CASE NO.
56
NORTHERN DISTRICT

JACINTO GRANT

WILLIAM H. McKEE
CLAIMANT

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PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 156

William H. McNee CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Jacinto."

/

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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Be it Remembered, *that on this* Third day of April, *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 William H McKee *for the Place named* "Jacinto"

was presented, and ordered to be filed and docketed with No. 156 *and is as follows, to wit;*

(Vide page 4 *of this Transcript.)*

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

San Francisco April 7th 1852

In case No 156, Wm H. McKee, the deposition of David Spence, a witness in behalf of the Claimant taken before Commissioner Hiland Hall, was filed and is in the words and figures as follows to wit: (Vide page 6 of this Transcript)

San Francisco April 29th 1852.

In case No 156, Wm H. McKee, the deposition of William B. Ide, a witness in behalf of the Claimant taken before Commissioner

Hiland Hall was filed and is in the words and figures as follows to wit: (Vide page of this Transcript.

San Francisco August 14th 1852.

In case No 156, Wm. H. McKee, for the place called "Jacinto" on motion of the Counsel for the Claimant, the following order was granted to wit: (Vide page 38 of this Transcript.)

San Francisco February 28th 1853.

On motion of the United States Associate Law agent Case (No. 156) William H. McKee, for the place named "Jacinto", was ordered to be placed on the Trial Docket.

San Francisco April 22d 1853.

Commissioners Helena Hall and Henry I. Thornton returned to the Secretary the papers in Case No. 156 (and others) which they had under advisement; after which act, pursuant to the Notice in the National Intelligencer, they withdrew and ceased to act as members of the Board.

San Francisco July 5th 1853.

In Case No. 156 William H. McKee for the place named "Jacinto" the deposition of Jacob P. Leese, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed: (Vide page 18 of this Transcript)

San Francisco July 11th 1853.
The same case (No. 156) on motion of the United States Law Agent was ordered to be placed on the Trial Docket.

San Francisco July 29th 1853.
Case No. 156! Called! The counsel for the claimant read the papers in evidence, and opened the argument – Continued for further argument.

San Francisco Aug. 1st 1853.
Case No. 156, Called! Argument in behalf of the claimant resumed; followed by the United States Law Agent and concluded for the claimant; Case submitted

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San Francisco Oct. 18th 1853.
In Case No. 156 Wm. J. McKee for the place named "Jacinto" Commissioner Robert A. Thompson, delivered the opinion of the Board rejecting the the claim;

For opinion vide page 39 of this Transcript.)

For decree vide page 48 of this Transcript.)

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Petition

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To the Honorable Board of Commissioners for Ascertaining Private Land Claims in the State of California -

Your Petitioner William H McKee, of the County of Monterey in the State of California, respectfully represents to your Honorable Board that he claims a certain tract of land situated in the Upper Sacramento Valley in the aforesaid County of Colusi in the State of California, and called the Rancho of "Hacinto" or "Hyacinth Rancho" and containing eight square leagues of land, and that he claims the same in fee by virtue of a grant made unto Jacinto Rodriguez of Monterey in the State of California, under the authority of the Mexican Government by Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Plana mayor of the same, Governor, Commandant General, & Inspector of the Department of the Californias, bearing date the Second of September A.D. 1844.

And your petitioner further represents that the said grantee, "Jacinto Rodriguez" did transfer unto your petitioner on the twenty fifth day of April A.D. 1846, all of said tract of land, together with all of his right in and to the same.

And your petitioner further represents to your Honorable Board that judicial possession of said tract of land was given unto your petitioner on the twelfth day of June A.D. 1846; and that the boundaries thereof were designated and defined accurately by survey in the month of October A.D. 1849, made by Wm. B. Ide Government Surveyor for the Northern Department of California, as will appear from the field

notes of survey & Commission, a copy of which and of the Map of the land accompany this and are marked E. & F.
And your petitioner further represents to your honorable Board that he now is, and has been even since the 12th day of June A.D. 1846, in the peaceable possession of said land; that houses and other improvements have been made thereon, and that the land has been occupied by him as a Stock and Cattle Rancho even since, and that he has no knowledge whatever of any interfering claim.
And your petitioner presents herewith to your honorable Board, copies of all the original papers pertaining to said Rancho (so far as to him known) to wit; a certified copy of the Espediente and the papers now on file in the Government Archives, marked 1st, and 2nd a true copy of the Original grant (now in the possession of your petitioner) and a correct Translation into English of the same, "B" and 3rd a true copy of the transfer deed from Jacinto Rodrigues to petitioner, together with an English Translation of the same, marked, C, and 4th A copy of Certificate &c of Judiciary Possession given to your petitioner by John A. Sutter, and marked "D" and 5th a correct copy of the field Notes of survey, and of the Commission from the Governor to Wm B. Ide, appointing him surveyor for that Department of California, and marked E.; and 6th and marked F. A copy of the Map of said land from survey.
And your Petitioner would further represent to your honorable Board, that said grant of land never received the sanction or approval of the Hon

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Departmental Assembly, simply because it never was presented for Approval, there having been no session of the Hon Assembly from the date of this grant until after General Micheltorena had gone from California, to wit, in the month of April A.D. 1846, at which time an Informal Session was held at the City of Los Angeles, no notice thereof having been given even to some members of the Assembly who were then resident of Monterey.

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And Your Petitioner will make further proof of Title &c if required by the Board

And Your Petitioner now prays your Honorable Board to take into consideration his claim to said tract of land, and decree his Title to be valid, and ratify and confirm the same. And Your Petitioner will ever pray, as in duty bound

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Wm. H. McRee
Of the City and County of California

Done at San Francisco Monterey
this 3rd day of April
1852.

Filed in Office April 3rd 1852
Geo. Fisher, Sec'y

Deposition of David Spence

San Francisco April 7 1852

On this day before Hiland Hall one of the Commissioners for ascertaining and settling private Land Claims in the State of California came David Spence a witness produced in behalf of the claimant in the case of the Petition of

William H. McKee being Number 156 on the Docket of said Commissioners & was duly sworn. The Land Agent was duly notified and attended.

In answer to questions propounded by the Counsel for the Claimant the witness testifies as follows,

My name is David Spence, my age fifty three years and I reside at Monterey, where I have resided even since the year 1824. I am acquainted with the hand writing and signature of Governor Michel-eltorena & have often seen him write I am also in like manner acquainted with the signature of Manuel Jimeno. An original paper is now shown me which I have compared with paper B. filed in the Office of the Secretary of the Board in this case & find the said paper B is a true copy of the original. The signatures of Micheltorena and Jimeno attached to said Original paper I have no doubt are genuine.

I am also acquainted with the hand writing of Manuel Dias, & Ambrosio Gomez, having often seen them write — A paper is now shown me purporting to be an official copy of a transfer from Jacinto Rodriguez to Wm. H. McKee upon which the signatures of said Dias & Gomez appear, and which signatures I have no doubt are genuine Said Dias acted as Alcalde at the date of said paper & Gomez as his Secretary I have compared paper marked "C" filed in the office of the Secretary of the Board in this case, with said original and find it to be a true copy. I am also

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acquainted with the hand writing of J. A. Sutter, having frequently seen his write. An original paper purporting to be a certificate of Judicial possession now shown me, & signed J. A. Sutter is, I have no doubt genuine. The signature is his hand writing. I have compared paper

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D filed in the Office of the Secretary of the Board in this case with the said original and find it to be a true copy. The certificat of the County Recorder of Colusi County being added to said copy.

D. Spence

Sworn & Subscribed
Before me
Hiland Heal. Com.
Filed in Office April 7' 1852
G. W. Fisher Sec'y

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Deposition of W. B. Ide

Office of the Board of Commissioners of California Land Claims
San Francisco April 19' 1852.

