CASE NO.

7

NORTHERN DISTRICT

SAN JUAN BAUTISTA GRANT

AGUSTIN NARVAEZ

CLAIMANT

LAND CASE 7 ND pgs. 360

ALSO AVAILABLE ON MICROFILM

TRANSCRIPT

CASE NO. 71 ND
PAGE NO. 1

OF THE

PROCEEDINGS

IN CASE

NO. 75

Agustin Narvaez CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"San Juan Bautista".

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CASE NO. 7 ND
PAGE NO. 2

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, that on this twenty seventh day of Feruary, 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 Augustin Narvaez for the Place named "San Juan Bautista" was presented, and ordered to be filed and docketed with No. 75 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 April 27th 1852.

In Case No. 75 Augustin Narvaez for the place named San Juan Bautista, the deposition of James W. Weeks, a witness in behalf of the claimant, taken before Commissioner Henry D. Thomson, was filed;

(Vide page 12 of this Transcript.)

In the same case the deposition of Antonio Chaboya, a witness in behalf of the claimant taken before Commissioner Henry D. Thomson, was filed;

(Vide page 10 of this Transcript.)

In the same case the deposition of Henry W. Wallack, a witness in behalf of the claimant taken before Commissioner Henry D Thomson was filed; (Vide page 9 of this Transcript.)

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In the same case the deposition of Wm. C. P. Haskell, a witness in behalf of the claimant, taken before Commissioner Henry I Thornton, was filed.

(vide page 8 of this Transcript)

San Francisco May 11th 1852

In the same case the Secretary filed the Translation of document A, annexed to the deposition of P. W. Haskell, filed January 27, - which translation is as follows:

(vide page 34 of this Transcript)

San Francisco March 7th 1853.

In the same case the counsel for Henry Clarkson and Henry Vansandice, presented a Supplemental Petition, which was ordered to be recorded and filed among the papers in the case.

(vide page 6 of this Transcript)

San Francisco May 27 1853

Case No. 75 (Augustin Narvaez) Called. The counsel for the claimant read the Evidence, Argued, submitted and taken under advisement.

San Francisco Jan. 15th 1853.

In the same case Commissioner Hoffman delivered the opinion of the Board rejecting the claim.

(vide page 36 of this Transcript)

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Petetion

State of California
County of San Francisco.

To the Honble Board and Hall Henry I Thornton and James Wilson United States Commissioners for the adjudication of Land Claims-

Your petitioner Augustine Narbeus of the County of Santa Clara in said State represents that he is the Claimant of the following tract of Land to wit: Bounded by farm of the Messrs. Bernabe with the farm of Justo Larios, and with the tract of land belonging to the Pueblo of San Jose, not-pasing the groves of Sycamore trees on said Pueblo lands and which tract of Land of your petitioner is known by the name of "Guadalupe Bautista" and is situated in said County of Santa Clara and comprises two leagues more or less; that said land was granted to your petitioner by Manuel Micheltorena Brigadier General of the Mexican Army Adjutant General of the Staff of the said Govenor of Upper California and Inspector of the Department of the California on the 20th day of March A.D. 1844 at Monterey in said State in fee simple, in due form of Law pursuant to the decree of the Mexican Congress of 18th August 1824 on Colonization of the Government Regulations for Colonization of territories adopted 21st November 1828 and in accordance with other Laws of the Mexican Congress Government, then in force in California where said Land is situated he the said Micheltorena at the time of making said grant having full power and authority to make the same, whether within ten leagues of the Sea Coast or not, in Virtue of said Laws and by the mandates of the Supreme Executive power of the Mexican Nation, the said Land however being distant from the nearest point of the Sea Coast ten or more leagues and there being not Comprised within said tract of Land more than One league of irregable Land.

Your petitioner further represents that he has complied with all the conditions and requirements of said grant, a copy of which marked A and a translation

thereof marked B accompanying the petition are made part thereof; that at the time of making said grant and for many years prior thereto he had been residing and yet continues to reside upon said land with his family, and that he had when said grant was made and long before and yet continues to have valuable and lasting improvements thereon in houses in enclosures for farming and for Orchards & Vineyards both fruit trees and the grape growing in said enclosures; that at the time he petitioned the said Governor for said grant he complied with said Law and said regulations of 1828 by setting forth the necessary facts in his petition accompanying the same with a map

Your petitioner further represents that owing to the change of Government and political disturbances which soon followed in point of time said grant, no judicial survey was made by Mexican Authority of the land granted, nor was judicial possession delivered to him nor was it presented to the Departmental Assembly for confirmation; that as soon as the political disturbances ceased and Competent Surveyors could be procured, he caused said tract of land to be surveyed by the County Surveyor of said County of Santa Clara who in making the same was governed by the said map and grant - and by said survey there were within said tract three leagues and about one tenth of a league; that thereupon he caused two leagues of said tract to be surveyed by said Surveyor, and had the same set apart to your petitioner embracing the said lands resided upon and improved as aforesaid when said grant was made and still continues to reside upon with his family, the map of said of said survey accompanying this petition is made part hereof. The map of the two Leagues set apart to your petitioner are embraced within the boundaries of this map there being no interfering claims of said land - he the said Narbeas at the time of making said grant being a Mexican Citizen of the Territory of upper California with a family and entitled by the Laws of

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Mexico to receive such grant—
This Honorable Board are referred to said grant and the map thereof presented to said Governor, at the time of granting the same, to the maps made by the said Surveyor, of said Surveys, as above mentioned, to the said Law of 1824, the said Regulations of 1828 to the Mandates which ought to said Governor, the Mexican Law the Treaty of the United States made with Mexico by which Upper California was ceded to the United States, and to such testimony which your petitioner can and will produce upon the hearing of his Claim

Wherefore your petitioner prays that this Honorable Board, upon due consideration of his cause will decree his title Valid for the whole amount of Land granted to him as described in the said grant but if your Honors should conceive your petitioner is only entitled to two leagues of Land in Virtue of said grant, that you will then decree the title Valid as to said two Leagues, and cause the same to be surveyed so as to embrace the said two Leagues, so surveyed and set apart to him as aforesaid, and that a report thereof be made to the Proper Officers of the United States for the purpose of the issuance of a Patent therefor to your petitioner, and for such other Orders and decrees as may be necessary to perfect and confirm his title—And in duty bound your petitioner will ever pray &c

Augustine Narbes
By his Attorneys
Watson & Heslep
C Ellmount
of Counsel

Filed in Office Feby 27th 1852
Geo. Fisher Secy

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Supplemental petition

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State of California
County of San Francisco

To the Hon. Leland Stall & Henry I Thornton United States Commissioners for the adjudicating of said claims

Your petitioners Henry Clarkson and Henry Vanderslice of the County of San Francisco represent- they are the claimants of the following tract of Land in the County of Santa Clara to wit, Bounded by the Farm of Messrs Bernals with the farm of Justo Larcons, with the Mountains, with the Land of Sem andes and with the tract of Land belonging to the Pueblo of San Jose not-paising the groves of Sycamore trees on said Pueblo Lands & which tract of Land is known by the name of Juan Bautista, and is situated in said County of Santa Clara and comprises two Leagues more or less-

Your petitioners claiming the whole of said Land Except Eight thousand eight hundred and forty Acres Surveyed off and deeded to Augustine Navarz That the said Land was granted to Augustine Navarez of Santa Clara County by Manuel Micheltorena Brigadier General of the Mexican Army &c on the 30th day of March 1844 at Monterey in said State in fee Simples in due form of Law, pursuant to the Decree of the Mexican Congress of 18 August 1824 on Colonization of Territories adopted 21 November 1828 & in accordance with other Laws of the Mexican government then in force in California where Land is situated- & the said Micheltorena at the time of making said grant having full power and authority to grant the same the said grant being accompanied by a Map of the Land herein claimed showing the boundaries thereof

That the said Augustine Navarez having lived for upwards of twenty years prior to and since the 30th of March 1844 resided upon the said Land with his family and his cattle and quietly and peaceably enjoy the whole of the Land within the boundaries described

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in the said maps accompanying the grant. that subsequently to the date last mentioned to wit, as soon as there was a legal and proper surveyor in the county in which the said Land is situated the said Augustine Navarez caused the said Land within the said Boundaries to be surveyed & found the same to contain three leagues and one tenth of which not more than one league was mayable land

That the said Augustine Navarez on the 11th April 1850 at San Jose conveyed to your petitioners the whole of the said Rancho except two Leagues to be measured off to the said Augustine Navarez by your petitioners & which was done accordingly. and your petitioners paid to the said Augustine Navarez a good & valuable consideration for the said Land so conveyed. a deed of which Exists on the Books of the County Recorder in & for the County of Santa Clara

× Your petitioners represent that the original grant-deed & Maps of the land herein claimed together with a duly certified plat of survey and other papers & Documents in relation to the claim of the Original claimant are on file in the Office of the Secretary of this Commission in the claim No 75 Entitled Augustine Navarez Rancho de San Lanan Bartolo and that the conveyance from Augustine Navarez to your petitioners is on record as aforesaid a transcript of which will be produced before this Honorable Board together with evidence of the title & possession of the Original claimant Augustin Navarez

Wherefore your petitioners pray that this Honorable Board upon due consideration of their claim will decree them to be Valid for the whole of the said Rancho excepting to the two leagues measured off and set apart to Augustin Navarez, and that a report there of be made to the proper Officers of the United States for the of the issuance of a patent therefor, and for such other and general measures as may be requisite for perfecting of their title -

Your petitioners will ever pray - Henry Clarkson &
Henry Vandeslice By their
Filed in office March 2d 1853 Attorney Geo. Gorden
Geo. Fisher Secy

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Office of the Board of Commissioners of Californias Land Claims San Francisco April 27. 1852

Deposition of W. E. P. Hartnell

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On this day before me Henry J. Thornton one of the Commissioners for ascertaining and settling private Land claims in the State of California came Wm. E. P. Hartnell a witness produced in behalf of the claimant Augustin Navarez whose petition being No 75 on the Docket of the Board and after being sworn testifies as following. The Law Agent was Notified and Attended by Mr Green how

Questions by claimant.

Question 1. Please State your Name age and occupation

Ans. 1. My name is Wm Edwd P Hartnell My age is 54 years My present occupation at present translator of the State of Californias

Ques. 2 Look upon the Map now here shown to you purporting to be a Map of the Rancho San Juan Bautista, & State what you know of it and whether your signature is genuine where it occurs upon and whether it is a true Copy as it purports to be which Map is herewith filed & Marked A)

Answer. I have examined the paper or Map of the said Rancho referred to in the interrogatory. I know that it is a true Copy of the Map which was on file with the public Archives of Land titles at Monterey in California, and that my Signature appears to it is genuine

Question 3. Look upon the paper purporting to be a letter to Augustin Navarez from Micheltorena of the Land called San Juan Bautista, which is Marked Exhibit A in the deposition of Wm Hartnell taken in the case, and State whether you are acquainted with the handwriting of Manuel Micheltorena and Manuel Jimeno and if so whether the Signatures where they occur in and upon said Exhibit are genuine - Answer. I am perfectly well acquainted with the handwriting of both those persons and that their Signatures where they occur on the said little papers are genuine

The Law Agent present Wm E. P. Hartnell

Sworn to and subscribed before me this 27th April 1852

Filed in office April 27. 1852 Henry J. Thornton Comr &c

Geo. Fisher Secy

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Office of the Board of Commissioners of California Land Claims — San Francisco April 27 1852

Deposition of Henry W. Halleck

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On this day before me Harry I Thornton one of the Commissioners for ascertaining and settling private Land claims in the State of California, came Henry W Halleck a witness produced in behalf of the claimant Antonio Narbez, whose petition being No. 75 on the Docket of the Board and after being sworn testified as follows. The Law Agent was notified and attended by Mr Greenhow.

Questions by Claimant.

Question 1. What is your name, age and occupation

Answer. Henry W. Halleck is my name, age 37 years, profession of the Law

Question 2. Are you acquainted with the Signatures of Manuel Jimeno And Manuel Micheltorena?

Answer. 2. I am acquainted with the Signature of M. Jimeno but I never saw M. Micheltorena write.

Ques. 3. Look at the Signatures to the petition & grant now shown Marked A & filed this day, and state if the Signatures thereto are genuine

Answer. 3. The Signature of Manuel Jimeno I believe to be genuine, that of Manuel Micheltorena I also believe to be genuine, having seen it a great number of times in public documents, but I have never seen him write. I have no reason to doubt its genuineness

H W Halleck

The Law Agent present and declines interrogating the Witness

Sworn to & subscribed in my presence
this 27th April 1852

Harry I Thornton Com. &c

Filed in office April 27th 1852
Geo. Fisher Secy

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Office of the Commissioners of California Land claims
San Francisco April 27 1852

Deposition of Ant. Chaboya

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On this day before me Henry J Thornton one of the Commissioners for ascertaining and settling private Land claims in California came Antonio Chaboya a witness produced in behalf of the Claimant Augustin Narbarz whose petition is No 75 on the Docket of said Commissioners - The witness being duly sworn testifies as follows - The Law Agent of the United United States was Notified and attended by Mr Green how

Questions by Claimant

Quest. 1. What is your name, age, and place of residence and Nativity -?

Ans - My Name is Antonio Chaboya. I am in my 49th year My residence is the County of Santa Clara in California and my birth place is the town of San Jose

Quest. 2. Are you acquainted with Augustin Narbarz the Claimant in this case, and if so, how long have you known him?

Ans. I am: and have known him about twenty Six years

Quest 3. Are you acquainted with the Rancho of San Juan Bautista, and who has occupied it within your knowledge?

Ans. I am. And have known it previous to the occupation of the same by Narbarz, and also since occupied by him for the space of twenty two years of continued occupation up to the present time.

Question 4th Since the occupation of the Rancho by Augustin Narbarz how has he occupied it, and what improvements has he put upon it, if any and the kinds of such improvements

Ans. He occupied it with Cattle horses and Sheep, cultivated the ground, raising Corn, wheat and barley. made also a garden, planted fruit trees, built houses, put up pens for cattle and horses and fences enclosing the grounds - He lived on it and is still living there with his family and the family of his two Sons.

Question 5. Are you acquainted with the boundaries of the Rancho of San Juan Bautista, if so state who have the

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the adjoining Ranchos? And give a description of the boundary of said Rancho?

Ans. I am acquainted with them partially. The Town of San Jose joins to the North, the Monterey road joins to the East - and the Lands of Justo Larios. Joaquin Bernal and of the Mission of Santa Clara join on it on the other sides

Question 6. Do the Lands of Jose Hernandez adjoin the Rancho of San Juan Bautista?

Answer - They do

Questions propounded by the Law Agent

Ques 1 Do you know who the lands belonged to before it was occupied by Narbaez

Ans. I do. A part belongs to the Town of San Jose and the other part to the Mission of Santa Clara

Question 2. Do you know whether he obtained a leave from the town and the Mission to occupy?

Ans. I do not, but from public report I understood that he petitioned the Government for it and it was granted to him

Ques 3. Do you know whether it was claimed by any one else since Narbaez occupied it

Ans. I do not know

Antonio his Chaboya
mark

The Law Agent being present.
Sworn to and his mark made
by the Interpreter in my presence
this 27th April 1852

Harry J Thornton Com. &c

Filed in Office April 27th 1852

Geo. Fisher Secy

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San Francesco April 27. 1852

On this day before me Hany L Thornton one of the Commissioners for ascertaining and settling Private Land Claims in the State of California Came James M Weeks a Witness produced in behalf of the Claimant Augustin Narbaez, whose petition is Number 45 on the Docket of the Board, and after being Sworn testifies as follows- The Law Agent was Not present and Attendance by Mr Greenhow

Deposition James M. Weeks

Questions by Claimant

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Quest: 1 What is your name, age and occupation?
Ans. My name is James M Weeks, my age between 37 and 38 years. I am now acting as interpreter for the County Court of Santa Clara.
Question 2. Are you acquainted with Augustin Narbaez the Claimant in this case, and if so how long have you known him?
Answer. I am acquainted with him. I have known him for the Space of twenty years.
Question 3rd Are you acquainted with the Rancho of San Juan Bautista, and if so, how long have you been acquainted with it, and who has been in possession of it, occupying, claiming and living in it
Ans. I have been acquainted with the Rancho as long as I have known Narbaez it has been occupied by him and his family, his family was quite Numerous, many of whom are Married and have houses upon the Rancho and are living there And Augustin Narbaez Still Continues to live there with his family
Question 4. How long has he occupied it?
Ans. By building houses, enclosures for Cultivation of grain to the Extent of three or four hundred Acres, he has it Stocked with Cattle of all kinds, has a black Smith Shop and Soap Factory, etc.
Question 5. Discribe the boundaries of the said Rancho?
Ans. On the East by the Monterey Road on the South by Bernals line Justa Lanes On the West by the Sierra Azul And the Lands of Jose Hernandez. On the North by a line running through the Middle of the Alesal on the Road to the Pueblo -

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Quest 6. State if you know under what circumstances Narbaez applied for the Lands and who prepared the Map of Laca Rancho for him?
Ans. I think that in 1843 Narbaez applied to me to make him a Map of the Lands of Laca Rancho as he said that he was going to apply to the government for a grant of said Land and I made the Map accordingly of which the Map now shown to me Marked Exhibit (A) to the deposition of W E P Hartnell in this case I believe to be a Copy.

Questions by the Law Agent

Quest. 1 Do you know or have you heard that this property was ever Claimed by any other person, or that the title of Narbaez to it was questioned?
Answer. I do not

James W Weeks

The Law Agent present

Sworn to and subscribed before me
this 27th of April 1852

Harry L Thornton
Com.

Filed in Office April 27. 1852
Geo. Fisher Dep Clk

2da

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1844

1 S. D. K.

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Expediente

Promovido por el Ciudadano Agustín

Narvaez en Solicitud del terreno

nombado San Juan Bautista

3/74

Place of Map

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1075

15

3 S. D. K.

Exmo Sor Comandte Gral y Jefe político de hambas Californias

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C

Expediente

75

Monterey Novr 22 de 1845

Insp. el Sor Srio del Despacho tomando proviamente los q.e y si nece= sitare, dilygando a la parte a agregar un pliego de papel sellado q.e puede acompañar aqui

Michelltta.

Agustin Narvaez, vecino del pueblo de San Jose de Guadalupe, y radicado hase veinte años en el paraje nombrado antiguam.te el Ranchito, y p.r mi San Juan Bautista, en la mejor forma que le corresponde en derecho, se presenta y dice: que el año de mil ocho cientos treinta y siete, Solicito del Sor Governador Don Juan Bautista Alvarado la propiedad del Sitio citado, por medio de una instancia acompañada de un diseño, cuella instancia no e Conseguido se provea; y el año anterior de mil ocho cientos treinta y dos, hize nueva instancia sin saber el probeido de ello; y no e Conseguido hasta esta fecha se me haga saber si hes o no admitida la Solicitud q.e tengo representada, para cuyo fin debo a V.E. este Suplicatorio para que se me decrete lo que se halle por justo.

E.S. hes numerosa la familia que tengo, mis bienes necesito Colocarlos en un trabajo propio, p.a que si Dios se acuerda de mi, mi esposa hijos disfruten de tranquilidad, sin que los perjudiquen y V.E. se Compadesca de mi; solo manifestare mis cortos Servicios, Servi quince años en la hon= =rrosa carrera de las armas, fui fundador de las

4 S. D. K.

misiones de Santa Cruz, Santa Clara, San Jose y los de San Fran.co en cuellas se Consiguio fuesen reconquistado mas de dos mil indigenas. Tres mis hijos Consta p.r varios jefes los e dado al Servicio de las armas. E. S. Si me fueren justos estos meritos que represento, espero se me atienda segun V.E. halle p.r Combiniente, reclamando mis instancias

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y Saver cual hes el fin á que no se me atendido; mas conforme en que V.E. a llegado a este desgraciado pais, y q.e hace justicia Segun Su benignidad me a hobligado en derecho hacer este Reclamo. Por tanto a V.E. rendidamente pido y Suplico se digne acceder a mi Solicitud de Cuya gracia vivire eternamente Reconocido, Sirviendose rebendirme esta en papel Comun p.r no haber en este puerto del Sello a q.e corresponde. Juro de no Ser de malicia en todo lo necesario &

S.r Juan B.ta 8.bre 5 de 1843

Agustin Narvaez

Ha =

5 S.D.K.

Sello cuarto dos reales

Habilitado provisionalmente por la Aduana marí= =tima del puerto de Monterey, en el Departamento delas Californias, para el año de mil ocho Cientos Cuarenta y tres

Micheltorena Manuel Castañares

Ad.a marit.a de Monty

= Habiendo agregado el Papel Sellado: pase este esped.te al Juez del Pueblo de San Jose p.a q.e informe Sobre su contenido, hasiendo Sitacion a D.n Maximo Martinez p.a q.e esponga Sobre el particular lo que se le ofresca, y concluido que sea todo, buelva a esta Sria, p.a dar cumplim.to al Superior decreto de hoy.

Monterey 22 de Nov.e de 1843

Man.l Jimeno

29

En virtud del Superior Decreto q.e antecede este Juzgado a hecho Comparecer a las personas de D. Agustin Narbaez y D. Maximo Martinez los Cuales han Convenido en las lineas y Señalamiento de terreno q.e Cada uno se Contrae en sus Solicitudes mas Como este terreno se ha reconocido p.r dela Mision inmediata de Sta Clara el Ministro de dicha, podrá decir Si se perjudica o no hay inconveniente Aparte q.e resulte en la Solicitud del interesado q.e

6 S.D.K.

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3
1845

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una tercera parte del terreno q.e Solicita es de este Pueblo q.e tiene prestado, el cual no me parece Con=veniente se posesione hasta tanto se le Señale á este Sus límites o ejidos.

Pueblo de S. Jose Dic.re 19 de 1843

Salvio Pacheco

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Exmo Sor Gobernador

El interesado en la precedente instancia es uno de los primeros pobladores de este país; tiene muchos bienes en el terreno de que hace referencia, pues lo ocupa hace mas de 20 años con Consentim.to de los

7 S. D. K. antiguos Padres Ministros de Sta Clara y de las Autoridades del Pueblo de San Jose, y si en tanto tiempo ha Conseguido Sus títulos, es a Causa del estravio que por varias veses han padesido sus papeles en poder del mismo interesado, el cual es acreedor á la gracia que pide, tanto por los Servicios que en publico ha prestado desde la fundacion de varias Misiones Como por la inumerable familia que tiene, con Solo la restriccion de no Comprehender en la Concesion el terreno que han Cultivado los vecinos del Pueblo por la parte del Sur.al. Mas la determinacion de V. E. Será la mas acertada.

Monterey 18 de Enero de 1844

Mant.l Jimeno.

Monterey En.o 13 de 44

En obsequio de Cuestiones en lo venidero y p.a q.e queden aganadas todas dificultades, impuesto q.e sea, Sirvase informar el M. R. P. Ministro

8 S. D. K. de la Mision de Santa Clara, y vuelva a este Gob.o Departamental.

Michelt.a

Exmo Sor Gobernador

27°

Consiguiente al Superior decreto q.e antecede, e

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instancia del Sor D. Agustin Narvaez, como en ella no se demarca terreno ninguno, y Solo se Contrahe a Sus antiguas Solicitudes y diseño con que las acompaño, Cuyos documentos dice en Su instancia no haberse le dado el proveído, de lo que Se infiere hallarse aun guisas en la Secret.a de Gobierno, en tal Concepto yo no puedo formar una idea justa de dho terreno q.e Se Solicita en propiedad p.r el referido Sor Narvaez, mas hallandose en el dia levantado el plano de los terrenos de esta Mision el que he mandado á V.E. p.r el, y los antiguos documentos de la parte interesada, creo q.e V.E. podrá decidir este asunto atendiendo á la justicia, meritos y largos Servicios que dho Sor tiene prestados en este Departamento; pero asi mismo atendiendo tambien al derecho de esta mision, q.e Si en otros tiempos tenia terrenos Suficientes para Seder algunos Sin perjuicio, en el dia Se hallan tan esquilmados q.e ya casi no cuenta Con ningunos, y mas estando Cuestionados los q.e aun reconoce p.r Suyos esta Mision p.r los Sres D.n Fran.co Estrada y D.n Jose Noriega quienes los obtuvieron p.r Sorpresa q.e Sin duda se hizo al Sor antecesor de V.E., D.n Juan Bautista Alvarado, quien Si hubiese sido mejor informado, quisa no los habria Concedido; mas ya dado este paso con manifiesto perjuicio de los derechos de la Comunidad de Sta Clara, Si á los Sres ant.s referidos Se atiende en el derecho q.e alegan tener fundados Solo en un titulo obtenido Con Sorpresion, en este caso, cual es la parte de terrenos que se deja a beneficio de estos indigenas, dignos y acreedores por tantos titulos a sus tierras que Dios y naturaleza les han dado, a unos hombres q.e me atrevo a decirlo Son los primeros q.e en el Departamento de Californias han prestado en todos tiempos, al Gobierno y a la Nacion, utiles y verdaderos Servicios personales y pecuniarios? Si, Exmo Sor, los intereses de los indigenas, como Si estos fueson los unicos Ciudadanos en Californias, Siempre han echo al Gob.no Sin tasa ninguna todo genero de Servicios y muchas ocasiones Con Sacrificio, merito.s que a lo menos no podran

q.e S. S. K.

37.o

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4 No 75

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alegar en su favor las demas clases q.e se han sido recompensados p.r el Gobierno, el q.e si alguna vez usando del dro eminente q.e es propio a la Suprema Autoridad, ha puesto alguna Contribucion indirecta en este Departam.to sin que grave los intereses de los q.e se dicen Ciudadanos, estos q.e lo son en verdad, y no el indigena q.e carece de esta prerrogativa; aquellos al momento haciendo alarde de sus Sagrados dros, solo se creen acreedores a recibir gracias y favores del Gobierno mas nunca con obligacion de llenar el titulo de tales Ciudadanos, sino es en lo q.e deja, ó por lo menos promete utilidad; pero en lo que quita aun que sea medio real por cuyo que se embarague, ya entonces se les presentan tantos precipicios q.e no los pueden salvar, no obstante todos los Sagrados dros de Ciudadanos, p.r q.e esto de Contribuir, solo parece obligatorio a la clase mas infeliz y miserable, cual es el Indio.

No hay duda, Ex.mo Sor, que hay buenos Ciudadanos en Californias, aun en grado eminente, y quisa uno de estos lo es el Sor D.n Agustin Narvaez, acreedor ciertamente a que se le atienda en su solicitud, concediendole no solo la parte q.e ha ocupado de esta Mision, sino tambien el terreno que pertenece a la Comunidad del Pueblo; pues dho Sor Narvaez ni es, ni ha sido de aquella clase de individuos, q.e no dejan un momento de reposo al Gobierno, en solicitud de terrenos, con perjuicio de sus legitimos propietarios, p.a luego hacer trafico en ellos, seguros de que haciendo nuevas solicitudes, fundadas en muchos meritos imaginarios, y p.r consiguiente fallos de servicios, los que no por eso pierden la esperanza de conseguir otro buen pedazo de tierra que aun que no tengan con que ocuparlo, p.r tiempo deja utilidad con el primer marchante que se presenta.

10 S. DK.

Me estendido mas de lo que pensaba V.E. tendrá la bondad de disimular lo difuso q.e he sido; mas en defensa de mis encomendados me parece q.e no he dicho nada. De todo lo espuesto,

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V. E., con aquella prudencia q.e le es tan propia, obrara en justicia lo q.e halla lugar en derecho.

Sta Clara Enr.o 30 de 1844

Exmo Sor

Fr. Jesus Ma Vasq.z

de Merced

Monterey Mzo 1.o de 1844

A la Sria p.a q.e haciendo buscar los antecedentes, indique la estension del terreno Solicitado, cuanto dice el Suplicante y lo q.e este pueda Conceder en justicia, teniendo presente Sus meritos, y el informe anterior del M. R. P. Mtro.

Michelt.a

Exmo

Sello quinto medio real

11 S.S.K.

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento delas Californias para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco

Micheltorena

Pablo de la Guerra

Adu.a marit.a de Monty.

Sor Gobernador

En la Sria no constan ningunos anteced.tes p.r lo que se ha practicado en este espediente parese que no hay ningun inconveniente para que se le concedan dos Sitios de ganado mayor. El Sup.or discernim.to de V. E. dispondra lo mejor.

Monterey 21 de Marzo de 1844

Mant. Jimeno

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Monterey Mzo 23 de 1844

Conf.a

Michelt.a

Monterey Marzo 30 de 1844

2to

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12 S. D.K.

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No 75

Vista la peticion con que dá principio este espediente, los informes que preceden, con todo lo demas que se tubo presente y de ver convino, de conformidad con las leyes y reglamentos de la materia, declaro a D.n Agustin Narvaez dueño en propiedad del paraje conocido con el nombre de San Juan B.ta Colin= =tante con el Rancho de los Señores Bernales, con el de Puesto Larios, con la Sierra, con el paraje de los Hernandez y el Pueblo de San Jose, sin pasar del Alisal que a este le pertenece, en estension de dos sitios de ganado mayor. Librese el correspond.te Despacho, tomese razon en el libro respectivo y dirijase este Esped.te á la Exma Asamblea Departamental para su aprobacion. El E. S. Gobernador, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana mayor del mismo, asi lo mandó, decretó y firmó.

13 S. D.K

El Ciudadano Manuel Michaltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Inspector del Departamento de las Californias.

Por cuanto el Ciudadano Agustin Narvaez ha pretendido p.a su beneficio personal y el de su familia dos Sitios de ganado mayor dentro del terreno nombrado San Juan Bautista, colindante con el rancho de los Señores Bernales, con el de Puesto Larios, con la Sierra, con el paraje de los Hernandez y el Pueblo de San Jose, sin pasar del Alisal que a este le pertenece; practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la Nacion Mejicana he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sugetandose á la aprobacion de la Exma Asamblea Departamental y bajo las condiciones siguientes. ——— 1.a No podra venderlo, enagenarlo, ni hipotecarlo, imponer censo, vinculo,

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Fianza ni otro gravamen alguno. — 2ª Podrá
cercarlo sin perjudicar las travecías, Caminos y
Servidumbres; lo disfrutará libre y esclusivamente
destinandolo al uso o cultivo que mas le acomode,
pero dentro de un año fabricará casa y estará
habitada — 3ª Solicitará del Juez respectivo
que le dé la posesion jurídica en virtud de es te
despacho por el Cual se demarcaran los linderos
en cuyos pondrá a mas de las mojoneras algunos
arboles frutales ó Silvestres de alguna utilidad. —
4ª El terreno de que se hace donacion es de dos
Sitios de ganado mayor poco mas o menos Segun esplica
el diseño respectivo. El Juez que diere la posesion, lo
hara medir Conforme á ordenanza quedando el sobrante
que resulte á la Nacion para los usos convenientes.
— 5ª Si contraviniere a estas condiciones perderá
su derecho al terreno y será denunciable por otro. —
En Consecuencia mando que sirviendole de título el
presente y teniendose por firme y Valedero, se tome
razon de el en el libro d' que Corresponde y se entregue
al interesado para su resguardo y demas fines. —
Dado en Monterey a treinta de Nro de mil ocho Cientos
Cuarenta y cuatro. — Manuel Micheltorena —
Manuel Jimeno Secretario — Queda tomada
razon de este Despacho en el Libro respectivo a fojas 8 —
Jimeno — El amanuense Franco Arce. —

14 S.D.K

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

I Samuel D. King, Surveyor General of the United States for the State of California and, as Such, now having in my office and under my charge and Control a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby Certify that the fourteen preceding and hereunto annexed pages of tracing paper numbered from one to fourteen inclusive and each of which is verified by my initials / S. D. K. / exhibit true and accurate Copies of

Doc

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certain documents on file and forming part of the said archives in this office.

In Testimony Whereof I have hereunto Signed my name, officially, and affix my private Seal, no Seal of Office at the City of San Francisco, Cal, this 29th day of April 1852

Saml D. Sting
Surveyor. Cal.

