CASE NO.
312
NORTHERN DISTRICT

SIX SQUARE LEAGUES OF
LAND IN YUBA COUNTY GRNAT
JOHN ROSE, et al.

CLAIMANT:

LAND CASE 312 ND 143 pgs.

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 605,

John Rose et al, CLAIMANTS

VS.

THE UNITED STATES, DEFENDANT,

FOR ~~THE PLACE NAMED~~

Six square leagues of land in Yuba County.

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* nineteenth *day of* February, *Anno Domini One Thousand Eight Hundred and Fifty=*three, *before the Commissioners to ascertain and settle the Private Land Claims in the State of California: sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;*

The Petition of John Rose et al *for the* ~~Place named~~

Six Square Leagues of land in Yuba County *was presented, and ordered to be filed and docketed with No.* 605, *and is as follows, to wit;*

(Vide page 5 *of this Transcript.)*

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

San Francisco December 5 1854.
Case no. 605, John Rose et al for Six square leagues of land in Yuba County, was ordered to be placed at the foot of the 3rd Class Cases on the Trial Docket.

San Francisco December 19 1854,
Case no. 605 was submitted under the Rule of 21 March 1855.

San Francisco December 26 1854,
In the same case the Counsel for the Claimant filed the following Petition & Affidavit, to wit,
(Vide page 3 of this Transcript.)
and the prayer of the petitioner therein was taken under advisement by the Board.

San Francisco January 2 1855.
In the same Case Commissioner Alpheus Felch

delivered the Opinion of the Board upon the Petition herein filed by the Claimants Counsel bearing, on the 26th December 1854, granting the prayer of the Petitioner;

Ordered, That this Case be placed at the foot of the 4th Class on the trial docket.

San Francisco January 29th 1855.

In the same Case the deposition of John Smith, a witness in behalf of the Claimants, taken before Commissioner Peter Lott, was filed;

(vide page 7 of this Transcript.)

San Francisco February 1st 1855.

In the same Case the Counsel for the Claimant filed the following Affidavit, to wit;

(vide page 29 of this Transcript.)

San Francisco February 2d 1855.

In the same Case the deposition of John Bidwell a witness in behalf of the Claimant, taken before Commissioner Peter Lott, was filed;

(vide page 10 of this Transcript.)

San Francisco February 17th 1855.

In the same Case the Counsel for the Claimant filed the following Stipulation, to wit;

(vide page 27 of this Transcript.)

San Francisco February 19th 1855.

In the same Case the deposition of Michael C. Nye, a witness in behalf of the Claimants taken before Commissioner Peter Lott, was filed;

(vide page 12 of this Transcript.)

San Francisco Feby 26th 1855.

In the same case the deposition of John A. Sutter, a witness in behalf of the Claimant, taken before Commissioner Peter Lott, was filed;

(vide page 13 of this Transcript.)

(Vide page 13 of this Transcript.)

San Francisco March 13' 1855.

Case no. 605 was submitted without argument and taken under advisement.

San Francisco May 22 1855.

In the Same Case Commissioner S. B. Farwell delivered the Opinion of the Board confirming the claim;

(Vide page 37 of this Transcript)

N. and the following order was made, to wit;

(Vide page 40 of this Transcript.)

605 John Rase et al
vs
The United States

Petition and Affidavit

To the Hon. the board of United States Land Commissioners to settle and ascertain private land claims in California

Your Petitioner John Rase respectfully represents that he is one of the claimants in the above case, and caused said claim to be presented before this Hon. Board by his counsel Robert Robert Rase, That he came twice to this city to give his personal attention to this cause, but was informed that his said counsel was in the city of Washington and was shortly expected home. Immediately after this last visit your petitioner was taken sick and confined to his room from the first of March to the beginning of June last, and such has been the condition of his health since that he has not been able until within the last month to give

his personal attention to his business. And your petitioner further represents, that on the 14th or 15th day of this month he received a letter from his said counsel Robert Rose dated the 28th of the previous month, informing him, that he should now prepare his case for Trial, that it was in the 4th class of cases upon the calendar, and advising him without delay to bring in his witnesses. Your Petitioner immediately came to this city, and ascertained that his counsel was mistaken, that his case was in the third and not the fourth class of cases, and was actual under a rule of the Hon. Board, submitted on Tuesday last for final adjudication.

Under their circumstance the absence of your petitioners counsel, his misapprehension in regard to the position of his case on the docket and his long sickness and feeble state of health, rendering it impossible for him to give his personal attention to his business, he prays that the said submission may be set aside, his case returned to the docket, and he be permitted to take such evidence as may be necessary to perfect his claim.

John Rose

San Francisco
Dec 20. 1852)
Subscribed and sworn to before me,

Alphens Peck Conn

Filed in Office Dec 20, 1852
(signed)

Geo Fisher Jr.

Decision
To the Board of Land Commissioners for settling Private Land Claims in California

Petition

To the Hon. Board of Commrs for settling Private Land Claims in California

The petition of John Rose and George Kinlock respectfully shewes—

That heretofore some time in or about the year 1844 Manuel Micheltorena by virtue of authority in him vested as Governor of California granted to John Smith a tract of six square leagues situate in the present County Yuba and bounded as follows, to wit, "On the North by the Yuba River On the West by the Eastern boundary of Captain Sutter's Land, on the South by Johnson's Rancho and by a line Extending Eastery to include six square leagues".

That on the 13th of August 1852 said John Smith sold and Conveyed unto your petitioner said tract of Land as set forth in the deed of Conveyance hereunto submitted marked B

That said land has been since the date of the grant & now is in the quiet and undisputed possession of your petitioners and those under whom they hold.

Your petitioners further shew that the title papers to said Land has been lost

That they rely for the Confirmation of their Claim upon the testimony of witnesses to be duly produced before this Hon Board

Wherefore they pray Confirmation of their Claim to said Land

Rose for Claimt.

Filed in Office Feby 19. 1853

Geo. Fisher Secy

Recorded in Vol 1 of Petitions on pages 591–592

Geo. Fisher Secy

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7 Deposition of John Smith

United States of America }
State of California }

San Francisco January 28. 1855

This day came before Peter Lott Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, John Smith a witness on behalf of claimants John Rose et al in case No. 605 on the Docket of said Board, and said witness being sworn deposed as follows

The U. S. Land Agent is present.

Questions by Mr. Williams for claimant

1st Question. What is your name age and place of residence.

Answer. My name is John Smith, my age is forty seven years and I reside On Rubicon River Mendocino County California.

2d Question. Are you acquainted with the Rancho de Yuba claimed in this case, if yea to whom was it granted by the Mexican Government Wohen?

Answer. I am acquainted with the said Rancho, It is in Yuba County It was granted to me. I petitioned for it in 1844 to Governor Micheltorena and obtained from Genl. Sutter a favorable report — Afterwards in 1845 Genl. Sutter delivered me a letter which he was authorized to give me, by Micheltorena

3d Question. What became of the papers above referred to viz the petition to Micheltorena and the reports and certificates thereon and the document delivered to you in 1845 by Genl. Sutter and where are they now?

Answer. In the Summer of 1845 I went over to Mr. Hardy's to get him to Survey my Land for me and I took my papers with me, on my return home I accompanied to find the Sacramento river about Nine

miles above the old crossing My horse became frightened and got off the bar into the deep water and was drowned – I lost my horse, saddle, bridle, papers and all, The papers were in a tin Case and were lost entirely – I immediately after made this known to Genl. Sutter, and he requested me to add up to him a Sworn petition stating the facts and asking for a Copy of the paper he had which he had begun from me This I did Mr. Bedwell prepared the petition for me and Genl. Sutter then gave me the Copy of said Document

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4? I came to this Country in 1835 with Capt Wilson, and he told me to give him the last mentioned papers and he would take them to Los Angeles and procure for me the Approval of the Departmental Assembly – I gave them to him and have never been able to hear of them since, though I made Efforts to Recover them.

4th Question. What were the dates of your petition to Michelorena and Sutters Report in your favor?

Answer. They were both dated I think in September 1844 which was the time I petitioned and obtained the favorable report of Genl. Sutter

5th Question. Were you a Naturalized citizen of Mexico.

Answer. I was Naturalized early in 1844 – and believe my Naturalization papers were given me by Governor Michelorena, but those papers were also lost

6th Question What improvements of any kind did you place on this Land

Answer. In 1844 I built a house on it, planted some Seventy five peach trees and in that year & 1845 I ditched all around three sides of a field of One hundred Acres the other side was bounded by the river. I cultivated this field in wheat Corn, potatoes and other vegetables – I tried potatoes two years

other vegetables - I tried potatoes two years

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but they would not grow.

In 1844 I had about Six hundred Cattle and a few horses on this Land they were afterwards increased in Number - I Continued to live there till I Sold out in 1848.

Cross Examined by Associate Land Agent

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1st Question. Did this title from Suter to yourself show Sutters authority to deliver it to you?

Answer. I Cannot read Spanish and therefore Cannot say but Gene Suter told me he was Authorized

2d Question. Did you get Handy to Survey your Ranch and what Office does Handy hold?

Answer. He was to have Come over the following week but I sent him word not to Come, that I had lost my papers, and I did not know then that I Could get other papers

3d Question. Was any Survey Official or private ever made of this Land?

Answer. Mr. Bedwell made a rough Survey of it to ascertain where the lines would run, and he made a map of it showing the Extent of the Six leagues

4th Question. Was the approval of the Departmental Assembly ever obtained to this grant?

Answer. I do not know Leape Wilson can tell that, I never got the papers from him.

5th. Question. What kind of a house was it you built on the Land?

Answer. It was about 35 or forty feet by Sixteen partly adobe and partly sticks put upright thatched

John Smith

Subscribed & sworn to before me on this 27th day of January A.D. 1855. Peter Tait Commissioner

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Filed in Office Jan. 29. 1855
Geo. Fisher Secy
Recorded in Rev. B Vol 1 p 288
Geo. Fisher Secy

Deposition of Jno. Bidwell

United States of America
State of California } ss.

San Francisco January 22. 1855

This day came before Peter Lott Commissioner for taking testimony to be used before the Board of U. S Land Commissioners in said State John Bidwell a witness on behalf of the Claimants John Rose et al in Case No. 605 on the docket of said Board; and said Witness being sworn depose as as follows

The U. S Attorneys Land Agent present

Questions by Mr. Williams for Claimant
1. Question. What is your name age and place of residence
Answer. My name is John Bidwell, my age thirty five years my residence, Butte County California
2d Question. Are you acquainted with the land claimed in this case if yea, please state its boundaries and the quantity of Land contained in said tract?
Answer. I am acquainted with the Land. It is bounded on the North by the Yuba river, on the West by Selling Claim on the South by Johnsons Ranch and extends Easterly so as to contain six square leagues
3d Question. To whom and by whom was said tract granted?
Answer. It was granted to John Smith by Governor Micheltorena
4th Question. Did you ever see the grant and accompanying documents if yea please state all your knowledge in

Answer. This was one of the

If you please state all you know in

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in regard to them

Answer. This was one of the tracts of Land embraced in what was known as the "General Title of Michelorena" the original of which is filed in the claim of Samuel J Hensley before this Board I saw Genl. Sutter deliver to John Smith a copy of said Original title - At said Smith's request I prepared for him a petition to Genl Sutter as Alcalde setting forth the fact, that he had lost his original Especiente with the certificates & decrees that usually accompany such documents in crossing the Sacramento River, and praying for a copy of said General Title, to which he was entitled, his original papers bearing date previous to the date of said General Title -

Genl Sutter knowing these facts delivered to him a copy of said title as he requested - This occurred I think in the Spring of 1845 -

5th. Question. State what you know in regard to the occupation of this Land by said John Smith.

Answer. John Smith had purchased of Genl. Sutter an adjoining tract of Land in 1844 - upon which he built a house and lived. After that I think in the fall of 1844 or early in 1845 he built another house on the tract claimed in this Case. The house was an Adobe house he made also ditches and corrals and had upon it about four hundred head of Cattle - said Smith continued to live from that time till he sold out his interest in this land which was I think in the fall of 1848 -

6th. Question. Look upon the map marked D and filed on the 8th of March 1852 in William Johnson's Case No. 91 and state by whom said map was made, and whether or not the land claimed in this Case is marked thereon

Answer. I made the map

myself I think in the year 1844. The tract of Land marked thereon Rancho de Yulee is the Land claimed in this case. Though that map is not in all respects accurately correct it is sufficiently so, as to the Northern Southern and Western boundaries to survey and accurately locate the Land.

L Bidwell

Subscribed and sworn to before me January 22d 1855

Pela Lott Commissioner

Filed in Office Feb. 2 1855

Geo. Fisher Secy

Recorded in Ev. B Vol. 11 p 326

Geo. Fisher Secy

Deposition of M. C. Nye

United States of America
California } ss

San Francisco Feb. 16. 1855

This day came before Commissioner Lott and was sworn Michael C Nye who testified for claimants John Rose et al in case No. 605 in said Commission as follows.

The U. S Associate Land Agent Mr. Blanding is present.

Questions by Judge Thornton for claimant —

Question by claimants counsel

1st What is your name age & place of residence?

Answer. My name is Michael C Nye My age is thirty four years My residence in Butte County California

2d Are you acquainted with John Smith the Original grantee of the Land in this case and with the present Claimants?

Answer. One William Foster and myself bought this tract of Land from said Smith, but there was no deed executed to us by said Smith. Foster and myself afterwards sold the same to the present Claimants and then Smith the Deed that is on 13th of

and then Smith the Deed that is on 13th of

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August 1852 to the present Claimants

Question by Law Agent. How do you know that Smith Executed the Deed to the Claimants?

Ans. I was not a witness to this deed, but I have seen it with the certificate of probate upon it, and they have been in possession Claiming under their purchase to this time, with my knowledge and consent and also of said Foster.

M. C. Nye

Subscribed & Sworn to before me On this 16th day of February 1855

Peter Loll Commissioner

Filed in Office Feby 19. 1855

Geo. Fisher Secy

Recorded in Ev. B Vol 11 p 428

Geo. Fisher Secy

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Deposition of Jno. A Sutter

United States of America }
State of California } ss.

San Francisco Feby 24. 1855

This day Came before Peter Loll Commissioner for taking testimony to be used before the Board of U. S Land Commissioners in said State John A Sutter a witness on behalf of the Claimants John Rose et al in Case No. 605 On the Docket of said Board and said witness being sworn deposed as follows.

The U. S Law Agent Present.

Questions by Judge Thornton for Claimant

1st Question. What is your name age and place of residence?

Answer. My name is John A Sutter my age 52 years my residence in Sutter County California.

2d Question. Are you acquainted with John Smith the Original grantee in this case and with the Land Claimed in this case

3d Question. State what you know in relation to the Making & obtaining

by the said Smith of his title in this case

Answer. John Smith the Original grantee of the Land claimed in this Case, petitioned to Governor Micheltorena for six Square leagues of Land accompanying his petition with a Map or diseno which was made or drawn as I understood by John Bidwell – This Expediente with the usual decree for information directed to me, was acted upon by me, and a favorable report made by me, before the 22d day of December 1844 – Smith after this and before within twelve months, occupied the land so petitioned for, made improvements and built an Adobe house, and had upon the said Land about 400 head of Cattle with some horses. upon the application of said Smith I remember that I gave to said Smith a Copy of the General Title, a true Copy of which is on file in this Case, as he was entitled to have it –

Said Smith was in possession by my authority of this land and the boundaries of the said tract of land were on the North of Yuba River, on the West my own Land and on the South Johnson's Ranch and corresponds with the map referred to in the deposition of John Bidwell taken and on file in this Case. I was informed and fully satisfied that in the Spring of the year 1845 the said Smith lost all his documentary Evidence or Esiediente in this Case

Cross Examined by U. S Law Agent

1st Question. When, where and in whose presence did you first see and Examine the petition of John Smith to the Governor for the Land, and how many times, and on what occasions have you since seen it?

Answer, I cannot remember the precise time but it was before I report upon the land to the Governor – I saw it in my office at the Fort. Mayor Bidwell who wrote the petition was present and Smith himself and

that I was asked after the petition had gone to many

the petition was present and Smith himself and

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I do not think any one else was there.
That was after the petition had gone to Monterey and been sent back again through the hand of Maya Bedeville. I was then called upon for my report and I Examined the petition and did report upon it. I think this was Eleven months or about a year before I gave him the general title.

2d Question. Where were you when you gave him the title you speak of?

Answer. I was at the Fort.

3d Question. What action did you take upon said petition?

Answer. I informed the government that the Land was unoccupied and did not belong to any body

4th Question. How many times did you Examine said petition and the Expediente, and when was the last time?

Answer. I never saw it after the occasion I speak of when it came back from the Governor

5th. Question. How long were you in Examining it at that time

Answer. Only a short time. I read it over and handed it back to Smithe

6th. Question. Have you ever compared the Copy of the General Title on file in this Case with the Original if Nay, if Nay How do you know it to be a true Copy

Answer. I have not heretofore compared this Copy with the Original, but by now reading it over, I find it to be what according to my best recollection is a literal Copy, I was in view of same Original title.

7th Question. Have you returned in your memory the words of the Original title so that you Could now repeat them?

Answer. I have not learned them by heart, but by reading it over I

remember the Original

8th. Question. In your direct examination in this deposition you say that the boundaries of the Ranch claimed in this Case, correspond with the map referred to in the deposition of John Bidwell taken and filed in this Case, What map did you refer to, and State what is the knowledge you have of that map?