San Francisco April 19' 1852
On this day before Hiland Heal one of the Commissioners for ascertaining and settling Private Land claims in California came William B. Ide a witness produced by Wm. H. McRee in behalf of the claimant in the Petition of William H. McRee himself being number 156, on the Docket of the Commissioners.
The Land Agent was duly notified and attended by Mr Greenhow.
The witness having been duly sworn gave his evidence as follows.
In answer to questions put by Wm. H.

McKee aforesaid in behalf of his own claim, the witness says

That in the year 1849 he was the United States Government Surveyor for the Northern Department of California, having been duly commissioned as such by Governor Mason and sworn into office.

That in the month of October, in that year, he surveyed accurately the eight leagues of land, known as the Rancho de Macinto, situated in the Upper Sacramento Valley, in the County of Colusi, as now called which was at that time occupied by, and belonged to Dr. W. H. McKee, the present claimant, and witness further says, that the papers now shown to him and marked E and E No 156, and filed in the Office of the Secretary of the Board are true copies of the originals, made by him to wit; the field notes of survey and the Diagram of the land;

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And witness further says that he knows W. H. McKee to have been at that time, and ever since, in the peaceable possession of said tract of land, or Rancho de Macinto, witness also exhibits his original commission from Governor Mason and having compared with it, the paper, on file in the Office of the Secretary of the Board marked E, he says that said paper E is a true copy of the said commission. Witness moreover says, that the field notes are true notes of the survey, and that the map was made from the field notes. On examining the copy of the map shown to him as on file in the Office of the Secretary marked F; he considers

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it entirely correct except that a road is laid down on it which he does not recollect in his original map though he may have traced it in pencil.

Wm. B. Ide

Sworn & Subscribed
Before me
Hiland Hall Com.
Filed in Office April 19 1852
Geo. Fisher Sec.

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No 156.

San Francisco July 5th 1853

Deposition of Jacob P. Leese

On this day before Com. Thompson Campbell, came Jacob P. Leese, a witness in behalf of the claimant Wm. H. McRee petition No. 156, and was duly sworn his evidence being given in English.

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The U.S. Associate Land Agent, was present.

Questions propounded by claimants Counsel.

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

Ans. My name is Jacob P. Leese, age, 44 years, and place of residence Monterey

Ques 2nd. Are you acquainted with the tract of land claimed in this case, if so state all you know of its occupation at any time.

Ans. I am acquainted with the Rancho referred to. I had it taken possession of myself in the year 1844, by a man by the name Moitte, under the grant from the Grantee.

Ques 3d. Per relation to the same

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called Rio del Plato in the petition, Do the Governor, State if you know whether it is the same one which is named in the diagram and in the grant in the case indifferently either as Capay, or Stone river.

Ans to 3d Direct. It is the same river called by the different names mentioned in the interrogatory

Mr Greenhow U.S. Land Agent declined to cross Examine.

Sworn to and subscribed. J.P. Deese
before this 5th day of July
A.D. 1853.

Thompson Campbell
Comr

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Filed in Office July 5th 1853
Geo. Fisher Secy

Rom 200 follows (Expedite)

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1. S. D. R

Espediente

Promovido por Dn. Jacinto Rodriguez en pretencion de un terreno por el Rio del Sacramento

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2.S.D.R

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Sello Quinto un Real
Habilitado provisionalmente por la Aduana maritima del puerto de Monterey en el departamento de las californias para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco.
Micheltorena

Pablo de la Guerra
Por aus.a del Admor.
Guill.o Ed.o Hartwell

S.D.R

Expediente

Excmo Sor. Gobor.

Jacinto Rodriguez Mejicano p.r nacimiento y natural del Puerto del Monterey ante V.E con el debido respecto y como mas halla lugar en derecho represento y digo: que siendo dueño de un numero de ganado Bacuno y Caballar, bastante considerable, y careciendo de un terreno para el adelanto de dichos bienes; he adquirido noticias q.e arriba del Rio del Sacramento por la parte del poniente se halla uno conocido por el nombre de Rio del pleito y el Rio de los Toros que colinda por la parte del Oriente con el Rio del Sacramento por el poniente con la Sierra Madre por el Norte con un Corrayo q.e se halla delante del Rio de los toros distante como dos leguas poco mas o menos y por el Sur con la gentilidad y como dho terreno se halla enteramente Baldio en todas sus partes suplico a V.E se sirva concederme ocho Sitios de ganado Mayor en el mencionado paraje del Rio del pleito y Corrayo que se halle delante del Rio de los toros, por el margen del Rio del Sacramento como lo demuestra el diseño que debidamente acompaño del men=

Monterey Julio 6 de 1844 — Inf.e del Sor Sno del Despacho tomando antes los g.s necesita al efecto — Micheltorena

3.S.D.R

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=cionado terreno, Por tanto
A. V. E. suplico encarecidamente se sirva
acceder à esta mi Solicitud de lo q.e reci=
=bire merced y gracia jurando no ser
de Malicia y lo necesario. V. E.
Monterey Julio 8. de 1844

Jacinto Rodriguez

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Como dispone el exmo Sor Gobernador
Sirvase informar el C. Alcalde 1.o de
Sonoma sobre el contenido de la prest.e
instancia.
Fha la misma
Man.l Jimeno.

Por Sro del despacho el Terreno q.e
se hace mencion es Baldio y no pertenece
Pueblo ni corporacion ninguna.
Monterey Julio 8 de 1844
Jacobo P. Leese

4.S.D.R

Exmo Senor Gobernador.
Por el informe del Alcalde de Sonoma
y por el merito y posibilidades del que
representa entiendo que no hay incomo=
=diente alguno p.a que se acceda à su
pretencion. La Sup.a disposicion de
V. E. hara lo que mejor lo convenga.
Monterey 8 de Julio de 1844
Man.l Jimeno

Monterey Julio 2. de 1844
Habiendose me procurado hacer hoy esta
Solicitud, no observe la fha del anterior
informe, concedo en ella el pedido q.e
se hace vistos los informes

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Micheltorena

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5.D.R

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El Ciudadano Manuel Michelt orena General de Brigada del Ejercito Mexicano Ayudante General de la plana Mayor del mismo Gobernador, Comandante general e inspector del depart.to de California

Por Cuanto D.n Jacinto Rodriguez ha pretendido para su beneficio personal el terreno q.e se halla desde la embocadera del Rio de Capay en la Orilla del Rio del Sacramento rumbo al Sur hasta donde mi=dan cuatro leguas, debiendo ser de Ancho por la parte del Oeste para que resulte tener el terreno ocho leguas cuadradas. practicadas previamente las diligencias y averiguaciones consiguientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas à Nombre de la Na==cion Mexicana. he venido en concederle el terreno mencionado sujetandose à la aprobacion de la Exma Asamblea Departa=mental y à las condiciones siguientes. 1.a Podra cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso ò cul=tivo que mas le acomode.
2.a Solicitara del Juez respectivo que de la posesion juridica en Virtud de este des=pacho por el cual se demarcaran los linderos en cuyos limites pondra à mas de las moho=neras algunos arboles frutales de algu=na utilidad. 3.o Si contravniese à estas condiciones perdera su derecho al terreno y sera denunciable por otro. En Con=secuencia mando que teniendose por forme y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines Dado en Monterey a dos de Setiembre

6.C.D.R
260

de Mil mil ocho cientos cuarenta y cuatro
Michelorena.

Queda tomada razon de este despacho en
el libro respectivo.