Filed in Office May 8th 1858
Geo. Fisher
Sec

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Translation of Espediente

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Most Excellent Senior Commandant Genl & Political Chief
Of the two Californeas

I Alequsio Narbaiz resident of the Pueblo of San Jose de Guadalupe and located for twenty years upon the place call El "Rancheto" and by me named "San Juan Bautista" as best I may in Law present myself and say "That in the year 1837 I solicited of the Sor Governor Don Juan Bautista Alvarado the ownership of the aforementioned place by means of a petition accompanied by a plat (Diseno) for which petition had not obtained his approval the year previous to 1832 I made a new petition to know what disposition was made and I have not obtained to this date that I should be informed whether there was or not admitted the petition which I presented for which purpose I address your Excellency and do supplicate that you decree in my favour that which you may deem just Excellent Sir a place suitable to fix my property upon so that, should God remember me my wife & children may enjoy some tranquility be free from injury: if Your Excellency should sympathize with me I shall simply make known my fine services: I served fifteen years in the honorable profession of Arms, I founded the Missions of Santa Cruz, Santa Clara & San Jose & that of San Francisco in which there were reconquered more than 2000 Indians, Moreover it is shown by different Chiefs that I have brought up my children in the service of the Arms of the Country - If your Honor Endeavors to be just - these claims which I set forth I hope that you will attend to my case as you may deem proper, considering my representations and enquiring into the reasons why I was not attended to; in as much as your Excellency has come to this unfortunate Country I feel obliged to make this request. Therefore I humbly beg and ask of you Excellency that you accede to my demand, for which favour I shall remain for ever grateful hoping that you will be pleased to allow it - On this Common paper not having any in this place

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of the proper seal. I decree this not to be done in Makes
for all necessary purposes &c
(Signed) Augustin Narbaez
3

Monterey Nov 22d 1843

Let the Secretary of State make
make the necessary informations he may need obliging the
party to annex the sheet and stamped paper that
can be bought in this place
(Signed) Micheltorena

Stamps Fourth Two Reales
Provisionally authorized by the Maritime Custom House of
the Port of Monterey in the Department of the California
for the year 1843
(Signed) Michelta") (Signed) Manuel Castanares

Seal Having annexed the sealed paper, let this
Espediente be referred to the Magistrate of the
Pueblo of San Jose, that he may report on its contents;
having cited Don Maximo Martinez to make known
the particulars he knows of & having accomplished
all that is necessary, let it be returned to the Secretarys
Office for the Completion of the 4th days decree
Monterey 22d Nov. 1843
(Signed) Manl Jimeno

In virtue of the preceding Supr Decree this Judgeship
has summoned to appear Don Agustin Narbaez and
Don Maximo Martinez who have determined upon the
lines & boundaries of the Land to which they each agree
in their petition, but as this Land has been recognized
to belong to the adjoining Mission of Sta Clara, its
Father Minister shall say if it is enjoined or if there is
no objection apart of that which results from the
petition of the interested party; that a third portion
of the Land which he solicits belongs to this Pueblo
& that he holds it under a loan, for all of which it does
not seem to me proper that he should enter in possession

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untill I determine his boundaries and limits to the lands
Pueblo of San Jose' Dec 19th 1843
(Signed) Salvio Pacheco

Most-Excellent Sor Governor

The interested party in the
preceding petition is One of the first Settlers of this
Country, he has a good deal of property in the lands
to which he refers. Therefore he occupies it for more
than twenty years with the Consent of the Old Father
Ministers of the Colonies & of the Authorities of the Pueblo
of S Jose and of such a length of time he has not
Obtained his title, it is on Account of the many
Various Changes, his papers have suffered in the possession
of the same interested party; That he the petitioner
is intitled to the favour he asks as much for the
services which it is publicly known he has rendered
since the foundation of Various Missions, as for his
innumerable family, with the Only restriction not to
Comprehend in the Concession the land Cultivated by the
inhabitants of the Pueblo in the direction of the
("Sansal") willow grove. But the determination of
Your Excellency will be the best
Monterey 18th Janry 1844
(Signed) Manuel Jimeno

Monterey Janry 13th 1844

In settling all questions in
future & to terminate all difficulty that might be set
up, let the M. R. F Minister of the Mission of Santa Clara
make his report and return it to this Departmental
Govt

(Signed) Micheltorena

Most Excellent Sor Governor

Pursuant to the preceding
Superior Decree and petition of the Sor D Augustin
Navarez as in it he has not marked out any land &
simply refers to his Own petitions & plat with which

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he accompanys said documents he says in his petition that he did not know of the decree, from which he inferred that it was still to be found in the offices of the Secretary of State, therefore I cannot make a just estimate of said Lands solicited in fee simples by the said Navarez, moreover you will find that on that day was made the plan of the Lands of this Mission which I transmit to your Excelly through him with the Old Documents of the party interested I believe your Excelly will be able to adjust this question attending to the Justice the Merits & great services rendered to this Department by said Sor, but at the same time you might also be attending to the rights of this Mission, which if in Other times did Own Lands enough to give some up, without injury, at the present day they are so limited as hardly to number any and moreover that those which the Mission still recognizes as hers are disputed by the Sors D Franco Estudillo & D Jose Noriega who obtained them by misrepresentations which no doubt they made to the Senor your Excelly's predecessor D Juan Bautista Alvarado, who had he been better informed would have been far not to concede them; moreover having already this & the manifest injury of the rights of the Community of Santa Clara of the Govs before refused to should be attended to in the hope which they allege they have & is given solely in a title obtained by subreption in this case, which is the portion of Lands which was left for the benefit of those Indians worthy of and entitled to so many titles to their Lands, that Govs & Nations have given to them, those men, who I venture to say, are the first who, in the Department of California have rendered, in all times, to the Government And to the Nation, useful & true services If Most Excellent Sor, the interests of the Indians, proved as they were the Only citizens in California have always been rendered to the Government without remuneration whatever all kinds of services & in different Occasions, even with sacrifice & Merit as I think; and can they not allege in their favour the existence of the

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Other clases who have always been recompensed by the Gov
ernment, which if some time losing of the well known
right that belongs to the Supreme Authority, has placed
indue et contributions in this Department without honoring the interests
of those who call themselves Citizens, but those of the true
Citizens the Indians who are wanting of this prerogative
those now boasting of the rights they enjoy, believe them
selves alone entitled to receive favors from the Govern
ment, but never with the obligation to Complete the titles
of such Citizens, unless it is in what is left or, for the
least-guarantees profit; but in that which is left
although it be a "half real" for very hidden that is
the piece, there are offered impediments which they
Can not remove, notwithstanding all the Sacred Rights
of Citizens, whereby, this mode of Contribution alone seems
Obligatory upon the most unfortunate and poorest class,
which is the Indian Class—
"There is no doubt most Excellent Sir that there are good
Citizens in California even in high position & as one
of those is the Sor D Augustin Navarez entitled certa
inly to be attended to in his petition that there may be
Conceded to him not only the portion of the Mission
which he has occupied but also the land which belongs
to the Community of the Pueblo, therefore" said Sir
Navarez, neither is nor has been of either class of indi
viduals who do not leave a moments rest to the Govern
ment, in petitioning for lands to the injury of the legitimate
proprietors to make hatred of them soon afterwards,
Certain that in making new petitions, founded on many
imaginary merits and consequently wanting of succes,
that with these they will not loose the hopes of obtain
ing another good piece of Land although they have
not got the requisite to occupy it; but profit is always
left with the just-tradicker who presents himself
I have dwelt on this longer than I thought; Your Excellen
cy will be so good as to tolerate my lengthiness on this
Subject: Moreover in behalf of my Constituents it
seems to me I have said nothing but what is allowed
Your Excellency with its wanted Prudence will do in justice

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all that is right &c.

Sta. Clara January 30th 1844

Most Excellent Sor

(Signed) Fr Jesus Mª Vusg[illegible]

de Mercado

Monterey March 1st 1844

In the Office of Secretary it seems that in Making search for the Antecedents they will show the Extent of the Lands & Solicitudes are Represented by the petitioner & that which can be Considered in justice Comprising his present Merits & the anterior information of the most R F Menester

(Signed) Micheltorena

Seal Fifth Half Real

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the years 1844 & 1845

Micheltorena Pablo de la Guerra

Seal

Most Excellent Sor Governor

In the Office of the Secretary there appears no antecedent, but what has been done in this Expediente It seems there is no impediment to grant two (dos) de ganados Mayor) square leagues, The Superior judgment of Your Excellency will direct that which is best

Monterey 31st March 1844

(Signed) Manuel Jimeno

Monterey March 23d 1844

I comply in this

(Signed) Micheltorena

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Monterey March 30 1844

Considering the petition with which begins this Espediente the preceding informations with all that which is presented and found in conformity with the Laws & Regulations appertaining to the matter, I declare Dn Augustin Navarez owner in fee of the place known by the name of Sn Jn Bautista its bounded by the Rancho of the Sres Bernales, by that of Justo Larios, by the (Sierra) range of Mountains, by the place of the Hermandez by the Pueblo of San Jose, not going beyond its (alisal) alder trees, to the extent of two Square Leagues - Let the corresponding title be issued let it be recorded in the respective Book & let it be despatched to the Most Excellent Departmental Assembly for its approbation - the Most Excellent Governor, Brigadier Genl of the Mexican Army Adjutant Genl of the the Staff of the Same, Thus has ordered decreed and signed

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The Citizen Manuel Micheltorena Brigadier General of the Mexican Army Adjutant Genl of the Staff of the Same, Governor Commandant Genl & Inspector of the Department of the Californias.

Whereas the Citizen Augustin Navarez has solicited for his personal benefit & that of his family two (sitios de ganado mayor) Square leagues of the land named Sn Jn Bautista bounded by the Rancho of the Sres Bernales, by that of Justo Larios by (la Sierra) the range of Mountains, by the place of the Hermandez, by the Pueblo of San José, not going beyond the (alisal) Alder trees that belongs to the Mission, the proper investigations and corresponding steps belonging thereto being previously complied with as Ordered by Laws & Regulations by Virtue of the Authority in me vested, in the name of the Mexican Nation, have determined to Concede to him the Mentioned land, declaring unto him the Ownership thereof by these presents, he subjecting himself to the approbation of the Most Excellent Departmental Assembly under the following Conditions

1st He shall not sell it alienate it, hypothecate it

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subject it to taxation, bond, intail nor to any encumbrance
wholsoever
2da He may enclose it without impairing the crosings
roads & servitudes, he shall enjoy it freely and exclusive
ly, destining to the use or culture that may best suit him
but within One year he shall build a house & it
shall be inhabited.
3da He shall solicit of the respective Magistrate to give
him the juridical posession in virtue of this decree,
by him shall be marked out the boundaries, in which
besides the Land Marks, he shall place some fruit
trees or fruit trees of some utility
4th The Land of which a tenalon is made is of two square
Leagues more or less as shown by the respective (Diseno)
plat= The Magistrate who shall give the posession
shall cause it to be measured conformably to Ordenanza)
the (tobante) Overplus that may result remaining to the
Nation for its Convenient uses.
5th If he contravenes these conditions he shall lose his
right to the Land and it shall be denounced by Another
Therefore I Order that these presents serving him as a title
and being held as firm & valid, note be made of it in
the Corresponding book, and it be delivered to the interested
party for his security & other ends=
Given in Monterey the 30th of April 1844
Manuel Micheltorena
Manuel Jimeno Secretary
Record of this decree has been made in the Corresponding
Book at page 8 = Jimeno = Francisco Arce

I certify the above translation to be a true and faith
ful translation from the duly Authenticated Facsimile "Espediente" filed in this Case
Geo. Fisher Dep'y

Filed in Office Aug 22 1853
Geo. Fisher Dep'y

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A

Document annexed to the deposition of H. W. Halleck

Nº 75

Sello primero Ocho pesos

Habilitado provisionalmente por la Aduana marítima del puerto de Monterey en el Departamento de la Californias, para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco

Michel Torena Pablo de la Guerra

Adª marit.ª de Monty

El Ciudadano Manuel Michel= =torena, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador Comandante General de la Plana Mayor e Inspector del Departamento de las Californias.

Por cuanto el Ciudadano Agustin Narvaez ha pretendido para su beneficio personal y el de su familia dos Sitios de ganado mayor dentro del terreno nombrado San Juan Bautista, Colindante con el Rancho de los Señores Bernales, con el Justo Larios, con la Sierra, con el Paraje de los Hernandez y el Pueblo de San Jose, Sin Sin pasar del Misal que a este le pertenece, practicadas previamente las diligencias y averiguaciones Concernientes Segun lo dispuesto por leyes y reglamentos; usando de las facultades que me Son Conferidas á nombre de la Nacion Mejicana he benido en Concederle el terreno mencionado declarandole la propiedad de el por las presentes letras, Sugetandose a la aprobacion de la Dipa. Asamblea Departamental y bajo las condiciones siguientes.

1ª No podra venderlo, enagenarlo, ni hipotecarlo, imponer Censo, vinculo, fianza ni otro gravamen alguno.

2ª Podra Cercarlo Sin perjudicar las travecias, caminos y Servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso ó Cultivo que mas le acomode, pero dentro de un año fabricara Casa y estará habitada.

3ª Solicitara del Juez respectivo que le

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de la posecion juridica en virtud de este despacho, por el Cual se demarcaran los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales ó Silvestres de alguna Sutilidad.

4ª El terreno de que se hace donacion es de dos Sitios de ganado Mayor poco mas ó menos Segun esplica el diseño respectivo. El Juez que dicte la posecion lo hara medir Conforme á orde= =nanza quedando el Sobrante que resulte á la nacion para los usos Convenientes.

5ª Si Contraviniere a estas Condiciones perderá Su derecho al terreno y Será denunciable por otro.

En Consecuencia mando que Sirviendole de titulo el presente y teniendose por firme y valedero Se tome razon de el en el libro a que Corresponde y se entregue al interesado para Su resguardo y demas fines. Dado en Monterey a treinta de Marzo de mil ocho Cientos Cuarenta y Cuatro.

Mant Michelta.

Mant Jimeno
Srio

Queda tomada razon de este dispacho en el libro respectivo á fs. 8.

Jimeno

Filed for Record 27 April 1850 7 55/60 O'Ck P. M.

Recorded in Book A folio 27

Filed in office April 27 1852
Geo: Fisher Sec

Translated & filed in office May 11th 1852
Geo: Fisher Sec

Recorded in Record of Evidence Vol. 1. pages 178 & 179
Geo: Fisher Sec

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[L S]

Translation of Grant

Just Stamp Eight Dollars
Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the years 1844 & 1845

Micheltorena — Pablo de la Guerra

I Citizen Manuel Micheltorena Brigadier General of the Mexican Army. Adjutant General of the Staff of the same Govern, Commandant General of the Staff and Inspector and Inspector of the Department of the Californias—

Whereas Citizen Gregorio Navarez has solicited for his personal benefit and that of his family two Sqeare leagues (Sitios de ganado Mayor) within the land named San Juan Bautista, bounded by the Rancho of Mesa Bernales, by Arroyo Larios, the mountains the place of the Harmandez and by the town of San Jose, without passing further than the grove of Alderdees (Alisal) which belongs to it (the Pueblo) & after having previously made the corresponding investigations and taken the proper steps according to the laws and Regulations: by Virtue of the authority in me vested, in the Name of the Mexican Nation, I have determined to concede to him the land mentioned declaring to him the Ownership thereof by the present letter, subject to the approbation of the Most Excel. Departmental Assembly and under the following Conditions

1st He shall not sell, alienate by hypothecate it, impose any tax, entail, bond or any other incumbrance upon it

2d He may fence it without prejudice to the crossings roads and servitudes; he will enjoy it freely and Exclusively, destining it to the end & cultivation which may be most convenient to him: but within One year he shall build a house which shall be inhabited—

3d He shall solicit from the respective Judge to give him the Juridical possession in Virtue of this letter, by whom the boundaries shall be marked out, which limits he shall place, besides the Land Marks, some

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fruit trees & forest trees of some usefulness

4th The land of which donation is made is of two Square Leagues (Sitios de ganado Mayor) a little more or less, as it is Explained in the respective Diagram. The Judge who shall give the possession shall cause it to be measured according to Ordenanza, the Overplus that should result remaining to the nation for its convenient use

5th If he should contravene these Conditions, he shall lose his right to the Land and it shall be denounceable by another. In Consequence I Command that these presents serving him as a title and being held as firm Valid to be entered in the Corresponding Book, and delivered to the party interested for his security and Otherwise

Given in Monterey March 30th 1844

Manuel Michel Lorenzo

Manuel Jimeno Secy

This title has been entered in the respective book Folio 8 = Jimeno.

Made & filed in Office Febuary 27th 1852
San Francisco
Geo. Fisher Secy

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Augustin Navaez
vs
The United States

For the placed called "San Juan Bautista containing two Sqeare leagues of Land.

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It appears from the traced copy of the Espediente filed in this cause, that the claimant petitioned the Governor for the grant Oct. 5 1843, and after obtaining the requisite informations, an Order of concession was made on the 30th March 1844. The grant duly authenticated is given in evidence, it is signed by Governor Manuel Mechell[illegible] is made subject to the approval of the Departmental Assembly, and is dated March 30th 1844. No approval by the Assembly is shown
The conditions of the grant required among other things that the grantee should build a house on the premises within a year. It also required him to petition the proper Officer to give him juridical possession, to place the proper land marks, to designate the land as it should be measured to him by the Officer. The surplus land remaining to the nation. The grant given by Governor Micheltorena describes the land granted as "two Sqeare leagues" within the tract of land called San Juan Bautista bounded by the Rancho of Siniores Barrales, by that of Justo Larios, by the sierra, by the place of the Alamar and the Pueblo of San Jose without going further than Alisal (Alders trees) belonging to the latter. That there was a grant of two Sqeare leagues of Land, to be located within the limits of the tract surrounded by the Exterior boundaries above named and not of the whole tract above described as evident from the terms of the grant itself.
Two Sqeare leagues alone only were granted and not the whole of the tract called San Juan Bautista on the above description. It was not San Juan Bautista this bounded that was granted but a tract two

Square leagues in Extent lying within its limits and part of it - That this was the true design the granting power and no mere accidental phraseology used in the documents is evident from the Espidente -

In his petition for the grant the claimant solicits a concession of the land by the name of San Juan Bautista without mentioning the quantity or giving any further description. He alleges moreover that he had previously petitioned to Governor Alvarado and had presented a plat (diseno) of the land, but no notice had been taken of his application - From the information which was taken on the subject by Order of Governor Micheltorena it appears that the land had been formerly been claimed in part by the Pueblo of Jose, and a part of the Mission of Santa Clara, a reference was made to the Mayordomo of San Jose for information and he reported that one third of the land belonged to that Pueblo and says that he does not think it proper that the petitioner should enter in possession until he (the Mayordomo) determines the boundaries and limits of the land - The Reverend Father Minister of the Mission in his report, says that he cannot make a just estimate of the land solicited by Narvaez because he has not marked out any land and simply refers to his old petitions and plat filed at the time of his former application, and adds that there was transmitted with them to the Governor through said Narvaez a plan of the lands of the Mission, by reference to which the Governor would be able to determine the question - On receiving these reports the Governor made an Order for a search for the old petition and map in the proper Office - To this Order the Secretary made report on the 21st March 1844 stating that they could not be found, but adds that

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PAGE NO. 39

there seems to be no impediment to granting two square leagues within the Exterior limits above mentioned It is evident from these proceedings, that the question of definite location and of the limits and boundaries of the land granted was left unsettled, and the grant was purposely made of the specified quantity of two square leagues within the limits mentioned - and it was left to the Claimant to obtain a judicial Survey in order to define and separate the land which should become his under the grant - The judicial act of measurement was one partly of a Judicial Character, and especially designed to settle boundaries between the holders of Colonial grants, who was summoned to be present at the Survey - The setting of these exterior lines was very properly left to be made when such Official measurement should take place - That being done the Officer giving the possession was further required by the Conditions of this grant, if more than two square leagues of land resulted when these boundaries were fixed to proceed and set off by metes and bounds to the Claimant two square leagues of land as specified in this grant - The remainder, Contained the property of the Nation We have had occasion in Another Case bearing much similarity to the present to state, that the Claimant would be in such entitled to a Confirmation for the whole Land if it proved not to Exceed the quantity granted to him, but that the burden of proof was on him to show one of two things, first, that he had Obtained the Measurement required by the grant and thus obtained a Separation of the Land granted, and held his Specified portion by the metes and bounds thus establ ished, or Secondly, that by measurement it was found that there was no more Land in the entire Space in which his location was to be made than was Called

CASE NO. 7 NB
PAGE NO. 40

by the grant in which event the whole would pass by the grant
In this case the claimant obtained no juridical survey
nor has he proved that the land did not exceed two
square leagues. On the contrary he alleges in his petition
and shows by a map presented as part of his case
that by an actual survey recently made the quantity
of land was ascertained was to be three square leagues
and about one tenth of a league. The claimant also
shows that he caused the surveyor in ascertaining the
quantity in the whole tract to survey out and separate
by metes and bounds according to his direction a portion
of said land two square leagues in quantity which
he claims for the land conceded to him, He asks in
his petition that he may be confirmed in the title to the
whole tract of land described, or if that cannot be
granted, that he may be confirmed in the two square
leagues as surveyed and laid off in the map accompa
nying his petition - If the country still continued under
the jurisdiction and laws of Mexico, he would have no
claim to the entire premises - He was expressly restricted
by his grant to the quantity of two square leagues - Nor
would he if no decree had been made, be entitled to
the specific portion set apart for his two leagues by a
surveyor under his own direction, because that designation
could only be made by the proper Magistrate clothed
with power to perform in person official acts in the presence
of the owners of the adjoining lands making the proper measu
rements and giving juridical possession. Such a solem
act obtained on his own application and performed at
his Expense was the only means by which he could obtain
the assignment of his specific two leagues of land and its
separation from the other portion of the land belonging to
the nation, this he failed to do not for want of time
before the decision was made but for reasons of which

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No explanation is given - The case of the claimant then is the common one of the grant of a specific quantity of land which the party interested must locate by juridical survey, within the boundary of a large tract, and which he failed to cause to be located and segregated - He has then no established limits to his lands at the time of the cession no segregation of it from the public domain, and no definite boundaries of a specific portion of land to which his equities attached and what this Commission can carry into grant. We cannot confirm mere floating permission to locate land - We are limited by the law under which the Commission is organized and by the principles settled in similar cases in the Supreme Court of the United States to grants with specific boundaries described thereon, or those which have been made certain by juridical survey according to the terms of the grant before the cession - There seems to have been long occupation of the premises in this Case which might seem to commend it to a most favorable consideration We are not authorized to apply a rule in one case which we do not apply in another. We are not authorized to locate lands never yet segregated from the National domain either by and authorized survey or sufficient description in the grant to enable the survey to be made according to its calls - If a case of hardship is presented, for the want of these, it is for Congress and not this Commission to afford the proper relief

The claim must be rejected

Filed in Office Nov. 15th 1853
Geo. Fisher Secy

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CASE NO. 7 ND
PAGE NO. 42

Augustin Navarro }
vs
The United States }

In this case, on hearing the proofs and allegations, it is ordered by the Commissioners that the said claim of the petitioner is not valid and his application for a confirmation of the same is therefore denied

Alpheus Felch
R. Aug. Thompson
Thompson Campbell
Commissioners

Filed in Office Nov. 15th 1853
Geo. Fisher Secy

CASE NO. 7 ND
PAGE NO. 43

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

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing forty one ——— pages, numbered from 1 to 41, 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. 75 on the Docket of the said Board, wherein Agustin Narvaez is ———

the Claimant against the United States, for the place known by the name of "San Juan Bautista".

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 third day of August A. D. 1854, and of the Independence of the United States of America the seventy-Ninth.

Geo: Fisher

By

U. S. DISTRICT COURT,

Northern District of California.

No. "7"

THE UNITED STATES,

vs.

Augustin Narvaez

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS

In Case No. 75.

Filed, August 23d, 1854

Wm. A. Monroe,

Clk.

Maps 10-11-12-13 & 14 to
be inserted here marked
pages mar. 44-45-46-46-A-47-47-A-
48 and 48-A.

I George Fisher, Secretary to the Board of the United States Land Commission for ascertaining and settling Private Land claims in the State of California, do hereby certify that the foregoing is a true and accurate extract from a facsimile of a Spanish document authenticated by Samuel D. King lately Surveyor General of the United States for the State of California aforesaid, which said document purporting to be an "espediente" filed in case No 75 on the Docket of the said Board now in this office

In testimony whereof I have hereunto subscribed my name and affixed the seal of the office of the Secretary of said Commission San Francisco in the State of California aforesaid this 9th day of October A.D. 1854

Geo: Fisher

Sec'y

CASE NO. 7 ND
PAGE NO. 43

Diseños

No 75

Agustin Narvaez

San Juan Bautista

Extract
from
C
Expediente

Filed in office Jan'y
8th 1853.—

(Signed) Geo. Fisher
Dep.

AD

CASE NO. 7 ND
PAGE NO. 50

Test 7.—

CASE NO. 7 NDL
PAGE NO. 51

UNITED STATES DISTRICT COURT,
Northern District of California.

United States

vs

Augustin Narvaez.

San Francisco, June 6th 18 55

ON this day, before John A. Monroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Sherman Day a witness produced on behalf of the Claimant in Case No. 7, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 75 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: The U.S. District Attorney per A. Glassell, and Thornton & Williams per. J.I. Williams

QUESTION BY J.I. Williams

What is you name, age and place of residence?

Answer - Sherman Day reside in San Losé and I am forty nine years of age.

2d. How long have you been in Califurnia and what business have you been engaged in?

Answer - I have been here nearly six years and have been engaged principally in surveying.

3d. Did you ever in the exercise

of your Profession survey the Rancho San Juan Bautista claimed in this case and make a map of the same? if so please produce said map and say under what circumstances you made said survey and map and by what you were guided in making the same - Describe the boundaries of said Rancho as surveyed by you

Answer - I have surveyed it once and partially surveyed it a second & third times - I surveyed first in 1850, commencing the survey under Mr. Lyman who was then the Official Surveyor of the Middle District of California as arranged under the direction of Governor Mason Mr Lyman left the country soon after the commencement of the survey and I completed the survey - I was guided at the time by the original papers in the hands of Augustin Narvaez and copies of the papers in the possession of Mr Lyman - and by the information received from old californians who pointed out the boundaries of other Ranchos - one of these persons was Jose Hernandez - At that time I aimed to survey all the

land which could by any possibility be covered by the claim expecting to have the two leagues cut off by some Magistrate who had the power to do it. For that purpose I presented the papers to Fernandez who was Second Alcalde at the time. He went on the ground but did not divide the land. He took the papers under advisement and within one week his official term expired and the new State government intervened without any action on his part. I subsequently made some surveys at the request of persons who had purchased under Narvaez.

I made a duplicate and original map at the time and gave one to Narvaez and the other to the purchasers from Narvaez.—

In the autumn of 1854 I re-surveyed a portion of this Rancho, and as Deputy surveyor of the County of Santa Clara and as U. S. Deputy surveyor I have surveyed various lines across this Rancho, and in the vicinity of the Pueblo of San Jose and the map herewith presented marked Exhibit "A. M" was made from data obtained in all the various surveys heretofore alluded to. During the re-survey in 1854 I had in my possession

the ~~sigiunal~~ certified copies of the original Deseño of the Expediente, and grant and opinion of the Board of Land Commissioners. These copies were obtained from the Secretary of the Board of the Land Commissioners (Geo. Fisher) and are herewith marked respectively. AB, AC, AD.

Question. Does your survey ~~corres~~ and Map correspond with the grant and deseño contained in the record in this case?

Answer. The map presents a ~~topographical~~ correct representation of the physical features of the land refered to in the grant and deseño together with a portion of the Pueblo of San Jose which is not represented in the deseño. These physical features correspond in relative position and character as nearly with those represented in the deseño as an accurate drawing will with one made by hand. The boundary of Bernal's land is represented as pointed out by Bruno Bernal which I believe to be that confirmed by the Commissioners. The Sonicate refered to is that agreed upon by Novoces and Bernal.

The boundaries of Justo Larias land are those pointed out by José Hernandez and other California witnesses. I have represented on the map two lines as explained on the map for Hernandez boundary

Question Describe the boundaries of said Rancho as surveyed by you

Answer - The title calls for five boundaries in words as expressed therein - First the Rancho de los Ligones, Second that of Justo Larias, third the Sierra. Fourth the Paraje de los Hernandes - and fifth the Pueblo of San José but this latter is qualified by an exception requiring that it shall not pass abisal which belongs to the Pueblo - This is considered to be a grove of large sycamores lying south of the Pueblo and between it and Moraga's Rancho - Some dictionaries translators render abisal and Alder - but it is meant in California a sycamore - and is so marked on my map - or a grove of sycamores - This enumeration leaves two boundaries undefined for which we are to seek on authority the deseño and also from the limitations contained in the grant which is confined to

two leagues -- One of these lines is supplied by the deseño and is evidently the water course running at the foot of the hills of San Juan Bautista. The remaining line is to be drawn between Hernandez, boundary and the Alisal. These lines inclose the entire body of land granted with the exception of two short lines connecting the water course of San Juan Bautista with the Alisal and another connecting the hills of San Juan Bautista with Bernals boundary. In the first of these lines I taken the point and drawn the line from the point where the water approaches nearest the Alisal. In the second case I have drawn the line from the Sauceleto noted in the original deseño to the most Southern hill of San Juan Bautista. If a point be taken on the Hernandez line as surveyed by me in 1850 two thirds the way from the foot of the Sierra hills to the arroyo de los gatos and from said point a line be drawn to the Alisal near Kells house it will conform in position generally to a dotted line on the deseño and will ~~cut off~~ embrace with the other boundaries above described about two leagues and one ~~third~~

Seventieth - If a similar operation be performed on the line surveyed by Healey in 1854 it will not materially vary the result. The excess over two leagues would be about double, say one ~~thirty fifth~~ or one thirtieth.

Question Is there any difficulty in locating this Rancho and surveying it according to said grant and deseño -

Answer None whatever when the ~~lines of the~~ calls mentioned grants confirmed already by the Board are ascertained - and when the person making the survey is clothed with the power of the U.S. Surveyor General -

Question In what county is the land situated - and is it north or south of the Thirty Seventh degree of North Latitude

Answer - In Santa Clara County and north of the Thirty Seventh ~~parallel~~ degree of latitude

Sherman Day

Sworn to and subscribed before me this 6th day of June A.D. 1855 -

Jno. A. Monroe
U.S. Commissr

El Ciudadano Manuel Micheltorena
General de Brigada del Ejercito Mejicano
Ayudante General de la Plana Mayor
del mismo, Gobernador Comandante
General é Inspector del Departamento
de las Californias —

CASE NO. 7 ND
PAGE NO. 58

Por cuanto el Ciudadano Agustin
Narvaez ha pretendido para su beneficio
personal y el de su familia dos sitios
de ganado mayor, dentro del terreno nom-
brado San Juan Bautista, colindante
con el Rancho de los Señores Bernales,
con el de Justo Larios, con la Sierra, con
el parage de los Hernandez, y el Pueblo
de San José, sin pasar del Alisal que
a este le pertenece: practicadas previa-
mente las diligencias y averiguaciones
concernientes segun lo dispuesto por
leyes y reglam.tos usando de las facul-
tades que me son conferidas á nombre
de la Nacion Mejicana hé venido en
concederle el terreno mencionado, decla-
randole la propiedad de el por las
presentes letras, sujetandose á la apro-
bacion de la Exma Asamblea Departa-
mental y bajo las condiciones siguí-
entes = 1.a No podrá venderlo, ena-
genarlo, ni hipotecarlo, imponer censo,

CASE NO. 7 ND
CASE NO. 59

vinculo, fianza ni otro gravamen alguno. —
2ª Podrá cercarlo sin perjudicar las travesías
caminos y servidumbres, lo disfrutará libre
y exclusivamente destinandolo al uso ó cul-
tivo que mas le acomode, pero dentro de un
año fabricará casa y estará habitada = —
3ª Solicitará del Juez respectivo que le
la posesion jurídica en virtud de este des-
pacho por el cual se demarcarán los linderos
en cuyos pondrá amas de las mojoneras algu-
nos arboles frutales ó silvestres de alguna uti-
lidad = 4ª El terreno de que se hace dona-
cion es de dos sitios de ganado mayor poco
mas ó menos segun esplica el diseño respec-
tivo = El Juez que diere la posesion, lo hará
medir conforme á ordenanza quedando el
sobrante que resulte á la Nacion para
los usos convenientes — 5ª Si contraviniere
á estas condiciones perderá su derecho al ter-
reno y será denunciable por otro. = En
consecuencia mando que sirviendole de titulo
el presente y teniendose por firme y valedero
se tome razon de el en el Libro á que corres-
ponde y se entregue al interesado para su
resguardo y demas fines = Dado en Mon-
terrey á treinta de Mayo de mil ocho-
cientos cuarenta y cuatro = Manuel Mechelt.ª =

Manuel Jimeno Secretario = Queda tomada razon de este Despacho en el Libro respectivo á fojas 8 = Jimeno = El amanuense Fran.co Arce = ⟶

CASE NO. 7 ND
PAGE NO. 60

I, Gerge Fisher, Secretary to the Board of the United States Land Commission for ascertaining and settling Private Land claims in the State of California, do hereby certify that the foregoing is a true and correct extract copy of a facsimile of a Spanish document, authenticated by Samuel D. King lately Surveyor General of the United States for the State of California aforesaid; which said document purporting to be an Expediente filed in case No 75 in the Docket of the said Board now in this office

In testimony whereof I have hereunto subscribed my name Office of the Secretary of said Commission San Francisco this 5th day of October A.D. 1854

Geo. Fisher

Sec'y.

