CASE NO.
342

NORTHERN DISTRICT

ZAYANTA GRANT

ISAAC GRAHAM et al

CLAIMANT

ALSO AVAILABLE ON MICROFILM

LAND CASE 342 ND

Pp. 75-76 missing. Replaced with copies 6/18/85.

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TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 260.

Isaac Graham, et, al. CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Zayanta"

Office of the Board of Commissioners

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

The Petition of Isaac Graham, et al, for the Place named "Bayanta", was presented, and ordered to be filed and docketed with No. 260, 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 2, 1853.

In Case No. 260, Isaac Graham et al, for the place named "Bayanta", the deposition of John Parrott, a witness in behalf of the Claimants, taken before Commissioner Alpheus Felch with document marked No. 1 A.F. annexed thereto, was filed;

(Vide page 6 of this Transcript.)

In the same Case James W. Weeks, a witness in behalf of the Claimants, taken before Commissioner Alpheus Felch, with documents marked Nos. 1, 2, 3, 4 A.F. annexed thereto, was filed;

(Vide page 8 of this Transcript.)

San Francisco January 9, 1854.

In the same Case the deposition of José

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Boleoff, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed:
(Vide page 14 of this Transcript.)

San Francisco Nov. 3? 1854.
In the same case the deposition of Joseph L. Majors, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed:
(Vide page 18 of this Transcript.)

San Francisco Nov. 28, 1854.
Case No. 260 was ordered to be placed at the foot of the 3d Class cases on the Trial Docket.

San Francisco Dec. 7, 1854.
In the same case the deposition of Thomas N. Wright, a witness in behalf of the Claimants, taken before Commissioner Peter Lott, with a Map marked "Exhibit B. P.L." annexed thereto was filed:
(Vide page 23 of this Transcript.)

San Francisco Feby 26, 1855.
In the same case the deposition of José Ramon Bulnes, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed: (Vide page 34 of this Transcript)

San Francisco Dec. 12, 1854.
In the same Case the deposition of Cornelio Perez, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed:
(Vide page 28 of this Transcript.)

San Francisco Feby 27, 1855=
In the same Case the deposition of Jacob R. Snyder, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed:
(Vide page 42 of this Transcript.)

San Francisco May 13, 1855=
Case No. 260 was submitted on briefs and taken under advisement by the Board -

San Francisco June 26, 1855=
In the Land Case Commissioner R. Asa Thompson delivered the Opinion of the Board confirming the claim:
(Vide page 74 of this Transcript.)
And the following Order was made, to wit:
(Vide page 74 of this Transcript.)

of Commissioners appointed by said
Private Land Claims in the State of

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Petition.

To the Honorable the Board of Commissioners appointed to settle private land claims in the State of California under the act of the 3d of March 1851.

Your Petitioners Isaac Graham and William Ware Citizens of the State of California and represented before Your Hon Board by John Parrott of San Francisco as their attorney.

Respectfully represents That on the 22d day of April 1841 Joseph L Majors a Naturalized Citizen of Mexico solicited and obtained from the then Governor J. B Alvarado a grant of a certain tract of land called and known by the name of Tasanta near the Mission of Santa Cruz Said County of the same name and more particularly described in the original Title Judicial possession and Surveys herewith accompanied with translations

That from the date of said grant of which Judicial possession was given Your petitioners have been in undisturbed possession of the Rancho have improved the same by Erecting Extensive Saw Mills dwelling houses and all other improvements necessary.

That the said Joseph L Majors has held the said Rancho of Sayanta in trust for Your petitioners up to the 22d day of May last when he transferred to Your petitioners all his right title and interest in and to the said Rancho a certified copy of the said

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is herewith filed.

Your Petitioners therefore pray Your Hon Board to confirm their Title to the Estate therein called for and cause a patent to be issued in their Name as the true and lawful owners of the said tract of land called Salcedo.

And Your Petitioners will ever pray.

Isaac Graham
William Ware.

By their attd.

John Parrott.

Filed in Office Jan 11. 1852.

(Signed)

Geo. Fisher Secy.

Office of the Board of U S Land Commissioners &c
San Francisco Dec 2. 1853.

Deposition of J. Parrott.

This day before Comr Alpheus Felch came John Parrott a Witness in behalf of the Claimants Isaac Graham et al Petition No 268 and being duly sworn deposed as follows.

Questions by General James Wilson attorney for Claimants.

1 Question.

What your Name age and place of residence?

Answer.

My Name is John Parrott My age is forty two years and I

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resided in San Francisco in California.

2 Question.

Look on the document now presented to you purporting to be a deed from Joseph L Majors to Isaac Graham and William Ware hereto annexed and marked Exhibit No 1 with the initials H F and state whether you are a subscribing Witness to said deed and whether you saw said Majors execute and deliver the same.

Answer.

I am a Subscribing Witness thereto and I saw said Majors Execute and deliver the same. My Name thereon as a subscribing Witness was written by me at the time said deed was Executed.

3 Question.

Are you acquainted with said Majors. if so do you know him to be the same man to whom the grant of land was made by Governor Alvarado on the 22d April 1841 in the Name of Juan Jose Crispostomo Major.

Answer.

I am acquainted with him he is the same man to whom the grant was originally made.

4 Question.

Please you state any time you on the Rancho whom Captain Isaac Graham now lives? if yea at what time and how often?

Answer.

I was on it in August 1845

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Graham was in possession of the Rancho at that time and had a small and some houses and some fine horses on it and also other Stock.

Questions by Mr Graham Associate Land Agent.

1 Question.

At the time when you visited this Rancho was Graham or Mayors reputed to be the owner?

Answer.

Graham was.

John Parrott.

Sabscribed and Sworn to
before me the second day of
December 1853.

Alpheus Felch
Commissioner

Filed in Office Dec 2. 1853.
Signed
Geo Fisher Secl.

Office of the Board
of U S Land Comrs &c.
San Francisco Dec 2. 1853.

Depositions of J. W. Weeks.

This day before Comr Alpheus Felch came James H Weeks a Witness in behalf of the Claimants Isaac Graham et al petitioners No 265 and being duly sworn deposed as follows

Questions by Genl James Wilson

g

Attorney for Claimants.

1 Question.

What are your name age and place of residence.

Answer.

My name is James H Hucks my age is forty years and I reside at San Jose California — I have lived since 1831 in California —

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2 Question.

Are you acquainted with the hand writing of Juan B Alvarado and Manl Jimeno if so please look on the document now presented to you purporting to be a grant by said Alvarado to Don Juan Jose Chrisostomo Major dated April 22d 1841 and marked "Exhibit No 1" with the initials H H. and hereunto annexed as a part of this deposition and say whether the signatures of said Alvarado and Jimeno appearing thereon are their true and genuine signatures.

Answer.

I have looked on said document. The signatures appearing on said document as those of said Alvarado and Jimeno are their true and genuine signatures.

I am acquainted with the hand writing of both of them.

3. Question.

Are you acquainted with the hand writing of Juan Jose Chrisostomo Mejias and of Jose Bolcoff. If so look on the document now presented to you purporting to be original record of Judicial Possession given by said

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Bolcoff as Justice of the Peace to said Majors of the Rancho called Zaquanta near the Cities of Brazoria marked Exhibit No 2 with the initials "A.T." hereunto annexed as a part of this deposition and state whether the Signatures of said Major and Bolcoff appearing thereon are their true and genuine Signatures respectively. Answer.

I know the hand writing of said Bolcoff and said Majors, I have looked on said document and the said Signatures appearing thereon as their are their true and genuine Signatures, respectively. Answer.

I Know the hand writing of said Bolcoff and said Majors. I have looked on said document and the said Signatures appearing thereon as their are their true and genuine Signatures.
Q Question.

Are you acquainted with said Rancho Zaquanta and the circumstances connected with the application of Majors for the grant of the same. If yea state what you know in relation thereto.

Answer.

I am acquainted with the Ranch. I drew a map or diagram for said Majors to present to the Government when he applied for the grant at that time. Myself and others have been at work on the land, building Mills making bricks sawing lumber &c.

Majors was interested with

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us in this work.

5th Question.

Look on the paper now shown to you marked "Exhibit No 3 with the initials "A F" hereunto attached as a part of this deposition and purporting to be a map or diseno of said Rancho and state whether it is the map or diseno drawn by you mentioned in your former answer.

Answer.

It is the very same one, at the South East corner of the Rancho is the place called the Rincon where we used to saw lumber, at the North East corner is the place where we had a small grist mill. A line run from the Rincon to the place where the grist mill was, would run on the East side of the river San Lorenzo and would be on the Eastern part of the Rancho.

On the western side of the Rancho are the mountains and three potreros all of which are on the west side of said River —

6th Question.

Look on the paper now presented to you purporting to be a sketch of the map above mentioned in ink marked "Exhibit No 4" with the initials A F. and annexed hereto and state whether a drawing in ink was made by you to represent the said Rancho?

Answer.

It is. The place where the mill was situated is marked thereon "Molina" and the Potreros" are also

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marked thereon on the West side of the river above mentioned.

7th Question.

Was you present when Bolcoff delivered the Syndicail possession of the land to said Majors?

Answer.

I was. Said Bolcoff came on to the Ground with his assistants to measure off the land as was customary in those days.

They commenced at the Rincon and followed along the foot of the hills across the creek called Zanta and then measured along that creek to the grist Mill before mentioned from thence they returned back and went to the first Solnero on the west side of the San Lorenzo Arroyo and there they marked some small oak trees and from that point they began measuring again and run in a North Eastwardly direction crossing the San Lorenzo near the Junction of the Zanta creek with it, to the Road above the road on the sand hills.

At this point they marked a pine tree. At this place Said Bolcoff called on Majors to know if he was satisfied and said he was and then he proclaimed it to be said Majors property and gave him Syndicail possession in the usual manner.

8th Question.

Please name the persons interested in the Mills and improvements made by you and others on the land

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Answer.

Joseph Mayors, who is the same person named, Juan José Mayors in the grant.

Peter Lassin, Frederick Eagle, William Hare and myself.

We continued in the possession and enjoyment of the land after the grant to Mayors. We began to Erect a Saw Mill and built houses and were making improvements when Captain Graham came.

He purchased the property of us and took possession of it and went on making improvements and has continued there from that day to the present and has lived on the place during that time. He has now three Mills on the place Several houses. Considerable Stock and some fields Enclosed and under Cultivation.

There were some fields Enclosed and under Cultivation on the place before we sold to Graham.

Questions by Mr Graham Associate Law Agent.

1 Question.

When did Mayors obtain the grant for the land.

Answer.

On the 22d day of April 1841.

2 Question.

When was the land sold to Graham.

Answer.

In 1842. After Judicial possess

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was given —
3 Instructions.

Was said Graham at that time a Mexican Citizen or at any time afterwards?
Answer.

I do not know.

James H Weeks

Subscribed and Sworn to
before me on this 2d day of
December 1853.

Stephen Field
Commissioner

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

Office of the Board of U S.
Land Commissioners &c.
San Francisco Jan 4. 1854.

Deposition of Jose Bolcoff.

At this day before Commissioner Redd Thompson came Jose Bolcoff a witness in behalf of Claimants Isaac Graham et al No 260 who after being duly sworn deposed as follows his testimony being interpreted by the Secretary.

Present Genl James Wilson Atty for Claimant and R Grunhut Esq Associate Law Agent.

In answer to questions,
Witness states his name is Jose Bolcoff his age 56 years and residence Santa Cruz

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California.

Question by Claimants Atty.

Are you acquainted with the Rancho called "Tajauntes" in the County of Santa Cruz near the Village of Branciforte if So State how long you have known it?

Answer.

I know said Rancho and have known it ever since the year 1834.

Question by Same.

Have you ever at any time given Juridical Possession of said Rancho in your Official Capacity as Justice of the Peace and if so to when and to whom did you give such possession.

Answer.

I did as Justice of the Peace give such Juridical Possession of said Ranch to Jose Majors Deceased sometime about the year 1840 or 1841.

Question by Same.

Look at the paper now shown you marked Exhibit No 2 with the initials A F annexed to the deposition of James H Parks filed in this case, and State if you know what is the character of the paper and what you know of its Execution.

Answer.

I have Examined said paper and find it to be the original record of the Juridical Possession given by me to Jose Majors and referred to by me in my preceding answer.

The said paper is genuine and was drawn up and executed by me at the time and date which appear on it

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Questions by same.

Look at the maps now shown you marked as Exhibits Nos 3 and 4 annexed to the deposition of James H Meeks filed in this case and describe with reference to said maps the boundaries of the land of which you gave said Judicial possession to Jose Majors.

Answer.

Said possession was given by the Map in pencil marked Exhibit No 3. I have given Judicial possession of said Rancho three different times by said Map. Exhibit No 4 is a correct delineature of the said Rancho Equally so with the other and is on a somewhat larger scale.

When I gave said possession I marked a large pine tree by a deep chop at the commencement of the line between said Rancho and the Rancho of San Leandro.

Said pine tree is situated near the centre of the largest cluster or grove of trees represented on said map and the aforesaid boundary line runs from thence North ~~North~~ East to the Mid represented on said Map by a cross and circle, near which and North of it an oak was marked as a corner.

Thence I run the line South West including the canal Lagoon and crossing the Arroyo de San Lorenzo to a point on the Sierra where a large Red wood tree was marked as a corner.

Thence South South East

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a Straight line to another large Red wood tree which was marked as a corner.

Thence a Straight line N North East to the beginning.

Jose Majors, was present and took corporal possession of the land.

There were at that time Several houses on land and two mills which were partly owned by Major and part by Graham.

The lands were also cultivated by Major and Mr Graham all the lands were cultivated that were proper for that purpose. They had also on the Ranch horses Cattle and hogs.

The present claimant Isaac Graham has continued in the possession and occupation of said Ranch from that time to the present.

He has since built several additional houses and Mills among which is a flouring Mill and a Saw Mill —

Question by U. S. Dist Law Agent.

To whom did you give the Juridical possession on the two other occasions of which you spoke of the land in question, State the circumstances in relation to them.

Answer.

I first gave such possession to Joaquin Bulna and the second to Francisco his Bulna sold his interest to Mos and the latter subsequently surrendered his interest in favor of Major

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and, I gave the Jurisdiction to the three in succession.

Jose Bolcoth.

Sworn to and Subscribed
before me Jan'y. 1854.
R. Aug. Thompson Comr.

Filed in Office Jan'y. 1854.
(Signed)
Geo Fisher Clerk

United States of America
State of California.
San Francisco Nov 1. 1854

This day came before Peter Lott Commissioner for taking testimony to be used before the Board of U.S. Land Commissioners in said State Joseph L Majors a Witness in behalf of the United States in Case No 760 on the docket of said Board wherein Isaac Graham et al are Claimants and said Witness being sworn deposed as follows.

Deposition of J. L. Majors.

The Claimants Counsel D. S. Gregory is present—

Questions by U. S. Law Agent.

1 Question.

What is your name age and residence?

Answer.

My Name is Joseph L Majors My age 44 years My residence Santa Cruz County California —

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2d Question.

Are you acquainted with the land claimed in this case the Rancho of Sayanta if so whether you are the original grantee thereof?

Answer.

I am acquainted with said Rancho and it was granted to me for Dane Graham and others that is it was granted in my name because I was a Mexican Citizen and could hold the land and I held it for Graham and others who Nothing Citizens could not hold it in their own name.

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The other persons were William Hare John Sasson, Frederick Heagle. These Hare the persons I first hild the land for and then Grahem brought out Sasson and Heagle and I hild it for Graham and his partner Henry Neil and said Hare. They were putting up a Saw Mill on the place where Graham & Neil were in.

3 Question.

Did you ever live on said land or cultivate any part of it?

Answer.

I never Made My home on it I built a house on it and was interested in and assisted to build a Saw Mill upon it. I never Cultivated any of the land myself but Graham Neil and Hare did live on the land and cultivated it Every year from the time it was granted.

4th Question.

Did you ever receive Juridical possession of the place from

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and one of sea from whom.

4th Question objected to by Defendants Counsel as incompetent in attempting to prove matter of Record by parol.
Answer.

I recvd Juridical possession of the place from José Bolcoff First Alcalde of Santa Cruz.

5th Question.

State whether the Juridical Measurement was Commenced and how it run and describe the lines?
Answer.

We commenced the Measurement at a little oak tree on the South westerly part of the Ranch and we run 3000 varas up to a little Stream where stood a small grist Mill which I had built. Thence we made a cross on an alder tree by cutting with an axe.

I think the little oak tree where we started was marked tho I am not positive.

I know it was ordered to be marked, that tree has been cut down the stump of it is standing there.

Then we went down near the South West part of the Ranch and measured from a pine tree on the West line across in an Easterly course 3000 varas as near as I can recollect to a pine tree on the Eastern line.

I marked this last mentioned tree myself by cutting a cross on it. It stood on the line of the San Augustin Ranch. That was on the

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measuring we did. It was done on horseback with a hair rope 100 varas in length.

6th Question.

Who else were present at the Juridical Measurement besides you and Jose Bolcoff.

Answer.

Francisco Rodriguez, Simon Rodriguez, Cornelio Sanz and James Hicks was there and several others whose names I do not now recollect.

The account was kept by Francisco Rodriguez and the line was carried by Roman Rodriguez and Sanz.

7th Question.

Was there ever any other Juridical possession given of said Ranch by said Bolcoff to you?

Answer.

There never was any other given to me.

8th Question.

Look at the deposition of Jose Bolcoff taken in this case January 9, 1854 and at his description of the land as given by him in said deposition and state whether you ever recived Juridical possession according to that description and state also how much land would be embraced within that description?

Answer.

I recived the Juridical possession according to the map in lead pencil marked "Exhibit No 3" to said Bolcoffs deposition. I did not receive

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it by and such measurment as Bolcoff discribes in his said deposition.

There was no such thing done that day. But it was done as I have before discribed after the measurment was made in which I gained possession Bolcoff waved his hand around saying I give you possession of all the land Embraced within the hills all round.

That would Embrace some 8 or 10 leagues of land. This had pencil map would Embrace that much land it was considered so at the time.

Cross Examined by Claimants counsel.

1st Question.

Had the Rancho of Bartolo been granted to other persons previously to the time it was granted to you if you to whom and had Judicial possession thereof been given by Bolcoff to those persons to whom the same had been granted.

Answer.

The Rancho had been granted first to Joaquin Buelna and Bolcoff told me he had given Buelna Judicial possession and then it was granted to Francisco Mesa and Bolcoff gave Mesa Judicial possession.

I passed by and saw him when he was doing it and then it was granted to me.

S. L. Mayos.

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Subscribed and Sworn to
before me on this 28th day of
November A.D. 1854.
Peter Sott Commr &c.

Filed in Office Nov 3. 1854.
Sign'd
Geo Fisher Sec't.

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United States of America
State of California } ss
San Francisco Dec 6. 1854.

Deposition of T. W. Wright. This day came before Peter Sott Commissioner for taking testimony to be used before the Board of U S Land Commissioners in said State. Thomas W Wright a Witness on behalf of the Claimants Isaac Graham & et al in Case No 260 on the docket of said Board and said Witness being Sworn deposed as follows.

The U. S Sam. Agent is present.

Questions by Claimants Counsel.
1st Question.
What is your Name age and residence?
Answer.
My Name is Thomas W Wright My age 24 years My residence in Santa Cruz California.
2 Question.
Are you the County Surveyor of Santa Cruz County if you are your appointed with the Rancho called "Sanfanto"?

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Answer.

I am the County Surveyor of said County and am acquainted with the Rancho named.

3d Question.

Look at the document marked "N P L. Exhibit to this deposition and heretofore filed in this case and State whether you recognise the Map contained therein as a correct representation of said Rancho.

Answer.

I cannot say that it is a correct description of the land, such as I would be so called by a Surveyor. It is disproportioned. I suppose it has been made from a view of the Case. I can find here several of the land marks which I am acquainted with on the ground and which I could easily find with this Map as a Guide.

4th Question.

State whether or not you have Surveyed any of the lines of said Rancho and if you how did you ascertain any of the Corners or land marks.

Answer.

I have Surveyed some of the lines of said Rancho I found some of the land marks but what I suppose was a duplicate of this Map and some of them were also pointed out to me by Desi Dolcoff.

5th Question.

State what lines you run.

Answer.

At the request of the Claimant

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in this case Sworn and Measured the land on last thursday Dec 1854, I Commenced at an oak tree marked with a cross pointed out to me by said Balcoff and marked on the lead Syned Map hereunto filed and made a part of this deposition marked B B L said Starting point is indicated on said last Mentioned Map by the words "oak tree point of beginning."

I run thence 65 chains North 56° East to the point Marked Pinal which was shown to me by said Balcoff he showed me a stump there and said the tree had been cut down or the map in some way destroyed thence I run North 6° 30' East 175 chains to an oak tree which had the appearance of having been Marked and had a stone lying at the root of it which Balcoff told me was placed there by his order when he gave possession of the place. It is indicated as a Corner on said map thus ✕ and is near the point "La Molina".

These are the only two lines I Measured. I ascertained the point Marked "Canal" also by reference to some distinct lines which I had before that time run.

Its distance from the last Mentioned oak tree near the Mill Molina is 130 chains.

6th Question.

State how far it is on the last Mentioned line from said Oak Near the Mill westerly to the east of the hills east of the San Lorenzo.

Answer.

I cannot give the distance

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precisely. I ascertained by triangulation at several points the distance of the said hills at their Summits from the said San Lorenzo Creek to be from a Mile and a half to 1¾ Mile at different places. the distance on this line from said tree near the mill Molino to said crest of the hills I should say is about three Miles a little more or less.

4th Question.

State the distance from your "beginning point in a Southeasterly Course across the San Lorenzo to the Summit of said hills on the West side of said Creek."

Answer.

This distance is about 1¼ Miles.

5th Question.

What do you suppose to be the area between the lines pointed out to you by Bolcof as those by which he said he got Judicial possession and the crest of the hills West of the San Lorenzo.

Answer.

There is about one league perhaps a little more or less.

6th Question.

Does the Map filed by you herewith "B. P. L." correctly indicate the position of the improvements and other objects on the land in question?

Answer.

It does as much as I could represent them by a hurried survey. I was only occupied 8 hours on

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the work I did and do not say that it is all as accurate as it might be with more care and time in drafting but in the main it is correct.

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The U S Law Agent objects to the reading of the foregoing deposition in evidence in this case because the Surveyor made his information of irresponsible persons not under oath.

Cross Examined by U. S Law Agent.

1st Question.

Do you know where or near stood the Grist Mill or what is now called the Agua Creek.

Answer.

The place where the old Mill stood was pointed out to me by Bolcoff it is the place indicated on my map "B S L" thus "Molino".

2d Question.

Measuring in an easterly course from that point to the San Agustin Ranch what is the distance.

Answer.

Measuring Easterly from the "Molino" I would not touch the San Agustin Ranch. There is a place on the South part of my map marked "Graham" Lower Mill" which I suppose you mean, Measuring East from that Mill, I would strike said San Agustin Ranch but I do not know the boundary of said Ranch and cannot tell what is the nearest point to said Mill but from said Mill to the old dwellings on San Agustin Ranch is about one mile.

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3d Question.

Describe the topography of the valley in which this rancho is situated.

Answer.

The rancho lies in a valley between two ranges of mountains on the East and West sides, the two streams of San Lorenzo and Sycamore run in Southerly directions through said rancho and between them a Spur of the Mountains comes down from the North and terminates in small sand hills covered with pine brush the land bordering said Streams is some prime and some timber mostly level, in places gently rolling.

Thos. H. Wright

Subscribed and Sworn to before me on this 6th day of December A.D. 1854.

Peter Sahl
Commissioner &c.

Filed in Office Dec 7, 1854.
(Signed)
Geo Fisher Secy.

United States of America
State of California } ss
San Francisco Dec 7, 1854.

Deposition of
C. Perez.

This day came before Peter Sahl Commissioner for taking testimony to be used before the Board of U.S. Land Commissioners in said State Cornelio Perez a Witness on behalf of the United States

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in Case No 260 on the docket of said Board wherein Isaac Graham et al are Claimants and said Witness being sworn deposed in Spanish which is interpreted by the interpreter to said Board as follows

The U. S Law Agent is present.
Gen Wilson for Claimant is also present.

Questions by U S Law Agent.

1st Question.

What is your name age and residence?

Ans.

My name is Candio Perez My age 41 years My residence in Santa Cruz County California.

2d Question.

Are you acquainted with the Claimants in this case Isaac Graham with Joseph L Majors Jose Bolcoff and with the Rancho called Bayaata claimed in this case if you state how long you have known them.

Answer

I am acquainted with all the persons named and with said Rancho I have known said Graham 15 or 16 years said Majors 15 or 20 years and said Bolcoff a much longer time and I have known the said Rancho a same 15 or 20 years. I know who it belonged to the original grantee Joaquin Buelna.

3d Question.

Was you present when the Juridical possession of said Rancho was given to Joseph L Majors if so state all that was done on that occasion?

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Answer.

I was present on that occasion The land was measured and I was one of the Cordeleyros. We measured first from a point called "Rincon del Monte" where there was a tree marked with a cross, an oak tree on the left hand side of the Main road going to Centros the woods — from that point we went measuring along the said road crossing the creek between the house of Mr Graham and then all along up the creek to where it issues from the woods there we marked a tree called Alamillo —

From tree went straight measuring over to a place called the Potrero crossing the San Lorenzo River.

From there a grove in which we marked a pine tree thence measured from there across the San Lorenzo where a road crosses it and continued the measurement down to the Rancho of San Agustin, where we marked another pine tree then from there we went to measure the Rancho of San Agustin That was all we did on the Zayante Rancho.

Ask Question.

Did Bolcoff wave his hand and say to Majors I give you possession of all this land to the hills.

Answer.

When we got to the boundary of San Augustin Rancho. Bolcoff told Majors to take possession of the land which had been measured by the ceremonies used on such occasions pulling up

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grass and the like.

Ide not remember of his waving his hands or spoken of the hills.

5th Question.

Were you present at a Measurement Recently Maade by Thomas H Knight the County Surveyor?

Answer.

I was not.

6th Question.

Do you know the place called Pinal on said Rancho?

Answer.

Pinal means a grove of pine trees and there are pine groves in many places around said Ranch. I know of no particular point designated by that name.

7th Question.

What quantity of land would be contained within the points from which you measured taking in the surrounding hills up to their Summits.

Answer.

I do not know what amount of land was in it.

Cross Examined by Genl Wilson for Claimant.

1st Question.

How long have you known Capt Graham to occupy said Ranch? and for what purposes has he so occupied it.

1st Question.

Objected to by Law Agent as Immaterial.

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Answer.

I do not remember the exact time It is some 11. 12 or 13 years he has occupied the for farming purpo= ses stock raising and he has had saw mills and grist mills on it.

There was a mill standing on the place when said Graham bought it. he finished that Mill. Hee has built 3 Mills on the place the water carried one away and he now has a saw Mill and a grist Mill there.

I have worked in all the Mills a great deal and hauled logs and done other work. Graham has a number of houses on the place. I do not know exactly how many.

Re Examined by U. S Law Agent.
1st Question.

State to him the Mills of which you have spoken were built and to whether anybody else has ever occupied said place.

Answer.

I do not remember the dates of the building of the Mills there were three saw mills running when the gold mines were first discovered. the grist Mill has been built since.

I know nothing more about the occupation of said Rancho than this. that said Graham has always said there since he first went on to the place and has had people always at work for him there—

Cornelio Perez +

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Subscribed and Sworn to
before me on this Eighth
day of December A.D. 1854.
Peter Dodt Commissioner

Filed in Office Dec 12. 1854.
Dfsmd
Geo Fisher Secy.

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No 760.

Isaac Graham Claimant.

To the Atty for Claimant
Hon— Edmund Randolph
" James Wilson.

Gentlemen.

Take notice that on the
24th day of February A.D. 1855 at the
hour of 10 A.M or as soon thereafter
as the Matter can be reached before a
proper Commissioner at the Court room
of the Commissioner I shall proceed to
take the deposition of Ramon Budna
and others to be read in Evidence on the
trial of the above Entitled Case on the
part of the United States.

Notice

Respectfully
J. H. McKinne
U.S. Dist Atty.

Rec'd copy Feb 23d 1855
James Wilson—

Deposition of D. R. Budna.

United States of America }
State of California } ss.
San Francisco Feb 24th 1855.

34.

Depo. of
R. Buelna.

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This day came before Peter Lobb Commissioner for taking testimony to be used before the Board of U S Land Commissioners in said State Jose Ramon Buelna a witness on behalf of the United States in Case No 260 on the docket of said Board Rhodes Bruce Graham et al are Claimants and said witness being sworn deposed in Spanish which being interpreted by the interpreter to said Board as follows

Gen Wilson Counsel for Claimant. is notified and does not attend (See annexed Notice)

Questions by U. S Law Agent.

1st Question.

What is your name age and residence?

Answer.

My name is Jose Ramon Buelna My age 46 years and residence in Santa Cruz County California.

2d Question.

Are you acquainted with the Rancho called Zayante formerly occupied by Francisco Mesa and now claimed in this case if you. Look at the Map now shown to you Marked "NPS" as an Exhibit to this deposition and State whether it is a correct representation of said Rancho and explain the same!

Answer.

I am acquainted with the Rancho named My father originally petitioned for this Rancho for the benefit of his family and I myself went on and

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occupied.

It was afterwards occupied by Francisco Mass, and this Mak "A P L" is not a correct representation of said Rancho.

3d Question.

State what was the Western Boundary of said Rancho?

Answer.

The Rio San Lorenzo was the Boundary of the Rancho as given to my father.

4th Question.

Standing at the Southern Boundary of said Rancho and facing North what quantity of land could there be in a Circle Extending all around to the Summits of the Mountains.

Answer.

I think there would be about 20 Square Leagues or as I would state it I think it is about 4 leagues Round the top of the Mountains West of the San Lorenzo in Ring from this point to where they Meet the tops of the Mountains on the North and it is about 3 leagues across from the Eastern Boundary of this Rancho to the said tops of the Mountains on the West.

5th Question.

What was the size of the Rancho Bayanta given to your father and did it pass to the West of the River San Lorenzo or not and point?

Answer.

The Rancho given to my father was one league in length and a half a league in width —

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Jose Ramon Bulna.

Subscribed and Sworn to
before me on this 24th day
of February A.D. 1853.

Peter Dott
Commissioner

Thos Ames Edward Stanton Esqr and
represents the Claimant in this case and
asks leave to Cross Examine the said Witness
herein which with the Consent of the U.S.
Law Agent is accordingly done and is as
follows to wit—

Questions by Mr Stanton Attorney for
Claimant.

1 Question.

What was the Name of Your
Father?
Answer.

Jose Joaquin Bulna. He died
about four or five years ago.
2 Question.

Was any Claim presented to
this Board of Land Commissioners by
his heirs for said Rancho?
Answer.

I do not know.
3 Question.

How long has Isaac Gra=
ham lived on said Rancho?
Answer.

I cannot remember how long
Isaphre four or five years more or less
before the Americans came into the Country.

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42 Question

Did Graham have possession of any of the land west of the San Lorenzo River? Did he have a mill there or corral his cattle there. Have he not cultivated land on the west side of said River for years past.

Answer.

I do not know whether he ever had possession there but he had a field on the west side of said River and kept stock there. He also cut timber in the Mountains on the west side of said River He had a Mill but it was on the East side of said River.

43 Question.

Look at the Map now here presented to you marked D.P.L. annexed to the deposition of Thomas H Wright heretofore filed in this case and state what is the distance from the point of beginning to the point marked "Final".

Answer.

I cannot state exactly what the distance between these two points, is but it is probably fifteen hundred varas

44 Question.

Was you ever on said Rancho with Jose Bolcoff, formerly Alcalde.

Answer.