16 Simeno Sro

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Here follows
Mayo

18

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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 Custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the seven preceeding and hereunto annexed pages of tracing paper numbered from one to seven inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain Documents now on file and forming part of the said Archives in my Office

In Testimony whereof I have hereunto signed my Name Officially and Affix my private Seal (not having a Seal of Office at the City of San Francisco Cal. this twenty first day of August 1851

Saml. D. King
Survr. Genl. Cal.

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Filed in Office
April 3rd 1852
Geo: Fisher
Secy.

9.20

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A Record of Proceedings at the instance of Don Jacinto Rodrigues petioning for a tract of land about ("par") the Sacra=mento River

421.

"A"
Translation of Expediente

L. S. Seal

Monterey July the 6th 1844.
Let the Secre=tary of State report, calling beforehand for what reports he may want for the purpose
Signed/Micheltorena

Excellent Vice Governor
I, Jacinto Rodrigues, a Mex=ican by birth and born in the port of Monterey represent and say before Your E. with due respect and according to the most suitable forms of law:
That being the owner of a rather considerable amount of black cattle and horses and wanting a tract of land for the progress of said prop=erty, I have acquired in=formation that up the River Sacramento towards the West, there lies one, known under the name of "Rio del Pleite" y el Rio de las toros" bordering towards the East on the Sac=ramento River, towards the West on the Sierra "Madra" towards the North on a brook that is before the "Rio de las Toros," at a distance of about two leagues a little more or less, and towards the South on the Heathens grounds ("la gentilidad") and inasmuch as said tract of land is lying entirely unoccupied in all its

parts, I entreat V. E. to be pleased to grant to me eight square leagues "(sitios de ganado mayor") in the aforementioned location of the "Rio del Pleito" and the brook that is before the "Rio de Los Toros" along ("por") the margin of the Sacramento River, as is shown by the sketch which I send duly accompanying of the mentioned tract of land.

Therefore I earnestly entreat V. E. to be pleased to accede to this request of mine, whereby I will receive mercy and grace, swearing not to proceed maliciously, and to whatever else may be necessary.

Monterey Feby the 3rd 1844.

(Signed) Jacinto Rodrigues.

Agreeably to the determination of this Excellency the Governor, the Honorable 1st Alcalde of Sonoma is hereby requested to report on the contents of the proceeding instancy.

Same date. (Signed) Manuel Jimeno

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Senor Secretary of State. The tract of land in mention lies vacant and does not pertain to any pueblo or corporation.

Monterey July the 8th 1844.

(Signed) Jacob P. Leese.

Excellent Sir Governor.

By the report of the Alcalde of Sonoma and by reason of the merits and means of the party who has made the representation, I understand that there is no obstacle against accending to his request. V. Excellency Superior

disposition will do what may best suit. Monterey July the 8th 1844.
/Signed/ Manuel Jimeno

Monterey September the 2nd 1844
This memorial not having been presented to me till the present day, notwithstanding the date of the foregoing report, I grant the petition made in it after having seen the reports.
/Signed/ Micheltorena

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Citizen Manuel Micheltorena General of Brigade in the Mexican Army Adjutant General in the staff of the same, Governor Commandant General and Inspector of the Department of California.
Whereas Don Jacinto Rodriguez has petitioned for his personal benefit the tract of land which lies from the mouth of the River Capay, on the bank of the Sacramento River in a southerly course, to a point where the measure or length of four leagues be attained, its breadth to be two leagues westerly in order that the tract of land may result to have eight square leagues the investigations thereunto concerning having been previously performed according to the prescriptions of the laws and regulations, by virtue of the authority in me vested in the name of the Mexican Nation I have found expedient to grant to him the aforementioned tract of land, subject to the approval of the Excellent Departmental Assembly and to the following conditions:

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1st He may enclose it without prejudice to the paths crossroads and

servitudes, he shall have the free and exclusive enjoyment of it destining it to what use and cultivation may best suit him.

2nd He shall solicit the respective Judge to give to him the judicial possession by virtue of this patent, by whom the boundaries shall be marked out, on the limits of which he shall set, besides the landmarks, some fruit trees of some utility.

3rd If he should contravene these conditions, he shall loose his right to the land and it shall become liable to be denounced by another.

Consequently I order that the present title being held as firm and valid, the same be entered in the respective Book and be delivered to the concerned part for his security and other ends.

Given in Monterey, on the Second day of September, one thousand eight hundred and forty four.

Micheltorena

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This patent has been entered in the respective Book.

Simeno. Secretary

I hereby certify the foregoing to be a true and correct translation of an authenticated copy from the Spanish Original Document on file in the Office of the U.S. Surveyor General, said authenticated copy is on file in this Office in case No. 156, William H. McRee for the place called Hyacintha Ranchq.

Geo. Fisher Secy

Filed in Office June 8th 1853

Geo. Fisher Secy

Spur 200 B follows

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Original Exhibit marked B. annexed to the Deposition of David Spruce taken before Commissioner Hilana Hall Apr. 7th 1852. Copy of which is filed with the petition in this Case.

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Sello Primero
Habilitado provisionalmente por la Aduana maritima del Puerto de Monterey en el Departamento de las California, para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco.

El Ciudadano Manuel Michel=torena General de Brigada del Ejercito Mejicano Ayudante General de la plana Mayor del Mismo Gobernador Command.te Gral Inspector del departamto de California

Por Cuanto D. Jacinto Ro==driguez ha pretendido para su Beneficio personal el terreno que se halla desde la embocadera del Rio de Capay en la Orilla del Rio del Sa==cramento rumbo al Sur hasta donde midan cuatro leguas debiendo ser dos de ancho por la parte del Oeste para q.e resulta tener el terreno ocho leguas cua==dradas: practicadas previam.te las dili=gencias y averiguaciones segun lo dis==puesto por leyes y reglam.tos usando de las facultades q.e me son conferidas à nombre de la nacion Mejicana he venido en concederle el mencionado terreno Suje=tandose à la aprobacion de la Excma Asamblea Departamental y à las con==diciones Siguientes:

1.o Podra Deslindarlo sin perjudicar las travesias, caminos y Servidumbres, lo dis==frutara libre y Esclusivamente desti==nandolo al uso y cultivo que mas le aco==mode.

2.a Solicitara del Juez respectivo que le de la posesion juridica en Virtud de

este despacho para el cual se demarcaran los linderos en cuyos limites pondrá á mas de las Mojoneras algunos frutales ó de alguna utilidad.

3º Si contravinese á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey á dos de Setiembre de Mil ocho cientos cuarenta y Cuatro.

Micheltorena

Manl. Jimeno
Srio:

Queda tomada razon de este despacho en el libro respectivo á fojas 4. Dn

Jimeno

Filed in Office
June 8th 1852
Geo: Fisher
Secy Jam

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"B"
Translation
of Grant

56 ND
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Stamp First Eight Dollars

Provided provisionally for the Custom House of the Port of Monterey, in the Department of the Californias for the years Eighteen hundred and forty four and of eighteen hundred and forty five.

Micheltorena. Pablo de la Guerra

Custom House Seal

The citizen Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor, Commandant General and Inspector of the Department of the Californias.

Government Stamps California

Inasmuch as Hacinto Rodrigues has besought for his own personal benefit a tract of land which is situated on the banks of the Sacramento River, and extending from the mouth of Capay River for four leagues to the South, and being two leagues in breadth from the river Westward, so that the tract of land contain eight square leagues, the necessary steps having been taken and information obtained concerning the same as prescribed by the laws and statutes; making use of the powers which have been conferred upon me, in the name of the Mexican Nation, I have granted unto him the before mentioned lands, subject to the Approval of the Honorable Departmental Assembly, and to the following conditions; namely.

First. He may fence it in without obstructing the crossings roads and servitudes, and may make use of it either for cultivation or in whatever

other way may best suit him.
Second. He will request of the respective judge that Juridical possession may be given unto him in virtue of this Dispatch, by whom shall be designated the boundaries at the limits of which shall be placed, besides the landmarks, some fruit trees or else other trees of some utility.

