CASE NO.
353
NORTHERN DISTRICT

A LOT AT MISSION DOLORES GRANT
EUSTAGIO VALENCIA et al.
CLAIMANT

LAND CASE 353 ND 43 pgs.

33 Sup-

Map-

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 53

Eustagio Valencia, et, al, CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"A lot at Mission Dolores"

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* seventh *day of* February, *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 Eustagio Valencia et al. *for* ~~the Place named~~ "A lot at Mission Dolores," *was presented, and ordered to be filed and docketed with No.* 33 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

San Francisco March 2 1853.

In Case no. 33, Eustagio and José Ramon Valencia for a lot at the Mission of Dolores, the deposition of Juan B. Alvarado, a witness in behalf of the claimants, taken before Commissioner Harry I. Thornton, with document marked N. S. S. No. 1, annexed thereto, was filed:

(Vide page 5 of this Transcript.)

San Francisco May 9 1854.

In the same case the deposition of Manuel Castro, a witness in behalf of the Claimants, taken before Commissioner Peter Sott, was filed:

(Vide page 6 of this Transcript)

San Francisco Sept. 13 1854.

In the Same case the deposition of Candelario Valencia, a witness in behalf of the Claimants, taken before Commissioner Peter Sott, was filed:

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(vide page 11 of this Transcript)

San Francisco Oct. 10 1854.

Case no. 33 was ordered to be placed at the foot of the second class Cases on the trial docket.

San Francisco Nov. 14 1854.

Case no. 33 was submitted on briefs and taken under advisement by the Board.

San Francisco July 3 1855.

In the same Case Commissioner S. B. Farwell delivered the Opinion of the Board rejecting the claim;

(vide page 19 of this Transcript)

N

And the following order was made, viz:

(vide page 21 of this Transcript)

To Petition

To the Honorable The Commissioners on Private

3 Petition

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To the Honorable The Commissioners for settling Private Land Claims in California

The petition of Eustaquio Valencia and Jose Ramon Valencia respectfully showeth:

That on the 30th of June 1845 the said Eustaquio Valencia and Jose Ramon Valencia presented a petition in writing to Idelberto Sanchez Justice of the Peace at San Francisco soliciting for themselves a grant of Two hundred varas square at the Establishment of Dolores

That said solicitation having been referred to the Prefect of the 2d District of California and the said Prefect having reported favorably thereon, the said Justice of the Peace gave possession to your petitioners on the 22d September 1845 — of a lot in the Mission of Dolores Two hundred varas square of unimproved land situated to the South of the Orchard.

That the above lot of land has been surveyed according to the annexed Map which showeth that in consequence of the late City Survey, the West side of the above two hundred vara lot has been removed sixteen feet from the East side of Dolores Street.

Your petitioners pray to be authorized to remove their fence to the line of said Dolores Street yielding to the State an equal piece of land sixteen feet wide on the East side of said Two hundred varas —

That the Original Documents are now in possession of Petitioners and ready to be offered in Evidence and that the annexed translations of the same are herewith submitted and prayed to be made a part of this petition. The same being recorded in the Office of the County Recorder of San Francisco in Book 1 of Spanish Records pages 35 & 36 May 23d 1851 at 12 Oclock and 15 Minutes p.m.

Your petitioners ask after due proofs in the premises — Your Honors would Establish and Confirm his claim

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and title to said land as above set forth

Jn Eustaqio Valencia &
Jose Ramon Valencia
W Schleicen

San Francisco Feb 11. 1852

Filed in Office 11th Feby 1852

Geo. Fisher
Secy

Recorded pages 112. 113 & 114 in Journal
Vol 1

Geo. Fisher
Secy

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Deposition of J. B Alvarado

San Francisco March 2nd 1852

On this day before Wm. H. T. Thornton came Juan B Alvarado a witness on behalf of the Claimant Eustagio & Jose Ramon Valencia, petition No. 33 and was duly sworn his Evidence being interpreted by the Secretary

Questions by Claimant

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

Answer. My name is Juan B Alvarado my age forty three and my residence is Contra Costa

Question 2nd Examine the Document now shown to you and marked Exhibit No 1 filed herewith and state whether you know the hand writing of Jose de la Cruz Sanchez, Vasko and Francisco de Haro, and if yea, state if their Signatures to the said Document are genuine?