The day he gave possession to my father I was with him, I was one of the cord bearers or measurers.

45 Question

At what point on this Map did Bolcoff begin the survey.

Answer.

I am not real certain but I

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think he began at the place marked on this Map "Corral Viejo" and Run'd towards the point Marked "Oak tree place of beginning".

5th Question.

What is the distance from the point Marked Molino to the Crest of the hills on the East side of the "San Lorenzo".

Answer.

It is a long ways. I never passed over it in that direction to the tops of the Mountains and Cannot Correctly Estimate it, but I suppose it is about four or five leagues.

6th Question.

What is the distance from the place Marked "Oak tree point of beginning" in a South westerly Course to the tops of the hills on the East side of the San Lorenzo River.

Answer.

I have never travelled over it in that direction. It is probably a league or a league and a half more or less.

X 7th Question.

How many leagues of land is Embraced between the lines run by Bolcoff and the Crest of the hills on the East side of the San Lorenzo. By the lines run by Bolcoff I mean the lines drawn on the Map beginning at the Oak tree and running thence to the Road thence to the Corner near "Molino and thence to Corral Viejo".

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Answer.

I cannot estimate it but I suppose it contains eight square leagues of land and is about ten leagues around it.

11 Question.

How many years did you first occupy the Rancho?

Answer.

I do not remember exactly but I think it was about eight years.

12 Question.

To whom did your Father sell the Rancho?

Answer.

To a Man they called Francisco Pacheco a Frenchman or Canadian. They sometimes called him Francisco Mas.

13 Question.

How long after your Father left the Rancho before Graham went onto it?

Answer.

I cannot state. I think Mas had it about three years and then I think Millus had it awhile but I am not sure of this.

Jose Bolcoff gave possession of the Rancho to my Father.

14 Question.

Did Bolcoff give him possession of any land on the west side of the San Lorenzo River.

Answer.

He did not. The River was established as the boundary on that side.

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15 Question.

Standing at the Southern boundary of said Rancho and facing North what quantity of land would there be included in the lines run by Bolcoff and the Summit of the hills on the West side of the San Lorenzo?

Answer.

It would be ten leagues more or less all around it.

16 Question.

What quantity of land is included in the lines run by Bolcoff and the San Lorenzo River.

Answer.

The possession was given of one league in length and half a league in width. The land is about one league long and half a league wide. I cannot state the quantity.

17th Question.

What is the distance from the point marked "Molino" on the map last referred to, to the Summit of the Sierra west of the San Lorenzo.

Answer.

Probably about five leagues a little more or less.

18 Question.

What is the distance from the top of the hills on the west to the top of the hills on the East side of said River at the South end of said Rancho.

Answer.

It is probably three leagues.

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19 Question.

Who claims the land on the west side of the San Lorenzo.

Answer.

I do not know. Graham has told me since the possession was given to my father that it belonged to him. I do not know who claimed it at the time Bolcoff gave the possession.

20 Question.

How you know any one except Graham to claim the land on the West side of the San Lorenzo?

Answer.

I have not. Graham told me that it was his to the top of the mountain.

21 Question.

What Rancho adjoined your Father on the west.

Answer.

There was no Rancho.

22 Question.

Was J. L. Majors ever put into possession of said Rancho by the authorities?

Answer.

I know of no such possession I never saw it.

23 Question

Did Majors ever petition for a grant of said Rancho or ever claim it?

Answer.

I do not know that he ever did.

Question by Law Agent.

1 Question.

When you speak of the east

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of the hills on the west side of the San Lorenzo do you mean the first range of the hills or the highest points of the Mountains. Please state the distance between the two!

Answer.

I mean the highest points of the Mountains. The hills commence near the River and from the foot of these hills to the top of the Mountains it is more or less two leagues and a half.

Jose Ramon Bustna.

Subscribed and Sworn to before me on this 27th day of February A.D. 1855.

Peter Dodk
Commissioner

Filed in Office Feb 26. 1855.
(signed)
Geo Fisher Secy

Deposition of J. K. Snyder.

United States Land Commission
San Francisco Feb 24. 1855.

On this day before Commissioner Alpheus Felch came Jacob K Snyder a Witness on behalf of the United States in case No 266 Johnson Isaac Graham et al are Claimants who after being duly sworn deposed as follows.

Questions by Wm McKenna Law Agent
1st Question.

State your name

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age and place of residence?
Answer.
My Name is Jacob N Snyder My age is forty two years and I reside in San Francisco California.
2 Question.
Do you know the Rancho Sausito in Santa Clara County Claimed in this Case - If you State whether you ever surveyed the same and if so at whose request.
Answer.
I know the Rancho called by that Name and claimed by Isaac Graham - I surveyed said Rancho at said Grahams request in 1847.
3 Question.
Look on the Map now here presented to you Marked A B C Exhibit to deposition of Jose Ramon Bulna Feb 24, 1855. hereto fore filed in this Case and State what you know of the same!
Answer.
It is my belief that this is the Map which I drew of said Rancho as surveyed by me. It looks like my work and is the original Map made by me or a copy of it.
In making the Survey I run the lines according to the directions of said Graham running from point to point as he pointed out the objects to me.
4 Question.
Did Mr Graham at the time you made the Survey Exhibit any title papers to you?

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Answer.

He exhibited either the original title papers or the testimonial of the giving of the juridical possession. I do not remember which.

5 Question.

Did your Survey Conform to the discriptions in said documents.

Answer.

I think the quantity that I surveyed Excided the Quantity discribed in said documents. I think the grant called for a league of land more or less and that the juridical possession that had been given to him was of a stock of land on the Jayomte creek a league in length and half a league in width.

I thought it should be surveyed according to the juridical measurement but he thought an entire Square league of land ought to be surveyed to him. I run according to his directions and it was our intention to survey a league. We took into the Survey a league or a little more.

6 Question.

Are you certain that the grant called for a Square league of land.

Answer.

I am under the impression that it did. My impression is that he had a paper title that mentioned one Square league and the Controversy between us at the time of the Survey grew out of the fact of his having a paper of that kind while the document which

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he presented Showing the Judicial Measurement was for half a league only.

7th Question.

According to that record of Judicial Measurement on which side of the San Lorenzo Creek did the half a league which was delivered to him lie?

Answer.

It was on the North Side of the San Lorenzo and was located on the Zayante and on both banks of it.

Questions by Genl James Wilson attorney for Claimant.

1 Question.

Do you recollect whether any Monuments were pointed out to you in making that Survey.

Answer.

I do not recollect any excepting that I think there was an old Corral Some where on the North part of the Survey to which we directed our course.

2 Question.

Do you recollect a little Mill towards the North west corner of the Rancho?

Answer.

I recollect there was some improvement on that part of the Rancho but I cannot remember what it was. It seems to me there was some remains of an old building there but I cannot tell what it was —

3 Question.

Please describe the Courses

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distances laid down on the Map above described.
Answer.

The North line of the Rancho was North forty three degrees East five thousand varas. the East line runs North six and a quarter degrees East three thousand varas. the South line runs North forty three degrees East five thousand seven hundred and thirty one and a quarter varas when the the run the East line is Controversy across between Graham and two of the adjoining land owners, and I took the courses of two or three lines merely to find out where they would intersect certain points. There was no definite line run — During the time we were examining this part of the boundaries Mr Mason and Señor Arrain who claimed the adjoining lands were present a part of the time —

4 Question.

When did you first know the Las Cruces Rancho.

Answer.

In the winter of 1845 —

5 Question.

Who then was in the occupation of it.!

Answer.

Mr Graham. Both Graham and a Mormon by the name of Ware lived on it at that time!

6 Question.

State what improvements were then on it?

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#7

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Answer.

There was a house in which Graham lived and there was a mill and a corral. There was a canal on the South side of the San Lorenzo and towards the South west corner of the Rancho where their cattle and horses run. The places called the Potreros which were occupied by their cattle and horses were situated South of the San Lorenzo.

At the time I made the Survey Graham was building a mill on the San Lorenzo which was then nearly completed.

I went into that Neighborhood in 1845 and remained there until the Spring of 1846.

In 1846 I was absent in the Military service and returned in 1847 and was then engaged in Surveying in that Neighborhood until the discovery of gold in the early part of 1848.

I was appointed Surveyor for that district by Governor Mason. of California.

From the time you first knew the Zayante Rancho in 1845 until you left that Neighborhood in 1848 as stated above did you ever know of any person claiming or occupying the land lying South of the San Lorenzo creek to the South line of the Rancho as you surveyed it including the corral aforesaid and the Potreros except Isaac Graham the claimant in this case?

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Answer.

There was a portion of that land which was claimed by Samsourain lying at the South East corner of the Survey as represented on the Map.

In consequence of the dispute between him and Graham we could not establish the line when the Survey was made.

In consequence of this several lines were run as represented on said Map when we were surveying at the South west corner of the land.

I think I remember that a Man by the name of Boteaff who claimed the land on the other side of the ridge came and said that we were getting too far over and were encroaching on his land.

No body except Graham was in possession of the portion of land described in the Culmination. The line from the South west corner where Boteaff made his claim to the South East corner of the Survey runs along the Mountain Ridge —

Questions by Land Agent.

1 Question.

Did you have an order from Governor Mason to make that Survey?

Answer.

I had not.

A. R. Snyder.

Subscribed and Sworn to
before me this twenty seventh

45/260

#9 dat of February 1855

Alphaeus Filch
Commissioner

Filed in Office Feb 27, 1855.
(Signed)
Geo Fisher Sec.

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Sello 1º = seis pesos:
Habilitado provisionalmte por la Aduana
maritima de Monterey, para los años de 1839.
y 1840.
Alvarado Antonio Mª Osio.

Vale p.ª los años de 1841 y 1842
Alvarado Antonio Mª Osio

Exhibit No. 1 (de) Juan B. Alvarado Gobernador Con-
A. Le. annex stitucional del Departamental delas
to Depo: of Jas: Californias.
W. Weeks - of
Dec: 2. 1852.

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Por Cuanto Dn Juan Jose Cristo=
bal Moser naturalizado y casado conme
ciano ha pretendido para su beneficio per
sonal y el de su familia el terreno que
antes ocupaba Dn Francisco Mo Se=
noreido con el Nombre de Tayanta, colin
dante con la Villa de Bremerforte y
Mision de Santa Cruz practicadas
previas las diligencias y averiguacio
nes conducentes segun lo dispuesto por Leys
y Reglamentos: usando de las facultades
que me son conferidas à nombre de la
Nacion Mexicana he venido en concederle
el terreno mencionado declarandole la
propiedad de el por las presentes letras
sin perjuicio del aprovechamiento comun
de los habitantes de la Villa de Bremer=
forte en orden à pastos, Aguas, Maderas
Leña &c. y sujeta à pagar el canon que se
le imponga si resultare pertenecer à los
ejidos de dha Villa y à las condiciones
siguientes.
1ª Podrà cercarlo sin perjudicar las
Travesias, caminos y servidumbres; lo dis
frutarà libre y Exclusivamente destinandole
al uso y cultivo que mas le acomode;
pero dentro de un año fabricarà casa y
Estara habitada.
2ª Solicitara del juez respectivo que le
de posesion judicial en virtud de este
despacho por el cual se demarcaran
los linderos en sus limites poniendo à mas
de las mojoneras algunos arboles frutales

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o silvestres de alguna utilidad.
3ª= El terreno de que se hace merced es de una legua de latitud, poco mas ó menos segun Esplica el Diseño que corre en el Espdte.= El juez que diere la posesion lo hara medir conforme á Ordenanza quedando el sobrante que resulte á la Nacion para los usos convinientes.
4ª. Si contravinieren á estas condiciones perderán su derecho al terreno y serán denunciables por ello.

En consecuencia, mando que teniendose por firme y valedero este titulo se tome Razon de el en el Libro de asientos y se entregue al interesado para su resguardo y demas fines.

Dado En Monterey á Veinte y dos de Abril de mil ocho cientos cuarenta y una

Juan B. Alvarado

Mano. Jimeno. Secro.

Que la tomada Razon de Este despacho en el Libro de asientos sobre adjudicacion de terrenos baldios á fs. 4.

Jimeno.

El Exmo. Señor Gobernador dispone se tome Razon de Este Titulo en la Prefectura del 1º Distrito.

Jimeno 2do

Juan de Castro Abril 23 de 1841.

Se omese Razon

Jose Ma. Castro

Se tomo Razon de Este Titulo á foja 2. 2da del libro Respectivo en Esta Prefectura del 1º Distrito.

Manl. Castañares

Secro.

Oficina de Hacienda Junio 4 de 1852

Geo. W. Leidesdorff

S 3

Sello Cuarto Una Cuartilla
Habilitado provicionalmt. por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil Ocho cientos cuarenta y mil ocho cientos cuarenta y uno.
Alvarado Antonio Maria Osio.

B

Exhibit N. 2 A. G. annex to Depo of James W. Weeks of Dec. 2. 1858. Geo. Fisher

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Sr. Juez de paz

(Sello)

Juan José C. Mayor y de Esta vecindad ante V. Dise que aberdose obtenido la conseccion propia del terreno conocido con el nombre de La Juntas, ocurro ante V. pa. qe. se sirba darle la posecion juridica conforme ésta prevenido en el Art. 4. del titulo de dho terreno que solo espedio el veinte dos del Abril presente año que debidamte. pa. cuando obre los efectos deceados. por tanto. A V. suplico se sirba ponerla en posecion que solicita en lo que recibira justicia. -

Sta Cruz julio 13 de 1841.

Juan José Crysostomo Mayor

Presentado y admitido, En virtud de la antecedente solicitud procedio por mi el Juez á la medicion señalamiento de linderos y posecion Juridica que solicita el interesado pr. Este Espedte. señalandose para efectuarlo el Dia 24 del presente mes para lo qe. se citara con boletas de comparendo á lo colindantes - Asi yo dho Juez de paz lo decreté mandé y firmé con los de asa. con qn. actuo por receptoria á falta de Escribano publico segun dho. doy fee.

José Boleoff. Manl. Rodz.

Cornelio perez +

Ramon Rodriguez +

C.

En el Rancho de Laguna de 25 de julio de 1841. presente año - En cumplimto. del auto de fha concurrieron los C. C. colindtes. de este Rancho y citado pa. la medicion y señalamto. de Linderos y posecion nombré pr. medidores á los. C. C. Manuel Rodriguez y Cornelio perez á qn. precha la aceptacion y juramto. procedan al desempeño de su

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Encargo. Asi yo el juez lo decreté mandé y firmé con los de asza.
José Boleoff. Ireneo Rodriguez
Cornelio perez. Ramon Rodriguez +

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En la fha en el Rancho Espresado se les notificó el auto que antecede à los C.C. Medidores y entendidos dijeron que aceptan dho Encargo de medidores y juraron à Dios y señal de la Cruz de usarlo sin dolo grande contra persona alguno y firmaron conmigo ante los testigos.
José Boleoff Ireneo Rodriguez
Cornelio perez
Asda Ramon Rodriguez +
En seguida en presencia de mi el Espresado juez y los otros medidores tomaron un cordell y con una Vara de medir uso Mexicano teniendola en mano midedor cincuenta Varas pa hacer la Referida medida y pa constancia lo Rubrique

En el mismo Rancho y en la referida dha siendo como las ocho de la mañana yo el presente juez mandé à los medidores nombrados se pongan para la medida de terrenos que han de hacer al Ciudno Majino; se comenso la medida teniendo el cordel al S. a el en donde se midio cinco mil Varas y se puso por Mohonera. El molino de agua de S. desde del Rio de Sn Lorenzo donde empieza el Monte luego desde W. à E. tres mil Varas abraza (Sello quarto una Cuartilla (Habilitado provicional mte por la Aduana Maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno.
Alvarado Antonio Maria Osio.
los poteros de otro lado del Rio de Sn Lorenzo; En donde se puso por el Mojoneras un pino;
(Sello)

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quedando el Diseño despachado en la misma forma que se medio el Sitio declarando à los dhos medidores haver un sitio ganado mayor y pa constancia lo firmaron con migo los C.C. medidores y testigos de asa=
José Bolcoff # Ignacio Rodriguez
Cornelio perez +
Ramon Rodriguez +

En el Referido Rancho en la fha el Ciud.no vecino Juan José Majors acompañando al Juez de paz dho lugar y testigos de asa= Dijo Ciud.no Majors que en Virtud de ha ver medido las tierras de Este Rancho segun consta en las Dilig.s anteriores tomaron la Verdadera corporal y Real posecion del espresado sitio de ganado mayor por una legua de longitud y tres mil varas de Latitud pues le pertenece como puesto en el Titulo obtiene de la concesion que de Ella se tubo con fha 22 de Abril presente año. El Sr Gobernador constitucional del partamt.o de Californias pr las facultades que le son conferidas En la misma fha corriente; Entro y paseo por Ella, arranco yerbas y arboles y tiro piedras à los cuatro partes del viento é hizo otras seremonias y actos de posecion en señal de lo q.e dijo tomava dha tierra y mando el citado Juez que desde entonces lo tubieron y reconoscan por verdadero señor y posedor de Ella, de todo Referido pidio dho Ciud.no Majors que pa memoria y conservacion de lo venidero de sus derechos por mi el Repetido Juez estendido una constancia lo que hace fue autorisado con testigos de asa con quienes actuo por Receptoria al falta de Escribano publico que no lo hay segun derecho doy fee.
José Bolcoff
Ignacio Rodriguez
Cornelio perez + Ramon Rodriguez +
En la fha se devolvio este Espedt.e al Enteresado en fojas 4. Utiles pa constancia lo Rubrique.

56.

Filed in Office June 4th 1852.
Geo: Fisher Secy.

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D
Translation

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First Stamp. Six Dollars.

Provisionally Authorized by the Maritime Custom House of Monterey for the years 1839 & 1840.

(Signed) Alvarado. (Signed) Antonio Ma Osio

Good for the years 1841 & 1842.
Antonio Ma Osio

Juan B Alvarado Governor of the Department of the Californias.

Seal.

Be it known. Thomas Juan José Crisóstomo Mayers naturalized Citizen and Married to a Mexican Lady has petitioned for his personal benefit and that of his family the land that Don Francis Ross formerly occupied known by the Name of Zayante Cordemit in the Village of Branciforte and Mission of Santa Cruz having previously complied with all the requirements concerning it in conformity with the laws and regulations belonging thereto. I have in the Exercise of the powers conferred upon Me and in the Name of the Mexican Nation granted to him the said land declaring it to be his property by these Letters patent without prejudice to the Common interests of the inhabitants of the Village of Branciforte in regard to pasturage timber wood &c and subject to pay the rent that may be imposed upon him in case it should be found to belong to the

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Public lands of said Village and upon the following Conditions.

1st.— He may fence it without interfering to the roads pathways and Servitudes and shall enjoy it freely and exclusively in the manner he may deem most advantageous to his interest whereon he shall build a house within one year and it shall be inhabited —

2d.— He will solicit from the proper authority that possession in judicial form be given him in virtue of this Title at point by whom the boundaries shall be designated at the end of which besides the land marks he shall plant some fruit or wild trees of some utility.

3d. The land of which Mention is made is longitudinally one league and latitudinally one half league more or less as explained in the diagram attached to the Espediente.

The Judge would possession thereof shall have it measured in conformity with ordinance and the Surplus which may result remaining to the Nation for its Government uses.

4th. If he should contravene to these Conditions he will lose his right to the land and it may be demanded by another.

Consequently holding this

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title to be given and paid I direct that it be entered in the book of Entries and be delivered to the interested party for his security and further ends.

Given in Monterey this twenty Second day of April in the year one thousand Eight hundred and forty one.

John B Alvarado.

Manl Jimeno

Secl

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This title is Entered in the Book of Entries on adjudications of public lands at folio 1.

Jimeno.

His Excellency the Governor directs that this title be registered in the Office of the Prefect of the First district.

Jimeno —

San Juan de Castro April 23. 1841.

Let it be Entered.

Jose F Castro.

This Title has been Entered in the proper book at folio 2 over in this Prefecture of the first district —

Manuel Castanares
Secl.

Fourth Stamp. One Quartillo.

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the years 1840 & 1841.

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(Signed) (Signed)
Alvarado. Antonio Ma Osio.

Mr Judge of the Peace.

Seal 3.

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John Joseph C Majors of this vicinity respectfully represents before you that having obtained a grant of the tract of land known by the name of "Zayante" applies to you and asks that you will be pleased to give him Judicial possession of the same in Conformity with the requirements contained in the 4th article of the title to said land Extended in his favor on the 22d April ultimo herewith duly presented for the desired purpose.

Wherefore he begs that you may be pleased to give him the possession he petitions for by which he shall receive Justice.

Santa Cruz July 13. 1841.

Juan José Crisóstomo Majors.

In virtue of the foregoing petition which has been presented and admitted I the Judge will proceed to take the measurement of the said land for its bounds and give the Judicial possession called for by the petitioner in this Espediente. I appoint for the Execution the 20th day of the present month for which purpose written summons shall be issued to the neighboring land owners to appear.

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Thus I the Judge of the Peace did direct order and sign with the attesting witnesses with whom I act by delegate power and according to law for want of a Notary Public.

Jose Boleaff.

Ygnacio Rodriguez
Cornelio Sanz
Roman Rodriguez.

In the Rancho of Sausalito this 25th day of July 1841 in execution of the foregoing order the surrounding land owners of this Rancho being present who were summoned for the measurement and location of its Lands and possession Aforesaid as Neighbors Citizens - Francisco Rodriguez and Cornelio Sanz who after having accepted their appointments and been sworn shall proceed to the discharge of their duties.

Thus I the Judge did direct order and sign with the attesting witnesses.

Jose Boleaff.

Ygnacio Rodriguez
Cornelio Sanz.
Roman Rodriguez.

On the same date and in the said Rancho the foregoing acts was notified to the surrounding land owners who having understood it said that they did accept the aforesaid appointment of Measures and they swore to God and the sign of the Holy cross

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that they would perform their Commission without detriment to and person and they Signed with me before the Witnesses—

José Boloeff.

Francisco Rodriguez
Cornelio Ruiz
Roman Rodriguez
Assistant Witnesses—

Then before me the said Judge the above mentioned Measurers took a rope and with a American yard holding it in hand they measured of fifty Varas with which to make the said Measurement in proof of which I Sign it with my Seal.

At the same Rancho and on the same day it being about 8 O'Clock in the Morning the present Judge directed the aforesaid Measurers to proceed to the Measurement of the said ground of citizen Majors.

They commenced the admeasurement from S to S first thousand varas designating for land mark the Main Mill S. from the River of San Lorenzo to the Commencement of the Mod thence from S to West to East three thousand Varas including the flats or pasturage on the other Side of the River San Lorenzo. Where they set a pine tree for land Mark giving to the land the form and dimensions shown in the diagram— The said Measurers declaring that the said land was one Square

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league.

In testimony whereof this the said Measures Signed with me and aforesaid witnesses.

José Bolcaff.

Franco Rudriguez
Comelio Perez
Riman Rudriguez

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PAGE 62

At the aforesaid Rancho and on the same day the Citizen and Neighbor Juan José Mason accompanied by the Judge of the place and the Attesting witnesses said that the land of the Rancho having been surveyed as stated in the aforequind Procedings he took bodily and real possession of the said Sitio de ganados Mayor for one league longitudinally and three thousand varas latitudinally as belonging to him being the same as expresed in the title of grant made on the 22o day of April of the present year by the Constitutional Governor of the Department of the Californias in virtue of the powers conferred upon him.

On the same day he Entered into the land pulled up grass and shrubs and cast stons to the four winds and performed other Ceremonies and acts of possesion in consequence of which he said that he took the said land.

Whereupon I the said Judge ordered that from thence forward

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he should be held as the true owner and possessor thereof of all of which acts and proceedings the said Citizen Mason asked to be furnished with an authenticated copy for his security now and for all time to come.

Thus I the said Judge ordered and decreed before the witnesses with whom I act by delegated power according to law for want of a Notary public. there being none in this place which I certify.

Jose Boteoff.

Francs. Rodriguez
Cornelio Ruiz
Ramon Rodriguez.

And the same day this Espediente was returned to the interested party written on four sheets of paper in proof of which I sign it with my seal.

E. C.
R. P.

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

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2ao

65—

E.
Transfer.

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This Indenture Made the twenty second day of May in the year One thousand Eight Hundred and fifty two between Josiph L Majors of the County of Santa Cruz and State of California a party of the first part and Isaac Graham and William Ware of the aforesaid County and State of California parties of the second part.

Witnesseth that the said party of the first part for and in Consideration of the Sum of One thousand dollars lawful Money to him in hand paid by Isaac Graham in the year One thousand Eight hundred and forty two the receipt of which is hereby acknowledged has granted released and quit Claimed and by these presents do grant release and quit Claim unto the said Isaac Graham three fourths and William Ware one fourth and to their heirs and assigns forever in the proportion above Expressed all that piece or parcel of land lying and being Situated in the County of Santa Cruz known by the Name of Zayante and Conveyed to the party of the first part by a deed from Governor Alvarado dated the twenty second day of April 1840. together with all and Singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof. and also all the Estate right title interest dower and right of dower property possession Claim and demand whatsoever

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as well in law as in Equity of the said party of the first part of in or to the above discribed premises and every part or parcel thereof with the appurtenances.

To Have and To Hold all and Singular the above mentioned and discribed premises together with the appurtenances unto the said parties of the second part their heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(signed) S. L. Mayers (Seal)

Sealed and delivered
in the presence of

T. M. Cahill
John Barrett

State of California
County of San Francisco } ss

On this twenty second day of May AD 1852 before me came Joseph L Mayers to me known to be the individual discribed in and who executed the foregoing instrument and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Witness whereof I have hereunto set my hand and affixed My Official seal

E Sealy

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in the City of San Francisco the day and year first above written.

(Signed)

L. H. Sloat.
Notary Public.

Office of the Board of Commissioners of California Land Claims.

I certify the foregoing to be a correct copy of an original.

Geo. Fisher Secy.
San Francisco May 25. 1852.

Filed in Office June 4. 1852.

(Signed)

Geo Fisher Secy

Exhibit No 1 A D Amend to John Sanots deposition.

This Indenture Made the twenty second day of May in the year one thousand Eight hundred and fifty two between Joseph L Majors of the County of Santa Cruz and State of California a party of the first part and Isaac Graham and William Ware of the aforesaid County and State of California parties of the second part.

Witnesseth that the said party of the first part for and in Consideration of the Sum of One Thousand dollars lawful Money to him in hand paid by Isaac Graham in the year one

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thousand Eight hundred and forty two the receipt of which is hereby acknowledged has granted released and quit claimed and by these presents do grant release and quit claim unto the said Isaac Graham thier four thousand and William Ward one fourth and to their heirs and assigns forever in the proportion above expressed all that certain piece or parcel of land lying and being situated in the County of Santa Cruz known by the Name of Zayante and Conveyed to the party of the first part by a deed from Governor Alvarado dated the twenty second day of April 1841 together with all and Singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions remainder and remainders rents issues and profits thereof and also all the Estate right title interest claim and demand whatsoever as well in law as in Equity of the said party of the first part of in or to the above described premises and every part or parcel thereof with the appurtenances.

To Have and To hold all and Singular the above mentioned and described premises together with the appurtenances unto the said parties of the second part their heirs and assigns forever.

In Witness whereof the said party of the first part has

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hereunto set his hand and seal this
day and year first above written —

J. L. Majors (L.S.)

Sealed and delivered in
the presence of

T. M. Cahill
John Parrott

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State of California
County of San Francisco } ss.

On this twenty second
day of May A.D. 1852 before me
came Joseph L. Majors to me known
to be the individual described in and
who executed the foregoing instrument
and acknowledged that he executed
the same freely and voluntarily for the
uses and purposes therein mentioned.

In Witness Whereof I have hereunto
set my hand and affixed
my Official Seal in the
City of San Francisco the
day and year first above
written —

(Seal)

L. W. Sloat
Notary Public

State of California
County of Santa Cruz } ss.

I hereby certify that
the foregoing is recorded in the
Book of Deeds Vol 1st pages 334 &
335 of the records of the Recorders Office
of said County and that the same was
filed for record June 1st 1852 at 1/2
past 11 O'Clock P.M.

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Attest.

Peter Tracy
Recorder.

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

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1/204

Opinion of the Board

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Number 261
Isaac Graham et al
vs
The United States } Zayante

This is a claim for a tract of land situated in the County of Santa Cruz containing about one half of a square league of land.

The Petitioners have offered in support of this claim 1st an original Grant from Governor Alvarado to Juan Jose Crisostomo Majors dated April 22nd 1841 in which the land is described by the name of Zayante to the extent of one league in longitude by a half a league in latitude as shown by the map in the Expediente,

2nd an original Record of Juridical measurement from which it appears that the Grantee was formally put in possession of the premises granted by the proper officer to the extent of one square league in length by three thousand varas in width

3rd a deed from Jose Ch. L. Major dated May 22nd 1852 conveying the premises to the present Claimants in the proportions of three fourths to Isaac Graham and one fourth to William Ware

All of these documents are properly proved and authenticated. It is also in proof that Joseph L Major the grantor in the last mentioned deed is the same person to whom the original Grant was made. The performance of the conditions by Major & those holding & claiming under him is

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satisfactorily shown and the parcel in part granted can be located without difficulty by reference to the maps and other evidence in the case

The proofs in our opinion suffice to establish the validity of the claim and a decree will be entered confirming the land to the claimants according to their respective rights and to the extent shown by the grant

Filed in Office June 26th 1855

Signed
Geo Fisher
Secretary

4200

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Decree of Confirmation

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Number 266
Isaac Graham and
William Ware
vs
The United States

In this cause
having the proofs and allegations it
was adjudged by the Commissioners that
the claim of the Petitioners is valid
and ought to be confirmed that the same
be confirmed to them in the following
proportions to wit.

Three quarters thereof
to the said Isaac Graham and one
fourth to the said William Ware the
tract of which confirmation is made
is situated in the County of Santa Cruz
and is known by the name of Laguna
Bueno
the same which is now held and
occupied by the claimants and is of the
extent of one league in length and about
league in width to the limits as
shown by the original grant Records
of juridical possession and mappeling
in the case had of which reference is
hereby made for a more particular
description

R Aug Thompson
S B Farnell
Commissioners

Filed in office June 26th 1855
Signed
Geo Fisher
Secretary

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and it appearing to the satisfaction
of the Board that the land hereafter described
is situated in the Northern
District of California within any grant
that has transcripts of the proceedings
and of the decision in this case and
of the papers and evidence upon which
the same are founded and the testimony
and depositions of the witnesses produced
and sworn before the Commissioners appointed
by the United States District
Court for the Northern District of California
which will also be transmitted
to the Attorney General of the United
States

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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 Seventy four — pages, numbered from 1 to 74, 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. 2 U, on the Docket of the said Board, wherein

Isaac Graham, et, al, are — the Claimants, against the United States, for the place known by the name of "Zayanta."

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this Twenty first — day of November A. D. 1859, and of the Independence of the United States of America the ~~seventy~~ eighteenth.

Geo: Fisher.
Sec'y.

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U. S. DISTRICT COURT,

Northern District of California.

No. 342

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UNITED STATES,

vs.

Isaac Graham, et al

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF LAND COMMISSIONERS.

No. 264

December / 1855

E. Barnes,

Clerk

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Office of the Attorney General of the United States,

Washington, 31. Dec. 1855.

260 / "Zayanta" —

Isaac Graham 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 28th day of December 1855, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Attorney General.

No. 342 —

United States

v

Isaac Graham

Notice of Appeal in
Case no. 260.

Filed Febry 11. 1856.

E. Sherwood.
Deputy.

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No 169.

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

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The United States appellant
vs.
Isaac Graham et al appellees.

No 342
"Fayante"

The petition of the United States by their Attorney represents: that this cause is an application for a review of the decision of the Board of Land Commissioners, whereby the claim of the said appellees was confirmed, as appears by reference to the records in this cause.