Third. Should he not comply with these conditions, he will loose his right to the land and it will be denounceable by another. Consequently, I order that the present title, being taken for a firm and valid one, be noted and entered in the respective book, and then delivered unto the interested part for his protection and other ends. Given at Monterey on the second day of September, A.D. Eighteen hundred and forty four

/Signed/ Micheltorena

200 /Signed/ Manuel Jimeno
Secretary

Entered in the Respective book of Titles at the reverse folio seven.
/Signed/ Jimeno

I hereby certify the foregoing to be a true and correct Translation of the Spanish Original Document filed and now on file in this Office in Case No 156 William H. McSee for the place called Hyacinth.
Ce: Fisher
Sec'y

Filed in Office April 3rd 1852
Ce: Fisher Sec'y

(Span Doc C follows)

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Original Exhibit marked C. annexed to the Deposition of Dona Spruce taken before Comr. H. Hall April 7th 1852. Copy of which is filed with the Petition in this Case

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En el Puerto de Monterey de la Alta California à los Veinte cinco dias del mes de Abril de Mil ocho cientos cuarenta y Seis. Ante mi Manuel Dias Alcalde Primero Constitucional y Juez de Primera Instancia de esta demarcacion y por ante los testigos de Asoa con quienes Actuo en la forma establecida. Parecio de presente el Ciudadano Jacinto Rodriguez Cuya persona doy fè conozco y dijo que por si y a nombre de sus herederos y sucedores y de quien de ellos hubiere titulo, Voz y fama en Cualesquiera manera vende y da en Venta publica solemne y enagenacion perpetua por juro de heredad pa Siempre jamas à Dn Guillermo Mc Key que tambien doy fè conosco especial y señaladamte un terreno que se halla desde la embocadera del Rio Capas en la Quilla del Rio del Sacramento rumbo al Sur hasta donde unidan cuatro leguas debiendo ser dos de Ancho por la parte del Ol. por lo que resulta tener ocho leguas cuadradas; en la Cantidad de tres cientos ochenta pesos que ya tiene recibidos à su entera satisfaccion; en tal Virtud y corriendo agregando el titulo de otro terreno declara y asegura el otorgante no tenerlo vendido enagenado ni empeñado y que esta libre de todo gravamen publico perpetuo temporal especial, tacito o espreso y como tal se lo Vende en el precio dicho y sobre no parecer de presente la entrega renuncia las leyes de ella las de su prueva y pago del recibido. Como en ella se contiene y asi mismo declara que el justo precio y verdadero valor del mencionado sitio son las referidas tres cientos ochenta pesos y que no vale mas y en caso de que mas

valga o valer pueda del ceceso en macha
o poca suma hace al favor del Comprador
gracia y donacion pura, perpetua e irrevoca
=ble que en derecho se llama Inter Vivos
Con insinuacion y demas firmezas lega
=les renunciando las leyes que tratan de
los contratos, truegues, y de otros en que hay
lesion en mas o menos de la Mitad del
justo precio y desde ahora en adelante
para siempre se desapodera, desiste
quita y aparta del dominio propiedad
posesion, titulo, voz recurso y otro quales=
=quiera derecho que se competa al enunciá=
=do terreno lo cede y traspasa en el compra=
=dor y en quien la Suya represente para
que lo posea, gozè, cambiè enagenè, usè
y disponga de el à su eleccion Como de
cosa suya adquirida con legitimo y justo
titulo. Y la observancia de todo lo referido
obliga el otorgante todos sus bienes habidos
y por haber y con ellos se somete al fuero
y jurisdiccion de los S.S. Jueces y justicia
que de sus causas puedan y deban como
ser conforme à otro para que à su cumpl.nto
le compelan y apremien. Como por sen=
=tencia definitiva consentida y pasada
en autoridad de cosa juzgada renuncia
las leyes, que en el caso le favorezcan y
la gral del otro en toda forma.
En cuyo testimonio asi lo otorgo. y
firmo con migo y los citados testigos de
Ass.a siendo los instrumentales los
Ciudadanos Florencio Serrano, Jose
Abrego, y Jose Rafael Gonzales presen=
=tes y vecinos. Que yo el referido Juez doy
fe y conosco Manuel Dias, Jacinto Ro=
=driguez Dc. Ass.a Jesus Rogasi
Otro si se estiende la presente escri=
=tura en papel comun por no haber

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del Sello que corresponde.
Es copia que Certifico sacada fielmen=te de su Original en el dia de su O=torgamiento siendo testigos de ver la copiar, corregir y consertar el Ciudadano Ambrosio Gomez de que doy fee.

Dos sin papel
ocho p: dos Reales

Mon.l Dum.
Ambrosio Gomez

Filed in Office
8th June 1852.
Geo: Fisher Secry

Recorded in Book of Deeds "A" of Colusa County Records at Pages 2.3.4.
Mr Monroe
Recorder of Colusa County

56 ND
PAGE 29

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"C"
Transfer Copy
and Translation

56 ND
PAGE 30

In the Port of Monterey, Upper California, on the twenty fifth day of April A.D. Eighteen hundred and forty six, personally appeared before me, Manuel Elias, First Alcalde Constitutional and judge of First Instance for this District and in presence of the witnesses of assistance with whom I operate according to the established custom the Citizen Hacinto Rodrigues who is personally known to me, and who said for himself and in the name of his heirs and successors, and of whomsoever of them might have title or claim in any way, he sells and gives by public solemn sale and perpetual alienation forever to William H. McKee, who is also personally known to me, a tract of land situated on the bank of the Sacramento River, extending from the mouth of Capay River for four leagues to the South, and being in length two leagues from the River to the west; so as to contain in all eight square leagues, for, and in consideration of the sum of three hundred and eighty dollars, which he has already received to his entire satisfaction; in virtue of which, (and the original title of said land being passed along with this, he declares and binds himself that the said land is not sold, mortgaged nor transferred, but that it is free from every encumbrance, public, perpetual, temporal, special tacit or expressed, and as such, he sells it in the aforesaid sum; and that he may not require to be present personally to deliver it up, he renounces the laws of delivery, and the proof thereof and

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thus declares that the just and true Value of the aforesaid land are the before-mentioned three hundred and eighty dollars and that it is not worth more, and that in case it were worth more, in a greater or less sum, he gifts and makes a present of the same unto the purchaser, as a donation perpetual and irrevocable, which in law is called inter vivos, with insinuation and other legal bonds: renouncing the laws which treat of contracts, barters and of other contracts in which there is deceit or fraud is more or less than the one half of the just price: and from now, henceforth, forever, he quits and leaves off all dominion authority, possession, property, title and every other right which he may have in and to the beforenamed land, and cedes and transfers it to the purchaser and whoever may represent him or his interests, so that he may possess,
300 enjoy, exchange, bargain, and dispose of it as he may choose, as his own, acquired by him through legal and just title.

And for the observance and fulfilment of all of the foregoing, the subscriber binds himself by all his present and future property, and with it he submits to the jurisdiction of the courts and decision of the justices competent to know according to law and to decide such cases, in order that they may compel its fulfilement, and award as by final and decisive judgment in a tried cause: he renounces every law that might be in his favor in every form. In testimony of which he thus signed and acknowledged along with me and the assistant witnesses;

being present the citizens Florencio Serrano, Jose Abrego and Jose Rafael Gonzales, all of whom are residents of this place and personally known to me.

(Signed) Manuel Dias

(Signed) Jacinto Rodrigues
Witness of Assistance

(Signed) Ambrosio Gomez

(Signed) Jesus Rogas
Ass Witness.