Answer. I have Examined the Document and know the writing of the persons named, having seen them write & state that their Signatures where they occur on the said Document are genuine —

Juan B Alvarado

U. S Land Agent present

Sworn to and subscribed before me this 2nd of March 1853

Wm H T Thornton Com'r &c

Filed in Office March 2. 1853

Geo. Fisher Secy

Recorded in Ev B Vol 2 p 622

Geo. Fisher Secy

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Deposition of Manl. Castro

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United States of America }
State of California } ss

San Francisco May 9. 1854

This day personally came before Peter Lott a Commissioner for taking Testimony to be used before the Board of U.S. Land Commissioners in said State Manuel Castro a witness on behalf of the Claimants in Case No 33 on the Docket of said Board wherein Eustaquio and Ramon Valencia are the Claimants and the said Witness being duly sworn on Oath deposed in the Spanish language, which was interpreted into English by the interpreter of said Board as follows to wit

The U S Law Agent is present

Questions by Attorney for the Claimants

1st. Question. What is your name age and present residence

Answer My name is Manuel Castro my age 32 years my residence Monterey California

2d Question. Look at the paper marked Exhibit No 1 to the deposition of Juan B Alvarado in No 33 H.J.T. and filed in this Case and State whether you know the genuineness of the documents and the signatures thereto?

Answer. My own signature is genuine on the 2d page of the Document. I have seen the persons write whose names are written in the document except the petitioners tho' I believe their signatures are genuine and I now believe the Document to be genuine as also did at the time I made the grant.

3d Question. State what you know of the occupation and improvement of the Land claimed in this Case by Eustaquio and Ramon Valencia or their families?

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Answer. I know that immediately after the grant was made to them, they occupied the Land and that they now occupy it That have a wooden house and corral On it, and all the Land Enclosed, and that they cultivate it, I do not recollect when the House was built, tho I know that in the year in which the grant was made the Corral was built, and that the grantees then cultivated the Land. The grantees were young men and were on the Land and lived there in 1845.

4th Question. Look at the map filed in this case Marked Exhibit 1 to Depo of Manuel Castro, and State what you know of the localities thereon delineated?

Answer- I am well acquainted with the Land this map represents at the Mission of Dolores. The Lot Marked "Valencia 200 Varas" is the three grantees in this Case, and it is bounded on the North by Lands of the father of the Claimants and on the West by the Main road which passes in front of the Church and and the other boundaries for quantity of 200 varas square, I think the map is correct delineation of the Lands—

Cross Examined by U. S. Law Agent

1. Question. When did you first see the lands Claimed in this Case?

Answer- In 1845

2d. Question. Where did you then reside

Answer. In Monterey.

3d. Question. How long were you at the Mission Dolores in 1845

Answer. I was several days at the Mission and Yulen Bernal together in the latter part of the year October, November or December.

4th Question. What was your business here and at the Mission at that time

Answer. I came to Visit the Destitute as Prefect

5th Question. Did the object of your visit lead you to examine the limits of each lot at the Mission?

Answer. I was there on a visit, saw the lots and was told of the localities but it was no part of my object in going there.

6th Question. How many lots did you learn the boundaries of while you were there

Answer. I do not recollect –

7th. Question. When where and under what circumstances did you first know the claimants in this case?

Answer. In 1845 when I was here?

8th. Question. Was you intimately acquainted with them?

Answer. I saw them frequently, there were but few people here, and we always saluted each other when we met I was not otherwise intimate with them.

9th Question. Were you in company with them at any time at the Mission Dolores

Answer. I saw them there several times. I did not go on to the Land with them tho' we were near in sight of it.