That a transcript of the said Record was filed in this Court on the first day of December 1855 that a notice of appeal was filed on the day of , and that the land claimed lies in the said District.

That the said claim is invalid, therefore appellants pray that the said decision of the Board be reversed, and that this Court decree the said title to be invalid

Respectfully &c

A. Wassell

Atty for Dist Attorney

Court No 342.

In District Court of the United States Northern District of California

The United States
vs
Isaac Graham et al

"Zayante"

Petition for Review.

Filed April 28th 1856
Chas. C.
Deputy.

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No 342.

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

The United States
vs
Isaac Graham et al } "Fayante"

The respondents for answer to the petition filed in this cause, answer and say

It is true that the lands mentioned in said petition, and in said transcript of the proceedings before the said Board of Commissioners lie within the said Northern District of California, and within the jurisdiction of this Court.

But these respondents deny that their title to the said lands is invalid, and aver that the same is valid, and pray that the decision of the said Board be affirmed and their title decreed to be valid.

Isaac Graham et al

by Stanly & King
their Attys.

Court No 342

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

The United States
vs
Isaac Graham et al.
"Fayante"

Answer.

Filed April 28th 1856
Shepard
Deputy

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Hardy & King
Attys

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California Land Claims

Attorney Generals Office

4 Decr 1854.

Sir.

In the case of the claim of Isaac Graham et al: confirmed to the claimants by the Commissioners, case no. two hundred and sixty (260), appeal will not be prosecuted by the United States.

I am

Respectfully

Yours

Wm Blanding Esq.

U. S. Attorney

San Francisco.

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

The United States

v

Isaac Graham et al

Case No 342
Transcript 260.

In pursuance of a notice from the Attorney General of the United States, hereunto annexed, it is hereby stipulated and agreed that the appeal heretofore taken in this case from the decision of the United States Land Commission to ascertain and settle private land claims in California be dismissed, and the notice of intention to prosecute said appeal, filed in this Court by the Attorney General of the United States be withdrawn, and that the claimants have leave to proceed under the decree of the said Land Commission in their favor, as under Final Decree

Wm Blanding
U. S. Dist Atty

Shafter & Wing
Attys for Claimants

No 342.

U. S. District Court

The United States

v

Isaac Graham et al

Case No 342
Transcript 2 do.

Stipulation

Filed Feby 9 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 Monday the Ninth day of February in the Year of our Lord One thousand eight hundred and fifty seven.

Present:

The Hon Ogden Hoffman, District Judge.

The United States

vs

Isaac Graham, et al

Case No 342
Transcript 260.

The Attorney General of the United States having given notice that no appeal will be further prosecuted in this case and a stipulation having been entered into by the United States District Attorney for the dismissal of the appeal from the decision of the Board of United States Land Commission heretofore rendered in ~~the~~ favor of the claimants: On motion of the District Attorney it is Ordered adjudged and decreed that the appeal pending in this Court be dismissed and that the claimants have leave to proceed under the decree of the Land Commission heretofore rendered in their favor, as under Final Decree.

Ogden Hoffman
U. S. Dist Judge

No 342

U. S. District Court

The United States

v

Isaac Graham et al

Case No 342
Transcript 2 bo

Order

Filed Feby 9. 1857.
W. H. Chevers
Deputy

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after No 5 follows
two maps - leave
blank space for them.

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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 House, in the City of SAN FRANCISCO, on Thursday the 22nd day of June in the year of our Lord one thousand eight hundred and fifty-nine,

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States. vs. Isaac Graham, et al.

L. Com.: No 260
D. C. No 342.

On motion of Stanley, Esq. Counsel for the Claimants herein. It is ordered by the Court that the Surveyor General of the U. S. for the State of California return into this Court Plats of the two surveys made by J. Wallace Deputy Surveyor, and returned to his office of the tract of land called "Zayante," or "Syante," and that a certified copy of this order be issued forthwith to the said Surveyor General and on the U. S. Attorney for this district.

No 342

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States,

vs.

J. Graham et al,

Order to Return Survey, &c,

Filed June 23 1859.

W. H. Chevers Clerk.

By

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

Clerk's Office,

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

..... *Clerk.*

By .....

..... *Deputy.*

U. S. District Court
In and for the Northern District of California

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Isaac Graham et al
vs.
The United States

"Sayante" or "Zayant" Rancho

Land Comm.r No. 260. Court No. 342.

The Confirmees except to the survey of the said Rancho, as made by John Wallace Deputy Surveyor under the instructions of the Surveyor General of the 18th October last and approved by the said Surveyor General and now before the Court, for the following reasons.

First. Because in all cases where the area confirmed is less than that contained in the tract as described in the Original grant and deseño, (as is apparent from the Original documentary title and the evidence, to be the fact in this case) the Instructions from the Gen.l Land Office and those of the Surveyor General expressly provide, and it is the law, that the confirmee shall have the right to select the area so confirmed to him anywhere within the extended limits of his grant and deseño, provided the same is taken in a compact form and not interfering

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with the rights of another confirmee. And the survey now excepted to has been made in violation of the said rights and wishes of the confirmees, and embraces land not desired by them to be included in their survey and excludes other portions which they wished and desired to be embraced thereby, of which wish and desire the Surveyor General had due notice

Second Because the western line of said survey has been so run as to cross the San Lorenzo River several times whereby it is apparent that such a line is one no reasonable man would ever consider a proper or convenient boundary, and one which under the former government would never have been assigned to the grant.

Third. That it is manifestly made in violation of the Instructions under which it purports to have been executed, for in them the Deputy Surveyor was directed as follows "You will make your survey in accordance with the decree of confirmation as above set forth, and in accordance with the terms of judicial possession above set forth paying particular attention to the following sentence, to wit "embracing the Potrero on the other side of the River San Lorenzo", while any

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inspection of the plat of survey shows that it has been so made as to exclude portions of the Portreros exhibited therein, and also entirely excludes at least one other and not represented Portrero.

Fourth. Because the Confirmees notified the Surveyor General and his deputy that they desired the area confirmed to them to be located in a precise locality within the tract described in the original grant and deseño, the same to be located in a compact form, according to the lines of the public surveys and furnished him with a specific designation of the locality they had selected, but the said Surveyor General and his deputy in utter disregard of the wishes of the confirmees and against their will located the area confirmed to them in a place entirely different from the one selected by them as aforesaid.

For these reasons the Confirmees pray for a decree rejecting the said mentioned survey; another and proper survey having been made under the direction of the said Surveyor General which embraces the lands the Confirmees claim to be entitled to under their confirmation and the said instructions

Hardy & King
Attys

U. S. District Court

342.

Isaac Graham
& others

vs

The United States

Exceptions to Survey

Filed July 16th 1859
W. H. Chevers
Clerk.

Due service of a copy
of the within exceptions
is hereby admitted
July 16th 1859
Tully R. Ricaud
acting
U.S. Dist. Atty

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U. S. District Court in and for the Northern District of California

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Isaac Graham et al
v.
The United States

Rancho "Sayante" or "Zayant"

Land Comm'rs No. 260. Court No. 342.

In this case it is an acknowledged fact that the tract of land described in the grant, exhibited by the attached deseño and of which judicial possession was given to the grantees includes more land than has been confirmed

The documents of title, deseno and evidence all show that the claim as granted extended to the crest of the hills or mountains West of the San Lorenzo. This fact is also clearly stated in the report of the Surveyor John Wallace, of his survey of May 1858.

The Instructions of the General Land Office to the Surveyor General of California, and his general instructions to Deputy Surveyors most positively provide that where the quantity confirmed is less than that contained in the tract described and shown by the original title papers, the confirmee has the right to elect the particular lands to be included in his survey, provided such selection forms

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a compact body, and does not interfere with the specific claim of a third party.

Under the instructions of the Surveyor General of 13th March 1858 Wallace as his Deputy, made a survey, and returned the notes thereof to the Surveyor Generals office. In explanation of that survey he therein remarked - "I commenced the survey on the 13th of May 1858, by first making a careful reconnoissance of the ground, and hearing testimony as to the judicial boundaries from which it appears that the boundary on the west was always considered to extend to the top of the Sierra, that distance having been given by the Officer at the time of the judicial measurement, and always understood so by the previous owner Joseph L. Majors - It is also stated in the act of judicial possession that the measures declared the land to be one square league, but as the confirmation is for a tract of land 5,000 varas long by 3,000 varas wide. I have located the western line rather less than half way up the Sierra, and nearly parallel with the River San Lorenzo, taking the line of the Cañada del Rincon Rancho for the southern boundary and making the northern boundary a due east and west line, keeping

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" the land in a compact form and within
" the prescribed quantity".

The survey is within the extended limits of the tract refered to in the original grant and deseño, embraces the lands desired by the confirmee, is compact in form, and interferes with no other claim. The thrown out or excluded portions of the original tract now form upon three sides, the public lands as shown by the plat of survey. The right of the confirmee to claim the confirmation of this survey, under the instructions before refered to is considered to be clear and unquestionable.

This survey did not however meet the views of the Surveyor General, and he has refused to approve it. The reasons for such refusal are not known, and it now stands as the naked exercise of assumed despotic power. Wallace was instructed to make another survey, which he has done by now excluding a large body of land on the west side of the first survey and including a like area on the East side of the former survey, and this second survey is now also before the Court as approved by the Surveyor General.

If it is true that the Surveyor General has the power to reject or confirm a survey according to his own wishes, and that such decision by him is final and conclusive, then

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the existing course of proceedings in the U. S. District Court in relation to surveys is in substance and reality, a mere mockery, and the District Judge becomes the mere instrument by which all the acts of the Surveyor General are to be clothed with the dignity of judicial approval, however much the Judge may differ in opinion from that officer, after a full investigation of the subject.

If however such is not the fact, and the Judge instead of being a mere ex officio registrar and official approver of the views of the Surveyor General is to examine the subject matter, and to decide according to the principles of law justice upon the case and from all the lights before him, say whether or not in his opinion the survey embraces the particular tract to which the claimant is entitled under his confirmation and acknowledged right of selection, then we have a tribunal to which we can confidently appeal whenever the Surveyor General in his action ceases to be governed as we believe, by those principles of justice and equity which are to guide an officer in the exercise of his discretionary official duties in all cases when they have reference to individual rights for surely official discretion is limited and

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controlled by the well settled principles of right and justice, and not left to be exercised in unrestainable violation of both.

Without proceeding at the present time to examine whether or not the Surveyor General has this arbitrary right of rejecting surveys when made in conformity to his own instructions and to order new ones, we raise the following objections to the second survey as made under his orders of 18th October last, and which he has approved.

1st Because it is a survey made in violation of the wishes of the confirmee, inasmuch as it embraces lands he does not claim under his acknowledged right of selection, and excludes those he desires to take

2nd That inasmuch as the Western line has been so run as to cross the San Lorenzo River several times, it is apparent that such a line is one which no reasonable man would ever consider a proper, just or convenient boundary of a claim, and is certainly, and which under the former government would never have been assigned to the grant.

3rd That it is manifestly made in violation of the Instructions under which it purports to have been exected, for by them the Deputy was told. "You will make your survey in "accordance with the decree of confirmation as

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" above set forth, and in accordance with the
" terms of the ~~finidical~~ judicial possession
" above set forth, paying particular attention
" to the following sentence to wit, "embracing the
Portrero on the other side of the River San
Lorenzo"; and an inspection of the plat shows
the line has been so run as to exclude portions
of the exhibited Portrero and the evidence shows
that at least one of them has been entirely ex-
cluded.

For these reasons the confirmee prays
a decree of the Court rejecting the last men-
tioned survey and confirming the first one
as embracing the land he has selected and to
which he is entitled under the confirmatory
decree.

Hardy King
Atty

I hereby consent that the foregoing be
filed as an additional exception to the
Survey approved by the Surveyor Genl.

Tully R. Rice.
Acting U.S. Dist. Atty.

342.

U. S. District Court

Isaac Graham et al

vs

The United States

Exceptions to Answer —

Hanly & King
Attys

Filed July 18. 1859.
H. A. Cheney,
Clerk.

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U. S. District Court.

The United States
v.
Isaac Graham, et al.
} No. 342.

It is hereby stipulated and agreed that the attorney for the United States may file his exception to the survey of the land claimed herein, known as the "Zayante Rancho," on or before the 15th day of August, 1859.

San Francisco, July 29, 1859.

Stanly & Hoey
Attys.

U. S. District Court.

The United States
v.
Isaac Graham, et al. } No. 342. "Jayanto."

---

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And now come the United States, by their attorney P. Della Torre, and except to the survey made and approved by the U. S. Surveyor General for Cala, of the lands claimed in this case; a plat of which survey was filed in the clerks office of said Court on the 9th day of July last.

And for exception to the said survey, the United States, by their said attorney, allege as follows:

1st. That the decree of the Board of U. S. Land Commissioners confirming the claim to the said lands, directed reference for more particular description of said lands to be had to the original grant, record of juridical possession and map on file in the case.

2d. That the said survey has not been made in accordance with the act of juridical possession made under the authority of the Mexican Government.

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Wherefore the United States pray this Court to reject the said approved survey as erroneous, and that an order be entered directing the said U. S. Surveyor General for California to cause a new survey of said lands to be made in accordance with said act of juridical possession, and that he return a plat of the same, when made, to this Court for its approval.

San Francisco, Aug 15, 1859.

Tully R. Rice,
Acting U. S. Atty.

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U. S. District Court.

The United States

v.

Isaac Graham et al

Exception to Survey

Rec'd copy within this
fifteenth day of August
A. D. 1859.
Stanly & Kay
Att'y.

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Filed August 15. 1859.
W. H. Chevers
Clerk.
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Sully R. Rose
Acting U. S. Atty.

UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Isaac Grahame et al

San Francisco, September 13th 1859.

On this day, before J. R. Wise Esq. by consent ~~a Commissioner of the United States for the Southern District of California, duly authorized to administer oaths, &c., &c.,~~ came Roman Rodriguez a witness produced on behalf of the United States in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 240 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by Richard Tobin a sworn interpreter

PRESENT: Jully R. Wise acting United States District attorney and S. D. King for Claimants.

1st QUESTION BY the District Attorney. What is your name, age, and place of residence?

1st Answer. My name is Roman Rodriguez, I am sixty two years of age and I live in Santa Cruz county.

2nd Question. Do you know the Zanja

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to touch in that county now occupied by Captain Isaac Graham?

2nd. Answer. Yes sir.

3rd. Question. State if you was present at the first juridical possession was given to Mr. Rogers; relate your possession and what did you do and who assisted you?

3rd. Answer. The Alcalde Jose Bolcoff Mr. Rogers, Jose Cornelio Peres, Juan Jose Felis and myself was present, Jose Cornelio Peres and myself carried the cord with which the measurement was made and we were both present during the whole of the measurement.

4th Question. State in what manner the measurements was made?

4th Answer. We started from the first pin that was marked in a westerly direction; one man went on horseback and carried a large pole or long stick and marked the distances; we were all on horseback and one man carried a pole: two of us held the cord and dropped a branch at ~~every~~ each end of the cord. one

measured two lines one from east to west the other from North to South.

5th Question. Do you know the length of each line in varas?

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5th Answer. No sir I do not.

Cross Examination

6th Question. When the measurement was concluded did the Alcalde say any thing to Mejias about the extent of the possession then given to him?

6th Answer. I do not know I heard nothing about it.

7th Question. Did you consider the possession then given as including the potrero on the west side of the San Lorenzo river?

7th Answer. Yes sir.

Sworn to before me this 13th Sept A D 1859
Geo. Pen. Johnston
U. S. Commissioner

Roman + Rodriguez
his mark

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U. S. Dist Court

The United States

v.

Isaac Graham et al

Depos of Roman Rodrigues
for United States

Filed Sep 14. 1859

W. H. Chevers
Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Isaac Graham et al

San Francisco, September 13 1859

On this day, before J. R. Wise Esq – by consent ~~Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c.,~~ came Thomas W. Wright a witness produced on behalf of the United States in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 260 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: Jully R. Wise acting U.S. District Attorney and L. D. King for Claimants

1st QUESTION BY District Attorney. Please state your name, age and place of residence and occupation?

1st Answer. My name is Thomas W. Wright, aged thirty four years residence Santa Cruz County, and am a Surveyor.

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2nd Question. Do you know the Ranch occupied by Captain Graham called the Guyandt?

2nd. Answer. I do.

3rd. Question. Have you been upon that Ranch recently in order to ascertain the lines of juridical possession and title there?

3rd Answer. I have been there recently with Jose Camilio Pires and Otis Ashley; the Pires who testified here to day is the person who went with me.

4th Question. Did Camilio Pires point out to you upon the ground the manner in which the measurement was made when juridical possession was given?

4th Answer He did.

5th Question. Please examine "Exhibit No. 1" annexed to the deposition of Jose Camilio Pires and verify upon that exhibit the manner in which juridical possession was given, as described to you by Pires?

5th Answer. He took me to a pine tree on the side of the road marked on this exhibit "No. 1": (the pine marked + on the westside of it): this he said was the point of beginning of the measurement: we then went in a westerly direction and crossed the Ayayaute and San Lorenzo rivers and through a small ~~wood~~ potrero to a pine which stands in a ~~mont~~ on the river edge and near the edge of the potrero: this pine I found no mark on but a piece chopped out of the side of it: this he said was for the width of the road. the blue line laid down on this exhibit from 1 to 2 represents that line: it is about one hundred and seventeen long: and you can see one pine from the other: he then ~~went back~~ showed me where they commenced to measure for the length of the road: he showed me when they measured the line going towards the north ~~to a point~~ to a point on this Exhibit marked alder tree No. 4: but there's

notice there, he says the line is down, and it is very near where there was once a mill: the dotted line on the Exhibit from No. 3 to 4 or from the Oak to the Mill he says they measured for the length of the line: the oak at 3 stands in a ravine in the potrero and at the edge of the Monte: and further more the lines they measured is through the open land, and he says they measured the lines in the open land to avoid the brush on the sides which they could have found in any other place: on the "exhibit No. 1" the San Lorenzo river ~~6th Section~~. should be a little further to the east as is shown by the blue dotted line: the mine is about thirty six or seven chains east of the west line of the Guyamte rancho as laid down in this exhibit: the position marked large potrero ~~and~~ on the official survey is very nearly correct and the mine, described which I have, is on the ~~aforesaid~~ ~~southeastern~~ west side of the potrero: the line which I have been describing stands on a little

hill and about thirty yards west of the edge of the potrero.

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Cross Examination.

6th Question. At whose instance or request did you go with Peres to make the examination on the ground which you have described?

6th Answer. At Mr. Askley's request.

7th Have you received or do you expect to receive any compensation from Mr. Askley for this examination

Note. The District Attorney objects to this question as irrelevant.

7th Answer. For the measurements which I made on the ground he has paid me for; he paid me five dollars for it; and for the examination I forget whether he has paid me or not but he promised to pay me for my days work.

8th Question. Does Mr. Askley live on the rancho as claimed by Captain Graham & if so

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how long?

8th Answer. He lives on the ranch that Captain Graham claims and I think he has been there for two or three years.

9th Do you know whether Mr. Ashley has been concerned in cutting timber or hauling back from the trees on the land claimed by Captain Graham?

Note. District attorney objects to this question because it is irrelevant.

9th Answer. I never saw him do it - but I know from Mr. Ashley's statements and from others that he has. But they say that he has been careful to keep off of the official survey since the surveyor was there and made it.

Thos W Wright

Sworn to before me this 13th Sept A. D. 1889.

Geo: Pow: Johnstone
U. S. Commissioner

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U. S. Dist Court

The United States

v.

Isaac Graham et al

Defts Pltf. M. Wright
for United States

Filed Sep 14. 1859
W. H. Chevers
Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Isaac Graham et al

San Francisco, September 3 1859

On this day, before J. R. Wise Esq. & consent ~~a Commissioner of the United States for the Southern District of California, duly authorized to administer oaths, &c., &c.,~~ came Joseph L. Majors a witness produced on behalf of the Claimants in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 260 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: Jully R. Wise acting U. S. District Attorney and S. D. King for Claimants

QUESTION BY Claimants Counsel.

1 Question. Please State your name, age and place of residence?

1 Answer. Joseph L. Majors, fifty three years of age, and I reside in Santa Cruz County near the town of Santa Cruz.

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2nd Question. If you were present when juridical possession was given to you of the Gayanta Ranch please state what Alcalde Bolcoff then put you in possession of?

2nd Answer. I was there at the time that possession was given by Bolcoff and I heard it: he put me in possession of the Gayanta Ranch, he raised his hands up and said he gave me possession to the lots of the mountains all around and we were then in a little house in the valley.

3rd. Question. What do you consider the quantity within those lines?

3rd. Answer. I would think it would be seven or eight leagues.

4th Question. Was not the land west of the San Lorenzo river and up to the top of the hills always considered and possessed as part of the Ranch?

4th Answer. Yes sir it was considered so.

Cross Examination

5th Question. Did you testify before the land Commission in favor of the United States?

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5th Answer. Yes sir.

6th Question. In the answer to the 8th question of that examination before the land commission you say I received the juridical possession according to the mark in lead pencil marked exhibit No. 3 to said Boloffs deposition I did not receive it by any such measurements as Boloff describes in his depositions; there was no such thing done that day but it was done as I have before described; after the measurement was made in which I received possession Boloff waived his hand round saying I give you possession of all the lands enclosed within the hills all around please explain whether in your answer in this present deposition whether you mean to say there was no measurement made

and that the possessing given was only such as was indicated in the 2nd answer to this deposition?

6th Answer. That all cases on my Attorneys so far as I understand it: there was a measurement of some lines but it was not measured all round; after the measurement he put me in possession as I have stated.

7th Question. Why was any measurement made if possession was intended to begin by a waive of the hand?

7th Answer. They always measure before they give possession.

8th Question. How much land did you petition for?

8th Answer. I petitioned for a league.

9th Question. Do you know the length of the lines running

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east and west as measured by Bolcoff for the width of the ranch?

9th Answer. Two thousand seven hundred and fifty or eight hundred varas: that is what he stated: but I forget which.

10th Question. Do you know the length of the line running north and south which he measured?

10th Answer. It was five thousand varas. He said it was five thousand varas when he got through measuring.

11th Question. Look at exhibit No. 1 and point out as near as you can the little house in the valley which Bolcoff stood when he gave possession as mentioned by you in your last. Answer.

11th Answer. The house stood about 200 yards from the east end of the line measured for the

width of the ranch.

Sworn to before me this 13th day Sept A.D. 1859
Geo: Pen: Johnstone
U. S. Commissioner

J. L. Mayor

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U. S. Dist Court

The United States
v
Isaac Graham et al

Depos. J. L. Mayor
for claimants.

Filed Sep 14, 1859
W. H. Chevers
Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Isaac Grahamstel

San Francisco, September 13 1859

On this day, before J. R. Wise Esq, by consent ~~Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c.,~~ came Otis Ashley a witness produced on behalf of the United States in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 240 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: Judge R. Wise acting U. S. District attorney and S. D. King for Claimants

QUESTION BY the U. S. District Attorney

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

1st Answer. My name is Otis Ashley, age Thirty nine years and I reside in Santa Cruz County.

2nd Question. Do you know the Rancho

much claimed by Mr. Graham?

2nd. Answer Yes sir.

3rd. Question. Please examine the plat of the approved survey in this case and say if your residence is included in that survey?

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3rd. Answer. Yes sir it is - just four chains from the west line.

4th Question. Have you recently been over the ground in order to ascertain the lines of juridical possession given to Mr. Myers and with whom?

4th Answer. I have been over it with Thomas N. Wright and Isac Cornelio Perez the same persons who testified as here to day in this case.

5th Question. Please examine exhibit No 1 attached to the deposition of Isac Cornelio Perez and describe the lines of juridical possession as pointed out to you by Perez on the ground?

5th Answer. We went to the first post down here as number

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"1" Peres said that was the point from which they commenced measuring: the tree was marked with a "+"; we then went with Peres to a pine tree on the west side of the San Lorenzo river marked "2" on this exhibit; this tree had a block cut out of it some six or eight inches square; I observed no where the oak tree stood, no 3" but we did not go to it: we then went to number "4" the old mill: Peres said the tree he could not find it must be down but it was near by where they were going to build a mill at that time and we found the ruins of the mill:

6th Question. Do you claim to be now on public land?

6th Answer. I do.

7th Question. Do you know of any stone iron post binding on the west line of the Zayante Rancho as delineated on the plat of the approved survey?

7th Answer. I do not know.

Cross Examination.

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8th Question. How long have you lived on what Mr. Graham claims as the Agayante Ranch?

8th Answer. I have lived there one year and eleven months since I moved on the ~~entire~~ claim I now live upon.

9th Question. Did you ever own or lease any saw mill from Captain Graham on that ranch and if so how long ago?

9th Answer. I did, it was about two years and a half ago that I commenced, I was running his mill about one year and a half.

10th Did Captain Graham then claim the Potrero and side of the hills east of the San Lorenzo river?

10th Answer. Yes sir he claimed it all to the top of the mountain.

11th Question. After you ceased to saw the mill alluded to have you been engaged in cutting timber and peeling bark from the trees on the land so claimed by him near the San Lorenzo river? and has he ever protested against your so doing?

Atty. The Dist Atty. objects to this question as irrelevant.

11th Answer. I never cut any timber until after the first survey was made by Mr. Wallace without it was a few hoop poles; after Mr. Wallace made the first survey last May a year ago I went up on the side of the mountain west of the survey and cut oak timber and peeled bark; since the last survey was made and approved I have cut timber west of that survey and included in the first survey

but if my memory serves me right Captain Graham never has said any thing to me about cutting timber.

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12th Question. Did you and others ever attempt by force to prevent any person ~~from~~ using Captain Graham's mill pond going into the potrero and taking away saw logs which had been cut?

Ans. Same objection as to the last question.

14th Answer. ~~I object~~ There is a potrero there that I live in and which is in my quarter section of land as I claim it: I prevented George Evans who was using Captain Graham's mill from cutting or hauling any thing from that Potrero ~~which~~ on from my claim.

15th Question When he went on to your present claim was there any house or fence built there?

13th Answer. There was some fence rails but no house timber.

14th Question. Do you know that at that time Captain Graham had saw logs there and that a house had been moved there by a man named Block?

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14th Answer. I know that there was a house moved off of there in March or April 1857, six months before I moved there: I suppose that Block took it but I did not see him take it. The saw logs, all that I considered worth saving I had sawed up while I was running the mill.

15th Question. Did you take any measures to prevent the approval of the first survey made by Wallace and if so what were they?

15th Answer. I did - I considered it Government land: I got some depositions and came down and saw Mr. Mandeville myself: I got up a petition

Redirect

16th Question. Have you ever cut any wood or committed a trespass of any description within the lines of the survey approved by the Surveyor General?

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16th Answer. I have not, except I might have cut two or three trees near my house and burnt them up.

17th Question. Running a line on "Exhibit No. 1" attached to the depisition of Peres Nutt and to the intersecting pine line No. "2" does the exception made in your last answer apply to any land east of that line.

17th Answer. I have cut no timber east of that line.

Otis Ashley

Sworn to before me
this 15th day Sept AD 1859
Geo: Pen: Johnstone
U.S. Commissioner

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U. S. Dist Court

The United States

v

Isaac Grahamstal

Depos Otis Ashley
for United States

Filed Sep 14. 1909

W. H. Chevers
Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Isaac Graham et al

San Francisco, Sepbr 12th 1859

On this day, before J. R. Wise Esq by consent ~~Commissioner of the United States for the District of California, duly authorized to administer oaths, &c., &c.~~, came Cornelio Peres a witness produced on behalf of the United States in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 260 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Richard Tobin a sworn interpreter

PRESENT: Jully R. Wise acting U. S. District attorney, and Shanley and King for the Claimants

1st QUESTION BY U. S. District attorney
What is your name, age and place of residence?

Answer 1st. My name is Cornelio Peres, I am forty nine years of age; My residence is in Santa Cruz County.

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2nd Question. Are you acquainted with the Zayante Rancho in Santa Cruz County, granted to J. L. Majors now occupied by Isaac Graham and his family have you known it?

2nd. Answer. I am acquainted with it and have known it as long as I can remember.

3rd. Question. Did you witness in giving juridical possession while the rancho was owned by Mr. Majors and if so state the Time?

3rd. Answer. Yes sir I was present when Mr. Majors got possession. I do not know what year it was no other possession has been given since to my knowledge.

4th Question. State the name of the Magistrate who gave him the possession?

4th Answer. The then Alcalde Jose Bolcoff.

5th Question. Did you assist at the ceremony of giving the juridical possession and in what

capacity.

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5ª Answer. I was there assisting in the measurement and carried the rope with which the measurement was made: Mr. Ramon Rodriguez assisted me in carrying the rope.

6ª Question. Describe the place where the measurement was first commenced?

6ª Answer. On the side of the main road there was a pine tree which was marked with a cross, ~~and stopping back~~ this pine tree was the starting point.

7ª Question. State the direction which you measured from that point and the distance?

7ª Answer. We then ran down to the Bayaute river and then to the San Lorenzo river, and from there to the potrero ~~at~~ first after passing the potrero we came to a hill where there were some pine trees growing ~~and~~ we also marked ~~a tree~~ one of these trees, a large one

~~we then turned back.~~ The line we ran from the first pine tree to the last one was the width or breadth of it: we then came back and crossed that two miles and the plain of Guacante to where there was an oak tree at the entrance of the "Monte" we marked this tree with a cross and from this point we started to measure the length lengthwise, we then crossed the Guacante river again and ran the line along the bank of the river; we followed up the stream until we reached a place where they were going to build a water mill at which place there was a tree called an "alamillo" which we also marked the measurement stopped at this point and we returned.

8th Question. Then I understand the only measurement you made was two lines, one for the width and the other for the length of the tract?

8th Answer. Yes sir there were only four sticks or lines marked ~~on the two ends of the tract~~ one at each end of the line we mea-

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sured lengthwise and one or less
end of the line is measured cross-
wise: I saw nothing more than
this:

9th Question. Please examine this
sketch marked exhibit No. 17
attached to your deposition and
state if you can point out
upon it the two lines you have
described?

9th Answer. I cant tell by this
map.

10th Question. Have you been over the
ground lately and pointed out these
lines to any one and if you have
to whom?

10th Answer. Yes sir I was there
lately with Mr Ashley and Mr Wright for that
purpose and I showed ~~him~~ them the
points I have described: ~~I also~~
~~went~~

The United States District Attor-
ney here closed his examination
and Mr S. D. King commenced
his Cross Examination

Cross Examination.

11va Question. Did the Alcalde Bolcoff do any thing after the lines were run to show the extent of the possession thereupon to Majors?

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11va Answer. After the measurement Mr. Majors took possession in the usual way and, went through the ceremonies that were common in those times. I dont know what the Alcalde did after that; he was around town with his papers, visiting and talking with the parties. I heard tell Mr. Majors to take possession.

12va Question. Did he not tell him that he gave him possession to the top of the hill west of the San Lorenzo?

12va Answer. I dont know what he said to him because I was carrying the cord.

13va Question. Did you understand that the Potreros west of the San Lorenzo

were included in the transaction prior to May 1898?

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5th Answer. Yes sir I did, because the measurements showed that.

Redirect.

Question.

The examination was here closed.

Jose Cornelio + Perez
his mark

Sworn to before me this
13th day of Sept A.D. 1899

Geo. Pen. Johnstone
U.S. Commissioner

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260 B1

U. S. Dist Court

The United States

v.

Isaac Graham et al

Depos José Cornelio Perez
for United States

Filed Sep 14 1859
W H Chevers
Clerk

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U. S. District Court.

