CASE NO.
57
NORTHERN DISTRICT

ORESTIMBA GRANT

SEBASTIAN NUNEZ
CLAIMANT

LAND CASE 57 ND pgs. 133

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 35

Sebastian Nunez CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

Orestimba

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* , *Anno Domini One Thousand Eight Hundred and Fifty=* , *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 Sebastian Nunez *for the Place named* "Cuatindé" *was presented, and ordered to be filed and docketed with No.* 35 *and is as follows, to wit;*

(Vide page of this Transcript.)

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

San Francisco May 4th 1852.

In case No. 35 Sebastian Nunez, the deposition of Francisco Perez Pachecó, a witness in behalf of the claimant, taken before Commissioner Julian Hale, was filed:

(Vide page of this Transcript.)

San Francisco May 13th 1852.

In the same case the deposition of David Spence a witness in behalf of the claimant, taken before Commissioner was filed;

(Vide page of this Transcript.)

San Francisco Aug. 3d 1852.

In the same case, the Secretary made and filed the translation of the Expediente, marked

"C" which is as follows, to wit:
(vide page of this Transcript.)

San Francisco March 15th 1853.
In the same case the deposition of William A. Richardson, a witness in behalf of the claimant taken before Commissioner Ira J. Thomas with document marked H. J. T. No. 1 & 2 annexed, was filed:
(vide page of this Transcript)

San Francisco March 23d 1853.
In the same case, the deposition of Jose Abrego, a witness in behalf of the claimant taken before Commissioner Milan Vance, was filed: (vide page of this Transcript.)

San Francisco Aug. 8th 1853.
On motion of the United States Associate Law Agent, case No. 35 was ordered to be placed on the final Docket.

San Francisco Aug. 8th 1853
Case No. 35 called, submitted on briefs on both sides:

San Francisco Oct. 25th 1855.
In the same case Commissioner Alpheus Felch delivered the Opinion of the Board rejecting the claim:
(vide page of this Transcript)

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To the Honorable
the Commissioners for Settling Private Land claims in the State of California

Petition

The petition of Sebastian Inuez a resident of the County of Tuolumne & State of California respectfully sheweth
That being a Mexican by birth & possessed of a large number of cattle & other stock he made & presented his petition to Don Manuel Michel torena on the 12th day of Feby 1844 soliciting for himself the grant of a tract of land situate in the said county of Tuolumne containing six sitios de ganado mayor & known under the name of Rancho de Cristinta
That on the 16th of February 1844 said petition was referred by said Governor Michel torena to the Secretary of the Department in order to obtain his report thereon
That said Secretary reported favourably thereon on the 17th of February 1844 whereupon the said Governor Michel torena by a deed dated the 22 of February 1844 granted to your petitioner the tract of land petitioned for & directed the proper documents constituting title to be executed & delivered to the same, That a grant was issued on the same day under the Governors signature & in conformity with all the formalities of the Law & that the entire copies & translations of the petition reference report of the Secretary & report of one Perez Pacheco the owner of the adjoining land of the decree & grant are herewith exhibited & prayed to be taken as part of this petition
That the original grant is in the possession of your petitioner & ready to be offered in evidence when required That said land is situate in the present county of Tuolumne & according to the terms of the grant bounded as follows

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On the North by the river San Joaquin on the East by the Lands of Don Juan Perez Pacheco On the South by the Mountains & Range of hills On the West by the Lands of Don Antonio Maria Pico as the said Lands were owned & possessed by the said Pacheco & Pico respectively on said 22 day of Feby 1844 & your petitioner further saith that ever since said grant was made to him he has exercised & enjoyed undisputed ownership of said tract of land & is not aware of any other title paramount to his own Your Petitioner therefore claims to be the owner of said six sitios de ganado Mayor known as Rancho de Cristinica & prays your Honorable body may confirm his title thereto

Clark Taylor & Beckh
Attorneys for Pet.

Filed in Office Feby 12th 1852
Leo Fisher Secy

Deposition

Office of the Board of Commissioners of California Land Claims

San Francisco May 4 1852

On this day before me Hilary Hare one of the commissioners for ascertaining & settling Private Land Claims in the State of California Came Francisco Perez Pacheco a witness produced in behalf of the claimant Sebastian Nunez whose petition is No 35 on the Docket of the Board & was duly sworn His evidence being given in the Spanish Language was interpreted by the Secretary Leo Fisher The Law Agent was notified & attended In answer to questions propounded by the counsel for the claimant the witness testified as follows