56 ND
PAGE 32

Furthermore, the present instrument of writing is drawn off on common paper for want of the proper stamped paper.

The foregoing is a copy faithfully drawn from its original, on the day of its execution, being witness to the copying, correcting or comparing citizen Ambrosio Gomez, which I attest.

(Signed) Manuel Dias

200

" " Ambrosio Gomez

Fees without paper
$8 - 2 Rls.

I hereby certify the foregoing to be a true and correct translation of the Spanish Original Document filed and now on file in this office in case No 156. William H. McKee for the place called Hyacinth.

Chas. Fisher Sec'y

Filed in Office April 3rd 1852.

Chas. Fisher

Span Doc "D"
follows

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To Senor Don Juan A. Sutter
Constitutional Alcalde of Sacramento

"D"
Judiciary Possession

56 ND
PAGE 33

William H. McKee a citizen and a resident of Monterey of Upper California before you in due form appears and States that having obtained by legal service, as it is manifest by the conveyance herewith accompanied, the Concession of a Tract of land known, which is situated in the valley of Sacramento on the West side, and extending eight leagues on "Litios de ganado mayor" to the South of the Cosay River (or Stone Creek) as it is manifest by the title of Concession and other documents which are herewith duly accompanied, he prays you to be pleased to give him juridical possession as provided for by the 2nd Article of the Title.

He affirms that it is done in justice and not in Malice &c. Nueva Helvetia May 10th 1846. (Signed) Wm H. McKee

Nueva Helvetia May 12th 1846.

The foregoing petition is admitted. Let me the present Judge proceed to the measurement marking the boundaries, and giving the juridical Possession, solicited by the party interested assigning for its verification the 12th day of June of the present year, for which purpose the Coterminous neighbours shall be summoned in writing to appear. Thus I have decreed & signed

(Signed) J. A. Sutter. Alcalde

I certify the foregoing to be a and correct Translation of the Spanish part of the annexed Document filed in this Office in Case No 156. Wm H. McKee for the place named Hyacinth.

Geo. Fisher
Secy

Sr. Don Juan A. Sutter
Alcalde Constitucional. Sacramento

Guillermo H. McKee, Ciudadano y vecino de Monterey de la Alta California, ante Vmd. en debida forma comparece y dice, que haviendo obtenido por compra legal, segun consta por la escritura de Venta que aqui se acompaña, la concesion de un terreno conocido, que se halla en el Valle del Sacramento al lado al Oeste, y en estencion de ocho leguas ó sitios de ganado mayor al sur del Rio Cosay (ó Stone Creek) segun consta por el titulo de concesion y demas documentos, que aqui debidamente se acompañan, ocurra ante Vmd. para que se sirva darle la posesion jurídica, conforme esté prevenido en el Art.º 2.º del titulo.
Jurando son por justicia y no por malicia &c. Nueva Helvetia el 10 de mayo de 1846.

(Signed) Guill.º H. McKee

Nueva Helvetia, 12.ce de Mayo de 1846.
Admitida la antecedente solicitud, procedase por mi el presente juez á la medicion, señalamiento de linderas, y posesion juridica que solicita el interesado, señalandose para su ejecucion el dia doce de junio del corriente año; para lo que se citará con boleta de comparecer á los colindantes. Asi lo decreté y firmé.

(Signed) J. A. Sutter. Alcalde

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New Helvetia 12th June 1846. Be it known that on the 12th day of June A.D. 1846. legal and judiciary possession of the lands, (in extent eight Square leagues) granted to Hacinto Rodrigues and lying on the western side of Sacramento River, was given by me, Alcalde for Sacramento jurisdiction unto Wm. H. McKee, as prayed for in the foregoing petition.

(Signed) J. A. Sutter. Alcalde

Recorded August 21st 1851.

W. P. Monroe. Recorder Colusi County.

Recorded August 21st 1851

W. P. Monroe

Recorder

56 ND
PAGE 35

State of California }
County of Colusi }

I, W. P. Monroe County Recorder of the County of Colusi do hereby certify that the foregoing is a full, true and faithful copy of what stands recorded on the last half of the 4 page and the former part of the 5th page of Book 1st A. of the Registry of Deeds for Colusi County.

In Witness whereof I, W. P. Monroe hereunto subscribe my Official Signature and affix the Seal of the Count Court (by use of my private seal having none other yet provided) this 13th day of March 1852.

W. P. Monroe Recorder of Colusi County by Wm B. Ide
Dep Recorder

(Certificate of Record (Copy) Judicial possession Capt A. Sutter)

Filed in Office April 3rd 1852
Geo. Fisher Secy

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"E" Field Notes of Survey & Surveyors Commission

Copy of Field Notes of Survey of Doct. W. McKee's Ranch commencing at a willow tree 5 inches in diameter, & standing at the mouth of Capay River, otherwise Stone Creek, Upper Lacr."

Sta	Bearings	distance in Varas		observ	Sta	Bearings	distance in Varas	
1	S. 88° 40' W	1040	7		31	S 22° 7½ W	826	2
2	S 26° 00' W	89	5		32	S 42° 50' E	540	5
3	S 8° 43' W	1025	7		33	S 5° 00' E	232	1
4	S 73° 52' E	1464	8		34	S 3° 18' W	614	2
5	S 37° 40' E	898	1	across a gravel point	35	S 47° 50' E	1046	4
6	S 32° 20' W	826	8		36	S 63° 45' E	808	
7	S 7° 20' W	617	8	small I. east side Fish dam 240 below	37	S 7° 35 W	604	7
8	S 28° 14' W	2667		Dw R.	38	S 22° 45' E	600	6
9	S 39° 18' E	582	6		39	S 30° 30' W	1200	6
10	S 70° 15' E	623	5	good site to build	40	— W. —	10,828	44 Varas
11	S 10° 53' E	1267	9	Dw R.	41	N. 3° 22' W	20,000	Varas
12	S 52° 35' E	1464	8			— E —	10,836	5 Varas
13	S 22° 28' W	966	7		a small willow tree with			
14	S 12° 27' E	849	4		111. the place of begin-			
15	S 83° 40' W	1514	2		ning, containing after			
16	S 11° 31' W	244	7	great quantity of small cotton wood N.E.	deducting 14,192 3 Varas			
17	S 51° 45' E	779	8		to balance offsets, Eight			
18	S 35° 40' E	342	6		Mexican Leagues 49,679			
19	S 24° 00' E	269	2		square Varas or 35,436 $\frac{57}{100}$			
20	S 72° 00' W	1099	1		English acres, very			
21	S 30° 37' W	131			nearly.			
22	S 7° 00' W	118	8		The foregoing is a correct			
23	S 17° 00' E	245			copy of field note, of			
24	S 48° 00' E	232	1		a survey made in October			
25	S 37° 45' E	247	6		1847. by William B. Ide			
26	S 77° 10' E	1477	9		Land Surveyor			
27	S 42° 55' W	641	9		in and for the Northern			
28	S 5° 15' E	748	2		Dept.t of Upper			
29	S 32° 45' E	269	9		California			
30	S	211	5		(Signed) William B. Ide			

Fish dam 240 varas below.

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PAGE 36

1950

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X

56 ND
PAGE 37

Know all men by these presents that I Richard B. Mason, Colonel 1st Regiment Dragoons, United States Army, and Governor of California by virtue of authority in me vested, do hereby appoint William B. Ide Land Surveyor, for and in the Northern Department of Upper California. Done at Monterey Upper California this 7th day of June A.D. 1847 and the 71st of the Independance of the United States.

R. B. Mason
Col 1st Dragns
Gov California

United States of America
Territory of California }
District of Sonoma }

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I, William B. Ide do Solemnly swear that I will support the Constitution of the United States, and faithfully demean myself in office as Land Surveyor for, and in the Northern Department of Upper California.