The United States
v.
Isaac Graham et al } No. 342.
"Zayante"

San Francisco, Oct 20. 1859

It is hereby stipulated and agreed that this case be submitted upon briefs files this day.

Lully R. Wise
Acting U. S. Atty
Shanty & King
Attys for Claimants.

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U. S. District Court

The United States

v.

Isaac Graham et al

Stipulation submitting case.

Filed Oct: 20. 1859.

W. H. Chevers.

Clerk

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The United States
vs
Isaac Graham

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This case comes up on exceptions filed to the Survey by the U. S. and the claimant —

In the grant the land is described as "that formerly
" occupied by Mr Nye and
" known by the name of
" Layante bordering on the
" village Branciforte and
" the Mission of Santa Cruz

The 8th condition states that the land of which mention is made is longitudinally one league and latitudinally one half league a little more or less as explained by the diseño attached to the Expediente —"

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under this grant a formal judicial measurement was made and possession was given the record of which is found attached to the Expediente in the case — The diseño is not found in the Expediente but a map is produced which the Officer ~~who gave the possession~~ identifies as that ~~over before under~~ according to the grant which the possession ~~was given~~ —

This diseño in a rude but intelligible manner indicates the tract of country out of which the quantity granted was to be taken — but its no boundaries are delineated ~~upon~~ of ~~it~~ nor are the hills, Rivers ciforte or the missions of Santa Cruz laid down upon it —

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4 The act of possession thus far finishes the
only means of
~~To~~ ascertaining ~~the~~ the
true location of the ~~land~~
~~our~~ small tract which
was granted, ~~to be must~~
~~refer to the judicial~~
~~possession~~ —

4½ ~~In~~ The record of that
proceeding ~~is stated~~, after
reciting the usual formal preliminaries, sets forth that
the measurement was
commenced holding the
cord from S. to North
in which direction they
measured 5000 varas
and placed as a land
mark ("mohonera") the water
mill — on the South
from the Iron San Lorenzo
where the route begins from
whence they from West to East
3000 varas (including the
Potreros on the other
side of the river) where
they set a pine tree for

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land mark going to the
land the form and di
mensions shown in the
diagrams disco The said
measurers declaring that
the Land was "the sitio
de gaiado Mayor"
the aforesaid Rancho and on
the same day the citizen
Juan Jose Majors accom
panied by the Judge of
the Peace and the attesting
witnesses said that the
land of the said Rancho
having been surveyed as
stated in the foregoing pro
ceedings he took todely &
real possession of the said
sitio de gaiado mayor
for one league longitudinally
and 3000 varas latitudi
nally as belonging to him
being the same expressed
in the title &c"

The record then states &c

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forth that the grantee entered on the land pulled up grass and shrubs and cast stones to the 4 winds and performed other ceremonies and acts of possession in consequence of which he said that he took the said land"—

It will be observed that the language of this record especially in the important part which describes the measurements is somewhat obscure — owing probably to the fact that Bolcoff the magistrate by whom the possession was given was a Russian & imperfectly acquainted with the Spanish. to

It is to observed too that the diseño produced was not attached to the Expediente nor bound in the

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(13)

7

Record of the Judicial measurement — Its ~~author~~ identity ~~was~~ identity with that formerly attached to the Expediente and used when the possession was given is sworn to by Bolcoff whose testimony we shall hereafter see is not wholly reliable — and if the statement in the record that there was "given to the land the form and dimensions shown in the diseño," (or more correctly translated "leaving the diseño drawn or sketched (dibujado) in the same form as the land was measured") means that the land as measured was delineated on the diseño then it would follow that the diseño produced is not the one marked on that occasion for no

(13)

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such lines are upon it —
It is also to be observed
that the original Expediente
is not put in evidence in
the cause — but it appears
in evidence is stated in
the brief on the part of
the U.S. that by that Ex
pediente it appears that
the land was first granted
by to Joquin Buelna by
Figueroa in 1834 — That
it was denounced by and
granted to, Mofs, in 1839
and was finally petitioned
for and granted to Majors
in 1841 —

(8)

In the brief filed on the
part of the claimants these
facts are not denied and
it is testified by José Bol
coff that he gave 3
judicial possessions of the
land — the first to Buelna
the 2d to Mofs and the

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9

Hunt to Majors —

As the land granted to the latter is dis-cribed in the grant as that formerly occupied by Mo[illegible], it would seem that the grant ~~to him~~ and judicial possession given to him would furnish important evidence to remove any doubts as to the ~~the~~ location of the Tract intended to be granted ~~to~~ Majors. If ~~therefore~~ I concluded it necessary to enable me to arrive at a ~~correct~~ satisfactory determination of the questions now presented I should not hesitate to direct the Expedients to be filed — ~~in order~~ —

But it has appeared to me that notwithstanding the obscurities alluded to the Record of Judicial

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possession discloses the location and dimensions of the tract whereof Majors was put in possession with sufficient certainty to enable me to determine the present controversy—

It appears from that record that only 2 lines were measured— viz one longitudinally from South to North 5000 varas in length— and one latitudinally from West to East 3000 varas in length—

The commencement of the North and South line is not stated but its termination viz a water mill is distinctly mentioned as a boundary mark established by the Ju

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dicial offices — This mill is marked on the diseño and its ~~site~~ position as undisputed —

~~The Commencement of~~ The latitudinal line is ~~also~~ described in the record as commencing where the Monte begins — beyond the Rio ~~Las~~ San Lorenzo — which is ~~the~~ which probably the meaning of the words desde del Rio de San Lorenzo. But at all events it is clearly described as running from where the Monte begins ~~it~~ from west to East 3000 varas to a pine tree which was established as a Mojonero — and including the potreros on the other side of the San Lorenzo — There can therefore be no doubt that the land of which possession was given was a tract 5000 varas long

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and 3000 varas wide
on the northern bounda
ry of which was the mill
and on the eastern a
pine tree —
~~Both the~~ ~~As~~ Two of the
assisting witnesses have
testified in the case —
Both ~~of~~ depose that only
two lines were run, and
Perez states with precision
and in entire conformity
to the act of possession
the commencement and
termination of each of
those lines — He identifies
a pine tree on the edge
of the monte as that
point of begining of the
~~eastern line~~ East & West
line and also the pine
tree which as staked in
the act of possession was
~~set up~~ established, as a boundary mark
at its termination

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2

He also states that the point of beginning of the north and south line and assigns to it a position on the map corresponding nearly exactly with that of the point at which Bolcoff swears he commenced to run the north & south line —

In opposition to To meet this testimony and to establish if possible that the rancho was surveyed so as to include on the west the valuable timber lands which are the real subject of dispute the claimants have examined José Bolcoff the magistrate who gave the possession This witness states that he marked a large pine tree as the commencement of the line between the rancho and that of San

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Question— that this pine tree is situated near the centre of the largest cluster of grove of trees represented on the map" (the diseño) also that the boundary line runs from thence N. W. to the mill represented on said map by a cross and circle near which and to the north of it an oak tree was marked as a corner"—

Thence he saw the line S. West including the Corral Viejo and croping the Arroyo de San Lorenzo to a point on the Sierra where a large red wood tree was marked as a corner— thence South South East to a straight line to another red wood tree marked as a corner thence a straight line N. N. East to the place of beginning

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But it is clear from the evidence that the 4 lines thus described by Bolcoff were not drawn by him —

(10)

The two assistant surveyors who assisted at the measurement testify that only 2 lines were drawn — one for the length and the other for the width — And their statement is corroborated by Majors the grantee who describes the lines drawn as nearly the same terms as Reed except that

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the thirds the latitudinal line was 9700 varas long — But as to the ~~number~~ fact that only two lines were run — and the points at which each began and ended the witnesses are entirely agreed — But the testimony of Bolcoff is still more emphatically contradicted by the Record of possession signed by himself and produced by the claimants. In ~~Their~~ that record it is distinctly stated that two lines were run one 5000 varas long to the molino or mill, and the other 3000 varas long from the point the beginning of the Monte to a marked pine tree — and the dimensions of the tract ~~5000 by~~ are again stated

10

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on the subsequent part of the record which discribes the entry of the grantee on the land"—

If then it were legally impossible to contradict by parol a record of this discription and to show that the tract whereof possession was given was different and ~~much~~ much larger than that described in the act of possession — the evidence in this case is insufficient to raise even a doubt on the subject —

The claimants himself seems to be aware that the measurement as stated by Bolcoff could confer no rights to all the land included within it but that the dimensions of the tract must be stated

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on the grant (viz a league by ½ a league more or less) or as stated in the act of possession (5000 varas by 3000 varas). The survey for which he contends embraces only a tract of that extent and it is made to extend to and include the timber lands on the west only by neglecting entirely the call for the Molino which Bolcoff admits he marked as a corner and which is stated as a boundary mark in the act of possession. And by adopting as the controlling lines boundaries which no mention is made in the act of possession the location of which rests on the testimony of Bolcoff alone - but which

(1)

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in fact were never run. That the Molino or the oak tree near it was established as a corner on the N.E. is clear from all the testimony ~~not taking~~ ~~in addition~~ to the conclusive evidence afforded by the act of possession and the testimony above referred to, ~~it is proved by Weeks~~ may be added that of Weeks who swears that he drew the diseño produced by the claimant. ~~He states~~ That "at the S. East Corner of the Rancho is the place called the Rincon where we used to saw lumber — at the North East Corner is the place where we had a small grist mill — A line run from the Rincon to the place where the grist mill was would be on the

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on the East side of the river San Lorenzo and would be on the Eastern side of the Rancho"- tought a surveyor who drew out some of the lines of the Rancho at the request of the claimants and assisted by Bolcoff testifies that stated at the place of beginning pointed out by the latter - and which seems to be the same as that mentioned by Peres as the commencement of the S. & N line. thence he ran to a pine tree also pointed out to him by Bolcoff, and which also corresponds with the pine tree mentioned by Peres as the termination of the West & East line - and thence to an oak which had the appearance of

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of having been marked at the foot of which was a stone which Bolcoff said was placed there by his order— "This spot is indicated as a corner on the map and is near the point marked "Molino"

XI

On the claimants own showing as well as from all the testimony in the case it is clear that the Eastern boundary of the land which the grantee received the possession was a line drawn from the oak tree near the Molino to the pine tree mentioned in the act of possession as the termination of the East & West line and identified by Perez and Coughlin

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If then the rancho extends ~~bounded on~~ to this line on the Eastward it cannot also ~~be~~ extend on the west to the crest of the hills without disregarding entirely the measurement of the line run for width by the Judicial officer ~~already~~ ~~& the boundary established by him at the~~ western extremity of that line at the point (place) where the mouth begins - nor without ~~in~~ (much) including in the survey a greater extent of land than is called for in the grant or mentioned in the act of possession

~~We~~ We have already seen that the crest of the hills on the west is not ~~here~~ mentioned as a boundary either in the grant or the

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act of possession — "nor
have I been able to discover
on what ground it is claimed
that that boundary line is
should form
the western boundary unless
it be the statement of the
Mayors —
Thus witness testifies that "after
" the measurement was
" made Bolcoff waved his
" hand around saying I give
" you possession of all the
" land embraced within the
" hills all around" — "That"
" the witness adds "would embrace
" 8 or 10 leagues of land"
In a 2d deposition taken
after the return of the survey
to this Court the same
witness states that "Bolcoff
" raised his hands and said
" he gave possession to the
" tops of the hills all around"

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The difference between these two statements is of some importance for "the lands embraced within the hills all around" might very reasonably be deemed to be bounded by their last and not by their next— But both of these statements are contradicted by the act of possession— That record as has so often been mentioned states plainly the longitudinal and latitudinal dimensions of the tract and the boundary marks established and expressly recites that the grantee took possession of ~~the tract~~ a square of land ~~5000~~ one league ~~5000 varas~~, long by 5000 varas wide—

It is "The expression that the "sitio de ganado mayor" is ordinarily used inaccurately

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for the measurements previously recited and the words which immediately follow show what were the dimensions of the tract so denominated The sentence reads "the lands of the said rancho having been surveyed as stated in the aforesaid proceedings he (the grantee) took and that he took bodily and real possession of the said sitio de ganado mayor for one league longitudinally and 7 3000 varas latitudinally"

There are some conclusions of a more general nature which must contain the conclusions drawn from the terms of the act of possession

The rancho was petitioned for and granted under the name of Tajauta

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~~Lan~~ would The tract de
lineated on the diseño is
represented as lying on
both sides of that stream
altho the Pastreros on the
west of the San Lorenzo
are also laid down—
But the tract as located
~~laid~~ on the ~~San~~ survey
the Court is asked to adopt
would lie almost entirely
to the west of the Laguate
and ~~as~~ would be divided
nearly in the middle
by the San Lorenzo—
Had such been the situa
tion of the land located
it is natural to suppose
it would have been called
San Lorenzo and not "Lag
uate"— Such a location
would moreover exclude the princi
pal portion of not only
of the tract delineated on
the diseño by of the Salinas

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and improvements depe
sented upon it; especially
those at the South Eastern
corner and the Molino
or Mill at the N. East-
ern. The rancho as held
by the 1st grantee Buelna
is stated by the latter to
have been bounded on
the South by the San Lorenzo.
Alameda When the juridical
possession was given to
Majors the subsequent grantee
this boundary was not
observed yet the distance
of the to which it was to
extend beyond the San
Lorenzo was accurately
determined and a tree
was marked at the bes
ern end of the latitudi
nal line; the rancho remaining
as before formerly called
on the east of that
stream —

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Again

It is unreasonable to suppose that in 1841 the grantee would have denied more than 1/3d of a rancho which was only one league long by 1/2 a league more or less broad to be located on the sides of a densely timbered and almost valueless sierra — while valley lands on either side of a creek from which the rancho derived its name, and where a great part of his improvements were situated were excluded —

On the whole it appears to me that the land survey should be made so as to embrace a tract 7 the average length of 5000 varas & the average width of 3000 varas

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That the Eastern line should be run from the tree near the molino identified by the witnesses to the first tree mentioned in the act of possession as a boundary mark at the end of the last West and East line and so far beyond said tree as is necessary to make the length of said line 5000 varas. That the Southern line should be run so as to pass through the points mentioned by Peres and Majors & identified by boughs as the points of beginning of the longitudinal line. That the Western line should pass through the points mentioned in the act of possession as the place where the mouth begins and identi

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fied by Perez & bought-
and that thence it
should be run in a
general Northerly direction
and so as to include
the Pastures on the west
side of the San Lorenzo
provided that by so doing
the general average
width of the tract in-
cluded within thence
such western boundary
and the eastern boundary
as herein before described
shall not be greater
than 3000 varas—

No. 342.

N. Y. Dist. Court.

The United States

vs.

Graham et al.

Opinion

Filed Oct. 31, 1859.

W. H. Chevers
Clerk

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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 tenth day of November in the year of our Lord one thousand eight hundred and fifty-nine.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Isaac Graham, et al.

No. 342; L. C. 260.

"Layante".

This cause came on to be heard upon exceptions to the survey, and was argued by counsel for the respective parties, and due deliberation had in the premises; wherefore, it is now ordered, adjudged and decreed that the survey ~~made~~ of the land claimed in this case, made by the U. S. Surveyor General for California under the final decree heretofore entered herein, the field notes of which survey were approved by said Surveyor General on the 9th day of July, 1859, and a certified copy of the plat of the same was filed in this Court, pursuant to its order, on the said 9th day of July, 1859, be and the same is hereby declared erroneous and not in conformity with the said decree, and that the same be and hereby is annulled and set aside.

And it is further ordered, adjudged and decreed that the said U. S. Surveyor General for California cause a resurvey of the said land to be made in conformity with the true intent and meaning of the said final decree, to wit; the eastern line to commence at the tree near the molino identified by the witnesses, and thence to be run southerly to the pine tree mentioned in the act of possession as the boundary mark of the eastern end of the latitudinal line of juridical measurement, or so far beyond said tree as will make the length of said eastern line five thousand varas; thence the southern line to be run so as to pass through the point stated by Perez and identified by Wright as the point of beginning of the longitudinal line of juridical measurement,- said southern line to be in length equal to the said latitudinal line of juridical measurement; thence from the western end of such southern line to the point where the monte begins, being the western end of the latitudinal line of juridical measurement as identified by the witnesses, and from said last mentioned point to a point from whence the

northern line can be run equal in extent and parallel in course with the southern line, to the place of beginning; the said western line to be run so as to include the potre-ros on the west side of the San Lorenzo river, provided that the tract so measured shall not include between its eastern and western lines a greater average width than three thousand varas: Reference for greater certainty to be had to the depositions of Cornelio Perez and T. W. Wright taken in this Court and filed in the case.

And it is further ordered, that a certified copy of this order be served upon the said U. S. Surveyor General for California for his information and guidance.

Ogden Hoffman
Dist Judge

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UNITED STATES DISTRICT COURT,
Northern District of California.

The United States
vs.
Isaac Graham, et al

Order setting aside survey and directing a resurvey.

Filed November 10th 1859,
W. H. Chevers
Clerk.

By
Deputy.

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Towne & Bacon, Printers, 125 Clay Street, corner Sansome.

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U S Marshal's Office
San Francisco, Nov: 10th 1859

I have this day made personal service by copy of this Order on J. W. Mandeville the U. S. Surveyor General for California

P. L. Solomon
U. S. Marshal

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In the District Court of the
Northern District of California

The United States
vs
Isaac Graham,
Claimant of the
Zayante Rancho

Petition for rehearing
to open decree &c

No. 260

The above-named
Isaac Graham respectfully shews that on the
day of June 1852, he filed before the
late board of Commissioners for settling private
land claims in the State of California,
his petition for the confirmation of the Ran-
cho above-named: that not being acquainted
with many persons in the City of San Francisco,
he applied to John Parrott, whom he had
known for several years before the date men-
tioned, and said Parrott drew the petition
for him: that at the time of applying
to said Parrott, he exhibited to him
all his title papers relating to said Rancho,
those now on file, in the office of the Surveyor
General, and also those, a traced copy
of which is hereunto annexed, the originals
of which he has exhibited for examination
to the acting District attorney of the

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United States, and has ready to produce at any time, when directed so to do, by this Honorable Court. —

That when he exhibited said papers, said Pandt told him he thought it unnecessary for him to produce before the Land Commission any other than those on file.

He, then finding the services of an attorney indispensable, applied to the Hon. James Wilson, formerly a member of said board, as his legal adviser, who also informed him, he thought it unnecessary to produce any other papers than those on file.

That knowing his claim to the land, he now asks for was honest and just, he relied upon the equity and justice of the United States, to give him what the Mexican Government had granted to him.

The said Isaac Graham further shews, that he was induced to make the application, referred to in the papers now submitted, because it had been suggested by some person whose opinion he respected, that the juridical possession had been imperfectly given, and that his papers were not as clear and intelligible as they should be: and in order to prevent any mistake or dispute, he made the said application for the land containing the timber, and now

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rejected from the survey. Upon examination of these documents, it will appear that the "densely timbered land" referred to in the opinion of this Honorable Court, was not regarded as being "valueless", by the Claimant, when it was granted to him.

Claimant further shows, that after the report was made by the public officers named in these documents, he was instructed by them, that said land was included in the title of F. L. Majors, and was recognized as being so included by the Mexican authorities: and that acting upon such information, this Claimant proceeded a year or two afterwards, in 1846. & 1847, as nearly as he can remember, and built another mill, which is still standing on the San Lorenzo River, (marked on this map as the "Rio de Santa Cruz") and continued to use said timber, at his discretion, from the hill side, known as his desert, and which has been rejected from survey, by the United States Surveyor General: also built a house on said land.

Claimant further shows, that a few weeks since, his attention was called by his Counsel Mr Edward Stanly, to the opinion of this Honorable Court, and Claimant

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was asked by his Counsel, whether this timber was "valueless" in 1841. when Claimant informed him that he had petitioned for this land, because he wanted the timber, and that his papers would shew it. that he had asked for the land on the left side, West of the Potreros, mentioned in the Survey. and that he had mills on said Ranch in the year 1841, for sawing lumber. that his counsel Mr Stanly after examining informed him, he could not find all the papers spoken of, when this Claimant told him. what is remembered stated, of his producing the papers before Mr Wilson, and that Claimant believed he still had the papers. Upon the instruction of his Counsel he went home, to Santa Cruz County, and a short time since, brought the originals of the annexed traced copies to his Counsel

The said Claimant further represents that he is an uneducated man, living since the year 1818, in the wilderness, among Indians, until 1834, when he came to California: that he was well acquainted with this County, and thought the timber must be valuable and at an early day purchased this Rancho, from D. L. Magis, before mentioned: that he has always acted with good faith to the Mexican

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government, and with fidelity to his own country: that since he purchased this land called the Zapote from D. L. Mejia, he has always claimed the timbered land, now rejected in the survey. that he has paid various taxes, and because of want of confirmation and a proper survey, he has been deprived of all benefit from the land.

He prays the decree may be opened, and that he may be allowed to offer this testimony, and that the survey made excluding this land may be set-aside, and such a survey made as will give him all the land, the title to which was acknowledged by the Mexican government as being in him, and for such other and further relief, as to this Honorable Court may seem equitable & proper.

And as in duty bound, he will ever pray.

Stanly & King attys: for
Claimant.

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United States of America. } S. S.
Nor: Dist: California.

Isaac Graham

the within named petitioner being duly sworn deposes and says that he has read the foregoing petition and that the facts therein set forth are true to the best of his knowledge and belief.

Sworn to and subscribed
this 27 March 1860 before me
W. A Cheney.
N. P. Com:

Isaac Graham

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

United States

vs

Isaac Graham

No 260

Forfeited Ranchos

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Shurly & King

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SELLO TERCERO UN PESO.

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

Micheltorena. Manuel Castanares.

Exmo Sor Gobernador

Isac Graham, natural de los Estados Unidos de Norte America y residente en este Territorio hace como catorce años, ante V. E. se presento y digo: Que tenia un establecimiento de aserraduria por maquenia en el Rancho llamado Zayante, hay un poco de tierra valdio q.e contiene madera y ansioso á poner otro molino en dho terreno, segun consta el adjunto diseño - Suplica á V. E. q. me concede dho terreno = P. T.

Monterey Sepre 14. de 1843.

Sirvase informar el S. Prefecto del 1er Distrito -

Michtorena

A. V. E. Suplica humildamente q. me concede este mi peticion, siendo necesario, por lo cual recibire merced y gracia -

Monterey 14. de Sre. de 1843 -

Y Informe el Sor Juez de la Villa de -

Monterey 14 de Setiembre de 1843

Isac Graham

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Montevideo 28. de Sbre. de 1843.

Informe el Sor. Encargado del Establecimiento de Sta Cruz, Si el terreno que se pretende está baldío. con todo lo demas que crea enjusticia —

Estrada

Sr Prefecto

El terreno q.e Solicita Este ocupado pr. el ciudadano Jose Mayor, Segun q.e ha manifestado. Su Pueblo y decino, del Gobierno esto puede informar Sobre el particular Sto Cruz 1.º de octubre de 1843.

Jose Bolcoff

Branchporte, Si el terreno que se Solicita está baldío, ó si pertenece á particulares Pueblo, con todo lo demas que crea en justicia —

Estrada

Sor Cruz 16 de Septiembre de 1843

Informa el Juez de Branchporte que el lugar que Solicita Dn Isac Gram hermano politico a la Rancheria no hubido ningun Solicitante Sobre dicho lugar. Si pertenece ala Exmision de Sta Cruz hasta cuando tengo que informar

Rafael Cano

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Tierra

Lomería

Palo Colorado
Lomería

Cimarrona

Lomos de palo colora
de =

Potrero

Potrero

Potrero

Río de Sta Cruz.

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Translation. — — —

Third seal, one dollar. Provisionally qualified for the Maritime custom house, of the port of Monterey, in the Department of the Californias, for the year one thousand eight hundred, and forty three. —

To the Most Excellent Governor; Isaac Graham a native of the United States of North America, and resident in this Territory, for the last fourteen years, before your excellency presents himself and says, That he has an establishment for sawing by machinery in the Rancho called Zayante: there is a little vacant land containing timber, and desirous of putting up another mill on the said land as is shown by the accompanying designs, I request your Excellency to grant me said land. Therefore I humbly request that you grant me this my petition being necessary, by which I shall receive favor and grace. Monterey 14 Sept. 1843.

Isaac Graham. —

Monterey September 14th 1843. Let the Senor Prefect of the 1st District please report. —

Micheltorena —

Monterey 14th September 1843. Let the

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Judge of the Town of Branciforte to report whether the land petitioned for is vacant, or if it belongs to any private individual, or Pueblo, with every thing else he believes just

Estrada.-

Santa Cruz: 16th: September 1843.

The Judge of Branciforte reports, that the place solicited by Isaac Graham is ~~there being no petitioner in relation to said place~~ very near to his Rancho, it belongs to the Ex-mission of Santa Cruz. This is all I have to report

Rafael Castro.-

Monterey 28th: Sept: 1843. Let the person in charge of the Establishment of Santa Cruz report if the land which is solicited is vacant with whatever else he may believe just

Estrada-

To the Senor Refect.

The land petitioned for is occupied by the Citizen José Majors, as has been shown to me by his ~~title~~ Rancho & title from the Government. This is what I can report in the matter.- Santa Cruz 1st: October 1843.- José Bolcoff-

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

No. 260

The United States

vs.

Isaac Graham,
Claimant of Zayante Rancho

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James Wilson being duly sworn deposes & says, he has read the affidavit and petition of said Isaac Graham, of date 27 March 1860, and hereunto annexed, and that the facts therein stated by said Graham, of his exhibiting the said papers to this affiant, and his advice thereon are truly stated: that this affiant has examined the original of which a traced copy is annexed to said Grahams affidavit, and remembers the paper as being the same which was submitted to him by said Graham, as stated by him.

James Wilson.

Sworn to, and subscribed
before me, this 28. March 1860.

W. Do. Cheever.
U. S. Comr.

No. 342.

U. S. Dist: Court.

The United States.

— vs —

Isaac Graham.
et al.

Pet: for re-hearing.
Grant & translation,
and
affdvt: Jas: Wilson.

Filed March 28. 1860.
H. A. Cheever.
Clerk

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

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

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 342, to Isaac Graham et al known as "Sayante", and situated in the County of Santa Cruz in said District.

NOW THEREFORE YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the District Court of the United States for said District, sitting in Land Cases, on or before Wednesday, the 24th day of October A. D. 1860, at 11 o'clock, A. M. (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

WITNESS, the Hon. OGDEN HOFFMAN, Judge of said Court, at San Francisco, in said District, this 17th day of September A. D., 1860.

W. H. Chevers

CLERK.

The within Moxition was received by me on Wednesday the 19th day of September 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for 4 consecutive Wednesdays, in the San Francisco Herald, commencing on the 19th day of September 1860; and for 4 consecutive Saturdays, in the Equal Rights Expositor a paper published nearest the land, commencing on the 21st day of September 1860.

Dated San Francisco, October 24 1860

P L Solomon
U. S. Marshal.

Equal Rights Expositor

4

No. 342.

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

THE UNITED STATES.

v.

J. Graham et al,

MONITION.

Returnable Oct. 24. 1860.

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Issued Sept. 17. 1860.

Filed October 24. 1860.

W. H. Chevers
Clerk.

20

Ed. Stanly
atty for dfts.

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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 Wednesday the 24th day of October in the year of our Lord one thousand eight hundred and sixty.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

V.

James Graham et al.

IN LAND CASES.

District Court No. 342,

Land Com. No.

AND now at this day the United States Marshal having made return upon the Monition heretofore issued in this cause, that he had given due notice as therein commanded; on motion of Attorney for proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and intervene for the protection of such interest; the U. S. Attorney and John B. Williams appeared for the U. S. and E. Stanly for the Claimants, no other party appearing

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

No. 342.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Isaac Graham et al,

ORDER ON RETURN OF MONITION.

Filed October 24, 1860.

W. A. Clevers,

Clerk.

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DISTRICT COURT OF THE UNITED STATES,
Northern District of California.

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The United States
VS.
Isaac Graham et al.

San Francisco, November 23, 1860,

On this day, before me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Loron Longley Logan a witness produced on behalf of the Claimants in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 260, 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, to wit.: By~~

PRESENT: Mr Stanly, Counsel for Claimants, and Calhoun Benham Esq. U. S. Attorney.

QUESTION 1ST, By Counsel for the Claimants.
What is yr name, age, and place of residence.

Answer.
Loron Longley Logan, am about 39 years of age, and reside in Santa Cruz County, Cal.

2nd,
Look at the paper now shown yr marked "W. H. C. No. 1. Case 342", and

day whether you witnessed the said paper, signed by Isaac Graham, and James Mathers?

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Ans.

I did. I signed it as one of the subscribing witnesses. Loron Longley, the rest of my name being accidentally omitted. It is a contract between Isaac Graham, and Jas: Mathers. (Counsel for Claimants now offers said paper in evidence, which document is objected to by the United States Attorney, as incompetent, to contradict the calls of the Grant, and the record of Juridical possession)

2nd.

In the 13th line, on first page of said document the word "Creek" is mentioned. State by what name, or names said Creek, or Stream was known?

Ans.

I think it was called San Lorenzo, and sometimes Santa Cruz River.

4th.

Please look at a traced copy of an original paper attached to the Petition for Re-hearing, filed March 28th. 1860, and state whether you are acquainted with the tract of land there laid down?

Ans.

Yes Sir. I am somewhat acquainted with it, and have been since February

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or March 1847. I was employed by Mr Mathers at that time, who is a party to the contract aforementioned. He employed me to get out timber, and to do general work. I cut logs above Mr Ashley's house, which is above the third Potrero, opposite to the place marked "Lomas de Palo Colorado."

5th. Did you or not cut timber from the Mountain side for Mr Mathers in 1847?

Ans. I did.

6th Look at the paper now shown you marked "U. S. L. C. No 2. Case 342", and say if you are acquainted with the handwriting of Wm Blackburn, and if yea, state if said document is in his own proper handwriting. (U. S. Atty objects to said document as irrelevant.)

Ans. I am acquainted with the handwriting of Wm Blackburn, and believe said document is in his handwriting.

7th State if you know how far on the Mountain side, said Grahame claimed to own in 1847?

Objected to by U. S. as not being competent

to prove the calls of the Grant by parole testimony?

Ans. He claimed to own to the top of the Mountains. and no body else had any occupation. or possession of the land mentioned in the document first referred to in this deposition.

8th Look at the certified copy plat of the official Survey filed July 7th. 1859. and point out Ashley's house?

Ans. Witness points to the place marked "Ashley's house".

9th Point out on said Map where you cut timber.

Ans. I cut timber West of the line of Survey. and West of Ashley's house. in 1847.

Cross examined by U. S. Attorney.

10th

In your answer to the 7th question you state that Graham claimed to own to the top of the mountain: What sort of a claim did he have?

Ans.

I don't know. I heard under a Spanish grant.

11th

In the same answer you state there were none others who had any occu-

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patins there; Are you sure there was no dispute about the land west of the San Lorenzo while you lived there?

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11th. Ans.

Not until 1853 or 1854. by some letters. W Graves and others.

12th

Did you never hear Mathers himself question Grahams ownership?

(objected to)

Ans.

I heard Mathers say in 1848 that he didn't think Graham owned to the mountains. He and Graham had some difficulty about that time.

13th.

Did you not hear Mathers question Grahams ownership to all the land west from the San Lorenzo, as shown on the traced copy of the diseño filed in the petition for rehearing?

(objected to by claimants as irrelevant &c.)

Ans.

At the time he had the difficulty he did, including the place where the mill was situated mentioned in the lease.

14th

What was the nature of that difficulty?

(Obj'n to as before)

Ans.

It was something about cattle, that is, it commenced that way.

15th

Since the building of the mill did not Ramon Buelna point out to you the western line of the Ranch and if so, where was it located?

(Obj'd to by claimant)

Ans.