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My name is Francisco Ruiz Pacheco my age is fifty nine years. I reside in Monterey and have lived in California for twenty two years principally in Monterey
I know the Rancho de Cuestamba it is situated on the river San Joaquin bordering on the rancho Sanchis Gonzada belonging to my son Juan Ruiz Pacheco. The distance may be ten leagues in a Northerly direction from San Felipe. It is occupied at this time by Juan Ez the present claimant & has been occupied by him for about two years. A report was made by me as an adjoining neighbor to Governor Micheltorena in relation to the petition of Juan Ez Feby 21. 1844 of which there is a copy in Exhibit B filed in this case. There was no security in putting cattle on the rancho for several years after the grant. There is a house & cattle yard on the land which has been there between two & three years placed there by Juan Ez. The house is unoccupied. The rancho is more than ten leagues from the sea coast as I believe

Francisco Ruiz Pacheco

Sworn & subscribed Before me
Hiram Hale
Comr

200

Filed in Office May 4 1852
Geo Fisher
Clk

Board of Commissioners to ascertain & settle
Private Land claims in California
May 13th 1852

57 N.D
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On this day came David Spence a witness
offered by the Petitioner in the following case
& being duly sworn gave his testimony. Geo
W. Cooley Law Agent was present taken before me
James Wilson

Deposition

No 35 Claim of Sebastian Kenny Conn
Question by Claimant
Look at the original document
now shown you written in Spanish
& purporting to be a grant from Micheltorena
to claimant State if you have compared
it with Exhibit 1 now annexed to your depo
sition & placed on file in this cause purporting
to be a copy of said grant & a translation
thereof. State if said Exhibit contains a correct
copy of said original document & correct
translation thereof & whether you know any
of the signatures to said original docum
ent & which of them & whether the same are genuine
Deponents Answer
I have examined the document shown to
me have compared it with Exhibit 1
hereto annexed & find the Exhibit 1 to be
a true copy I have also examined the
translation of the same as part of Exhibit 1
& find the same to be substantially a cor
rect translation of said document I
further state that I am well acquainted
with the hand writing of Jose Maria
Michel torena & the hand writing of Juan
Jimeno. Their signatures to the original
document now shown to me & above refer
red to are their true & genuine signatures
David Spence

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n° 35.
7

57 ND
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Manuel Michelltorena General de Brigada del Ejercito Mexicano Ayudante Gral de la Plana Mayor del mismo, Gobernador Comandante General é Inspector del Departamento de California.

Por cuanto Don Sebastian Nuñez ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Orestimba y las Garzas, colindante por el norte con el Rio de San Joaquin, por el Sur con Don Francisco Perez Pacheco, por el oriente con San Luis Gonzaga y por el Poniente con Don Mariano y Pedro Hernandez, 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 conceder le el terreno mencionado, sugetandose á la aprobacion de la Sumo Ayuntamiento Departamental y á las condiciones siguientes.

1. No podrá vender lo, enagenarlo ni hipotecarlo, empeñarlo, ni otro gravamen alguno.

2. Solicitará del Juez respectivo que le dé la posesion jurídica en virtud de este despacho por el cual se deslindarán las linderos, en cuyos límites plantará ó mas de sus moradores algunos arboles frutales ó silvestres de alguna utilidad.

3. El terreno de que se hace donacion es de seis sitios poco mas ó menos de ganado mayor, segun esplica el dictamen respectivo. El Juez que dé la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la Nacion para los usos convenientes que mas le convengan.

En consecuencia mando que tenga entre por firme y valedero el presente, se tome razon de él en el libro respectivo y se entregue el interesado para su resguardo y demas fines. Dado en Monterey á veinte dos de Febrero de mil ochocientos cuarenta y cuatro. —

8

firmado. Michelto Vera. Mar.l Sudero. Srio.

Queda tomada razon de este titulo en el libro respectivo f. 14.
firmado. Simeon.

3.

9°

May 13th 1852

Subscribed & sworn to
Before me
James Nelson
Comr

Translation

Manuel Michiltorena Brigadier General in the Mexican Army, Adjutant General of the Plaza Major of the same, Governor Commander General & Inspector of the Department of California

Whereas Don Sebastian Arrazy has solicited for his personal benefit and that of his family the land known by the name of Cristina and Las Zanas bordering to the North on the river San Joaquin, on the South on Da Francisca Pacheco to the East on San Luis Gonzalez & to the West on Don Mariano & Pedro Hernandez after having previously taken the necessary action and made the necessary investigations according to the requirements of the laws & regulations in exercise of the powers vested in me in the name of the Mexican Nation. I have concluded to grant him the mentioned land, subject to the approbation of the Excellent Departmental Assembly & to the following conditions,