Answer. I referred to the map which accompanied the Espediente — I Examined it when the petition was presented to me for my informé, and I was well acquainted with the ground and I have read Major Bidwell's description of the ground and its boundaries, and the map corresponded with his statements in that description in his Sacia deposition —

I have seen the map referred to in Bidwell's deposition in the Johnson Case to which I also referred, and Major Bidwells Statements Correspond with this map marked D which gives the boundaries as I recollect them.

9th Question. State what the boundaries were as you recollect them and State particularly how and where your line was established and how you know it?

Answer. On the North was the Yuba river, the West my own boundary South Johnson's Rancho and to the East the foot hills of the Sierra Nevada My line was Established 3 leagues to the East of the Feather river — It was not surveyed but I claimed to that boundary and it was respected and recognized as my boundary by Smith who took the adjoining land with reference to that as my boundary

10th Question. Under what title did you claim 3 leagues East of Feather river and where was the division line between the two grants?

line between the two grants?

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Answer. I claimed at first up to that point and then I could select 11 leagues where I wished, and after I took my 11 leagues I petitioned the Government for the Sobrante. There was never a division line, I could locate where I pleased.

J A Sutter.

Subscribed and sworn to before me on this 24th day of February A.D. 1855.

Peter Lott Commissioner

Filed in Office Feb. 26. 1855

Geo. Fisher Secy

Recorded in E. B Vol 11 p. 153

Geo. Fisher Secy

Copy.
Deposition of John A Sutter
Jr on
No. 201

Case No 201 upon the Docket
For confirmation of the grant of
Rancho Aguas Nieves

Board of Commissioners to ascertain and settle private Land claims in California. On this 13th day of May A.D. 1852 came before me James Walsons One of the Commissioners, Capt John A Sutter a Witness offered by Samuel I Hensley petitioner, and being duly sworn gave the following testimony –

Geo. Wooley – Law Agent of the United States was notified and did attend to the taking of the testimony of said Witnesses

In answer to interrogatories propounded by petitioners Counsel, the deponent answers as follows.

I am acquainted with the hand writing of Gen. Manl. Michelorena and have seen him write very Often – The paper now shown to me as an Original paper and purporting to be the Certificate of the Governor of Nationalization of Samuel I Hensley as a citizen of Mexico is a genuine paper and the signature of Manl. Michelorena to said paper is his true signature, The Commissioner has affixed his initials to said paper and marked it as follows J A S No 1.

I have also compared said paper with Document marked Exhibit B on the files in this cause and I find the said Exhibit B to be a true Copy in the Spanish Language and the translations of the same into English to be substantially Correct

I further state that an original paper purporting to be the original of paper marked marked Exhibit A in said Cause which is now shown me is a genuine paper and the signature of Gov. Manl Michelorena Secy Manl. Jimeno, the signature of Saml I Hensley and my own signature, where they occur on said paper are all genuine signatures of those several persons.

"The last paper attached to said Exhibit A marked by the Commissioner as follows J M I have carefully examined and I state that I gave a copy of the original paper which I had received from Gov. Michelorena to Saml I Hensley as security for the land he claims until such time as he could perfect his title to the same according according to the forms required I gave that copy to S I Hensley about the 20th of April A.D. 1845.

"The map which is attached to the original paper marked J M No 2 is an original of which a copy is attached to Exhibit A in this Case.

I was Military Commander of the Northern frontier and exercised civil jurisdiction in all the North eastern portion of the Territory of Upper California in the years 1844 and 1845. I knew the Rancho Arroyo Nieves claimed by Saml I Hensley and the same was within my jurisdiction. It is on Butte creek in the Sacramento Valley about One hundred Miles North of Sutter's Fort. Mr. Hensley appeared to me in the Spring of 1845 to be put in possession of the Rancho Arroyo Nieves. I did not give him possession of the same as he requested for

Propeson of the Same as he requestine of

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the reason that I was engaged in a Military Campaign with Govr. Micheltorena from Jany 1845 to the 1st of April 1845. Immediately on my return from the Said Campaign I had to go out again on an Indian Campaign — Soon after my return from the Said Indian Campaign Col. Fremont Came with his party into that Section of the Territory and a general revolution followed throughout California —

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I soon ceased to Exercise Military Command or Civil Jurisdiction. For these reasons I could not Comply with his request

Upon Examination of the Witness by G W Cooley Esq. Land Agent of the U. S. States —

The Witness says that his civil jurisdiction Extended from the San Joaquin Northward over the whole Sacramento Valley

J. A. Fuller

The Land Agent G. W. Cooley Esq. objects generally to the foregoing deposition as incompetent reserving generally all legal objections

May 13th. 1853

Subscribed and Sworn to before me

James Wilson Commissioner

Filed in Office May 13th 1852

Geo. Fisher Secy

I George Fisher Secretary to the U S Land Commission to ascertain and settle the private land Claims in the State of California hereby certify that the foregoing is a full true and Correct Copy of a deposition in Case No. 201 wherein Samel J Hensley is Claimant against the United States for the place Named "Aguas Nieves" now on file in this Case.

In testimony whereof I have

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hereunto subscribed my name & affixed my official Office in the City of San Francisco California this Seventeenth day of February A.D. 1855

Geo. Fisher
Secy

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Filed in Office Feb. 17. 1855
Geo. Fisher
Secy

Acknowledged before me.
Feb. May. 17. 1852.

1. 21

This original exhibited by Capt. Sutter and proved before me. J. M. May. 13. 1852.

Doc. H. Hall. se DW. proved by Sutter & Bidwell and annexed to the depo. of the latter before Comr. Hall in 202.

Manuel Michelltorena, Gral. de brigada del Ejercito Mejicano, Ayundante Gral. de la Plana Mayor del mismo, Gobernador Comandte General é Inspector de Californias.

(L. S.)

(L. S.) No pudiendo ahora por estar sumamente ocupado este Gobierno Supremo Departamental, extender uno por uno los titulos respectivos á todos los ciudadanos que han solicitado terrenos con informe a su favor del Sor. D. Agusto Sutter Capitan y Juez encargado de la Jurisdicion de Nuevo Elveci a y Sacramento, á nombre de la Nacion Mejicana les confiero por estas letras la propiedad para ellos y sus familias de los respectivos terrenos marcados en sus instancias y diseños a todos y a cada uno de las que hayan solicitado y obtenido informe favorable del espresado Sor. Sutter hto. hoy dia de la fha. sin que nadie pueda disputar les su propiedad sirviendoles una copia de este que les dará mas adelante el S. Sutter de titulo formal con el que se presentaran a este Gobierno para estenderles el mismo titulo en la deberida forma y papel sellado correspondiente y para la debida constancia en todos tiempos de y este documento que será reconocido y acatado por todas las autoridades Civiles y Militares de la Nacion Mejicana en este y en los demas Departamentos, autorizado debidamente con los sellos Militar y de Gobierno en Monterrey a veinte y dos de Diciembre de mil ochocientos cuarenta y cuatro.

Manl. Michelltorena.

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State of California
Sacramento County. } ss.

on this 28th day of June A.D. 1850, I. Lewis A Birdsall, hereby certify that John Birdsall, Samuel I. Hensley, George McKinstry and Isaac I. Mott, personally came before me and being duly sworn by me and being all credictable witnesses depose and say on oath that they know Wickelthorne the above named Grantor and are well acquainted with his written signature, having seen him write and that they verily believe that he signed the above with his own hand. In Witness whereof I. Lewis A. Birdsall, Recorder in and for the County of Sacramento and State of California aforesaid have set my hand and seal the day and year above written.

L. A. Birdsall.
Recorder. Sac. Co.
California.

H. E. Robinson. = Filed for Record. June 28th 1850 at 10 O'H. A.M. and duly recorded in Book D. of Deeds. Page 110.

Lewis A. Birdsall.
Recorder. Sacr. Co. Cal.
pr. Th. I. May. Dpt.

John Birdsall = this paper proved by the testimony of John Bidwell before me: April 16. 1852. =
H. Hall. Comr.

no 201. = Samuel I. Hensley. against Grieves. = Doc. H. Hall. and I. W. proved by Sutter & Bidwell and answered to the depos. of the latter before Comr Hall.

Filed in Office January 28. 1853. =
Geo. Fisher Secy. = In case no 235. exhibit 1. to Depo of Jno. A Sutter = P. L. = Recorded in Record of Grants Vol. 6. pages 289. & 290.

George Fisher, Secretary to the Board of Land Commission to ascertain and settle private land

2. 23.

I George Fisher, Secretary to the U. S. Land Commission to ascertain and settle private land claims for the State of California, hereby certify the foregoing to be a full true and correct copy of a paper marked Doc. H. Hall & J. W. annexed to the deposition of John Bidwell in case No. 201 Samd G. Hensley vs. the United States for the place named "Aguas Vivas" now on file in this office.

In testimony whereof I have hereunto signed my name at office at the City of San Fran.co Cal. this 16th day of Feb. A.D. 1855.

Geo. Fisher. Secy.

Filed in office Feby. 17. 1855.

Geo. Fisher. Secy.

25 Doc. "H H & J W."

Translation

Manuel Micheltorena General of Brigade of the Mexican Army, Adjutant General of the Staff thereof, Governor, Commandant General and Inspector of the Department of the California

This Supreme Government of the Department not being able at the present time on account of being closely occupied, to extend one by one the respective titles to all the citizens who have petitioned for lands with favorable reports from Señor Don Augustus Sutter Captain and Judge in charge of the Jurisdiction of New Helvetia and Sacramento, by these letters in the name of the Mexican Nation I grant unto them and their families the lands described in their petitions and diseños to all and each one of them who has solicited and obtained from Señor Sutter up to the day of this date favorable reports without any one being able to dispute their ownership, a copy of this given to them hereof by Señor Sutter serving them as a formal title, with which they shall present themselves to this Government for the purpose of delivering to them the said title in due form and upon paper of the corresponding seal; and for the due testimony thereof, at all times I give this present document which shall be acknowledged & respected by all the civil and military authorities of the Mexican Nation in this and all the other departments duly authenticated under the military and Government seals, at Monterey on the twenty second day of December 18 One thousand Eight hundred and forty four

(Signed) Manl. Michelltra

I Geo. Fisher Secretary to the U. S Land Commission to ascertain and settle private Land Claims in the State of California hereby certify the foregoing to be a true and correct translation of a paper marked

Doc "He Heall & J ue" annexed to the Depo. of John Bidwell in Case No. 201. Saml J Hensley vs the United States. In the place named Aguas Nieves" now on file in this Office

In testimony whereof I have hereunto signed my name, at Office at the City of San Francisco. Cal. this 16th day of February A.D. 1855

Geo. Fisher Secy

Filed in Office Feb. 17. 1855

Geo. Fisher Secy

Stipulation U. S. Land Commission &c.

John Rose et al
vs
The United States
No. 605
Stipulation

It is hereby stipulated that a certified copy of the document called the General ~~Grant~~ Title Executed by Gov. Micheltorena delivered to Capt John A Sutter, the Original of which is on file in the Case of Saml I Hensley vs The United States No 201 as an Exhibit to the deposition of John A Sutter be together together with a Copy of the said deposition filed and Consequences occurred in this Case.

Feby 16th. 1855

Lewis Blanchard
Asso. Law Agent

Filed in Office Feb. 17 1855
Geo. Fisher Secy

Recorded in Journal Vol 4 p 210
Geo. Fisher Secy

28

Appearance John Rose & al
vs. } No 605

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Affidavit

John Rose et al
vs.
The United States
No 605

312 ND
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This day personally appeared before me the said John Rose and made oath that the original title papers to the land claimed in this case, consisting of the original petition to Gov. Micheltorena the favorable report of Genl. Sutter and the decree of the said Governor, together with a copy of the General Title of said Micheltorena delivered by Genl. Sutter to the original grantee of this land in accordance to the provisions of said General title were accidentally & unknowingly lost lost by John Smith while crossing the Sacramento or Feather river —

And this affiant further states, that the subsequent petition of Genl Sutter praying for another copy of said General Title, and the copy thereof given in accordance with said petition he believes to be hopelessly lost — That he has made the most diligent search and enquiry for them, in every place where they might reasonably be expected to be found, and of every person who might probably know anything of them, but without success, and that they are hopelessly lost.

John Rose

Subscribed and sworn to before me on this 22d day of January A.D. 1855

Peter Lott Commissioner

Filed in Office Feb. 1 1855
Geo. Fisher Secy

Recorded in Rev. B Vol 11 p. 312
Geo. Fisher Secy

Refusal in the Jews rest Arose on a
transference to Michael Cohen

31 B

Transfer

Know all men by these presents that Whereas in the year 1848 I sold and transferred to Michael C Nye and William Foster all my right title and claim to the following real Estate situate in Yuba County California, to wit, six leagues of Land Bounded on the Northern side by the Yuba River on the Western side by the Eastern boundary of John A Sutter's Land on the Southern side by Johnson's Ranchs, and extending Eastery for quantity so as to make up the said six leagues, and Whereas the said Nye and Foster have since sold said Land to John Rose and George Kinlock, Now then in Consideration of the premises, and further in Consideration of the sum of five dollars to me in hand paid by the said Rose and Kinlock, the receipt of which is hereby acknowledged I hereby Convey and give claim to the said Rose and Kinlock their heirs and assigns forever all my right title interest and claim to the said Land and every part and parcel thereof both in Law and Equity, and all right to the benefit of all grants to me heretofore made & all Equities in said Land by me at any time heretofore held —

Witness my hand and seal this 12th day of August A D 1852

Witness
J Halsey

John Smith (Seal)

32

State of California
County of Yuba } Yuba County

On this 12th day of August A D 1852 personally appeared before me Chas. Lindsey Clerk of the Yuba County in and for the County aforesaid Mr Smith to me known to be the person who made and Executed the foregoing Conveyance, and who to me acknowledged that he made and Executed the same freely and voluntarily for the uses and purposes therein Expressed.

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PAGE 29

Seal

In Witness whereof I have hereunto set my hand and affixed the Seal of said Court this twelfth day of August A.D. 1852

Chas. Lindsey Clk Dist Court
for J K Beckler Deputy

(Endorsed)

Received for Record this 15th Sept. 1852 at 45 minutes after three O'clock P M. Was Recorded Oct 5/52 at 10 O'clock A M Book 6 page 201. 202

Chas Lindsey Recorder
for J K Beckler Deputy

Filed in Office Feb. 19. 1853
Geo. Fisher
Clerk

Certificate

State of California }
Sacramento County } ss:

On this 28th. day of June A D 1850 I, Lewis A Birdsall hereby certify that John Bidwell, Samuel J Hensley George McKinstry and Isaac T Moll severally "came" before me, and being duly sworn by me, and being all credible witness, depose and say on oath that they know Michelorena the above named grantor and are well acquainted with his written signature having seen him write and that they severally believe that he signed the above with his own hand —

In witness whereof I Lewis A Birdsall Recorder in and for the County of Sacramento and State of California aforesaid have set my hand and seal the day and year above written

L. A. Birdsall
Recorder Sac. Co. California

"H. E Robinson.

"Filed for Record June 28th 1850 at 10 Ole. A.M. and duly recorded in Book D of Deeds of Page 140

Lewis A Birdsall
Recorder Sac. Co. Cal.
"Pr. "Thos J. Aby Deputy

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John Bidwell = "This paper proved by the "Testimony of John Bidwell before me — April 16. 1852. M Scott Com.

No. 201 = Same J "Hensley = Agustin Nieves = Doc. "He "Hence and file. prov.d by Sutter & Bidwell and anx.d to the Depo. of the latter before Com. "Hull = "Filed in Office January 28 — 1853 — Geo. "Fisher Secy = In case No. 235 Exhibit to Depo. of Jno. A Sutter P.L. Recorded in Record of Evidence Vol 6 pages 289 & 290 a

I George "Fisher Secretary to the U. S Land Commission to ascertain and settle private

I George Fisher Secretary to the U. S. Land Commission to ascertain and settle private

35

Land Claims in the State of California hereby certify the foregoing to be a full true and correct Copy of a paper marked "Doc A Hall & filed" annexed to the Deposition of John Bedwell in Case No. 201 – Same. L Hensley vs. the United States for the place named "Agua Nieves" now on file in this Office –

In testimony whereof I have hereunto signed my name at Office, at the City of San Francisco Cal this 16th day of Feb A.D. 1855

Geo. Fisher Secy

Filed in Office Feb. 17. 1855

Geo. Fisher Secy

37

Opinion of the Board

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Number 605
John Rose and Tuzee Kimball
vs
The United States

For Six Leagues of Land in Yolo County

This Claim is based upon what is called the Grand Title issued by Governor Micheltorena on the 22nd day of December 1844 and for the Mantee Ranch John Smith and which Grand Title is filed in Case Number 201 and which has been acted upon by this Board and been deemed valid in said Case

And by written Stipulation on file in this case the document above referred to is made evidence in this case

The fact is fully established by the testimony of John A Sutter and Wm Bidwell that the said John Smith was one of the persons residing in said Grand Mantee.

And Grand Sutter testifies that he admitted a copy of the original Mantee to the said Smith together with the map accompanying the original Expediente.

