant.

E. A. Lawrence for Jones & Agard.

SURVEY CONFIRMED.

United States vs. Tomas Pacheco et al.—In this case, the claim to the Rancho de los Cerritos, Judge Hoffman filed the following opinion:

The only objection to the survey in this case, is that it includes a small portion of the salt marsh which bounds the shores of the southern part of this Bay, and which is subject to occasional overflow. That this strip, and even more than is embraced within the survey, was intended to be included within the grant, is evident from the deslno. Near the line of the upland, but separated from each by a portion of the marsh, are two cerritos, or little hills, which are also delineated on the map, and which are shown to have been intended to be included within the grant. They have always been used for pasturage by the grantee, and the mission which formerly occupied them. Though at times, when the water is high, they may be insulated, they are through the greater part of the year readily accessible to cattle. The line of the claim has been run so as to embrace as little as possible of the marsh land, and at the same time include these cerritos. It has been run from the first to the second; thence along the base of the latter, and thence by a direct line to the upland at the point of beginning.

By this survey the claimant obtains nearly three-quarters of a league less than the quantity granted and confirmed to him, and there is excluded a large body of salt marsh which he might very reasonably have claimed.

The survey seems to me as favorable to the U. S. as should be expected, and I am of opinion that it ought not to be disturbed.

The objection filed by the intervenors Jones et als., I understand to be withdrawn.

The survey is therefore approved.

Office of the Board of Commissioners,

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

San Francisco, August 21st 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. 269 on the Docket of the said Board, wherein Encarnacion Mesa, et, al, are the Claimants against the United States, for the place known by the name of "San Antonio"

and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,

Geo. Fisher