10th Question. Did you converse with them or either of them about the Land

Answer. The claimants, which one I do not recollect told me that was the land which was granted to them and I recollect the father thanked me for granting the land to his sons – These things were not then considered of much importance as the land was not so valuable –

11th. Question. Not having gone upon the land how do you know where the boundaries were?

Answer. The father and sons (Valencia) showed me the land and told me that was the land which I granted to the sons –

Land which I planted to the Sonse

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12th Question. What Land marks did they point out?

Answer. When the showed it to me it was already Enclosed I do not recollect what kind of fence, it was wooden fence enclosing a square lot

13th. Question. Was one side of that square on the present Street called Dolores Street

Answer. I do not know the names of the Streets it was on Street which ran in front of the Church

14th. Question. Was the Corral inside of the Enclosure.

Answer. Yes it was a small Corral

15th. Question. Where did the peones live at that time?

Answer. They worked on Ranchos and about this place, they slept at their fathers most of the time

16th. Question. How long had the lot been Enclosed when you saw it

Answer. I do not know, tho I think it could not have been very long

17th Question. When did you next visit the Mission Dolores after 1845?

Answer. I was there in 1850

18th. Question. When was the land cultivated as you have stated

Answer. It was commenced in 1845 after it was Enclosed

19th. Question. To what extent was it cultivated

Answer. From what I saw, about one third of the ground seemed to be cultivated I do not know what was planted

20th Question. When you saw the land was it then recently planted or was it of older cultivation?

Answer. The appearance was of a place in active cultivation. I do not know whether the crops were matured or not

21st. Question. Do you not know that the crops were recently planted, you have before testified that they were planted after the fence was built

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Answer. I do not know the precise time when the place was planted, some of the place had been recently planted when I was there —

22d Question. Was the cultivation of which you speak of crops which had already matured when you were there or of those which were yet to be matured?

Answer. I saw it from some distance and cannot tell whether it was matured or not.

23d Question. Had the rainy season commenced at that time?

Answer. I do not recollect whether it rained or not at that time.

24th Question. Was the cultivation of which you speak made before the month of July or after that month

Answer — When I was there I saw that it was planted, and the father of the claimants said, you see the boys have planted and they are going on to plant more I understood it was cultivated after the plant was made

25th Question. Was it customary to plant after July and before the rainy season season set in?

Answer. In California the climate varies in different places, and different plants are planted at various times

Manuel Castro

Subscribed and sworn to before me on the 9th day of May A.D. 1854

Peter Lott Commissioner

Filed in Office May 9th 1854

Geo. Fisher Secy

Recorded in Ev B Vol 4 p. 370

Geo. Fisher Secy

Geo. Vesher Secy

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Deposition of C. Valencia

United States of America }
State of California } ss

San Francisco Sept. 13 1854

This day personally came before Peter Lott Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State, Leandro Valencia a witness in behalf of the Claimants Ramon and Ecestaquio Valencia in Case No. 33 on the Docket of said Board and said witness being sworn on oath deposes in Spanish, which is interpreted by the interpreter to said Board as follows.

The U. S. Law Agent is present

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Questions by Mr Schleiden Atty for Claimant

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

Answer. My name is Leandro Valencia, my age 44 years, my residence is the Mission Dolores in San Francisco County California

2d Question. Do you know the Lot marked "E & R Valencia 200 Varas" on the map now shown you which is filed in this Case, Feb. 11. 1852 if you state what you know about the same

Answer. I know the Lot described. In 1845 possession of said Lot was given to Ecestaquio and Ramon Valencia by a Justice whose name I do not remember. They built a house on it that year and enclosed the Lot and planted it with vegetables, they lived in the house, and they have continued to occupy it till the present time and they have dug a well on the Lot

3d Question. State what you know of the situation of said Lot?