And it is also satisfactorily proven that the said copy and the map was lost by the said Smith while pending appeal which is supplied by a copy of the same adopted by agreement of parties

The testimony of Sutter and Bidwell also establishes the performance of the conditions of the Grant

It also appears that the said Smith sold verbally the claim here made at Rye and William Foster and that Rye and Foster sold to the present Claimants

And that by agreement of the parties the said John Smith on the 12th day of August 1852 sold a and to the premises to the present Claimants which said deed is offered in evidence and duly authenticated

We are of the opinion from the showing in the case that the said Smith was one of the persons included in the General Grant

And that the present claimants including in a confirmation of the land claimed and adverse will be entitled accordingly

(Confirmed)

Filed in Office May 22nd 1855
Signed
Geo Foster
Secretary

Recorded in Record of Decisions Vol 2 p 699
Signed
Geo Foster
Secretary

2/605 7

39

Decree of Confirmation

Number 605
Petroleo and
Grego Unitock
vs
The United States

In this case after hearing the proofs and allegations it is adjudged by the Commission that the claim of the said Petitioners is valid and it is therefore decreed that the application for a confirmation thereof be allowed

The land of which confirmation is hereby given is situate in the County of Yuba embracing six square leagues and is bounded as follows to wit

On the North by Yuba River on the east by lands of John A Sutter on the south by the lands of Johnson's Ranch so called and by the Deposition of John A Sutter on file in this case for further particulars

R Aug Thompson
J B Farwell
Commissioners

Filed in Office Aug 22nd 1855
Signed
Guy Fulton
Secretary

Recorded in Record of Decrees Vol 2 p 678
Signed
Guy Fulton
Secretary

and it appearing to the satisfaction of the Board that the land hereby applied for is situated in the Northern District of California it is hereby ordered that the transcripts of the proceedings and of the decision in the cases of the petitions and evidence upon which the same are founded and an abstract of entries of the land together with the plat of the United States District Court for the Northern District of California and the other transmitted to the Commissioner of the United States

605
Dup

312 ND
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Office of the Board of Commissioners,
To ascertain and settle the Private Land Claims in the State of California.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing forty pages, numbered from 1 to 40, 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. 605 on the Docket of the said Board, wherein John Rose, et al, are Claimant against the United States, for ~~the place known by the name of~~ Six Square leagues of land in Yuba County.

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

Geo. Fisher
Sec'y

312

U. S. DISTRICT COURT,

Northern District of California.

No. 312 — 312

THE UNITED STATES

ND

vs.

John Rose, et al.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 685

Filed, October 23 — 1855

J. A. Monroe,

Clerk.

Office of the Attorney General of the United States,

Washington, 3. December, 1855.

605 — "Six square leagues of land in Yuba County" —

John Rose 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 20th day of November, 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. 312 One

United States
vs
John Rose et al;

Notice of Appeal in
Case no. 605.

Filed Febry 11. 1856,
WH
J. Cherrick.
Deputy.

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

The United States
Appellants
vs
John Rose et al
Appellees

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 Appellee was confirmed as appears by reference to the records in the case; That a transcript of the said Records was filed in this court on the 23rd day of October 1855; that a notice of appeal was filed on the 11 day of February 1856 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 decree the said title to be invalid.

Respectfully &c
S. W. Inge
U. S. Dist Atty

No 312 (2

U. S. District Court
Northern District

The United States
vs
John Rosedale

Petition

Filed Feby 25. 1856.
J. Thomas
Depty

John Rose Sal
ads No 312
The United States } In District Court
U.S. Northern District —

For answer to the Petition filed in this case on the part of the United States, the said appellees answer and say, it is true that the Land described in the said Transcript of the record of the proceedings and decision of the Board of Land Commissioners to ascertain & settle private Land claims in California, lies in the Northern District of California and within the jurisdiction of this Court —

But they deny that their title to the same is invalid, and aver that the same is valid, and pray this Hon. Court that the decree of said Board of Commissioners confirming their claim may be affirmed, and the validity of their claim and title to said Land may be decreed —

Thornton Williams & Thornton
for Appellees —

No 312 (3

U. S. District Court
Northern District

John Rose & al
ads
The United States

Answer

Filed Feby 25, 1856.
J. Chaves
Deputy

1

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

The United States
vs
John Rose et al

Northern District of California }.

On this day personally appeared A. S. Foote of said District who maketh oath and saith that the above entitled cause was submitted to this Court on the day of March A D 1857, that said cause as he is informed & believes was submitted on motion of the District Attorney of the United States for said District upon the record or transcript of the proceedings therein before the Hon the Board of United States Land Commissioners for California before whom the claim of the said Appellees was examined and by whom it was confirmed, that said cause was submitted to this Court as deponent is informed & believes without argument and without any opposition to its confirmation and without the adduction of any testimony other than what appears in said transcript, before this Court, that no decree of confirmation of said claim as he is informed & believes has yet been entered,

Deponent further saith that after the said cause came to this Court on appeal he was employed to oppose the confirmation of

the claim of said appellees by Robert McTurner for himself and others who are resident upon land which it is claimed by said appellees is within the boundaries of their said claim, and who as deponent is informed and believes settled upon said land in good faith for agricultural purposes believing it to be public land of the United States, and as deponent is informed & believes have put upon said land valuable improvements, that after the employment of deponent as aforesaid he called upon Andrew Flapell Esq who then had charge on behalf of the United States of this appeal as the assistant of the Hon S W Rice then District Attorney of the United States for said District and asked the consent of the said Andrew Flapell to appear with him and assist in the prosecution of said appeal and bringing forward and examining on behalf of the United States any witnesses whose testimony might be deemed material in opposing the said confirmation, and to adduce such other material testimony as might be procured in opposition thereto, that said Andrew Flapell consented to the appearance of deponent with him in behalf of the United States and agreed not to call up said cause without notifying deponent thereof in sufficient time to enable him to procure and adduce said testimony or to give him an opportunity in conjunction with the said Andrew Flapell of presenting such opposition to said claim as might be deemed expedient, that when the term of the employment

of the said Andrew Klapell on behalf of the United States, retained the said Andrew Klapsell as defendant is informed & believes failed to inform the present District Attorney of said arrangement with defendant, that defendant upon obtaining the consent of the said Andrew Klapell conferred with John J Williams Esq of counsel for the said appellees informing him of his said employment and of the said consent of the said Andrew Klapell and made an agreement with the said John J. Williams which defendant understood to be that said cause would not be called up or submitted by said Williams without advising defendant thereof or giving him an opportunity to be present in Court at the time, that defendant then supposed that there would be no difficulty in fixing said cause for hearing at such time as would enable him to advise his client thereof and to procure such testimony as he might wish to introduce, that he is informed and believes that it was then the practice of this Court to fix cases for hearing upon the agreement of parties or upon the application of either party showing a proper cause therefor, that defendant was not aware that said cause would be called for hearing at the time it was called, on the contrary he supposed from the mass of business which preceded it the cause would not be reached if called regularly on the calendar for some weeks thereafter, that the late summary disposal of cases of this class by this Court and the disposal of numerous appeals by the Attorney General of the United States has brought this cause to a hearing, by a call of the calendar

at a period much earlier than defendant anticipated, that he had no knowledge or notice of the calling of said cause or that the same had been called until after the said cause was submitted as aforesaid, that said cause was called by the Court and submitted by the District Attorney as defendant is informed & believes without any action on the part of the said John J. Williams or any other counsel in behalf of said appellee, that defendant desires with the consent of the District Attorney to argue said cause to the Court and would have done so when the said cause was submitted, if the Court would not have allowed a postponement thereof for the purpose of taking further testimony, believing the same not to be entitled to confirmation by the Court upon the record as it now stands on appeal even without the addduction of other testimony.

Defendant further saith that the witnesses whom he desires to examine as he is informed and believes reside and have from the time of his employment resided in Yuba & Butte Counties in this State.

Defendant further saith that although he was informed by the said Robert McFerran, Chairman of the Committee, and others of certain facts and circumstances which if presented to the Court by testimony would in the opinion of defendant have an important bearing against the said claim he found it difficult to ascertain by whom and in what manner such facts and circumstances might be presented in conformity to the rules of evidence governing the introduction of testimony in this Court, that it was not until somewhat in the earlier part of February

my last part that he received a letter from the Hon Charles D. Bryan of Maysville who is a practitioner of law there to the effect that he the said Bryan was engaged in certain litigation at Maysville in position adverse to the claim of the appellee to title to the land in controversy in this cause, and that having heard that deponent had been employed to oppose the confirmation of the said claim he desired to put deponent in possession of certain facts in connexion therewith which might be material in opposing the confirmation thereof and which were substantially then set forth in the accompanying papers numbered (1) & (2) - he referred to and made part of this affidavit. That soon after the receipt of said letter he wrote to the said Robert M. Turner advising him of the receipt and contents of said letter and advising the employment by him of Mr Bryan in conjunction with deponent and calling his attention thereto, but not anticipating the call of said cause at so early a period he did not inform his said client that it would be necessary for them to make immediate preparation for the trial thereof, that Mr Bryan in his letter to deponent did not state of whom or in what manner the facts he mentioned could be established except that he had elicited them in the said litigation in the examination of the said John Rose one of the claimants herein. ~~therein~~ ~~is~~, that since the submission of said cause deponent has received the accompanying affidavits marked (1) & (2), that deponent

upon the merits of said affidavits for the first time learned that he could establish the facts therein set forth by other persons than the said John Row.

Defendant further saith that if the said cause be reinstated and opened for further testimony he expects to establish the facts set forth and contained in the ~~foregoing~~ accompanying affidavits which are here referred to and made part of this affidavit, that he is desirous of examining John A Butler and other witnesses who were examined on behalf of the claimants before the said Board believing that if the testimony of said witnesses be again taken it will appear that they were mistaken in some material statements made before the said Board and that their testimony will not be found of a character sufficiently accurate & certain to warrant the confirmation of said claim and that said claim is in its character fraudulent as against the United States.

Defendant further saith that the claim of the appellees if confirmed he is informed and believes will be of immense value, that it will cover large bodies of agricultural and mining lands considerable portions of which are now occupied and improved as defendant is informed & believes under the belief that the same are public lands of the United States.

Defendant further saith that if said cause be reinstated and opened as aforesaid he expects to be able to procure all the

testimony which he desires to introduce within two weeks from this date and be prepared then to argue and submit the cause.
Deponent further saith that this affidavit is not made for delay but for the purposes of substantial justice.

Sworn to & subscribed before me this 19th day of March 1857

W. Foote

No. 312.

N. D. Dist. Court.

The United States.

vs

John Rose.

et al.

affidavit of H. S. Foote on motion to open Decree, and for a Continuance.

Filed March 17, 1857,
W. H. Chevers,
Deputy.

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At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of San Francisco, on Thursday the 19th 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 John Rose et al	D.C. 312: L.C. 605

It appearing that this Case has been heretofore heard and decided, on motion of the District Attorney, the Counsel for the appellees having been heard in opposition;

It is ordered by the Court that this case be re-opened for the admission of new testimony; that such testimony be closed by Monday the 30th March instant and that this case be again submitted on that day.

312 (4

United States District Court, Northern District of California.

The United States

vs.

Jno Rose et al

ORDER.

for rehearing.

Filed March 19, 1857

John A. Monroe,
CLERK.

By W. H. Chevers,
DEPUTY.

U. S. District Court

The United States

v

John Rose et al

D. C. 312 : L. C. 605.

San Francisco Mar 19/57

Gentn.

You are hereby notified that John A. Sutter, Michael C. Nye and John Smith will be examined in this case on the part of the United States before Cutler McAllister Esq. U. S. Commissioner at his office on Thursday next the 26th day of March instant at 12 O'Clock, noon, of that day.

Yours &c

Wm Blanding
U. S. Atty.

Mess Thornton, Williams & Thornton
Attys for appellees.

312
605

U. S. Dist Court

The United States

v

Jno Rose et al

notice

Due service admitted
this 25th day of March
AD 1857

Thornton Williams

Thornton.

312 ND atty. for Rose
PAGE 54

Filed March 20, 1857
Cutler McAllister
Clk

Blanding
USA

UNITED STATES DISTRICT COURT,
Northern District of California.

312 ND
PAGE 55

San Francisco, March 28 1857.

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Leander Ransom a witness produced on behalf of the United States —

in Case No. 312; being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 605 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT:
Gov Foote for US Dist Atty
J. S. Williams appeared for Claimants & objected to the taking of this deposition for want of sufficient notice —

QUESTIONS BY U.S. Dist Atty —

I am Chief Clerk of the US Surveyor General's office for California —

Ques Look at the map now handed to you & state what it is —

(Question objected to as being irrelevant and incompetent testimony —

Ans — I cannot answer this question more appropriately, than by in the language of the description of the map as marked on its face in the following words —

"Plat of Preliminary Survey of New Helvetia confirmed to John A. Sutter by the U.S. Board of Land Commissioners containing 182,301-784 Acres, Excess being, 35,825,245 as surveyed by A. H. Von Schmidt U.S. Deputy Surveyor — Scale 80 Chs to the Inch —

Certificate of US. Surveyor General California.

Signed J. C. Hays -

Quer 2 - Give the history of that map so far as you know it and how it came to be made -

Ans 2 I can state nothing more particularly than as it is laid down in the certificate of the Surveyor General upon the face of it -

Quer 3 - Do you know any thing as to the verity of the facts contained in this certificate?

Ans 3 - I know of the application of Geil Sutter for the Survey - I know that Von Schmidt was appointed to make the survey - and I also know that instructions were given him to make the survey in accordance with the decision of the Board of Land Commissioners made in this cause -

Atty for the Claimant protests against this deposition being either received or read on the grounds aforementioned - and under this protest proceeds to the Cross examination -

Cross Examination

Quer 1 Were you present when this survey was made?

Ans 1 - I was not -

Quer 2 Do you know of your own know-

ledge whether said survey is a correct & faithful survey of those lands –

Ans 2. I know nothing of my own knowledge, I know that Von Schmidt received his instructions, & returned his field notes under oath, & the map was made from those field notes –

Ques 3. Do you know of your own knowledge, whether or not this map is made in strict accordance with said field notes?

Ans 3 I made a general examination of it, but cannot say of my own knowledge that every line or point of it is true –

Ques 4 Have you ever read every word of those field notes –

Ans 4 I made but a general examination of them –

Ques 5. Was the said Von Schmidt specially sworn to make this identical survey?

Ans 5. My opinion is that he was, but I am not certain about it –

Ques 6 Under authority of what law was this survey made?

Ans 6 I does know precisely what law, I could if I had the books & under instructions contained in the little Book published by the Land Commissioners, which book contained part of the treaty of 1848 with the Mexican Government – the law of Congress 1851 – & the said instructions

Ques 7. Do you know whether this Sutter Claim was confirmed at the time of the Survey

Ans 7. It was by the Board of Land Commissioners —

Sworn to & subscribed before me this 28. 1857.

Cutler McAllister
U.S. Commr

Leander Ransom

United States District Court Northern District of California —
No 312

The United States
vs
John. Rose et al

Deposition of Leander Ransom
Filed on behalf of Defendants
on behalf of the United States

Filed March 30 1857.
W. H. Chevers, Clerk
By [illegible] Deputy

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UNITED STATES DISTRICT COURT,
Northern District of California.

312 ND
PAGE 59

San Francisco, March 26 1857

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Michael C. Nye a witness produced on behalf of the United States in Case No. 312, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 605 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: Gov. Foote for the US Dist Atty, Thornton Williams & Thornton for Claimants

QUESTIONS BY US Dist Atty —

I am a resident of Yuba County. I have been in this Country since 1842, off and on, I know John Smith in this Country I have been acquainted with him since the Summer of 1842 — When I first knew him he resided at Sacramento Fort at that time called New Helvetia, that was the residence of Genl Sutter, at that time, I had no particular connection at that time, by John Smith I mean the Claimant in this case, in 1844 or 1845, I could not say when I first became connected with him in business, we were in partnership, we had stock up in that Country — There was an adobe house erected about two miles from the junction of

the Yuba River, on its banks - by said Smith - That adobe house was below the Linda Town several miles to the West of it - The land on which this house was situated was a piece of land he had purchased from John A. Sutter - This house was an adobe house - ~~It~~ - I know that Sutter claimed this land & sold or leased it to Smith who built this house upon it, & afterwards sold it to Sutter -

(So much of the above objected to as relates to the claim of Sutter, on sales made by or to him, as being hearsay and secondary evidence) -

Smith resided in that County from the year 1842 or 1843 up to the time of his building the said house - he worked down here but had his residence home property up there, for a short time he was on this tract of land, & afterwards built another place -

I 1845 or 1846 he built a mud & stick house, it was built several hundred yards above Linda Ferry as it is now called, upon land which he purchased of Sutter at that time as a part of his grant - I know of no other houses but these two erected by Smith while he lived in the County of Yuba -

I don't know how he recognized them, but I know that he purchased them of Sutter, I don't know what his opinion was as to whether he was on Sutter's land or not, as the line had not been run at that time I have heard him speak about those

purchaser, he told me he had purchased those tracts of Sutter -

Ques. Look at the description of the tract of land ~~called the~~ claimed in this case in the deposition of John A. Sutter, contained in the record on file in this cause & state whether the Adobe House before mentioned in your deposition, was within or without said Boundaries as specified in said deposition -

Ans - ~~According to the map which I saw to day~~ -
I cant say, because I dont know, I dont know anything about the boundaries -

Ques Do you know of an Adobe House which Sutter built or had at that time, included within the boundaries of the grant which is now the subject of controversy -

Ans Not any according to the map which was shown to me to day, according to my knowledge - The map which I refer to is a map shown to me to day by Mr Turner which purports to be a "plan or preliminary survey of New Helvetia confirmed to John A. Sutter by the U.S. Board of Land Commissioners - as surveyed by A. W. Von Schmidt - US Deputy Surveyor made in May 1856 -
(Answer objected to as being irrelevant & incompetent testimony) -

Ans This map to which I refer is now before me

(Atty for Plnts objects to any testimony upon or in regard to said map - no proper foundation having been laid for it) -

Ques Suppose Sutter's line to be established or run three leagues to the East of the Feather River, where then would the Adobe House be, would it be on the claim or outside

(Question objected to as being irrelevant & incompetent & as assuming a fact) -

Ans It would be outside of the Smith grant several miles and inside of Smith's claim - The Stick House would be a mile more or less outside of the Smith grant it might be more I could not say -

Ques - Reflect upon the Geography of that neighborhood & say how far the Stick House is outside of the Smith grant or below the Western line of the Smith Grant -

(Question objected to as irrelevant and incompetent) -

Ans I should judge it was certainly a mile it may be something more. I could not say positively what the distance was as I have not been over that country for some years -

Ques In what relation were you living with Smith at the time of his residence in Yuba County -

Ans I was a partner with him in stock operations -

Ques When did Smith leave that part of the Country last

Ans He left that neighbourhood in the Summer or fall of 1848 - he disposed of his whole interest to myself & Foster, land stock and every thing - I bought of Smith the land he built the mud house on, & this grant he was supposed to have outside of ~~the~~ the tract he purchased of Sutter & adjoining it - I purchased of him the league which he purchased & on which he built the stick house & also a Mexican grant which he had outside & adjoining that tract which Mexican Grant is the grant in question -

Ques Were you or not familiarly acquainted with the business interest & property claims of Smith in that neighbourhood (Objected to as irrelevant) -

Ans Yes - I was a near neighbour of his & saw him every day - I do not know of his building any house upon the said Mexican grant to my knowledge - I don't think I know of any improvement he made upon said tract while ~~he was in po~~ it was claimed by him -

I think if any improvement had been made upon it I should have known it - At the time Smith left the Linda Ferry I resided there in an adobe house I built about 3 or 4 hundred yards from the said stick house that Smith built I lived there for 4 or 5 months afterwards during that period I travelled through

the Neighborhood in various directions so that I could observe the condition of things. I had a good deal of stock running through the Country. ~~Anterior to the time of Smith's leaving & my purchasing his interest I never saw any traces of improvements made by any body on that land.~~

During the period of my residence at the Ferry after Smith's departure I saw no traces of improvements made upon the land in controversy previous to Smith's departure. Since Smith left, there has been a great ~~deal~~ many improvements made upon that tract, but I do not know whether they were made by persons claiming under Smith or not.