William B. Ide

Sworn & subscribed before me
this 23rd day of June 1847.

L. W. Boggs
Alcalde of Sonoma

I, C. H. St John a Notary Public in and for the County of Colusi do hereby certify that the foregoing is a true and correct copy of the original this day presented to me

Witness my hand and private seal (having no Official Seal) at Weaverville this 13th day of March 1852

Seal

C. H. St John
Notary Public

I, W. P. Monroe C. Clerk of the Court of Colusi State of California do hereby certify that C. H. St John is duly qualified and properly appointed an Official Notary Public for and within the County of Colusi State of California. Witness my hand and the seal of the County Court (by use of private seal there being yet no court seal provided) at Office Weaverville March 13th day A.D. 1882.

W. P. Monroe Clerk
of Colusi County.

Filed in Office April 3rd 1882
Geo. Fisher Sec'y

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Order of Survey.

Office of the Board of U. S. Land Commissioners for the State of California August 14th 1882.

For the purpose of determining with precision and certainty the limits and boundaries of the land claimed by William H. McKee in his petition No 186 pending before the Commissioners, it is on motion of the Counsel for the claimant ordered that an initiatory survey under the superintendance of the United States Surveyor General of California be made of the land known by the name of Jacinto Rancho, being a tract of land on the western border of the Sacramento River, and extending from the mouth of Cayay River to the South a distance of four leagues, and reputing to be two leagues in breadth

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to the West, so as to contain eight square leagues, as is represented in the plan accompanying the respective Expediente locating the said quantity of Eight leagues according to the claim of said McKee, and having referance to the plan or diagram annexed to the said Expediente, but in such manner as to confirm such location within said limits, and to include in the survey so to be made the said quantity of eight Leagues. But this order is not in any manner to determine as against the United States, either the question of title, the construction of the grant the location boundaries or extent of the land to which the claimant may be entitled.

56 ND
PAGE 39

Filed in Office August 14 1852
Geo. Fisher
Sec'y

200

Case No 156.

Opinion

William H. McKee Claimant
vs
United States. For a place called "Jacinto".

The claimant sets out in his Petition that he claims a certain tract of land in the Upper Sacramento Valley, in the count of Colusi State of California called the "Rancho of Hacinto" or Hyacinth Ranch containing eight square leagues of land, and that he claims the same in fee, by virtue of a grant made to

Jacinto Rodrigues of Monterey under the authority of the Mexican Government by Manuel Michelltorena Governor &c of the Department of the Californias, bearing date the 2nd of September 1844, that the said land was transferred to him by the original grantee on the 25th day of April 1846. That juridical possession of said land was given to claimant on the 12th day of June 1846, that the boundaries thereof were designated and defined accurately by survey in the month of October 1845, made by Wm B. Ide government Surveyor for the northern department of California as appears from the field notes of Survey and commission a copy of which and of the maps of the land accompany the petition marked E & F. He further represents that he now is, and has been ever since the 12th day of June 1846, in the peaceable possession of said land, that houses and other improvements have been made therein, that the land has been occupied by him as a stock and cattle Ranch, and that he has no knowledge of any interfering claim &c.

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That said grant never received the approval of the Departmental Assembly simply because it never was presented for approval, there having been no session of the Assembly from the date of the grant, until after Genl Michelltorena had gone from California in the Month of April 1846, at which time an informal session was held in the city of Los Angeles, no notice having been given to some members of the Assembly who were then residents

of Monterey.
To sustain the claim thus set forth the claimant offers in evidence the original grant, together with a duly certified copy of the original conveyance, from the Grantee to himself, dated 25th of April 1846. A traced copy from the Archives of the original Expediente, containing the proceedings of the Government in relation to the grant commencing with the petition of the Grantee Rodrigues, dated on 3d of July 1844, and terminating with the formal grant by the Governor dated on 2nd of September 1844, also the map or sketch which accompanied the original petition, all of which appears to be in evidence with the laws and regulations on the subject.

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He also offers a certified copy from the records of Colusi County, of what purports to be a petition from the claimant, to John A. Sutter Constitutional Alcalde of Sacramento, praying him to give him juridical possession of the land granted dated 10 May 1846, the decree of Sutter thereupon dated 12th May 1846, and a certificate dated 12th of June 1846, at New Helvetia, and signed John A. Sutter Alcalde, declaring, that on that day, "legal and judiciary possession" of the land, (in extent eight square leagues) granted to Hacinto Rodrigues, and lying on the western side of the Sacramento River, was given by him, Alcalde for Sacramento jurisdiction to William H. McKee as prayed for in the foregoing petition; These papers appear to have been recorded, in the Recorders office of Colusi County, on the 21st of

August 1851, and are in the Spanish language except the last, which is in english —
There are also filed with the papers a copy of the field notes, and of a map of Ja Survey, made by Wm. B. Ide in Oct. 1848, also a copy of what purports to be the commission, and oath of office of said Ide as Land Surveyor for the Northern Department of Upper California.
David Spence proves the hand writing of Governor Micheltorena, and Manuel Jimeno on the original grant, and that of Manuel Diaz, and Ambrosio Gomez, on the copy of the mesne conveyance, also the hand writing of John A. Sutter, on an original paper, purporting to be a certificate of juridical possession, he also proves that the paper marked D is a true copy of said original, but no such original is found among the papers.
William B. Ide deposes, that in 1847 he was United States Government Surveyor, by virtue of a commission from Governor Mason, that, in that year he made a survey of the Rancho de Jacinto, then occupied by claimant, that the map and field notes, filed in the case, marked E. & F. are true copies of the originals, made by him, except that a road is laid down on the copy of the map, which he does not recollect on the original; that the commission and oath on paper marked E. are true copies of the originals;
He also proves that claimant was in 1847 and has been ever since in possession of said Rancho of Hacinto.
Jacob P. Leese deposes, that in 1844,

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he had the Rancho claimed in this case taken possession of by a man named Merritt, under the grant for the grantee, and that the River called Rio del Pleito, in the petition, is the same stream which is named Rio de Capay in the grant, and on the Map or diseño which appears in the Expediente.

The above abstract embraces the whole testimony, upon which the claimant asks a confirmation of his claim.

The objections urged by the Land agent are

1st That there has been no approval of the Grant by the Departmental Assembly

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2nd That no legal juridical possession was ever given, either to the original grantee or his assignee the present claimant.

3rd The absence of any evidence to prove occupation, or cultivation, according to the requisitions of the ordinance of the 21st of November 1828.

Upon the two first objections but little need be said; It is admitted by the Claimant that no approval of the Assembly was ever had, and the attempts to account for the failure to obtain it, by causes which are set forth in his petition.

According to the construction given by this board to the ordinance of 1828, by virtue of which this grant was made, those causes would contract the legal effect and operation of the approval, or supercede its necessity.

By that construction, the approval of the Assembly is decided to be an act,

essential to complete the grant, and give it validity in law.

The grant therefore in this case cannot be considered as vesting the fee or legal estate in the grantee, but must be regarded as conveying a mere equity, subject to the principles of equitable jurisdiction as assigned in the books, and laid down in the decisions of the Supreme Court in similar cases, which are prescribed for our government in the act of Congress creating this Board. The several objections it is not necessary to examine; The discription of the land, as contained in the grant, and on the map, or desing accompanying the Expediente are considered as sufficient to identify it, and enable the Surveyor to go upon it, and mark out its limits.

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Two natural boundaries to wit the river Cosay and the river Sacramento, are given, and the place of their junction furnishes a well assigned point of identification, from ~~and~~ which the other lines would be redily ascertained and established.