Answer. It is situated at the Mission Dolores South of and adjoining my own place

4th Question. Is this the same Lot for which

the claimants in this case petitioned?
Answer. It is –

Cross Examined by U.S. Land Agent

1st Question. How long have you resided at the Mejean Dolores?
Answer. I have lived there more than 15 years.
2nd. Question. How do you know what Lot the Claimants in this case petitioned for?
Answer. I know by the location which was mentioned in their petition, and from the fact that they received possession of that Land.
3d Question. What description of location was given in the petition, state the words
Answer. The location was described in the petition as the place of "La casa de los Yuegos" the place of the house where the Ox yokes of the Mejean were kept.
4th Question. What was the size and form of the place thus called and what marked the boundaries?
Answer. There was no particular amount of Land called by that name, only the house was so called, and the land petitioned for was described as being where that house stood
5th Question. What was the shape and size of the Land petitioned for, and what marked the boundaries
Answer. It was 200 varas square. There was no marks for the boundaries described in the petition. The Frutto n Orchard of the Mejean was on the North and the fences marked the other sides The Claimants were fencing it in when they petitioned for it.
6th Question. Look at the document now shown to you marked "Doc H. J. J. No 1 annexed to the deposition of Juan B

Adjourned taken before Com. Henry J. Hewitt
Filed in this Case March 28 1900 and

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Alvarado taken before Comr Harry I Thornton and filed in this Case March 2nd 1853 and state whether that is the petition to which you refer?

Answer. Yes this is the same

7th Question. When and in whose possession did you first see this document

Answer. I do not recollect when I saw it, or whether I saw it, my sons told me they were petitioning for the Land.

8th. Question. How then did you know what the petition called for?

Answer. I knew from what the claimants told me and from no other source

Candelario Valencia

Subscribed and sworn to before me
Sept. 13. 1854

Peter Lott Comr &c

Filed in Office Sept. 13 – 1854

Geo. Fisher Secy

Recorded in Ex. B Vol 5 p 350

Geo. Fisher
Secy

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1. 15

Sor. Juez 3º de Paz.

Eustagnio y José M. Valencia naturales del Puerto de su mocubio, ante V. hasen que no teniendo otra industria mas de labradores p.r subsisio y el de nuestros pradres y familia q. es bastante crecida, imploramos con V. para que nos conceden dosientas varas cuadradas en tierras baldias del establecimiento de dolores q. es notorio que estamos obecidados y en caso de no tener facultades. Suplicamos a V. eleve esta á la parte superior recomendando nuestra conducta como V. esta satisfecho para ver si servimos este benefico. - P. A. A V. reiteramos nuestras suplicas de los q. resbiran merced y gracia, no siendo en papel sellado esta otra solicitud por no haberlo. Jurando no ser de malicia y lo necesario. Dec.

San francisco Junio 30 de 1835.

Eulagnio Valencia. José Ramon Valencia.

Juzgado segundo de Paz de San Francisco.
En virtud de no tener facultades para conceder tantas varas pasa la presente solicitud al Sor. Prefecto para que si S. tubiese a bien agraciarlos bardenará a este Juzgado.

Establecimiento de Dolores. Julio 18 de 1845.

José de la Cruz Sanchez.

Pref.o del 2º Distrito. Monterrey. Julio 28 de 1845.
Concedase les á las partes interesadas lo que piden.

Castro.

José de la Cruz Sanchez Juez Segundo de Paz del Distrito de San Fran.co en vista del superior decreto que antecede en una representacion pasada al Juzgado de este punto por los SS. Eustagio Valencia y Jo senor Valencia, por lo que fué elevada por medio de un Oficio al Sor. Prefecto del Distrito y en contestacion me ordena que sean atendidos: por ellos y su familia. Por lo que doy posesion de dosientas varas cuadradas en el paraje de la Mision de Dolores que se halla baldio al sur de la Huerta y para que les sirva de titulo de posesion, sometiendose á las leyes de la policia y á la fundacion del Pueblo se les estendio el presente hoy veinte y dos de Sbre de 1845.

Doc. No. 2. A No. 1. anexed. to the Depo. of Juan G. Alvarado. taken before Comr Henry D. Thorthurs.

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José de la C. Sanchez. ano.
Dros. 25 ps. Francisco de Haro. Vicente Miramonte.