N° 75

Agustin Narvaez

San Juan Bautista

Extract
from
C
Expediente

Filed in office Jany
8th 1853. —
(Signed) Geo: Fisher
Secy

AB

CASE NO. 7 ND
PAGE NO. 61

Fees $ 5. —

Augustin Narvaez
vs
The United States } For the place called "San Juan Bautista" containing two square leagues of land

CASE NO. 7 ND

PAGE NO. 62

It appears from the traced copy of the Espediente filed in the case that the claimant petitioned the Governor for the grant October 5. 1823, and, after obtaining the requisite information, an order of concepion was made on the 30th March 1824. The grant duly authenticated is given in evidence. It is signed by Governor Manuel Micheltrena - is made subject to the approval of the Departmental Asembly and is dated March 30th 1824. No approval by the Assimbly is shown. —

The conditions of the grant required, among other things, that the grantee should build a house on the premises within a year. It also required him to petition the proper officer to give him juridical posepion - to place the proper landmarks to designate the land as it should be measured to him by the officer. — the surplus land remaining to the Nation. —

The grant ipued by Governor —

Micheltorena describes the land granted as "two square leagues within the tract of land called San Juan Bautista" bounded by the rancho of Señores Bernales, by that of Justo Larios, by the Sierra, by the place of the Hernandez and the Pueblo of San José without going further than the Alisal (alder trees) belonging to the latter". That this was a grant of two square leagues of land to be located within the limits of the tract surrounded by the exterior boundaries above named, and not of the whole tract above described, is evident from the terms of the grant itself. Two square leagues only were granted and not the whole of the tract called San Juan Bautista in the above description. It was not San Juan Bautista thus bounded that was granted, but a tract two square leagues in extent lying within its limits and part of it.

That this was the true design of the granting power, and no mere accidental phraseology used in the document is evident from the Espediente.

In his petition for the grant the claimant solicits a concession of the land by the name of San Juan Bautista

without mentioning the quantity or giving any further discription. He alleges moreover that he had previously petitioned to Governor Alvarado and had presented a plat (diseño) of the land, but no notice had been taken of his application. From the information which was taken on the subject by order of Governor Micheltorena, it appears that the land has formerly been claimed in part by the Pueblo of San José, and a part by the Mission of Santa Clara. A reference was made to the Magistrate of San José for information, and he reported that one third of the land belonged to that Pueblo and says that he does not think it proper that the petitioner should enter in possession until he (the Magistrate) determined his boundaries and limits of the land. — The Reverend Father Minister of the Mission in his report, says that he can not make a just estimate of the land solicited by Narvaez because "he has not marked out any land, and simply refers to his old petition and plat filed at the time of his former application; and he adds that there was transmitted with them to the Governor, through said Narvaez a plan of the lands of the Mission, by reference to which the Governor would be able to determine the

question. On receiving these reports the Governor made an order for a search for the old petition and map in the proper office. To this order the Secretary made report on the 21st March 1842 stating that they could not be found, but adds that there seems to be no impediment to granting two square leagues of land. And then follows the grant of two square leagues within the exterior limits above mentioned.

It is evident from these proceedings that the question of definite location and of the limits and boundaries of the land granted was left unsettled, and the grant was purposely made of the specified quantity of two square leagues within the limits mentioned. And it was left to the claimant to obtain a juridical survey in order to define and separate the land which should become his under the grant. The juridical act of measurement was one partly of a judicial character, and especially designed to settle boundaries between the holders of coterminous grants, who were summoned to be present at the survey. The settling of these exterior lines was very properly left to be made when such

official measurement should take place
That being done the officer giving the
possession was further required by the
conditions of this grant, if more than
two square leagues of land resulted, when
these boundaries were fixed to proceed and
set off by metes and bounds to the claimant
two square leagues of land as specified
in his grant. The remainder continued
the property of the Nation. We have had
occasion in another case bearing such
similarity to the present to state that
the claimant would in such case be entitled
to a confirmation for the whole land if it
proved not to exceed the quantity granted
to him; but that the burden of proof
was on him to show one of two things,
either first that he had obtained the
measurement required by the grant and
therefore obtained a separation of the land
granted and held his specified portion
by the metes and bounds thus established,
or secondly that by measurement it was
found that there was no more land in the
entire space in which his location was
to be made, than was conceded by the
grant, in which event the whole would
pass by the grant.

In this case, the claimant

(Next page is 69)

obtained no juridical survey nor has he proved that the land did not exceed two leagues. On the contrary he alleges in his petition and shows by a map presented as a part of his case that by an actual survey recently made the quantity of land was ascertained to be three square leagues and about one tenth of a league. The claimant also shows that he caused the surveyor, on ascertaining the quantity in the whole tract to survey out and separate by metes and bounds according to his direction, a portion of said land two square leagues in quantity, which he claims for the land conceded to him. He asks in his petition that he may be confirmed in the title to the whole tract of land described, or if that can not be granted, that he may be confirmed in the two square leagues as surveyed and laid off in the map accompanying his petition.

If the country still continued under the jurisdiction and laws of Mexico he would have no claim to the entire premises. He was expressly restricted by his grant to the quantity of two leagues. Nor would he, if no objection

had been made, be entitled to the specific portion set apart for his two leagues by a surveyor under his own direction; because that designation could only be made by the proper magistrate clothed with power to perform an important official act, in the presence of the owners of the adjoining lands, making the proper measurements, and giving juridical posession. Such as solemn act obtained on his own application and performed at his expence was the only means by which he could obtain the assignment of his specific two leagues of land and its separation from the other portion of the land belonging to the Nation. This he failed to do - not for want of time before the cesion was made, but for reasons of which no explanation is given.

The case of the claimant then is the common one of the grant of a specified quantity of land, which the party interested might locate by juridical survey, within the bounds of a larger tract, and which he failed because to be located and segregated. He had then no established limits to his land at the time of the cesion, no segregation of it from the public domain, and no defined boundaries of a specified portion of land to which

his equities attached, and which this Commission can carry into grant. We cannot confirm mere floating possession to locate lands. We are limited by the laws under which the Commission is organized, and by the principles settled in similar cases in the Supreme Court of the United States to grants with specific boundaries described therein, or those which have been made certain by juridical survey according to the terms of the grant before the cession.

There seems to have been long occupation of the premises in this case, which might seem to commend it to a most favorable consideration. We are not authorized to apply a rule in one case which we do not apply in another. We are not authorized to locate lands never yet segregated from the National domain either by an authorized survey or sufficient description in the grant to enable the survey to be made according to its calls. If a case of hardship is presented, for the want of these it is for Congress and not for this Commission to afford the proper relief.

The claim must be rejected.

I, George Fisher, Secretary to the Board of the United States Land Commission for ascertaining and settling Private Land claims in the State of California do hereby certify that the preceding is a true and correct copy of the Opinion of the said Board delivered in Case No 75 on the docket of the said Board now in this office.

In testimony whereof I have hereunto subscribed my name & affixed the seal of the Secretary of said Commission. San Francisco State of California aforesaid this Ninth day of October A.D. 1852.

Geo. Fisher.

Sec'y.

CASE NO. 7 ND
PAGE NO. 71

No 75

Augustin Narvaez

"San Juan Bautista

(Certified Copy)
of
Opinion of the Board
delivered by Commr.
Alpheus Felch

Filed in office
Novr. 15th 1853.
(Signed) Geo. Fisher
Secy.

AC

CASE NO. 7 ND
PAGE NO. 72

Fees $8.—

of the United States

Clerks Office of the District Court, for
the Northern District of California

CASE NO. 74 AND
PAGE NO. 73

Whereas the Commission constituted for the purpose of ascertaining and settling Private Land Claims in the State of California by the Act of Congress of the United States of America approved on the 3d. of March 1851 entitled "an Act to ascertain and settle the Private Land Claims in the State of California," did on the fifteenth day of November 1853 by their decision of that date decide against the Claim presented by the undersigned to the said Commissioners, which Claim is for land lying in the said Northern District, and is No. 75 on the Docket of claims before said Board, And the said claimant being desirous that the said District Court should review the said decision now hereby files this Notice, in the said Clerks Office, of his intention to prosecute an Appeal as is provided by the 12th Section of an Act, entitled "An Act making Appropriations for the Civil and Diplomatic expenses of the Government for the year ending the thirtieth of June Eighteen Hundred and fifty three and for other purposes, which said Act was approved on the 31st of August 1852—

Augustin Narbaez
by Thornton Williams
his Attorneys —

To the Clerk of the District Court of the U. States for the Northern District of California

Decr. 24. 1853

U. S. District Court

Land Claim No

No 7

Augustin Narbaez
appll[t]

vs

The United States
appll[e]

Notice of Appeal

Filed Dec. 24, 1853
John A. Munroe
Clerk

CASE NO. 7, ND
PAGE NO. 74

Clerk's Office of the District Court of the United States for the Northern District of California.

Whereas the Commissioners constituted for the purpose of ascertaining and settling private land claims in the State of California by the act of Congress of the United States of America, approved on the 3rd of March 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did on the 15th day of November 1853 by their decision of that date, decide against the claim presented by the undersigned to the said Commissioners, which claim is No. 75 on the docket of claims before said board and is for land lying in the said Northern District - and the said claimant being desirous that the said District Court should review the said decision, now hereby files this notice in the said Clerk's Office of his intention to prosecute an appeal as is provided by the 12th section of an act entitled "An act making appropriations for the Civil and Diplomatic expenses of the Government, for the year ending the thirtieth of June 1853 & for other purposes" which said act was approved on the 31st of August 1852.

To the Clerk of District Court of U.S. for the Northern District of California

Augustin Barbary
by Thornton & Williams
his Attorneys
September 1st 1854

CASE NO. 7 ND
PAGE NO. 75

District Court
No. 7

The United States

vs

Agustin Narvaiz

Notice of Appeal

Filed Sept 1st 1854
Jno Ammon
Clk

CASE NO. 7 ND
PAGE NO. 76

Thornton A Williams

CASE NO. 7 ND
PAGE NO. 77

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

Your Petitioner Agustin Narvaiz respectfully represents to this Honorable Court, that He did heretofore, as will fully appear by the Transcript of the proceedings had before the Board of Commissioners to ascertain and settle the private Land Claims in the State of California, now on file in this court, present before the said Board, whilst holding its Session in the City of San Francisco, a claim for the Land lying and being in the State of California and Northern District thereof and described in the said Transcript being claim No. 75 of the List of Claims presented to the said Board under and by virtue of the act of Congress approved on the 3rd of March 1851 —

The Claim of this Petitioner is founded upon a Concession and grant made by Manuel Micheltorena, under authority of the Mexican Government as Governor of the Department of the Californias, on the 30th day of March 1846 - which said Concession and grant together with the preliminary proceedings to procure the same are fully set forth with the proof and testimony in the transcript aforesaid *

Your Petitioner respectfully represents that his said claim has been rejected by the said Board and He now here humbly prays this Honorable Court to review the decision of the said Board and to decide on the validity of his claim —

Agustin Narvaiz
by his Counsel
Thornton Williams

*
See Amendment on next page —

I hereby acknowledge due service of this Petition —

S W Inge

CASE NO. 7 ND
PAGE NO. 78

After the words "Transcript aforesaid" sixth line from bottom page 1st insert the following —

And your Petitioner would further state that on the 23rd day of August 1854. the said Transcript, and on the 24th of December 1853 and afterwards on the 1st of September 1854, notice of his intention to prosecute an appeal, as required by Law were filed in the Clerks Office of this Honble Court, as will appear by the record —

Thornton & Williams

Amended by consent.
June 13. 1855.

A Glassell
Asst. U.S. Dist. Atty &c

No 7

In U.S. District Court.

=

Agustin Narvaiz

vs

The United States

=

Petition &c

=

Filed Sept 26. 1834

Jno A Stevenson

Clk

CASE NO. 7 ND
PAGE NO. 79

Thornton & Williams

CASE NO. 7 ND
PAGE NO. 80

At a Special 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 Friday the Sixth day of October in the year of our Lord one thousand eight hundred and fifty-four.

Present: Isaac. S. K. Ogier.
The Honorable ~~OGDEN HOFFMAN, Jr.~~, District Judge.

Augustine Narbaez.
—vs—
The United States.

On motion of Counsel for Claimant, and with the consent of the U. S. Attorney, Ordered by the Court. That all Parties interested be allowed to take further evidence in this cause, upon a reasonable notice, before a U. S. Commission of this Court.

A. D. Dist: Court.

No 7

Augustine Narbaez.

—vs—

The United States.

Order allowing all parties to take further testimony &c,

Filed Oct: 6th 1854.

Inot A Morrow

CB

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four

CASE NO. 7 ND
PAGE NO. 82

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

The United States
vs Appellees
ads.
Augustus Narbaez
Appellant

The United States the above named Appellees by their Attorney deny all and singular the allegations in the said petition contained and especially the validity of the title of the said claimant therein alleged - and pray that the decision of the Board of Commissioners be confirmed, and that the said title be decreed to be invalid.

A. Glassell
Asst. U.S. Dist Atty

U. S. District Court

No. 7 –

United States
ads
Agustin Narbaiz

Answer

Filed June 4, 1855,
by Chaves
Deputy.

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PAGE NO. 83

Chapell Clk

CASE NO. 7 ND
PAGE NO. 846

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 fifth day of July in the year of our Lord one thousand eight hundred and fifty-five

Present: Hon. M. H. McAllister Circuit Judge
and The Honorable OGDEN HOFFMAN, Jr., District Judge.

The United States,
—vs—
Augustin Narbaez,
No 7

In the case on the application of the U.S. Dist: Atty, made in open Court, it is ordered by the Court that an appeal in behalf of the United States from the final decision of this Court rendered in said Cause at the present term, be, and the same is hereby granted and that a certified transcript of the pleadings evidence, depositions, and proceedings in the said Cause be sent to the Supreme Court of the United States without delay.

No 7

United States District Court, Northern District of California.

The United States

—vs.—

Augustin Narbaez,

Order granting Appeal &c.

Filed July 5th 1855

John. D. Morse, Clerk.

by W. H. Chever Deputy.

CASE NO. 7 ND

PAGE NO. 85

Nine

Whereas a judgement was rendered on the 17th day of May a.d. 1852, in the District Court of the Third Judicial District, in and for the County of Santa Clara, State of California, in favor of James C. Boulden and against Henry Clarkson and Jacob D. Hoppe, for the sum of Seven thousand dollars debt, and the sum of five thousand dollars interest due thereon, together with costs of Court. that upon said judgement a writ of Fieri Facias was issued out of the Office of the Clerk of the Court aforesaid, under the private seal of the Clerk thereof, there being no official seal then provided, which writ was dated January 5th 1853, to me directed and delivered commanding me, as the Sheriff of said County that, of the personal property of the Defendant named in said writ, I should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said Defendant could not be found, that then I should cause the amount of such judgement to be made of the Lands and Tenements of the said Defendants, as on reference to the said writ now of record, or on file in the Office of the Clerk aforesaid, will more fully appear, the said writ came to my hands on the 5th day of January 1853, and whereas, because sufficient personal property of the said Defendants, in the said writ named could not be found in my bailiwick, whereof I, the said Sheriff could cause to be made the moneys specified in the said writ, I, the said Sheriff, on the said 5th day of January 1853, did in obedience to the said command

levy on take and seize all the right, title claim and interest of Henry Clarkson one of the Defendants in said writ named of in and to the Lands, Tenements, Real Estate & premises hereinafter particularly set forth and described, with the appurtenances—that on the 11th day of January A.D 1853, I gave public notice by an advertisement printed on that day in the Weekly newspaper published in the County aforesaid and also by posting a copy of said advertisement in three of the most public places of the County aforesaid, including three of the most public places in the Township where the said land and premises were situated, particularly describing said land, that the same would be offered at public auction between the hours of 9 o'clock, A.M. and 5 o'clock P.M. on Saturday the 12th day of February, 1853, at the Court House door in the City of San Jose, for cash in hand, to satisfy said writ and all costs, that at the place aforesaid and at about 12 o'clock M of the said 12th day of Feby I did sell the said Real Estate to George Gordon for the sum of Five thousand and Eight hundred dollars, he the said George Gordon being the highest bidder, and that being the highest sum bidden for the same, that the name of said purchaser and the amount bid was thereupon immediately endorsed upon said writ, that within three days after such sale, a certificate of said sale, made in due form of law, was executed by me and tendered to the said George Gordon and the payment of his said bid demanded

CASE NO. 7 ND
PAGE NO. 88

of him by me, that the said George Gordon declined to re-
deem said certificate, and refused and neglected to
pay the amount of said bid or any part thereof,
the said George Gordon still refusing and neglecting to
complete his said purchase I did on the 28th day of
February a.d. 1853, give public notice by advertising in
the weekly newspaper aforesaid, and by posting a copy
of said advertisement in three of the most public places
of the County, and like notice in three of the most public
places in the Township when the Real Estate aforesaid
was situated, stating that whereas the said Real Estate
was purchased at Sheriffs sale on the 12th day of February
1853, by George Gordon who had failed to complete the
purchase by refusing to pay the purchase money or any
part thereof, notice was thereby given that between the
hours of 9 o'clock a.m. and 5 o'clock P.M. on Monday
the 21st day of March 1853, I would offer the said
Real Estate for sale by auction, in front of the Court
House, in the City of San Jose, to the highest bidder for
cash on account of the said George Gordon, to satisfy said
writ and all costs, said notice particularly describing
the premises as before, that on said 21st day of March
at about the hour of 12 o'clock m. at the place aforesaid,
the said premises were struck off and sold to Lucy
Hoppe for the sum of One hundred and fifty one dollars
she the said Lucy Hoppe being the highest bidder,
and that being the highest sum bidden for the same

whereupon I the said Sheriff, after receiving from the said purchaser the said sum of money so bidden as aforesaid, gave to her such certificate as is by law directed to be given, and a certificate of such sale was duly filed in the office of the Recorder of the County aforesaid, and whereas the six months after such sale, and the giving and filing of such certificate thereof have expired, without any redemption of the said premises having been made. Now this Indenture witnesseth that I, Joseph W. Johnson Ex Sheriff of the County of Santa Clara, State of California by virtue of the said writ, and in pursuance of the statutes in such case made and provided, for and in consideration of the sum of money above mentioned, to me in hand paid as aforesaid the receipt whereof is hereby acknowledged have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said Lucy Hoppe, now Lucy Harper her heirs or assigns all the estate, right, title claim and interest of the said Henry Clarkson one of the defendant, against whom the said writ has been issued as aforesaid whereof he was seized or possessed on the day on which the levy was made as aforesaid of in and to that tract of land situated in the County of Santa

Clara and known as the "Rancho de San Juan Bautista" or "Narvaez Rancho" bounded on the South by the Rancho or land of Juan Bernal, or the heirs Bernals, and the "Rancho de Capitancillos, extending westerly to the foot of the hills to the east of the Blue Mountains to the Gatos Creek, from here easterly to the road from the "Pueblo de San Jose" to Monterey, from here southerly following the aforesaid road until it arrives at a point parallel with the northern line of the said land of the said Bernals, from here until it arrives at and accompanying said line or the Bernals, from here until it arrives and intersects the point of beginning, containing in all two leagues, more or less. Together with all the improvements thereunto belonging or in any wise appertaining: To Have and to hold the said above mentioned and described premises with the appurtenances unto the said Lucy Harper her heirs and assigns forever as fully and absolutely as I, Joseph W. Johnson the Ex Sheriff aforesaid can, may, or ought to by virtue of the said writ and of the statutes in such case made and provided grant, sell and convey the same, In witness whereof I the said Ex Sheriff have hereunto set my hand and seal this the 29th day of December a.d. 1859. The words "of the County of Santa Clara, State of California" between the 11th & 12th lines Page 4. inserted before signing. J. W. Johnson Ex Sheriff Seal
Sheriff of Santa Clara County.

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No. 3.

CASE NO. 7 ND

PAGE NO. 91

Printed and sold by Wm. B. Cooke & Co., Law Blank Stationers,
North-east corner Montgomery and Merchant Streets, San Francisco.

State of California,
COUNTY OF Santa Clara } ss.

On this Twenty Ninth day of December A. D. One thousand Eight Hundred and Fifty Nine before me, John B Henson a County Clerk in and for said County, personally appeared J. W. Johnson Ex Sheriff of Santa Clara County

to me personally known to be the individual described in and who executed the annexed Instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purporses therein mentioned. as such Ex Sheriff

In Witness Whereof, I have hereunto set my hand and affixed my Official seal, the day and year first above written.

John B Henson

County Clerk.

Sheriffs Deed

Hoppe & Clarkson

To

Lucy Hoppe - now

Lucy Harper

Filed for record at request of Jackson Lewis at 9 Oclock A. M. Dec. 30th A D. 1859

Jno. R. Wilson Recorder

By Geo W Gill Deputy

Recorded same day in Book J of Deeds pages 391. 392. 393 & 394. Records of Santa Clara Co Cal

Jno R Wilson

Recorder

By Geo W Gill Deputy

CASE NO. 7 ND

PAGE NO. 92

Eld

$3.00

1

CASE NO. 7 ND
PAGE NO 93

This Indenture,

Made the Twenty Sixth day of December in the year of Our Lord one thousand eight hundred and fifty-Nine

Between Charles A Harper and Lucy Harper his wife (formerly Lucy Stoppe widow of Jacob D Stoppe) of the City and County of San Francisco State of California of the first part and Isaac Branham and Jackson Lewis both of the County of Santa Clara and State aforesaid of the second part, **Witnesseth,** That the said parties of the first part, for and in consideration of the sum of one dollar

to them in hand paid, by the said parties of the second part, receipt of which is acknowledged, Have ———— remised, released, quit claimed, and by these presents do—hereby ———— remise, release and forever quit claim unto the said parties of the second part, and to their heirs and assigns forever. All their right title claim interest both at law and in equity of in and to all that certain tract of land lying being in the State of California and in the County of Santa Clara and known as the Rancho de San Juan Bautista or Navraes Rancho bounded on the South by the rancho or land of Juan Bernal or the Mesrs Bernal and the Rancho de Capitancillos extending Westerly to the foot of the hills to the East of the blue mountains to the Galos Creek from here Easterly to the road from the Pueblo de San Josè to Monterey from here Southerly following the aforesaid road until it arrives at a point parallel with the Northern line of the said land of said Juan Bernal from here until it ~~reaches~~ arrives at and accompanying said line of the Bernals from here until it arrives at and intersects the point of beginning containing in all two leagues more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining. **To Have and to Hold,** the same with all and singular the appurtenances and improvements thereunto belonging, unto the said parties of the second part their heirs and assigns forever.

CASE NO. 7 ND

PAGE NO. 94

In Witness Whereof, *the said parties of the first part, have hereunto set their hands and seals the day and year first above written.*

Chas. N. Harper

Lucy Harper

Signed, Sealed and Delivered, in the Presence of

P. P. Carnival

STATE OF CALIFORNIA,

County of } SS.

On *this* *day of* *A. D., one thousand eight hundred and fifty=* *before me, a Notary Public in and for said County, personally appeared*

personally known to me to be the individual described in and who executed the foregoing Instrument, and acknowledged that 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 at my office in the County aforesaid, the day and year above written.

Notary Public.

CASE NO. 7 ND

PAGE NO. 94

In Witness Whereof, *the said parties of the first part, have hereunto set their hands and seals the day and year first above written.*

Chas. A. Harper

Lucy Harper

Signed, Sealed and Delivered, in the Presence of

P. B. Cornwall

CASE NO. 7 ND

PAGE NO. 94 A

State of California, } ss.
CITY AND COUNTY OF SAN FRANCISCO.

On this twenty Sixth *day of* December *A. D., One Thousand Eight Hundred and ~~Sixty~~* fifty nine *before me,* P. B. CORNWALL, *a Notary Public, in and for said City and County, duly commissioned and sworn, personally appeared* Charles A. Harper *and* Lucy Harper *his wife, whose names are subscribed to the annexed Instrument as parties thereto, personally known to me to be the individuals described therein and who executed the same, and they and each of them acknowledged to me that they executed the said Instrument, each respectively, freely and voluntarily, and for the uses and purposes therein mentioned. And I do hereby further certify, that the said* Lucy Harper *wife of the said* Charles A. Harper *is personally known to me to be the person whose name is subscribed to said Instrument as a party thereto, and that she was by me first made acquainted with the contents thereof, and thereafter acknowledged to me on examination separately, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, for the uses and purposes therein mentioned, without fear or compulsion, or undue influence of her husband, and that she did not wish to retract the execution of the same.*

In Witness Whereof, *I have hereunto set my hand and affixed my official Seal the day and year in this certificate first above written.*

P. B. Cornwall

Notary Public.

In Witness whereof, *I have hereunto set my hand and affixed my Official Seal in the County aforesaid, the day and year above written.*

Notary Public.

C. A Harper et Ux

To

Deed

Branham & Lewis

Filed for record at request of J. Lewis at 9 5/60 O'Clock A. M. Dec 30 th A.D. 1859

Jno R Wilson Recorder

By Geo. W. Goode Deputy

Recorded in Book M. of deeds pages 688 & 689

Records Santa Clara County

Jno R Wilson Recorder

Exd

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PAGE NO. 95

$2.25

2

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PAGE NO. 96

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 Fifth day of January in the year of our Lord one thousand eight hundred and ~~fifty-nine~~ Sixty, for the trial of Land Cases.

Present:

~~The Honorable~~ OGDEN HOFFMAN, ~~District Judge~~.

The Hon. M. Hall McAllister Circ. Judge

Agustin Narvaez

vs.

The United States

L. C. 75
D. C. 7

It appearing to the satisfaction of the Court, that J. S. Black Attorney General of the United States, and C. M. W. Hackam Attorney of the said Agustin Narvaez in the above cause in the Supreme Court of the United States have signed and filed with the Clerk of the said Supreme Court, an agreement in writing directing the said cause to be dismissed, and it further appearing that the said Agustin Narvaez has consented to the said agreement and discontinuance, and that the said Clerk has entered the said cause dismissed pursuant to the 29th rule of the said Supreme Court of the United States. In consideration of which and upon motion of the said Agustin Narvaez by his attorneys Thornton Williams & Thornton, it is now hereby ordered and adjudged that the copy of the above proceedings certified by William T. Carroll Clerk of the Supreme Court of the United States, under the seal of said Court be filed in the Clerks office of this Court, and that the said ~~John~~ Agustin Narvaez be at liberty according to the terms

of said agreement to proceed and obtain a survey and patent in conformity with the Decree of Confirmation heretofore entered in this Cause, and the acts of Congress relating to private land claims in California

M. Hall McAllister
Judge Cir. Court U.S.
Dist. of Cal.

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.*

District Court of the United States

IN AND FOR THE

Northern District of California.

Agustin Alviso

vs.

The United States

Order of Court

Filed January 5 1858

W. H. Chevers, Clerk.

By ..... Deputy.

CASE NO. 7 ND

PAGE NO. 97

In the Supreme Court of the United States.

CASE NO. 7 ND

PAGE NO. 98

No. 161. December Term 1859.

The United States } Appellants
vs.
Augustin Narvaez } Appellee

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

Having examined the record in this case and being satisfied that there is no just ground for prosecuting this appeal I do hereby discontinue the further prosecution thereof and consent that the discontinuance be filed and entered of Record in the Supreme Court and that the claimant be at liberty to proceed and obtain a survey and patent in conformity with the Decree of Confirmation and the acts of Congress relating to private land claims in California.

Washington
19th Nov. 1859

J. S. Black
Attorney General

The foregoing discontinuance and consent is accepted

C. H. W. Meehan
for Appellee

As Counsel of record for Augustin Narvaez the Appellee in the aforesaid case I hereby consent & agree that the appeal in this case be discontinued pursuant to the 29th rule of this Court.
15th Nov. 1859.

C. H. W. Meehan
for Appellee.

1859. November 15th. The above stipulation to dismiss this case having been this day filed and the fees due the Clerk by the parties in this case having been paid, this case is thereupon now here dismissed pursuant to the 29th rule of this Court.

Wm Thos Carroll
Clerk of Sup Ct. U.S.

CASE NO. 7 ND
PAGE NO. 99

I William Thomas Carroll, Clerk of the Supreme Court of the United States do hereby certify that the preceding is a true copy of the stipulation filed in the above entitled cause and of the entry endorsed by me thereon dismissing the said cause pursuant to the 29th rule of this Court.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Supreme Court of the United States at the City of Washington being the present Seat of the National Government of the United States this Fifteenth day of November Eighteen hundred and fifty nine.

Wm Tho. Carroll
Clerk Sup Ct. U.S.

No. 7.

U. S. Dist. Court.

The United States.

— vs —

Agustin Narbaez.

Copy of stipulation, and dismissal pursuant to 64th Rule.

Filed January 5. 1860.
W. H. Chevers.
Clerk.

CASE NO. 7 ND
PAGE NO. 100

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

The United States
vs
Augustin Narvaez
} No 7. on Register of Land cases.

To the Honorable Ogden Hoffman Judge of the District Court of the United States for the Northern District of California.

The petition of Isaac Branham & Jackson Lewis by their attorneys Crockett & Cutting respectfully sheweth to your Honor, that a final decree of confirmation was entered in the above entitled cause, on the 5th day of July 1855, by the said District Court & the appeal from said decree has been dismissed & the said decree has become & is final & absolute. That the United States Surveyor General for California, has made or caused to be made an official Survey of the lands mentioned in said decree, & on the 11th day of September 1860 Approved the said Survey according to law & on the 12th day of September 1860, made the first publication of said approval, under & in pursuance of the first Section of the Act of Congress approved June 14th 1860, regulating Surveys made under the Act of March 3d 1857. Your petitioners further represent that

They are largely interested in the said Survey & in the lands embraced in said decree of confirmation, in this, towit that they claim in good faith to be entitled to more than two thousand acres of said land under & by virtue of conveyances & mesne conveyances from the said Narvaez the original grantee & the claimant in this cause, & from his grantees, which lands your petitioners purchased for a valuable consideration & have paid for. That your petitioner, Isaac Branham, resides with his family on said lands, claiming title under the conveyances aforesaid, & has erected expensive & valuable improvements thereon. And your petitioners further state that they verily believe & are advised by their counsel that the said Survey so approved by the said Surveyor General, is erroneous & does not conform to the decree of confirmation & does not embrace a large portion of the lands claimed by your petitioners as aforesaid, which ought properly to be embraced in said survey. Wherefore they pray for an order, directing the said Surveyor General to return into this Honorable court, a certified copy of the plat & field notes of said Survey, for the inspection & revision of the court & ~~as~~ they pray to be

allowed to intervene in said cause for the protection of their rights & that the said approved Survey be set aside & that a new survey be made, in conformity with said decree of confirmation.

Crockett & Crittenden
Attys for Petitioners.

Isaac Branham

Sworn to and subscribed this 22nd September 1860. before me.

W. T. Sheets
N. S. Com:

No 7.

United States

vs

Augustin Narvaez

Petition of Isaac
Branham & Jackson
Lewis ——

Filed Sept. 26. 1860.
W. D. Kennedy
Clerk

CASE NO. 7. ND
PAGE NO. 104

Sept 12,
Oct 17.
Executed & Entered in
Attys for petitioners

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 26th day of September in the year of our Lord one thousand eight hundred and sixty.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

V.

Agustin Narvaez.

IN LAND CASES.

District Court No. 7,

Land Com. No. 75,

AND now at this day on application of Crockett & Crittenden Attorneys for petitioners. IT IS ORDERED, that the Surveyor General of the United States for California return into this Court, on or before Wednesday, the 17th day of October A. D. 1860, his Official Survey and Plat of the land finally confirmed in the above entitled cause, known as "San Juan Bautista" and situated in the County of Santa Clara, in said District; AND IT IS FURTHER ORDERED, that the United States Marshal for this District serve upon the said Surveyor General, without delay, a certified copy of this order, and make due return hereon.