He did. He pointed out a redwood tree on the east side of the River and below the mill. This was in the winter of 1848. Buelna had been drinking some, when he told me.

16th

Did not J. L. Majors make to you the same statement, and if so, when?

Ans. (Obj'd to by claimant)

He said the Buelna grant did not go over the San Lorenzo creek, but Graham's grant did.

17th

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From these conversations, from the declaration of Mathers as you have stated, and from other matters, does it not seem plain to you now that Grahams claim to the mountain was disputed?

(Objc. to by claimant)

Ans.

It was disputed by Mathers, who refused to pay the rent in lumber provided by the terms of the lease and they had a law suit about it, which was settled by Blackburn the Alcalde, referred to in Exhibit No. 2 to this deposition. This dispute between Graham & Mathers is the same as I have before referred to.

I Longley Logan

Sworn to and subscribed this 23rd November, 1860. before me.

W. D. Rhees.

U. S. Comm'r.

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W. & C. M. 1. Case 342.

Agreement made and entered into by and between Isaac Graham of Santa Cruz in the Territory of California of the one part, and James Mathers of Santa Clara and Territory aforesaid of the other part, as follows, to wit; The said Mathers agrees with the said Graham to build a saw-mill on the main creek running through the tract of land owned by the said Graham and William Ware on which they now reside, and to have the same in operation on or before the first day of ~~August~~ next, the said mill to be substantially built and finished in a workmanlike manner, ~~and~~ with two saws to run at the same time, and also to build a good and substantial dam across the creek in connection with said mill. The said Mathers further agrees to run said mill five years from and after the time the same shall be put in operation, and keep the mill and dam in repair at his own expense, and to deliver to the said Graham, his heirs or assigns, at the said mill, five hundred feet of good merchantable lumber per day; that is to say, one hundred eighty seven thousand and eight hundred feet per annum, for five years as aforesaid. The said Mathers also agrees at the expiration of five years as aforesaid to give the said Graham, his heirs and assigns quiet and peaceable possession of said mill, with all that appertains thereunto, and to leave the same in good repair.

And the said Graham on his own part and behalf and also on the part and behalf of the said William Ware agrees to pay the said Mathers, his heirs or assigns

the sum of two thousand dollars in lumber, to be retained by the said Mathers out of the first that shall be sawed and due to the said Graham, as a full compensation for building said mill, the lumber to be rated at thirty five dollars per one thousand feet.

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The said Graham further agrees as aforesaid, to give the said Mathers, his heirs and assigns full liberty to enter on any part of the tract of land aforesaid and to cut and haul timber for the purpose of building said mill and dam, and for any other improvements that may be necessary to make in connection with the mill, and also to use all timber that may be requisit to keep said mill in constant operation.

The said Graham also agrees, to let the said Mathers have the exclusive privilege of building and running one or more mills in addition to the above, and on the same condition, and for the same length of time as is above stipulated. He also agrees to let the said Mathers have the occupancy of a reasonable quantity of pasture land convenient to said mill for the purpose of keeping the animals upon, that are necessarily employed in conducting the business connected with said mill, and the privilege of fencing the same if he thinks proper to do so.

The said Mathers agrees to give the said Graham notice in writing on or before the first day of August next whether he will or will not build another mill or mills as above alluded to, and said notice shall be deemed and taken as a part of this contract.

It is mutually agreed by and between the parties to

this contract that should any serious accidents happen to said mill so as to prevent its running for any considerable length of time, that the payment of the rent accruing to the said Graham shall be suspended until the said Masters shall have had a reasonable time to repair the same.

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In witness whereof the parties aforesaid have hereunto subscribed their names the 17th day of February in the year of our Lord 1847.

It is further agreed by and between the parties aforesaid, that should other persons than those who may be connected with the operations of the mill or mills to be built in pursuance to the foregoing contract, be engaged in building or sawing on the same tract of land, on which said mill is to be built that they are to have equal privileges in cutting timber with the party to this contract.

In witness whereof the parties aforesaid have hereunto subscribed their names this 17th day of February A.D. 1847.

In presence of—
David J Bennett
Loron Longley
Eli Rundell

Isaac Graham
James Masters

(Duplicate)

In explanation of the foregoing contract I hereby declare that the rent becomes due daily

James Masters

Isaac Graham
&
James McArthur

Articles of Agreement

641
313
1923
641
923
1282

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187200 41
12000 73
199200 114
199200 47
200000 543

W. A. C. No. 2. Case 342.

Know all men by these presents that I Carolon Mathews, Son of James Mathews, and a lawfull partner of said James Mathews, in the Sawmill built by James Mathews and Son, the said Sawmill Standing upon the farm owned and occupied by Isaac Graham I Carolon Mathews, by virtue of authority and power vested in me, by James Mathews my true and lawfull partner, to dispose of said Mill in such a manner as I may deem most advantageous.

I therefore do by these presents, grant give sell and convey, to Isaac Graham all the right and title of James Mathews and Son together with the Sawmill and all the apperatus belonging thereunto the Blacksmiths Shop dwelling Houses and all other out Houses and buildings Standing on the premises and heretofore occupied by James Mathews and Son to be included in the same. Also to Compleat the Contract of Cutting 2000 Logs as agreed upon between Wilson Thornton and James Mathews and Son. in Consideration of the Sum of $7,603 feet of Lubber being paid down by the said Isaac Graham the receipt whereof is hereby acknowledged in Witness whereof I do hereunto set my hand and Seal this 23 day of June in the Year of our Lord one thousand eight hundred forty and eight.

Witness
Albert T Morris. Carolon Mathews

The within
before me
A D 1848

Acknowledged
this 23d day June
Wm Blackburn
Alcalde of
Santa Cruz

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342.

U. S. Dist. Court.

The United States.

—as—

Isaac Graham.
et al.

Deposition of
L. L. Logan.

Filed Dec: 8. 1860.
W. A. Chenet.
Clerk,

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DISTRICT COURT OF THE UNITED STATES,

Northern District of California.

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The United States
VS.
Isaac Graham et al.

San Francisco, December 8th 1860,

On this day, before me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came R. L. Hopkins
a witness produced on behalf of the Claimants
in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 260 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, to wit.: By~~
Deposition of this witness taken by consent.

PRESENT: Edward Stanly, Counsel for Claimants, and Eachaun Buchanan U. S. Atty. for the U. S.

QUESTION 1ST, By Counsel for the Claimants.

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

Ans.

Rufus L. Hopkins; am of lawful age, reside in San Francisco, and have charge of the Spanish and Mexican archives of the former Government, now in the office of the

U. S. Surveyor General for California.

2nd. Look at the original paper now shown you marked Exhibit No 1, and attached to this deposition, and say whether in your opinion the signatures of Michel=torena, Estrada, Rafael Castro, and José Bolcoff, are genuine?

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Ans. The signatures of Michel=torena, Estrada, and José Bolcoff I believe to be genuine. That of Rafael Castro I am not ac=quainted with.

3rd. Have you examined the seal, and paper of this document, and if so, please state whether you believe the seal to be the original, and true seal used by the Mexican authorities of the date of the paper.

Ans. The seal is the genuine seal of the Aduana Maritima de Monterey, and the paper appears to be the genuine habilitated paper for the year 1843.

4th. Do you know in whose handwriting the petition of the first page of said document, and the writing on the map attached to said

document, is?

Ans.

In the handwriting of one George Allen, whose handwriting appears often in the Archives.

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(It is admitted by the Counsel for the respective parties, that the said George Allen died in July, 1847.)

5th.

How long have you been acquainted with the Archives, and what are your means of judging of the handwriting of the parties above referred to.

Ans.

I have been in charge of the Archives in the office of the U.S. Surveyor General for the last five years. I have been constantly in the habit of critically examining, and comparing the signatures found in said Archives, and have often examined the signatures of the gentlemen mentioned in this deposition, as found in the Archives. These are

the means I have of determining whether or not a signature be genuine.

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Cross examination waived.

Deposition closed.

R. C. Hopkins.

Sworn to and subscribed this 8th December. A.D. 1860. before me.

W. A. Chevers.

U. S. Comr.

The translation of the exhibit referred to in the foregoing deposition was filed in Court on the 28th March. 1860. and is annexed to the petition for a re-hearing of this cause.

No. 342.

U. S. Dist. Court.

The United States.

— vs —

Isaac Graham, et al.

Deposition of R. C. Hoffman.

Filed Dec: 8, 1860.
W. A. Chevers,
Clerk.

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SELLO TERCERO UN PESO.

Habilitado provisionalmente por la Aduana marítima del puerto de Monterey, en el Departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

Micheltorena. Manuel Castañares.

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Exmo Sor Gobernador

Isac Graham, natural de los Estados Unidos de Norte America y residente en este Territorio hace como catorce años, ante V. E. se presento y digo: Que tenia un establecimiento de aserraduria por maquenerias en el Rancho llamado Cyanthe, hay un poco de tierra valdio q.e contiene madera y ansioso á poner otro molina en dho terreno, segun consta el adjunto diseño. Suplica á V. E. q. me concede dho terreno = P. T.

A. V. E. Suplica humildamente q. me concede esta mi peticion, siendo necesario, por lo cual recibire merced y gracia.

Monterey 14 de Setiembre del 184

Isac Graham

Monterey Sepb. 14. de 1843.

S.r vay informar el S. Prefecto del 1.er Distrito.

Micheltorena

Monterey 14. de Sbre. de 1843.

Y Informe el Sor Juez de la Villa de

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Monterrey 28. de Sbre. de 1843.

Y

Informe el Sor. Encargado del Establecimiento de Sta. Cruz, si el terreno que se pretende está baldío con todo lo demas que crea en justicia.

Estrada

Branciforte, si el terreno que se solicita está baldío, ó si pertenece á particular ó Pueblo, con todo lo demas que crea en justicia.

Estrada

Sta. Cruz 16 de Setiembre de 1843

Informa el Juez de Branciforte que el lugar que solisita D. Ysal Garn. hes mui ynmedito a su Rancho de el. no habido ningun solisitante sobre el dicho lugar. Si pertenece a la Exmision de Sta. Cruz hes cuanto tengo que ynformar.

Rafael Castro

Sr. prefecto

El terreno q. solicita esta ocupado por el ciudadano Jose Majors segun q. lo manifiesta su titulo y vecino del Gobierno esto puedo informar sobre el particular Sta. Cruz 1º de octubre de 1843.

Jose Bolcoff

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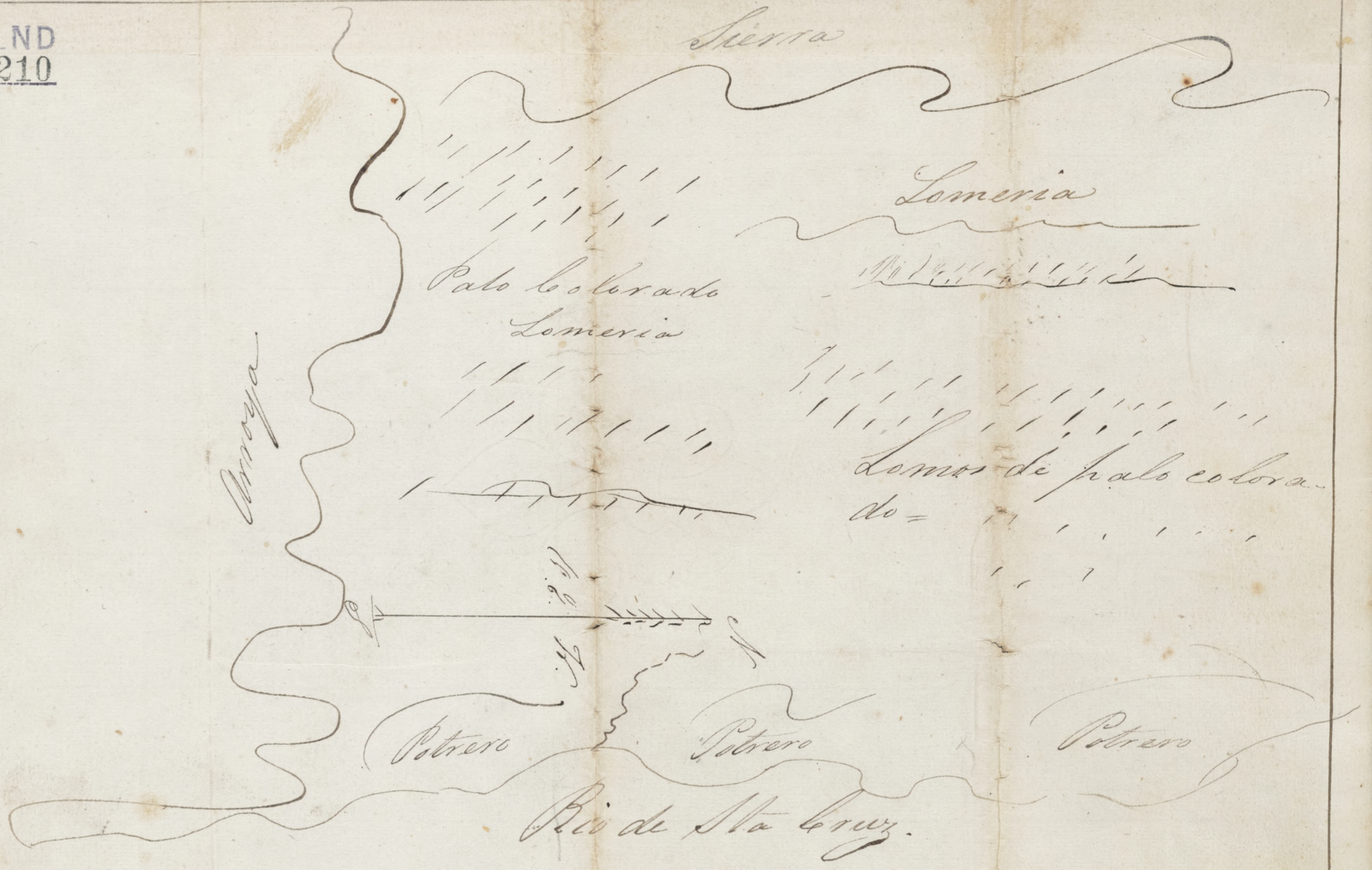

"Exhibit No. 1."
attached to dep-
-osition of R.L.
Hopkins in case
No. 342.

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No. 342. ND
26 a 54

U. S. District Court.

The United States.

— vs —

Isaac Graham, et al.

Exhibit No 1. to
deposition of R. L. Hopkins
taken and filed on
8th December. 1860.

Filed Dec: 8. 1860.
W. A. Clevers.
Clerk.

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DISTRICT COURT OF THE UNITED STATES,

Northern District of California.

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The United States
vs.
Isaac Graham
et al

San Francisco, Jany 4 1861

On this day, before me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Josè Bolcoff a witness produced on behalf of the Claimants in Case No. 342, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 210 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, to wit.: By Wm. H. Nye

PRESENT: Edward Stanly - for Claimts -
U.S. atty for US -

QUESTION 1ST, By Counsel for the Claimants

What is your name, age residence and occupation?

Ans. Josè Bolcoff - 67 years -
Pajaro - Santa Cruz Co -
Laborer -

2 Q Look at the Papers now shown

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Qu Marked Exhibit No. 1 to deposition of R. C. Hopkins taken and filed on 8. Dec. 1860 - And say if the writing on the 2d. Page to which your name is affixed, was placed there by you?

Ans I recognize the writing - it is mine - so are the signature & the rubric - the writing was made and the signature and rubric affixed at the time & subscribed in the documents - 1st. October 1843

3 What office did you hold at that time?

Ans I was Administrator of the Mission of Santa Cruz

4 Was this map attached to these papers brought before you at the same time - when you affixed your signature to this writing?

Ans. It was presented to me at the same time I signed the accompanying ~~document~~ instrument -

5 Did I. L. Majors bring before you his title papers to the Sayanta Ranch at this time, and did said Majors claim the land on the thick side as marked in this map belonging to him

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(Objected to by U.S. atty. as leading)

Ans. He did present his title papers at the same time - I am not sure and do not recollect exactly whether he claimed it at the time -

6 Did you have a trial between Majors and Graham at that time - relative to this land - and if so, what did you decide

Ans. ~~I know not~~ - I do not recollect -

7 What did you do when this matter was brought before you by Graham?

(Objected to by U.S. atty - because

the paper itself shows what Poloff did)

Ans. I ordered Major to present his title papers - I requested that the land was occupied by Majors

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8 In your deposition taken in this case, you say you ran 4 lines in giving judicial possession to Majors - were you correctly understood in this,

Ans. There were but 2 lines - the interpretation in the case was not correct - Buelna had possession before Majors - then there were 4 lines run - I gave possession also to a man named Mors.

9 Had you not frequently under the American Government given judicial possession to different persons - of other tracts of land - and was this done with as much regularity as in these cases -

(Objected to by US Atty, as the witness is not competent to construe his own judicial action)

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Ans I gave possession of many tracts of land - this was done with as much regularity as the others -

10 In giving Juridical Possession under the Mexican Government did you Survey all the lines as the U.S. Surveyors now do?

(objected to by U.S. Atty - because the ~~Witness~~ is not shown that the Witness Knows how U.S. Surveys are made - and as leading)

Ans. I did in the explaining the mountains Streams I did not -

11 Did Isaac Graham Erect a Mill upon this river called Rio de Santa Cruz - upon this Ranch - on 1st. October 1843 -

Ans I do not recollect

12 ~~13~~ Was the River called Rio de Santa Cruz on this map the same as that called San Lorenzo?

Ans The San Lorenzo and Santa Cruz

run into each other—

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Cross Ex. by U.S. Atty.

13 Look at Exhibit No 1. before referred to - and read the report upon it signed by you -

Ans. "Senor Prefect— The land petitioned for is occupied by the citizen Jose. Majors, as has been manifested to me by his title Papers and mapa. On the merit of this Govern= ment I am authorized to report respecting the par= ticular matter -

José Bolcoff

Santa Cruz
1st Oct. 1843 "

(Interpreter says the Witness read the foregoing correctly -)

14 Did you mean by that Report that the measurement which you had previously made when you gave provisional Possession to Majors, included the lands on the Arroyo in

Exhibit No. 1

Ans I do not recollect - The title papers of Mayors will show -

15 You have stated that when You gave Judicial Possession to Mayors, You measured but 2 lines - Can You recollect at what point You commenced to measure from, and if so, state it -

Ans I do not recollect
16

Can You recollect the direction of the two lines measured by You - whether North & South East & West or otherwise? -

Ans I do not recollect - It may have been from South to North and from East to West -

17 Will now read to You the Act of Juridical Possession, as it appears in the transcript, on Page 34, signed by You and by Francisco Rodriguez - Cornelio Perez - and Ramon Rodrigues, as assisting Witnesses, for the purpose of refreshing Your recollection - After hearing it read, please Answer Question No. 14

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Objected to by Mr Stanley because the original is not shown him)

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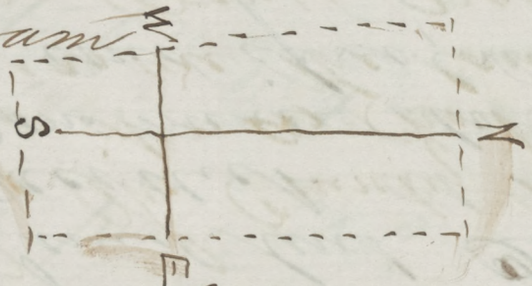
Ans. 18 I do not recollect.

In said there were but two lines - the act of Juridical possession states that the measurement was from South to North 5000 Varas, and from West to East 3000 Varas - Were those lines that you measured somewhat in the form of a Cross?

Ans 19 Yes, Perhaps

And the land included within that measurement would be shown as indicated by this diagram



Ans 20 It would be

Was not that form of measurement one in Common use under the Mexican Government when Juridical Possessions were given, of the nature of the land presented

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the extern boundaries being measured. And if so, was not that the reason why this measurement was made by measuring a line from South to North and from East to West instead of measuring the 4 Sides?

Ans. Where the Country was mountainous it was not customary to measure the land as the owners would not pay for it.

21 In the Act of Juridical Recognition it is stated "including the Potreros on the other side of the San Lorenzo River" If you recollect that expression in your Act of Juridical Recognition, can you state now or whether you meant to include such portion of the Potreros as would be found within the measurement you made?

Ans I do not recollect. The title papers will explain.

22

Deposition closed.

Jose Bolcoff

Subscribed & Sworn to before me
this 4th day of January A.D. 1860
W. A. Shurtleff
U.S. Comm.

342

U. S. Dist Court

The United States

vs

Isaac Graham
Etal

Deposition of
José Bolcoff
Taken for Claimts

Filed January 4. 1861.
W. A. Shevert
Clerk

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

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The United States
v
Isaac Graham } No: 342.

To Calhoun Benham Esq
District Atty: of the United States

Sir,

Please take notice, that on Monday next, at 11 O'clock A. M. or as soon thereafter as counsel can be heard, a motion will be made to the Court, to fix a time within which the proofs in this case shall be closed, and the cause heard.

Jany: 9th 1851.

Edw Stanly
Counsel for Claimant

Recd copy above notice,
Jno B Williams
atty in aid of U.S. atty

No: 342.

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

The United States

vs

Isaac Graham

Notice to close proofs &

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Received copy of this notice this day of

Bunnam

U. S. Atty

Jan. 9. 1866.

Filed January 14. 1866.

W. H. Chevers Clerk

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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 Monday the 14th day of January in the year of our Lord one thousand eight hundred and sixty one

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

V.

Isaac Graham et al

No. 342

And now at this day, on motion of the attorney for claimants, the U. S. atty consenting thereto, It is ordered, that the proofs in said cause be considered closed, with leave to either party to file such archive evidence as they may deem proper at or before the hearing of the cause: and it is further ordered on like application, that the 21st day of January — 1861, be set for the hearing of said cause.

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UNITED STATES DISTRICT COURT

Northern District of California.

The United States

V.

Isaac Graham, et al,

Order closing proofs & setting cause for hearing.

Filed January 14. 1861.

W. H. Chevers

Clerk.

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1857

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Expediente relative to the petition of Don Francisco Mas, for the land known by the name of Layanta.

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Señor Prefect of the 1st District.

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S. Francisco Mora, a naturalized citizen of the Mexican Republic, married to a woman of the Country, and residing at "la Natividad", appear before your worship in due form of law, and State as follows: That being the owner of a sufficient number of Cattle and horses, I am compelled, for the maintenance of my family, to seek for a tract of land, upon which to support my stock; for which reason, and knowing that Don Joaquin Buelna cannot improve the land possessed by him in the demarcation of the Villa de Branciforte, on account of his ~~tender~~ advanced age, and want of stock, I intend in a friendly way and with his consent, to denounce the said land as vacant; and the said Buelna has informed me, that, after this step had been taken, he freely consented that his land should be denounced by me as vacant, since he is unable to improve it, on account of his advanced age, and

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Since, on account of his life being greatly endangered by the incursions of barbarous Indians, he has already abandoned the place, with his family and removed his residence to the Rancho of San Pedro; that, desiring to make some compensation, to the said Joaquin Buelna, for the small improvements that he has made upon the land, I offered him an indemnity of eight hundred dollars, which he accepted, and delivered to me, before the justice of the peace of the said Villa, the title, which he had received from the Government, and the documents of possession, in order that they might be valid in my favor.

Wherefore; denouncing, as vacant, in due form, the land of Don Joaquin Buelna, known by the name of Zayanta, the map of which is hereto annexed; I most respectfully beg that your worship will take the necessary steps, in relation to this my petition, in order that the ownership of the land which I solicit, may be granted to me by the Government, and admitting this on common paper,

3,
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in default of the necessary Stamps.
& swear what is necessary &c.

San Juan de Castro. Sept. 1st 1839.

Francisco Mos.
+

Marginal decree.

San Juan de Castro. Sept. 2. 1839.

The petition is admitted and let ~~a copy thereof~~ the same be transmitted to Don Joaquin Buelna, in order that, within the term of Eight days, he may state what he considers to be just in relation thereto.

Castro.

Sñor Prefect.

~~With respect to~~ Having examined the representation of Don Francisco Mos, ~~a copy of~~ which I received from your worship, by which the petitioner denounces, as vacant, the land called "Layanta," the ownership of which I acquired from the Government by just title; I have to

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State, 1st That his advanced age does not permit of ~~his~~ my improving the said land: 2d That I have no cattle to locate thereupon; 3d That I have abandoned it, on account of the lives of my family and myself being endangered at a place uninhabited, and threatened by the Savages; 4th That the sum of eight hundred dollars, which the said Mor. has bound himself to pay me, is more than sufficient to indemnify me for my Expenses: 5th That it is true, that, of my own free and spontaneous will, I have delivered to said petitioner, the title and documents of possession, relative to my property in said land, abandoning all rights, which I had or might have, by virtue thereof.

San Juan de Castro, Sept. 6th 1839.

José Joaquin Buelna.

San Juan de Castro Sept. 7th 1839.

Let this pass to the Justice of the peace of the Capital of the District, who shall report if the party

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Don Francisco Ulos, possesses the legal qualificating required, and if he has stock to place upon the land that he solicits.

Castro

Señor Prefect.

In compliance with the preceding Superior Decree, I have the honor to report to your Worship, that the petitioner in this case, Don Francisco Ulos, is possessed of the qualificatione required by law, being a naturalised Citizen of the Republic, married to a Mexican woman, and has sufficient Stock to place upon the land he solicits.

San Juan de Castro, Sept. 8th 1839.

Juan Mig.l Anzar.

San Juan de Castro Sept. 9th 1839.

Let this pass to the Most Excellent Governor of the Department, with the Corresponding report.

Castro

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Most Excellent Señor.

The Prefecture sees no objection to granting to the petitioner, the land solicited, belonging to Don José Joaquin Buelna, as the latter states positively that he has abandoned the same, and cannot by any possibility improve it.

Jose Castro.

Monterey Sept. 21st. 1839.

In view of the petition, commencing this Expediente, the report of the prefect, and the abandonment by Don Joaquin Buelna, of the land, granted to him on the 18th of July, 1834, known by the name of Tayanta, and other matters ~~for the which appear Correct~~ necessary to be considered, and in conformity with the Laws and decrees; I hereby, by this present decree, grant to the said Francisco Mox, the said tract of Tayanta, bordering upon the Villa de Branciforte, and Mission of Santa Cruz, subject to the conditions expressed in the title: the principal one being that he shall build

himself to pay the tax, that may be imposed, if the land appertaing to the Ejidos of the villa, and that he will not interfere with the Common right of pasture and wood, and travel by Known roads, upon the said land of Zayanta—

Señor Don Manuel Jimeno Casarin, first propriétary vocal, of the most Excellent Departamental Junta has thus ordered, decreed and Signed.

Manuel Jimeno

Francisco. C. Arce.
first Spicial.

J.

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Monterey May. 22d 1840.

The above was ~~considered~~ submitted to the Most Excellent Departament-al Junta in Session of to day, and referred to the Commission on Agri-culture. Jose. Z. Fernanda.
Secy.

On the 26th it was returned by the Commission with the following Re-port. Fernanda.

Monterey June 13th 1840.

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In view of the approbation made, on the 26th of May of the present year by the most Excellent Departamental Junta, let certificate be issued to Don Francisco Mas, in confirmation of his title to the land of Tallanta, which he obtained on the 21st of September 1839.
Señor Don Juan. B. Alvarado, Governor of the Department of the Californias, has thus decreed and signed.

Alvarado.

Most. Excellent Señor.

The Commission upon Agriculture, directed to report upon the proceedings relative to the petition of Don Manuel Mas, for the land called Tayanta, by abandonment of Don Joaquin Buelna, in view of the said petition, and reports of the Prefect, Don José Castro, and of the Justice of the peace, Don Juan Anzar, and Alcalde of the Villa de Branciforte; the indemnity

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of Eight hundred dollars, paid by the first party to the Secund, and the grant of said Land, in favor of the said Don Manuel Alvarez, by the Governor ad interim, Don Manuel Jimeno Casarin, the Commission presents the following articles for your Excellency's consideration.

Art: 1st It approves of the grant of the land Tayanta, by Don Manuel Jimeno, Governor ad interim, to Don Manuel Alvarez, on account of the renunciation of the said Land by Don Joaquin Buelna.

Art. 2d Don Joaquin Buelna, cannot be permitted to petition for or obtain another track of land, since he has abandoned the land which was granted to him by the Mexican Nation, and for the reasons expressed in his petition of Sept. 6th of the last year.

Art 3d This Expediente shall pass to the Departamental Government, for the necessary action. Monterey May 25th 1840. S. Arguello.
José. Rafael. Gonzalez.

Monterey. May. 26.th 1840.

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In Session of to day, the most Excellent Departamental Junta, approved of Articles 1st and 3d, which Conclude the foregoing report, the Commission withdrawing the Second.

José. Z. Fernandez
Secretary.

Manuel Jimeno.
President.

Senor Prefect of the 1st District.

Francisco, Moz. and Juan José Crisostomo Mayors, Naturalized Citizens of the Mexican Republic, and married to women of this Department, respectfully represent to your worship, that it being for the interest of the first to give up the Land that he possesses by the name of Layanta, and which was granted to him by Superior title on the 20th of September 1839. he makes absolute donation of the Same to the Second Subscribing party, and we therefore beg that your worship will Consider and make report upon this petition

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in order that the most Excellent Governor, by virtue of his powers, may approve of the same.

Wherefore: we beg that your Worship will proceed in accordance with our request, thereby conferring a favor upon us.

San Juan de Castro, April 21st 1841.

Juan José Crisostomo Majors

For Don Francisco Mos. at his request, on account of not knowing how to write.

F. M. Bravo.

Most Excellent Señor.

Francisco Mos. and Juan José Majors; foreigners, naturalized in and married to women of the country, solicit, by the present petition, that your Excellency will approve of the donation made by the first to the second of the land called Layanta, and which was granted to the first, by Superior title, on the 20th of September, 1839.

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Stamp of the third class, two reals.
Considering the qualifications of Alvarado and his diligence in Labor, it is the opinion of this Prefecture, that, if your Excellency sees fit, the said petition may be granted.

San Juan de Castro, April 21st 1841.

José F. Castro.

Stamp of the 1st class. Six dollars.
Provisionally authorised by the Maritime Custom House of Monterey, for the years 1839 and 1840.

Alvarado. Antonio Mª Pico.

Manuel Jimeno Casarin first proprietary vocal of the most excellent Departamental Junta of the Californias, in charge of the Government of the same.

Whereas Don Francisco Alvarado has solicited for his personal benefit, and that of his family, the land formerly occupied by Don Joaquin Buelna, known by the name of Zayanta, bordering upon

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the Villa de Branciforte, and the Alcalde of Santa Cruz, the proper proceedings and investigations having been had, according to the Laws & regulations; by virtue of the powers conferred upon me in the name of the Mexican nation I have decided to grant him the above mentioned Land, declaring him the owner thereof, without prejudice to the common ~~usufructs~~ privileges of the inhabitants of the Villa de Branciforte, with respect to pastures, water, lumber, firewood &c: subject to the tax, that may be imposed, if the Land shall be found to belong to the Propios of the said Villa, and to the following conditions.

1st He may enclose the Land, without interfering with the passages, roads and "Servidumbres"; he may enjoy it freely & exclusively, devoting it to the use or cultivation that he may prefer, but within one year, he must build a house, which shall be inhabited.

2d He shall, without delay, request the proper Judge, to give him juridical possession of the Land, in ac-

cordance with this decree, defining the boundaries thereof, and placing landmarks at the terminii of the same, besides fruit or forest trees, of some utility.

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3ro. The above mentioned tract of land, is one league in length by one half league in breadth, a little more or less, according to the map, accompanying this espediente: the Judge who gives possession, shall have the land measured in conformity with the ordinance respecting boundaries, and any surplus shall be the property of the nation, for the proper uses.