Recorded in the Office of the County Recorder of San Francisco in Liber 1. of Spanish Records pages 35 & 36 May 23d 1851. at 12. O'clk. & 15. min p. m.

John Q McGlyn.
County Recorder.
By Frs O'Grady. Dp Rec.

Filed in Office. March. 2. 1853.

Geo. Fisher. Secy.

1 Translation of Espediente — Exhibit No 1 H. I. T. to Maps of Juan B Alvarado

To the Justice of the Peace

Eustaquio and Jose R Valencia natives of the place under your Control before you make known, that not having any other industry than that of tillers of the ground we implore you for our benefit and that of our parents and large family to grant us two hundred square varas of an occupied land in the Establishment of Dolores in which place we are now residing, and in case of your not having this authority, we pray you to submit this to a higher authority, recommending our conduct, with which you are satisfied, so that we may receive this benefit

We reiterate to you our appreciation and for which we will receive mercy and grace, not being on stamped paper this our solicitation, because there is none to be got, and we make oath it is not done in malice and also to whatever may be deemed necessary

San Francisco June 30. 1845

(Signed) Eustaquio Valencia
" Jose Ramon Valencia

2d Justice of the Peace of San Francisco not possessing the authority to grant so many varas, we refer the present petition to the Prefect, and an Official Communication so that if he be pleased to grant the request he will give the necessary orders to this Court

Establishment of Dolores July 18. 1854

Signed Jose de la Cruz Sanchez

Office of the Prefect of the 2d District
Monterey 23d July 1845

Grant unto the interested parties what they ask

Signed Castro

Jose de la Cruz Sanchez 2d Justice of the Peace of the District of San Francisco. In view of the Supreme decree which precedes in representation referred to this Office by Mejors Castañeda Valencia and Jose Ramon Valencia which was Officially remitted to the Prefect of the District, and in consequence I was ordered that they should be attended in in their behalf and that of their families. In which I give them possession of two hundred varas in the Mission of Dolores of Lands unoccupied situated to the South of the Orchard, and so that this may serve them as a title of possession, they be admitted to the Lands of Solide and those in the Jurisdiction of the Pueblo, these presents having been issued, this twenty second of September 1845.

(Signed) Jose de la Cruz Sanchez
Alcde
(Signed) Vicente Miramontes
Secretary (Signed) Franco de Haro Fees $25—

Recorded in the office of the County Recorder of San Francisco in Lib 1 of Spanish Records pages 35 & 36

May 23rd 1851 at 12 Oclk & 15 Min p m

(Signed) John A M Geynn
County Recorder By
James O Gray deputy

Compared with the Original— R. P.

Filed in Office Feby 11th 1852

Geo. Fisher
Secy

Opinion of Board by Com. Finnie

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Eustaquio & José Ramon Valencia
vs
The United States

For 200 square varas in the Mission Dolores in the County of San Francisco

In this Case the petitioners have offered in Evidence an Espediente addressed to a Justice of the peace of the Mission Under the 30th day of June 1845 asking a grant for 200 square varas of land in the aforesaid Mission in Case the Justice proposed the power to grant the same, if not asking of the Justice a favorable recommendation to the proper granting power, that the favor asked might be granted, upon which petition José de la Cruz Sanchez proposed to be a Justice of the peace declares that he does not not possess the power to grant the grant and so refers to the Prefect of the 2d District.

And in pursuance thereof he directs an Indorsement upon the petition the following

"Office of Prefect of 2d District
July 23d 1845

Grant unto the interested parties what they ask (Signed)
Castro

On the 27th day of September following the said Sanchez certifies that he put the parties in possession of the premises asked for.