CASE NO. 7 ND

PAGE NO. 106

U S Marshals Office
San Francisco Septr 26th 1860

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

P L Solomon
U S Marshal

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Agustin Narvaez.

ORDER TO RETURN SURVEY.

Returnable 17th October 1860.

Issued Sept: 26th (27) 1860.

Filed Sept: 27th 1860.

W. H. Reed

Clerk.

CASE NO. 7 ND
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CASE NO. 7 ND
PAGE NO. 108

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 17th 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.

Augustin Narvaez.

IN LAND CASES.

District Court No. 7.

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 appeared for the U.S. John J. Williams appeared for, and filed intervention of J. J. Easley, Crockett & Crittenden appeared for Isaac Branham, and Jackson Lewis, and on motion, ordered that they be allowed five days to file intervention of said parties. No one else appearing

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

No. 7.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Aug: Narvaez,

ORDER ON RETURN OF MONITION.

CASE NO. 7 ND
PAGE NO. 109

Filed October 17. 1860

W. A. Cheever

Clerk.

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

Augustin Navarro
vs
The United States

No: 7. In the matter of the Survey and location of Rancho San Juan Bautista—

The Petition of S. I. Easley, Alvis Cottle, C. J. Settle, J. A. Cottle, Royal Cottle, Francis David, Dominga Emanuella Jonathan Lupton, Wm H. Ware, Geo. Kennedy, Thos. Kirk, Seneca Jones, N. H. Hicks, W. K. Bethel, Alvis Beaulieu, P. C. Easley, A. C. Malone, J. L. Pearl, Thomas Kell, John G. Robertson, P. C. Vandenberg, Wm Munn, Francis Phillips, John E. Roberts, Daniel Madrican, A. D. Biggs, F. M. Fowler, G. W. Reynolds, Elisha Packwood, respectfully shows to the Court, that they are part owners of the lands confirmed in the case above mentioned, by titles legally derived from the original Grantee of the Mexican Government. That the said claim has been finally confirmed and duly surveyed. But that certain Justice's Warrant

claiming or pretending to claim a portion of said lands, have caused the said survey to be returned into this Honorable Court, with the view of obtaining or of attempting to obtain a modification of the same, in such manner as Your Petitioners are informed and believe, will if successful, greatly injure their Rights.

Whereupon, to prevent this great wrong and injury to them, and for the protection of their rights and interests in the premises, Your Petitioners pray that they may be permitted to intervene in this cause under the provisions of the act of Congress approved June 14th 1860, and that this Honorable Court will so order and decree: and Your Petitioners will ever pray &c

Thornton, Williams & Thornton
Attys for Petitioners

S. S. Easley

Sworn to and subscribed by S. S. Easley this 16th October 1860. before me,

W. A. Cheves.
U. S. Com.

No. 7

Agustin Narvaez

vs

The United States

Petition of S. J. Easley
asks asking to in-
tervene

Filed Oct. 17, 1860.
W. A. Shepard.
Clerk

CASE NO. 7, ND
PAGE NO. 112

Paid by S. J. Easley.

CASE NO. 7 ND

PAGE NO. 113

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. 7, to Agustin Narbaez known as "San Juan Bautista", and situated in the County of Santa Clara 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 17th 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 26th day of September A. D., 1860.

W. A. Reeves.

CLERK.

(12)

No. 7

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

THE UNITED STATES.

V.

Agustin Narvaez.

MONITION.

Returnable 17th October 1860.

Issued Sept. 26th 1860.

Filed October 17. 1860.

W. A. Clevenel.
Clerk.

The within Moxition was received by me on Wednesday the 26th day of September 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for 3 consecutive Wednesdays, in the San Francisco Herald, commencing on the 3d day of October 1860; and for 3 consecutive Saturdays, in the San Jose Tribune a paper published nearest the land, commencing on the 29th day of September 1860

Dated San Francisco, Octr 17th 1860

P. L. Solomon
U. S. Marshal.

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CASE NO. 7. ND

PAGE NO. 115

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

The United States vs. Augustin Narvaez } No 7. "San Juan Bautista"

Northern District of California ss:

Isaac Branham being duly sworn, deposes and says, That heretofore, to-wit; on the 31st day of August A.D. 1855, Augustin Narvaez, the claimant in this case, and Maria Josefa Higuera de Narvaez his wife conveyed to the Deponent, and to Jackson Lewis, the tract of land hereinafter described, and which is a part of the lands of San Juan Bautista, which are claimed in this case: That the said tract so conveyed is described as follows; all of the following tract or portion of land, lying being and situate in the County of Santa Clara, in the State of California, being a portion of the Rancho known as San Juan Bautista, or the Narvaez Rancho to-wit; Commencing at the North East corner of the farm of Isaac Branham, thence Westerly along the North line of said Branham, to the line of the land deeded by said Narvaez and Wife, to Wil-

-liam R. Basshaw; thence Southeasterly along said line to the South East corner of the land of said Basshaw; thence South Westerly, along said Basshaw's line and in continuation thereof in the same direction, until the same strikes or arrives at the original boundary line of the said Rancho San Juan thence along and with the line of said original boundary of said Narvaez Rancho Baptista), or Narvaez Rancho, in a South Easterly direction to the Arroyo Capitancillos; thence down and along with the said Arroyo Capitancillos, to the junction of the said Arroyo, with the Guadaloupe creek, running from the Almaden mines, thence down and along the said Guadaloupe creek to a point opposite the place of beginning, thence from that point Westerly to the place of beginning, excepting therefrom, such portions of the same which before the date of said deed had been legally and properly sold by the said Narvaez and Wife, the area of the said tract, after such exceptions, being upwards of Two thousand acres of land.

That he the said Isaac Branham, and the said Jackson Lewis still are the owners of said tract, under said deed

and that a large portion of the same

and that a large portion of the land is excluded from the survey made by the Surveyor General in this case, and which has been returned to this Court in consequence, as deponent is informed and believes, of the erroneous location of said survey.

Subscribed and sworn to before me this 20th day of October A.D. 1860.

P. W. Higgins
Notary Public

Isaac Branham

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No 7.

U. S. District Court.

The United States

vs

Augustin Narvaez.

CASE NO. 7 ND
PAGE NO. 118

Affidavit of Interest
of I Branham & J. Lewis

Crockett & Britton &c
Attorneys for Libelants

Filed Oct. 22, 1860,
W. A. Cheves,
Clerk

CASE NO. 7 ND
PAGE NO. 119

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 Third day of November in the year of our Lord one thousand eight hundred and sixty,

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.

V.

Agustin Narvaez.

No. 7.

On motion of Crockett & Crittenden Attorneys for the intervenors Braun-hart & Serres, ordered that they have ten days from and after the filing of the plat of survey to file exceptions thereto.

No. 7.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

V.

Aug. Narvaez.

Order allowing Crockett & Crittenden 10 days from filing of plat of survey to except thereto.

Filed November 3, 1860.

W. H. Sherwood

Clerk.

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PAGE NO. 121

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

The United States
vs.
Agustin Narvaez.

No 7.
San Juan Bautista.

Isaac Branham, and Jackson Lewis, by Crockett & Crittenden their attorneys, except to the survey and location of the land finally confirmed herein, made and approved by the Surveyor General of the United States for California, a certified copy whereof has been filed in this Court, pursuant to its order.

The said Branham and Lewis aver,

1. That the said location and survey, are not in conformity with the final decree of confirmation made by this Court, and the grant to which said decree refers,

2. That the said grant donated to the said Narvaez, two square leagues of land within the land named San Juan Bautista, bounded by the Rancho of the Bernal, by that of Justo Larios, by the Sierra, by the place of the Hernandez and the Pueblo of San José, without passing beyond the aliseal, which

CASE NO. 7. ND
PAGE NO. 122

belongs to the latter, as shown in diseño appearing in the Expediente.

3. That on the said diseño the Northern line of said land is marked and delineated at a considerable distance Southward of the stream known as the Arroyo de los Gatos, and is shown to be a straight line nearly parallel with the general course of the upper portion of said Arroyo.

4. That as delineated on said plat of survey, the Northern line of said survey is the Arroyo de los Gatos, and a line arbitrarily drawn from said Arroyo, to the Guadalupe River, which latter is made part of the Eastern boundary, the said River being an object not called for in said grant nor represented on said diseño, and that by so running said Northern line, the said survey is made to include a large quantity of land, not included in the said grant and diseño.

5th. That within the exterior boundaries specified in said grant and diseño, is contained a larger extent in area than the two squaire leagues, granted and confirmed to said Narvaez.

6. That no juridical possession was given of the said lands to said Narvaez under the former government of California, and

CASE NO. 7. ND
PAGE NO. 123

the former government of California, and the said grantee had, under the government of the United States, the right of selecting the two leagues granted and confirmed to him within the said exterior boundaries subject to the system of surveys in force, under the laws and regulations governing the Executive Department of the United States, and subject to the rights of those to whom he may have sold and conveyed any portions of the land within the said boundaries.

7. That on the 31st of August 1855, the said Narvaez sold and conveyed to these Intervenors, a tract of land containing two thousand acres lying on the stream called the Arroyo de los Capitancillos and extending from the Sierra or Mountain, on the West to the Guadalupe Creek, on the East, and being the Southern portion of said Rancho, and before the said 31st of August 1855, had sold and conveyed other portions of said two leagues of land, on the Western part of said Rancho, adjacent to the said Sierra, in which portions these Intervenors now hold a large interest,

CASE NO. 7 ND
PAGE NO. 123 A

and that by said sales and conveyances the said Narvaez made his election of the land to which he was entitled within said exterior boundaries.

That by the said survey, a large portion of the said two thousand acres, sold and conveyed to these intervenors, and also the whole of the said other lands previously sold and conveyed by said Narvaez, and in which these intervenors are interested, are excluded.

Wherefore they pray that the said Official Survey be rejected and set aside, and a new survey be ordered to be made of the two leagues of land, confirmed to said Narvaez, to include the said tracts of land sold and conveyed by him to these intervenors as aforesaid, and to be taken within the boundaries specified in said grant and diseño, the Northern boundary of said survey to be a line drawn South of the Arroyo de los Gatos as delineated on said diseño referred to in the grant.

Crockett & Pritchard
Attys for Intervenors
Brashear and Lewis.

No 7.

U. S. District Court

San Juan Bautista

The United States

vs.

Agustin Haraszthy.

Exceptions to Survey
by Branham & Lewis.

Crockett & Crittenden
Attys for said Interveners

Filed Nov: 20. 1860.
W. A. Shearer.
Clerk.

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CASE NO. 7 ND
PAGE NO. 125

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

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.

v.

~~Geo. C. Grant~~

Agustin Narbaez,

No. 7.

On Reading and filing Notice of Motion, and on motion of Mr Jno. J. Williams, of Counsel for the Claimant, ordered that the proofs herein be closed on, or before the 22nd inst. when the Cause may be brought on for hearing.

No. 7.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Agustin Narbaez,

Order closing proofs, and setting cause for 2nd inst.

Filed April 1, 1861.

W. H. Chever,

Clerk.

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

The United States
vs
Agustin Narvaez
} No 7 - D. C.

To Messrs Crockett & Sanderson and C. Beckam Esq. Dist-Atty -

Gentlemen

Please take notice that on Monday next at the opening of said Court or as soon thereafter as Counsel can be heard, we will move the Court to assign a day, for the closing of proofs in the above entitled cause, and for the argument of the same - March 27. 1861 -

Williams & Thornton
Attys for Claimant

U.S. Dist: Court

United States
vs } No 7
Apostolos Karavas

Notice of Motion to
close proofs &c &c

Filed April 1, 1861
W. A. Clement
Clerk

Due service of within
admitted. March 27, 1861

Crockett & Cattlett

CASE NO. 7 ND
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Bingham
U. S. Atty

CASE NO. 7 ND
PAGE NO. 129

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 22nd day of April in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Agustin Narvaez.

No. 7.

And now at this day on motion of Mr Brittenden. of Counsel for the Intervenors Branham. and Lewis. it is ordered that one week's further time be. and is hereby allowed all parties herein to close proofs. and move the cause on for hearing.

No. 7.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Agustin Narvaez,

Order allowing one weeks time to close proofs. etc.

Filed April 22nd 1861.

W. H. Chevers,

Clerk.

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CASE NO. 7 ND
PAGE NO. 131

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Tuesday the 23rd day of April in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Agustin Narbaez.
No. 7.

And now at this day, on motion of Mr John. I. Williams, of Counsel for the Claimants, it is ordered by the Court that the order herein entered on yesterday be, and the same is hereby vacated.

No. 7.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Agustin Narbaez.

Order vacating order entered herein on yesterday.

Filed April 23, 1861.

W. H. Chevers,

Clerk.

CASE NO. 7 ND

PAGE NO. 132

WARRANTY against Grantor.

Sold at Stationers' Hall, corner Merchant and Montgomery Streets.

CASE NO. 7 ND

PAGE NO. 133

This Indenture,

Made the Thirty first day of ~~September~~ August in the year of Our Lord one thousand eight hundred and fifty-five

Between Augustin Narvaez and Maria Josefa Higuera de Narvaez his wife parties of the first part and Isaac Branham and Jackson Lewis, all of the County of Santa Clara and State of California, parties of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of Two Thousand Dollars ~~~~~~~~~~ lawful money of the United States of America, to them in hand paid, by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do - grant, bargain, sell, alien, remise, release, convey and confirm, unto the said parties of the second part, and to Theirs heirs and assigns forever, All of the following described tract or parcel of land lying and being situate in the said County of Santa Clara and State of California, being a portion of the Rancho known as San Juan Baptista or the Narvaez Rancho; to wit- Commencing at the North East Corner of the farm of Isaac Branham, thence westerly along the North line of said Branham to the line of the land deeded by the said parties of the first part to William R Bassham: thence South Easterly along said line to the South East corner of the land of said Bassham- thence South westerly along said Bassham's line, and in Continuation thereof in the same direction until the same strikes or arrives at the original boundary line of the said Rancho San Juan Baptista or Narvaez Rancho- thence along and with the line of said original boundary of said Narvaez Rancho in a South Easterly direction to the Arroyo Capitancillos- thence down and along with the said Arroyo Capitancillos to the junction of the said Arroyo with the Gandalupe Creek to a point opposite the place of beginning- thence from that point westerly to the place of beginning. Provided however that all lands or portion of the same included in the above description which may have heretofore been legally and properly sold by the said parties of the first part, and in accordance with Law, shall be excepted from this deed.

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, ~~~~~~~~~~ property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the above described premises and every part and 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, and Their heirs and assigns forever, And the said parties of the first part for themselves heirs, executors and administrators, do hereby ~~ covenant, promise and agree, to and with the said parties of the second part, Their heirs and assigns, that they have not made done, committed, executed or suffered, any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered, in any manner or way whatsoever.

In Witness Whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

The word "August" interlined & the word "September" on first line erased before signing ~~

Signed, Sealed and Delivered in the presence of

H. C. Meline

Augustin X Narvaez his mark Seal

Maria Josefa X Higuera de Narvaez her mark Seal

State of California,
County of Santa Clara } SS.

CASE NO. 7. ND
PAGE NO. 134

On this Thirty first day of August A.D., One Thousand Eight Hundred and Fifty-five before me, ~~a Notary Public~~ County Clerk in and for said County, personally appeared Angustin Narvaez and Maria Jozefa Noignera de Narvaez his wife ~~personally~~

known to me to be the individuals described in and who executed the foregoing Conveyance, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned. and the said Maria Jozefa Noig de Narvaez, wife of the said Angustin Narvaez, having been made acquainted with the contents of said Conveyance acknowledged to me, upon an examination, apart from, and without the hearing of her said husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal in the County aforesaid, the day and year first above written.

Jno. B. Henson Clerk

~~Notary Public~~.

Augustin Navarro & Wife

Deed

To

Isaac Branham &
Jackson Lewis.

Filed for record (at
request of J. Lewis) at
4 35/60 O'Clock P.M.
August 31st A.D. 1855.
S.P. Clark Recorder

Recorded in Book
W. of Deeds, on pages
593 & 594. S.P. Clark
Recorder

Examined

3.75

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PAGE NO. 135

No. 7

U. S. Dist. Court

The United States

—vs—

Aug. Starrez

Exhibit "Sherman Day No. 1."

Filed April 23, 1861,

W. A. Cheney,

Clerk

CASE NO. 7 ND

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CASE NO. 7 ND
PAGE NO. 137

San Francisco, Feb 18th 1860.

C. J. Healy esq:

Dear Sir:

In making the final Survey of the Rancho, it is my intention to have you follow the lines of Survey as far as possible. Of course you must use your discretion in minor matters. It is suggested that the line run by Jno Ley, on the N. E. corner near the Guadalupe might be changed without doing injustice to any one; that is from a Sycamore tree in the lane, to the corner of the Rancho on the Gutos, or nearly there. If you deem it in accordance with justice to do so, I would have no objections. I send you the appraisement of Werks—

Yours Truly
J. W. Mandeville

No. 7.

N. S. Dist. Court
Nor. Dist. of Cal.

The United States
vs
Aug. Narvaez

Exhibit S. H. Smith
No 2. to dep. of
S. H. Smith

Filed April 23, 1861.
W. H. Chevers,
Clerk

CASE NO. 7 ND
PAGE NO. 138

CASE NO. 7 ND
PAGE NO. 139

U. S. Surveyor General's Office
San Francisco, Cal. January 18th 1860

Sir

Whereas in the claim of Augustin Bernalez, to the tract of land designated as "San Juan Bautista" the decision of the U. S. District Court for the Northern District of California has become final; said decision having confirmed the said claim of said Augustin Bernalez to the said tract designated as "San Juan Bautista"; and it further appearing, that all proceedings herein on appeal to the Supreme Court of the United States of America, have been dismissed, under the written consent thereto of the Attorney General 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 Decree of the U.S. District Court confirms said claim, as follows

"It is hereby ordered, adjudged and decreed
"that the said decision of the said Commissioners is hereby reversed, annulled
"and set aside, and it is hereby further ordered, adjudged and decreed,
"that the claim of the appellant Augustin Bernalez be, and the same
"is hereby confirmed and adjudged to be a good and valid claim to
"the extent of two Square Leagues (or sitios de ganado mayor) and for
"no more in the lands described in the grant set forth in the Record,
"provided said quantity of land to him granted, and now to him confirmed,
"be contained within the boundaries called for in said Grant, and if there
"be less than two square leagues, or sitios de ganado mayor within
"said limits, then there is confirmed to him the less quantity"

The grant above referred to describes said tract as of "two (sitios
"de ganado mayor") square leagues, within the land named San Juan Bautista
"bounded by the Rancho of Mesa Bernalez, by Santa Anita, the mountains,
"the Hernandez, and by the town of San Jose, without passing further

" than the grove of alder trees (actual which belongs to it (the
" Pueblo) ".

The 4th clause of said grant describes said tract further, as follows;
" The land of which donation is made is of two square leagues (sitios de
" ganado mayor) a little more or less, as it is explained in the respective
" diagram. The Judge who should give the possession, shall cause
" it to be measured according to ordinance, the overplus that should result
" remaining to the nation, for its convenient uses ".

The said grant is dated March 30th 1844

A copy of the diagram or diseno referred to, is herewith handed to you.

You will make your Survey in strict accordance with the decree of Court, and in Executing the work, and making returns thereof, you will be guided by my General Instructions dated Sept 1st 1858 a copy of which you have

Very Respectfully

(Signed) W Mandeville

U. S. Surveyor General Col

CASE NO. 7 ND
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Chas T Healy Esqr
~~[illegible]~~
Dep. Survr

A true copy
J Conway
Chf Clk.

(1) N. 23° W. 228.

Jan 17 1860

San Juan Bautista
to Augustin Narvaez
Instructions for Surveying
same to Chas. T. Healy.

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No. 7.

U. S. Dist: Court
Nor: Dist: of California

The United States
vs.
Aug: Sarraez

Exhibit S. H. Smith
No 1. to dep^{n} of
S. H. Smith.

Filed April 23. 1861,
W. H. Chevers.
Clerk

CASE NO. 7 ND
PAGE NO. 142

Exhibit

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

CASE NO. 7 ND
PAGE NO. 143

The United States,

v.

Aug: Narbaez,

IN LAND CASES.

Dist. Court No. 7.

Land Com. No. 75.

To Calhoun Benham and John. J. Williams.

You are hereby notified that the testimony of Sherman Day. and others in the above entitled cause in behalf of Benham & Sam's will be taken before me, the undersigned, 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, commencing on Friday the 12th day of April A. D. 1861, at 11 o'clock, A. M., and continuing from day to day until finished, at my office, No. 14 U. S. Court Rooms; and you are hereby further notified to then and there appear and propound such questions to the said witness as you may deem fit.

Dated at San Francisco, in the District aforesaid, this 5th day of April A. D. 1861.

W. A. Aherne

U. S. COMMISSIONER.

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Aug: Narbaez.

NOTICE.

To

Service of copy of within notice is hereby accepted. April 5. 1861.

Williams & Thornton

Duncan U.S. Atty

U. S. COMMISSIONER.

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

CASE NO. 7 ND
PAGE NO. 145

The United States,

v.

Augt. Sarbadez

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 45

BE IT REMEMBERED, that on this 12th day of April A. D., 1861, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Sherman Day a witness produced in behalf of Intervenors Branham & Lewis in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: ~~his evidence being interpreted by a sworn interpreter~~.

PRESENT: J. B. Crockett Esq. for Intervenors Branham & Lewis. J. J. Williams Esq. for Claimant. and Calhoun Benham Esq. U. S. Atty. for the U.S.

QUESTIONS IN BEHALF OF THE said Intervenors

Question 1st,

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

Ans.

My name is Sherman Day, my age is fifty five years, and

Presidio
at New Almaden Santa Clara Co.

2.

Examination adjourned by consent until 10 oclock A.M. tomorrow.

CASE NO. 7 ND
PAGE NO. 146

San Francisco
April 13th 1861

Examination of Sherman Day resumed from yesterday

Present:

All the parties.

Ques: 2.

What experience if any have you had as a surveyor?

Ans.

I have been surveying nearly eleven years in California, and was an engineer and surveyor for fifteen years before I came. I was Deputy U. S. Surveyor from 1832 to 1853 in this state. I was Deputy Surveyor of Santa Clara County for several years.

3.

Are you acquainted with the lands called El Rancho de San

Juan Bautista, confirmed to Agostin Starvaez?, if so how long have you known it?

Ans.

Again. I have known it for ~~less~~ seven years.

4.

State whether or not you ever made a survey or surveys of the said ranchs, if so, when and for whom?

Ans.

I made the first survey of it in March 1850; a little later in the same year - early in the summer or late in the Spring - I made an addition to and correction of the said survey. In 1854 I partly resurveyed said ranchs and made a new map, which is on file in this case, and which is marked "No 7, U.S. Dist Court. U.S. vs. A. Starvaez, Map A. A. M." I made the first survey for Starvaez himself. I made the additions and corrections to that survey at the instance of Vanderslice and Clarkson who purchased of Starvaez. The survey

of 1854 I made at the instance of Judge Heater, Bapham, Brannham (and some others whom I dont recollect) who purchased from Narvaez.

5.

State whether or not from the making of these surveys, and from your knowledge of the country you are acquainted with the streams, mountains localities and general topography of the said ranchs, and the adjoining lands?

Ans

I ~~have acquaintance~~ Yes.

6th

Examine the paper now on file in this cause marked "H. D." and attached to a former deposition given by you, and state whether or not the said paper was ever in your possession, and what it is?

Ans.

I have This paper was produced and attached to my former deposition in this cause. It is a copy of the original deseno

in this case.

7.

State whether or not when you made the surveys you have described you had a copy of the papers and of the original grant, or the originals themselves in your possession?

Ans.

When I made the survey in March 1850, I had a copy of the deseño, which was handed to me by Mr. Lyman, who I understand took it from the archives at Monterey; before I finished the survey and made the map, I saw what purported to be the original grant and deseño in the hands of Soberanes. I do not remember in the survey of 1854 what papers I had before me. I had become very familiar with all the papers in the case, and cannot distinctly remember which ones I had.

8.

Who accompanied you when you made the first survey?

CASE NO. 7 NO
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Ans.

Joaquin Soarez, Miguel Soarez, sons of Agustin Soarez, and José Hernandez one of the ~~Ala~~ Colindantes.

9.

Examine the map marked S. H. No. and describe on that map the survey as made by you in March 1830?

Ans.

I commenced the survey about the point marked "A." in pencil thence triangulated a line to the point marked B. in pencil to a Portezuello in the hills of San Juan Bautista, back of the old house of Agustin Soarez. Thence I triangulated another line to the point marked "Sausalito" or small willows" in the line of Bernal. Thence I ran to a small low hill marked "C" on the map near the Loma de Santa Teresa. This last line I afterwards changed at the instance of Bruno Bernal and run it to a leaning oak, marked "D."

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on the maps, on the ridge of the hills of Santa Teresa. I surveyed a line from the small hill previously mentioned to a ~~point~~ near Bartagnello, near the termination of the hills of Santa Teresa, and from that Bartagnello to the junction of the Arroyo Seco, with the Arroyo Capitancillos, to a sycamore which I marked S. These last two lines I afterwards changed to one straight line, jumping from said leaning oak to said Sycamore. From the Sycamore tree I run up the Arroyo Capitancillos (which is called upon some maps Arroyo Seco which was then understood to be the boundary between Narvaez and Prado Larios) ~~to the Eastern end~~ to a point marked "Sycamore" opposite to the end of the low hills of the Sierra Azul. From thence I run along the Northern skirt of said foot-hills about a mile and three quarters to ~~the Southern end of the line to~~ a spur of the said hills which runs at the

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Southern
termination of a line agreed upon between Hernandez and Soarez, which is marked on said map as such agreed line. This point was determined upon in the presence Joaquin Soarez Miguel Soarez and Jose Hernandez and myself, From this point they ran a line as indicated on this map to a large live oak on the Arroyo de los Gatos which was agreed upon by Joaquin Soarez and Jose Hernandez for me to run to. thence I ran down the Arroyo de los Gatos, following the meanders of the creek to a point marked "2" in pencil on the map at the Northwestern termination of a line leading towards the Mission of Santa Clara. and from thence in a straight line through the ~~beginning to~~ Williams to the beginning point on the Marsh near the junction of the Arroyo de las Gatos and the Arroyo Seco de San José de Guadalupe.

10.

Can you state about how much land was included in that survey?

Ans.

I should think about two leagues and a half by ~~a third~~ five eighths.

11.

State whether or not in making said survey, you were governed by the grant and ~~desire~~ or by the directions of Searcy or his sons.?

Ans.

I was governed by the direction of Sidney and his sons, occasionally consulting ~~with~~ the ~~and~~ of the Burnals and José ~~with~~ Hernandez.

12.

You have said that during the following summer you made an addition to, and correction of said survey. Explain by reference to the same map, what additions and corrections you made, and for what purpose they were made?

Ans.

The corrections I have already referred to in speaking of the

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lines of the Bernal boundary and they were made at the suggestion of the Bernals so as to leave no controversy in respect to their lines at that point. The additions I made to the survey were made at the instance of Vanderslice and Clarkson, who had purchased all the title of Ysunaga ~~except two leagues~~. to all the land he claimed, except two leagues.—All the land surpassed to be covered by his grant, ~~except~~ save and above two leagues,

I extended the Southern boundary of the survey over the hills beyond referred to, to the foot of the higher spur of the Sierra Azul. I extended the survey so as to include all the hills of the San Juan Bautista to the Monterey road as shown on the map. I also at that same time ran ~~two lines~~ a line at the instance of Vanderslice and Clarkson, indicated on the map by the letters F. and E. in pencil, terminating on the Capitancillos creek, a short distance above

Dr. Cunningham house. This line was intended to be the Southwestern boundary of the two leagues received by Harvey at the time of his sale to Vanderslice and Clarkson. The Southeastern boundary of the said two leagues was formed ~~partly by the straight line which is formerly~~ by the Arroyo las Pulgarcitos, running from the Lancelitos above referred to, running back of the old house of Harvey at the foot of the hills of San Juan Bautista to a point a short distance beyond the house of Miguel Harvey, thence sweeping in a Northwesterly direction to the Arroyo Leon de Guadalupe, thence following down this last Arroyo till it intersects the straight line before referred to, from the place of beginning to the Lancelitos, and thence along said straight line to said place of beginning. The other boundaries of the

& the two leagues, are the same as those depicted in the survey of March 1850. A

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13.

What instructions if any had you in making the survey of 1854. What was the object of said survey, and describe the same as made by you?

Objected to by Counsel for Claimant as irrelevant and incompetent

Ans.

I was requested by Judge Hester, Mr. Branham Mr. Dupham and others to make a survey of Narvaez's Ranch, delineating the topography thereof as nearly as it could be done in conformity with the original title papers and deeds, so that they could present to the U. S. District Court a map illustrating the correspondence between the original title and deeds, and the actual topography of the country and also its connection with the

boundary lines of the U. S. and

township lines of the U. S. land surveys, and the locality in reference to the Pueblo of San José. I was also requested to mark out upon that map the two leagues as they were called for in the title according to my understanding of the case.

The map is the same which I have heretofore referred to marked "S. A. Sc." and is a compilation made up from all my previous surveys of that region of country as Surveyor for Narvaez and others, as U. S. Deputy Surveyor for the purpose of surveying U. S. township lines in that vicinity, and a Deputy Surveyor of the County of Santa Clara.

14.

Please designate on said map, what lines if any, were intended to designate the two leagues, called for in the grant?

Ans.

The grant calls for the Colindantes Senores Bernal, which I understand to be as laid down

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upon the map; it calls for the name of Jesús Larios, ~~whose~~ another colindante, which lies South of the Arroyo Seco, ~~and the Arroyo~~ de Guadalupe and Arroyo Capitancillos; it calls for the Sierra Azul, the foot of the foot hills of which I have assumed as the boundary; it calls for the place of the Señores Hernandez, another Colindante, and for the Pueblo of San José without passing the Alizal. The Deseño indicates on the North side of the rancho also, the hills of San Juan Bautista with the small creek running along the Southern skirt of those hills. The North-western termination of those hills is very near the Alizal, which is mentioned in the title as a limiting point in the boundary. I therefore considered that ~~the Alizal~~, the hills of San Juan Bautista, and the other points already described ~~are~~ form the boundaries of the ranch on the East, the West

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and the South, leaving a line ~~drawn~~ to be drawn towards the Northwest between the hills of San Juan Pueblo and the boundaries of Hernandez, which line ~~is cutoff to the~~ would cut off the quantity of two leagues belonging to Narvaez from the lands of the Pueblo of San José, which line must also be so drawn that it cannot pass the Algal, or grove of Sycamores, said to belong to the Pueblo. This line I did not accurately lay down upon the map in ink because I did not know where the line of the Hernandez ranch had been finally determined to be. I have indicated two red lines upon the map, as the possible boundaries of the Hernandez ranch; one of these lines is the line agreed upon between José Hernandez and Joaquin Narvaez and surveyed by me in 1857; and the other is a line surveyed for Hernandez by Surv. Healey in 1854, and pointed out to me by Surv. Healey.

Please indicate on the map the line which you have spoken of as running from the Northwesterly point of the hills of San Juan Bautista, in a Southwesterly direction to the Hernandez line which would cut off two leagues reserved by Sarraez?

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—Objected to by Counsel for claimant as irrelevant.

Ans.

I find by reference to my former deposition in this case, that I have indicated two lines — one the short line running from the Arroyo Pulareitos to the Alizal near Kell's house, being the point on the Arroyo nearest to the Aliza, from this point near Kell's house I have drawn a line in pencil paping near to the U. S. Township Corner, cutting the two red lines of the Hernandez grant, at about two thirds of the distance from the Las Mountains to the Las Gatos creek. This line cuts off

about two leagues, between it and the Southern Western and Eastern boundaries before described.

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16.

State whether or not by running the line last described the survey of the two leagues named conforms to the calls in the grant and Deseño, and if not, state your reasons?

Objected to by Counsel for Claimant as incompetent and irrelevant

Ans.

I never actually surveyed any such line on the ground, but drew it on the map in pencil. I consider that it named conform to the calls of the grant and Deseño, if they were combined, and considered as one document. The reasons why it named conform to them are that these lines comprise the boundaries of the Ranchos of the Reynals, the Rancho of Pinto Larios and the Piedra Agua, the last of which I have assumed as the boundary, and the line

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of the brothers Alexandey, all of which boundaries are named in the grant, the line cutting off the two leagues also conforms to the grant in not infringing upon the Aligal, the calls of the deseño are complied with by making the hills of San Juan Bautista another part of the boundary. The dotted line indicated on the deseño running from the Alexandey boundary down to the Aligal conforms generally in position with the pencil line drawn on the map. The short line running from the hills of San Juan Bautista to the Aligal may be considered as corresponding with the other dotted line on the deseño, or partly so. There is no distinct point is indicated by the grant or deseño for the choice of these two lines, I did not undertake to designate it, as I had no authority to do so.