Ques. Do you know of any of the claimants making any improvements on said tract of land since Smith ~~went~~ left there.

I do not, I have not been there for several years.

Cross Examination.

I do not know the dividing line between Smith's purchase of Sutter & Smith's Mexican Grant, except by reference to the map ~~from~~ which Mr Turner showed me this morning.

Smith had Cattle while he was there, & they roamed over & graged on both tracts.

I am the same Witness who testified

before in the Land Commission —
Direct examination resumed —

According to this map the heavy body of the Cattle ran most on Smith's grant towards the hills —

Ques ~~Have you~~ Do you know of your knowledge of Smith's Cattle having been specially driven upon the land now in controversy more than upon any other lands immediately in the vicinity unenclosed —

Ans The Cattle were very seldom driven when they were driven, they were driven into a Corral — or to what was called a rodeo ground — the Corral was between a mile or half a mile above the Linda Feroy — East of the Feroy —

~~(Counsel for claimant objects to the whole of the above deposition~~

Under objection from U.S. Dist Atty ~~the~~ as ~~following~~ not being a direct answer to the last question & being hearsay — the following addition to the Answer is written down ~~added~~ "~~Smith said~~ "that when I purchased this land of Smith, Smith told me he had tried to accustom his cattle to range up in that Country supposed to be Smith's grant, there being water & grass there —"

Sworn to & subscribed
before me this 26 day
of March 1857.
Luther McAllister
US Commr

W. E. [illegible]

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 26 1857

ON this day, before Curtis McAllister — a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came John A. Sutter — a witness produced on behalf of the United States — in Case No. 312, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 605 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: Gov Foote for U.S. Dist Atty
Thornton, Williams & Thornton for Claimt's

QUESTIONS BY U.S. Dist Atty —

Ques 1 — ~~Fox~~ In your deposition in this case heretofore given, you have in specifying the boundaries of the grant now in question stated "that my line was established three leagues to the East of the Feather River" you stated further "it was not surveyed but I claimed to that boundary and it was respected and recognised as my boundary by Smith". Please look upon the map now presented to you, and state what map it is. (Question objected to as irrelevant & incompetent testimony, and also objects to any testimony with regard to said map)

Ans 1 — This is a map made by the deputy U.S. Surveyor under the authority of the Surveyor General at my instance & the instance of those

interested in the various tracts described thereon

Ques 2 – If your line extended 8 Leagues to the East of Feather River as above stated would or would not the improvements heretofore spoken of by you in the deposition already referred to, as having been made by Smith the Claimant – find their location within your own grant – before any portion of the same was disposed of by you, ~~or upon the grant now in question~~?

Ans 2 – I came very seldom up there, if he had another house besides the one I brought back I dont know, that house stood upon my grant, but his Cattle grazed on his own land –

Ques 3. Are you prepared to say at this moment according to all the information you now possess on this subject, whether or not Smith ever did build any house, outside of the boundaries of the land sold by you to him, or in other words upon the land in question –

Ans 3. This I dont know as I have not been there for a long time, I do not now recollect –

Ques 4 – Did you know this man Smith well or not –

Ans 4 – I knew him well – he was either from Canada or New Brunswick – he applied to me for a grant of land – I can not recollect now the amount of land he applied for –

Ques 5. What steps if any did he take towards obtaining a grant?

Ans 5. He took the usual steps, made a petition, accompanied with the map which was sent to Monterey with ~~your~~ my

information that the land was unoccupied, I don't remember the date of this proceeding - The petition and the map was made by Major Bidwell and sent to Monterey - I don't remember if Major Bidwell himself or some body else took it to Monterey - The petition was sent from Monterey to me to give information about the land, I do not remember exactly it is so long a time since - I don't remember what time the petition was received by me from Monterey; I don't think I could name the year -

The petition was written in the usual form, of the land described that he wanted, I don't recollect any more particulars with regard to the contents of the petition - ~~I could not now dese~~

Ques - Could you now specify the boundaries of the land thus petitioned for?

Ans - I could not -

Ques - Could you now give a specific or particular description of the map to which you have referred -

Ans - No I could not, it is so long a time since that I can not remember, it is impossible -

Ques - When the petition was received by you from Monterey as you have described what was your own action thereupon - ?

Ans - The first time when it came, I gave information in his favor, that is to say that the land was not occupied - I did

nothing more with it at that time - Afterwards I gave him a ~~general~~ copy of the general title because he was entitled to it - I don't recollect the date when I gave him the copy of the title -

Ques Do you know what became of Smith's papers?

Ans Only what I heard from other persons

Ques Did you take any other official action with regard to this claim of Smith's, than what you have stated?

Ans None, except to give him possession - I authorized him by writing as in most of the cases to take possession - that is what I mean by giving possession

Ques At any subsequent period at any time after this did you have occasion to take any further official action with regard to this claim?

Ans None at all -

Ques - Objected to - You have spoken of the general title, do you recollect now the contents of that documents & can you now state them -

Ans I do recollect it very well, but cannot now repeat it word for word -

Ques Can you recite any part of the contents word for word, either in Spanish or English

Ans - That is impossible, I did not learn it by heart - I recollect the meaning of the document -

Ques Are you prepared to say now that the document you handed to Smith was an exact copy of the original

Ans It was - I wrote nearly all of them myself Major Bidwell wrote only a few which I signed - I wrote them in Spanish - I can not remember whether I wrote this particular one - generally I compared them with the original - I do not recollect in this particular case whether I did so or not - I don't recollect if I handed this particular title to the Claimant in this case personally - or sent it to him, Once I sold some land to Smith -

Cross Examination -

X

Ques After Smith lost his papers do you recollect whether or not you gave him another copy of the general title?
(Question objected to ~~to the~~ on the ground that it is not proved by this Witness that he had any knowledge of the loss of the papers, except what he had heard from others, nor sufficiently proved by other witnesses in the case, & also on the ground that it is a direct leading question)

Ans I believe I did -

Ques - Do you consider the Von Schmidt Survey the map of which was shown you this morning a correct survey of your lands?
(Objected to on the ground that it is not a question addressed to him as an expert in surveying & because his opinion is not testimony in the case) -

Ans The survey may be correct, but I have the right to alter the different locations and shall do so -

Ques. In the final survey of your lands should this survey be followed, would you not protest against it as incorrect and unjust to you –

Ans I would –

(Question & Answer both objected to by US Dist Atty –

Direct examination resumed –

Ques You say you believe you gave Smith a second copy of the general title, when do you think you did so –?

Ans I cannot recollect when – I don't remember whether I gave it to him or sent it to him, I don't recollect whether any person was present when I did so –

Ques On what ground do you protest ~~to~~ against the survey? ~~because the other~~

Ans Because the other parties persuaded the Surveyor to do it as they wanted it.

X Examination resumed –

Ques Did you not give the second copy of the General Title to Smith, upon your hearing that he had lost his first –

Ans I recollect now that the copy was called for, but I don't recollect by whom – it was at the time I heard he lost the papers –

Direct Examination re-resumed –

Ques Did you give out the second copy, upon simply hearing the first was lost, and do you

Know who told you so-?

Ans It was proved to me by a ~~great~~ many people who knew it that the first was lost- I gave the second, I, don't recollect who told me it was lost-

Quer What do you mean by saying that the loss of this document was proved-

Ans When a man like Bidwell told me anything I believed it like the gospel-

Sworn to & subscribed
before me this 26
day of March 1854
Cutter McAllister
US Commr

J A Sutter

United States District
Court Northern (5)
District of California
No 312

The United States

vs

John Rose et al

Depositions of M. C. Nye
& J. A. Sutter Witnesses pro-
duced on behalf of the
United States —

Filed March 30. 1857.
W. H. Chenery,
Deputy.

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The United States
vs — No: 312 —
John Bore dal

It is admitted in this case that John Smith has filed a bill in Tulare County to set aside his sale of the land in controversy to Nye & Foster —

John Bore

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No 312 7

The United States
vs
John Rowedal

Stipulation of att
concerning sale of
land &c,

Filed March 30. 1857,
W. H. Chevers,
Deputy.

UNITED STATES DISTRICT COURT,
Northern District of California.

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San Francisco, March 31 1857.

ON this day, before Cutler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came John, Rose a witness produced on behalf of the United States — in Case No. 312, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 605 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: Thornton, Williams & Thornton for Claimts & Gov Foote for U.S. Dist Atty —

QUESTIONS BY

The United States Dist Atty —

Ques 1 — Is this paper marked Appendix A" a deposition formerly given by you before the referee named therein —

~~Ans~~ (Atty for Claimts objects to the deposition referred to being put in evidence, on the ground of irrelevancy, and incompetency) —

Ans 1st I believe it to be my deposition referred to —

Ques 2 — Do you know the land upon which Smith, Jorge, built a house, if so where does that land lie?

Ans 2 — I know the land and it lies

on the Yuba River, now called, Mimal Ranch.—

Ques 3. Do you know the Tract of land claimed by Genl Sutter in that neighborhood called New Helvetia?

Ans 3. I know the body of land so distinguished as Sutters grant—

Ques 4. Supposing Sutter's grant to be established three leagues east of Feather river, how far would his eastern line be above Linda Ferry?

Ans 4 I should think about five miles—

Ques 5. Where did Smith first settle in that neighborhood—

Ans 5. Ques withdrawn—

Ques 6. Where was Smith's ~~House~~ residing when you first knew him, in what House?

Ans 6 In a house between two and three hundred yards east of the Ferry, ~~that~~ ~~is~~

Ques 7. Did Smith dispose of the House first built by him on the Mimal Ranch to Genl Sutter?

Ans 7. I don't know, but I have heard Smith say he did—

Ques 8. If so when, and on what terms

Question withdrawn.

Ques 9. When did you hear Smith say that he sold that House to Genl Sutter?

Ans 9— I don't remember— But he stated to me at some time that he once owned it and sold it to Sutter—

(All evidence of Smith's declarations are objected to in this case upon

the ground, that the same is hearsay and upon the further ground, that they appear to have been made after Smith sold his interest in said land) —

Ques 10 Did he or not surrender the first House, or the House built on the Hinman Ranch, to Genl' Sutter in consideration of Sutters transferring to him, the land upon which the Linda House was located — that is to say: the Brick & mud house — ?

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(Question objected to, on the ground that the contract between Smith & Sutter is the best evidence of that and for the further reason that such testimony is irrelevant to the issue upon which this examination was directed by the Court to be had) —

Ans 10 I did not so understand him — he told me that he had sold this place to Sutter out & out, with the intention of going to Oregon, he did not go, and afterwards purchased a portion of Sutters land upon his Eastern boundary, the deed will show that —

~~Ques 11~~

Ques 11 How much land did he thus purchase off the Eastern boundary or what was the size of the tract if you know?

(objected to because the deed is the best evidence of the fact) —

Ans 11 Three Square Miles, —

Ques 12 How far is the Eastern line of the tract just mentioned by you, above the ~~tract~~ House of the Mimal

Ques 12 How far is the eastern line of the Mimal Ranch above the house located upon the same -?

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A (Objected to as irrelevant)

Ans 12 I am not certain, I think about 3/4 of a mile -

Ques 13. How far is the Eastern line of the tract of land that you describe as being three square miles above the place called Linda Ferry -

Ans 13 About two and a half miles somewhere about that -

Ques 14 How far is the house made of stick & mud from Linda Ferry -

Ans 14 I answer again between two & three hundred yards from the Linda Ferry

Ques 15. Do you know of any house built by Smith, or built during his time upon the grant of six leagues now in controversy -

Ans 15. I do not -

Ques 16 Do you know of any fruit trees located there during his time -

Ans 16 I do not -

(Atty for Claimant objects to this ~~ass~~ course of examination, because the case was not open for rebutting testimony, but expressly upon the subject of boundaries by order of the Court) -

Ques 17 Do you know of any ditches located on that land -

Ans 17 I do not —

(Gov Foote for the U.S. Dist Atty, ~~dem~~ in answer to the above objections, notifies the Witness and his Counsel that he will expect to examine said Witness in open Court next Saturday, and have him Subpoenaed for that purpose, and demands that this notice be put down by the Commissioner, in order to bring it to the notice of the Court) —

(Atty for Claimant objects to any such entry as the above, this being neither the time nor the manner of answering objections)

Commissioner puts down the notice made above objection —

Ques 18 Were there any improvements made upon the six leagues square by Smith —

Ans 18 Not that I know of — There might have been a corral ~~&~~ not known it, as it might have been ~~known it~~ burned up — there might have been other improvements

Cross Examination —

Ques 1 When did you first know the land claimed in this case —

Ans 1 In the Fall of 1848 —

Ques 2 Do not Smith's six leagues grant & the three square miles purchased by Smith of Sutter adjoin? —

Ans 2 They do

Ques 3 Do you know the boundaries between those two tracts, & if so how do you know them —

Ans 3. I only know from parties having shown me some stakes, and said they were Sutters eastern boundary, they told me they saw the Surveyor measuring the line & putting down the stakes about six months ago in surveying Sutters Ranch—

Quer 4 Are not Smiths improvements above referred to, certainly within either the said three mile tract, or the said Six leagues—
(Question objected on the ground of its being leading)

Ans 4 They are—

Quer 5. If the said boundary line should be finally run between the said improvements, and the said six league grant- according to the survey above referred to in that event would not the said improvements be on the three mile tract purchased by Smith of Sutter—

Ans 5. (Objected to as leading) —
They would—

Ques 6 Considering the said two tracts as one compact body of land are the said improvements within or without said body of land?

~~Ans 6~~ ~~th~~ (Question objected to as unduly hypothetical) —

Ans 6 Certainly —

Quer 7— Might not improvements such as corrals ditches & fruit trees, have been put upon the said six league

grant ~~before you knew the grant~~ and all the traces of them have disappeared before you knew the land?

Ans 7 There might have been Corrals & peach trees, but I think a ditch would have left a place

Sworn to & subscribed before me this 31 March 1857.

John Rose

= Cutler McAllister
U.S. Commr.

Appendix A

State of California
County of Yuba

W. Wilson Smith

being duly sworn on oath says that he is a Notary Public in and for Yuba County, that he was appointed a Referee by the District Court of the 10th Judicial District, ~~Court of the~~ in and for the County of Yuba, State aforesaid in a certain action pending in said Court wherein James Lewis et. al. were plaintiffs and G. G. Mellon et al. are defendants. That John Roze with whom deponent has been acquainted for the last six years was called as a witness on the part of the plaintiffs and testified therein before me as such Referee and the following is a full, true and correct copy of the testimony as taken by me as such Referee and given by the said John Roze under oath as such witness on the day of February A.D. 1857 and that the said John Roze is the same identical person who now claims a grant of land from the Mexican government to one John Smith, the said land being situate in this State and in that portion of this State now known as ~~the County of~~ Yuba

W. Wilson Smith

Sworn and Subscribed to before me this 6th day of March A.D. 1857.

W B Latham Jr
Notary Public
Yuba Co. Cal.

(1)

Deposition of John Rose

Q Are you acquainted with John Smith who is mentioned in the deposition of John A. Sutter which is referred to in the decree of confirmation Exhibit No 3?