1st He shall not have power to sell or alienate it, subject it to mortgage rent entail nor any other incumbrance,

2 He shall solicit of the respective Judge to give him juridical possession in virtue of this document by whom the boundaries will be fixed on the extremities of which he will put besides the land marks some fruit trees or wild ones of some usefulness

3. The land granted is of six square leagues (sitio de ganado mayor) a little more or less, as the

respective sketch shows, The Judge who should give the possession will cause it measured conformable to ordinance, leaving the surplus that may result to the Nation for the purposes that best may suit it

Consequently, order that these presents being held as firm and valid it be entered in the respective book and delivered to the interested party for his security and other purposes

Given in Guantang on the 22d of February 1844,

(signed) Manuel Quiñez

Manuel Jimino
Gentang

This title deed is entered in the respective book
(sgd) Jimino

Filed in Office May 13th 1852
Jas Fisher
Surv

11

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Deposition

San Francisco March 17 1853

On this day before Comr H I Thornton came Wm A Richardson a witness in behalf of the claimant Sebastian Nunez petition No 354 was duly sworn his evidence being given in English

Questions by Claimant

Ques 1 What is your name age & place of residence Answer My name is Wm A Richardson my age fifty eight years & I reside upon my ranchos of Santa Rita in Marin County Ques 2 Look at the document shown you purporting to be a grant from Manuel Micheltorena to Sebastian Nunez of the land known by the name of Austimba state what you know in regard to the genuineness of the signatures to said document Ans I am well acquainted with the hand writings of Manuel Micheltorena & Manuel Jiménez having often seen them write, these signatures where they appear on said document are genuine

Willm A Richardson

U S Law Agent present

Sworn & acknowledged before me this 17 of March 1853

Harry I Thornton
Comr

240

Filed in Office March 17th 1853
Geo Fisher Sec

Deposition

San Francisco March 23 1853

On this day before Com Hiland Hall came Jose Abrego a witness in behalf of the claimant Juan Perez Pacheco Petition No 357 was duly sworn his evidence being interpreted by the Secretary The U S associate Law Agent was present

Questions by Claimant

Ques 1 What is your name age place of residence

Ans My name is Jose Abrego my age forty years I reside at Monterey

Ques State what you know in regard to the possession and occupancy of the land petitioned for by Sebastian Nunez called Cestum ba

Ans I have known the land petitioned for during the last eight years. It has been during that time in the possession & occupation of the petitioner he has used it principally for grazing purposes having constructed & occupied several small houses by himself & those in his employ men he has also constructed various large corrals for the herding of cattle & has cultivated portions of said land during all that period

Jose Abrego

Sworn & subscribed Before me
Hiland Hall
Comm

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Filed in office March 23d 1853
Leo Fitzhugh
Secy

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Espediente promovido por D.on Sebastian Nuñez, en solicitud del parage que se espresa llamado Orentimba.

Año de 1840

Num.o 347

14 2. S.D.K.

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57 ND
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Sello Cuarto Dos Reales
Habilitado provisionalmente por la Aduana marítima del puerto de Monterrey en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco
Michelltorena — Pablo de la Guerra

Aduana Marítima de Monterrey (Mexican Eagle)

Gobierno del Departamento de Californias (Mexican Eagle)

Exmo. Sor. Gobernador del Departamento de las Californias

Sor.

Sebastian Nuñez, Natural de Sn. Miguel de Allendes y avecindado en este Departamto. ante V.E. con el debido respeto y como mejor convenga hace presente q. necesitando para si y su familia un terreno q. cultivandolo le produzca la subsistencia; y teniendo el q. expresente los bienes y recursos necesarios para verificarlo, espera de V.E. le conceda el terreno conocido con el nombre de Ojestimba; situado al Norte, por el Rio de Sn. Joaquin lindando por el oriente con Dn. Juan Peres Pacheco y por el Sur; con la Sierra y lomeria y al Poniente con Dn. Antonio Maria Pico; y el expresado lugar se halla valdio en extencion de seis sitios de ganado mayor poco mas ó menos, cuyo diseño acompaño protestando cumplir con las condiciones q. la ley previene

Monterrey Feb. 16 de 1846

Ppse. el Sr. Srio del Despacho tomando antes los q. necesitan si asi lo crea.
Michlt.a

5

6

Por tanto a V. E. Suplico, se digne acceder a mi pedido, en lo que Recibire merced y gracia

Monterey Febro. 12 de 1844

Y por no Saber firmar, lo firma a ruego del interesado=

José de la Rosa

(3 S.D.K)