17.

What is the character of the country running from a point

on the Arroyo Seco San José

on the Arroyo Seco San José de Guadalupe opposite Kell's house, in a Westerly direction to the nearest point in the Arroyo de los Gatos.

Ans.

The line crosses through rich mellow soil, near Kell's house it is moist, sometimes overflowed covered with brush and willows, and farther West it is interpersed with Sycamores live oaks and willows, and bushes, it is all of it fine agricultural land.

18.

What is the character of the land lying between the last named line and the pencil line you have described, in the neighborhood of the Arroyo Seco?

Ans.

It is fine agricultural mellow lands, with bushes and trees interspersed.

19.

Please describe on the map what is known as the Aliso of the Pueblo of San José and

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State how far it extends in a Southerly direction?

Ans.

The Aligal is a wide grave of Sycamores between the west branch of the Arroyo Seco San José Guadalupe, ~~and the East~~ or Eastern branch, (and which is a continuation of the Arroyo de los Pulaccitos) and the dry branch of the same Arroyo, extending from near Kell's house in a Northerly direction to within about a mile of the City of San José.

20.

State whether or not this Aligal, ~~from~~ the time you first knew it, has been well known by that name or otherwise, and whether it is well defined?

Objected to by Counsel for Claimant as immaterial

Ans.

By enquiries of old residents of California, I have always found

California, I have always found

~~it to correspond~~ there to indi-
cate the dance ground in the
dance locality. Since I have
been acquainted with the
country — about eleven years,
it has always been known by
the citizens of San Jose by that
name. On the Northern end
near San Jose, it is well de-
fined and extends nearly the
entire distance between the
two creeks; at the South end
it commences leaving the
Eastern branch of the creek,
near Kells house, going from
San Jose, and tapers down to
a point at the Western or dry
branch of the creek a little
South of Kell's house; there is
a slight interruption in the
grove a little North of Kells
house, the trees there being more
sparse. There are Sycamore
trees all along up the arroyo
Seco, but they do not spread out
into the plain far beyond the
borders of the creek, until a
point is reached about two
miles above, ~~Kells~~ Kells, so that the

wide grove of Aligals between Kell's and San José is entirely distinct and separated from the Sycamore groves near the junction of the Arroyo Seco and the Arroyo de las Capitancillos.

21.

State whether or not the Aligal which you have described as lying between Kell's house and San José, is upon the Pueblo lands of San José, if not upon whose lands is it?

Ans.

The Aligal is upon a tract of land included in the a survey said to have been made by S. D. Hutton in 1847, known as the survey of 500 acres lots of the Pueblo of San José. I do not know the ~~bounds~~ official boundaries of the Pueblo lands.

The answer above is objected to by Counsel for Claimant as in part not responsive to the question, and in whole as irrelevant incompetent and hearsay

Examine the plat of the approved official survey in this case, and state whether or not the same conforms to the original grant and deseño, and if not, in what respect does it vary from them?

Objected to by Counsel for Claimant as incompetent

Ans.

The boundaries from the hills of San Juan Bautista near Hall's, following around the Eastern, Southeastern and Southern lines to post "No. 18" on the plat, in my opinion conforms to the calls of the grant and deseño. I do not find on the official plat the Sierra Azul indicated as one of the boundaries, nor the boundaries of the Lenares Hernandez, nor do I find that the line separating the ranch from the Pueblo conforms to the dotted line or lines on the Deseño, which runs ~~from~~ to the top of the arroyo Las Gatos, keeping the willows, to the Aliso.

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Please explain by reference to the said official plat, how the same should be altered, so as to conform to the original grant and deeds?

Objected to by Counsel for Claimants as ~~irrelevant~~ incompetent.

Ans.

I believe that my answers to your previous questions will answer this question.

24.

Examine the papers now shown you purporting to be a deed from Agoshin Sarraeg and wife to Isaac Branham and Jackson Lewis, to be annexed to your deposition and marked Exhibit "Day No. 1." and state whether or not the lands therein described would extend to the West, and if so how far to the West of the Western line of the said official plat?

Objected to by Counsel for Claimants as irrelavant

Ans.

I do not know what is meant in this deed, by the words "the original boundary line "of the San Juan Bautista"; it undoubtedly has a reference to the boundary line of the Hernandez ranch and the Sierra Azul, but I cannot answer the question until, I understand what particular boundary of the Hernandez ranch ~~the~~ is intended.

25.

Assuming the agreed line between Hernandez and Zanuez ranchos, as surveyed by you in 1850, to be the boundary line referred to in said deed, then answer the last question?

Objected to as irrelevant and incompetent.

Ans.

The line running Southwesterly along W.R. Bapham's line would strike the line of Hernandez as surveyed by me in 1850 about three quarters of

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a mile Southwest of a straight line indicated on the official plat as the Southwestern boundary of Soarez's grant, and it would thus be outside of that line all the land ~~indicated on my map~~, South Southwest of the pencil line marked "E. S." on my map, which last line I consider as corresponding with the Southwestern line of the official plat.

Cross Examination
Questions by Mr. Williams.
Ques. 26.

Have you stated that your map marked S. S. No. was made by you at the request of certain parties for the purpose of showing the exterior boundaries of the Rancho San Jose Berreisa and the topography of the land: Please state whether or not you have represented on the said map, the various objects re-

ferred

pieces
so in the grant and marked
or delineated on the original
deseno?

Ans.

I have delineated all the
leading natural objects on
the deseno. There is a corral
and the Tierras de labor, are
changeable in their character,
and I do not know whether
those marked on my maps, are
in the same place, as those
represented on the deseno, When
I made my survey but I
found the corral and a Tierras
de labor on the ground.

2d.

Do not the makes of the
Arroyo de los Gatos, diffuse
themselves in the Monte, and
cannot delineated on your
map?

Ans.

They do on the Northern portion
of it, in the Southern portion—
the Monte and Lunar, are
sometimes covered with the
waters from the Arroyo Seco,
apparent North or below Reels.

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What preparation of the land comprised within the original deseño as shown by it is without the dashed lines marked "Terreno Colindante con S.r. José Hernandez" and "Colindante con el Pueblo," ?

Ans.

I cannot without making a calculation, say accurately, but would estimate it, just looking at the deseño, as a fifteenth or twentieth part.

29.

Please apply the scale on the deseño to the dashed line under which is written at one end "Aliga" and say what is it's length?

Ans.

About four thousand five hundred varas, or 9/10 of a Spanish league.

30.

Please apply the scale on your map to the line thereon which your say might correspond with the line last re-

referred to, and say what is it's length?

Ans.

I said it might correspond in part with the line last referred to. It is about two hundred and forty varas, or about one eighth of a mile.

31.

Please apply the scale on the ~~original~~ dezeno to the other dotted line above referred to marked "Tierras Colindante" etc, and state it's length?

Ans.

It is about 3600 varas or 7/10 of a Spanish league.

32.

Please apply the scale on your map, and measure the line which you say may correspond with the said dotted line on the dezeno, and last referred to, and state it's length?

Ans.

To the nearest red line as surveyed in 1850, it is ~~5324~~ 7080 varas, to the furthest red line as surveyed by Healy in 1854 it is 8880 varas.

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Why in 1854 did you include in your survey of the two leagues the Labranche which in 1850, you had surveyed out for Vandekelin and Clarkson?

Ans.

I consider the principal function of a surveyor, is to present a correct topographical delineation of the country with the natural and artificial objects in a tract of country surveyed in a dispute, for the information of persons at a distance from the land. Another function of a Surveyor may sometimes be to cut off certain quantities of land, defined within boundaries of a map, and as this quantity may sometimes be cut off by various lines, it may or may not be one of the functions of a surveyor to say which one of those lines shall be the official boundary. In all of the surveys which I have made of the Naronag tract

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I have considered myself as charged only with the duty of making the survey on the ground, delineating the topography and making the computation, and noting the distances and direction whether true or magnetic, and the relative position of objects, I have never been officially clothed with the power to make the boundary of the Naraez rancho. The Pueblo de San José is mentioned in the Naraez grant, I have laid down a part of the city of San Jose, to shew what was then the Pueblo of San José, I have laid down the Monterey road, and the hills San Juan Bautista, as objects delineated on the diseño, and also the Arroyo de los Gatos and the Sierra Azul, and lines supposed to be the boundaries of the rancho of Lenores Alemandez, these objects are all delineated as referred to in the original grant or diseño.

34.

When you surveyed out the

deberando for Clarkson and Vandeventer? Did you not then consider that you had left two leagues within the lines of the original decend for Stanway as received by him?

Ans.

I considered that I had left within their lines the two leagues that were reserved by them for Stanway. I considered myself performing a ministerial act for them, and not as ~~exercising any discretion~~ indicating my opinion as to what would be the official lines, as finally run.

35.

Please mark on your map, the position of Bapham's land, which you have referred to in connection with the calls of the deed to Branham and Lewis?

Ans.

I cannot lay it down, without reference to Bapham's deed. It is bounded on the Northeast by the Arroyo de las Gatos. Bapham's houses are indicated on the map, and I have written underneath them, the word "Bapham's"

It includes what is marked

It includes what is marked "U. S. Township corner." and the Southeastern boundary is parallel with the general course of ~~the~~ ~~Arroyo~~ ~~de las~~ as much of the Arroyo de las Gatos as ~~includes~~ constitutes his boundary.

36.

What was the date of the deed to Bufkard to which you have just referred?

Objected to as secondary evidence.

Ans.

It was in 1850 or 1851. I don't recollect distinctly.

Examination adjourned until Monday next at 9½ o'clock A. M.

San Francisco
April 15th 1861

Examination of Sherman Day resumed from Saturday last.

Present:

All the parties.

Ques 37.

Are you acquainted with the character of the Hutton survey to which you have referred?

Ans.

Yes sir.

38.

By referring to it, did you mean to indicate your faith in it, or cite it as reliable authority?

Ans.

~~It is~~ a piece of survey^ing ~~but~~ Hutton's survey ~~which~~ was exceedingly inaccurate so far as any correspondence is concerned ~~in~~ between what it professed to do, and what it actually did. The original field notes of the survey which I have seen in the old Alcalde's office at San José set forth courses, distances, and areas, which did not agree with courses distances and ~~lines~~ areas

as determined by my resurveys by the old stakes on the ground. As a matter of fact however a survey was actually made, and most of the stakes were substantial and well marked. In the main body of the survey, the lots as numbered and laid down had a general resemblance in form and relative position, but the angles which Hudson said were right angles varied from right angles one two or three degrees in different cases. Lines which he said were seventy chains, are only sixty or sixty one chains long.

39

Have you not frequently expressed an opinion, and at least once in writing that the Hudson survey was incorrect and unreliable, that it was conceived and executed in unworthy motives and for fraudulent purposes?

Ans.

I do not remember whether I have expressed my opinion in those terms. My opinion of the Hudson survey is derived from

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resurveys made by me. I have often expressed my opinion that the survey was full of blunders and my doubts whether those blunders arose from incompetency or knavery, most probably from both. As a matter of fact however the survey was made as shown by the stakes on the ground, and ~~some~~ of those lines have been recognised by ~~permanent~~ actual occupants for purposes of occupancy and fencing. I mean about three quarters of the lines are so recognised, and they are generally in the interior of the survey. Many of the exterior lines, it is impossible to find.

Thurman Day

Sworn to and Subscribed this 15th day of April A.D. 1861 before me.

N. D. Deneen
U. S. Commr.

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Agustin Narbaez.

DEPOSITION OF

Sherman Day

on part of Intervenors

Brenham & Lewis.

Filed April 23, 1861.

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,

v.

Aug: Narvaez

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 75

BE IT REMEMBERED, that on this 15th day of April A.D., 1861, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared ~~Thomas J. Duff~~ J. Ogsley Smith a witness produced in behalf of Intervenors Branham & Lewis in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his ~~evidence being interpreted by a sworn interpreter~~.

PRESENT: A. B. Crockett Esq for Intervenors Branham & Lewis. J. J. Williams Esq. for Claimant, and Calhoun Benham Esq, U. S. Atty for the U. S.

QUESTIONS IN BEHALF OF THE said Intervenors

Question 1st,

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

Ans.

My name is J. Ogsley Smith, my age is 22 years, and my

residence is in the city of San José.

2?

Are you acquainted with the rancho San Juan Bautista confirmed to Agustin Olivera, if so how long have known it?

Ans.

I am, I have known it for four years.

3?

Examine the ~~office~~ copy of the official approved plat of the survey of said rancho, filed in this cause, and state what connection if any, you had with the said survey, and the making thereof?

Ans.

I was appointed as Compaspman by Chas. T. Healey U. S. Deputy Surveyor and did the field work of the survey. I also made the original plat of which this is a copy.

4?

Do you know whether or not any written instructions were

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furnished by the Surveyor General to the said Healey for the making of said survey, if any, and if the same are now in your possession, please produce them, to be annexed to your deposition? ~~and to be~~

Ans.

There were such instructions given to Healey, and he gave them to me. The papers marked "Exhibit J. W. Smith No. 1." ~~(1)~~ are the original instructions, which I now produce to be annexed to my deposition.

5.

State what papers if any, besides the said instructions were furnished you for your information and guidance in making the said survey?

Ans.

I had a letter from the Surveyor General which I now produce, marked "Exhibit J. W. Smith No. 2" to be annexed to my deposition. Also a copy of the diseno furnished by the Surveyor General, and the field notes of the

U. S. Townships lines.

6.

In starting from the beginning corner what line did you first run?

Ans.

I run a straight line following the government subdivision lines to a point opposite Kells, East of the Las Gatos, thence due East to the Northern point of the San Juan Bautista hills passing Kell's house.

7.

In running the said line what was about the average distance of it South of the Las Gatos to the point opposite Kells house?

Ans.

About a quarter of a mile.

8.

State why you run the said line, instead of meandering the Las Gatos to the point marked "Post No. one 20" on the plat?

Objected to as irrelivant.

Ans.

Because the Las Gatos creek

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was not mentioned in the instructions, and because one were referred in the instructions to the legend, which showed a dotted line out from the creek, and because one moved pass nearer to the Pueblo of San José than the grave called "Alizal," which was contrary to the instructions.

9.

State why the said line as originally run as you have described, was afterwards changed so as to meander the Los Gatos, as shown on the official plat?

Objected to as irrelevant

Ans.

It was changed by an oral order from Gen. Henderick, Surveyor General, who came upon the ground and examined it himself

10. Point out if you can, on the official plat the Sycamore tree, and the Northeast corner referred to in Gen. Hende-

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Mills's letter marked S. V. Smith No. 2?

Ans.

The ~~Post~~ Sycamore tree is near "Post ~~No~~ No. 4" on the official plat, and the Northeast corner referred to is near the figures 13, ~~and that corner might be changed~~ on the North line; my construction of the letter was that we might change the line so as to run Southwest to the Las Gatos from the Sycamore tree.

11

Describe the grove called the Aligal, and state how near it comes to Kell's house?

Ans.

It is a grove of Sycamores, and extends from Kell's house towards the town

12.

In what direction from Kell's house is the City of San José, and how near to the central parts of the said town, and to the old church therein, does the Aligal extend?

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Ans.

The direction is Northwest from Kell's house, and the Algal extends to within a mile and three quarters of the church and central part of the town.

13.

How far distant from the said old church is the nearest point of the said official survey?

Objected to as irrelevant

Ans.

About a mile and a quarter.

14.

Do you know the corporate limits of the city of San José, if you, state whether or not the said official survey includes any land, if so how much, within the said corporate limits?

Objected to as irrelevant

Ans.

I know the Southern Eastern and Northern boundaries of the city, the said survey takes in a small portion of those corporate limits, but I dont know

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how much.

15.

How long have you resided at San José and in its vicinity?

Ans.

I have resided in San José and its vicinity for about five years.

16.

State whether or not the Aligal which you have described has been known and recognised by that name, from the time you first went there?

Objected to as irrelavant

Ans.

I do not know. I never heard it called Aligal until about the time of making the survey. I could not speak Spanish and the Americans generally called it the "fair grounds."

17.

State in what respect if any the said official survey varies from the original field notes and from the written instructions of the Surveyor General, and

from the description of the land contained in the grant, as set forth in the said instructions?

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Objected to as being incompetent and as asking the opinion of the witness upon matters reserved by law to the decision of the Court, and not facts.

Ans.

The descend is rather indefinite so far as the particular localities are concerned, and are governed by the written instructions of the Surveyor General. Literally it very nearly conforms to the descend, but taking the instructions and the descend together, it differs in the first place by meandering the Las Lucas Creek, and in the second place by passing nearer to the Pueblo than the Aliqal as mentioned in the instructions of the Surveyor General in reference to the description given by the grant.

18.

How far is the North line of

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said survey South of the point of junction of the Las Gatos Creek with the Guadalupe river?

Ans.

It is about a mile and a half.

19.

Do the said streams unite at a well defined point, or do they spread out into a marsh, losing their waters in the thicket?

Ans.

They spread out to a great extent into the Sausalito, but the main point of junction is well defined. The Northern line of the survey runs through a portion of the Sausal where the waters diffuse themselves.

20.

How far South of the said North line does the Sausal extend?

Ans.

About two miles, and about a quarter of a mile South of Hills house. The Sausal extends about a mile and a quarter North of the North line.

Cross Examination

Questions by Mr. Williams for Pltf.

Ques. 21.

How far is it from the Northern to the Southern line of the corporate limits of the town of San Jose? ~~is it~~

Ans.

It is about five miles.

S. Horsley Smith

Sworn to and subscribed April 15. 1861. before me.

W. T. Clement.

N. P. Com:

CASE NO. 7 ND
PAGE NO. 192

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Aug: Narvaez

DEPOSITION OF

S. Worsley Smith

on part of Intervenors

Branham & Lewis

CASE NO. 7 ND

PAGE NO. 193

Filed April 23, 1861,

W. A. Clevers.

Clerk.

CASE NO. 7 ND
PAGE NO. 194

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Sarbaez.

IN LAND CASES.

Dist. Court No. 7.

Land Com. No. 75

To Calhoun Benham, Esq.
U. S. Atty.

You are hereby notified that the testimony of Augustin Joaquin and Miguel Sarbaez, Harry Bee, James Meeks, Chas. R. Basham, J. W. Mandeville, Antonio Bernal, David Young, John E. Ross and C. T. Healy,

in the above entitled cause in behalf of the Intervenors S. D. Easley, et al.,

will be taken before me, the undersigned, 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, commencing on Thursday the 2nd day of May A. D. 1861, at 11 o'clock A. M., and continuing from day to day until finished, at my office No. 14 U. S. Court Rooms; and you are hereby further notified to then and there appear and propound such questions to the said witness as you may deem fit.

Witness my hand and official seal at the City of San Francisco, in said District, this 24th day of April A. D. 1861.

W. A. Sherwood

U. S. COMMISSIONER.

No. 7.

The United States.

—vs—

Aug: Starbuck.

Notice to take testimony on the 2nd May. 1861.

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PAGE NO. 195

CASE NO. 7 ND
PAGE NO. 196

Page 1.

Know all men by these presents and instrument that I Augustin Narvaez of the County of Santa Clara and State of California for and in consideration of the sum of one thousand Dollars to me in hand paid, the receipt whereof I hereby acknowledge, that by this instrument I bargain, sell and aliene+ and his heirs and assigns forever all that tract or extencion of lands in the County of Santa Clara known as the "parage of San Juan Bautista" and described as follows: bounded on the South by the Rancho or lands of Juan Bernal, alias, Señores Bernales and of Jose C. Cook, extending Westwardly to the Eastern foot of the Sierra Azul, thence Northwardly on a line with the Eastern foot of the Sierra Azul to the "Arroyo de las Gatas", thence Eastwardly to the road leading from the Pueblo of San Jose to Monterey, thence Southwardly along said road to a point parallel with the Northern line of said land of said Juan Bernal, alias, Señores Bernales, thence to, and along said line of the said land of the Bernales to and including the point of beginning

+ something is surely wanting, perhaps a line was omitted. — — —

excepting from all this two leagues of land, to be divided and set aside to said Augustin Narvaez in the following manner, to wit: beginning at the north eastern point of said tract of land (paraje) thence running one league West upon the line which divides the lands of San Juan Bautista, from those belonging to the Pueblo of San Jose, thence running two leagues Southwardly, thence a league Eastwardly, thence two leagues Northwardly along the base line of the hillocks (Lomerias) on the West to the point of beginning. The expenses for the measurement of the above mentioned two leagues, will be paid by said Vanderslice and Clarkson. If the said tract of two leagues cannot be found by the southern line, it will be completed in the measurement of the width, and the said Narvaez by this instrument puts the said Vanderslice and Clarkson in full possession of all the "sobrante" of said tract of land, called "sobrante" and over the said two leagues. In Witness whereof I affix my hand and seal on the Twenty fifth day of April of the year Eighteen Hundred and Fifty

Signed, sealed and delivered in the presence of

Augustin his + mark Narvaez
Maria Josefa her + mark Narvaez

John Richardson, James W. Weeks.

John Richardson, James W. Weeks.

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State of California
County of Santa Clara } ss.

Before me John I Richardson, Register in and for said County of Santa Clara, to day personally appeared Augustin Alvarez the grantor named in and whose hand and seal are affixed to the preceding instrument, and whom I know personally to be the grantor who made said instrument and acknowledged the same to be his voluntary act and deed for the uses and purposes therein expressed. Given under my hand and seal, this 25th day of April 1850.

John I. Richardson
Recorder St. Clara Cty.

Augustin Narvaez & wife
to
Vanderslice & Clarkson
Dated April 25th 1850

Translation

No 7.

U. S. Distt. Court.

The United States.

—vs—

Aug: Narbaez.

Translation of Exhibit
Bassham No 3.

Filed May 4. 1861.
N. A. Cheves
Clerk.

CASE NO. 7 ND
PAGE NO. 199

1 I the undersigned declare by the present instrument that from this date I make donation through right of inheritance as it corresponds to my son Joaquin Narvaez I declare him owner, him and his heirs of a piece of land, taken from the land which I to this date possess and have possessed as legitimate owner, it having been conceded to me by the Mexican Government, as it is shown by the documents which reserve to me the ownership of said land for which end I assign (señalo- I mark out) to my said son from the point of the "Derramadero" of the "Arroyo de los Capitancillos" having for land mark a "Willow-tree (sauz) which grows on the right side + of the South towards the North and near to the high-road taken likewise from said Willow-tree by the margin of the wood (monte) taking all the land which is found from the source of the Arroyito which flows into the River Guadalupe following likewise by the margin of the River Guadalupe to where reaches the boundary (lindero) which is + on the side of the River to the Northern

+ of a line running from South to North - - - -

+ on the Northern side of the River

CASE NO. 7 ND
PAGE NO. 201

side and said boundary taken by the margin of the "Arroyo de las Gatas" following the said Arroyo up, till reaching a place where is found an Alder-tree (aliso) of large enough size which tree is marked with a cross at the foot of the tree as a land-mark and thence a straight line is taken to the point of the "escobal" and from said "escobal" taking a direct line to the above mentioned Willow-tree wherefore "+ item" that of the tract of land in this document described my said son Joaquin only is owner to be enjoyed by him and his heirs and none other of my heirs and their successors will prevent him from the free use thereof wherefore I give him this document declaring it true and valid now and at all times, also he can present to the proper authority to have it recorded and obtain all its due force, wherefore I and my wife sign it before two witnesses

Given in the Ranch of San Juan Bautista on the 19th day of August 1850.

Witnesses
Felis Buelna
N. S. Berta

José Augustin Narvaez +
María Josefa Higuera +

+ I suppose it means "I repeat"

Jose Augistin Narvaez
to
Joaquin Narvaez
Dated 19th August 1850

Translation

No 7.

U. S. Dist: Court.

The United States.

—vs—

Aug: Narbaez.

Translation of
Exhibit
Basham. No 4.

Filed May 4. 1861.
W. H. Chevers.
Clerk.

7 ND
PAGE 202

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PAGE NO. 203

Sepan todos por estos presentes ó letras que yo Augustin Narvaez del Condado de Santa Clara y del Estado de California por un consideracion de la suma de un mil pesos pagados en mis manos. cuyo recibo confieso por estas. que por estas letras contrato vendo y enagreno y sus herederos y asignatorios para siempre todo aquel parage ó estension de terrenos dentro del condado de Santa Clara. conocidos por el parage de San Juan Bautista y especificado como sigue colindante por el Sur con el Rancho ó Terreno de Juan Bernales alias Seniores Bernales y de Sur á Nor. hasta estendiendo para el Poniente hasta el Pie al Est del Sierra azul de aqui al Norte en linea con el pie al Este del Sierra azul hasta al arroyo de los gatos. de aqui para el Este hasta al Camino del Pueblo de San Jose á Monterey de aqui para el Sur siguiendo el referido camino hasta llegar á un punto paralelo con la linea del Norte de dicho terreno del referido Juan Bernal alias Seniores Bernales de aqui hasta llegar y acompañando dicha linea del terreno de los Bernales hasta llegar y incluyendo el lugar del principio esceptuando de todo esto dos leguas de terreno para medias y apartar al dicho Augustin Narvaez del modo siguiente a saber. Comenzando al punto del Nor-Este de dicho parage de terreno corriendo de alli una legua al Poniente sobre la linea que divide los terrenos de San Juan Bautista de aquellos pertenecendo al Pueblo D. San Jose. de aqui corriendo dos leguas al Sur de aqui una legua para el

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Este. de aqui dos leguas el Norte acompañ=
do la linea basi de las lomerias al Poniente
hasta el punto del principio. Los gastos de la
mensura de los referidos dos leguas seran pag=
ados por dichos Vandeslice y Clarkson. Si
el dicho parage de dos leguas no puede hall=
arse por la linea del Sur se completara la dif=
erencia en la mensura de la anchura y el
dicho Narvaez por estas letras pone en llena
posecion á los referidos Vandeslice y Clarkson
de todo lo sobrante de dicho parage de ter=
renos espesificados sobrante y a mas de las
referidas dos leguas y para que conste Sus=
cribo mi punto y firma a los veinte y cinco
dias del mes de Abril del año de mil ocho=
cientos y cincuenta

Firmada Sellada y entregada en presencia de John D. Richardson James W. Weeks

Augustin + Narvaez (Sello)
his mark

Maria Josepha + Narvaez (Real)
her mark

Estado de California } Ante me John D.
Condado de Santa Clara } Richardson Registra=
dor dentro y por dicho condado de Santa Clara
hoy Comparecio en persona Augustin Narvaez
el Concededor nombrado en y cuyo firma
y Sello estan agregados a la letra que ante=
cede ya quien conozco personalmente ser
el Concededor que hizo dicha letra y confeso
la misma ser su acto y letra Voluntaria para
los usos y fines espresados. Dado bajo mi firma
y Sello hoy el 25 de Abril 1850.

John D. Richardson (Real)
Recorder St Clara Cty.

CASE NO. 7 ND

PAGE NO. 205

I hereby certify that the foregoings on pages One and two hereof is a full true and correct copy of an Instrument of Record in my office in Book A of deeds on pages 104 & 105.

Witness my hand and official Seal this 15th day of April A.D. 1861

Jno R. Wilson

County Recorder Santa Clara Co.

No. 7

U. S. Dist: Court
Nor: Dist: of Cala.
The United States
vs.
Aug: Narvaez

Exhibit Bapham No. 3.
to deposition of
Wm. R. Bapham.

CASE NO. ___
PAGE NO. 206

Filed May 4. 1861.
W. H. Chevers,
Clerk.

___ 7 ND
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Augustin Narvaez et ux
To.
Vandeslice & Clarkson

Dated April 25. 1850

2

Bapham No. 3

CASE NO. ___ ND
PAGE NO. ___

$250 1850

CASE NO. 7 ND
PAGE NO. 207

This Indenture made the thirty first day of August in the year of our Lord one Thousand eight hundred and fifty five Between Augustine Narvaez and Maria Josefa Higuera de Narvaez his wife parties of the first part and Isaac Branham and Jackson Lewis all of the County of Santa Clara and State of California parties of the second part Witnesseth, That the said parties of the first part for and in consideration of the sum of Two Thousand dollars, lawful money of the United States of America to them in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted bargained sold aliened remised released conveyed and confirmed and by these presents do grant, bargain, sell alien, remise release, convey and confirm unto the said parties of the second part and to their heirs and assigns forever All of the following described tract or portion of land lying and being situate in the said County of Santa Clara and State of California being a portion of the Rancho known as San Juan Baptista or the Narvaez Rancho; to wit; Commencing at the North East corner of the farm of Isaac Branham thence Westerly

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2 along the north line of said Brasham to the line of the land deeded by the said parties of the first part to William B Basham; thence South easterly along said line to the South east corner of the land of said Basham thence South Westerly along said Bashams line and in continuation thereof in the same direction until the same strikes or arrives at the original boundary line of the said Rancho San Juan Baptista - or Narvaez Rancho thence along and with the line of said original boundary of said Narvaez Rancho in a South easterly direction to the Arroyo Capitancillos thence down and along with the said Arroyo Capitancillos to the junction of the said Arroyo with the Guadaloupe Creek or Creek running from the Almaden Mines, thence down and along the said Guadaloupe creek to a point opposite to the place of beginning thence from that point Westerly to the place of beginning. Provided however that all lands or portion of the same included in the above description which may have heretofore been legally and properly sold by the said parties of the first part and in accordance with law. Shall be excepted from this deed Together with all and singular the tenements, hereditaments and appurtenances

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PAGE NO. 209

3 hereunto 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, property possession claim and demand whatsoever as well in law as in equity of the said part of the first part of in or to the above described premises and every part and 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 and their heirs and assigns forever and the said parties of the first part for themselves, heirs, executors and administrators, do hereby covenant promise and agree to and with the said parties of the second part, their heirs and assigns that they have not made done committed executed or suffered any act or acts, thing or things whatsoever whereby or by means whereof the above mentioned and described premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached, charged or incumbered, in any manner or way whatsoever. In Witness Whereof the said parties of the first part, have hereunto set their hands and seals the day and year first above written. The word August

4 interlined and the word "September" on
first line erased before signing.

Augustine his + mark Narvaez (Seal)
Maria Josefa her + mark Higuera de Narvaez (Seal)

Signed sealed and delivered in presence
of H C Melone.

State of California } ss On this twenty first
County of Santa Clara } day of August A D one
thousand eight hundred and fifty
five before me, County Clerk in and for
said County personally appeared Augustine
Narvaez and Maria Josefa Higuera de
Narvaez his wife known to me to be the
individuals described in and who execu-
ted the foregoing conveyance and acknowl-
edged that they executed the same freely
and voluntarily for the uses and purposes
therein mentioned And the said Maria
Josefa Higuera de Narvaez wife of the said
Augustine Narvaez having been made
acquainted with the contents of said
conveyance acknowledged to me upon
an examination apart from and
without the hearing of her husband
that she executed the same freely and
voluntarily without fear or compulsion
or undue influence of her said husband
and that she does not wish to retract
the execution of the same. In Witness
Whereof I have hereunto set my hand
and affixed my official seal in the
County aforesaid the day and year

5 first above written (Seal) Jno B Hewson Clerk
Filed for record at request of J Lewis
at 4 35/60 Oclock PM August 31st AD 1855.
S A Clark Recorder.

CASE NO. 7 ND
PAGE NO. 211

State of California } ss I hereby certify that
Santa Clara County } the foregoing on
pages one, two, three, four and five
is a full true and correct copy of
an Instrument of record in my office
in Book H of Deeds on pages 593, 594
and 595 records of Santa Clara County
In Witness Where of I have
hereunto set my hand
and seal this 16th day
of April AD 1861.
Jno R. Welch County Recorder

No. 7

Augustine Narvaez
+ wife
To
Branham and Lewis

5

Baptham No. 6

N. S. Dist. Court
Nor. Dist. of Calfa
The United States
vs.
Aug. Narvaez

Exhibit Baptham No. 6
to deposition of
W. R. Baptham

CASE NO. [redacted]
PAGE NO. [redacted]

Filed May 4. 1861.
W. H. Chenery
Clerk.