4to. In case the petitioner does not observe these conditions, he shall lose his right to the land, and it may be denounced by another.

Wherefore, I order that this title, be considered firm and valid, that it be recorded in the proper books, and be delivered to the petitioner, for his protection, and the necessary purposes.

Given at Monterey, Sept 20th 1839.

Manuel Juncus.

Francisco C. Arce.
First "Oficial"

The foregoing is a correct translation
B. C. Hopkins.

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U. S. District Court

The United States

v

Isaac Graham, et al,

Exhibit U. S. No. 1

Filed Jany 21. 1841
W. A. Chevers.
clerk.

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Copy of Translation of the proceedings at the instance of J. L. Mallory, who claims a tract of land called San Agustin.

Translated by John Clark

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First Seal. Six dollars

Provisionally authorised by the Maritime Custom House of Monterey for the years 1839 & 1840.

(Signed) Alvarado. (Signed) Antonio Mª Osio.

Seal.

Authorized for the years 1841 & 1842.

(Signed) Alvarado. (Signed) Antonio Mª Osio.

Juan B. Alvarado, Constitutional Governor of the Department of the Californias —

Whereas Don Juan José Cristobal Mayor, naturalised & married to a Mexican, has petitioned, for his personal benefit & that of his family, for the tract of land, known by the name of San Agustin, bounded by the town of Branciforte; and having complied with the requirements of the Laws & regulations, in the matter, it results that Don José Bolcoff, to whom it had been granted, has abandoned it, now by virtue of the authority in me vested, I have thought proper, in the name of the Mexican nation, to grant

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to him said tract of land, declaring the same to be his property, by these letters patent, said grant being understood to be, in entire conformity with the requirements of the laws, and without injury to the common benefit of the inhabitants of said town, so far as relates to pastures, water, wood, timber &c.&c: subject to pay the rent that may be assessed, if it should result that it belongs to the Commons of that Settlement (poblacion) when its boundaries shall be fixed, reserving said grant for the approval of the Excellent Departamental Board, and to the following conditions.

1st He may fence it without obstructing the crossings, roads and servitudes: he shall enjoy it freely and exclusively, putting it to the use and culture, he may deem best, but within one year, he shall build a house, which shall be inhabited.

2d. He shall solicit the rest-

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pective judge to give him juridi-
cal possession; by virtue of this
3. patent, by whom the boundaries
shall be fixed, at the limits of
which, he shall set, beside the
land-marks, some fruit trees, or
else wild ones of some usefulness.

3ro. The land of which donation is
made is of one Sitio de ganado
mayor (one square league) a little
more or less, as shown by the plot
annexed to the "espediente" proceedings.

4to. If he contravene to these con-
ditions, he shall lose his right to
the land, and it shall be denun-
ciable by another person.

Consequently I command
that, viewing this as a title-deed,
& holding it as firm & valid, the
same be entered in the corresponding
book, and be returned to the
interested party for his own secu-
rity and further ends. Given in
Monterey on the 21st of April. 1844.

(Signed) Juan B. Alvarado.

Manuel Jimeno.

Secretary.

The Same has been recorded in this Office, in the book of Entries relative to the Adjudication of vacant Lands on folio 4.

Jimeno.

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His Excellency the Governor directs that this title-deed be recorded in the Office of the Prefect of the 1st Dis= trict.

Jimeno.

San Juan de Castro. April 23. 1841.
Let it be Entered.
José. D. Castro.

This title-deed was Entered in this Prefecture of the 1st District on folio 2. of the respective book.

Manuel Castañares.
Secretary.

To his Honor, the Justice of the Peace.

José Crisostomo Majors, of this vicinity, before your honor presents himself and says, that having obtained a grant of the land, known by the name of—

San Agustin, he now applies to your Honor for the juridical possession, agreeably to the stipulation of the Article 2ª of the title of the land issued on the 22ª of April of the present year, which he duly forwards for the desired End, wherefore he requests your Honor, to put him in the possession, he solicits, by which he shall receive justice.
Santa Cruz. July. 23ª 1841.

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Presented and admitted. Dª the town of Branciforte, July 24ª 1841. Agreeably to the preceding petition, I, the judge of the admeasurements, fixing of boundaries, & the giving of juridical possession solicited by the interested party in this espediente, shall proceed, and do appoint the 25ª instant to that effect, for which Summons shall be issued to the bordering neighbors, requiring their attendance.
Thus, I, the Justice of the Peace, did decree, command & sign, with my assistants in the act, in lieu of a Notary public, there being

none at present here. All which I attest in due form.

(Signed) José Bolcoff.

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At the Rancho of San Agustin, July 25th present month & year. In fulfilment of the foregoing, the Citizens of this Rancho met for the measurement, designation of boundaries & possession thereof, and I, ro appoint, as measurers, the Citizens Francisco Rodriguez & Cornelio Perez, who, with the previous acceptance and required oath, shall proceed to discharge that duty. Thus I, the judge, did decree, command and sign with the assistants.

José Bolcoff. Cornelio Perez +

Roman Rodriguez +

Assistant= Francisco. Rodriguez.

On the same date, at the fore-mentioned Rancho. The preceding decree was notified to the Citizen measurers, and they made oath, in the name of God and the Sign of the Cross, as is usual, without bias against any person whatsoever,

and the assisting witnesses signed this with myself

José Bolcoff. Francisco Rodriguez.
Cornelio Perez.
Asst. Roman Rodriguez.

J.

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At the same Rancho, and on the said date, at about 12 o'clock meridian, I, the judge present, commanded the appointed measurers, to proceed to measure the lands which are to be measured for Citizen Juan José Majors; the measuring was commenced by stretching the Cordel (cord) to the North, until reaching the lands on the S. having measured 10.000 varas, at which place, "Las Piedras de Molino" were designated as a land mark; and from E. to W. it could not be measured, it being a thick wood, and the river Saint Lorenzo was given as a land mark;" the plan being sketched in the same form in which the land was measured, the said measurers declaring that there was one sitio de ganado mayor, in witness whereof they, the measurers, signed this

with myself and the aforesaid witnesses.

(Signed) José Bolcoff. (Signed) Francisco Rodriguez
(Signed) Cornelio Perez.
(Signed) Asst. Roman Rodriguez. +

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At the same Rancho, and said date, citizen Juan José Crisostomo Majors accompanying the justice of the peace to said place, and the assistant witnesses, citizen Majors said, that as the Lands of the Rancho had been measured, as is evident by the preceding acts, he took the true, corporal and real possession, of the said place, it being two leagues in length, the width to be that required to complete the whole extent; because it belongs to him as expressed in the title of concession, issued on the 21st April of the present year by the Governor of the Department, by virtue of the authority in him vested. On the said date, he went upon, and walked over it & pulled up grass & trees, and threw stones to the four winds of heaven, and performed other ceremonies and acts

of possession, in lieu of that which he said he took of said land, and the said Judge Commanded that, from that time, he should be considered and recognised as the true owner & possessor thereof, for the proof & preservation of his rights, in future. the said Citizen Mayor asked a certified copy of all the foregoing proceedings, which I, the aforesaid judge, with my assisting witnesses, with whom I act, in default of a Notary Public, there being none, according to law, extended, which I certify.

(Signed) José Bolcoff.
(Signed) Francisco Rodriguez. — Intric.
(Signed.) Cornelio. Perez. +
(Signed) Roman Rodriguez. +

I, George Fisher, Secretary to the U.S. Land Commission to ascertain & settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document in case No

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208. J. L. Majors for the place called "San Agustin," now on file in this Office.

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In testimony whereof, I have hereunto signed my name, Office of the Secretary of the above named Commission, at the City of San Francisco, Cal. this 27th day of September A. D. 1854.

Geo. Pixley
Secy.

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The foregoing is admitted without further proof this January 23, 1861.

Edw J Mulyn Clk.
Jno B Williams
atty in aid U.S. atty.

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U. S. District Court

The United States

v.

Isaac Graham, et al

Exhibit U. S. No. 2

Filed Jany 21. 1851.

W. A. Chever.

Clerk.

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In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Isaac Graham et al

IN LAND CASES.

Dist. Court No. 342

Land Com. No. 260

BE IT REMEMBERED, that on this 4th day of Jany A. D. 186[illegible], at San Francisco in the District aforesaid, before me, ~~JOHN B. WILLIAMS~~ Clerk pro tem, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Joseph L. Majors a witness produced in behalf of The United States in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

PRESENT: C. Burbank U S Atty by J B. Williams
C. Stanley for Claimant

QUESTIONS IN BEHALF OF THE United States

Question 1st,

Your name age and place of residence?

Ans/

Joseph L. Majors - I am 55 years of age - I reside in Santa Cruz

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County —

Ques 2.

Are you the original Grantee of the Mexican Government to the land claimed by Isaac Graham & als in this case &.

Ans 2.

I was —

Ques 3

In your deposition given in this case on behalf of the Claimants in September 1859, you speak of the Juridical possession which was given to you by Jose Bolkoff, at which you were present, when certain measurements were made by Bolkoff — State, if you recollect, where the land mark, showing the Western end of the line running East & West, and if so, state what that land mark was and its location &.

— Ans 3 —

They commenced running the line at the Western Corner, on the West side of the San Lorenzo River, where there is a Mound — There

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was a pine tree there as a land mark—

Ques 3

Was there, or not, between this pine tree & the San Lorenzo River & to the East of that River, what is called a Potrero; and if so, was that Potrero, intended to be included within the Measurement &

Ans 4.

There was a Potrero there, the Measurement did not include the Potrero except a small portion of it—

Ques 5,

Were there any other Potreros on the West side of the San Lorenzo River, & North from the one which you have mentioned; & if so were they or any portions of them, included, or not included within that Measurement &

Ans 5,

There were some there but not inside of the Measurement—

Ques 6

What land did you sell to Mr Graham &

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Ans 6

I sold them the Ranch of Layante- & gave them a title to it -

Ques 7,

Examine "Exhibit No 1." to deposition of R. L. Hopkins in this case, & state if you have any knowledge concerning it &

Ans 7

I never saw this Exhibit before - I was sent for & brought my papers to exhibit them to Balkoff -

Cross Examination
Questions for Hermann

Ques 1,

When Juridical possession was given by Balkoff to you, did they measure in the middle of the Ranch where the riding was good, or did they ride along the outside boundaries &

Ans 1,

They went as near what they supposed to be the middle of the Ranch as they could -

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Ques 2

Is not the land between the Still House & Brothers, a sand hill &.

Ans 2

Yes Sir, there are some sand hills along there, two or three I dont know how many—

Ques 3,

Is there any timber between the Still House & Brothers for a saw mill?.

(Objected to as irrelevant, the land not having been granted for its wood but for agricultural purposes)

(Counsel for Claimants contradicts the fact set forth in above objection),

Ans 3.

There is some, but very little, there has been some, but it has all been used up, I suppose there are some pine & red wood trees standing yet—

Ques 4

In your deposition taken in this case on the 13th Sept 1859, you state, that you received

Juridical possession from Bolcoff & that he raised his hands up & said, he gave you possession to the tops of the Mountains - How much land did he put you in possession of at that time? (Objected to because the written act of possession shows the land which was actually measured).

Ans 4

A I considered that the measurements were the proper possession, but he gave me possession all around.

Ques 6

In the same deposition you were asked the question What do you consider the quantity within these lines, & your answer was, I would think it would be seven or eight leagues - Do you mean to say that you were claiming seven or eight leagues of land under the title given you by the Mexican Government?

Ans 6

No Sir, I don't. I only claimed what was measured & marked -

The possession he gave me was more than the marked lines—

Ques 6

Look at the map now shown you attached to the Exhibit No 1 hereto before referred to & state whether you remember when the same was by presented by Graham to Bolcoff in your presence?

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Ans 6

I do not remember that any map was presented by Graham to Bolcoff at all — I could read the papers at all —

Ques 7

Who came for you when you went before Bolcoff with your papers & for what purpose did you go?

Ans 7

Bolcoff sent up to me by an Indian a written paper, to bring my title down to him —

When I brought the papers to Bolcoff, he looked at the papers & said the land belonged to me —

Ques 8

Who was claiming the land then from you?

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Ans 8-

I understood afterwards that Graham wanted to get it. it was the same land that was marked out on my desire-

Ques 9,

Was Graham claiming the land on the West side of the San Lorenzo River for the redwood timber for his mill?

Ans 9

I don't know that positively, but I suppose it was so-

Ques 10

In your deposition taken on the 13th Sept'r 1859, you were asked the Question " Was not the land west of the San Lorenzo River, & up to the top of the Hills, always considered & possessed as part of the Ranch?, and you answered " Yes Sir - it was considered so"- I ask you now - Was not the land West of the San Lorenzo River, & up to the top of the Hills covered with redwood, the same land that Bolcoff decided was possessed by you?

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Ans 10—

By the possession given it was claim-
ed as such—

Quen 11.

According to the Custom of the Country
at that time, could the land asked
for by Graham, be granted to him,
after it was decided to be owned
by your title papers?
/Objected to/

Ans 11

I don't Know—

Quen 12

When you came before Bolcoff with
your papers, did you bring the map
attached to them, & by whom was
that map drawn?

Ans 12

When I came before Bolkoff I brought
the map attached to my papers
this map was drawn in pencil
by J. M. Meeks—

Quen 13

Do you know whether Graham has
or has not cut timber on the moun-
tain side west of the San Lorenzo
before the Americans took pos-
session of this Country?
/Objected to because the cutting of timber

in this County is no proof of ownership of the land)

Ans 13.

I never saw any body cutting timber there, but I understood that Graham did cut timber there —

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Quer 14

Were not you interested in the Saw Mill before you made the conveyance to Graham — & was not timber cut on that mountain side by you or Graham, or by persons employed by you?

(objected to as it is not contended by the U. S. that Graham & Major had no right to cut timber from vacant land).

Ans 14

I had nothing to do with the Mill on the San Lorenzo, the Mill on the Sayante, I had — No wood was cut for the Sayante Mill on that mountain by myself or persons employed by me that I know of —

Quer 15.

When you appeared before Boalsoff with the title papers of the "Sayante" Ranch, did you not contend, that the land that Graham asked for,

was not vacant, but belonged to you, & did you not offer to bet with Graham your part of the suit against his, that such was the fact &.

Ans 15=

I contended that it was laid down on my descrip, & that I would bet that it was so—

Quest 16.

Was this the same time that Bolcoff decided that the land that Graham petitioned for belonged to you &.

Ans 16.

This took place some little time before, probably about a week before—

At the time we offered to bet, Henry Nail went to Monterey to see whether the map filed there corresponded with my map—He saw the maps & found out that I was right—

Weeks made two maps one of which was filed at Monterey & the other given to me—

Quest 17

Are you a man of education & can you read &

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Ans 17.

I can't read - I get other people to read my letters - I can write my name, & that is all I can do -

Ques 18

Was not the land of which Boleoff put you in possession covered with chemisal & other thick undergrowth so as to make it impossible to survey the land straight - ?

Ans 18.

It could not be run straight only by cutting brush - They did not pretend to run through brush, but made allowances for crooks &c -

Direct Examination resumed.

Ques 1.

Were you not also the Grantee under the Mexican Government of the San Augustine Ranch?

(Objected to as irrelevant)

Ans 1

I was - They were both received the same day from the Governor & received possession of both the same day - The papers were

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have borne different dates –

Quer 2

Was it, or was it not your intention that the Westerly line of the San Augustine Ranch should be the Easterly line of the Sayante Ranch, & was not that Contemplated by the Measurement that was made &.

(Objected to as irrelevant)

Ans 2

It was – The Sayante papers call for the San Augustine Ranch.

Quer 3.

Why did you ask for the two Ranches, instead of getting the land in one body &

Ans 3.

I got the Sayante Ranch for other men who were not Mexican Citizens & who could not hold land & held it in my name for them – The San Augustine Ranch I got for myself –

I have bought out one of the men for whom I held the Ranch –

~~Quer 4~~

~~Do you know it~~

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Cross Examination
Resumed

Ques 1.

At the time of this Controversy before Balkoff in 1843, were not the Mid Indians very troublesome in committing depredations, stealing horses & otherwise &.

Ans 1

They were - They had stolen 103 of my horses & Graham went with me & recovered them -

Ques 2

When Juridical possession was given You of the San Augustine Ranch, were all the lines of the Juridical possession run, or was it run with as little regularity as in the Sayante case &.

Ans 2.

Both done just the same - Within three leagues of the other - They run the line of the Sayante & then ran over to the San Augustine & ran through the middle of it -

Examination closed.

J. S. Mayors

Subscribed and sworn to before me
this 4th day of January A.D. 1861.

Butler McAllister
U.S. Com.

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U. S. District Court

– No 342 –

The United States

v.

Isaac Graham et al

Deposition of Joseph L. Majors. U. S. Witness.

Filed Jan 22. 1861

W. O. Ogden

Clerk

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U. S
vs
Isaac Graham et als

No. 342, ND
"Laguna".

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An order having been made by this Court to modify and reform the survey ~~in this case~~ of this claim, the case has been again presented on a re-hearing ~~made~~.

I have carefully re-examined the grounds of the ~~original~~ former order as also the additional proofs which have been taken I have been unable to perceive any reasons for changing the views already expressed by the Court—

It is clear from the terms of the grant that the land conceded was to be one league in length by half a league in breadth a little more or less—

It is also clear from the record of the judicial delivery

of possession that a tract
5000 varas in length by 3000
varas in width was measured
off to the grantee by the officer
who gave the possession — to measured
The location of those lines is
fixed by the testimony of
all the witnesses beyond any
reasonable doubt — and their
bounds of beginning & ending are
identified — I do not know on
what principle I can disre-
gard the location of the tract
so fixed by competent authority —

It is true that after the
measurement of the lines the
Alcalde appears to have said to the grantee in a loose and in-
formal way & often that "he
"might take the land as far
"as the hills all round"
But of this the record of poss-
ession makes no mention &
a tract so bounded would
have included a quantity
of land several times greater

than that mentioned in the grant—

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The grantee himself from whom the claimants derive title states that although the Al Calde gave him possession "all around" he considered that the measurements were the proper possession, and that "he only claimed what was measured and marked"—

That It appears that Graham the claimant cut timber on the west side of the Sacramento shortly before after he obtained a conveyance from Mayors the grantee, and probably before the Americans came to the Country. And that in 1847 he and his partners erected a Saw Mill on the same Stream — But these facts prove nothing except that he availed himself of the timber growing on unoccupied lands adjacent to his

4 Rancho, or at most that he had an idea that those lands were included in his possession—

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That he did not at first think so is evident from the fact that in 1843 he petitioned the Governor to grant him the very land which he now seeks to have included in his survey—

This petition, (altho the circumstance that Graham was not a naturalized Mexican citizen would have been an insuperable obstacle to the grant) was referred by the Governor to the local authority for information— and Bidwell the Alcalde reported that the land was occupied by Majors "as had been shown to him by the title and map from the Government"—

The Alcalde in this report seems either to have forgotten the measurement he had pre

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mously made, or else to have supposed that his general ~~words~~ permission to the grantee to take a tract all around to the hills opened in some way to give him a right to the whole extent of land, several times larger than the quantity granted to him, in ~~shadow~~ deeds represented on the division.—

But we have already seen that Majors himself made no such claim, and the saw mill erected by him was on the Layante and not like those erected by Abrams in 1847 and 1848 on the San Lorenzo— concluded

But it is not now ~~claimed~~ that the whole of the tract bounded by the hills should be surveyed to the claimant To justify such a pretension the Court would be obliged to attribute to the Alcalde

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the right to put the grantee in possession of any tract no matter how much it might exceed the quantity mentioned in the grant — in short to exercise the granting power — such a claim would be wholly inadmissible — But it is sought asked that the Court, on the ground that the Klamath cut some timber on the hill sides, put up saw mills on the San Lorenzo in 1847 & 1848, and after the report of the alcalde that the land was included in Majors desire appears to have thought that his grant extended the hills, should shift the location from the boundaries of which were measured to him, and formally recorded on the act of possession to another tract on the Western side of the San Lorenzo — where the timber was much valuable

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still demains —
But independently of the insurmountable objections presented by the fact that his land was measured and assigned to him by the proper officers under the former Government such a location would be inadmissible for other reasons.
The diseno attached & exhibited by the claimants and a copy of which the grant was founded are manifestly represented two houses, a corral, and an enclosed, cultivated field. All these objects are in the South East Corner of the map and are situated on the Rio Cow where were the settlement and principal cultivations of the grantee —
But if the Rach be located as contended for by the claimants these buildings &c would not be included in

the survey - and yet that the tract should be located so as to include the improvements of the grantee would seem unquestionable -

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On the whole I think that the testimony leaves no room for doubt as to what tract was measured off to the grantee by the alcalde - and that the ~~circumstances~~ ~~the~~ ~~good~~ plural permission given to the grantee by ~~that~~ officer after making his measurement to take possession of a much larger tract can have no effect to vary the location of the tract ~~to be measured off~~ now to be surveyed to the claimants

That the latter who appears to a worthy but not highly educated man has believed since the report of Col Coffee on his petition in 1845 that he had a right to all the

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9 land west of the San Lorenzo
and on the hill sides ~~of~~
is most probable — But it is
I think evident that he sup
posed his grant included
those lands in addition to
the tract measured off to
him, and not instead of
the latter — And that he has
based this idea on ~~some~~ the
fact of the Alcalde's genral
permission already agreed to
and on the circumstance that
the whole tract is laid down
on the diseño —
But the duty of this Court
is plain — First to reduct
the quantity to that mentioned
in the grant — and 2d ly to
locate within the boundaries
of the diseño according to the
measurement made by the
Alcalde and officially re
corded & signed by him &
the assisting witnesses on the
act of possession — More is

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pecially as, in this way alone can the houses the cultivated fields the corral &c delineated on the draw be included in the Survey—

The Counsel for the claimant cited has referred the Court to Journal of the more recent decisions of the Supreme Court— Of these the only one which can be supposed to have any bearing on the case at bar is that U.S. vs Alviso 23 How. p. 318.

In that case it appeared that the claimant had in 1840 petitioned for a tract of land and obtained permission to occupy it provisionally— The authorities reported that the land was vacant and the claimant had continued ever since in occupation and possession of the tract—

The Supreme Court refused to

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dis tute so ancient a possession notwithstanding that the formal title from was issued But that decision can have no application to the case at bar — for in dependently of the fact that the evidence of an exclusive occupancy only in the circumstance that timber was cut by the claimant on hills adjacent to his land, we have the grant itself before us which specifies the extent of land granted and a formal measurement record of the judicial measurement which shows its location as fixed by the officers — There is no evidence that the possession of a affluent or large brook was sanctioned by competent authority for the statement by Bolcoff in his report that the land was included in Major's diary cannot be regarded

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Construed as giving or intended to give to Majors or his grantee a right to occupy a tract of much greater extent than that granted to him by the U.S. measured by the Alcalde.

For these reasons I think that the order for an amended survey heretofore made by this Court ought not to be set aside and that the land should be located as is therein directed.

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U. S. District Court

The United States

v.

Isaac Graham, et al

Opinion

(Survey)

Filed Febry: 13, 1861.

W. H. Chever,

Clerk,

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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 Saturday the Sixteenth day of February in the year of our Lord one thousand eight hundred and ~~fifty~~ Sixty-one.

Present:

The Honorable OGDEN HOFFMAN, ~~Jr.~~, *District Judge.*

The United States
v.
Isaac Graham, et al.

No. 342.
"Layante"

This cause came on to be heard upon exceptions to the official survey of the land confirmed, a certified copy plat whereof was filed July 9, 1859, and counsel for the respective parties having been heard, and due consideration had, it is hereby Ordered and adjudged that the said survey is erroneous, and the same is hereby annulled and set aside.

And it is further ordered that the Surveyor General of the U. S. for California cause a new survey to be made without delay in conformity with this order, and return a plat of the same for confirmation and approval.

And it is further ordered, that the said survey shall be made as follows: The length of the tract shall be found by a line run from a tree near the "molino" shown on the Exhibit attached to the deposition of José Cornelio Perez, filed Sep 14, 1859, in its northeast corner, to a point in the rincon south of Layante creek, where a marked oak tree is shown on said ~~plat~~ Exhibit, as the termination of the longitudinal line of the juridical measurement, and at a distance from the beginning

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point of about 5000 varas; and if said oak tree cannot be found, then said line is to terminate as near as may be to the point where said tree is laid down on said Exhibit, but so as to make its point of termination 5000 varas distant in a north and south direction from the point of beginning: And the width of said tract shall be measured as follows.- Beginning at a point where a pine tree is shown on said Exhibit west of the San Lorenzo river, near a monte. thence to a pine tree on the east of Layante creek, marked on said plat as the termination of the latitudinal line of said juridical measurement: And if either or both of said trees cannot be found, then the said latitudinal line is to commence as near as may be at the point indicated on said Exhibit as its point of beginning, and to run in the direction of said latitudinal line, as laid down on said Exhibit, towards the point marked thereon as its point of termination, but so that its length in an east and west direction shall be 3000 varas. The length and width of the tract having been thus ascertained, a rectangular tract shall be surveyed, of which the eastern line shall commence at the point near the Molino aforesaid. shall pass through the eastern extremity of the latitudinal line ascertained as aforesaid, and be produced until it shall be in a line with and due east from the point ascertained as the southern extremity of the longitudinal line as before determined; the southern line of said tract shall be ~~drawn~~ run thence at

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right angles so as to pass through the said southern termination of the longitudinal line until in a line with and due south from the point of beginning of the latitudinal line as before determined; And the western line of said tract shall be ~~drawn~~ run thence at right angles so as to pass through the said point of beginning of the latitudinal line, and be produced until it is in a line with and due west from the point of beginning; And the northern boundary line shall be run thence to the place of beginning. provided, that in running said lines the surveyor may depart from their precise location as herein laid down, so far as may be necessary to conform to the nearest lines of the public surveys. The tract so surveyed shall be at least of the extent of 5000 varas in length by 3000 in width.

And it is further ordered that a certified copy hereof be served upon the Surveyor General of the U. S. for Cala, by the U. S. Marshal of this District.

Ogden Hoffman
U. S. Dist Judge

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I hereby certify that I have this day made personal service of the within Order on James W Mandeville U S Surveyor General for California by delivering to him a certified Copy thereof and exhibiting to him this original

San Francisco
February 18th 1861

R L Solomon
U S Marshal

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U. S. District Court

The United States

v.

Isaac Graham, et al

Order directing new survey.

Filed February 16, 1861.

W. A. Chenert,

Clerk

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Here follows Plat - Leave blank space for it

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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 Friday the 18th day of July in the year of our Lord one thousand eight hundred and sixty-two.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.

v.

Isaac Graham, et al,

No. 342

And now at this day, on motion of J. B. Crockett, Esq., of Counsel for the Claimants, it is ordered by the Court that all parties have ten days to file exceptions to the last Survey made by the U. S. Surveyor General.

No 342.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

v.

Isaac Graham. et al,

Order allowing all parties 10 days to file exceptions to the last Survey

Filed July 18th 1862

W. H. Chevers.

Clerk.

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United States District Court:
Northern District of the State of California:

The United States
vs
Isaac Graham et al. } No. 342 Zayante

And now comes the United States by their Attorney, William T. Sharp, Esq, and Excepts to the Survey made and approved by the United States Surveyor General for the State of California, of the land claimed in this case a plat of which Survey was filed in the Clerk's Office of Said Court on the 10th day of June, 1862:

And for Exception to Said Survey the United States by their Said Attorney allege as follows:

First: That the Decree of this Court, made on the 16th day of February, A.D. 1861, directs, in relation to the Survey of the Latitudinal line of the Zayante claim as follows: to wit:

"That the width of Said Tract Shall be measured as follows; Beginning at a Point where a Pine Tree is Shown on Said Exhibit West of the San

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Lorenzo River near a Monte, thence &c&c"

"And the Western line of Said"
"Tract shall be run thence at right angles"
So as to pass through the point of beginning
of the Latitudinal line and be produced &c"
— all of which will more fully appear
by Said Decree, reference to which is
hereby made, as though Said Decree were
herein fully incorporated:

Second: That Said Survey as to
its Western boundary line, has not been
in accordance with the plain direction
of Said Decree of this Court, in this, to wit:
— That, instead of Commencing
the Latitudinal line at the point where
a Pine Tree is Shown &c, as directed by
the Decree of this Court, (which Pine
Tree, it is well known, is now Standing
at the point designated in the Exhibit
it named in the Decree aforesaid)
So that the Western boundary line
Should pass through that point according
to Said Decree, the Survey has been made
in Such a way, that the Western boundary
line does not touch that point, but
throws the whole of the Western boundary
line Seven Chains and twenty one Links

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West of the said Pine Tree and thereby wrongfully and in violation of the plain and positive directions of this Court in the Decree aforesaid, includes a Tract of Land on the East, Seven Chains and twenty one links in width claimed as public Lands by one George W. Evans, and on which is located all the improvements of said Evans, Consisting of dwelling houses, barns, outhouses &c.;

Wherefore the premises Considered the United States prays this Court to reject the said approved Survey as erroneous; and for leave to offer proofs of the wrongs complained of herein; and that an Order be made directing the said United States Surveyor General for California, to cause a new Survey to be made in accordance with the Decree of this Court of February 16, 1861, — and that he return a Plot of the same when made to this Court for its approval, and for such other and further relief as shall seem meet to this Honorable Court in the premises.

San Francisco, July 28th 1862.

Chas. H. Sharp
U. S. Atty.

United States District Court
Northern Dist. of California

The United States
vs
Isaac Graham Et. al.

No 342 Zayante

Exceptions to Survey
by U. S. Atty.

Filed July 28. 1862,
W. H. Chevers,
Clerk

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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 Monday the 26th day of October in the year of our Lord one thousand eight hundred and sixty-three

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Isaac Graham et al

No. 342

It appearing to the Court that the Surveyor General of the U.S. for Cala has returned to the Court his survey of the land confirmed, shown by the plat filed June 10. 1862, and that exceptions to said survey were filed by the U.S. July 28. 1862, Now, on application of W. H. Sharp Esq, U.S. Atty, It is Ordered that he have leave to withdraw from the files his said exceptions.

No. 342

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

V.

Isaac Graham et al

Order allowing U.S. Atty to withdraw exceptions filed July 28. 1862.

Filed Oct 21 1863.

W. H. Chevers

Clerk.

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At a Stated Term of the Dist. Court of the United States for the Northern District of California, held at the Court room in the City of San Francisco on Monday the 26th day of October, A. D. 1863.

Present:

Hon. Ogden Hoffman, Dist Judge

The United States

vs. } No 342

Isaac Graham, etal

And now at this day, it appearing to the Court that the Surveyor General of the United States for California has returned to the Court his survey and location of the land confirmed herein, made in pursuance of the order of the Court entered February 16. 1861, and which survey and location is shown by the certified copy plat filed June 10. 1862; and counsel for the respective parties being present, It is Ordered, adjudged and decreed that the survey and location of the land confirmed in this cause, the field notes of which survey were approved by E. F. Beale, Surveyor General of the United States

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for the State of California, on the 2d day of May, 1862, is a good and valid survey of the land confirmed to the said Isaac Graham et al, claimants herein, and that the said survey and location be and the same hereby is approved.

And it is further Ordered, adjudged and decreed that the certified copy plat of said survey and location, filed June 10. 1862, and marked "Approved, October 26th 1863, Ogden Hoffman, District Judge" be attached to and made part of this decree for a more full and particular description of the tract of land of the area of Twenty six hundred and fifty eight 21/100 acres, now finally confirmed to the said Isaac Graham and others.

Ogden Hoffman
Dist Judge

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U. S. Dist. Court

The United States

v.

Isaac Graham et al.

Final Decree

Filed Oct 26, 1893.
W. H. Chevrett,
Clerk.