The power of the Prefect to grant lands is special and Confined to the Common lands of Pueblos And in this Case the proceedings themselves show that the lands asked

In Court not be granted by a Prefect being Lands of the Mission Dolores and Constituted no part of the common Lands of any Pueblo, and it is not shown that the Justices of the Peace possessed any power to grant the grant. We do not think this a valid Claim and a decree will be entered rejecting the same —

(Rejected)

Filed in Office July 30. 1855
Geo. Fisher Secy

Recorded in a Record of Decisions Vol 3 page —
Geo. Fisher Secy

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Decree

Eustaquio & Jose Ramon Valencia
vs.
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the Claim of the said petitioners is not valid and it is therefore decreed that their application for a Confirmation be denied

R. Aug. Thompson
S. B. Farwell
Commissioners

Filed in Office July 30. 1855
Geo. Fisher Secy

And it appearing to the satisfaction of the Board that the Land hereby adjudged is situated in the Northern District of California it is hereby Ordered that two transcripts of the proceedings and decision in this case and of the papers and Evidence upon which the same are founded be made out and duly certified by the Secretary One of which transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States

Office of the Board of Commissioners,

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

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the following Twenty first — pages, numbered from 1 to 21, 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. 33, on the Docket of the said Board, wherein Eustagio Valencia, et, al, are — Claimants, against the United States, for the place known by the name of "a lot at Mission Dolores."

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. 1855, and of the Independence of the United States of America the ~~seventy~~ eighteenth.

Geo: Fisher

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U. S. DISTRICT COURT,

Southern District of California.

No. 353 353

THE UNITED STATES,

vs.

Estaguno & José Ramon Valencia

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 33

Filed, December 1855

A. Thomas

Clerk

Eustagio Valencia & José Ramon Valencia vs The United States	Case No. 33. In Docket U. S. Land Commission

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

Notice is hereby given in conformity with the Act of Congress that the above named claimants hereby Appeal from the decision of the Board of Land Commissioners rejecting this claim for a Lot of Land in the Mission Dolores

Eustagio Valencia &
José Ramon Valencia
By their attorney
C. L. B. Brooks

San Francisco 7th day of May A.D. 1856.

No. 353

In docket of the U.S.
Land Commission
of California

Eustagio Valencia
&
José Ramon Valencia
vs
The United States

Notice of Appeal

Filed May 7. 1856.
Chenes
Deputy.

Docket No. 353.

In the Northern U. S.
District Court
State of California

Eustagio Valencia & José Ramon Valencia vs The United States	Case No. 33. in the Docket of the United States Land Commission

Appeal

To the Honble Ogden Hoffman, Judge of the U. S. Northern District of the State of California,

The Petition of Eustagio Valencia and José Ramon Valencia of the Mission Dolores County of San Francisco, Citizens of California respectfully represent that under the provisions of the Act of Congress of the 3rd day of March 1851 they presented a Petition to the Commission appointed under the said Act to examine claims to lands in California praying for the Confirmation of the claim to the Lot of Land therein described of two hundred varas square situate at the Mission Dolores in the County of San Francisco under Grants made by Manuel Castro Prefect of the 2nd District dated 23rd July 1845 and by José de la Cruz Sanchez, Justice of the Peace of the District of San Francisco dated 22nd September 1845 and accompanied by evidence of their title and to which for more

full particular description they beg leave to refer

That the said Claim being designated as No 33 on the Docket of said Commission was rejected by them on the 3rd day of July 1855,

That the said land is situate within the limits of the Northern District of California and that a Transcript of the proceedings and decision of the Commissioners in the case was filed in the Office of the Clerk of the Court of that District on the 21st day of November 1855 and on the 7th day of May. 1856 notice was filed with the said Clerk that your Petitioners appealled from such decision

Your Petitioners pray for a rehearing of the case upon this Appeal that the said decision of the Commissioners may be reversed, and annulled and that the Court will make such Decree and Order as may be necessary and proper to recognise, confirm and declare valid their title and claim to the premises mentioned and referred to in in their Petition and evidence of claim

and Your Petitioners
will ever pray

Eustaquio Valencia
José Ramon Valencia
By their attorney
O. L. Brooks

No 353

In Docket in the Northern U.S. District Court of California

Eustaquio Valencia
&
José Ramon Valencia

vs

The United States

Petition for review

Filed May 7. 1856.
C Herns
Deputy.