CASE NO. 7 ND
PAGE NO. 212

$3.25

CASE NO. 7 ND
PAGE NO. 213

Page 1

Know all men by these presents that We Augustin Narvaez and Maria Josefa Yguena his wife. Feliz Buelna & Bernarda Rosalis his Wife. Damian Marchin. Jose Mercedes Cardenas and Juan Francisco Munoz have this day bargained and sold and by these presents do grant bargain Sell and convey for ourselves our heirs executors administrators and assigns unto William M Ware of the County of Santa Clara State of California. his heirs and assigns. for and in consideration of the Sum of Eight hundred (800) dollars to us in hand paid by the said Ware. the receipt where of is hereby acknowledged all our right title and interest in & to the following described premises Situated in the County of Santa Clara and State aforesaid. to wit; all that certain piece or parcel of land lying and being in the County aforesaid about 3 miles South West from the City of San Jose. being in the Western part of the Rancho known as the Rancho San Juan Baptista granted to Don Augustin Narvaez by Gov. Micheltorena the said piece of land according to Survey made by W.J. Lewis County Surveyor. Beginning at an old Stake marked "B" at the corner of the pole fence and ten (10) varas from Mr. Barshams South Western line. thence on a true course of S. 68° 47' W 27.70 chs to an oak tree marked "E" at the corner of a pole and brush fence. thence on a true course of N 21° 27' W 34.86. chs.

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PAGE NO. 214

to a Sycamore marked "H" on the South bank of the Arroyo de los Gatos to a Stake marked "C" which bears S. 35° E. W 42 links from Barshams Stone corner. thence parallell to Barsans line and ten(10) varas distant therefrom S. 28° 37' E. 25.28 chs. to the place of beginning. Containing 80 25/100 acres To have and to hold the said described piece aforesaid to the said William H. Ware his heirs executors administrators & assigns forever. In Witness Whereof we have hereunto placed our hands and Seals at the City of San Jose this 22d day of July 1852.

_____ Jose Augustin Narvaez his mark X (Seal)

_____ (Seal)

_____ Feliz Buelna (Seal)

_____ (Seal)

_____ (Seal)

_____ Jose Mercedes Cardenas (Seal)

_____ Juan Franco Munoz (Seal)

County of Santa Clara } ss.

On this 22d day of July A D. 1852. personally appeared before me a Notary Public in & for the County aforesaid Jose Augustin Narvaez Narvaez. Feliz Buelna and Jose Mercedes Cardenas and Juan Franco Munoz known to me to be the same described in & who Signed the foregoing deed who having Signed Sealed the same in my presence, acknowledged to me that they & each of them executed the same freely and voluntarily and for the uses and purposes therein mentioned. (and the said being Ex.-

Page 3.

amined by me Separate and apart from their husbands. acknowledged that they executed the same without fear compulsion or undue Solicitation of their said husbands)
Given under my hand Seal this 22d day of July A.D. 1852. with my private Seal (there being no official Seal yet provided)
Seal Thos L. Vermule Notary Public
Filed 10 Oclk am. July 24th 1852. J. M. Murphy Recorder. Recorded by C. Bonnyer Deputy

---

State of California }
Santa Clara County }

I hereby certify that the above and foregoing on pages 1, 2, & 3 hereof is a full true and correct copy of an Instrument now of record in my office in Book E of deeds on pages 69 and 70.

Witness my hand and official Seal this 16th day of April A.D. 1861.
Jno. R. Wilson County Recorder

Sp. 1

N. S. Dist: Court
Nor: Dist: of Calª
The United States
vs.
Augs: Narvaez

Exhibit Bapham No 1
to deposition of
Wm R. Bapham

Filed May 4. 1861.
W. H. Chevers.
Clerk

7 ND
1
PAGE 216

Augustine Narvaez et al
Vs
William H. Ware —

1

Bapham No 1.

ND

$250

CASE NO. 7 ND
PAGE NO. 217

Yo el abajo suscrito declaro por las presentes letras que desde esta fecha hago donacion por derecho de heredad segun la corresponde a mi hijo Joaquin Narvaez le declaro por dueno a el y sus herederos de un pedoso de terreno tomado en el terreno que hasta esta fecha poseo y aprovechado como legitimo dueno por habermelo concedido el gobierno Mexicano como consta por los documentos que me resguardan la propiedad del mencionado terreno para cuyo fin le señalo a mi referido hijo desde la punta del veranadero del arroyo de los Capitancillos poniendo por mojonera un sauz que esta plantado del lado derecho del sur para el norte y mediato el camino real tomado asimismo desde dicho saus por la orilla del monte tomado toda la tierra que se encuentra desde el nacimiento del arroyeto que entra el rio de Guadalupe siguiendo asimismo por la orilla del rio Guadalupe hasta a donde llega el lindero que esta por la parte del rio al lado del Norte y dicho lindero tomado por la orilla del arroyo de los gotas siguiendo el mencionado arroyo arriba hasta llegar al lugar donde se halla un arbol de aliso bastante grande cuyo arbol esta señalado con una cruz al pie del arbol por mojonera y de alli se toma una linea ~~directa~~ al sauz arriba recta hasta la punta del escobal y del espresado escobal tomado una linea directa al sauz arriba espresado por lo cual lo restero que el porcion de terreno que en este documento se espresa solo es dueno mi referido hijo Joaquin para que lo disfrute el y sus herederos y ninguno otra de mis herederos y sus sucesores no tendran que —

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estorbarle el libre uso de el para cuyo fin le doy este documento declarando Ser firme y valedero para ahora y en todo tiempo asimismo lo podra presentar a la autoridad que corresponda para que se archive y tenga toda la debida fuerza que corresponda asi lo otorgo y firmo yo y mi esposa ante dos testigos. Dado en el Rancho de San Juan Bautista a los diez y nueve dias del mez de Augusto de 1850.

Testigos — Jose Augustin Narvaez +
Felis Buelna — Maria Josefa Higuera +
N. S Berton

State of California } Be it remembered
Santa Clara County } that on this 22 day of August 1850 before me John D. Richardson Recorder in and for said County personally appeared Jose Augustin Narvaez and Maria Josefa Higuera his wife and acknowledged the foregoing to be their free act and deed for the uses and purposes therein mentioned. And the said Maria Josefa Higuera his wife being by me examined Seperate and apart and from without the hearing of said husband and having been made acquainted with the contents of said deed declared that She executed the same freely and of her own accord and without the undue influence of her said husband and that She did not wish to retract the execution of the same In Testimony whereof I have hereunto set my hand and affixed my private seal there being as yet no public seal at office the date above written. } Seal } John D. Richardson Recorder
Filed for record 10 Oclock A.M. 22. Augt. 1850. ——
J. D. Richardson Recorder

CASE NO. 7 ND
PAGE NO. 219

State of California }
Santa Clara County } I hereby certify that the foregoing on pages one and two hereof (excepting the erasure of the words "directa al Sauz acha" on first page) is a full true and correct copy of an instrument now of record in my office in Book A of deeds on page 346 —

Witness my hand and official Seal this 16th day of April 1860

Jno R. Wilson County Recorder

Jose Augustin Narvaez et ux
vs
Joaquin Narvaez

Dated 19. Augt. 1850

6

Bapham No. 4

No 7

N. S. Dist. Court
Nor: Dist. of Cuba
The United States
vs.
Aug: Narvaez

Exhibit Bapham No 4.
by deposition of
Wm R. Bapham

Filed May 4. 1861.
W. A. Chevers.
Clerk.

7 ND
PAGE 220

$2.50

1 State of California }
County of Santa Clara }
Know all men by these presents:
That I D Augustin Narbaez have
this day nominated, constituted
and appointed William R Bassham
and Joseph Gale all of the County and
State aforesaid my true and lawful
attorney in fact to attend to and
represent me in the prosecution of my
claim to the lands known as San
Juan Babtista that is now pending
before the Court of the United States
and I do hereby covenant and agree
with the said Bassham and Gale
that I will not sell, lease or convey
any of my land situated on the San
Juan Babtista grant in the County
and State aforesaid unless it be by
and with the consent and approval
of my said attorneys Bassham & Gale
until the final confirmation is obtained
and the agreements hereinafter men-
tioned is complied with; viz; I do
hereby agree to give to my attorneys
Bassham and Gale three hundred acres
of land to be located on my grant
made to me by the Mexican Goverment
or two thousand five hundred dollars
in cash to be paid on the withdrawel
of this authority made for the uses
herein mentioned the consideration
herein specified is not to be paid unless

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PAGE NO. 222

2 Basham and Gale are successful
ni obtaining for me a good and
clear title for all the land unsold
by me that is properly situated on the
ranch known as San Juan Bautista
and should my attorneys so manage
my business herein specified so that
I will obtain or receive from the American
Goverment a good title for my land situ-
ated on the San Juan Babtista grant
then I do covenant and agree for myself
my heirs and administrators that I
will give to them a good and sufficient
title for the three hundred acres of land
above mentioned out of my grant known
as San Juan Babtista on which I
am now living or pay to them twenty
five hundred dollars in good and
lawful money of the United States.
Given under my hand and seal this
the 21 day of November AD 1853
Jose Augustine his + mark Narbaez (Seal)
The erasure in the twenty second line was
made before signing
Attest James W Weeks
Jose Joaquin his + mark Narbaez

State of California } ss On this twenty first
County of Santa Clara } day of November ad
1853 personally came before me Recorder
ni and for said County Jose Augustine
Narbaez to me personally known to be
the person described in and who executed

CASE NO. 7 ND
PAGE NO 223

3 The foregoing Instrument in writing and who acknowledged to me that he executed the same freely voluntarily and for the uses and purposes therein mentioned. Given under my hand and private seal (having no seal of office yet provided) the day and year last above written (Seal) S.A. Clark

County Recorder

By J Lewis Deputy

Filed for record at 12 o'clock M November 21st A.D. 1853 S A Clark Recorder By J Lewis deputy. Recorded by S A Clark Recorder.

State of California } I hereby certify
Santa Clara County } That the foregoing
on pages ~~one~~, two and three hereof is
a full true and correct copy of an
Instrument of record in my office in
Book F of deeds on pages 527 & 528.

Witness my hand and
official Seal this 16th day
of April A.D. 1861.

Jno R. Wilson County Recorder

No. 7.

U. S. Dist. Court
Nor. Dist. of Cal.
The United States
vs.
Augt. Narvaez

Exhibit Bapham No. 2
to deposition of
Wm. C. Bapham

Filed May 4. 1861.
W. H. Chevers.
Clerk.

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J. Augustin Narvaez
To Power of Atty
Badham & Gale

4

Bapham No. 2.

$2.50

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PAGE NO. 225

1 This Indenture made and entered into this 23rd day of September a One Thousand eight hundred and fifty Three by and between Don Augustine Narvais of the County of Santa Clara and State of California of the first part and William R Basshans of said County and State of the second part, Witnesseth; That the said party of the first part for and in consideration of the sum of Six hundred and seventy five dollars to him in hand paid by the said party of the second part the receipt whereof is hereby acknowledged and confessed, hath bargained sold and conveyed and by these presents do bargain sell and convey and confirm unto the said party of the second part and to his heirs and assigns forever the following described tract or parcel of land lying and being in the County of Santa Clara and State of California Beginning at a Stake on the Western line of the "Rancho de San Juan Bautista" Thirty three feet from the Southern corner of land bought by W H Ware being part of said Rancho thence along the Western line of said Rancho South 20° 52' East (true course) 49.20 chains to a stake marked WR Basshans Southern corner which bears south 45°, 53' West 24 links from a White Oak tree marked B; thence North 71°, 08' East, (true course) 49.26 chains

3

to the Southern corner of Said Bassham's land being a former purchase of said Navaise; thence along the Western line of said land North 28° 37' West (true course) ~~37.82~~ chains to a stake in said line thirty three feet from W H Ware's Southern line thence parallel to and thirty three feet distant from said line South 68° 23 West (true course) 42.06 chains to the place of beginning, containing two hundred and twenty nine acres of land of which one hundred and eighty eight acres are wood land and forty one acres are clear land. To Have and to Hold the same with all the rights, privileges and appurtenances thereunto belonging or in any wise appertaining unto the said party of the second part and to his heirs and assigns forever, the said party of the first ~~part~~ hereby covenanting that his heirs, executors and administrators will warrant and defend the title to the said premises so far as the said party of the first part has any right or title or may acquire to the said premises. In Witness Whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written. Augustine his mark Navaise (Seal)

Attest I Archer.

State of California }
County of Santa Clara } ss On this the twenty

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3rd day of September A.D. 1853 personally appeared before me a Notary Public in and for the County of Santa Clara and State of California Augustine Narvaiz known to me to be the person described in and who executed the foregoing instrument who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned. Given under my hand and Notorial Seal at the said County of Santa Clara this September 23rd A.D. 1853 (Seal) S. Archer Notary Public

Filed for record at 12 o'clock M. September 23rd A.D. 1853 J. M. Murphy Recorder By T. Lewis Deputy. Recorded by S. A. Clark Recorder.

State of California } ss
Santa Clara County } I hereby certify that the foregoing on pages one, two and three hereof is a full true and correct copy of an Instrument of record in my office in Book F. of deeds on pages 426 & 427

Witness my hand and official seal this 15th day of April A.D. 1861

Jno. R. Wilson
County Recorder

No. 7

U. S. Dist. Court
Nor. Dist. of Calª.
The United States

vs.

Aug: Narvaez

Exhibit Bapham No. 5,
to deposition of
Wm R. Bapham

Filed May 4. 1861.
W. H. Chevers,
Clerk

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PAGE 225c

Augustin Narvaez
Vs
William R. Barham

Dated Sept. 23d 1853.

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Bapham No. 5.

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PAGE NO. 225c

$2.50

CASE NO. 7 ND

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Sarraez

IN LAND CASES.

Dist. Court No. 1

Land Com. No. 75

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

PRESENT: J. J. Williams for said Intervenors and claimant, J. B. Crockett for Intervenors Branham & Lewis, and C. Benham U. S. Atty for the U. S.

QUESTIONS IN BEHALF OF THE Intervenors S. J. Endley et al

Question 1st,

What is your name age and place of residence?

Ans.

My name is Miguel Sarraez, my age is 57 years, and I reside

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on the rancho of the Castros Santa Cruz County.

Q.

Do you know the rancho San Juan Bautista, which was granted to Augustin Narvaez, and if so, how long have you known it?

Ans.

I have known it since the year 1825.

3.

Do you know what were the boundaries of the land which was occupied by your father, and subsequently granted to him?

Ans.

I do. They are the Arroyo de las Gatos, the ~~arroyo~~ Rio de Guadalupe, the Aligal the Portozuelo, the Calindante ~~of~~ the Bernales, the Arroyo de las Capitancillos, the Calindante ~~of~~ Justo Larios, and the Calindante Jose Hernandez.

4.

When did you first became

acquainted with these boundaries and lines?

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Ans.

I knew the boundaries for the first time, when I brought the papers already signed by the Governor, viz. the title.

5.

Were these boundaries generally recognized among the people and neighbors as the boundaries of the Rancho San Juan Bautista, or was it otherwise?

Objected to as irrelevant incompetent and leading.

Ans.

I do not know whether everybody knew them, but they were recognized by the vecinos colindantes.

6.

Did you, your brother or your father ever cultivate any portion of this ranch, and if so, in what years?

Objected to as irrelevant
Ans.
The cultivated cane land from the beginning of the ranch in 1825.

Q.
Where were the running grounds of the ranchs in the years 1843 - '44 - '45 - and '46?

Objected to as irrelevant.
Ans.
They were on the other side of the Arroyo Seco de Guadalupe, on the other side from the house, on the West side of the ~~Guadalupe~~ Arroyo Seco de Guadalupe.

Cross Examination
Questions by Mr. Crockett
Ques: 8.
Can you read or write?
Ans.
I can only write my name, I cannot read.

Q.
Did you see the deeds for

the rancho San Juan Bautista?

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Ans.

Yes sir.

10.

How often have you seen it?

Ans.

I saw it three times when I brought the title from Monterey in 1844, and from that time I have not seen it.

11.

Would you know it now, if you were to see it?

Ans.

I cannot say.

12.

Look at the paper now shown to you, found between pages 13 and 15 of the transcript in this cause, and state whether you recognise it, if so what it is?

Ans.

I do recognise it. These are the old houses (witness points out on the map) where we used

to live, and these are lands where one used to saw (witness points out the Green oblong marked "Rieras de Labor")
This paper is the desēno.

13.

Does this desēno show or represent the Las Gatas as one of the boundaries?

Ans.

This is the Las Gatas (witness points on the map to the Green line ~~mark~~ marked "arroyo de las Gatas.")

14.

Point out on the said map the Alizal?

Ans.

I think this is it. (Witness points to the line of trees marked "Alizal")

15.

Point out on the map, the boundary line of the Hernandez ranche?

Ans.

It is a line from here (Witness pointing to the place marked "Aguage") the running through

the Chemisal to the Las Gatos. This is the line agreed upon between my brother and Hernandez when Day measured the land.

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16.

Do your knowledge of the boundaries derived from the deeds, and from Day's survey?

Ans.

My knowledge is derived both from the deeds and Day's survey. The amount of the land described in the deeds is very large, and the two leagues of land surveyed by Mr. Day more or less, being those ~~granted~~ cancelled by the American government were measured off on the land one when purchased.

17.

Have you any means of knowing the boundaries, except from the deeds and Day's survey?

Ans.

Now I do not live on said land, and I have not been

there for a long while, so
I could not know the
boundaries especially, as every
thing has changed.

18.

Question 17 is repeated?

Ans.

No, I have no other means.

Miguel Narvaez

Sworn to and Subscribed
May 2nd. 1861. before me.
N. A. Cheneré.
N. P. Com:

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Aug. Starrach

DEPOSITION OF

Miguel Starrach

on part of Intervenors

S. J. Easley et al

Filed May 4. 1861,

W. H. Chevers.

Clerk.

CASE NO. 7 ND
PAGE NO. 234

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Haraez

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 75

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

PRESENT; J. J. Williams for said Intervenors and Claimant. S. B. Crockett for Intervenors Branham & Lewis, and C. Benham U. S. Atty. for the U. S.

QUESTIONS IN BEHALF OF THE Intervenors Easley et als.

Question 1st,

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

Ans.

My name is William R. Rapham, my age is 39 years, and I reside

in the city of San Jose.

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2.

Do you know the Rancho San Juan Bautista, if yes, how long have you known it?

Ans.

I know it and have known it since 1847 or 1848.

3.

Are you the same Bapham whose house is marked on Sherman Day's map heretofore filed in this case?

Ans.

I am, and I occupied it at the time the survey was being made.

4.

Have you any interest in this Rancho now, or in this cause?

Ans.

Not one cent's worth, none.

5.

Has the original grantee Augustin Narvaez any present interest in this land, or has he sold it all?

Objected to as irrelavant.

Ans.

My impression is that he has sold it all.

C.

State if you know to whom he made his first sale, and where the land sold was situated; describe it's locality upon the said map of Sherman Day?

Objected to as irrelavant and Secondary

Ans.

My understanding from him is that the first land he sold was to one Feliz Buelna, the land sold is situated and adjoining the land once occupied by me, in the South west corner of the two leagues surveyed by Day in 1850, at the instance of Vanderslice and Clarkson. I have marked the place with a cross in pencil. By saying the Southwest corner I don't mean to say that Buelna's land

run plumb up to ~~the~~ ~~lines~~ southern line.

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Starnes sold this land to Buelna, for the consideration of labor, Buelna building a house for Starnes, He in about 1849 or 1850 the deed passed from Starnes to Buelna but it was never recorded, and in 1852 Buelna and Starnes joined in a deed to W. H. Ware, a copy of which I now produce, to be annexed to my deposition, to be marked, Exhibit Bapham No. 1.

Answer objected to by Mr. Leverett as irrelevant, incompetent secondary and hearsay.

7.

Did any confidential relationship, such as agent or otherwise ever exist between you and Augustin Starnes, if so what was it?

Objected to as irrelevant and incompetent

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Ans.

At one period there did I acted for him as agent, under a power of attorney, a copy of which I now produce to be annexed to my deposition and to be marked Exhibit Bupham No. 2.

8.

State if you know what was the next sale made by Narvaez of any portion of this rancho?

Same objection as the last.

Ans.

The next transaction that I am cognizant of in relation to that rancho was a sale made to Vandeveslice and Clarkson in April 1850, a copy of the deed I now produce to be annexed to my deposition to be marked Exhibit Bupham No. 3.

9.

How long, and up to what date did you continue to act as agent for Narvaez, under the power of attorney just filed?

Objected to as irrelevant

Ans.

From the date of the Power of Attorney up to ~~the~~ 31st. August 1853.

10.

Looks at the documents now shown you marked respectively Exhibits Bapham Nº. 4 and 5, and state what they are?

Objected to as irrelevant and Secondary

Ans.

Exhibit Bapham Nº. 4 is a copy of a deed from Augustin Saraveg to Joaquin Saraveg, dated 19th August 1850. Exhibit ~~Saraveg~~ Bapham Nº. 5, is a copy of a deed from Augustin Saraveg to myself, dated ~~Sara-~~ 24 September 23d 1853.

11.

Point out on Sherman Day's said map the locality of the lands in the said last two deeds described?

Objected to as irrelevant

Ans.

In the Deed marked Exhibit Bapham No. 4. the location is in the neighborhood of the place marked "Joaquin Narvaez." In the other Exhibit Bapham No. 5 the general locality of the land is where it is marked ~~on the marked~~ on the said map "Baphanio" in pencil.

12.

Look upon the map marked "Nº 75, Augustin Narvaez, San "Juan Bautista. Filed in Office "Feby 27th 1852. Geo: Fisher Secy," and say what it is, and state all that you know in regard to it?

Ans.

I understand this to be the map made by direction of Vanderslice and Clarkson showing the two leagues reserved by Augustin Narvaez as being the ranch property of San Juan Bautista, to which I have before referred. I believe the boundaries are set out in the deed marked Exhibit Bapham Nº 1.

13.

Did you ever under the power of attorney before referred to, make any sales of land for Augustin Savage, if so, what was the last sale that you negotiated?

Objected to as irrelevant and incompetent

Ans.

I negotiated a sale for Savage on the 31st August 1855, to Mr. Isaac Bronham and Jackson Lewis, Mr. Bronham acting for both parties. A copy of that deed I now produce to be annexed to my deposition to be marked Exhibit Bapham No. 6.

14.

On the description of the land ~~described~~ conveyed in said last mentioned deed the following language is used "thence Southwesterly "along said Bapham's line and "in continuation thereof in the "same direction until the same "strikes or arrives at the original

"boundary line of the said Rancho
"San Juan Bautista or Navarez
"rancho, thence along and with
"the line of said original bound-
"ary of said Navarez rancho
"in a Southeasterly direction
"to the Arroyo Capitancillos"
State what line was under-
stood between the parties as
the original boundary of
said Navarez rancho?

Objected to as irrelevant
incompetent, and as offering
verbal proof to vary explain
or contradict the deed.

Ans.

On or about the 25th of
September 1853 I purchased
from Navarez the piece or
parcel of land described in
Exhibit Bautista No. 5, In
order to make the deed that
was necessary, ~~any~~ to ascertain
where the ~~same~~ line on
the ground was which was
marked on the said map marked
"No 75" &c, as the Western
boundary of the two leagues

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reserved by Augustin Alvarez at the time of his sale of the Sobrante to Vandersliece and Clarkson. I had that line run by a surveyor, I think it was Chas. J. Whiting, and in making the ~~Deed~~ sale deed referred in Exhibit Basham No. 6, I had reference to the same line. I thought that boundary was understood between the parties. The deed to Branham and Lewis ~~contain~~ contained this reservation "Provided however that all lands "or portion of the same in-"cluded in the above description "which may have heretofore "been legally and properly sold "by the said parties of the "first part, and in accordance "with law, shall be excepted "from this deed." And as the lands southwest of the line mentioned had been previously separated from the two leagues, which myself and Mr. Branham were aware of, I cannot conceive how it was possible that either of the parties

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could have understood that it was any other line, than the one described. That is, the line shown on said map "No 75" etc, as the Western line of the two leagues reserved.

Cross Examination ~~waived~~
Questions by Mr. Brackett

Ques: 15.

Did at the time of the sale to Brinkam & Lewis not your fence run up to the line which you have said was the Western line of the Two Leagues reserved by Harvacy?

Ans.

It did.

Direct examination resumed.
Questions by Mr. Williams.

Ques: 16.

Please produce to be annexed to this deposition the diagram which you have just made as explaining your answer to the foregoing question

Ans.

This is it. I now produce it to be annexed to my deposition to be marked Exhibit Brinkam No. 7.

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Is the tract marked "Davis" on said diagram intended to represent the lands described in Exhibit Bapham No. 1.?

Objected to as new matter irrelevant and leading.

Ans.

It is.

Cross Examination resumed.

Questions by Mr. Crockett

Ques: 8.

Which of the fences or lines represented on said diagram is referred to in the following clause in Exhibit Bapham No. 6. to wit: "thence South-
"westerly along said Bapham's
"line, and in continuation
"thereof in the same direction,
"until the same strikes, or
"arrives at the original bound-
"dary line of the said rancho
"San Juan Bautista?

Ans.

It is the fence under the

words "Easterly line or boundary".

19.

What line is represented on said diagram by the words "Westerly line or boundary"?

Ans.

It is intended to represent the Westerly boundary of the said two claims reserved.

W. R. Basham

Sworn to and Subscribed
May 3rd. 1861. before me,
W. H. Chenes.
U. S. Com.

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Exhibit Bapham No. 7.

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Augustin Narbaez.

DEPOSITION OF

W. R. Basshams,

on part of Intervenors

S. I. Easley, et al.

Filed May 4. 1861,

W. H. Chevers,

Clerk.

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Starrez

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 75

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

PRESENT: S. S. Williams for said Intervenors, and Claimant; J. B. Crockett for Intervenors Branham & Lewis, and C. Denham U. S. Atty. for the U. S.

QUESTIONS IN BEHALF OF THE Intervenors S. J. Easley et al.

Question 1st,

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

Ans.

My name is Joaquin Starrez, my age is 36 years, and I

reside in the place called New Almaden.

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2.

Are you the son of Augustin Narvaez, the original grantee ~~and claimant~~ of the rancho San Juan Bautista?

Ans.

I am.

3.

Did you ever reside on the said rancho, and if so, when did you, and when did your father first reside there?

Ans.

Yes sir, I lived there about 1825, my father also lived there the year following.

4.

Q. Do you know what were the boundaries of the land, which was occupied by your father, and subsequently granted to him?

Objected to as irrelevant and secondary.

Ans.

I do. They were the aroyo de

Las Gatos, the Arroyo Guadalupe, the Arroyo Seco de Guadalupe, the Alizal, the Portezuelo, the road to Monterey, the lines of the Berrals, the line of Jesus Larios, the Arroyo de las Capitancillos, the Sierra Azul, and the lines of Hernandez

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5.

Where on said ranch did you reside?

Objected to as irrelevant

Ans.

On a place called the Abra.

6.

How long have you resided in that particular place?

Same objection as the last

Ans.

About ~~Xxxxx~~ Mexican years.

7.

Are you the same Joaquin Soarnez, whose house was located on Day's survey of this rancho marked Exhibit "S. A. M."?

Ans.

I am.

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8.

By authority from whom did you occupy that land and build that house?

Same objection as the last.

Ans.

It was part of the inheritance ~~of~~ given me by my father. for my use and that of my children, and part of it was my own, because half of the ranch was given to my father, and half to ~~my~~ his children.

9.

Did your father ever convey to you that land, if so, when?

Objected to as irrelavant.

Ans.

He did, in the year 1839. I think in 1839. The deed is recorded in the archives. and the title exists at present.

10.

Was it before or after your ment there to live, that your

Father

father made to you that donation of the land?

Same objection as the last.

Ans.

After; about five years after.

11.

Have you any interest in that land or this ranche now?

Ans.

No I have no interest whatever.

12.

Did you or your father ever cultivate any lands on this ranche?

Same objection as the last.

Ans.

We did, back in the Abra, and my father's ranch.

13.

Is your house situated in the Abra?

Same objection as the last.

Ans.

It was.

14.

What, and where is the Abra?

Ans.

The Abra is a tract of land surrounded by road (Monte) on the side of the Arroyo de las Gatas, towards the Pueblo of San José and the Mission of Santa Clara.

15.

Where were the old corning grounds of the ranch?

Ans

Same objection as the last

Ans.

They extended from the Arroyo Seco, to the Arroyo de las Gatas, up to the place where the house was situated.

Cross Examination
Questions by Mr. Crockett,

Ques: 16.

How do you know the Monterey road was one of the boundaries of said ranch?

Ans.

Because it was set down as one of the boundaries in the deseno, and when we measured it off

me went to the road.

17.

By whom was it measured, at the time when you say the measurement went to the road?

Ans.

By Mr. Day, the first time.

18.

How do you know that the Los Gatos was one of the boundaries of the ranch?

Ans.

Because it was so set down in the deeds.

19.

Is not the Los Gatos called for, as one of the boundaries in the Titles?

Objected to because the title is the best evidence of that fact, ~~and because~~

Ans.

I do not know whether it is as in the title, but we all knew it as one of the boundaries.

20.

Did you ever see the Titles and read it?

Ans.

No sir.

21.

Can you read or write?

Ans.

No sir.

22.

Examine the paper now shown to you, found between pages 13 and 15 of the transcript in this cause, and state whether or not you ever saw the paper of which this is a copy?

Objected to ~~the~~ unless said paper is explained to witness, he not being able to read or write.

Ans.

I have seen the original deeds, but I cannot say whether this is a true copy of it or not.

23.

If this is a true copy, point out on it, that part which represents the Las Gatos, and the road to Monterey as two of the boundaries?

Same objection as the last.

Ans.

I cannot, for I don't understand the maps.

24.

If you cannot understand the maps, when it is shown to you, how do you know that the Las Lomas and the road to Monterey were laid down on the diseno as two of the boundaries?

Ans.

Because these boundaries were recognized by everybody.

25.

Is that the reason why you said they were laid down on the diseno as two of the boundaries?

Ans.

Yes, that was the reason.

26.

What part of the Aliso was one of the boundaries?

Objected to as assuming a fact, that a "part" of the Aliso was the boundary.

Ans.

About fifty varas inside the Aliso, towards San José.

27.

How do you know, that this boundary was at that place?

Ans.

Because when Mr. Day measured, he ran his line by there.

28.

When Mr. Day measured it did he not make the Las Llagas one of the boundaries?

Ans.

He did.

29.

Is not that the reason why you say that the Las Llagas was one of the boundaries of the ranch?

Ans.

Yes sir. That is the reason, and we made a landmark of stones and mortar.

30.

At the time when Mr. Day measured the ranch, did not you and Hernandez agree

upon the dividing line between the Hernandez rancho, and the rancho San Juan Bautista?

Ans.

Yes sir. We met there and did agree, namely the Colindanches.

Direct examination resumed
Questions by Mr. Williams.

Ques. 31.

Did you know the boundaries of the rancho San Juan Bautista, prior to Mr. Day's survey? and if so how?

Objected to as leading.

Ans.

I knew them by their names. before the measurement by Mr. Day. I knew them because they were set down in the deeds when the petition to the Government was made.

32.

Were the boundaries of said rancho, prior to Mr. Day's

Survey, the same as you have already described them, or different?

Ans.

Yes, they were already so recognized.

Joaquin his + mark Narvaez

Sworn to and subscribed May 2nd. 1861. before me,

N. Cheney.

N. P. Com.

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No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Aug. Narvaez

DEPOSITION OF

Joaquin Narvaez

on part of Intervenors

S. J. Easley et al

Filed May 4. 1861.

W. H. Chevers.

Clerk.

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CASE NO. 7 ND

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Aug. Starrett

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 173

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

PRESENT: S. S. Williams for said Intervenors and Claimant. S. B. Crockett for Intervenors Branham & Lewis, and C. Benham U. S. Atty for the U. S.

QUESTIONS IN BEHALF OF THE Intervenors Easley et als.

Question 1st,

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

Ans.

My name is Charles D. Stanley, my age is 27 years, and I

reside in the city of San Jose.

2.

What is your occupation?

Ans.

I am County Surveyor of Santa Clara County. I have also been employed by the U. S. Surveyor General on several occasions to make surveys of private lands.

3.

~~Look at the map marked~~

Do you know the rancho San Juan Bautista claimed in this cause, and are you the same Charles T. Healey by whom it was officially surveyed?

Ans.

I know the rancho, and I am the same Chas. T. Healey.

4.