I am.

Q Did you ever receive any conveyance from that John Smith?

I did

Q Where is that conveyance?

In the office of the U. S. Land Commission in San Francisco.

Q Is it filed in any case there?

It is, - In the case of John Rose et al vs United States, - Land case before the Commission.

Q Have you made any attempt to get it from the files of the Court?

I went to San Francisco about the middle of December in order to get the deed - expressly for that purpose - my lawyer went with me to the office of the Clerk of the Land Commission and my lawyer asked the Clerk in my presence who told me that I could not get it - he the Clerk would allow it to leave the office.

Q Is that deed in the possession of any of the plaintiffs or under their control?

It is not.

(2)

Q At the time that John Smith gave his deed to yourself and Kinloch was he in possession of the premises?

A. It was in our possession.

Q To what uses did you subject it?

Used it principally for stock - at the time the deed was given we used a portion of it as a farm, we were in the occupation of it.

Q Are you acquainted with a tract of land that goes by the name of Johnson's Ranch?

Yes.

Q How far is the Yuba river from the boundary of Johnson's Ranch?

About six miles I think.

Q Do you know the Eastern boundary of the land of John A. Sutter?

Yes - I think I do.

Q Do you know the land occupied by the plaintiffs opposite Long Bar?

I do.

Q How far is this land occupied by the plaintiffs from the Eastern line of Sutter's land, so called?

The house at Long Bar ferry is about three and a quarter miles from what is called the Eastern boundary of Sutter land.

Q How far would six leagues carry the

(3) Eastern line of the land specified in this decree of Confirmation - Exhibit No 3?

At least three miles above the house of plaintiffs.

Q Is the land then occupied by the plaintiffs and their house and garden and enclosures embraced within the tract mentioned in this decree of Confirmation, according to the number of leagues given in that decree?

To the best of my knowledge they are.

Q You stated that the Eastern line of the land mentioned in this decree of confirmation extended three miles above the house of the plaintiffs, please state how far South it extended back from the river?

About six miles.

Cross Examined.

Q Has there been an appeal of that case of Rose & Kinloch vs The United States from that Commission to the U. S. District Court?

Not that I know of, I have received no notice of appeal.

Q Have your lawyers received any notice of appeal in that case to your knowledge?

Not to my knowledge.

Q When did you last see the lawyers that you

(4)

employed before the Land Commission in regard to that business?

I have not seen him in regard to that business since the confirmation.

Q Have they informed you at any time since the confirmation or any other counsel that you may have employed that the case was appealed from the Land Commission to the U. S. District Court?

A. I have received no notice.

Q Where did you reside upon this land?

A. Various places I resided some time at Linda, kept the ferry there, at another time about one and a half miles below Linda - a portion of the time just outside the ferry.

There are none of these places on the land of the John Smith grant.

Q For what purpose and in what business did you use the land you got of Jacob Smith?

For grazing cattle.

Q Did you use for grain, grass or hay that portion of your pretended claim, which is the subject of this suit?

Only by stock running on it. Stock ran there in 1849 and before that and in the Spring of 1850.

Q Is not the land in dispute among the mountains, near and contiguous and beyond

(5)

mountains going from your former residence?

It is among what is termed the foot hills.

Q How far is it from the ground in dispute claimed by the defendants as mining ground from Linda ferry, your former residence?

About five and a half to five and three quarters miles – by a direct line, a Surveyors line – to the best of my knowledge five and a half miles.

Q Is it not called ten miles?

No.

Q How far is it from the last place you speak of to the ground in dispute?

About seven miles.

Q Have you never heard from the parties interested in the Sutter Grant that the line runs ~~ten~~ once miles below Linda instead of within 3 or 4 miles of this ground?

No.

Q Has the line of Sutter been surveyed between the Rose Ranch and the Sutter grant?

I have been told that it was and been shown the corner stake.

Q Was you present at the Survey?

No.

Q When you speak then in your examination in chief of the East line of Sutter's grant, do you speak of your own knowledge of the actual

(6)

surveyed line?

No. I did not see the Surveyors run the line, but the stakes were shown to me by others.

Q Have you ever purchased any portion of the grant of Sutter adjoining your grant?

I have.

Q From whom did you purchase?

From John A. Sutter, from Michael C. Ogle, and Wm Foster.

Q Have you ever sold any land below Linda to Henry P. Mann?

I have.

Q How far is that land below Linda?

About one and a half miles.

Q Have you before or since the sale to Mann claimed the land you sold him as belonging to the Smith grant?

No.

Q Have you to James Simpson, Robert Turner, and others occupying lands below Linda represented to them that those lands were upon the Jack Smith grant, at any time?

I have no recollection of making such a remark, nor do I think it possible I could ever have made such a remark.

Q Have you ever stated in my office in my presence and in the presence of W.B. Latham

(7)

and Chas. E. Filkins that you was uncertain as to where the boundary of the Smith grant or Rozes Ranch terminated in connection with those lands in dispute?

I dont recollect ever having any conversation as to these mining lands.

In a conversation with Mr Bryan in which my claim was mentioned the particulars of which I do not remember, he told me that this claim would be brought up in the trial of this case.

Q I ask you Mr Roze to think a moment and refresh your memory and see if you dont recollect a conversation recently had in the ~~offic~~ presence of Mr Latham and Mr Filkins in the office of Bryan & Filkins in which you stated in substance that you were not certain where your line did run in connection with the mining lands in dispute?

I dont remember any such conversation.

Q Do you remember having any conversation within the last two months in the same office and before the same persons, in relation to the upper boundary of the grant you claim?

I do not remember any particular conversation. I have been asked about my upper boundary line by so many

persons at different times, that I dont charge my memory with any remarks on the subject.

Q Have you executed any conveyance of the lands claimed by plaintiffs in this suit to these plaintiffs and if so when?

Yes, I made a deed a few days ago.

Q How many days ago?

Two or three days ago I dont remember the exact day.

Q Was there any consideration paid to you or on your behalf to any other, at the time or prior to the time of the execution of the deed mentioned?

There were two payments made, to me on that account. One of five hundred and ten dollars in May last. with the understanding that if they purchased the land, that was to be the first payment.

Q Has there ever been any other payment?

Of one hundred dollars, the day the deed was executed, and the balance to be paid at such times as we agreed upon.

Q Do you know whether your stock did not also range over hills, mountains and valleys. that did not belong to you?

I dont think they went much beyond what I claimed- they

may and they may not.

Q Do you recollect ever finding your cattle on any hills except those in your claim?

Not the cattle you refer to.

Q Is this country that you speak of where these mining lands are situated and was it at the time you spoke of in your former testimony agricultural and grazing land?

It is agricultural and grazing land now, and I suppose if it is, it was.

Q How many farms and gardens after you pass the first foot hills in going to the mining lands in dispute – do you know of being upon the Jack Smith grant as claimed?

I do not know how many.

Q Is there a farm or garden within one mile of the ground in dispute except that claimed by the plaintiffs, on that side of the river?

I dont whether there is or is not.

Q Is there not a large population occupying the ground among the hills and ravines located on and in the neighborhood of the mining lands in dispute?

In those lands in dispute I see quite a number of persons – a number of Chinese were above them – and there is quite a number of Americans below it.

(10)

Q Is there not a large mining population located upon that portion of this grant that you claim to be in the mountains and are they not there for mining purposes and not agricultural and grazing purposes?

There is a large population and the majority for mining purposes and two or three cultivating gardens.

Q Has that land in the mountains spoken of in the neighborhood of the land in dispute which you claim to be on the grant, been occupied, ever since the settlement of California and the discovery of gold by the Americans, by miners for gold or mining land?

There have been miners on the land in the mountains on this claim, since 1849 mining for gold.

Direct resumed.

Linda is not within what is termed the Jack Smith grant.
When I speak of residing at Linda I dont speak of residing on that grant.
The line of the grant commences about two and three quarters miles above the Linda ferry. I know Mr Mellon. Mr Mellon

(11)

applied to me to purchase a portion of the land in the enclosure of the plaintiffs in dispute.

Mr Mellon came to see me some time in December last, and we had a conversation about the land in the enclosure - as near as I remember I told him I understood he wanted to purchase - and the particulars of the conversation I dont remember - he said he did. He went so far as to agree upon a price if he would take it - that is I told him what I would take for it and he said he would go and see if he would take it. The agreement was made with the plaintiffs for the purchase of this land of theirs some time last May.

At the time the first payment was made there was an agreement to purchase which was not concluded.

Cross Ex.

I know of an old adobe house at Linda - M. C. Ayres built and lived in it - Jack Smith lived in a house in 1848 close to the ferry two or three hundred yards from it

Q What passed at the conversation with Mellon?

I told Mr Mellon that I had received some money from Mr Myers on this land.

(12)

one of the plaintiffs - that Mr Myers had the refusal of it - that I left myself myself at liberty to sell to any person, if Mr Myers did not see proper to take it at the moment I told him that I would sell - that if I sold to Mr Mellor that I would have to pay Myers back with interest.

I think it was probable I said that Myers was indifferent to this purchase.

Q Did not Jack Smith own land below this grant by purchase?

He did.

Deposition of Jno Rose

(3)

United States Dist-
rict Court for the
Northern
District of California
312.

The United States

vs

John. Rose et al

Deposition of John Rose
a witness produced on
behalf of the United States

Filed April 1. 1857.
W. H. Chevers
Deputy.

UNITED STATES OF AMERICA,

STATE OF CALIFORNIA.

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COUNTY OF SAN FRANCISCO.

In the ~~Circuit~~ District Court of the United States for the ~~Districts~~ Northern District of California.

The United States
vs.
Jno Rose et al

D. C. 312 : L. C. 105

The President of the United States of America,

To John A. Sutter, Michael C. Nye and John Smith

GREETING:

You are hereby required, That all and singular business and excuses being set aside, you appear and attend before Cutler McAllister, U. S. Commissioner appointed by the Circuit Court of the United States for the Districts of California, ~~to be held~~ at the Court House in the City of San Francisco, on the Twenty sixth day of March A.D., 1857, at twelve o'clock, M., then and there to testify in the above stated cause now pending in said ~~Circuit~~ District Court, on the part of the above named United States. And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved.

Cutler McAllister
U S Com'r

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Circuit Court of the United States

FOR THE

Districts of California.

The United States

vs.

Jno Rose et al

SUBPŒNA.

To Jno A Sutter
M. C. Mye
Jno Smith
} Original

Filed, *day of*

March 23 1857

Clerk.

Copies

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Filed June 11, 1857.

Cutler McAllister

U S Commr

Served personally upon Jno. A. Sutter this 23rd day of March A.D. 1857 and upon John A Sutter March 26th 1857 & M. C. Mye & Jno Smith not found. Fees $ [illegible]

Jno. J. Marshal
By [illegible] Deputy

Served personally upon Jno. A. Sutter this 23rd day of March A.D. 1857 and upon John A Sutter March 26th 1857 & M. C. Mye not found. Fees $ [illegible]

Jno. J. Marshal
By [illegible] Deputy

Served personally upon Jno. A. Sutter this 23rd day of March A.D. 1857 and upon John A Sutter March 26th 1857 & M. C. Mye not found. Fees $ [illegible]

Jno. J. Marshal
By [illegible] Deputy

Shereby specially deputize R. M. Turner to serve this process upon the within named John A. Sutter & M. C. Mye

Jno. J. Marshal
By [illegible] Deputy

San Francisco March 15th 1857

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 Monday the fourth day of May in the year of our Lord one thousand eight hundred and fifty-Seven

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
vs
John Roe et al

No: 312
On Appeal
from decision of the
Board of Land Commissioners
&c &c —

This cause coming on this day to be heard, was argued by Counsel, and thereupon in consideration thereof, this Court is of Opinion, that there is no error in the decision of the Board of Land Commissioners to ascertain and settle private Land Claims in California, confirming this claim, and that the said decision should be and is hereby affirmed — And this Court doth adjudge order and decree that the claim of the said petitioners is valid and that the same be and is hereby confirmed to them, The Land for which confirmation is hereby made, is situated in the County of Yuba, embracing six square leagues, and is bounded as follows to wit, On the North by Yuba River on the West by Lands of John A Sutter, on the South by the line of Johnson's Rancho, reference being had to the deposition of John A Sutter on file in this Case for further particulars, and to the traced copy of the Map of the land claimed, contained in the Transcript of the record from the said Board of Land Commissioners —

Ogden Hoffman
U. S. Dist Judge

No: 312 10

United States District Court, Northern District of California.

The United States

vs.

John Rose et al

Decree.

Filed May 4th 1857

John A. Monroe,

Clerk.

J. W. H. Cheney

Deputy.

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This decree is correct.

Wm. Blanchard

Dist. 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 Wednesday the fourth day of November in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States v John Rose et al.	D. C. 312: L. C 605.

In this case, on the application of the U. S. attorney, made in open Court, it is ordered by the Court that an appeal in behalf of the United States from the final decision of this Court, rendered in said cause at the Decr 1856 term, be and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and the appellant is ordered to serve the usual citation according to law

Ogden Hoffman
U. S. Dist Judge

312 (12)

United States District Court, Northern District of California.

The United States

vs.

John Rose et al

ORDER.

granting appeal

Filed November 4th 1857

John A Monroe Clerk.

By J Wyatt Lyons Deputy.

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District Court of the United States
Northern District of California

The United States
vs.
John Rose Et al.

State of California
County of Yuba } S.S.

Damascus Allen of lawful age, being duly sworn on oath says that he is a resident of the County of Yuba and has settled upon ~~or had~~ land situate in said County and the same has been settled upon by him and he claims the same to be public land belonging to the Government of the United States and is pre-empted as such.

Deponent further says that the land so settled upon by him he believes to be included within the pretended grant of one John Smith and now claimed by one John Rose and others

Deponent further says that he is informed and believes that it can be proven that John Smith who is claimed to be the original grantee in this case never resided upon or erected

any house within the boundaries of the said pretended grant as described in the deposition of John A. Sutter.

Deponent says he expects to prove the said fact by one M. C. Nye who was well and intimately acquainted with the said John Smith during all the time the said Smith was a resident of the portion of the Country now known as the County of Yuba, and purchased the interest of the said Smith in and to his lands and all other property owned by him in said County of Yuba (that is now) at the time he left the same in the year A.D. 1848.

Deponent further says that he is informed and believes that the said grant if ever made by the Mexican Government to the said Smith was made conditionally and that the conditions of the same were never complied with by the said John Smith, which fact deponent believes can be proven by the said M. C. Nye.

Deponent further says that he believes that it can be proven by the said Nye, that the said

Smith never, during his residence in the portion of this State now known as the County of Yuba, resided upon or within any other grant or boundaries than those at the time claimed by John A. Sutter, and which land was purchased by said Smith of said Sutter.

Damascus Allen

State of California
County of Yuba } S.S.

Damascus Allen being duly sworn says that he has heard read the foregoing deposition and that the same is true of his own knowledge except as to those portions stated upon information and belief - and as to those he believes them to be true.

Damascus Allen

Sworn to and subscribed before me this 6th day of March A.D. 185[illegible]

W B Latham
Notary Public
Yuba Co. Cal

U. S. District Court
Northern District

The United States
vs
John Rose Ekal.

Deposition of D. Allen

(1)

District Court of the United States
Northern District of California.

The United States
vs
John Rose Et al

State of California
County of Yuba } S.S.

Michael C. Nye
of lawful age, being duly sworn on oath says that he is a resident of the County of Yuba, State aforesaid, and has been a resident of this State and in the County of Yuba (that is now) since the year A.D. 1842, that he has been acquainted with John Smith the original grantee in this case since the summer of 1842 and that the said Smith at that time resided at what is now known as Sacramento that the said Smith settled in what is now known as the County of Yuba in the year A.D. 1843 and deponent and the said Smith erected houses on the Yuba River in what is now known as the town of Linda and near the Linda Ferry, in said County of Yuba about three hundred yards apart. This was in the year 1845 or

1846 and deponent and the said Smith lived as neighbors from that time, up to the time the said Smith left the said County of Yuba in the year 1848.

That the said house built by said Smith was what is called a "Stick House" and was built upon land which the said Smith purchased of John A. Sutter in the year A. D. 1845 or 1846 consisting I believe of one league of land; that the said league of land was, at the time of the said purchase by said Smith, claimed by said Sutter as to be included in his grant.

Deponent further says that the said Smith from the year A. D. 1842 or 1843 up to the time of the building the said Stick house, resided in what is now known as the County of Yuba, but about three miles below the said house on the Yuba river where the said Smith erected an adobé House on what was and is called the "Menal Ranch" which said Ranch was situate within the boundaries of the grant of the said John A. Sutter.

Deponent further says that the

the only houses erected by the said Smith, in what is now known in the County of Yuba are those heretofore mentioned by deponent and were all located on land purchased by the said Smith, of John A. Sutter and recognised by the said Smith to be included within the boundaries of the said grant from the Mexican Government to John A. Sutter.

Deponent further says that he has heard read a certified copy of the deposition of John A Sutter on file in this Cause, and that from the boundaries of the said grant to Smith as given by Sutter in his said deposition, the said Smith never had an adobe house within said boundaries or outside of the boundaries of the land at that time claimed by said John A. Sutter, and purchased of him by the said Smith.

Deponent further says that he was well acquainted with the said Smith during his said residence in what is now known as the County of Yuba, and was a partner with the said Smith, in business during the said

residence of the said Smith on the land purchased by him of the said John A. Sutter.