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

The United States
ads
E. & J. R. Valencia

D.C. 353 ; L.C. 33

The United States by their attorney deny the validity of the title set out in the petition of the appellants, and pray that the decision of the U. S. Land Commission be affirmed and that the said title may be decreed invalid.

San Francisco Sep 12. 1857

Wm Blanding
U. S. Atty.

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U. S. District Court

The United States
ads
E & J. R. Valencia

Answer

Filed Feby 12. 1857.
W. H. Chevis,
Deputy.

Wm Blanding
U. S. Atty

UNITED STATES DISTRICT COURT,
Northern District of California,

The United States
vs.
E. & J. R. Valencia

San Francisco, 1862

On this day, before me Henry C. Hyde a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came R. C. Hopkins a witness produced on behalf of the United States in Case No. 353, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 33 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: P. Della Torre Esq. on the part of the United States

QUESTION BY P. Della Torre Esq.

My name is R. C. Hopkins, I am Kleper of the Spanish archives in the office of the United States Survey General for the State of California.
I produce the original papers in this case which were filed before the Land Commission. I examine the ~~ex~~ hand.

writing and signature of Manuel Castro on the second page of this Document. I think it differs somewhat from the writing of Manuel Castro of same date as found in the archives; it however has the same general character.

Question.

Are the points of difference between the writing of this document and the writing of Manuel Castro as found in the archives about that date, plainly distinct and perceptible?

Answer.

I think they are

Question

Is there any appearance of erasure, obliteration or other change in the writing of the third page of said document?

Answer

The date "1845" to the act of profession signed by Jose de la Cruz Sanchez appears to have been changed from some other date. It is impossible to tell what date was first written.

Examination closed

R. C. Hopkins,

Subscribed and sworn to before me this 25th day of July A.D. 1862

Henry A. Hyde
U.S. Comr.

No. 353
U. S. Dist Court
North Dist California
United States
vs }
E + J. R. Valencia

Deposition of
R. C. Hopkins
for U. S.

Filed July 25. 1862,
W. H. Chevers,
Clerk

United States vs Case No. 353
C. & J. P. Almeida

This Claim was rejected by the board of Land Comrs on the ground that a Prefect had no power to grant any but Pueblo land. It appears that the claimants in 1845 applied to the Justice of the Peace for a grant of the Land and he declined acting as he had not the power. They then applied to the Prefect who thereupon made the grant. Now if he did not possess the power he would not have granted the land inasmuch as the Justice of the Peace had already declined to do so, and he could have had no motive to deceive the Claimants by issuing an invalid grant, which would not avail them and would prevent them seeking a grant from a higher power. That the grant was made is prima facia evidence that the Prefect had the power to grant the land in question (see Supreme Court decisions in U.S. v. Peralta) ~~that~~ there is also nothing in the proofs to disprove his authority. But presuming even that the Prefect had not the power to make an absolute grant the Claimants have established all the equities to entitle them to a decree of final confirmation as the evidence shews that they complied in 1845 with all the necessary proceedings attending a grant under the Mexican Laws. They petition to the Prefect who had power to grant Pueblo Lands and he grants them the land in question. He does not tell them that it is not Pueblo land & that he cannot therefore grant it. They are then put in possession by the Justice of the Peace, when they inclose it

the land, occupy & cultivate it, & have continued to do so down to the present time, now nearly thirteen years. If therefore the Prefect had not the Power to make this grant originally, they having complied with the Mexican laws of Colonization & after having been put in possession by the Justice of the Peace are entitled to obtain from the ~~United~~ States Government the same consideration, which would have been bestowed upon their Claim by the Mexican Government & now, ask to receive from the U. States Government a confirmation of their grant which the Mexican Government according to its paternal wages would now grant were it still the Sovereign Power.

E. L. B. Brooks atty
for claimants

No. 353

The United States

vs.

E. & J. R. Valencia

Claimants Brief

Case No. 353.

United States
vs
J. R. Valencia

Additional Brief of Counsel of Claimants filed this 11th day August 1862 as per order of Court.