State whether or not at the time of making this survey, you had with you the map now shown to you marked "No. 75 Augustin Narvaez, San "Juan Bautista, Filed in office "Feby. 27th 1852, Geo: Fisher, Secy."

Ans.

I did.

5.

State how the line on said map marked "Pies 1953 ~~South~~ 30° ~~W~~ 05' " agrees with the corresponding line on the official survey designated ~~Hutton~~ on the plat thereof as "course 42"?

Objected to as irrelevant Ans. They are identical.

6.

Does or does not the Northern line of the official survey being "course 13" pass through what is known as the Monks and Lamar?

Ans.

It does.

7.

Through what part of the Monks and Lamar does it pass?

Ans.

Through about the middle of it.

8.

Cross Examination
Questions by Mr. Crockett

Ques: 8.

On making the said official survey what papers if any, had you for your guidance?

Ans.

I had written instructions from the Surveyor General, and a copy of the deeds, and during the progress of the survey I also received a letter from the Surveyor General in relation to it, and also a letter or letters from Mr. Conway Chief Clerk. If I mistake not my instructions referred me to several deeds, which I examined at the time; of this however I am not certain.

Q.

Acting upon your original instructions and upon the deeds were you not proceeding to make the said survey in a different manner, from that represented in the official plat, and if so, in what res-

pect were you about to survey it differently?

Ans.

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I run ~~same~~ preliminary lines conforming to the legal subdivisions of the public surveys so as to give the ranchos as compact a form as possible within the exterior boundaries, not going so far to the Northwestward as the Arroyo de las Gatos, nor so far to the Northward as the present survey extends, and including a portion of the San Juan Bautista hills, and of the land lying to the Southwest of the present survey, which lands are not included within the present survey.

The lines which I refer to were experimental lines merely in order that I might obtain the requisite quantity by conforming to the legal subdivisions.

10.

In running the experimental lines or lines on the North

where did your run thence?

Ans.

The Northern line commenced at a point about midway between the place marked "Melone," on the official plat and the Southern corner of the Rancho de las Coches, and ran thence East to the San Juan Bautista hills, crossing the arroyo Seco near Kells'.

11.

In so running the said preliminary lines did you touch the Las Gatos Creek?

Ans.

I did not. The line was a zigzag line on the 40 acre subdivisions ~~and run to the South of it~~ about half a mile to the South of the Creek.

12.

In making the final survey, why did you fix the Northern line so much further to the North than the preliminary line which

croped the arroyo seco near Abel's house, and why did you meander the Las Lajas Creek, instead of adopting the line to the South of it according to the experimental line you have referred to?

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Ans.

I finally located the rancho in obedience to the oral instructions given to me by the U. S. Surveyor General on the ground, subsequent to the preliminary survey. I was instructed by him to conform as closely as practicable to the survey made by Daly between 5th July and 6th July 1850, and did so with one or two inconsiderable changes.

13.

How much further towards the North does the Aliso extend than the Northern line of the official survey?

Ans.

The Northern boundary produced towards the Eastward would pass through the Northern portion of the Aliso, I cannot

Bell precisely how far to the North of said line the trees extend, as I have never run a line through there. The main body of the Aliso mound lie to the South of the said line if produced.

14.

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At what point does the Aliso terminate at its Southern extremity?

Ans.

Near Bell's

Direct examination resumed
Questions by Mr. Williams
Ques: 15.

How far towards the junction of the arroyo de las Yuccas, and the Rio del Guadalupe, does the Monte and Sausal extend?

Ans.

It extends to it.

Chas. T. Healy

Sworn to and Subscribed this
3rd day of May, 1861, before me,

A. A. Chenery,
U. S. Comm'r

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No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Augustin Narbaez.

DEPOSITION OF

Charles T. Healy,

on part of Claimants

S. C. Easly, et al,

Filed May 4, 186 1

W. H. Chevers,

Clerk.

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Sarbaez

IN LAND CASES.

Dist. Court No. 1

Land Com. No. 75

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

PRESENT: J. J. Williams for said Intervenors, and Claimant. J. B. Crockett for Intervenors Branham & Lewis, and C. Benham U. S. Atty. for the U. S.

QUESTIONS IN BEHALF OF THE Intervenors S. J. Easley et al

Question 1st,

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

Ans.

My name is James W. Yukes, my age is 49 years, and my residence

is in the city of San José.

2.

When did you first come to California?

Ans.

In October 1831.

3

Do you know the rancho known as the Rancho San Juan Bautista, which was granted to Augustin Narvaez, if so, how long have you known it?

Ans.

I do, I have known it since 1832.

4.

In whose occupation was it then?

Ans.

It was occupied by Augustin Narvaez and family.

5.

Did you ever reside upon it yourself?

Ans.

I did. I resided there in two places, one time first under the hills of San Juan

Bautista somewhere about a

Bautista, somewhere about a year, and I resided at the Abra near where Joaquin Narvaez' house now stands, about a year. In the first place it was in 1832. In the latter place somewhere about 1849 or 1850.

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6.

Do you know the boundaries of the ranchos San Juan Bautista?

Ans.

I don't the definite boundaries, I know what are reputed to be the boundaries.

7.

Answer objected to by Mr. Crockett as irrelevant and hearsay.

8.

State if you know what was the boundary on the Northwest of the lands actually occupied and claimed by Augustin Narvaez in the years 1842, 1843-'44-'45 and 1846?

Objected to as irrelevant

Ans.

The Northwest boundary by Hernandez's line, was the Arroyo de las Gatas.

8.

Did Augustin Juarez, in the years specified in the preceding question, cultivate any portion of this rancho?

Objected to as irrelevant.

Ans.

He did.

9.

In what portion of the rancho, were his planting grounds. Describe their locality.

Objected to as irrelevant.

Ans.

He planted on both sides of the Guadalupe, on the West and East sides.

10.

~~Did he cultivate any land~~ How far were the planting grounds on the West side of the Guadalupe from the Monte and Levee, and in

what direction?

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Same objection as the last Ans.

The mining grounds were between the Guadalupe and the Monte, They were pretty large grounds, all the family lived there, They had various pieces in cultivation around there, ~~the~~ it was not far from the Monte — where the best lands were.

Crop examination waived
James W. Weekes

Sworn to and Subscribed this 2nd May. 1861. before me,
W. A. Chenard,
U. S. Comr.

No. 7c

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Aug: Narbaez.

DEPOSITION OF

Jas: W. Weeks.

on part of Intervenors

Easley, et al.

Filed May 4. 1861,

W. H. Chevers.

Clerk.

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Narbaez.

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 75.

To Calhoun Benham, U.S. Atty.
and
Crockett & Crittenden.

You are hereby notified that the testimony of Augustin, Joaquin, and Miguel Narbaez, Harry Bee, James Weeks, Wm. R. Basshaw, I. N. Wandeville, Antonio Bernal, David Young, John C. Ross, and C. T. Healy,

in the above entitled cause in behalf of the intervenors S. I. Easley, et al.

will be taken before me, the undersigned, 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, commencing on Thursday the 2nd day of May A. D. 1861, at 11 o'clock, A. M., and continuing from day to day until finished, at my office No. 14 U. S. Court Rooms; and you are hereby further notified to then and there appear and propound such questions to the said witness as you may deem fit.

Witness my hand and official seal at the City of San Francisco, in said District, this 24th day of April A. D. 1861.

W. A. Clement

U. S. COMMISSIONER.

No 7.

Copy of the within
notice received by me
on this 24th April. 1861.
Crockett & Britton
for Intervenors
Frankum & Lewis

Pinkham
U. S. Atty.

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Augustin Sarbaz

IN LAND CASES.

Dist. Court No. 7

Land Com. No. 75

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

PRESENT: S. J. Williams for said Intervenors and claimant, J. B. Crockett for Intervenors Branham & Lewis, and C. Denham U. S. Atty. for the U. S.

QUESTIONS IN BEHALF OF THE Intervenors S. J. Easley et al.

Question 1st,

What is your name, age, and place of residence

Ans.

My name is Henry Bee, my age is 62 years, and I reside

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in the city of San José.

2.

When did you first come to California?

Ans.

In the Fall of 1829.

3.

Do you know the rancho known as the Rancho San Juan Bautista which was granted to Augustin Zarate, if so how long have you known it?

Ans.

Yes I know the ranch and have known it for about twenty six years.

4.

Who was residing on it when you first knew it?

Ans.

Augustin Zarate and his family.

5.

On what part of the ranch did he then reside?

Ans.

At the foot of the hills of San Juan Bautista, about the same

place where his house is now.

6.

Did you yourself ever reside upon that tract of land?

Ans.

I cultivated on it.

7.

When and where did you cultivate?

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Objected to as irrelevant

Ans.

On the Eastern side of the Arroyo de las Gatas, It was about the year 1844. I once stated that it was 1842, but on reflection I am satisfied it was in 1844.

8.

Look on Exhibit J. A. Mc. heretofore filed in this cause, and point out the locality where you cultivated?

Ans.

About the bend over which is written "Las Gatas."

9.

By whose authority did you cultivate that land?

Objected to as irrelavant.

Ans.

By authority of Augustin Narvaez.

10.

What was the boundary of the lands occupied by Narvaez since you knew that ranch, and at the time that you first knew it, on the North west?

Objected to as irrelavant and incompetent

Ans.

The arroyo de Las Gatos.

11.

Do you know where the house of Joaquin Narvaez is?

Ans.

Yes sir.

12.

Has there ever any cultivation near that house, if so, by whom and when?

Objected to as irrelavant

Ans.

Yes sir, by Joaquin Narvaez

and his family. It was culti-
vated by them for several
years, I cannot say when,
but it might have been in
the years 1847 - 1848 and 1849.

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Cross Examination waived
~~Questions by Mr. Crockett~~
~~Ques 13.~~ Henry. Bee.

Sworn to and Subscribed May 2nd
1861. before me,
W. H. Chevers.
U. S. Com.

No. 7

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Ang: Narbaez

DEPOSITION OF

Harry Bee

on part of Intervenors

Easley et al.

Filed May 4. 1861

W. H. Chevers

Clerk.

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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, and as such, having in my office, and in my charge and custody, the papers of the late Board of Commissioners to ascertain and settle the private land claims in California: by virtue of the power vested in me by law, Do Hereby Certify, that the preceding, and hereunto annexed page, numbered from one to inclusive, exhibits a true, full, and correct copy, of the Original Map of the Rancho "San Juan Bautista," filed in Case No. 75, on the Docket of the Board of Land Commissioners aforesaid, together with the endorsement thereon, as the same now appears in my Office and in my charge and custody.

EXAMINED & FOUND CORRECT-
Keeper of Archives.

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 Seventh day of May 1861

J. W. Mandeville
U. S. Surveyor General, for California.

No. 7. ND

75B9.

U. S. District Court.

The United States.

—vs—

Augustin Narbaez.

Sherman & Seymour

Map. filed by

Easley. et al.

Filed May 8. 1861.

W. A. Cheever.

Clerk

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

The United States
vs
Agustin Narvaez
No 7 - D.C.

It is hereby admitted that D. J. Easly, Alvis Cottle, C. J. Kettle & A. Cottle, Royal Cottle, Francis David, Dominga Emanuella, Jonathan Laplain - Wm H. Ware, George Kennedy, Thos. Rentz, Seneca Jones, N. H. Hicks, W. H. Bethel, Alvis Beaulieu, P. C. Easly, H. C. Malone, J. L. Pearl, Thomas Kell, John F. Roberts, P. C. Vanderberg, Wm Munn, Francis Phillips, John E. Roberts, Daniel Madrecin & D. Biggs, F. M. Fowler, G. W. Reynolds, Elisha Packwood, Intervenors, have such interest in the survey and location of the tract of Land herein confirmed, as entitles them to be admitted as intervenors and to be heard in the matter of the said survey and location, and in defence of said survey as made and returned to this Court, the lands claimed by them, being included within the limits of said survey -

Crockett & Crittenden
attys for intervenors
Brankard & Lewis -

W. H. Sharpe
U. S. Atty.

No: 7 -

U. S. Dist. Court -

The United States

vs

Agustin Navarez et al.

Stipulation in reference to the witnesses Easley et al.

Filed June 26. 1861.

N. D. Cheves.

Clerk

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U. S
vs
Agostin Navarez

No. 7. ND

"San Juan Bautista."

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Stated Term. July 25. 1862.

By the final decree in this cause there was confirmed to the claimants two square leagues of land to be located within the boundaries described in the grant. The petition of Navarez to the Board after setting forth the grant prays represents that within the exterior boundaries are contained about 3 leagues and one tenth - that he has caused two leagues to be accurately surveyed and that the same are indicated by red lines on the map of the survey whole rancho which he submits to the Board - He therefor prays that his title may be decreed to be valid for all the whole land embraced within the exterior boundaries But if the Board should be of opinion that he is only entitled to two leagues, then that the said two leagues may be confirmed to him and surveyed so as to embrace the land inclosed with red lines on the map -

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In the same case a supplemental petition was filed by Vanderslice and Clarkson — This petition after setting forth the grant and the ancient occupation and settlement of Navarro alleges that on the 11th April 1850 Navarro conveyed to the petitioners the whole of the said Rancho excepting two leagues which he reserved to himself and which were to be measured off by the petitioners That this was done accordingly. They petitioners further represent that the original grant the deed of Navarro to themselves and maps of the land claimed by them, with a duly authenticated plat of survey are already on file in the case of Navarro by the U.S. They therefore pray that their title may be decreed to be valid to the whole of the land excepting the 2 leagues set apart and measured off to Augustin Navarro —

The deed from Navarro to Vanderslice and Clarkson confirms the statements of this petition — And it expressly mentions that the land

3 intended to be conveyed is the Sobrante or leagues above two leagues which may be found within the exterior limits boundaries of the Rancho-

It is evident that the claim of Navarro was restricted to the two leagues which had been by in accordance with his agreement with Randolphia and Clarkson measured off to him, and which on the map referred to, in both petitions, was indicated by red lines. While the claim of Randolphia and Clarkson was for the Sobrante which on the same map is inclosed in green lines-

By the final decree of this Court the claim was confirmed to the extent of two leagues only- The application for a confirmation of the Sobrante was therefor in effect rejected.

Thus has accordingly been surveyed to Navarro the two leagues located by himself and in accordance with the plat of survey presented by him & by Randolphia and Clarkson to the Board-

To this survey the United States make no objection-

Objections known are filed on the part of certain interests claiming under Pendleton and Clarkson, and under another conveyance from Hancock which will hereafter be noticed —

It is urged that the two leagues are located to the North and West beyond the extreme limits of the decision — That the boundary line thereon delineated on the North West thereon delineated, is not the Lost Gatos creek but an imaginary line to the S. E. of it and that such the line should be drawn as indicated by the decision so as to cross the Arroyo at a point considerably to the South of its present location —

By thus cutting off this a considerable tract to the North West the quantity of two leagues can only be obtained by a corresponding extension to the South East which and thus a portion of the Rancho Conveyed to Pendleton and Clarkson will be included — which they or their representatives claim to hold by virtue of Hancocks deed. and

The inequitableness of this pretension is apparent.

It is plain that Nadeau intended to sell, and Dandurand & Clarkson supposed they were buying only the 4 leagues and above two leagues which might be found within the exterior limits — The petition of Nadeau indicates by the alternative form in which his prayer for confirmation is expressed that he had little expectation that his title would be deemed valid for more than 2 leagues and we may presume that the consideration paid for the assignment of his possible title to the Sobrante was much less than the value of the land if his title to it had been supposed clear.

If any mistake as to the exterior boundaries. If in measuring off the two leagues and separating the Sobrante a mistake has been committed, it was the mistake of Dandurand and Clarkson by whom the measurements was made — Their claim to the tract enclosed in green lines was founded on the proceedings on the hypothesis, and indeed

6

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the express allegation that there had already been measured off within the exterior limits ~~the~~ to Navarro the two leagues reserved by him and his claim to the tract within the red lines was in like manner founded on the idea that that tract was wholly within the exterior boundaries, and would constitute the 2 leagues which he reserved.

When therefore the claim of Van Ness Husbee and Clarkson for the sobrante was rejected they lost all ~~to which~~ that to which they could assert any title — and the speculation on which they bought the sobrante, failed, ~~no sobrantes~~ it being decided that there was no sobrante which could have been conveyed to them.

The ~~eff~~ attempt now made by ~~to change them~~ them or their representatives to change the location made by themselves of the two leagues reserved by Navarro and by making it include a part of what they acquired as a sobrante claimed as a sobrante, and measured off under their deed be

7

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"It was a sobrante
cause" seems to me palpably
unjust.

If successful the effect would
be to deprive Randall of a por-
tion of the two leagues which it
was well understood by all parties
he was to retain— and profiting
by their own mistake in measuring
the land to grant punish them
to acquire under a deed for
the sobrante or excess beyond
two leagues a portion of the
two leagues which their grantor
expressly reserved to himself—

It seems to me that by their own
measurement plat and survey
filed with the Board— by the
terms of their deed and their
petition, they and their successors
are estopped to contend
that the two leagues measured
off to Randall were not correctly
located— or that the land
or any part of it, deeded to them
beyond the said lines was ~~any~~
~~other than the sobrante or excess~~
~~beyond two~~ was a part of the
two leagues reserved by Randall
or other than the sobrante or
excess beyond two on & above
those 2 leagues—

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But the Intervenors also claim the right to object to this survey by virtue of a ~~deed~~ conveyance from Navarro to Isaac Branham and Jackson Lewis of a certain portion of the Rancho ~~claimed to be a part of the Salvador~~ and not included in the survey.

In this ~~deed~~ conveyance the part of the description material to notice is as follows "Thence South Eastely along said line to the South East corner of the land of said Branham - thence South westely along said Branham's ~~land~~ line and in continuation thereof until the same strikes or arrives at the original boundary line of the said Rancho San Juan Bautista or Navarro's Rancho thence along & with the line of said original boundary of said Navarro Rancho in a South Eashely direction to the arroyo de los Capitan dillos thence down & along with said arroyo &c &c

It is contended on the part of the claimants that the original boundary lines of the Navarro Rancho

9 referred to in this description
as the boundary of the Rancho
proper as the same was established
by the survey of Vandenhice &
Clarkson - and that therefore
the deed embraces no part of the
Sobrante and all the land con
veyed to Branham and Lewis is
within the official survey - Hence
they have no right or interest to
object
On the other hand it is urged
that the reference to the original
boundary line of the Rancho is
too explicit to be mistaken -
That the land of Bassham extends
to the boundary which divided
the two leagues of Navales from
the Sobrante - and that inasmuch
as the deed describes the Northerly
line of the premises conveyed by it
as ~~upon~~ running "along Bassham's
line and in continuation thereof
in the same direction" it must
have been intended to run beyond
the dividing line between the 2 leagues
and the Sobrante at which Bas
sham's line stopped -
To this it is replied that the
~~original~~ Northerly line is described
as running with said original boun

10 "day line in a South Easterly
"direction to the Arroyo de los Capi
"tancillos." And that if the exterior
boundary line cannot be meant
for that line runs in a direction
nearly due South and terminates
at the Sierra Azul and not at
the arroyo de los Capitancillos.
It is also urged that ~~the con~~
~~veyance contains an~~ even if
a portion the Obrante conveyed
to Clarkson and Sandusky be
included within the boundaries
mentioned in the deed, that in
strument by an express exception
excludes from its operation "all lands
or portions of the same included
in the discription, which may
have been heretofore been legally
and properly sold by the said par
ties of the first part and in
accordance with law"

It is certainly not easy, if the
line referred to, in this discription
be the boundary of the two leagues
measured to Rhoades, to account
for that part of the discription
which calls for a line along "boundary
along said Basham's line and in
continuation thereof" until it strikes

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or arrives at the original boundary line of the Rancho—

On the other hand if the exterior boundary be meant that boundary corresponds neither in its course or points of termination with the description of it in the deed— for it is described as running in a S. Easterly direction & terminating at the Capitancillos Creek. Whereas the exterior boundary of the Rancho, or the line of Human der runs in a nearly southerly direction and terminates at the Sierra.

Mr Bassham by whom as agent for Randall the negotiations were made and the sale effected swears that it was well known to all parties that the land be yond the true boundary of the two leagues had already been sold to Randleshee & Clarkson and that the description in the deed was understood to apply to that land if any such of it were embraced within the general description.

12 The tract ~~surveyed~~ officially surveyed to the claimant is precisely that measured off for him by Surveyor Dushee and Clarkson and for which his claim was presented to the Board — ~~The only~~ ~~from~~ The grant describes the disputed boundary as "the place or Rancho of Hernandez and the Pueblo of San José without passing the Alisal which pertains to the latter." ~~In the diseño a dotted line is~~ ~~regularly intended as a boundary.~~

The line of Hernandez is not disputed — It forms the western boundary of the Rancho — The only designation of the Northern boundary which is the boundary in controversy is the call for the ~~Pueblo~~ "Pueblo without passing the Alisal" — But the Pueblo & Alisal ~~only~~ can only serve as a ~~boundary~~ limit on the Easterly end of the Northern boundary — for the location of the remainder of that line we must have recourse to the diseño —

On this diseño we find a dotted line which on its upper or western portion was evidently intended to

13 indicate the boundary of Hernandez but the lower or North western & northern portions seem equally clearly to have been drawn to mark the limits of the Rancho in those directions. This line is at a considerable distance to the South of the Gatos Creek ~~and~~ if this indication be scrupulously observed that creek ~~creek~~ cannot be reached — It has notwithstanding been taken as a boundary in the official survey — and the line when produced across the monte includes a large portion of the Alisal and strikes the Guadalupe creek at a greater distance from the ~~Guadal~~ San Juan Bautista Hills than would seem to be warranted ~~better~~ either by the delineation on the diseño or the calls of the grant.—

This strip of land lying along the "Gatos" appears to have been from an early period occupied and to ~~to~~ a portion of it cultivated by the grantee — ~~a part of it within the~~ ~~he established one of his~~ at a place within it called the "Abra" within he established one of his sons — and the "Gatos"

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seems to have been generally recognized as his boundary by his neighbors—

At the time he obtained his title the grant to Hernandez had already been made— This latter rancho lay ~~on the upper part of the Gato~~ and at the base of the Sierra and extended on both sides of the Gatos a considerable distance down that stream— The diagonal dotted line on the westerly corner of the diseño was intended to mark the boundary of Hernandez— and of course ~~and so far down the Gatos as that rancho extends the~~ But Hernandez' land does not extend ~~that~~ along the creek the whole distance from the Sierra to its mouth— and there would seem to have been no motive for assigning to Rancho an imaginary and arbitrary line for a boundary ~~and~~ instead of following to come to the creek below the line of Hernandez, and where he would intrude with no one— The only boundary on this side, mentioned in the grant is the Pueblo of San José— and it appears that out of the lands of

15 that Pueblo
a grant of a place called Los
Coches was subsequently made the diseño
of which shows that it lay below
the Rancho of Hernandez, and
on the lower portion of the Salado.
But it does not But that creek
forms its Southern boundary—
a circumstance which may justify
the inference that the Government
when granting Los Coches up to the
Salado and no further, supposed
that the rancho of Narvaez on the
opposite side of the creek also
extended to it
Such seems to have been the
general understanding not only
of Narvaez himself but of the Seños
and colindantes—and as before
remarked the principal part
of his cultivation was on lands be-
tween the dotted line and the
creek—
As early as 1850
the survey of Day was made
which was intended to segregate
and define the two leagues reserved
by Narvaez from the Solitario con-
veyed by him to Hendricks &
Clarkson— The location appears
to have been acquiesced in by
all parties— No objection to it is

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made by the U. S. or by any ~~colindante~~ colindante — The only exception to it is taken by parties who acquired their interests with full notice & understanding that any lands outside of this location were conveyed as part of the Sobrante and that no title passed unless it should be held that the grant to Brackett was not restricted to the quantity of 2 leagues but embraced all the land within the exterior boundaries —

For the reasons already given it has appeared to me that the representatives of the grantees of the Sobrante cannot now be heard to object to the location made by themselves and on the faith of the correctness of which, the supposed Sobrante was conveyed to them. ~~And the~~ The rights of the representatives of Brackett to object is more open to debate — But it has seemed to me that the deed to him ~~taken~~ as limited by the reservation contained in it cannot be construed to embrace any lands not included within the 2 leagues which had been measured off to Brackett — And on

17 If any such lands were included that it was understood that they were to be taken out of the what was recognised on all sides lands as the Solvente—

I am aware that it to confirm a location ~~to such~~ which extends beyond the exterior limits of the division or grants is an apparent departure from the principles by which that Court is required to be governed.

But ~~in this~~ in this class of cases no rule can be inflexibly observed nor any principle be of universal application

The whole of the two leagues measured off to Rhoads has been sold & the contest is ~~in effect~~ between those who have bought the land claimed to be without the external boundaries and those who have bought lands ~~supposed to be~~ supposed to be part of the Solvente. The ancient possession and cultivation of Rhoads — the general recognition of his boundaries by his neighbors — ~~the~~ such ~~appeals~~ are upheld by the former government in their grant of the adjoining Rancho of Los Coches — and the

18 the express and emphatic recognition and adoption of the same boundaries by the grantees purchasers of the Solvente when laying off the 2 leagues were pointed by Navarro & with the fact that if these boundaries be now changed the practical effect will be to deprive the subsequent purchasers Navarro of a part of the 2 leagues intended to be vested and to give to the intervenors as a part of the Rancho proper those lands that they bought as a Solvente — These considerations coupled and the fact that the U. S. acquiesced in the location and that no colindante objects seems to have led me to the conclusion that I ought not to disturb a location so long recognized, and which there can be no doubt would have been adopted and confirmed by the former Government or by the officer giving judicial possession if called on to perform that duty.

I think therefore that the Survey should be approved

CASE NO. 7 ND
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Since the foregoing Opinion was delivered it has been suggested to the Court that the official Survey ~~and~~ does not exactly conform to the Division of the Rancho made in pursuance of the decree to the Justice and ~~Boundary~~ Claimant — the Leave was therefore given to the Counsel for the Claimant by whom the Application had been overlooked to file objections to the official Survey forthwith — and in accordance with the views expressed in the Opinion the Survey must be modified so as in all respects to Conform to the lines agreed upon as has been stated) —

January
February 3d 1863 —

It having been found that the modification of the Survey above indicated will embrace lands now occupied by certain parties claiming under the U. S. and the ~~Claimants~~ Intervenors ~~Petitioners~~ through their Counsel D. D. Williams Esq having suggested

to the Court then willing not
to waive any. Modified show of
the official and to accept the
same as a correct and proper
survey of said Rancho, and
the U. S. having opposed no objection
to an approval of the same
it is now on Motion of Mr
Williams ordered that he have
leave to withdraw the opposition
of Mr Easley heretofore to said
survey heretofore allowed to be
filed nunc pro tunc — and
that a decree be entered
approving said official survey
as returned into this Court.

No 7.

U. S. District Court.
Nor: Distt: of Cal.

The United States.
vs.
Augustin Narvaez.

Opinion approving Survey.

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

CASE NO. 7 ND
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PAGE NO 312

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

The United States
vs
Agustin Narvaez

And now comes S. L. Early and objects to the official Survey in this case, because it does not conform to the election made by the claimant in 1850, and surveyed out by Sherman Day for him.

Because it excludes a portion of the land conveyed to him the said Early by the said Narvaez, which said portion is within the two leagues elected by said Narvaez, and within the 3rd lines on the plat of said Days Survey. Wherefore the said Early prays that said Survey be so modified as to conform to the Survey of the two leagues elected by said Narvaez and included within the 3rd lines on the plat of said Days Survey.

S. L. Early
by his Attys
Williams & Thornton

U. S. Dist. Ct.

No. 7.

The United States

vs

Apsley Ramsay

Objections of J. J. Early

to Answer

Filed August 13, 1862.

nunc pro tunc

as of July 25, 1862.

W. H. Chevers,

Clerk

CASE NO. 7 IND

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CASE NO. 7 ND

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

The United States
vs
Agustin Navarro

On Motion of S. S. Early and for reason appearing satisfactory to this Court, It is ordered that leave be given to the said Early to file objections to the appearance Bonds filed in this case. And that said objections be filed nunc pro tunc as of July 25. 1862.

U. S. Dist. Ct.

No. 7.

The United States

vs

Upston Harvey -

Order allowing S. J.
Early to file exceptions
nunc pro tunc -

Filed Aug: 13. 1862,
W. H. Clevert.
Clerk

CASE NO. ND
PAGE NO. 315

CASE NO. 7 ND
PAGE NO 316

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

The United States
vs
Augustin Narvaez
No. 7—

In the matter of the Survey and Location of the Rancho San Juan Bautista—

This cause coming on this day to be heard, was argued by Counsel, and thereupon, in consideration thereof, It was Ordered, Adjudged and Decreed, and the Court doth hereby order adjudge and decree, that the official Survey, the plat of which was returned into this Court, be and the same is hereby disapproved, annulled and set aside; And it is further ordered adjudged and decreed, that the Surveyor General cause the said Survey to be modified so as to make it conform to the Survey of Sherman Day made between the 5th day of July, and 6th of July 1850 of the two leagues elected by and Narvaez within the exterior bounds of this grant. A plat

of which Survey, ~~it~~ referred to in the petition of said Navarro, was filed in the Land Commission on the 27th day of February — 1852, and the said two leagues so elected as aforesaid by said Navarro being thereon in red lines —

And it is further ordered adjudged and decreed that so soon as said Modification is made, that a plat of the Modified Survey be forthwith returned into this Court for approval.

Ogden Hoffman
Dist Judge

No. 7

U. S. Dist: Court
Nor: Dist: of Cal.a

The United States

—vs.—

Aug: Starvaez

Order rejecting survey, and ordering new survey.

Filed Sept: 26. 1862.

W. H. Chenn,
Clerk

CASE NO. 7 ND
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CASE NO. 7, ND
PAUL NO. 319

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

The United States
vs
Agustin Narvaez } No 7 -

And now comes Intervenor S. P. Early
by his counsel J. J. Williams and
moves the Court for leave to with-
draw exceptions heretofore filed by him
to the Official Survey of the lands claimed
in the above entitled cause, and there-
upon it is ordered that said exceptions
be withdrawn, and it appearing
to the Court that no other party has
made objection to said Official Sur-
vey except Brannan and Lewis whose
exceptions have heretofore been overruled,
It is further ordered that said survey
be approved -

Ogden Hoffman
U. S. Dist Judge

No: 7

U. S. Dist. Court

The United States

vs

Agustin Navarez

Order giving leave to
S. F. Easley to withdraw
exceptions &c &c

Filed Febry 4th 1863.

W. H. Elwood,
Clerk

CASE NO. 71 ND
PAGE NO. 320

CASE NO. 7 ND
PAGE NO. 321

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

United States
vs
Augustine Narvaez } No 7.

The intervenors Isaac Branham & Jackson Lewis hereby withdraw their exceptions to the survey in the above entitled cause & consent that the official Survey as made by the Surveyor General of the United States for California (a copy plat of which survey is on file in said cause) shall stand as the final survey therein & they hereby waive their right to appeal from the order of the said District Court approving said survey.

San Francisco 26 Feby 1863.

Crockett & Crittenden
attys for said Intervenors.

On reading and filing the above, It is ordered that leave be given to withdraw the Exceptions of Isaac Branham and Jackson Lewis to the Official Survey in the above-mentioned cause and that said Exceptions be considered as withdrawn.

February 27. 1863.

Ogden Hoffman
Dist Judge

No 7.

U. S. Dist. Court.

United States

vs

Augustus Navarg

Stipulation & order withdrawing exceptions of Branham & Lewis.

Filed Feby 27, 1863.

W. H. Chevers.

Clerk

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CASE NO. 7 ND
PAGE NO. 323

At a Stated Term of the District Court of the United States for the Northern District of California held at the Court Room in the City of San Francisco on Friday the 27th day of February A.D. 1863.

Present:

Hon Ogden Hoffman, Dist Judge

The United States
vs
Agustin Narvaez
Dist. Court No. 7 -

In the Matter of the Survey and Location of the "Rancho San Juan Bautista"

This cause came on this day to be heard and was argued by Counsel, and it appearing to the Court that Intervenor S.J. Easley and Intervenors Isaac Branham and Jackson Lewis have withdrawn their exceptions to the Official Survey in this case, and that no objections are now urged against said Survey, and the Court being of opinion that the same is a true and accurate Survey of the lands of the said Rancho.