Deponent further says that at the time the said Smith left this part of the Country he, deponent, purchased the entire interest of the said Smith in all his lands, cattle, stock and other property.

M. C. Nye

State of California
County of Butte } SS.

Michael C. Nye first being duly sworn says he has heard read the foregoing affidavit and well knows the contents thereof and that the same is true of his own knowledge except as to such portions stated on information and belief and as to those he believes them to be true

M. C. Nye

Sworn to and Subscribed before me this 5th day of March A.D. 1857.

W. B. Lathan Jr
Notary Public
Butte Co Cal

U. S. Dist Court
Northern District

The United States
vs
John Rose Et al

Deposition of M. C. Nye.

(2)

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

San Francisco, March 26. 1857.

On this day before Cutter McAllister a Commissioner of the United States for the Northern District of California duly authorized to administer oaths &c &c came Michael C. Nye a Witness produced on behalf of the United States in Case No 312 being an appeal from the Board of ~~Land~~ Commissioners, to ascertain and settle the Private Land Claims in the State of California in Case No 605, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows

Present
Gov Foote for the U.S. Dist Atty
Thornton, Williams and Thornton for Claimants -
Questions by U.S. Dist Atty -

I am a resident of Yuba County, I have been in this Country since 1842 -, off and on - I know John Smith in this Country - I have been acquainted with him since the Summer of 1842 - off and on, I knew John Smith in this Country, I have been acquainted with him since the Summer of 1842 - When I first Know

him he resided at Sacramento Fort at that time called New Helvetia, that was the residence of Genl Sutter at that time I had no particular connection at that time by John Smith & Meau the Claimant in this Case in 1844 or 1845. I could not say when I first became connected with him in business nor were in partnership, we had stock up in that Country.

There was an adobe house erected about two miles from the junction of the Yuba River on its banks by said Smith, That adobe house was below the Linda Town several miles to the West of it, The land on which this house was situated was a piece of land he had purchased from John A Sutter. This house was an Adobe house, I know that Sutter claimed this land & sold or leased it to Smith who built this house upon it & afterwards sold it to Sutter. (So much of the above objected to as relates to the claim of Sutter or sales made by or to him as being hearsay and secondary evidence.)

Smith resided in that Country from the year 1842 or 1843 up to the time of his building the said house - he worked down here but had his residence home properly up there for a short time he was on this tract of land & afterwards built another place.

(In 1845 or 1846 he built a mud & stick house, it was built several hundred yards above Linda Ferry as it is now called upon

land which he purchased of Sutter at that time as a part of his grant, I know of no other houses but these two erected by Smith while he lived in the County of Yuba—

I dont know how he recognized them but I know that he purchased them of Sutter. I dont know what his opinion was as to whether he was on Sutters land or not as the line had not been run at that time I have heard him speak about those purchases. he told me he had purchased those tracts of Sutter.

Ques. Look at the description of the tract of land claimed in this case in the deposition of John A. Sutter, contained in the record on file in this cause & state whether the Adobe house before mentioned in your deposition was within or without said boundaries as specified in said deposition.—

Ans. I cant say, because I dont know I dont know anything about the boundaries.

Ques. Do you know of an Adobe house which Smith built or had at that time included within the boundaries of the grant which is now the subject of controversy.

Ans. Not any according to the map which was shown to me to day according to my knowledge, The map which I refer to is a map shown to me to day by Mr. Munson which purports to be a plan or preliminary survey of New Helvetia confirmed to John A Sutter by the U. S. Board of Land Commissioners as surveyed

by A. W. Von Schmidt U. S. Deputy Surveyor made in May 1856.
(Answer objected to as being irrelevant & incompetent testimony.

Ans. This map to which I refer is now before me.

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(Atty for Claimts objects to any testimony upon or in regard to said Map - no proper foundation having been laid for it

Ques. Suppose Suttens line to be established or say three leagues to the East of the Feather River where there would the Adobe House be would it be on the claim or outside. —
(Question objected to as being irrelevant & incompetent & as assuming a fact.)

Ans. It would be outside of the Smith grant several miles and inside of Smiths claim. The Stick House would be a mile more or less outside of the Smith Grant it might be more I could not say.

Ques. Reflect upon the Geography of that neighborhood & say how far the Stick House is outside of the Smith Grant or below the Western line of the Smith Grant.
(Question objected to as irrelevant and incompetent)

Ans. I should judge it was certainly a mile it may be something more I could not say positively what the distance was as I have not been over that Country for some Years.

Ques. In what relation were you living with Smith at the time of his residence in Yuba County.

Ans. I was a partner with him in stock operations

operations

Ques. When did Smith leave that part of the Country last.

Ans. He left that Neighborhood in the Summer or fall of 1848 he disposed of his whole interest to myself & Foster, land & stock and every thing I bought of Smith the land he built the mud house on & this grant he was supposed to have outside of the tract of land he purchased of Sutter adjoining it - I purchased of him the league which he purchased & on which he built the Stick House & also a Mexican Grant which he had outside & adjoining that tract which Mexican grant is the grant in question

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Ques. Were you or not familiarly acquainted with the business interest & property claims of Smith in that Neighborhood

(Objected to as irrelevant)

Ans Yes I was a near neighbour of his & saw him every day, I do not know of his building any house upon the said Mexican grant to my knowledge, I dont think I know of any improvement he made upon said tract while it was claimed by him,

I think if any improvement had been made upon it I should have known it At the time Smith left the Lizida Ferry I resided there in an Adobe house I built about 300 or 400 hundred yards from the said Stick house that Smith built I lived there for 4 or 5 Months afterwards during that Period I travelled through the Neighborhood

in various directions so that I could observe the condition of things I had a good deal of stock running through the Country.

During the period of my residence at the Ferry after Smith's departure I saw no traces of improvements made upon the land in Controversy previous to Smith's departure. Since Smith left there has been a great many improvements made upon that tract but I do not know whether they were made by persons claiming under Smith or not.

Ques Do you know of any of the Claimants making any improvements on said tract of land since Smith left there I do not I have not been there for several years.

Cross examination.

I do not know the dividing line between Smith's purchase of Sutter & Smith's Mexican Grant except by reference to the map which Mr. Turner showed me this morning. Smith had Cattle while he was there & they roamed over & grazed on both tracts.

I am the same Witness who testified before in the Land Commission

Direct examination resumed.

According to this map the heavy body of the Cattle ran mostly on Smith's grant towards the hills.

Ques. Do you know of your knowledge of Smith's Cattle having been specially driven upon the land now in Controversy more

than upon any other lands immediately in the vicinity unenclosed.

Ans The Cattle were very seldom driven when they were driven, they were driven into a Corral or to what was Called a rodeo ground the Corral was between a mile or half a mile above the Linda Ferry East of the Ferry.

Under objection from U. S. Dist Atty as not being a direct answer to the last question & being hearsay the following addition to the Answer is written down "that when I purchased this land of Smith Smith told me he had tried to accustom his Cattle to range up in that Country supposed to be Smith grant there being water and grass there".

Sworn to & Subscribed
before me this 26
day of March 1857.
Cutler McAllister
U S Commr

M. E. Rye

United States
District Court for
the Northern District
of California

No 312

The United States

vs

John Rose et al

Copy Deposition of
M. L. Rye a Witness
produced on behalf
of the United States

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The United States
vs
John Ross Wood

United States
District Court
Northern District
of California.

In the above case it is agreed that the depositions and other papers on file may be withdrawn from the Clerks Office by L. Aldrich Esq or on his order for the purpose of having a transcript prepared for the Supreme Court.

Thornton Williams & Thornton
Attys for Claimant

Apr 16th 1857

In accordance with the above stipulation it is ordered that the Clerk deliver the papers in said cause to L Aldrich Esq
Apr 16th 1857.

O. Hoffman
Judge

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United States
vs
John Rossiter et al

Cubery.

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The United States
vs
John Rose et al

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The claim in this case is founded on what is known as the "general title" of Michilimackinac — It has already after full consideration been determined in this Court that, that grant was sufficient to convey a valid title to those in whose favor it issued — The only points now open to controversy in this case are three fold 1. Whether the ~~claimant~~ alleged grantee was one of those persons for whose benefit the grant was made — and 2dly Has the rights (if any) acquired by him been forfeited ~~by him~~ by ~~reason~~ such unreasonable neglect to perform the conditions of occupation and cultivation as to authorise the presumption that he had abandoned his land. 1st Was he one of the grantees under the original title —

The grant of Michel Torena bears date Dec. 22. 1844- It results that the Supreme Goovernment not being able on account of other occupations to extend one by one the respective titles to all the citizens who have petitioned for lands with favorable reports from Señor Don A. Sutter by these letters grants unto them and their families the lands described in their petitions & discriptions to all and each one who has obtained the favorable report of Señor Sutter - without any one being able to question their ownership - a copy of this given to them hereafter by Señor Sutter serving them as a formal title with which they shall present themselves to this goovernment for the purpose of delivering to them the title in due form and upon paper of the corresponding seal - And for the testimony thereof I give at all times I give this present document which shall be ack

and respected by all the civil and military authorities of the Mexican nation in this and all the other departments.

Signed "Michel Torena"

If having seen this did that this grant passed a title to the persons therein referred as fully and effectually as if they had individually named, or had received their separate titles - the ~~[illegible]~~ only question that remains is was the claimant one of those ~~[illegible]~~ who had petitioned the Government and had obtained a favorable report from Señor Sutter - of this, the most satisfactory evidence would undoubtedly be the production of a copy of the grant delivered to him by Sutter in obedience to the direction contained in it - But this tho' perhaps the best is not the only evidence which could establish the fact of that the claimant was one

of the intended grantees—
If he could show that he had petitioned for the land and that he had obtained the favorable report of Gen: Sutter it would clearly be wrong to establish his right under the grant even though Sutter may have neglected or refused to give him the evidence of his title which he was directed to furnish— The fact however that such a copy was not delivered to the party would be a circumstance requiring explanation— for it has not as yet been suggested to this Court that Sutter neglected or refused to comply with the directions of the general title, in this respect when applied to by any one entitled under it—
In this case at Bar— it is alleged that ~~the~~ a copy of the title was duly given to the grantee that it, with other papers was lost by him while fording the

the Sacramento River - That on being made acquainted with ~~these facts~~ the tops Capt Sutter furnished a second copy which was sent by the grantee to Monterey for the purpose of obtaining the approval of the Assembly - but that he has never been able to recover it or to discover what had been done with it.

Gen Sutter who was sworn on the part of the claimants testifies that John Smith petitioned the Governor for 6 square leagues of land accompanying his petition by a map drawn as he understood by John Bidwell - The Expedente with the usual decree for information was acted upon by the witness and a favorable report made before the 22d Dec. 1844 - The witness also stated that he remembered having given to Smith a copy of the original title as he was entitled to have it - ~~The witness further stated~~ - that subsequently he was informed

ed and fully satisfied that in the spring of 1845. Smith lost all his documentary evidence or Expedients in this case On his cross examination he stated that after the petition came back from Monterey for his report he examined it in the presence of Bidwell who wrote it and of Smith the grantee Major Bidwell ~~[illegible]~~ confirms the testimony of Gen Sutter — and states that he saw ~~the~~ the latter deliver a copy of the general title to Smith and that subsequently he prepared a petition to Gen Sutter soliciting another copy of the general title as the first had been lost with the accompanying documents, and that Gen Sutter knowing that fact delivered a second copy as requested — The witness also states that the land claimed in this case was granted to Smith by the general title referred to, and he identifies

7

a map as made by himself in 1844 on which the land now claimed is marked as the "Rancho de Yuta"

Gen: Sutter was re examined in this Court. His recollection at when making his last deposition seems more uncertain and confused that when his first ~~statement~~ testimony was first taken. He repeats however his former statements as to the facts we are considering viz that Smith applied for the land — that the petition was referred to him; that he reported favorably upon it — that he delivered a copy of the general title to Smith and that on its being proved to him "by many persons" that the first copy was lost he gave or sent to Smith a second copy —

When asked how the loss of the first copy was proved he replies when a man like Bidwell ~~tells~~ told me anything

I believed it like the "Gospel" —
There can I think be no room for doubt under this testimony that Smith ~~[illegible]~~ was one of those in whose favor the general title issued.
His own testimony has been taken to prove the loss of the copy delivered to him and of the other documents — It is objected that it has since appeared that he has or pretends to some interest in the land notwithstanding his conveyance to the present claimants — A bill of complaint is exhibited in which he prays that that sale may be set aside on the ground of fraud — The objection was not taken however at the time he testified and besides his own evidence as to the loss of the documents would clearly be admissible notwithstanding his interest.
His account is corroborated by the testimony of Sutter & Bidwell — witnesses of whom it may be observed that ~~of~~ they are

of a class, unfortunately too small, upon whose veracity this Court can place reliance

It is not to be forgotten that the production of the copy of the general bill is only important as showing that the party producing it was one of those intended to be benefitted by the original. The interest passed by virtue of the original and it passed to those persons who are referred to in it though they are not named. The only inquiry therefor is was the claimant one of those persons? To establish this secondary evidence of the contents of the copy delivered to him is necessary — It is the fact that he was one of those in whose favor Suther had reported which gives his rights and identifies him as one of the intended grantees.

That he did petition for the land, that Suther reported favorably on his petition —, that a copy

of the original grant was given to him at the time as one of the original grantees is clearly proved — His ~~is~~ rights are therefore established whatever may have become of the copy delivered to him — that copy being in no sense the instrument which conveyed the title — but only a means of showing by its production what other testimony has sufficiently proved —

But in order to ascertain what lands were granted reference must be had to ~~the~~ his petition. for it was the land therein solicited which the Governor granted. & secondary evidence of the contents of the petition must of course in the absence of the original be resorted to —

That the petition and accompanying documents were lost is I think sufficiently shown not only by Smith's own testimony but by that of Sutter and Bidwell & still more conclusively by the fact that a 2d copy of the grant was delivered to the grantee — a proceed

~~obse~~-ding absend and without a motive — unless the fish had been lost — It is suggested that due diligence has not been shown to obtain this 2d copy — But the only documents ~~of~~ as to which secondary evidence is important ~~are~~ is the petition and of this it does not appear that any copy was made —

The petition not being produced the fact that the land now claimed was that solicited in it must be estathished by other testimony —

Mag. Bidwell ~~states~~ testifies that he is well acquainted with the land and he states its boundaries — and that it was granted to Smith by Michel Torena — A map is also identified by him as made by himself in 1844 in which the land now claimed is delineated under the name of "Rancho de Guta" Gen Sutter testifies that John Smith petitioned Gov. Michel Torena

for 6 leagues of land accompanying his petition with a map or diseño drawn as witness understood by Maj. Bidwell - ~~the~~ Smith, (the witness says) was in possession by his authority of this land ~~and that~~ the boundaries of which ~~the land~~ correspond with the map referred to in the deposition of ~~Sather~~ Bidwell. He witness on his cross examination says that he examined the original diseño when the Expediente was referred to him for his "informe" - that he was well acquainted with the ground and that ~~Maj. Bid~~ wells the boundaries as testified to by Maj. Bidwell and ~~exp~~ delineated on the map referred to by him ~~by him~~ correspond with those on the diseño which accompained the petition
When subsequently examined the witness declared his inability to specify the boundaries of the land petitioned for or to give a particular description of the de

sino which accompanied the petition — He even states that he cannot recollect the quantity of land applied for by Smith

It is not very easy to reconcile the accurate recollection exhibited in the first deposition of Gen Sutter with the confusion and forgetfulness shown in his last Perhaps the lapse of time may in some degree have impaired his memory — tho' it is ~~somewhat~~ strange that two years should have so completely obliterated the ~~memory~~ recollection of events which in 1855 he so freshly remembered.

If we were compelled to rely upon Gen: Sutter's testimony alone to ascertain ~~what~~ the land which Smith petitioned for, and which was granted to him we should perhaps be obliged to reject the claim.

The testimony of Bidwell ~~is~~ however is explicit and identifies the land granted to Smith —

Smith himself swears that he petitioned for and obtained the Rancho de Guta — and that he

claimed to own it is without proof the testimony introduced on the part of the U. S.; for in 1848 he sold out to Hye and Foster, from whom the claimants derive title, his interest in the land now in controversy the fact that so soon after the acquisition of the country he claimed to own this land under the title derived from Micheltorena ~~affords~~ shows that the claim now urged is no recent invention and corroborates the testimony of Sutter and Bidwell that the tract now claimed was that originally petitioned for and granted to him.

Upon the whole I think it sufficiently proved ~~that~~ not only that Smith was one of the intended grantees under the general title but that the land petitioned for by him, and by that instrument granted was the Rancho de Yuba claimed in this suit —

The next inquiry is — was the vested interest so acquired forfeit

ed during the existence of the former government by such unreasonable neglect to perform the conditions as to justify the presumption that the grantee had abandoned his grant

The evidence shows that before obtaining his grant Smith had purchased from Gen Sutter one league of land and had built a house upon it. The land he solicited ~~and~~ immediately adjoined this ~~land~~ tract and it would seem from the proofs that the 2d house built by Smith was also within the limits of his purchase and not within those of his grant. This is certainly the case if the boundaries of Sutter's grant be located according to the preliminary survey made of it.