Exmo Señor Gobernador

El terreno que pretende el interesado en la presente instª está valdio y en estado de Colonizarse, y como está muy distante de San Juan, por esta causa he creido no ser necesario, ni el informe del R. P. Mtro ni el del Juez; pero el Supor discernto de V. E. dispondra lo conveniente

Monterey 17 de Febro de 1844

Manl Jimeno

7

Monterey Febº 17 de 1844

Yn formense los Colindantes qe. sita el interesado

Michelta

(4 S.D.K)

Hor fuellen [illegible]

18 (5.DSk)

Exmo. Sor. Dn. Manuel Michelorena
Gobernador del Departamento

El que suscribe como colindante del terreno que se pretende tiene el honor de hacer presente á V.E. que no se le perjudica en nada á su propiedad y antes bien concidera nesaria la colonizacion del terreno de Cerritos y las Garcas, para la seguridad de sus rumbos

Monterey Febrero 21 de 1844

Franco Perez Pacheco

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8

Monterey Febro 21 de 1844

Espidase el titulo espresando no perjudicar a los colindantes Dn. Anto. Mª Pico cuyo infe. aun falta

Michelta.

(6.S.DK)

Monterey 22 de Febrero de 1844

9

Vista la peticion con qe. da principio este expediente los informes que preceden con todo lo demas que se tubo presente y ver conviene de conformidad con las Leyes y Reglamentos de la materia; declaro á Dn. Sebastian Nuñez dueño del terreno nombrado Cerritos colindante al Nte con el Rio de Sn. Joaquin al Ste con Dn. Franco Perez Pacheco, al Orte con Dn. Luis Moraga, y al Poniente con Marano y Pedro Hernandez en extencion de seis sitios

de Ganado Mayor. Líbrese el Correspondte. despacho, tomese razon en el libro respectivo, y dirijase este espedte a la Exma. Junta Departamental para su aprovacion.
El Exmo. Sor. Gobernador asi lo mando decreto y firmo doy fé

10 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 six preceding and hereunto annexed pages of tracing papers numbered from one to six 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

11 In Testimony whereof I have hereunto subscribed my name officially and affixed my private seal (not having a seal of Office) at the city of San Francisco Cal. this Eleventh day of February A.D. 1852

(Seal) Saml. D. King
Surv.r Gen Cal

Filed in Office Feb 12th 1852
Geo. Fisher
Secy.

11½

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Translation

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

Miguel Torres — Pablo de la Guerra

(Seal) (Seal)

Monterey Feby 16th 1844

Let the Secretary of State report on the subject taking if he thinks proper such previous information as he may deem necessary

Miguel

To the Most Excellent Governor of the Department of the California

Sir

Sebastian Kenny a native of San Miguel de Mellender & resident of this Department before V.E. with due respect & as may be most expedient does represent that wanting for himself & his family a tract of land by cultivating which Kenny may secure his livelihood, as the Memorialist possesses the means for that object, he hopes that V.E. will grant him the tract of land known by the name of Cuestinita

Bounded

North by the river San Joaquin on the east by the lands of Don Juan Bautista Pachecos on the south by the Sierra or hill range & on the West by land of Don Antonio Maria Pico, the said tract of land being vacant & is of the extent of six square leagues sin detrimento de ganado mayor more or less, the plot of which I here with enclose promising that I comply with the conditions required by the laws & beg that V.E. will deign accede to my request wherby I shall receive favor & benefit Monterey Feby 12th 1844 not knowing how to sign I sign it at the request of the party concerned

(Signed) Jose de la Rosa

Senor Governor

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The tract of land claimed by the petitioner in the preceding memorial is vacant & proper

to be settled & as it lies far from San Juan
Where on that account considered it unnecessary to ask for a report from the Revenue
Father the Minister or from the Judge Bid. G E
better yet so sure will order what was
deemed expedient

Monterey Feby the 17th 1844
Manuel Jimino

Monterey Feby 17th 1844
Let the bordering land owners mentioned
by the party report upon the Same
Micheltorena

To the Excellent Don Manuel Micheltorena
Governor of the Department
The undersigned as a neighboring land owner to the land petitioned
for has the honor to inform V.E. that in this
his property is in no manner injured but
on the contrary he considers settlements
made on the lands of Cristinta & Las Zorras
as necessary to the security of that neighborhood
Monterey Feby 21st 1844
Francisco Perez Pacheco

Monterey Feb 21st 1844
Let the patent be issued expressing therein
that no detriment results to the bordering
land owner Don Antonio Maria Pico
whose report is still wanting
Micheltorena

Monterey Feby 22 1844
Having examined the petition heading this
expediente (proceedings) the preceding reports
all that was presented having bearing thereon
in conformity with the laws & regulations
on the matter I declare Don Sebastian Nunez
to be the owner of the tract of land known by