It is now therefore Ordered, adjudged

and decreed, And the Court doth hereby order, adjudge and decree that the said Official Survey be and the same is hereby approved as a true and accurate Survey of the land of the said Rancho. The Survey hereby approved is the same made by Charles T. Healy United States Deputy Surveyor in May 1860, containing Eight Thousand Eight Hundred and Seventy nine $\frac{54}{100}$ (8879 $\frac{54}{100}$) acres of land, a duly certified plat of which said survey was filed in the Clerk's Office of this Court on the 17th day of November 1860, and which said plat is hereunto attached as a part of this decree, Marked "Approved, February 27th 1863 Ogden Hoffman Dist. Judge"

Ogden Hoffman
Dist. Judge

7 ND
7518D

U. S. District Court

The United States

v

Agustin Narvaez

Final Decree

Filed Febry: 27. 1863.
W. A. Leverett
Clerk.

CASE NO. 7 ND
PAGE NO. 325

CASE NO. 7 ND
PAGE NO. 326

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

United States
vs } No 7. D.C.
Apistin Narvaez

To Messrs Crockett & Crittenden
And C Benham Esq. Dist-Atty.

Gentlemen
Please take notice that on Monday next, at the opening of said Court, or as soon thereafter as Counsel can be heard, we will move the Court to assign a day, for the closing of proofs in the above-entitled cause, and for the argument of the same.

March 27. 1861.

Williams & Thornton
Atty for Claimant.

U.S. Dist. Court

T-ND

United States
vs } No. 7
Agustin Narvaez

Notice to close proceedings —

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No. 7 ND

Published in Alta of 27th May 1862.

No. 7 ND
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COURT PROCEEDINGS.

FRIDAY, July 25.

U. S. District Court.

SURVEY OF RANCH IN SANTA CLARA.

U. S. *vs.* Agustin Narvaez.—In this case, Judge Hoffman, to-day, confirmed the survey, and filed the following opinion:

By the final decree in this cause there were confirmed to the claimant two square leagues of land to be located within the boundaries described in the grant.

The petition of Narvaez to the Board, after setting forth the grant, etc., represents that within its exterior boundaries are contained about three leagues and one-tenth; that he has caused two leagues to be accurately surveyed, and that the same are indicated by red lines on the map of the survey of the whole rancho, which he submits to the Board. He therefore prays that his title may be decreed to be valid for all the land embraced within the exterior boundaries. But if the Board should be of opinion that he is only entitled to two leagues, then that the said two leagues may be confirmed to him, and surveyed so as to embrace the land enclosed with red lines on the map. In the same case a supplemental petition was filed by Vanderslice and Clarkson.

This petition, after setting forth the grant, and the ancient occupation and settlement of Narvaez, alleges that on the 11th April, 1850, Narvaez conveyed to the petitioners the whole of the said rancho excepting two leagues, which he reserved to himself, and which was to be measured off by the petitioners; that this was done accordingly.

The petitioners further represent that the original grant, the deed of Narvaez to themselves, and maps of the land claimed by them, with a duly authenticated plat of survey, are already on file in the case. They therefore pray that their title may be decreed to be valid to the whole of the land, excepting the two leagues set apart and measured off to Agustin Narvaez.

The deed from Narvaez to Vanderslice and Clarkson, confirms the statements of their petition; and it expressly mentions that the land intended to be conveyed is the *sobrante*, or excess above two leagues, which may be found within the exterior boundaries of the Rancho.

It is evident that the claim of Narvaez was restricted to the two leagues which had been, in accordance with his agreement with Vanderslice and Clarkson, measured off to him, and which on the map referred to, in both petitions, was indicated by red lines, while the claim of Vanderslice and Clarkson was for the sobrante, which on the same map is inclosed in green lines.

By the final decree of this Court the claim was confirmed to the extent of two leagues only. The application for a confirmation of the sobrante was therefore in effect rejected.

There has accordingly been surveyed to Narvaez, the two leagues reserved by himself, and in accordance with the plat of survey presented by him and by Vanderslice and Clarkson to the Board.

To this survey the United States make no objection.

Objections known are filed by certain intervenors, claiming under Vanderslice and Clarkson, and under another conveyance from Narvaez, which will hereafter be noticed.

It is urged that the two leagues are located to the north and west beyond the exterior limits of the desiño, that the boundary line on the north-west, thereon delineated, is not the Los Gatos creek, but an imaginary line to the south-east of it, and that such, the line of the survey should be drawn as indicated by the desiño so as to cross the alisal at a point to the south of its present location.

By thus cutting off this, a considerable track to the north-west, the quantity of two leagues can only be obtained by a corresponding extension to the south-east, and thus a portion of the sobrante conveyed to Vanderslice and Clarkson will be included; which they or their representatives claim to hold by virtue of Narvaez's deed.

The inequitableness of this pretension is apparent. It is plain that Narvaez intended to sell, and Vanderslice and Clarkson supposed they were buying only the excess over and above two leagues, which might be found within the exterior limits. The petition of Narvaez indicates, by the alternative form in which his prayer for confirmation is expressed, that he had little expectation that his title would be deemed valid for more than two leagues; and we may presume that the consideration paid for the assignment of his possible title to the sobrante was much less than the value of the land, if his title had been clear.

If, in measuring off the two leagues and separating the sobrante a mistake has been committed, it was the mistake of Vanderslice and Clarkson, by whom the measurement was made. Their claim to the tract (inclosed within the green lines) proceeded on the hypothesis, and indeed the express allegation, that there had already been measured off within the exterior limits, to Narvaez, the two leagues reserved by him; and his claim to the tract within the red lines was, in like manner, founded on the idea that the tract was wholly within the exterior boundaries, and would constitute the two leagues which he reserved.

When, therefore, the claim of Vanderslice and Clarkson for the sobrante was rejected, they lost all to which they could assert any title; and the speculation on which they bought the sobrante failed, it being decided that there was no sobrante which could have been conveyed to them. The attempt now made by them or their representatives, to change the location (made by themselves) of the two leagues reserved by Narvaez, and by making it include a part of what they acquired as a sobrante, claimed as a sobrante, and measured off under their deed because it was a sobrante, seems to me palpably unjust.

If successful, the effect would be to deprive Narvaez of a portion of the two leagues which it was well understood, by all parties, he was to retain: and profiting by their own mistake in measuring the land, to permit them to acquire under a deed for the sobrante or excess beyond two leagues, a portion of the two leagues which their grantor expressly reserved to himself.

It seems to me that by their own measurement, plat and survey, filed with the Board, by the terms of their deed and their petition, they and their representatives are estopped to contend that the two leagues measured off to Narvaez were not correctly located; or that the land, or any part of it, deeded to them beyond the red lines was a part of the two leagues by Narvaez, or other than the sobrante or excess over and above those two leagues.

But the intervenors also claim the right to object to this survey, by virtue of a conveyance from Narvaez to Isaac Branham and Jackson Lewis, of a certain portion of the rancho not included in the survey. In this conveyance, the part of the discription material to notice is as follows: "Thence southeasterly along said line to the southeast corner of the land of said Bassham; thence southwesterly along said Bassham's line, *and in continuation thereof, until the same strikes or arrives at the original boundary line of the said Rancho San Juan Bantista or Narvaez Rancho;* thence along and with the line of said original boundary of said Narvaez Rancho, in a southeasterly direction to the Arroyo de los Capitancillos; thence down and along with said Arroyo," etc., etc.

It is contended, on the part of the claimants, that the "original boundary line of the Narvaez Rancho" referred to in this description, is the boundary of the rancho proper, as the same was established by the survey of Vanderslice and Clarkson, and that therefore the deed embraces no part of the sobrante, and all the land conveyed to Branham and Lewis is within the official survey; hence they have no right or interest to object.

On the other hand, it is urged that the reference to the original boundary line of the rancho is too explicit to be mistaken. That the land of Bassham extended to the boundary which divided the two leagues of Narvaez from the sobrante; and inasmuch as the deed describes the northerly line of the premises conveyed by it as running "along Bassham's *line and in continuation thereof in the same direction*," it must have been intended to run beyond the dividing line between the two leagues and the sobrante, at which Bassham's line stopped.

To this it is replied, that the westerly line is described as *running with said original boundary* line in a southeasterly direction to the Arroyo de los Capitancillos;" and that the exterior boundary line cannot be meant, for that line runs in a direction nearly due south, and terminates at the Sierra Alizal and not at the Arroyo de los Capitancillos. It is also urged that even if a portion of the sobrante conveyed to Clarkson and Vanderslice be included within the boundaries mentioned in the deed, that instrument, by an express exception, excludes from its operation "all lands or portions of the same included in the description, which may have heretofore been legally and properly sold by the said parties of the first part, and in accordance with law."

It is certainly not easy, if the line referred to in this description be the boundary of the two leagues measured to Narvaez, to account for that part of the description which calls for a "boundary *along said Bassham's line, and in continuation thereof*," until it strikes or arrives at the original boundary line of the Narvaez.

On the other hand, if the exterior boundary be meant, that boundary corresponds neither in its course or points of termination with the description of it in the deed; for it is described as running in a southeasterly direction, and terminating at the Capitancillos Creek; whereas the exterior boundary of the rancho, on the line of Hernandez, runs in a nearly southerly direction, and terminates at the Sierra.

Mr. Bassham, by whom, as agent for Narvaez, the negotiations were made and the sale effected, swears that it was well known to all parties that the land beyond the boundary of the two leagues had already been sold to Vanderslice and Clarkson, and that the reservation in the deed was understood to apply to that land, if any of it were embraced within the general description.

The tract officially surveyed to the plaintiff is precisely that measured off for him by Vanderslice and Clarkson, and for which his claim was presented to the Board. The grant describes the disputed boundary as "the place or rancho of Hernandez and the pueblo of San José without passing the Alizal which pertains to the latter."

The line of Hernandez is not disputed. It forms the western boundary of the rancho. The only designation of the northern boundary, which is the boundary in controversy, is the call for the "Pueblo without passing the Alizal." But the Pueblo and Alizal can only serve as a limit on the easterly end of the northern boundary. For the location of the remainder of that line we must have recourse to the diseño.

On this diseño we find a dotted line which, on its upper or western portion, was evidently intended to indicate the boundary of Hernandez, but the lower or north-western and northern portions seem equally clearly to have been drawn to mark the limits of the rancho in those directions. This line is at a considerable distance to the south of the Gatos Creek, and if this indication be scrupulously observed that creek cannot be reached. It has, notwithstanding, been taken as a boundary in the official surveys, and the line, when produced across the monte, includes a larger portion of the Alizal, and strikes the Guadalupe Creek at a greater distance from the San Juan Bautista Hills than would seem to be warranted either by the delineation on the diseño or the calls of the grant.

This strip of land lying along the Gatos appears to have been from an early period occupied and a portion of it cultivated by the grantee. At a place within it called the "Abra," he established one of his sons, and the "Gatos" seems to have been generally recognized as his boundary by his neighbors.

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PAGE 328 A.

At the time he obtained his title the grant to Hernandez had already been made. This latter rancho lay at the base of the Sierra, and extended on both sides of the Gatos a considerable distance down that stream. The diagonal dotted line on the westerly corner of the diseño was intended to mark the boundary of Hernandez. But Hernandez' land does not extend along the creek the whole distance from the Sierra to its mouth—and there would seem to have been no motive for assigning to Narvaez an imaginary and arbitrary line for a boundary, instead of allowing it to come to the creek below the line of Hernandez, and where he would interfere with no one. The only boundary on this side, mentioned in the grant, is the Puebla of San José, and it appears that out of the lands of that Puebla, a grant of a place called Los Coches was subsequently made, the diseño of which shows that it lay below the Rancho of Hernandez, and on the lower portion of the Gatos. But that creek forms its southern boundary—"and is named Arroyo de la Mojovena"—a circumstance which may justify the inference that the Government when granting Los Coches up to the Gatos, and no further, supposed that the Rancho of Narvaez on the opposite side of the creek, also extended to it. Such seems to have been the understanding, not only of Narvaez himself, but of the vecinos and cohindante, and, as before remarked, the principal part of his cultivation was on lands between the dotted line and the creek.

As early as 1850, the survey of Day was made, which was intended to seggregate the two leagues reserved by Narvaez from the sobrante conveyed by him to Vanderslice and Clarkson. The location appears to have been acquiesced in by all parties. No objection to it is made by the United States, or by any cohindante. The only exception to it is taken by parties who acquired their interests with full notice, and understanding that any lands outside of this location were conveyed as a part of the sobrante, and that no title passed unless it should be held that the grant to Narvaez was not restricted to the quantity of two leagues, but embraced all the land within the exterior boundaries.

For the reasons already given, it has appeared to me that the representatives of the grantees of the sobrante cannot now be heard to object to the location made by themselves, and on the faith of the correctness of which the supposed sobrante was conveyed to them. The right of the representatives of Branham to object is more open to debate. But it has seemed to me that the deed to him, as limited by the reservation contained in it, cannot be construed to embrace any lands not included within the two leagues which had been measured off to Narvaez; and even if any such lands were included, that it was understood that they were to be taken out of what was recognized on all hands as the sobrante.

I am aware, that to confirm a location which extends beyond the exterior limits of the diseño or grants is an apparent departure from the principles by which this Court is required to be governed. But, in this class of cases, no rule can be implicitly observed, nor any principle be of universal application.

The whole of the two leagues measured off to Narvaez has been sold, and the contest is, in effect, between those who have bought the land claimed to be without the external boundaries and those who have bought lands supposed to be part of the sobrante; the ancient possession and cultivation of Narvaez; the general recognition of his boundaries by his neighbors, and impliedly by the former government in their grant of the adjoining rancho of Los Coches, and the express and emphatic recognition and adoption of the same boundaries by the purchasers of the sobrante when laying off the two leagues reserved by Narvez—with the fact, that if those boundaries be now changed, the practical effect will be to deprive the representatives of Narvez of a part of the two leagues intended to be reserved, and to give to the intervenors, as a part of the rancho proper, lands that they bought as a sobrante. These considerations, and the fact that the United States acquiesce in the location, and that no cohindante objects, have led me to the conclusion that I ought not to disturb a location so long recognized, and which there can be no doubt would have been adopted and confirmed by the former government, or by the officer giving judicial possession, if called on to perform that duty.

I think, therefore, that the survey should be approved.

Filed July 25. 1862,

W. H. Sharp, U. S. Atty,
for the U. S.

Williams & Thornton
for Claimant, and
Intervenors Easly, et al,

Crockett & Curtis on
for intervenors
Branham & Lewis.

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

CASE NO. 7 ND
PAGE NO. 329

The United States vs Agustin Narvaez } In the matter of the Survey & location of the Rancho San Juan Bautista

To Messrs Crockett & Courtlandon
Counsel for Brannan et al.
Intervenors against the Survey —

Gentlemen

Please take notice that on Tuesday the 9th inst. at 11 O'clock A. M. or as soon thereafter as counsel can be heard, We will move the Court to dismiss the petition of said Intervenors and approve the said Survey —

The ground of this motion, which will be made upon the record & papers in the cause, is that said Intervenors have no such interest against said Survey as entitles them to any right to intervene against the same, under the provisions of the Act of Congress approved June 14th 1860 — July 1st 1861. &c

William M Thornton
Atty for Claimant, and others

U. S. Dist. Court

The United States
vs
Agustin Narvaez

Notice of Motion

Due service admitted of the within notice by service of a copy —
Crockett & Britton

We agree to the post-ponement of within motion, until Wednesday 10th inst. at 11 a.m.
July 8th 1861
Crockett & Britton
for Intervenors

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

San Francisco, August 23d 1854

John 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. 75 on the Docket of the said Board, wherein

Augustin Narvaez

the Claimant - against the United States, for the place known by the name of "San Juan Bautista"

and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,

Geo. Fisher.

Recr

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

The United States
vs.
Augustin Narvaez

No 7 N. D.
"San Juan Bautista"

You will please take notice, that on Wednesday, the 19th day of June inst, at the opening of the Court on that day, or as soon thereafter as Counsel can be heard, we shall move the Court, for an order fixing the time, within which the proofs shall be closed, and for the hearing, in the above entitled cause.

Dated San Francisco, June 15th 1861.

To
Wm H. Sharp Esq.
U. S. District Attorney
and J. J. Williams Esq.
Attorney for Easley et al.

Crockett & Pritchett
Attorneys for Intervenors
Branham & Lewis.

No 7 N

U. S. District Court.
San Juan Bautista

Due service of a copy of
within admitted
June 15th 1861.
Williams & Thornton
Wm H Sharp
Per G J Sharp

The United States.

vs.

Augustin Narvaez

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Notice of motion.

20 days —

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

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The United States
vs
Agustin Narvaez

The Judge's notes are so full that it is hardly necessary to enumerate the points made on argument —

The dotted lines on the original diseño are wrongly located. The intention was to designate by them the line of division between this and the Hernandez Rancho. The Map filed as an Exhibit in the case, showing the relative positions of the two Ranchos makes this apparent.

The Government is satisfied with the official survey, and the only objections to it are made by Branham & Lewis, claiming under Vandenlinden & Clarkson.

The deed to Vandenlinden & Clarkson was a fabrante deed, and shows, as also does the evidence, that there was no contract or intention to convey by it any portion of the two leagues specified in the original grant —

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PAGE N° 335.

Vandeusen and Clarkson contracted to have the said two leagues surveyed out for Nanny, at their own expense, in which they were to have no interest; and to take a Deed for the Tobacco. For this Tobacco only, they presented their claim, accompanied by the plat of the survey which they had caused to be made in pursuance of their contract. This claim was in effect rejected, which two leagues and no more were confined to Nanny; thus emphatically ~~declaring~~ deciding that there was no Tobacco which Nanny could dispose of, and that Vandeusen and Clarkson took nothing by their deed. Branham & Lewis have therefore no interest in the Land and their intervention should be dismissed.

The intervention being dismissed, the survey should be approved, even though it may not be strictly accurate, for the reason, that the only parties in interest, viz: the Claimant and the Government are satisfied with the location made

by the Surveyor General, of the two leagues which were confirmed.

Basham was the Attorney in fact of Ramsay by whom the deed to Vandeusen and Clarkson was made, and he testifies positively, that by the words in the deed, "original boundary line of said Ranch", was meant and intended the boundary of the two leagues specified in the grant, as determined prior to that time, by the survey made by Mr Day at the instance of Vandeusen & Clarkson. The deed shows on its face, and thus confirms Basham's evidence, that there was no intention to convey any portion of the two leagues reserved by Ramsay, and which were surveyed out by Day, and included within the red lines of his plat. The evidence of Basham is likewise corroborated by the fact; that the line of the Ranches proper, that is of the two leagues, as determined by Day, answers the call of the deed, while the line contended for by witnesses contradicts it in many particulars. According to the deed the line is to extend in

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a South-Easterly direction to the arroyo Capitancillos. The red line on Days Plat made for Vanderslice & Clarkson corresponds with this call, but the line contended for by Intervenors has no such course, and however far extended would fail to reach the Capitancillos.

Ramsey owns no portion of the two leagues confirmed, but has sold many acres within the Official Survey which corresponds with the red lines on Days Plat. He has sold none without the said Survey or red lines, excepting the deed to Vanderslice & Clarkson.

For further points, should the Court be against us on the motion made and argued, to dismiss the Intervention of Bradham & Lewis, it is only necessary to refer to the notes of argument taken by the Judge.

Williams & Thornton

N. B.

The Knipp's deed in no way aids the pretension of Intervenors - Clarkson's interest was sold out under execution

and Lucy Hoppe became the pur-
chaser, who together with her husband
Harper conveyed to intervenors, all
their interest acquired under the Sale
& Shurtz deed - If we are right-
in our views, Clarkson had no
interest in the grant, having pur-
chased only the Patented, which
was finally rejected —

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The United States

vs

Agustin Ramirez

Reply to

"Points related on by Intervenors"

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The United States
vs
Augustin Narvaez.

Objections to survey

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Crockett.

The grant is in terms limited on the North by the Alisal or grove of Sycamore trees.

Day's testimony shows that Alisal begins just above "Kells house" on official survey.

We claim that the survey can not pass the Los Gatos creek — but must run from the "Alisal to the South of that creek

Williams

diseño inaccurate

Narvaez settled there in 1825

In his petition Narvaez asks for ~~the~~ no boundaries but only for the land of which he had been in possession since 1825

What land did he occupy —

The land included in ~~the~~ the official survey

The Map shows the tierra de labor

Harry Bee shows where he cultivated by permission of Narvaez

Weeks testimony

He says it was always occupied up to Los Gatos. since 1832
Navarro's two sons also testify that they occupied up to "Los Gatos" since 1832 —

In 1845 they fixed at the place marked Joaquin Navarro was given to his son — who occupied and cultivated it

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Our Northern line passes through the centre of the Mouth and we leave the whole aforesaid between us and the Pueblo —

The intervenors have not connected themselves with Clarkson's title — he has not exhibited the judgment ~~1079~~ which was the only source of authority of the officers —

N. Phillips on Ev. Cow. & Hills n. 1079.

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vs
Augustin Navarro

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Williams

In 1850 Navarro sold to Vandusheer & Clarkson his whole rancho reserving to himself two leagues - which were to be set apart by a survey to be made at Vandusheer's expense This was done — the survey was made by S. Day — Navarro petitioned for confirmation of land within red lines - Vandusheer also petitioned for land within the green lines -

Navarro sold to various persons — amongst others to Basha Branham — But the deed to Branham calls for the exterior boundary of the rancho does this mean the exterior boundary of the whole tract or only of the 2 leagues reserved by Navarro —

We say the latter

1. Basham swears to it. He was atty in fact —
2 The line runs SE to the

Capelamellos — the outside line would run S to the Sierra —

3 The deed excepts out of the land all land previously sold — now the land outside of the Navalz line had been sold 5 years before

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The United States.

vs

Agustin Barbaro.

Notes of Argument.

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Augustin Narvaez Appellant vs The United States Appellee	District Court U.S. for the Northern District of California

The claim of appellant is predicated upon a Grant issued to him by Governor Micheltorena dated March 30. 1844 - Subject to the approval of the Departmental assembly. -

The parol evidence ascertains the fact, that appellant had lived on and cultivated the land petitioned for, some twenty years, had built several houses, ~~his~~ members of his family had been married and established their homes upon the premises ~~there - In 1844 after many years residence on the premises having had a settled knowledge he applied for a Grant which he obtained~~ - X

The "Commissioners to ascertain and settle the private land claims in the State of California" rejected the claim of appellant on the ~~single~~ ground

× This Case has been submitted without argument, each party relying upon the Case as presented in the transcript from this Court.

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that no segregation of the land from the public domain had taken place by judicial measurement and appellant being placed in possession of the land by Mexican authority, and that by the terms of the Grant no specific land was granted but only a certain quantity within the limits defined by the Grant.

In the petition filed to Governor Micheltorena in 1843 the petitioner states he had ~~resided~~ been located for twenty years on the place called "el Ranchito" and named by himself "San Juan Bautista" and asks for a concession of the place so named; but he does not mention the quantity, nor give any boundaries, or other description than the name. This petition was referred to the proper Functionary for the requisite information — A report was made in response to the reference, that the petitioner and one Don Maximo Martinez had appeared and had determined upon the lines and boundaries of the land to which they each aspire in their petition, "but as the land had been recognized to belong to the adjoining Mission of St Clara, the Father Minister shall say if there be no injury, as there is no objection apart of that which results from the petition of the interested party," that a third portion of the land which he believes belongs to that Pueblo, & that he holds it under a loan" and the report concludes, by stating it would not be proper for the petitioner to enter into the ~~band~~ possession of the land until its limits were determined by measurement". This report is dated, ~~San~~ "Pueblo of San José Dec 19. 1843. and signed ~~on 18th Jany 1844 a decree was made~~

by Sabino Pacheco, ~~Alcalde~~ the Magistrate of San Jose Pueblo. On 18. Jany following the Secretary of State at Monterey reports to the Governor referring to the long residence of petitioner on the land, his willingness to receive, and the reasons which had prevented his not having previously obtained a title for the land, and recommends the prayer of the petitioner should be granted.

On receipt of these two reports, the Governor ~~refers~~ refers the case to the Minister of Sta Clara to report with a view as the reference states, of "settling all questions in future "and to terminate all difficulty that "might be set up."

A very long and somewhat confused report which throws little light on the matter is made to the Governor on 30. Jany 1844, which is followed by a reference by ~~the~~ Governor his Excellency ~~is made~~ to the Secretary's office ~~for~~ to [illegible] to investigate "antecedents" that will show the extent of the land solicited as represented by the petitioner." In reply to this, the Secretary of State reports, "there is no antecedent, but what has been done in this expediente" and concludes in these words "It seems there is no impediment to grant two (sitios de ganado mayor) square leagues." Whereupon the Governor issued this grant to the appellant reciting he had solicited two (sitios de ganado mayor) square leagues within the land named San Juan Bautista bounded by the Rancho of the Los Berreyesas, by that of Justo Larios by (la Liena) the range of mountains, by the place of Hernandez, by the Pueblo of San Jose, not going beyond the (alisal) Alder trees that belongs to this Mission"

The evidence establishes the fact that within the limits of those called in the grant there are three ~~league~~ and one

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one tenth leagues. Now the Petition of appellant was for the tract of land specifically known as "San Juan Bautista" in the possession of which he had been twenty years; but the intention is clearly manifested on the face of the grant and by the intrinsic evidence in the cause to grant the appellant but two square leagues within the place so called. The Reports which were made intermediate the filing of the petition and the issue of the Grant, & the concluding clause of the Secretary of State ~~to the G~~ in his last report to the Governor "that there is no impediment to grant two square leagues" furnish conclusive proof of the intent. The grant on its face not by way of reservation, ~~but~~ but in express terms limits the quantity of land to two square leagues, nor does the grant refer to or adopt the map ~~[illegible]~~ made filed by the petitioner. The appellant claims under the grant, and by it must the ~~character~~ extent of his claim be ascertained. This Court therefore agrees with the Commissioners who decided that the interest which was conveyed to appellant by the grant was a right to two square leagues only to be taken out of the limits mentioned in that instrument. Viewed in that light it is clearly entitled to be considered a valid claim under the authority of the case of "Fremont vs The United States Sup. Ct. Dec. Term 1854, and for reasons stated ~~when~~ by this Court in commenting upon that authority in the case of Vaccaville Armijo vs The United States decided at the present Term. The following decree will be entered.

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Augustin Stamps
Appellant
v
The United States
appellees.

} District Court U. S.
for the Northern
District of California.

This cause coming on to be heard at a Special Term of this Court on appeal from the final decision of the Commissioners to ascertain and settle the private land claims in the State of California under the Act of Congress of 3 March 1851 upon the transcript of the proceedings, decision and the papers and evidence on which said decision was founded and also upon testimony taken in this Court and Counsel for both parties having appeared in Court; It is hereby ordered, adjudged and decreed that the said decision of the said Commissioners is hereby reversed, annulled and set aside, and it is hereby further ordered adjudged & decreed that the claim of the Appellant Augustin Stamps be, and the same is hereby confirmed, and adjudged to be a good and valid claim to the extent of two Square leagues (or otherwise as may be found to be contained within the boundaries called for in said Grant, and if there be less than two Square leagues, or other quantity found to be contained within the boundaries of said Grant, then to confirm to him the quantity

H. Hall McAllister.
Circuit Judge
Ogden Hoffman Jr.
U.S. Dist. Judge.

District Court U.S.
Northern District of
California.

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Opinion & Decree

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Several

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U.S. District Court

United States
vs
Augustin Narvaez

Depositions taken
June 6th 1855-

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vs
Augustin Narvaez

No 7.

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The points relied upon by the intervenors Branham & Lewis for the rejection of the survey are the following

1st. That the dotted lines on the diseno clearly indicate the limits of the tract on the north.

2nd That the los Gatos creek is not one of the boundaries, 1st because it is outside of the dotted lines & 2nd because it is not called for as a boundary in the petition or grant.

3rd That the north line cannot go further towards the north than the Southern extremity of the sycamore grove called "Alisal" because 1st the grant says expressly it shall not pass the Alisal & 2nd the diseno represents the "Alisal" as lying to the north of the dotted lines. whereas by the official survey, the los Gatos is made one of the boundaries, & the north line runs not only through the "Alisal" but nearer to the northern than the Southern extremity of it.

4th We claim that the north line should run across the Guadalupe near Kells house & from thence before reaching the Los Gatos, should

run in a Southwesterly direction as indicated by the dotted line on the diagram & as described by Day in his deposition & on his map, & that all to the North & North West of this line, should be excluded & the deficiency in quantity made up by including an equal quantity on the South West.

5th It was argued at the trial that Branham & Lewis have no interest to resist the survey, because it was said, the only title they have, is to lands embraced by the present survey - We claim on the contrary that the deed to them from Narvaez embraces all the land to the South west line wherever that may properly be - One of the calls is "thence South Westerly along said Basham's line & in continuation thereof in the same direction until the same strikes or arrives at the original boundary line of said tract rancho San Juan Baptista or Narvaez ranch - thence along & with the line of said original boundary of said Narvaez rancho in a South Easterly direction to the arroyo Capitancillos". By reference to the deposition of Basham & the diagram annexed to it, we claim that this call cannot be answered by stopping this line at the South West line of the official survey - Basham's tract lies immediately on the South West line of the official survey, & the

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call in the deed to Branham & Lewis, is to extend Basham's South West line in the same direction until it strikes the original boundary line of the rancho. This call cannot possibly be fulfilled by stopping at Basham's South West corner which is on the South West line of the official survey. That line must be extended to the original boundary of the rancho. This would embrace a considerable body of land outside of the present survey.

But it was said this land had been sold to Vandershied & Clarkson & that the deed to Branham & Lewis excepts out of it all lands before then sold by Navarro & therefore does not embrace this.

We produced & put in evidence a sheriffs deed conveying all the interest of Vandershied & Clarkson to Lucy Hooper now Harper & a deed from her to the intervenors. These are objected to because the judgement was not produced, under which the sheriffs sale was made. In real actions of ejectment, it would doubtless be necessary to produce the judgement, to show the legal title in the purchaser at sheriffs sale. But in this proceeding, it is only necessary to satisfy the Judge that the intervenors has an interest to resist or uphold the survey. It may be done by an ex parte affidavit or otherwise, & is a summary proceeding in which no

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great strictness is required - But at the trial we offered to produce the judgments, if a few days time were allowed for that purpose & now & are ready to produce it renew the offer if it be deemed by the court a material part of the intervenors case -

Brockett & Cravens
for Intervenors
Braham & Lewis

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vs

Augustin Navarez

Points relied on
by Intervenors.

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Crockett & Cuttenden

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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The United States,

v.

Aug: Narbaez.

IN LAND CASES.

Dist. Court No. 7.

Land Com. No. 75.

To Calhoun Benham.

You are hereby notified that the testimony of Sherman Day and others in the above entitled cause in behalf of Benham & Sevis will be taken before me, the undersigned, 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, commencing on Friday the 12th day of April A. D. 1861, at 11 o'clock A. M., and continuing from day to day until finished, at my office, No. 14, U. S. Court Rooms; and you are hereby further notified to then and there appear and propound such questions to the said witness as you may deem fit.

Dated at San Francisco, in the District aforesaid, this 5th day of April A. D. 1861.

W. A. Shepherd.

U. S. COMMISSIONER.

No. 7.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Aug Sarbay

NOTICE.

To

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U. S. COMMISSIONER.

CASE NO. 7 ND
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Isaac Graham
vs
John Fleck et al.
} 3rd Dist. Court.
Santa Cruz.

Guadeloupe Castro being duly sworn, says he was alcalde for Santa Cruz City district shortly after the americans took the country. Heard nothing of their being a grant to the cañada del Rincon until some months after the change of government. When Carlos Roussillon requested him to give him a judicial possession which affiant declined on the ground that he had no authority and the land asked for was the property of the Pueblo of Santa Cruz. Heard of no petition for a grant to the local authorities. If there had been a grant under the Mexican government from his position and opportunities would have known it. It was always the custom to have a report of the local authorities to show whether the land was public, or could be granted before issuing a title — No such application was made for affiant would have known it as he mixed largely in the affairs of the Pueblo

Guadeloupe Castro

Sworn to before me
this 3rd of January A.D. 1856
witness my hand &
official seal

J. C. Willson
County Clerk

State of California
County of Santa Cruz } ss

I. C. Willson County Clerk and ex officio clerk of the district court of the 3rd Judicial district in and for said county & state hereby certify the annexed & foregoing to be a full, & correct copy of the affidavit of Guadeloupe Castro made in a case said cause & now on file in my office in the aforesaid Cause

attest my hand & seal of said court affixed this 25th day of July A.D. 1857.

I. C. Willson
Clerk of Dist Court

Copies of affidavits of Jose Bolcoff & Guadalupe Castro

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