~~The~~ It may be a doubtful thing for that Smith never built a house ~~up~~ within the limits of the 6 leagues granted. But that he resided in a house built

on the land purchased by him which immediately adjoined it — His cattle however ranged over the large tract and he appears to have claimed & been recognised as possessing both tracts until 1848 when he sold out to Rye & Poston — It seems to me that this occupation was sufficient to satisfy the Mexican law. When a sobrante or surplus was granted to one who had previously obtained a grant of a portion of the land included within natural boundaries it was not expected that he should build a second house and reside on both tracts at once — So also when an augmentation or additional grant was made the additional quantity was added to that first granted and both formed one whole —

If Smith then was residing and had built a house upon the one league ~~granted~~ purchased and then obtained from the Government an addition

at six leagues immediately adjoining it, he must be considered ~~as~~ ~~to~~ from that time as occupying the whole 7 leagues or the whole tract upon a portion of which he continued to reside —

Certainly such an occupation repels all idea that he had abandoned his grant — and it is only when the neglect to fulfil the conditions has been so unreasonable as to justify the presumption of abandonment that we are authorised under the principles laid down by the Supreme Court to declare his claim forfeited —

Your last objection. It is further objected that the general bill only grants to those citizens who have obtained the favorable report of Gen Sutter the lands solicited by them respectively — and that it is not shown that Smith was a citizen —

It appears that Smith was a

native of Canada or New Brunswick that he came to this country in 1835

He swears himself that he was naturalized but he does not produce his papers or give secondary evidence of their contents — They were lost with the other documents

It appears however that Gen: Sutter delivered to him a copy of the title as one of those referred to in it. Gen Sutter was at that time military commandant of the Mouth and exercised civil jurisdiction in that portion of Upper California — ~~The gran~~ He was directed to deliver a copy of the title to a certain class of persons described in it — It is to be presumed that as an officer of the Government he did his duty and acted within the limits of his authority. The fact therefor that Smith was recognised by him as one of those entitled to receive a copy of the grant — That he

delivered to him a copy,
to him as such should
when corroborated by the
oath of Smith himself be
received as sufficient to bring
him within the class of
persons in whose favor the
grant issued —

The claim was confirmed
by the Board and I see
no reason to reverse their
decision —

May 2. 1857.

The A. S

B

Rose Hal

T Pinnock

May 21. 1857

Office of the Board of Commissioners,
To ascertain and settle the Private Land Claims in the State of California.

San Francisco, Oct. 20th 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. 605 on the Docket of the said Board, wherein John Rose, et al, are the Claimant against the United States, for the place known by the name of "Six square leagues of land in Yuba County" and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,
Geo. Fisher

Ogden A Hoffman

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES, *vs.* JOHN ROSE, et al. *Case No.* 312, *For the* *Rancho de Yuba.*	In Appeal from decree of confirmation of the Board of United States Land Commissioners, for the State of California.

Argument of H. S. Foote, on the part of the United States.

This, may it please your Honors, is a case which I hope will give you but little trouble, either in the ascertainment of the facts or in the settlement of the legal principles involved in it. The claimants represent that they became the owners of the Rancho de Yuba by purchase from one John Smith, in the year 1852. They represent that Smith applied for a grant of this ranch to Micheltorena, then Governor of California, in the autumn of 1844, and obtained the same.

It appears in testimony that, in the autumn of 1848, Smith parted with whatever interest he then held in said ranch to M. C. Nye and

William Foster, by an arrangement the precise nature of which is not very distinctly presented.

The first and most important witness introduced on the part of the claimants is John Smith himself, the alleged original grantee. It is admitted, by a stipulation on file in the case, that a suit is now pending in the District Court of the County of Yuba, in which Smith, as plaintiff, claims to be yet the rightful owner of the land in controversy, alleging that he was fraudulently inveigled into the sale thereof under which Rose and Kinlock now claim said ranch, and praying to be restored to his original rights as grantee of the Mexican Government; so that it now appears to the Court, that when Smith came forward in this case to testify in support of the claim of Rose and Kinlock, he could not but regard himself as bearing evidence in favor of his own interest. Whether his deposition should, on this showing, be stricken from the record, or be received *cum grano salis*, is a point on which I am quite willing that your Honors shall pass without argument.

I proceed, after this suggestion, to examine the deposition of Smith. It appears from it that he is a foreigner by birth. He says he was naturalised under the Mexican Government, and he thinks by Micheltorena. He goes on to state that he is acquainted with the Rancho de Yuba; that he petitioned for it in 1844, to Micheltorena; that he obtained from Gen. Sutter a favorable report, and that the General afterwards "delivered to him a title which he was authorised to give by Micheltorena." He is asked then, by claimants attorney, "What became of the papers above referred to, viz.: the petition, &c?" to which he responds thus: "In the summer of 1845 I went to Mr. Hardy's, to get him to survey my land for me, and I took my papers with me. On my return home, I attempted to ford the Sacramento river about nine miles above the old crossing. My horse became frightened and got off the bar into deep water, and was drowned. I lost my horse, saddle, bridle, papers and all. The papers were in a tin case, and were lost entirely. I immediately after made this known to Gen. Sutter, and he required me to address him a sworn petition stating the facts, and asking for a copy of the paper which he had before given me. This I did. Mr. Bidwell prepared the petition for me, and then Gen. Sutter gave me a copy of the said document."

Upon this part of the deposition, I propose to offer a remark or two before going farther.

And first, I call the attention of your Honors to the fact that this is a case in which a claim to land is set up, under what is known as the "General Title of Micheltorena," upon the validity of which I understand your Honors to have heretofore repeatedly passed, and I shall therefore not trouble you with a labored discussion of the point. You will pardon the suggestion though, I trust, that had not the question been *res judicata* here, I should have been inclined to doubt the validity of the "General Title," as it is called, on two grounds, 1st. Because the letter of "Instructions and Powers of Micheltorena," under date of the 11th of February, 1842, addressed to him by the Minister of War, (under the authority of which the "General Title" purports to have

emanated,) for the attainment of certain objects specified therein, assumes to grant "extensive powers," in relation to "colonization," &c., &c., but was not, according to my understanding of it, intended to authorise the Governor to delegate those powers sweepingly to subordinate functionaries, of whom the Supreme Government of the Republic could know but little if anything; and 2ndly, Because it is at least doubtful whether the President, *ad interim*, of Mexico, by whose direction the "letter of Instructions and Powers" is supposed to have been made out and issued, had any authority to grant such latitudinous powers to a Territorial Governor—without the special sanction of the Mexican Congress first being obtained.

But pre-termitting these points on the present occasion, I insist that the "General Title" itself is expressly limited in its application to Mexican "*citizens*," that document being couched in the following phraseology:

"I, Manuel Micheltorena, &c., not being able, on account of being closely occupied, &c., to extend, one by one, the respective titles to all the *citizens* who have petitioned for lands, &c., I, in the name of the Mexican nation, confer upon them and their families, &c."

Now, inasmuch as Smith was of foreign nativity, I urge that he could not take any benefit under the "General Title" under any circumstances, unless it appear by satisfactory evidence—1st, that he had been naturalized in some valid and effectual manner, at the period of his receiving a copy of the "General Title" from General Sutter; and 2nd, that he petitioned for a grant as a *naturalized citizen*, of foreign birth, and that all the usual steps had been taken to obtain information as to his being a *proper person* in all respects, foreigner by birth as he was, to become a grantee of a large body of the public domain of Mexico, at such a period in the history of the country as the autumn of 1844. I shall not dwell upon these points at present, preferring to offer, in the first instance, some suggestions upon the deposition of Smith, of a different character.

I do not know what your Honors may think of the strange story he tells about his horse becoming frightened in crossing the Sacramento river, and getting drowned; but to my mind this whole tale seems to be most manifestly fabricated for purposes of imposition, and is not entitled to the least credence. Why, if he desired to get his land surveyed, did he not go and employ the surveyor to come and execute the job without taking his papers with him? If he took them with him and actually employed Hardy to execute the survey, where was the necessity of taking the papers back home with him again immediately? Why could he not leave them with Hardy until he could come over to perform this important job? If he feared to trust Hardy with papers so valuable, in his estimation, why did he not leave a copy of them at least, or some memorandum of them at any rate, which could have been produced as secondary and corroborating testimony, now that the papers in question are alleged to have been lost? Where was the necessity of taking anything more with him than a specification of the boundaries, when he paid this momentous visit to Hardy? Why, if he valued

the papers so highly, did he, without any apparent necessity, undertake to ford the Sacramento river nine miles above the usual crossing place? But, really, can your Honors believe that a California horse, accustomed doubtless to fording rivers, and swimming them too occasionally, would take fright and drown in consequence of getting off the bar—into water a little deep! But suppose this all to be true, could not the carcase of that ill-fated animal have been rescued with a little trouble from the submerging waters? Could not the tin canister in which the papers were so carefully stowed away, have been by some means brought forth from the depths of the cruel Sacramento? Why does it not appear, at least, that the grantee made *some* efforts to retrieve his muniments of title, before secondary evidence of their contents is here resorted to?

But, may it please the Court, it does not appear in a manner at all satisfactory, *what* precise papers they were that were thus lost. Smith speaks of them as "papers" only; he does not even say that they were papers appertaining to *land* anywhere; still less that they were title-papers belonging to the six leagues of land now the subject of controversy. It is shown in evidence, as your Honors will presently see, that this was not the tract of land on which Smith lived at the time, but that he had purchased another tract of land from General Sutter, upon which he had built the house in which he resided during the whole period of his sojourn in that neighborhood. If indeed he went over to Hardy's at all, in order to employ him to survey land, does it not appear to be altogether possible that the land which he wished to have surveyed was the tract on which he lived, and which he seems to have held by an absolute title? If so, then would it be equally possible that, if he lost his title papers, they were such as appertained to the last-mentioned tract.

Before I leave this point, let me call your Honors' attention to the fact that no attempt seems to have been made to obtain the testimony of Hardy in regard to this most marvellous transaction. It is not made known to us even whether this important personage is at this time dead or alive, has removed to distant lands, or still abides in California.

The remainder of Smith's deposition relates to other matters. He goes on to say that he came to this country in 1835, with Captain Wilson; that Captain Wilson told him to give him the last mentioned papers, (meaning the second copy of the "General title") and he would take them to Los Angelos, and procure the approval of the Departmental Assembly;" that he "gave them to him," and has "never been able to hear of them since," though he "made efforts to recover them." What efforts, pray? These we are left to conjecture. Where is this Captain Wilson? Is he dead or living? Is he no longer a resident of California? On these points we are left wholly in the dark.

Your Honors are too familiar with the law in regard to the introduction of secondary evidence as to the contents of a written instrument, to need elaborate citation of authority on this head. I am con-

tent to assume the position formally before you, that the *loss* neither of the first copy of the "General Title," nor of the second, has been so attested as to make the adduction of secondary testimony proper; and I further insist, that it does not appear that *due diligence* has been used by Smith, or those claiming under him, to produce the primary documentary evidence here. I contend, may it please your Honors, further, now, that even admitting the evidence of the loss of the first copy of the "General Title" to be sufficient, and that proper *diligence* has been shown on this point, that there is nothing in the language of the document itself, or in the circumstances connected with its emanation, to authorise the granting of a *second copy* of it, at the discretion of Sutter, on his learning, however satisfactorily, that the copy first given had been lost. Only *one copy* is in terms authorised; which was, in due season, to be returned to the Governor himself, when a formal title was to be issued in its stead. If ever a document existed to which the principles of strict construction were applicable, this surely is that document. Its history, so well known in this Court, shows it to have been a *cautionary* expedient, resorted to by Micheltorena, upon the suggestion of his secretary, as a means of avoiding indiscreet grants of the public domain to unsuitable persons; and to give it validity and binding force beyond its own provisions, would be, in my judgment, wholly unjustifiable and improper.

Smith's deposition contains some other statements necessary to be particularly noticed. He says: "In 1844, I built a house on it, planted some seventy-five peach trees, and in that year and in 1845, I ditched all around three sides of a field of one hundred acres—the other side was bounded by the river. I cultivated this field in wheat, corn, potatoes, and other vegetables. I tried potatoes two years, but they would not grow. I had about six hundred head of cattle on it. They were afterwards increased in number. I continued to live there until I sold out in 1848."

All this, it will presently appear, by evidence incontestable, is a sheer fabrication. I assert emphatically, that it is not proved in the case, that Smith ever set foot upon any part of the six leagues in his life. It is proved by the deposition of Nye, presently to be brought forward, and by the deposition of Rose, one of the claimants, that there were no improvements put by Smith upon any part of the six leagues before 1848, when he left that part of the country altogether; so that there was no house upon it, no ditches, no fruit trees. Cattle belonging to Smith might, perchance, have been seen roaming over its surface, as over other unenclosed lands adjoining it. The nearest approximation to proof of the *pedis possessio* of the Rancho de Yuba, in any form, by Smith, is the statement of Rose, the claimant, in his deposition already referred to, that it is a *possibility* that *corrals* might have been established there without his seeing traces of them afterwards. I have but little more to say of the deposition of Smith. Before dismissing it from notice altogether, though, I will call the attention of your Honors to a palpable contradiction in which he involves himself, upon a point of some interest. On cross-examination, he says

that after losing his papers in the Sacramento river, as described, he did not make any effort to secure a survey of his lands, because he was not certain that he could get his papers renewed; and yet he says in another part of the same deposition, that he made application for a second copy of the "General Title" *immediately* after said loss, and was successful in obtaining it. Such a discrepancy would, of itself, be sufficient to destroy the force of his whole testimony in any case, on the principle of "*Falsum in uno, falsum in omnibus;*" in a case like the present, there is so much reason for distrusting his statements on other grounds, that it was hardly necessary to suggest this contradiction at all, gross as it is.

I shall occupy the attention of your Honors for a moment only, with the depositions of Bidwell and Sutter. They are both respectable citizens, and I shall not call their veracity in question. What they say in regard to all the material points in the case, is so vague and confused—rests so manifestly, in relation to various important facts, upon mere rumor and hearsay—and on the subject of the occupancy of the land in question by Smith, and his establishment of improvements upon it, is so clearly the result of mere misinformation or conjecture on their part, (effectually counteracted by the evidence yet to be examined,) that I shall pass it by without special remark, except to call the attention of your Honors to the second deposition of Sutter, taken only a few days since, in which all the most material statements contained in his first one, are either altogether taken back or essentially modified. It is evident that neither Bidwell nor Sutter was likely to know very accurately and minutely whether Smith made his improvements upon the six leagues in controversy, or upon the piece of land adjoining, which he had previously purchased of Sutter. Neither of them is proved ever to have paid a personal visit either to the one place or the other. Major Bidwell speaks of Smith's having built two houses, one upon the land bought of Sutter, and the other, as he supposes, upon the six leagues tract. His mistake, and the manner of his falling into it, are now obvious enough. Smith did, in fact, (as is attested by Nye and others,) build two houses, one upon a place known as the "Memal Ranch," in the same neighborhood, but not at all connected either with the one league tract purchased from Sutter, or the six leagues asserted to have been granted by Sutter in his official capacity. He afterwards, (it seems probable, in the year 1843,) built the second or "stick and mud house," spoken of by witnesses. Bidwell supposed that this second house was built *after* the date of the grant, and within its limits. But this is shown, conclusively, not to have been the case, by the testimony of Nye, and that of Rose himself already adverted to.

Let us now examine the depositions of Nye and Rose. The former states that he knew Smith well from the year 1842. He was his partner in the stock business. They lived in separate houses, about three hundred yards apart. Their residences were both at or near what is known as Linda Ferry. He saw Smith every day, and was familiar with all his business concerns. He asserts that the house in

which Smith lived was located on the piece of land bought of Sutter, and not within several miles of the nearest point of the six leagues tract. He bought Smith out in 1848, when the latter left that neighborhood for Mendocino county. He, Nye, continued to live at or near Linda Ferry for six or eight months after Smith left for good, and avers positively that there were no traces of any improvement made by Smith upon any part of the six leagues grant before he left that vicinage.

Rose himself confirms Nye's statements in every material respect. I shall not cite his evidence at length; your Honors will of course examine it carefully for yourselves. I should certainly be willing to risk this case upon the testimony of the claimant himself.

Inviting the attention of the Court to the deposition of Col. Ransom, in regard to the survey of the New Helvetia Ranch, recently made at the instance of General Sutter and others, by a surveyor acting under the authority of the United States, and the evidence of Sutter, Rose, and Nye, in regard to the boundaries of the New Helvetia Ranch as laid down therein, and as understood and recognised in the neighborhood, I shall now proceed to state the grand result of the whole evidence.

I insist, then, that admitting that Smith did actually receive such a grant as that claimed to have been made to him; admitting that the grant was in all respects a valid one; that a case for the introduction of secondary evidence of the contents of said grant has been fully made out; yet it does not appear either that Smith complied with the material conditions of the grant, or even attempted to do so, either wholly or in part. This is no case of the location of a house upon the wrong piece of land by *mistake*. It does not appear that Smith himself, whilst residing at Linda Ferry, ever recognised his house as located within the six leagues grant. On the contrary, so far as there is any evidence on this point, it is exactly to the reverse. His house and other improvements, if he had any, being located *proximately* to the tract of land in dispute, so far from being a favorable circumstance, is the most unfavorable one that could be imagined; since that fact renders it most manifest that it was altogether in the power of the claimant to comply with the conditions of his alleged grant, and that such compliance would have been in the highest degree convenient. No hostile Indians drove him from the neighborhood; he lived there in peace and safety; and no obstacle whatever was interposed to prevent his taking possession of said six leagues of land, and establishing a residence thereupon This he neglected to do, up to the autumn of 1848, when he ceased to reside in the neighborhood. Even when he left for Mendocino county, he made no formal surrender of the land in controversy to any one; entered into no written contract in regard to it; and in fact executed no conveyance of it up to the year 1852, long after this country was acquired by the United States, when the lands had greatly appreciated, and the spirit of speculation had displayed itself throughout the agricultural and mining regions of California.