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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 7th day of April in the year of our Lord one thousand eight hundred and sixty-four

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v.
Isaac Graham et al

No. 342
"Jayante."

This cause having come on to be heard on objections to the survey and location of the land heretofore confirmed to the said Isaac Graham et al, claimants and the Court having by its decree entered on the 16th February 1861. ordered a modification of the said survey and by its final decree entered on the 21th day of October 1863 approved said modified survey, now on motion of said Claimants by their attorney E. Stanly Esq. it is Ordered that an appeal on behalf of said Claimants from said final decree be, and the same is hereby granted, and that a certified Transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

No 342

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

v.

Isaac Graham
et al

Order granting
appeal on behalf
of Claimants

Filed April 7th 1864.

W. H. Chever
Clerk.

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

The United States
vs
Isaac Graham et als
} No: 342

United States of America
To William H. Sharp Esq-
District Attorney of the United States
Greeting.

You are hereby cited and admonished, to be and appear, at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to an order of appeal granted on the Seventh day of April A.D. 1864, in open court, by the District Judge of the District Court of the United States, for the Northern District of California, in a certain suit, wherein the United States are Plaintiffs and Isaac Graham and others are Defendants on appeal, to show cause if any there be why the decision in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco

this Seventh day of April in the year of our Lord, one thousand Eight hundred and Sixty four

Ogden Hoffman

Dist Judge

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N. D. District Court

The United States
vs
Isaac Graham et als:

Citation

Due service of a copy of within admitted this 7th day of April 1864.

Wm. T. Sharpstein
U. S. Atty.

Filed April 8, 1864.
W. H. Chevers
Clerk

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UNITED STATES OF AMERICA, ss.

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THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

Greeting:

Whereas lately, in the District Court of the United States for the Northern District of California _____ before you, _____ in a cause between The United States, appellants and Isaac Graham et al, appellees, wherein the decree of the said district court, entered on the 26th day of October A.D. 1863, is in the following words, viz;

"And now, at this day, it appearing to the court that the surveyor general of the United States for California has returned to the court his survey and location of the land confirmed herein, made in performance of the order of the court entered February 16, 1861, and which survey and location is shown by the certified copy plat filed June 10, 1862, and counsel for the respective parties being present, it is ordered, adjudged and decreed that the survey and location of the land confirmed in this cause, the field-notes of which survey were approved by E. F. Beale, surveyor General of the United States for the State of California, on the 2nd day of May 1862, is a good and valid survey of the land confirmed to the said Isaac Graham et al., claimants herein, and that the said survey and location be, and the same is hereby approved.

And it is further ordered, adjudged and decreed that the certified copy plat of said survey and location, filed June 10, 1862, and marked

"Approved October 26th, 1813, Ogden Hoffman, district judge", be attached to and made part of this decree for a more full and particular description of the tract of land of the area of twenty-six hundred and fifty-eight 21-100 acres, now finally confirmed to the said Isaac Graham and others"

as by the inspection of the transcript of the record _____ of the said District Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, _____ in such case made and provided, fully and at large appears.

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

And it is further ordered, adjudged and decreed that this cause be and the same is hereby remanded to the district court of the United States for the district of California.

J. Jan:

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

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

Witness the Honorable *Salmon P. Chase* Chief Justice of said Supreme Court, the *first* Monday of *December* in the year of our Lord one thousand eight hundred and *Sixty-six*.

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

$

~~Taxed by~~

D. W. Middleton

Clerk of the Supreme Court of the United States.

No. *47* *December* Term, 186*6*. *No. 342. N.D.*

MANDATE

SUPREME COURT UNITED STATES.

Graham et al. vs. U. States.

Filed by order of Court on motion of John A. Stanly March 4th 1867.
Geo. E. Whitney Clerk
By [illegible] D.C.

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Court No 342. Index. Land Comm'r No 260.

In United States Court for the Northern District of California

The United States vs Isaac Graham et al } Claim to "Zayanta"

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Pages of Manuscript

57. Translation of grant of the Rancho by Governor Alvarado to C. Majors, 2d April 1841

60 Translation of proceedings giving juridical possession

65 Deed dated 22 May 1852 from I. L. Majors to

67. Isaac Graham & Wm Ward.

5. Petition to Board of Land Commissioners

6 2 Dec 1853. Deposition of John Parrott.

" " " " " " J. W. Weeks & map.

14. June 1854 " " " Jose Bolcoff

18 1 Nov " " " " I. L. Majors & map.

23 6 Dec " " " " J. W. Wright

29 " " " " " C. Perez.

33 24 Feby 1855 " " " J. R. Buelna

42. 27 " " " " " J. R. Snyder

71. Opinion and decree of the Board confirming

73 the claim.

Court No 342.

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

The United States
vs
Isaac Graham et al
"Zayanta"

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Santa Clara July 28th 1862

Rec'd July 30 1862

Mr. Williams

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Dear Sir

I will come to the citty tomorow week with two or the witnesses to give testimoney in the Bennett clame Mrs Love has notifyed Mr Gould of the fact also. if it is possible I would like to hav them examend the Same day so they can come back on the Same Boat as time is money with farmers at this time. if you can take the testimoney on that day pleas drop me a line

yours Truley

H. Love

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

The United States
vs
Isaac Graham and
William Were

No: 342=

John A Stanly Attorney for the Claimants in this cause presents to the Court the Mandate of the Supreme Court of the United States affirming the Decree of this Court entered on the 26th day of October 1863 finally confirming to the said Isaac Graham and William Were the land embraced within the survey a copy of the plat of which was attached to and made a part of said decree, and asks leave to file the same - It is hereby ordered that the same be filed and that the Claimants be allowed to proceed upon said Decree of this Court entered on the 26th day of October 1863. as aforesaid. no upon final Decree herein -

March 4. 1869 -

In the District Court
Of the United States for
the District of California

=

The United States
vs
Isaac Graham
and William Ware
-
No. 342

=

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Copy - of the motion of the Appeal -
" " Writ of Error
" " final Decree

U. States
vs
Isaac Graham

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U. S. vs Barreyesa 23 How 499 500
U. S vs Aloiso — 23 How
U. S vs Rose
id 253-3
De Haro's heirs 22 How 294
Rosa Rocheo 225

U. S. District Court.
Nor. Dist. Cala.

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The United States
v.
Isaac Graham, et al.

No. 342.
"Zayante".

In this case the approved survey is excepted to by both the claimants and the United States.

The claimants, when before the Board, put in evidence the grant and act of juridical possession, but no expediente. The expediente is, however, in the archives, and discloses that the land was first granted to Joaquin Buelna by Figueroa in 1834. It was denounced by and granted to Moss in 1839, and by Mayors petitioned for and granted to him (~~next~~ day ~~of~~ on 22 April 1841. Juridical possession was given by José Bolcoff in the following July. The expediente in the archives contains no ~~or~~ diseño, and the uniform description of the land granted, throughout the whole expediente, is, "bordering on the Villa of Branciforte and the Mission of Santa Cruz". The Villa was situated on the east side of the River San Lorenzo,

and the mission on the west side of the same river, a few miles south of the land in question. The Zayante creek, from which the name of the Rancho is derived, branches from the east side if the River San Lorenzo, and runs in a northerly direction.

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No land marks are given or shown in the description, which, as noticed before, designates the land as "bordering" upon the villa ~~or~~ and Mission. The grant would thus be entirely void ~~from~~ for uncertainty, were it not saved by the act of possession. Although the grant to Majors refers to the diseño, it is evident that reference was made to it in the 3d. condition merely as a matter of form generally followed, and this is supported by the facts that there is no map found in the espedeinte, and no exterior boundaries in the description of the land which required one to be made.

It thus follows that the grantee has no claim to a tract of land one league in longitude and half a league in latitude to be segregated at his election from a larger tract, but that he is bound absolutely by the actual measurement of the judicial officer who gave possession; and that this officer was bound by the grant for quantity, and could not by a wave of his hand give

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possession of an indefinite extent, within which the grantee can now select his quantity, as he ~~seeks~~ sought to do under the first survey by Wallace, ~~and~~ which was not approved by the Surveyor General, and now seeks to do in this Court, by asking that Wallace's rejected survey be approved.

The motive which prompts the location as made by Wallace's first and rejected survey is this: The Sierra included by the west line of that survey is covered with a heavy growth of oak timber, now of great value for its bark, which is used and in constant demand by the tanners at Santa Cruz. The valley of the Zayante creek and the low hills through which that creek runs, so well calculated for grazing purposes at the time the land was granted, are now, and have been since the American possession, of little value compared with the oak bark. Hence a grant given for one purpose is now sought to be turned to account for another more valuable.

Wallace's second survey, approved by the Surveyor General, and excepted to by the claimant, is also excepted to by the United States, for the reason that it is not in conformity, though much nearer so than

the fruit, to the juridical measurement. The survey is made to include a portion of both the valley of the San Lorenzo River and that of Zayante creek. This last survey was made by the same deputy, and he evidently exhibits a partiality for his fruit.

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The plat marked Exhibit No. 1 to the deposition of Perez shows the actual measurement of the judicial officer. Perez was one of the cord-bearers, and his testimony is not impeached. He is corroborated by Ramon Rodriguez, who also was a cord-bearer. Thos. H. Wright testifies he went on the ground with Perez, and from his actual recognition of the measurement which he helped to make he has marked that measurement on exhibit No. 1.

This measurement was commenced from the pine tree to the east and near the road, and continued westerly for width to another pine tree - the westerly end of this line should properly extend (the river San Lorenzo being laid down too much to the westward) to the edge of and include the large potrero to the west of the San Lorenzo. The next measurement was for length, and commenced at a point marked

"3" and went northerly to the point at the mill marked "4". This was the only measurement made, and by this the land was designated and segregated, or not at all. The reason the land was not exteriorally measured appears to have been from the natural difficulties of the ground. The length measured was 5000 varas, and the width 3000 varas. As the grant says a league longitudinally and a half league latitudinally, more or less, it is considered that the juridical measurement, actually made at the time, is binding upon the United States; though under our system of surveys ~~it seems nothing~~ any excess would be void.

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It will be noticed by the Court that a survey made in accordance with the juridical measurement will form a tract ~~through~~ which the Zayante Creek will flow nearly through its centre, and will include the Zayante valley and the large pastrero on the west of the San Lorenzo; having the N. line of the Cañada del Rincon Rancho for its southern line (which is an agreed line); the San Agustin Rancho on the east, and will conform to the evident natural features of the country.

It is submitted that an order

directing the surveyor General to make a new survey in conformity with this view will do justice to both the grantee & the government.

L. P. W.

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U. S. District Court

The United States

v.

Isaac Graham et al

Brief for the U. S.

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

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The United States
vs
Isaac Graham
" Sayante "

No: 342.

To Calhoun Benham Esq
District Atty: of the United States

Sir,

Please take notice, that on Monday next, at 11 o'clock A. M. or as soon thereafter as counsel can be heard, a motion will be made to the Court, to fix a time within which the proofs in this case shall be closed, and the cause heard.

Jany 9th 1851.

Edw Stanly
Atty: for Claimant

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

The United States

vs

Isaac Graham

Notice to close proofs &c

for Monday 14th Jany. 1861.

"Sayward"

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U.S. Dist. Court. North. Dist. Cal.

The United States
vs
Isaac Graham et al &c

No 342
"Zayante"

The Grant of Zayante rancho to Majors on the 25 April 1841, declares "The land of which mention is made is "longitudinally One league and latitudinally One half "league more or less as explained in the diagram attached to the Espediente"

Juridical posession having been applied for, it was given to the grantee by the Alcalde Bollcoff on the 25 July 1841. In the record of those proceedings, see transcipt, it is said - "At the same rancho and on the same day, it being about 8 O'clock in the morning, I the said judge directed the aforesaid measurers to proceed to the measurement of the said ground of Citizen Majors - they commenced the measurement from South to North five thousand varas designating for land mark the water mill South from the River San Lorenzo at the foot of the mountain to the Commencement of the wood - thence from West to East three thousand varas including the flats or pasturage [potreros] on the other side of the River San Lorenzo, where they took a Pine tree for land mark, giving the land the form and dimensions shown in the diagram. The said measurers declaring the land was one square league" - The Judge and assistants then certify that Majors took "bodily and real posession of the said Sitio de ganado mayor for one league

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longitudinally 3000 varas latitudinally, as belonging to him, being the same expressed in the title of grant made on the 22nd day of April of the present year" &c. and the Judge then declared him to be the owner thereof.

When the case was before the Land Commissioners Bolcoff testified as follows - "Said possession was given by the map in pencil, marked Exhibit No 3, See paper "A". I have given juridical possession of the said Rancho three different times by the said map. Exhibit No 4 is a correct delineation of the said Rancho, equally so with the other and on a somewhat larger scale. When I gave the possession I marked a large Pine tree by a deep chop at the commencement of the line between this Rancho and the Rancho of San Augustin - Said Pine tree is situated near the centre of the largest cluster or grove of trees represented on the said map: and the aforesaid boundary line runs from thence South South West to the Mill represented on said map by a cross of pencil mark near which & back of it was an Oak marked as a corner - thence I run the line South West including the Canal Viejo and crossing the Arroyo San Lorenzo to a point in the line where a large Redwood tree was marked as a corner - thence South South East a straight line to another large Redwood tree which was marked as a corner - thence in a straight line N.N.E. to the beginning"

Wm Welch testified before the Land Commission that he drew the map annexed to the grant & designated

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See paper "A"

as "Exhibit No 3" - and said - "At the South East corner of the Rancho is the place called the Rincon where we used to saw lumber - At the North East corner is the place where we had a small grist mill. A line run from the Rincon to the place where the grist mill was would run on the East side of the river San Lorenzo and would be the Eastern face of the Rancho - On the Western side of the Rancho are the mountains and three potreros all of which are on the West side of said river"

I. Cornelio Peres testified before the Land Commissioners "The land was measured and I was one of the Chain bearers, we measured first from a point called Rincon de Monte where there was a tree marked with a cross; an Oak tree on the left hand side of the road where it enters the woods - from that point we went measuring along the road crossing the Creek below the house of W. Graham and thence all along up the Creek to where it spires from the woods where we marked a tree called Alamillo - then we went, without measuring, over to a place called the Potrero crossing the San Lorenzo River; there was a grove in which we marked a Pine tree - then we measured from there across the San Lorenzo where a road crosses it, and continued the measurement down to the Rancho of San Augustin where we marked another Pine tree - Then from there we went to measure the Rancho of San Augustin. That was all we did on the Zayante Rancho"

The claim was confirmed by the Commissioners, and in their decree it is said - "The land of which Confirmation is made is situated in the County of Santa Cruz, and is known by the name of Zayante being the same which is now held and occupied by the said claimants, and is of the value of one league in length and a half league in width a little more or less as shown by the original grant, record of juridical possession, and map filed in the case, to all of which reference is hereby made for a more particular description".

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In this case it is an acknowledged fact that the tract of land described in the grant, exhibited by the attached diseño, and of which juridical possession was given to the grantee, includes much more land than has been confirmed. Then documents & the evidence all show that the grant & possession included the Motrera on the West side of the San Lorenzo, and extended up to the crest of the hills beyond them.

See paper "A"

In such cases of excess, the instructions of the General Land Office to the Surveyor General, and his instructions to the Deputies, most explicitly provide that when the quantity confirmed is less than that contained within the limits described and shown by the title papers, the Confirmee has the right to elect the particular lands to be included in his survey, provided such selection forms a compact body, and does not interfere with the specific limits of a

See papers B.

claim of another party. This right of election is clearly allowed by the Opinion of the Supreme Court in the Fremont case, and has always governed similar cases in the other land States of the Union.

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Under instructions of the Surv. General of 13 March 1858, Wallace, as his authorized deputy, made a Survey of this claim and returned the notes thereof to the Survey'r General's Office. In explanation of the Survey thus made by him, he remarked in his field notes thereof. "I commenced the Survey on the 13th of May 1858, by first making a careful reconnoisance of the ground, and hearing testimony as to the juridical boundary, from which it appears that the boundary on the West was always considered to extend to the top of the Sierra, that distance having been given by the Officer at the time of the juridical measurement, and always understood so by the previous owner Joseph L. Majors. It is also stated in the act of juridical possession that the measurers declared the land to be one square league, but as the Concession is for a tract of land 5000 varas long by 3000 varas wide, I have located the Western line rather less than half way up the Sierra, and nearly parallel with the River San Lorenzo, taking the line of the Cañada del Rincon Rancho for the Southern boundary, and making the Northern boundary a due East & West line, keeping the land in a compact form within the prescribed quantity."

See paper "C"

This Survey is within the extended limits of the tract
agreed to in the Original grant and deeds, and that of which
juridical possession was given to the grantee, embraces
the land denied by the Comprimo, is compact in form,
and interfers with no other claims, the thereon out
a excluded portions of the Original tract now
forming upon three sides, the "public lands" shown
by the plan of Survey. The right of the Comprimo,
under the circumstances & the instructions before
referred to, to claim the confirmation of this Survey
is considered to be clear and unquestionable.

This Survey did not, however, meet the views of
the Surveyor General and he has refused to approve
it, but the reasons for such refusal are not stated,
and it now stands as the naked exercise of
assumed dispotic power.

It is proper here to remark that we have lately
been informed that Wallace's field notes of this
Survey are no longer on file in the Surveyor General's
Office. The before quoted extract of his reasons, as
given therein for making this Survey, were taken
from those notes while they were on file in the
Office, & that fact will be established by affidavit
whenever required.

On the 18th Octr 1858 Wallace was instructed by the
Surveyor General to make another Survey, which he
has done by excluding a large body of land including
of all of one & portions of two other grants on the West

See page "C"

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side of the San Lorenzo River, and taking in a like quantity on the East side of the former Survey, and this second Survey is now also before the Court as approved by the Surveyor General.

The testimony of four witnesses on the part of the United States, and of one on that of the claimant has been taken since the Plats were returned to the Court. These witnesses prove the running, by meaning on horseback, of two lines, which juridical possession was given that those lines were run in the places they were in consequence of the favorable nature of the ground & to avoid the brush on what would have been any other lines - that one of these lines was run East from a point beyond the West edge of one of the Potreros West of the San Lorenzo - that the possession as then given by the Alcalde included the Potreros & lands West of the San Lorenzo to the crest of the hills - One of these witnesses runs Graham's Saw-Mill on San Lorenzo for about a year & a half, and then squatted on one of the Potreros where there had been an improvement, and acknowledges that he has by force prevented those in the employ of Graham from entering upon the Potreros & removing cut saw logs therefrom - that he has, since the first Survey was made been employed in Cutting down the timber & peeling tan bark from the trees on the land claimed as part of the Rancho but West of the West line of that Survey - that he came up to the Surveyor General to procure the rejection of that Survey,

and that after it was so ejected & another survey made he has been in like manner destroying the timber on the land between the lines of the first and second surveys; and, also that the place he so moved to & where he now resides is within the limits of the claim as last surveyed.

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It thus appears that the opposition to the survey originates from a squatter, who after being a long time in the employ of Capt Graham, took up his residence upon an old improvement which he well knew had always been claimed as part of the rancho both under the original & judicial possession, and by the subsequent continued use & occupancy of the same by the grantee, and that his sole business has been & still is to injure the rancho as much as possible by cutting down all the timber he could & destroying the residue by peeling the trees for tan bark. The testimony now produced is corroborative of that previously taken, by showing that the original judicial possession embraced the lands between the San Lorenzo & the crest of the hills towards the West.

In reference to questions connected with the effect of judicial possession there is one point well worthy of notice. When a map is attached and referred to in a public grant, or a conveyance between individuals, the rule is well settled that the showing of such plat controls the description in the grant or deed. Under our customs such a map is, almost universally,

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band upon & represents a previous actual survey of the land, but under the laws of the former government of this Country, the Plat was a preliminary showing upon which grant was founded, the survey or equivalent judicial possession being the subsequent proceeding of a subordinate Officer, and that therefore instead of affecting the terms of the grant itself, it was only valid so far as it conformed to, & was not in opposition to the grant and the map thereto referred to. That such was the light in which such proceedings were viewed by the former government appears by the proceedings of the Superior Tribunal of Justice, as shown by Exhibit No 2. RT, in the transcript of land Claims No 1111, & of which a translation will be found in the transcript of Case No 525; and such a view is in conformity to the dictates of Common Sense.

Preliminary to remarking upon the powers of the Surv Gen. & of the Court, as to the approval of the surveys of confirmed claims, it may be well to observe that the Surveyor General has no power to compel the attendance of witnesses before him, and if they should voluntarily appear, being equally destitute of all power to administer Oaths, whatever they may state are but mere gratuitous statements, to the falsity of which no penalty can be attached, and are valueless as evidence; while, on the other hand, the Court has all its ordinary powers to procure whatever evidence it may deem necessary, in an authorized

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manner, & to punish whenever perjury is committed.
Therefore while the one tribunal is totally incompetent
to elicit the truth, the other has the same full power
to do so in relation to surveys, as it possesses with reference
to the ordinary cases which are brought before it.
If it is true that the Surveyor General has the power to
reject or confirm a survey, according to his own wishes,
and that such decision by him, is final & conclusive
upon all parties, then the existing course of proceedings
in the United States' District Court in relation
to surveys, is, in substance & reality, a mere mockery
and the District Judge becomes the mere instrument
by which all the acts of the Surveyor General are to be
clothed with the dignity of judicial appeal, however
much the Judge may differ in opinion from that
Officer, after a full investigation of the subject.
Should however, such not be the fact, and the Judge,
instead of being a mere Ex-Officio Registrar and Official
approver of all the acts of the Surveyor General, is to
examine the subject matter, and to decide according to
the principles of law and justice, upon all the light
before him in the case, say whether, or not, in his own
opinion, the survey embraces the particular tract to
which the claimant is entitled under his confirmation
and acknowledged right of selection, then we have a
tribunal to which we can confidently appeal, whenever
the Surveyor General in his action, ceases, as we believe,
to be governed, by those principles of equity & justice

which

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which are to guide an Officer in the exercise of his discretionary official duties in all cases where they have reference to individual rights, for surely official discretion is limited and controlled by the well settled rules of right & justice, and not left to be exercised in unrestrainable violation of both.

Believing therefore that the Surveyor General has not this arbitrary right of rejecting surveys legally & properly made, we shall contend for the confirmation of the first Survey made by Wallace, as being in compliance with his instructions and as embracing the lands the party had the right to elect, and at the same time object to the recognition of the second, or approved, Survey for the following reasons -

1st Because it is a Survey made in violation of the rights of the confirmee, inasmuch as it embraces lands he does not claim under his acknowledged rights of selection, and excludes those he desires.

2d That inasmuch as the Western line has been so run as to cross the San Lorenzo River several times, it is apparent that such a line is one which no reasonable person would ever consider a proper, just, or convenient boundary of a claim, and is, certainly, one which under the former government would never have been assigned to the grant.

3d That it is manifestly made in violation of the instructions under which it purports to have been executed, for in them the Deputy was told - "You "will make your Survey in accordance with the

decree

"of confirmation as above set forth, and in accordance
" with the terms of the judicial possession above set forth,
" paying particular attention to the following sentence
" to wit - "embracing the Potreros on the other side of
the River San Lorenzo": as an inspection of the plat
shows that the line has been so run as to exclude
portions of the exhibited Potreros, and the evidence
shows that at least one of them has been entirely
excluded".

See papers marked "D."

For these reasons the confirmee prays a
decree of the Honorable Court rejecting the last
mentioned survey, and confirming the one first
made, as embracing the land

Stanly & King

16 Octr 1858.

Attys for claimt.

No 342.
United States
vs
Isaac Graham et al
"Zayante"

Brief of counsel for
Defendants

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State of California
County of Township of Santa Cruz } ss.

I, Henry Love of the County of Santa Cruz, State of California do hereby certify that I have examined the North Western Corner Stake of the Survey of the Sayanta Ranch in Santa Cruz County as recently made by Walter United States Deputy Surveyor & that according to said Survey at least one of the "Potrero" on the Western side of the San Lorenzo River & between the South Western & North Western Corner Stakes of said Survey, is entirely left out, & that the Western boundary of said Potrero is at least three hundred yards from said line of Survey, & further that one other of the said Potreros on the Western side of the San Lorenzo River is in part on the West side of said Western line of Survey—
"The word in line 15 changed to three before hundred"

Sworn to & subscribed before me this 5th day of February A.D. 1859.

Wm Garber Justice of the Peace said County & Township

Henry Love

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Deposition

of

Henry Love

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State of California
County & Township of Santa Cruz } ss.

I George W Evans of the County of Santa Cruz, State of California - certify that I have examined the Western line of the Survey of the Sayanta Rancho in said County, as recently made by the United States deputy Surveyor Wallace, that the said Western line of said Survey does not include nor embrace all the "Potreros" along the Western side of the San Lorenzo River & between the South Western & North Western corner stakes of said Survey - that at least one of said "Potreros" is entirely left out of said Survey, and a great part of two others of said "Potreros" is on the West side of said Surveyed line.

And I further certify that that said Survey as made by the aforesaid United States deputy Surveyor Wallace was not made in accordance with the instructions for said Survey as contained in a letter of instructions from the United States Surveyor General & which said letter of instructions was exhibited to the undersigned by the aforesaid U.S. deputy Surveyor Wallace.

Sworn to & subscribed
before me This 3d day of Feby
A.D. 1859
John Parker Justice of
the Peace and Ex Officio
Notary Public

G. W. Evans

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State of California
County & Township of Santa Cruz } ss

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I Joseph L. Majors, of Santa Cruz County, California do hereby declare that when I obtained from the former Mexican Authorities the grant of "Zayante" Rancho in said County, I did it for the benefit of William Ware and others and held the same for them until I transferred the same — that the application and the grant were intended to embrace all the lands up to the crest of the mountains upon the west side of the San Lorenzo; that the juridical possession as given by the proper officer extended to the top or crest of the mountains, and that ever since the grant, the crest of those mountains has always been known and recognized by the neighbors and those acquainted with the Rancho as forming its western boundary.

Sworn to and subscribed before me this 23d day of Dec. A.D. 1858.
John Garden Justice of the Peace of said Township.

Joseph L. Majors

Exhibits D.

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Jany 4 1861

Bilcoff

Evidence of extent of original grant, and of the exclusion of the Potrero by Mallows land surveys

It is not admitted by the District that these affidavits can be considered by the Judge

Oct 7/59

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Transcript

Feby 11 1856 Notice of appeal from atty Genl
April 28 1856 Petition
" " " Answer
Feby 9 1857 Stipulation & Order vacty appeal
June 23/59 Order to return Survey
July 9/59 certifies copies plats from Sur. Genl
July 16/59 Exceptions to Survey
" 18 " " " "
Aug 15 " " " "
" 22 "
Sept 14 " Dep. R. Rodriguez
" " " " Thos W. Wright.
" " " " L. L. Majors
" " " " Otis Ashley
" " " " J. C. Perry
Oct. 20 " Stip ~~&~~ substitg cause
" 31 " Opinion vcg Survey
Nov 10 " Order setting aside Survey & directg a resurvey
1860
March 28 Pet: for rehearg - Grant & translation & appdx. Jas Wilson
Sept 17 Issued Mon. reb &c
~~Oct 29~~
Dec 8 " Dep L. L. Logan.
" " " R. C. Hopkins
" " " Exh. Hopkins
Jany 4 1861 Dep, José Bolcoff.
" 14 " Notice not & order to close proofs & hear cause on 21st

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1911

Jany 21 Exch. U. S. No 1 /
" " 22 Dep J. L. Majors /
Feby 13 Opinion denyg motion for rehearg survey
16 Order directg new survy to be made
1912
June 10 Plat survey from S. G.
July 18 Ord. giving parties 10 days to exch Exhibits
28 Excepts of U.S. to Survy /
1913
Oct 26 Order allowing U.S. Atty to withdraw
exceptions filed July 28/12 /
" " Final Decree approvg Off. survy

[Exhibit C]

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United States Surveyor Generals Office,
San Francisco, Cal, March 13th, 1858.

Sir. —

Whereas in the claim of Isaac Graham, et al, to the tract of land hereinafter described, the confirmation by the U.S. Board of Land Commissioners has become final, the appeal therefrom having been dismissed on the part of the United States, I have thought proper to appoint you my Deputy in this special case, for the execution of the final Survey thereof.

The said Board of Commissioners has confirmed said claim to the following effect. — "The land of which confirmation is made, is situated in the County of Santa Cruz and is known by the name of "Zayanta", being the same which is now held and occupied by the claimants, and is of the extent of one league in length, and a half league in width, a little more or less, as shown by the Original grant, record of Judicial Possession, and Map filed in the case, to which

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reference is hereby made for a more particular description."—

In the original grant the above mentioned tract of land is described as "bounding with the Village of Branciforte, and the Mission of Santa Cruz, and being in extent one league in length, and a half a league in width, a little more or less, as explained by the Map attached to the Espedients, the surplus resulting after Juridical Measurement, to revert to the Nation."—

In the record of Juridical possession referred to in the decree of confirmation, the premises are thus described.—

"The measurement was commenced, running from South to North, five thousand varas, to the Water Mill which was made a land mark; "de E" from the River of San Lorenzo, where the Monte commences, and then from W to E, three thousand varas, embracing the Potreros on the other side of the River San Lorenzo, where a Pine was made a land mark, the measurement being

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"Made in the manner as shown by the Map".—

You will make your Survey in accordance with the decree of confirmation, as above set forth, and the data therein referred to.— Herewith I enclose a copy of the Map referred to. For a more particular description of the manner in which you are to proceed in the execution of the work, I refer you to General Instructions to Deputy Surveyors, dated January, 1858, a copy of which is herewith enclosed.

In accordance with Instructions rec.d from the Dep.t at Washington, you are prohibited from receiving any compensation in any way, from the claimants of this Rancho, for Surveying the exterior boundaries thereof.

Jno Wallace,
D.S.

Resp.t &c,
J. W. Mandeville,
U.S. Surv.r Gen.l, Cal.a

Endorsed

155— Instructions to Jno Wallace, D.S. for making final Survey of Rancho "Gayanta", conf.d to Isaac Graham.

San Francisco, Cal.a Mch 13.th, 1858

3

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United States Surveyor Generals Office,
San Francisco, Calª Oct 18th, 1858.

Sir—

Whereas in the claim of Isaac Graham et al, to the tract of land hereinafter described, the confirmation by the U.S. Board of Land Commissioners has become final, the appeal therefrom having been dismissed on the part of the United States, I have thought proper to appoint you my Deputy in this special case, for the execution of the final Survey thereof.—

The said Board of Commissioners has confirmed said claim to the following effect.— "The land of which confirmation is made, is situated in the County of Santa Cruz, and is known by the name of "Zayanta", being the same which is now held and occupied by the claimants, and is of the extent of One league in length and a half league in width, a little more or less, as shown by the original Grant, Record of Juridical Possession, and Map filed in the case, to which reference is hereby made

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for a more particular description."—

In the original grant, the above mentioned tract of land is described as "bounding with the Village of Branciforte, and the Mission of Santa Cruz, and being in extent one league in length, and a half a league in width, a little more or less, as explained by the Maps attached to the Expedients, the surplus resulting after Juridical measurement to revert to the Nation."—

In the Record of Juridical possession, referred to in the decree of confirmation, the premises are thus described.—

"The measurement was commenced running from South to North, five thousand varas, to the Water Mill, which was made a land mark, "de S", from the River of San Lorenzo, where the Monte commences, and then from W to E, three thousand varas, embracing the "Potreros" on the other side of the River San Lorenzo, where a pine was made a land mark, the measurement being made in the manner as shown by

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the Map".—

You will make your Survey in accordance with the decree of confirmation, as above set forth, and in accordance with the terms of the Juridical Possession above set forth, paying particular attention to the following sentence, to wit: "embracing the Potreros on the other side of the River San Lorenzo, &c"

Herewith I enclose a copy of the Map referred to.—

For a more particular description of the manner in which you are to proceed in the execution of the work, I refer you to General Instructions to Deputy Surveyors, dated Septr 1st 1858, a copy of which is herewith enclosed.—

Resp^y &c,

(Signed) J. W. Mandeville,

U.S. Surveyor Genl, Cal.