This objection therefore according to the rules established by the Supreme Court and acted on by this Board in other cases, would present no obstacle to the confirmation of the claim.

The third is one of much more serious import. The Grant & title deed in this case differs from those usually issued under the ordinance of 1828, by the failure to insert in it the customary conditions of occupation or construction which that

instrument prescribes, as the object or purpose of the grant; and the question is raised whether this omission can be considered as relieving the grantee from the obligation to perform them.

The evident object of the Mexican Colonization law of the 18th of August 1824, was to hold out inducements both to foreigners and native citizens, to settle on and relieve from their wild, and unprotected state, the extensive and fertile regions which were lying waste within the limits of her broad dominions; and the 1st Article of the regulations of 21st of November 1828, has manifestly the same object in view, when it limits the power to concede lands which it confers on the political chiefs, to the purposes of occupation and cultivation alone. This provision necessarily involves the obligation on the grantee to carry out the purposes of the law, by either occupying or cultivating the land, that being the consideration on which the grant is founded or in other words it is a condition imposed by the law, and is equally obligatory on the grantee, whether inserted in the grant or not. But even if there had been no provision of the law creating this condition, yet in the present case it would clearly arise by implication.

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The Grantee in his petition to the Governor for the land, sets forth, as an inducement to the grant, that he has "rather a considerable amount of black cattle and horses" and for the increase and improvement of said stock, he solicits the land in question. This according to the decisions

of the Supreme Court, constitutes the transaction a contract between the parties in which the grantee undertakes in consideration of the grant to occupy the land with his cattle and horses. That being the usual mode of occupation in California and the purpose for which lands were most frequently granted. In such a case where a party claiming under an inchoate or equitable title, makes application for its ratification and an investiture of the legal Estate, he must first show that he has performed his part of the contract, that he has discharged the consideration according to its terms; and in the case of a Spanish grant, presented after the session of Florida for the purpose of obtaining a patent, the court say that the United States could avail themselves of the performance of the
300 conditions or terms of the concession, to the same extent that the Spanish Government could have done had the country remained under her jurisdiction. The same rule applies here; but as the whole subject has been fully discussed in our opinion of the Board delivered in another case it is unnecessary to enlarge on it further.

We are clearly of the opinion, that, in all cases of grants made under the authority of the ordinance of the 21st of November 1828, the conditions of occupation or cultivation though expressed in the grant are imposed by the law, and by the terms of the petition upon which ~~which~~ it is presented. Higgins Case 14 Peters 334 and 11th Howard p 63.

According to the cases cited the party

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claiming under an equitable title must show a substantial performance of the conditions of the grant before he is entitled to a confirmation of his claim, and that performance must have ~~been~~ been prior to the time when the Mexican dominion ceased, and that of the United States commenced,

The whole evidence in the case on this point is contained in the depositions of Jacob P. Leese and Wm. B. Ide, the former proves that in 1844, he had the land in question taken possession of, by a man named Merritt under the grant, for the Grantee; and Ide deposes that in 1847 the present claimant Wm. H. McKee was in possession of the land, and has been ever since. This last testimony if it amounted to any thing would be of no avail as it has reference to a possession only since the authority of Mexico ceased,)

56 ND
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Possession and occupancy have in law very different significations, and although the evidence might be sufficient to prove an entry it certainly does not go to establish such an occupancy or cultivation as was contemplated by the Mexican law, or as was undertaken by the Grantee in his petition for the grant.

From the above brief statement it is very evident that the claimant here has not shown such occupation or cultivation of the land claimed, as would bring the case within the rule laid down by the supreme court and acted on by this Board in other cases and entitle him to a confirmation.

We are therefore of the opinion that

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the claim be rejected.

Decree

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William H. McKee
Vs
The United States } Jacinto

In this case on hearing the proofs and and allegations, it is adjudged by the commission that the claim of the petitioner is not valid and it is therefore decreed that his application for a confirmation thereof be and the same is hereby denied.

Alphens Fielch
R Aug Thompson
Thompson Campbell
Commissioners

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Filed in Office Oct 18' 1853
Geo. Fisher, Sec'y

Office of the Board of Commissioners,

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

56 ND
PAGE 49

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-eight pages, numbered from 1 to 48, 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. 156 on the Docket of the said Board, wherein William H. McNee is the Claimant against the United States, for the place known by the name of "Jacinto"

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this fifth day of August A. D. 1854, and of the Independence of the United States of America the seventy-eighth.

Geo: Fisher

Sec'y.

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U. S. DISTRICT COURT,

Northern District of California.

No. 56 —

THE UNITED STATES,

vs.

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Wm. H. McKee

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 156.

Filed August 5th 1854

John A. Monroe,

Clk.

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

Wm H McKee
vs
The United States } No. 156

You will please take notice that an appeal from the decision of the Board of Land Commissioners for ~~settling~~ ascertaining and settling private land claims in the States of California, rendered on the 18th day of October 1853 in the above entitled case, will be prosecuted by claimant before the United States District Court for the District aforesaid.

Rose for
Claimant

San Francisco
Dec. 23d 1854

No. 56

Wm. H. McKee

vs

The United States

Notice of Appeal
from the Board of
U. S. Land Commissioners.

Filed, Dec: 23, 1834,
John A. Monroe,
Clerk

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Rose, Atty. Counsel

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

Wm H McKee Claimant
vs
The United States Deft

Case No 56

Testimony taken on behalf of Claimant, by consent, before Henry B Janes, June 27. 1855.

José Castro, a witness called by the Claimant & duly sworn says

I am forty six years of age, reside in Monterey, have resided in Upper California since my birth; I resided in Monterey in 1844. I knew Jacinto Rodriguez during that time. He was at that time a military and civil Officer At first a military Officer, afterwards an officer in the Custom House He had been a military Officer under me from 1836. to 1844. He was a Lieutenant.

I presented Michaltorena for a grant of land in on the Sacramento river in 1844, and it was granted.

Rodriguez received the grant from Michaltorena, without being required to go upon the land and occupy it from because his services were required in the Army, and Michaltorena did not want him to leave.

He petitioned Gen. Michaltorena in writing for his discharge from the army, and it was sent by Gen Michaltorena to the Mexican Government.

The petition came back to the General Com-

manding here, and at the time of granting him a change of office from the military to the civil service, the general requires of him (Rodriguez) to hold himself in readiness for service in the Army.

Rodriguez was employed in the Custom house at Monterey. He continued in the Custom service all the time up to July 1846, except such time as he was recalled to military service

At the time of the grant in 1844, the Government of Mexico owed Rodriguez about one half of what he had earned by his military service – the Government had no money to pay him, and I believe is still in his debt.

Rodriguez always fulfilled his duties as an officer under me

Cross examination by the defendant.

I have no interest in the confirmation of the claim in question.

José Castro

Subscribed and sworn to before me June 27, 1855.

Henry B. Janes.

It is hereby stipulated by and between the respective parties that the above deposition of José Castro this day taken by consent before Henry B.

taken by consent before Henry B.

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James may be filed and read in evidence in said case, in the same manner and with the same force and effect as if regularly taken before a commissioner of this Court or in open court, all irregularities in the manner or mode of taking the same being hereby waived 24th June 1855, the attorneys for both parties being present at the taking of said deposition

A. Glassell
Asst. U.S. atty.
E. M. F. Sloan
Atto. for claimant

No 56

U. S. District Court

Wm H McKee
Claimant

vs

The United States
Deft

Deposition of
José Castro.

Filed June 28. 1855.
by W. H. Chevers
Deputy

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

The United States
Appellee
vs
Wm. H. McKee
Appellant

No. 56.

The United States by their Attorney deny the validity of the title set out in the petition of the said Appellants; and pray that the decision of the Board of Commissioners be affirmed, and that the said title be deemed to be invalid.