If it be possible to make out, by evidence, a case of *abandonment*, such as is mentioned in the case of Fremont *vs.* The United States, in 17th Howard, and in the case of the United States *vs.* Reading, in 18th Howard, surely we have succeeded in proving up such a case on this occasion.

In the case of Fremont, *vs.* The United States above cited, the opinion of the majority of the Court, in the most emphatic manner, asserts the principle, as applicable to that and all other grants of land in California by the Mexican government other than definitive ones, that no "*unreasonable delay*" should appear to have occurred on the part of the grantee in complying with the conditions of the grant. The Court expressly say, in considering this point: "Upon this view of the subject, we proceed to inquire *whether there has been any unreasonable delay, or want of effort, on the part of Alvarado to fulfil the conditions?* For, if this was the case, it might justly be presumed, as in the Louisiana and Florida concessions, *that the party had abandoned his claim* before the Mexican power ceased to exist, and was endeavoring to resume it, from the enhanced value under the government of the United States."

In the case of the United States, *vs.* Reading, (or Redding as the name I suppose should be written) the same principle is again asserted. In regard to Redding's not "having complied with the condition to build a house upon the land, and have it inhabited, within a year from the date of the grant," and his failure to "obtain a judicial possession and measurement of it," the Court say: "The last two objections are charges of *negligence*, which must be determined by the proofs in the case. In our opinion, they do not show either *negligence* or *omission* in the particulars mentioned." They then go on to state the facts of the case with some particularity, showing that Redding made every proper and reasonable effort to comply with the conditions of his grant, but was prevented from doing so by Indian hostilities, and then say: "We have noticed these minor objections, against the confirmation of the grant, that the real merits of the transaction might be known, and not because it was essential to the decision of the case. For, even if the proofs in the case, in respect to the grantee's occupancy of the land had been otherwise than they have been shown to have been, his title to it would not have been lost, because the conditions annexed to the grant had not been fulfilled; unless it could be shown that there had been on his part such *unreasonable delay or want* of effort to fulfil those conditions as would amount to an intention to abandon his claim before the Mexican power had ceased to exist, and that he was now endeavoring to resume it, from its enhanced value under the government of the United States."

I am aware that the decisions of the Supreme Court of the United States, delivered recently in cases arising in California involving the character of Mexican grants of land here in colonial times, have been to some extent the subject of conflicting construction among members of the Bar in this State. I should hope that the true interpretation of these decisions would be fixed among us by the recent opinion of your

Honors in the case of Tobin *vs.* Walkinshaw, in which, after reviewing the decisions referred to, and a number of other cases decided both in California and Texas involving similar questions: you say: "It has been urged that the decisions of the Supreme Court of the United States, in the Fremont and other cases, establish that these Mexican grants pass the fee to the land, and constitute such title as will sustain ejectment. Whatever may be the conclusion at which this tribunal may arrive on this point, we see nothing to authorise us to consider that the decisions heretofore made have gone to the extent contended for. They have determined that these grants pass a vested and immediate interest, and one which should be recognized by a Court of Equity, and beyond that we do not understand them to have gone. To these grants are annexed certain conditions, which are clearly subsequent, and if the title had been complete, the non-performance of them could only have been availed of in the manner prescribed by law for the defeat of legal estates subject to forfeiture. But the titles under the Mexican grants being deemed *merely inchoate*, were treated as such; and the Supreme Court *enter into a minute examination of the facts of each case with a view to ascertain its equities*, and *whether the non-performance of subsequent conditions should forfeit the right of the party to have his claim confirmed.*"

Upon this view of the matter, it is difficult to see how any doubt can arise in this case as to the claimants not having an equitable right to the confirmation insisted upon in their favor. They have certainly done nothing to entitle them to the favorable consideration of the Court; and a confirmation of their alleged claim would be destructive of the equities of others, that have sprung into being under governmental encouragement, and are entitled to a fair and just protection in all the Courts of the Union. I allude now of course to the honest agriculturists and miners who are now located upon the six leagues claimed by Rose & Kinlock as assignees of Smith. I know it is customary in California to speak of this numerous class of our citizens with indifference, and even with contempt. So did not the distinguished Statesman now at the head of our national government, when, at a memorable period in our history as a people, in 1848, he addressed a letter to a high functionary in California, evidently too designed for publication, in which he gave solemn assurance to those American freemen dwelling upon the coast of the Pacific, that "the laws of the United States relating to trade and intercourse with the Indians should be extended over them, Custom Houses be established for the collection of the revenue, *and liberal grants of land be made to those bold and patriotic citizens, who, amidst privations and dangers, have emigrated, or shall emigrate to that Territory from the States East of the Rocky Mountains.*"

In the same noble spirit spoke an eminent Judge of the Supreme Court of the Union lately, (Justice Catron) in the dissenting opinion delivered by him in the Fremont case, in which he holds the following language: "And this presents a very grave question affecting pre-emption rights. The country in California is filled with inhabitants cultivating the valleys and best lands, and where they rely almost as con-

fidently on *their government titles, founded on acts of Congress, as if they had a patent for the land. No other American title is known in California except such as are founded upon the pre-emption laws.* These agricultural people are quite as much contractors with the United States as the Mexican grantees were contractors with their government. By the acts of March 3rd. 1853, and March 1st. 1854, congress promised to each settler who was on the land March 1st. 1854, or might settle on it within two years thereafter, 160 acres, to include his residence, at one dollar and twenty-five cents an acre. This was a policy to populate the country, which is yet in progress. That these occupants have an equitable interest, and hold the land as purchasers, is the settled doctrine of the department of public lands, which exercises jurisdiction over them. Much of labor and money has been expended on the faith that a preference-right was a safe title, and exempt from floating Mexican concessions, such as that made to Alvarado, and now in litigation here. And this was most natural. Incipient Mexican claims had no standing in an ordinary court of justice, and congress created special courts to try them, and prescribed the laws and rules by which these courts should be governed in their adjudications; and among other rules it was provided, that the decrees of the Supreme Court of the United States should govern where they applied. They thus had given to them the force of a legislative enactment."

I cannot but feel the fullest confidence that the action of the Supreme Court of the United States in regard to the land claims in California will be at least as benignant hereafter to the interests of *bona fide* settlers, whether miners or agriculturists, as it has heretofore been. Indeed there are some signs which seem to indicate that the future action of the Court will be less favorable to land claimants under Mexican authority than heretofore. There are now three dissentient Judges to the principal decisions heretofore rendered; and Justice Daniel, in one of the last cases decided, in an opinion marked with a boldness, honesty, and independence worthy of Spencer Roane himself, speaking of the decisions rendered in former cases, does not hesitate to say: "The decisions in all the cases above enumerated have, according to my apprehension, been made in violation of the acknowledged law and authority of that government which should have controlled those decisions and the subjects to which they relate; are subversive alike of *justice and of the rights and policy of the United States in the distribution and settling of the public lands,—of the welfare of the people of California,* by inciting and pampering a corrupt and grasping spirit of speculation and monopoly—subversive likewise of rules and principles of adjudication heretofore asserted by this Court in relation to claims to lands within the acquired domain of the United States."

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After referring particularly to "the laws and regulations enacted by the Mexican government with respect to the granting of lands within that Republic, prescribing the mode in which and the agents by whom, all grants should be made, and prescribing also the limitations and exceptions to which the power of making grants was subjected;"

he continues: "That the laws and ordinances above referred to were solemnly, formally, and legitimately established and proclaimed by the government of Mexico, is not denied, nor is it pretended that they have ever been expressly or openly repealed by the government of the Republic. An attempt is made, however, to escape from the authority and effect of these public laws, by setting up a *practice* in violation of them, and from the *proof of the practice*, to establish a different code or system by which the former regularly adopted and promulged, and never directly repealed, has been abrogated and disannulled."

* * * * * * * * * * *

After some intermediate observations of a bitterly sarcastic character, and in a most striking manner pointing out the danger of undertaking to prove "the laws and constitution of Mexico" by oral evidence, or other unauthentic testimony "collected from sources however impure or liable to improper influence," he thus nobly expresses himself:

"How a proceeding like this is to be reconciled with the decisions of this Court already cited, or how indeed it can be reconciled with uniformity or with the safety either of property or person, passes my comprehension to conceive. It can hardly admit of a rational doubt in the mind of any man who considers the character of the population of the Spanish dominions in America,—sunk in ignorance, and marked by the traits which tyranny and degradation public and moral, naturally and usually engender—that any proofs, or rather statements might be obtained, which it might be deemed desirable or profitable to establish. And it will very possibly be developed in the struggle or scramble for monopoly of the public domain, that many of the witnesses upon whose testimony the novel and sturdy Mexican code of practice or seizure is to be established, in abrogation of the written law, are directly or intermediately interested in the success of a monopoly by which, under the countenance of this Court, PRINCIPALITIES are won by an AFFIDAVIT, and conferred upon the unscrupulous few, to the exclusion and detriment of the many, and by sacrifice of the sovereign rights of the United States."

Justice Daniel concludes this magnificent Judicial Phillippic, (if it may be so denominated,) thus: "Upon such a foundation, such a pretence, or rather such a defiance of authority (I will not by an abuse of language, call it even a pretence of right,) I cannot consent to impair or destroy the sovereign rights, and financial interests of the United States, in the public domain. I can perceive no merit, no claim whatsoever, to favor, on the part of the grasping and unscrupulous speculator and monopolist; no propriety in retarding, for his advantage or profit, the settlement and population of new States, by excluding therefrom the honest citizen of small means, by whose presence and industry the improvement and wealth, and social and moral health, and advancement of the country are always sure to be promoted." Such views and sentiments, wise and salutary as they undoubtedly are, if uttered by a member of the Bar of California, in Court or elsewhere, would be sneered at and derided by certain persons deeply interested in getting up, by illicit contrivances of one sort or other, a state of public sentiment among us which may effectually prevent manly

and efficient opposition, either in Courts of Justice or elsewhere, to a system of fraud and corruption in connection with the Land Titles of this fated country such as has never been known before in any age of the world.

The counsel who appear in support of this claim have insisted up to the present moment, and, indeed, I suppose will still insist that the evidence in the case proves that the house and other improvements, spoken of by several of the witnesses as having been established by Smith, were located upon some part of the six leagues in controversy. It now seems to be intimated, though for the first time, that it is quite immaterial whether these improvements were upon the six leagues or upon the tract of land adjoining, which appears to have been obtained from Gen. Sutter by Smith, some time in the year 1843, by *private purchase.* In support of this view of the matter, the familiar principle so often enforced in this Court, in connection with what are known as *Sobrantes* appears to be relied on. It is obvious that this is no case of a *sobrante*, and that the reasons upon which the decisions referred to are based have no application to a case like the present. A sobrante, we know to have been understood, in the days of Mexican domination here, to have been the *overplus* or *residue* of a body of land granted by the government, with certain specified boundaries, and limited also in quantity, ascertained or conjectured to be contained within said boundaries over and above the quantity thus defined. It was usual, as we know, for the original grantee of the general tract, after having faithfully complied with the conditions of the grant, upon the ground of his having so complied with said conditions, or upon some other ground of actual or imaginary merit, to apply to the government for a grant of the residue. If the application was successful, and the grant of the sobrante was not formally burdened with the conditions affixed to the original grant, the presun ption has been, and perhaps under the circumstances it was reasonable enough, that the grantor—that is to say, the government—did not intend to exact a compliance with said conditions a second time in relation to the overplus. The whole is looked upon as one compact body of land, and the grant of the residue is construed to have relation back to the time of the original grant, so that any improvements made upon the former are regarded as having been made likewise upon the latter, or, in other words, are viewed as lapping over the overplus so as to relieve the grantee thereof from all the original conditions. Here the grantor, both of the original tract and of the sobrante, is the same; the grantee is the same; the overplus is actually located within the same territorial boundaries; and the non-requisition of the original conditions on the occasion of making the second grant, or grant of the *overplus* or *residue*, is a circumstance which may well be construed most favorably to the grantee. But, in the present case, the grantor is not the same person. In selling a part of his own ranch to Smith, Sutter acted in his private capacity alone. In acting as the agent of Micheltorena, in handing over to Smith a copy of the "General Title," he acted in a ministerial capacity merely. The grant was understood to be made by the Governor himself. Sutter

was only the *conduit* through which the stream of title passed from the Governor to the grantee. There is no privity whatever between the sale of a small piece of his own land in 1843 to Smith, and giving him a document in 1845, by direction of the Governor, which was to operate as an inchoate grant for a large and magnificent body of the public domain. The improvements made by Smith upon the inconsiderable piece of land purchased by him from Sutter, have no connection whatever with the grant afterwards obtained from the government. It would be the height of absurdity to suppose that the conditions annexed to the grant of six leagues, had been substantially complied with by the grantee before he seems even to have thought of applying to the government for any grant of land whatever; and that the improvements made upon land obtained by purchase from a private individual, should be regarded as having been originally located upon a portion of the public domain, to which it had no relation at all except that of *accidental contiguity.*

There are two points in addition, to which I hope the attention of your Honors will be given, one of which has been already alluded to. I shall content myself with stating them, without troubling your Honors with an elaborate discussion of either of them. The first of these points relates to the question of *Naturalization;* the second is connected with the subject of the archives of California, during the period of Mexican misrule.

The decree of the government of Mexico, on the subject of *Colonization*, under date of the 18th of August, 1824, is so familiar to this Court that its special citation is hardly necessary.

The sixth section of this law runs thus: "There shall not, before the expiration of four years from the publication of this law, be imposed any duty on the entrance of foreigners, who shall come to establish themselves for the first time in the Nation."

The 7th section provides that "Prior to the year 1840, the General Congress shall not prevent the entrance of foreigners to colonize, except imperious circumstances oblige it to do so with respect to the individuals of some other nation."

The 8th section then provides, in addition, that "The government, without prejudicing the Colonization Decree itself, should take the measures of *precaution* which it may judge proper for the *security* of the federation with respect to *foreigners* who come to colonize."

The 9th section provides, that "in the distribution of lands *Mexican citizens* should be preferred," &c., &c.

The Regulations of 1828, adopted for the purpose of carrying this Decree into effect, authorised "the Governors of the Territories, in compliance with the law of the General Congress of 1824," "to grant lands to contractors, (Empresarios,) families, or private persons, whether Mexicans or foreigners, who may apply for them for the purpose of *cultivating* or *inhabiting* them." These Regulations then provide that "Every person soliciting lands," "shall address to the Governor of the respective Territory, a petition setting forth his *name, country,* profession," &c., &c. They also provide that "the Governor shall

proceed immediately to obtain the necessary information whether the petition embraces the *conditions* required by the said law of the 18th of August, 1824, both as regards the land and the *candidate*," &c., &c. The 4th Regulation then succeeds, and is in these words: " This being done, the Governor will accede or not to said petition, in exact conformity to the laws on the subject, and especially to the beforementioned one of the 18th of August, 1824."

Now Smith, may it please your Honors, is proved to have been of foreign birth, a native of New Brunswick or Canada. I do not intend to insist that this fact disqualified him for becoming a grantee under the Mexican government; though, in the Redding case, the Supreme Court of the United States have intimated some doubt upon the subject. But I shall urge before your Honors, that the fact of foreign nativity appearing in the case, renders it necessary that it should be shown that all the *cautionary* measures required by the laws of Mexico, to be taken in regard to this particular class of persons, were actually taken in his case. In the Redding case, the grant itself set forth the fact that naturalization had taken place. Redding was invested with rights as a land-owner, in his capacity of a *naturalized citizen;* thus making it clear that the attention of the government was turned to the fact of his foreign nativity, and raising the presumption, also, that the proper steps had been taken to ascertain that it would be safe and proper to make him a grantee of lands. In this case, Sutter says that the only information which he gave to Micheltorena, in response to his decree for the same, was that the six leagues petitioned for were not occupied by any one else. He only testifies that the *usual* proceedings were adopted in Smith's case, in order to obtain a grant; which by no means, in my judgment, raises a presumption that such proceedings as were requisite in cases of foreign birth had been taken in Smith's case.

At any rate, (as before hinted,) inasmuch as the " General Title" of Micheltorena was limited in its operation to " Mexican citizens," and there is no adequate and satisfactory proof that he had been naturalized, either by the adduction of the usual official certificate delivered to the candidate for naturalization, or by proving the *loss* thereof by satisfactory testimony, and introducing thereupon secondary testimony of the contents of this important document, it is impossible that any rights, either legal or equitable, inchoate or perfect, could have vested in him.

By the 9th Regulation of the law of 1828, the Mexican Congress provided that " The necessary record (of the action of the Governor in the granting of lands,) should be kept in a book prepared for the purpose, of all the petitions presented and grants made, with the maps of the lands granted." It is known, in point of fact, that such a Book of Records was kept. It appears by the Jones Report, and otherwise, that the Books of Record for 1844 and 1845, are in a state of complete preservation. What is the reason that the claimant has given us none of the record proof in support of this claim, which it appears could so easily have been obtained, had his claim been genuine, and the legal

formalities had been complied with in such manner as to secure its validity? In this case especially, where the *primary* testimony, upon points most material, is alleged to have been lost, the adduction of record proof would have been eminently proper. But not only is none produced; but no attempt even seems to have been made to procure it.

Upon the various grounds insisted on, I confidently expect a decision adverse to the pretensions of the claimants, and in favor of the United States.

Judge McAlister