Jno Wallace, D.S.

Endorsed, 155.— Instructions to Jno Wallace, D.S. For making Final Survey of Rancho "Zayante" confd to Isaac Graham et al

San Francisco, Cal. Oct 18th, 1858.

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

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I, J. W. MANDEVILLE, *Surveyor General of the United States for the State of California, by virtue of the power vested in me by law,* **Do Hereby Certify**, *that the* Six *preceding, and hereunto annexed pages,* numbered from one to, Six inclusive, exhibit a true, full, and correct copy, of Instructions issued to John Wallace Dep. Surveyor for making final survey of Rancho "Tayanta" confd to Isaac Graham et al and dated March 13th and Oct 18th 1858 respectively

EXAMINED AND FOUND CORRECT.
E. Conway
Chief Clerk.

In Testimony Whereof, *I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this* ~~thirteenth~~ *day of* July *1859*

J. W. Mandeville U. S. Surveyor General, for California.

Exhibit "C"

Instructions of the
13 March & 18 Oct 1858
to
John Wallace
to make survey of
"Sayanto"

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U.S. District Court, Northern Distt of Cal.

The United States
vs.
Isaac Graham et al } No 342.
"Jayante"

We were in hopes that our previous Brief would be all that we should have to submit in relation to this case, but the Brief of the Acting District Attorney is of such an unexpected character, that some notice of it must be taken in justice to our Clients.

As to the "Expediente" referred to as being in the Archives, this is the first time that we have heard of it, (not being the Original Counsel in the Case,) and as it was never brought before the Land Commrs or the Court, either by the United States, or the claimants, we might object to it as not now being evidence before the Court, but from the recital of it's showing as given by the Distt Atto, it is apparent that it contains no facts not stated in the record, for in relation to the several grants which had been made of this Rancho, Bolcoff after stating that he had three times given juridical possession of the rancho according to the map he then identified, says- "I first gave possession to Joaquin Buelna, and the second to Francisco Mos, and the latter subsequently surrendered his interest in favor of Mesnis, and I gave the possession to the three in succession"

Why the Atto for the U.S. should, in this instance, consider

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the reference in the 3d Article of the grant to the plat as showing the lands intended to be granted, to be more a mere "matter of form", than in other cases, cannot be imagined, the more especially as, in the present instance, the importance of this reference as a matter of reality & necessity, is in fact subsequently admitted, when he says that in the other papers "there are no extensive boundaries in the description of the lands". If the papers and title had contained an exact and precise description of all the boundaries of the tract granted, then there might be some pree in saying that such a reference in the grant to a map showing those limits, was a mere matter of form, but when, as in this case, the map is essential to a showing of the lands intended to be granted by the specific name, then the reference appears to us to be ~~[illegible]~~ more one of substance than of mere form.

That the map in the record is the one referred to in the grant as exhibiting the lands, is, we think, most fully proved by the evidence of the Alcalde Bollcoff, Marks, and others, and the proof is equally positive that the juridical possession was given according to that map.

In relation to the lines referred to by the Dist Atto, we remark that the evidence is conclusive, (and it is admitted by the Dist Atty) that those lines were not used as the boundaries of the rancho, but these points selected in consequence of the more favorable nature of the ground for horseback measurement - that they show that it was intended thereby to embrace the whole of the Southern Potrero West of the

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San Lorenzo, and that instead of forming two of the boundaries, they are, necessarily, both within the tract intended, as they cross each other; and that while they do not contradict the statement of the other proceedings then had, the record of those proceedings, the subsequent testimony of Bolcoff and other witnesses, as well as those now brought forward by the United States, show that at that time the juridical possession was understood by all parties to extend to & include the pastures and lands West of the San Lorenzo.

The attempt to attach ridicule to the Alcalde's wave of the hand would be effective if we were considering acts of possession under our laws, but it is something else when we view it as part of the established & recognized course of proceedings under the laws & customs of the Government under which those proceedings were had, and certainly is no one deserving such kind of comment than the present attempt to make the horseback traverse of lines crossing each other & within the limits of the tract, and whose position it is acknowledged were granted solely by the nature of the ground, to be the extreme limits of the Governor's grant.

In reference to this attempt to make the lines control the title given by the grant, we will only remark that in respect to juridical possession, we believe that such a proceeding, being the subsequent act of a subordinate Officer, is valid only so far as it may be in conformity to the grant itself, and no further, and that none of his proceedings could, legally, either restrict or enlarge the operation of the grant itself - Otherwise the Alcalde

becomes, by giving juridical possession, the granting power, and not the Governor.

The U.S. Attorney next assumes the supreme prerogative of knowing what are the hidden motives of human actions, for he says — "The motive which prompts the location "as made by Wallace's first and rejected survey is this. "The Sierra included by the West line of that survey is "covered with a heavy growth of Oak timber, now of "great value for its bark which is used and in constant "demand by the tanners of Santa Cruz. The valley of "the Zayante Creek, and the low hills through which "that hill runs, so well calculated for grazing purposes "at the time the land was granted, are now, and have "been since the American possession, of little value "compared with the Oak bark. Hence a grant given "for one purpose is now sought to be turned to account "for another more valuable."

Here is a bold and unmistakable declaration upon the part of the U.S. Attorney, that the application now made to the Court in behalf of the Confirmee, is in truth and in fact, an attempt to commit, with the sanction of the Court, a barefaced fraud. A fraud of such a description as not only involves the character of the Confirmee, but of his counsel, and one which, if true, would well deserve the censure of the Court.

Let us examine each branch of these assertions.

First — We are told that the Sierra is covered with a "heavy growth of Oak timber" — that this timber is

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"of great value for its bark", and that that bark is "used and in constant demand by the Tanners of Santa Cruz". Has one these circumstances the truth of which we freely and fully acknowledge; and to them we will add a fourth which will hardly be denied by any one knowing all the facts; and that is, that if it had not been for this "Oak timber", this bark "of great value", and this use and constant demand for it by these "Tanners of Santa Cruz", there would have been no opposition to, or difficulty in procuring the confirmation of the first survey made by Wallace. The money that the squatters have acquired by cutting down this "timber" and peeling this "bark", so readily disposed of to these "Tanners of Santa Cruz", is the main spring which has set in motion and sustained the opposition to that survey. Had the side of that Sierra been as bleak, barren, and worthless as the "low hills" at the Creek to which the District Attorney now wants this grant to be confined, then the survey would have been unobjectionable, and we should never have had to meet this opposition of squatters and tanners. It is the value of the growth on the land, not any defective title, or unaccomplished possession under it, which prompts the present objections of those who seek to continue their course of plunder.

We are, secondly, then told of the difference of value between this timbered land, and those valleys and low hills. Allow this to be true, how does it affect

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the Construction of the Confirmatory decree by the Court.
Certainly the District Attorney does not suppose that the
judgment of the Court upon land titles is regulated
by questions of dollars & cents. If however it was
intended to convey the impression that the grant
was mainly sought as a title to the "Valleys" and "low hills"
because they were, as now stated to be, "so well calculated
for grazing purposes", the District Attorney has certainly
been greatly misinformed, for while Billcoff has
testified that at the time of giving possession "all the
lands were cultivated which were proper for that
purpose", any one acquainted with the character
of the great body of lands which the Dist Atto now
designates as Valleys & low hills, and seeks to force us
to take, can well imagine why the two previous grantees
had given up the land, and why the present Confirmee
does not wish them to be included in his survey, even
without comparing them with "Oak bank" as valued
by the Santa Cruz farmers.

This is an assumption of the location as contended for by U.S.

Basing his declarations upon his supposition the
District Attorney goes on, thirdly, to declare - "Hence
a grant given for one purpose is now sought to be
turned to account for another more valuable." In
other words the charge is that we are now sustaining
an attempt upon the part of the Confirmee to make
the claim embrace lands which were never intended
to be included in the grant by the former government
and thus in effect helping him in what would be

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equivalent to the manufacturing of a new title.

To this charge, let it take what shape it will, that we emphatically deny, and, apart from our knowledge of the motives of the Confirmee, we appeal to the documentary evidence in the case in support of such denial.

The papers show that the land was first granted in 1834- then denounced and granted to another, and then under an agreement between them, surrendered, and regranted to the party under whom we claim in 1841- The application for this grant was accompanied by a map showing the land claimed- the grant was made, and as showing the lands intended that map is referred to in the grant- the map now forms a part of the record in the case, and its genuineness and identity fully proved without any attempt to impeach it- the Officer who gave juridical possession of the tract to the last, as well as to the previous grantees, proves that in doing so he was governed by that map; and he as well as the assistant witness & others all agree that the possession thus given embraced the lands West of the San Lorenzo River. The Surveyor, acting under his Oath, says that he was satisfied that that possession extended to the crest of the hills.

It is also in proof that the parties for whose benefit this last grant was made were then in actual possession, and had built houses and mills on the

land previous to the time of the grant - Beck's testifies that at the time the grant was applied for, he "and others were at work on the land, building Mills, making homes, sawing timber" &c Bell off testifies that at the time he gave the juridical possession there were - "several houses on the lands, and two mills which were part owned by Majors and partly Graham - the lands were also cultivated by Majors and Mr Graham - all the lands were cultivated that were proper for the purpose They had also Rancho houses cattle and hogs. The present claimant Isaac Graham has continued in the possession & occupation of said Rancho from that time to the present. He has since built several additional houses and Mills, among which is a flouring Mill and a saw Mill"

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It will thus be seen that from even before the date of the last grant the Rancho was used by those under whom we hold with reference to its timber, growing on the Scotts slope now in dispute, and that saw mills were then built and kept in operation by them. Nor has any one ventured to deny that from that time to the present day, it has been continually occupied and used with reference to its timber, and not on account of its agricultural or grazing advantages

It is the value of its timber & bark, which alone has given rise to the present controversy as to the precise portion of the entire tract which he is entitled to hold under the confirmation, and although for the last nineteen years Graham has lived upon, and been the locally recognized

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owner of the rancho with the crest of the mountains for his western boundary, using and cultivating the potreros West of the San Lorenzo, and cutting the timber on the side of the mountain for the use of his saw mill on that stream, he is now to be forced to abandon his long prospering, not because he has no title to the land- not because the former government during the seven years they remained in power after the date of the grant ever questioned his right to the land- not because he has ever ceased to use the timber and the land, as held under his title, since the United States acquired the Country, nor yet upon account of any interfering or superior title, for it is worthy of note that there is no interfering claim to any of this land.

None of these causes form the basis of the present opposition, but it owes its origin simply and solely to the fact that certain speculators (one of whom is now a witness on the part of the United States) influenced by the opportunity to make money which was afforded by their destroying the timber, and peeling the "bark which is used, and "in constant demand by the tanners of Santa Cruz" & who buy the article without caring how it was obtained, have raised the objections to the survey, and with the means so illegally obtained having so far succeeded in preventing the confirmees obtaining those rights we believe him to be entitled to under his confirmation, they now hope to be protected by the Court, while continuing their system of plundering.

Yours

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There are the simple facts, and it becomes the Confirmee seeks such a survey as will embrace the timbered lands of which he has been in possession as the undisputed owner for the last nineteen years, and without which his mill, and in fact his whole claim, would be comparatively valueless, and his Counsel sustain that Survey, believing it to be both legal & equitable, and are therefore opposed to these timber cutters & Oak bark peelers, we are subjected to this imputation of seeking to commit a fraud by our present application - We repel it with such feelings as is naturally produced.

The Confirmatory decree in this case has reference, as will be seen, to the lands continually held and occupied by the claimants, and the benefits of that clause of the decree, are as much claimed as of any other portion of it.

For the sake of brevity we refrain from remarking upon some other portions of the Brief, which otherwise would seem to deserve notice.

Manly & Hoge
Attys for Claimt

October 7th 1857.

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The Attorney for the U.S. disclaims any action on his part except as to the controversy between the U.S. and the claimant. He has no interest of any kind for or against the letters or for or against the claimant as such, and bases his argument entirely upon the record & not from any feeling of partizanship.

With reguard to the above note the Counsel for claimant states with pleasure that they did not intend to make any such imputation as the Att'y of the U.S. has disclaimed.

Stanley D King

No 342.

Ills. Dist Ct N. Dist.

The United States

vs

Isaac Graham et al.

Assignment by Counsel for
Claimants to Brief for
the U.S. States.

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Hon Ogden Hoffman

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In the District Court of the United States,

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ISAAC GRAHAM, ET AL. } No. 342.

"ZAYANTE."

BRIEF IN AID of THE U. S. DISTRICT ATTORNEY.

JOHN B. WILLIAMS,
Attorney for the Settlers.

Commercial Steam Presses, 525 Sansome Street, San Francisco.

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In the District Court of the United States,

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THE UNITED STATES
vs.
ISAAC GRAHAM, ET AL. } No. 342.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
ISAAC GRAHAM, ET. AL. } No. 342.

"ZAYANTE."

BRIEF IN AID OF THE U. S. DISTRICT ATTORNEY.

This case was originally brought into Court in pursuance of the jurisdiction taken under the decision by the Supreme Court in the case of the United States v. Charles Fossat, and a decree entered setting aside the official survey made and returned by the Surveyor General of the United States for California, and a new survey ordered to be made.

On application of the attorney for claimants, a rehearing was granted, and the case is now pending under the Act of June 14, 1860.

The claimants now produce an Expediente, commencing with a petition from Isaac Graham to Governor Micheltorena, dated September 14, 1843, and containing several informes elicited by the Governor's marginal decree.

Had this evidence been produced by the claimants at the former trial of the cause, it would have served to make clear what was then somewhat obscure—namely, an expression in

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the act of juridical possession relative to the potreros on the west side of the river San Lorenzo.

The decree of the Court ordering a re-survey of the land finally confirmed, directed the western line to be run so as to include the potreros on the west side of the San Lorenzo river; provided, that the tract measured should not include a greater average width than three thousand varas.

The evidence filed in the case since the petition for rehearing was granted, in connection with that previously in the record, removes all ambiguity, and makes certain what before was doubtful. A statement of the whole case will now be given.

In 1834, Governor Figueroa granted the rancho then and now known as "Zayante," to one Joaquin Buelna; and in 1839, it was denounced by Francisco Mos, and the final grant made to him in September of that year. The quantity granted was one league in length by half a league in breadth, a little more or less, to be measured in conformity with the ordinances. On the 21st April, 1841, by public act before the Prefect, Mos donated to José C. Majors the rancho which had been granted to the former in 1839; and they jointly petitioned the Governor to approve the donation made from one to the other.—*Exhibit U. S., No.* 1.

The effect of this petition was the delivery of a grant, dated 22d April, 1841, to Majors, which described the land donated as the same formerly occupied by Mos, and known by the name of Zayante, being one league longitudinally, and half a league latitudinally; and which directed the Judge who should give posssession to measure the land in conformity with the ordinances. With this grant in his possession, Majors petitioned the Justice of the Peace, José Bolcoff, on the 13th July, 1841, for juridical possession of the land granted, which was soon after given him by that officer, and a record of the act given to Majors for his protection. This record shows the measurement was made from south to north five thousand varas, and from west to east three thousand varas, and that a water mill was designated as a landmark at the northern extremity of the longitudinal line, and a pine tree on the west of the San Lorenzo river, as the western extremity of the latitudinal line.—*Trans.* 51.

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On the 22d May, 1852, Majors formally conveyed to the claimants all his interest in the rancho, which, however, according to their petition to the Board of Land Commissioners, he had held in trust for them since the date of the grant, and of which they had held undisputed possession from the time of the juridical measurement.—*Trans.* 5. This allegation in the petition is sustained by the testimony of James W. Weekes, a witness called by the claimants before the Land Commissioners, who states the land was sold to Graham in 1842, after juridical possession was given.—*Trans.* 8. Majors testifies to the same effect. He says the tract was granted in his name, though really for Graham, because the latter was not a citizen. —*Trans.* 19.

Weekes states he was present at the measurement, which commenced at the *rincon* and proceeded along the Zayante creek to the grist mill; then from the first potrero on the west side of the San Lorenzo, where were marked some small oak trees, to the *penal* above the road on the sand hills, where was marked a pine tree, and at which place Bolcoff gave Majors possession in the usual form.—*Trans.* 12.

Bolcoff was also examined by the claimants before the Board, when he stated he run four lines—a statement contradicted by the record of the act of possession. He has lately been recalled by the claimants, and on his cross-examination, in answer to questions 18 and 19, gives an approximation to the measurement as actually made; to wit, a line of five thousand varas from south to north, crossed by a line of three thousand varas from west to east.

Majors, in his examination before the Board, makes the same statement, and contradicts the testimony of Bolcoff before the Land Commissioners, as to the measurement, but says Bolcoff gave him possession of all the land within the hills around. He was recalled by the claimants in this Court, and repeated the statement he before made. Since the rehearing was granted he has been examined in behalf of the United States, and explains more fully the mode in which the measurement was made and possession given by Bolcoff. His testimony, in connection with that of José Cornelio Perez and Ramon

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Rodriguez, who were both present and assisting, fully establishes that the measurement was made from the *rincon* on the south to the *molino* on the north, and from the pine tree to the west of the San Lorenzo, to another pine tree on the east. It is clear, also, that Bolcoff, after completing the measurement, gave Majors some sort of possession to all the land about there—some seven or eight leagues it was supposed. Majors also establishes the fact that the San Agustin rancho was intended to be the eastern boundary of the Zayante, both having been granted to him at same time, and to both of which he received possession on the same day.—*Exhibit U. S. No.* 2.

He states, the reason why he received separate grants and separate possession of the two tracts, instead of one grant and one possession for the combined tract, was because he solicited the San Agustin for himself, and the Zayante for persons who were not naturalized, and therefore could not take a grant in their own names. We have already seen that the claimants, in their petition to the Board, alleged that Majors had held the land in trust for them since the date of the grant.

Majors also states that James W. Weekes made two diseños for him, one of which went with his petition to Monterey, while the other he retained. No diseño is found in the archives, but the one retained by Majors was filed with the grant and act of possession in the Land Commission, and a copy of it appears in the Transcript, at page 8, as Exhibit No. 3 to the deposition of Weekes. This diseño shows the place where the measurement of the latitudinal line was commenced—namely, at a pine tree in the potrero on the west of the San Lorenzo river, where there is a *monte.* Majors states positively that, while the *possession* given was somewhat general and indefinite, the *measurement* included only a portion of that potrero, but none north from it; and that he claimed only what was measured.

This view is conclusively supported by the espediente which has been filed in the case by the claimants since the motion for rehearing was granted; and the Court is now asked to consider this evidence, bearing in mind the claimants' connection with the land since the date of the grant.

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As we have seen, the grant was dated 22d April, 1841, and the measurement made and possession given in the same year. It appears from the espediente just mentioned, that in September, 1843, two years afterwards, Graham petitioned Governor Micheltorena, for a grant of the vacant land adjoining Zayante on the west, as shown by the accompanying diseño. This diseño shows the land which Graham considered vacant as that lying between the San Lorenzo, or Santa Cruz river, and the Sierra, and north of the *arroyita* shown on Majors' diseño, which is depicted as flowing into the San Lorenzo, a short distance from the *monte*. No stronger proof than this can be adduced to show Graham's own estimate of the land which had been measured, and which he and others had purchased.

But the claimants rely on the fact shown by the espediente, that José Bolcoff, to whom Graham's petition was finally referred, reported that the land was occupied by Majors. This is easily explained. When Majors produced his title papers at Bolcoff's request, the diseño which he had retained formed a part of those papers, and Bolcoff, evidently recollecting the general and indefinite *possession* of the land shown by it, which he had given, and overlooking the *measurement*, reported the land not vacant. The whole proceeding was careless and irregular, for as Graham was not a naturalized citizen, the first report should and would have been to that effect, had proper care been taken, or had an *informe* been required from Jimeno, who, but a short time afterwards, reported to the Governor the same defect in the application of Pedro Sainsevain, who solicited the rancho immediately south of Zayante.

It seems conclusive, from all the evidence, that not only was the measurement made as the United States contend, but that the claimants so understood it themselves; and the Court is now asked to affirm the order already entered, directing a new survey to be made, except that the western line shall be run so as to include only the potrero within which is the landmark denoting the western extremity of the latitudinal line, in order that the survey shall strictly conform to the juridical measurement.

JOHN B. WILLIAMS,
Attorney for the Settlers.

January, 1861.

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B.

Ex Rich's B.

GENERAL INSTRUCTIONS

FROM THE

U. S. SURVEYOR GENERAL

FOR CALIFORNIA,

TO THE

DEPUTY SURVEYORS ENGAGED IN SURVEYING
THE FINALLY CONFIRMED LAND
CLAIMS IN THE STATE.

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INSTRUCTIONS.

1.—In making the survey of Ranchos that have been finally confirmed, you will not only use great diligence and precaution in ascertaining the true locality of each claim, but exercise much care and discrimination in establishing the boundary lines in such a manner as to preclude any reasonable ground of complaint or opposition on the part of any person who may be interested in the same. A strict adherence to this mode of procedure, is of paramount importance, and is absolutely essential, in all cases, in order to do justice to the proper owners of the land, as well as to obviate the necessity of a re-survey, the expenses of which the Department would not be likely to sanction.

2.—If other land claims, held under legitimate titles, adjoin any claim to be surveyed, you will, before commencing operations, ascertain all the information you can respecting such claims, and notify the claimants, in writing, of the time at which any lines, in which they may be interested will be run; and if they themselves, or their agents, are present at the time of running such lines, that fact must be stated. In case any line as run by you, between any such adjoining land claims, shall be agreed upon between the respective claimants of the lands, you will obtain their written assent to such agreements; and in case any of the claimants shall make a written protest against any such lines you may establish, you will note the same, and return all such agreements, protests, and other relevant documents to this office, with your field notes.

3.—With a view to ascertain the precise locality and boundaries of

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each claim, with as much accuracy as possible, you will consult the most reliable witnesses that can be obtained, who may have resided in the vicinity, or have been more or less connected with the former Government Officials, in the disposition of lands, and who may, from personal knowledge, be intimate with the boundaries and land marks mentioned in the grant and other documents relating thereto. You will enter in your field book all information that may have a tendency to throw light upon any matter in controversy, or to show the propriety of the course you adopt in making the survey.

4.—Upon making these preliminary examinations, should you have good reason to believe that, in any instance, by the phraseology of the final decree, lands are included therein which are clearly not embraced within the limits of the claim as originally granted, you will be particular in your endeavors to ascertain the exact nature and cause of such variance, and report all the facts to this office for further instructions.

5.—When a confirmee is limited to a less quantity of land than is embraced within the boundaries of his original title papers, he may select out of any portion of such larger tract the quantity to which he is entitled; but the quantity thus selected must form a compact body of land; and if any portion of the original grant has been sold, as such, by the owners thereof, such portion is to be included within the limits of the claim thus selected, if practicable, without destroying the compactness of the survey.

6.—It is required, in locating these claims, that the boundaries shall conform, as near as the nature of each case will admit of, to the lines forming the legal subdivisions of the Public Lands; and hence, when the boundary is not the bed or bank of a river, or other water course, the margin of a swamp, or other overflowed land, or a line separating different claims, it should, if possible, be established by running to the cardinal points, so as to correspond to what otherwise would be the *general course* of such boundary line, and at the same time dispense with fractions of the legal subdivisions of sections, when the adjacent public lands are surveyed.

7.—When a River, Creek, Arroyo, or other water course which is not navigable, or declared to be so by the laws of the State, forms a

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boundary of any Rancho, you will run the line along the channel, or middle of the bed of such stream, and not on either of its banks; and when swamp or other overflowed lands constitute the boundary, you will, unless otherwise specially instructed, if upon *tide water*, establish such boundary so as to coincide with the line of ordinary high tide; but if not upon tide water, with the line where the land becomes of such a marshy or overflowed character as, in ordinary seasons, to prevent the proper cultivation of the soil, or the raising of planted crops.

8.—These surveys must be connected with the nearest established corners on the lines of the adjacent public surveys, in order to indicate the precise locality of each claim, and a post must be established at the point where any such line is intersected by the boundary line of any claim, properly marked with reference to the private grant as well as the public lands.

9.—If, upon testing such intersections with the courses and distances of the lines of the public surveys, you find that the actual connections so made differ materially from what, by calculation, they should be, there must be some error, either in your own work, or in the reported public lines, and therefore, while in the field, you must critically exquire into the cause of the discrepancy, correct the error, if in your own work, and if in the public surveys, state the precise nature and extent of it.

10.—The distances must be measured in chains and links, with a chain duly tested by the standard in this office, and the bearings taken with a transit, or other proper instrument, with due corrections for the declination of the magnetic needle, to ascertain which the necessary astronomical observations must be made.

11.—The "*corner monuments*" must be established in a permanent manner, of durable materials, and conformably, in all respects, to the instructions relative to the surveys of the public lands, with the execption that the posts are to be marked with the initial letters of the name of the Rancho, and numbered in regular succession, instead of the sectional numbers.

12.—The field book must be neatly kept, in the same manner as in the surveys of the public lands, and furnish all the requisite information

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in regard to notable objects, and other matters specified in the instructions to the U. S. Deputy Surveyors. The field notes are to be made on the prescribed kind of paper, and to be accompanied by a neat and accurately protracted map, upon a convenient scale, say 20 or 40 chains to the inch; and also by the proper tabling, showing the lines as run, with their latitudes and departures, the balancing of the work, and the computation of the area of the survey.

13.—The field notes must be verified by your own affidavit, and those of your assistants, in the same manner as is prescribed in the instructions for the surveys of the public lands.

14.—In all cases you will consider the judicial league equal to 5,000 Spanish lineal *varas*, 4,635 English yards, or 210.6818 chains, and consequently the *vara* equal to $33\frac{372}{10.0}$ English inches, and the *sitio mayor*, or square league, containing $4{,}438\frac{683}{1000}$ acres.

15.—You are prohibited from receiving payments from any party, other than the United States, for running the exterior lines of private land claims, and no survey thereof will be approved in this office where such compensation has been received.

16.—A rigid compliance with these instructions, in every particular, will be invariably expected.

ADDENDA,

EXPLANATORY OF THE FOREGOING.

In order that the foregoing may be clearly understood by the Deputy Surveyors, I have thought proper to make some remarks on the same, based upon the experience of the returns made during the past year; and you will consider these as part of the printed instructions, in in all matters herein set forth.

You will, upon making a contract for public surveys, or upon receiv-

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ing instructions for the survey of private land claims, call upon the Examiner of Surveys for the form of oath for deputies, for this fiscal year; which, when duly attested, and filed with the examiner, will be the only preliminary oath required from yourself, until your appointment is revoked. In the surveys of private land claims the oaths of your assistants, before entering on the work, and after the completion thereof will be taken before yourself. Your own final oath is required to each return.

In returns of public surveys, as each field book becomes a separate record, it will be necessary, to have the preliminary and final oaths of assistants, and your own final oath, in their respective places in *each* book. Your own oaths should be taken before a *Notary Public*, or some competent officer, *with a seal.*

Secs. 1, 2, 3, *of the printed instructions.*—You are expected to place before this office, in your field notes, immediately after the preliminary oaths, a general summary of the steps taken by you to comply with these sections of the instructions, stating fully from whom you received protests, agreements as to boundaries, &c., &c., and return all original papers so received with your field notes.

Secs. 4 *and* 5.—You will report all facts under these sections to this office, in your summary above alluded to.

Sec. 6.—You are required to comply with this section as set forth in the printed instructions.

Sec. 7.—Requires no explanation.

Sec. 8.—You cannot be too particular in obtaining correct information with regard to the lines of the public surveys, connected with your work, before leaving this office, and when in the field. A post must be established at all intersections, marked, &c., as required, and the whole matter set forth distinctly in your field notes.

Sec. 9.—You will be careful to comply with these instructions, and report in your field notes all discrepancies, or errors, found in the lines of previous surveys.

Sec. 10.—Requires no explanation.

Sec. 11.—"*Corner Monuments.*"—Corners are to be regarded as at every point where the course changes, except in meandering rivers,

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bays, sloughs, &c., &c.; you will report in your field notes the *manner* of conforming to the instructions.

Sec. 12.—You will make your returns in the prescribed forms of the office, specimens of which will be handed to you by the Examiner.

When notable land objects, marks, &c., are mentioned in your instructions as having been on the lines or boundaries of the *juridical possession*, or are noted on the *diseños*, you will be careful to note their true position in your returns, with reference to your survey, by name, topography, &c.

You are expected, *in all cases*, to return perfect *plats* of your surveys. The form used for title in this office can be seen in the office of the Examiner.

You will observe that the field notes and plat must agree as to topography, &c.; should the scale of 40 chains to the inch be too small to delineate the topography, use that of 20 chains to the inch.

In running boundaries of Ranchos, the methods of offsetting or triangulation should not be resorted to, except in cases where they become inevitably necessary. The deputy is required to establish a post at the point where he ceases to run the line by chaining; this point is to be established agreeably to the instructions given for establishing Lee. Cor. in public surveys, with the modification to mark them with the initials of the Rancho, instead of the rule of marking there prescribed. A similar post has to be established at the point where the actual boundary is taken up again by chaining. The deputy is required to enter in his field book all notes and calculations which he arrives at, the length and direction of any line not actually marked out and chained on the ground.

Any information you may require in the progress of your surveys, will be cheerfully given at all times upon application to this office.

It is my wish to have the work returned by the deputies in such a manner as to preclude the possability of a suspension thereof, either in this office or at Washington; and a strict attention to the foregoing instructions will cause the work to be forwarded with despatch, and, as a consequence, the prompt settlement of the accounts of the deputies will follow.

San Francisco, Sept. 1st, 1858.

U. S. Sur. Gen'l.

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Extracts from Instructions of the General Land Office to the Ass. Surveyor General for California.

"28th November 1855".

"4th Where the record and final decree of Confirmation fix the area claimed - thus, for example - "A Sitio de ganado mayor" or square leagues, and the figurative plan, or map delineation of the limits, gives a surface much larger than the area confirmed, the location is to be taken within that surface, in a compact form, according to the lines of the public surveys, at the election of the Confirmee as to the precise locality, but in such a manner whenever practicable, as not to interfere with any adverse claim. Where this is not practicable with the calls of the Confirmation, the law is explicit as to the proceedings for the settlement of the conflict"

5th. In any case of this class the Surveyor General should make a formal demand upon the Confirmee to give, in writing, a specific designation of the locality he may elect within the extended limits indicated by the plat and the record, and a period should be fixed within which he should be required to make his election. In default of compliance it will be the duty of the Surveyor General to exercise his sound judgment in fixing the location, having due regard to the rights of the Confirmee, and in conformity to the record."

"29th May 1857"

"By request of Counsel for California claimants, your attention is called to a particular

claps of cases represented to exist, which may be described as follows.

The claim A has been finally confirmed. The figurative plan or map in the record describes limits much larger than the restricted area fixed by the final decree, and within these extended limits another finally confirmed claim B. falls, having specific limits not exceeding the area fixed in the decree confirming the latter.

What is to be done?

The location of these two confirmations must be made where it can be done without conflicting; that is, B. should have his location according to his specific boundaries, and A. should have his location wherever he may elect within the extended limits, without conflict with B; but where each cannot get his full quantity in consequence of the area within his limits being insufficient, and conflict becomes inevitable, you will proceed to make the adjustment according to law, and pursuant to instructions of 18th Inst. This course you will perceive is in strict accordance with the general instructing for the survey of private claims of 28th November 1855."

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Exhibit B.

General Instructions in relation to Surveys of Private Land Claims.

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