In addition to the Brief heretofore filed in this Case on the 12 February A.D. 1857, the attorney and Counsel for the Claimants now comes, and in reply to the Brief of the distinguished Counsel for the United States says, that the main objection which is urged by the attorney for the United States against this Claim is that the prefect had no right to make the grant in this Case, in reference to that allegation your Honor is referred to the decission made by your Honor in the Case of

The United States
vs
Peter Sherrebeck
No. 356. being the same Prefect to wit. Manuel Castro who made the grant in this Case

the proof furnished by R. le Coptain that the signature of Manuel Castro is not the same as that which appears in the archives of the same date amounts to absolutely nothing, because it is asking of this Court to say by virtue of a judicial decision, that the testimony of a stranger to a signature shall out way the testimony of the party who swears that his signature is genuine, —

The main question in regard to the genuineness of the papers and documents in this Case does not depend on the fact, that they are or are not recorded or found in the archives, but upon the simple fact as to whether they are or are not "genuine" the fact that they are found in the archives is but a circumstance and nothing more which among other circumstances is to be weighed and to receive is due weight but cannot of itself defeat an "honest and bona fide" Claim as this appears to be, The other points made by the United States require no notice from claimant.

require no notice from claimant.

R. A. B. Brooks atty & Counsel
for Claimants

Case –
No. 353.

United States
vs
E. & J. R. Valencia

Brief of Counsel
for claimants

C. S. Robb
Atty & Counsel
for claimants

U. S
vs } L. C. 33 D. C 353
E. & J. R. Valencia

For 200 varas square at Mission Dolores

Documents of Claimants

1 Petition by claimants to Jose de la Cruz Sanchez Juez de Paz 1845
2 Report by Sanchez that he had no power to grant the land
3 Order of Manuel Castro, as Prefect, that the Prayer of Petition be acceded
4 act of Possession

Depositions

Juan B. Alvarado to signature
Manuel Castro

Objections

1st

The claim was rejected by the L. C. because no power was shown in the Prefect to grant the land claimed

The defect has not been supplied in this Court. Neither in this, nor in any other case, has such authority been shown. Claimants seem to rely upon the argument, that the power of a public officer to perform a public act, may be inferred from its actual performance. But this doctrine, so far at least as Mexican land claims are concerned, has been thoroughly exploded by the Supreme Court of the U. S. The principle which controls their decisions is, that he who claims under a Grant by a Mexican Official, must shew that

that the law vested in such officer, the authority to make the grant.

Tested by this, now unquestionable, rule, the claim must be rejected.

2

Even were this not so, the claim would fail for insufficiency of proof

Signatures to the documents are proved by Alvarado & Castro. But this is not enough. The Supreme Court requires, that the cotemporaneousness of signatures with dates of documents, must be proven: this has not been done.

Consequently the case falls

3

The evidence of R. C. Hopkins, shows that the handwriting of Manuel Castro in the documents, is not the same as that which appears in the Archives, as of the same date.

In fact, the many, other of these cases, this claim is built upon an incomplete attempt to obtain a grant under the Mexican dynasty, and the papers have been completed in form since the American occupation. I think it most probable, that the genuine documents ended with the refusal of Sanchez to grant: the rest have been added in more recent times.

4

There is no trace of these proceedings in any of the Archives general or local. If there is, Claimant should have shown it. There is none. All the papers are produced from the custody of Claimants

For above reasons, the Claim should be rejected

Respectfully submitted
P. Della Torre
of Counsel

S.C. 33. D.C. 353.

The United States
v.
E & J.R. Valencia
for 200 varas square
at Mission Dolores

Brief of
P. Della Torre
of Counsel

Office of the Board of Commissioners,

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

San Francisco, Nov. 21st 1855

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

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 33 *on the Docket of the said Board, wherein* Estaquio & José Ramon Valencia are — *the Claimant against the United States, for the place known by the name of* "Settlement of Dolores" — *and request your receipt for the same.*

I am, Respectfully,
Your Obt Servant,

Geo. Fisher.