A. Glassell
Asst U.S. Atty.

U.S. Dist. Court.

No. 56.

The United States
ads
Wm. H. McKee –

Answer

Filed June 29 1855.
by Owen
Deputy

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Wassell

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

Wm. H. McKee Claimant

No. 56. v.

The United States Defendant.

The petition of Wm. H. McKee respectfully represents that this cause is an application for a review of the decision of the Board of Land commissioners, whereby the claim of the appellant was rejected, as appears by the record and proceedings therein: That a transcript of the record, in said case was filed in this Court on the 5th day of August 1854; that notice of appeal was duly filed on the 23d day of December 1854; that the land claimed by the appellant lies in said District; and that said claim is valid; Wherefore the appellant prays that the said decission of said Board may be reversed, and that this Court may grant a decree pronouncing the title of the appellant to be valid and confirming the same

E. W. F. Slaan
Atty. for Appellant.

District Court U. S.
Northern Dist. California

No. 56.

Wm. H. McKee
Claimant.

v } Petition

The United States
Defendant.

Filed June 28. 1855.
by Chever
Deputy

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E. W. F. Sloan
for claimant

UNITED STATES DISTRICT COURT,
Northern District of California.

William H. McKee
vs
The United States

San Francisco, July 11th 1853

ON this day, before Ira A. Munroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Abner Bryan a witness produced on behalf of the Claimants in Case No. 56, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 156 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: E. W. F. Sloan for claimant and A. Glassell for the United States -

QUESTION BY

I reside in Contra Costa County and have resided in California constantly since 1845. I am acquainted with Dr. Wm H. McKee the Plaintiff in this action - and have known him since February 1846. I am acquainted with the tract of land claimed by Wm H. McKee on the upper Sacramento in what is called Colusi County now - called the Jacinto Rancho. I've knew it by the name of Dr. McKees Rancho. I lived on it part of the year 46 and part of the year 47. I was

employed by Dr Wm H. McKee -
I cultivated it and built a house
on it and took charge of the
cattle, horses and hogs. I built corrals
cultivated corn wheat potatoes
&c. I had somewhere about one
hundred head of cattle and from
twenty five to thirty horses and
some hogs &c. I left there in
December 47. When I left I
left the stock of Dr. McKee in
charge of Capt Swift - Granville
Swift. I was under the direction
of Dr McKee & had two others
who worked under me.
The Rancho is on the western side
of Sacramento River on the south
side of Cotay ~~on~~ Stoney Creek.

Abner Bryan

No. 56

U. S. District Court

The United States
—vs—
William H. McKee

Deposition of
Abner Bryan
Filed July 11-1855.
by Thomas
Deputy.

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

D. C. No. 156. L. C. 156.

William H. McKee Appellant
vs
The United States Appellee

Stated Term January 15, A. D. 1857.

This cause coming on to be heard on this day upon the petition and answer, the certified transcript of the proceedings and decision of the board of Commissioners to ascertain and settle private land claims in California and the papers and evidence on which the same are founded, and upon further evidence taken by order of this Court, was argued by Counsel, In Consideration whereof the Court doth adjudge order and decree that the decision of the said board of Commissioners rendered in said case is erroneous, and that the same be and is hereby reversed, It is further adjudged ordered and decreed that the claim presented in the petition filed in this case is valid, and that the lands claimed therein be confirmed to the said petitioner to the extent of eight square leagues and no more, bounded as follows; Commencing at a point on the west side of the Sacramento River at its Junction with the River Cosumnes, and running thence Southerly or down said River and binding thereon four leagues, thence leaving said River westerly two leagues.

Thence northerly four leagues, and thence Easterly two leagues to the point of begining so as to include the quantity of eight square leagues, reference for a further description being had to the orgenial grant, and the map entered in the Espedientes copies of which are contained in the transcript filed in the case.

Ogden Hoffman
U. S. Dist Judge

Wm. W. McKee
as Trustee
vs
United States

U.S. District Court
" " "

No. 56.

U. S. Dist. Court.

Wm. H. McKee,

vs

The United States.

Decree.

Filed January 15. 1857,

W. H. Chevers,

Deputy.

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

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States v William H. McKee	D.C. 56: L.C. 156.

The Attorney General of the United States having given notice that no further appeal will be taken in this case, and a stipulation to that effect having been entered into by the District Attorney:

On motion of the U.S. Attorney it is Ordered Adjudged and Decreed that the claimant have leave to proceed under the decree of this Court heretofore rendered in his favor as under Final Decree.

Ogden Hoffman
U. S. Dist Judge

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United States District Court, Northern District of California.

The United States

vs. Ready

Wm N. McKee

ORDER.

vacating appeal

Filed August 5th 1857

John A. Monroe,

CLERK.

By W. H. Chevers

DEPUTY.

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

The United States

v

Wm H. Mc Kee.

D. C. Shi. L. C. 154.

In pursuance of notice from the U. S. Attorney General it is hereby stipulated and agreed that no further appeal be taken in this case on the part of the United States, and that claimant have leave to proceed under the decree of this Court heretofore rendered in his favor, as under Final Decree.

San Francisco Augt 5th 1857

E. W. F. Sloan
attorney for claimant

P. Della Torre
U. S. atty.

54

U. S. Dist Court

The United States

v

Wm H. McKee

Stipulation.

Filed Aug: 5. 1857.
W. H. Chenery
Deputy.

Carmany

The U. S.
vs
W. H. McRee

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The claim in this case was rejected by the Board not however because any doubt was ~~ascertained~~ entertained as to the genuineness of the grant but because ~~there~~ no sufficient performance of the conditions ~~was not considered to have been sufficiently~~ was shown or shown. The subsequent decision of the Supreme Court ~~has~~ in the case of Fremont has established a definite rule for our guidance, and the testimony taken in this Court on appeal is abundantly sufficient to remove the only objection urged by the board to a confirmation of the claim -

Abner Bryan swears that the rancho claimed by the appellant was known as Dr McRee's rancho. That in 1846 and 1847 he was employed

by Mc Kee to take charge of and cultivate it – that he built a house upon it & planted it with Corn wheat & potatoes – that he had upon it about 100 head of cattle & from 25 to 30 ~~head~~ horses – & some hogs The witness remained on the land until the end of 1847 when he left it and Capt G. Swift took charge of the stock

Jose Castro testifies that Rodriguez the original grantee was a ~~civil~~ & military officer of the Mexican Government That on receiving his grant he was not required to occupy the land as his services were needed in the army He was subsequently transferred from the military to the civil service but was required to hold himself in readiness for service in the army – He ~~Capt~~ ~~was~~ continued to be employed until the July 1846 in the

Custom House at Monterey except at intervals when he called into Military Service
The witness further states that at the time of obtaining his grant in 1844 the Government owed him about 1/2 of what he had earned as an officer of the Army — but it was without funds to pay him & the witness states his belief that the debt has never been paid —
The grant in this case does not contain the usual condition of occupation & inhabitation and the above testimony satisfactorily explains the reasons of the omission —
We think that there is no evidence in the case to authorise the presumption that the claim was abandoned by the grantee or that he is now attempting to resume it owing to the

enhanced value of the land — On the contrary the reasons of his delay and are fully explained and ~~his excuse~~ are such as were not only received by the former government but were immediately owing to their own express commands —

We think therefore that a decree of confirmation should be entered

45 No. 56

The U. S.

ads

W H McRee

Plaintiff

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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, Aug 3, 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. 156 on the Docket of the said Board, wherein

William H. McKee, &c

the Claimant against the United States, for the place known by the name of Jacinto

and request your receipt for the same.

I am, Respectfully,
Your Ob't Servant,

Geo. Fisher.

Sig.