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the name of Cristinba bounded on the North by the river San Joaquin on the South by the land of Don Francisco Perez Pacheco on the east by lands of Don Luis Moraga & on the West by lands of Mariano & Pedro Hernandez to the extent of his sitios de ganado Mayor (Equal Lots) Let the corresponding patent be issued & entered in the respective book & let this Expediente (proceedings) be transmitted to the Most Excellent the Departmental Assembly for its approval, His Excellency the Governor thus did order decree & sign which I attest

I certify that the foregoing is a correct translation of an authenticated copy of the original Spanish Document on file in the office of the U S Surveyor General for California which authenticated copy is now on file in this office in Case No 35

Sebastian Nunez

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Filed in office Feby 12th 1852
Leo Fisher
Clk

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Grant

Doc. H. J. 5
anx.d to the
Depo. of Wm.
A. Richardson

Sello Primero Ocho Pesos
Habilitado provisionalmente por la Aduana marítima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco
Michelltorena — Pablo de la Guerra

Aduana marítima de Monterey (Mexican Eagle)

Manuel Michelltorena General de Brigada del Ejercito Mejicano Ayudante Gral de la Plaza Muyor del mismo Gobernador Comandante General é Inspector del Departamento de California

Por cuanto Sebastian Nuñez ha pretendido para su beneficio personal y el de su familia, Conocido con el nombre de Cestimba y las Garzas, colindante, por el Norte con el Rio de Sn. Joaquin, por el Sur con Dn. Franco. Perez Pacheco, por el Oriente con San Luis Gonzaga y por el Poniente, con Don Mariano y Pedro Hernandez, practicadas previamte 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, sugetandose á la aprovacion de la Exma Asamblea Departamental y á las Condiciones siguientes.

2 1a. No podrá venderlo, enagenarlo ni hipotecarlo, ni poner sino vinculo ni otro gravamen alguno.

2a. Solicitará del juez Respectivo que le de la posesion jurídica en virtud de este despacho, por el cual se le

demarcaran los linderos, en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3ª El terreno de que se hace donacion es de seis sitios poco mas ó menos de ganado mayor, segun esplica el diseño respectivo. El juez que dene la posesion lo hara medir conforme á ordenanza quedando el sobrante que resulte á la Nacion para los usos que mas le convenga.

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En consecuencia mando que teniendose por firme y valedero el presente, se tome razon de él en el libro respectivo, y se le entregue al interesado para su resguardo y demas fines.

Dado en Monterrey á veintidos de Febrero de mil ochocientos cuarenta y cuatro.

Manl. Michelena

Manl. Jimeno
Srio.

Queda tomada razon de este titulo en el libro respectivo a foj. 6
Jimeno

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Translation of A I I No 1 to the Deposition of W A Richardson

Seal of First Class Eight Dollars
Authorized Personally by the Maritime Custom House of the Port of Monterey in the Department of the California for the years eighteen hundred and forty four & eighteen hundred and forty five
C H Huse
Seal (Signed) Michelorena (Signed) Pablo de la Guerra

Manuel Michelorena Brigadier General of the Mexican Army Adjutant General of the Staff of the Same Governor Commandant General and Inspector of the Department of California

Whereas Don Sebastian Nunez has solicited for his personal benefit and that of his family (the Rancho) known by the name of Austin ba Glas Zanzas bounded on the North by the river of San Joaquin, on the South by Don Francisco Ruiz Rancho on the East by San Luis Zanzagan and on the West by Don Juan Rodriguez and the necessary steps and investigations having been previously taken and made in conformity with the requirements of the laws and regulations I have by virtue of the powers conferred upon me granted me from the said land in the name of the Mexican Nation subject to the approval of the most Excellent Departmental Assembly and to the following conditions

1st He shall neither sell alienate nor hypothecate it, impose land rent (censo) entail (vinculo) nor any other burthen

2nd He shall request the respective Magistrate to give him immediate possession in virtue of this Title and said Magistrate shall designate the boundaries or the limits whereof he shall be seized the land marks plant some fruit trees or measure of some utility

3d The land whereof donation is made consists

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of six square leagues (seis sitios de ganado mayor) a little more or less as appears by the respective plot, the Magistrate who gives possession shall cause it to be measured according to law the surplus which may present to be left to the Nation for the uses which may be considered requisite

I consequently command the holding the same title as firm and valid as according thereto be made in the respective book and this be delivered to the party interested for his security, and further ends.
Given in Monterey on the twenty second of February eighteen hundred and forty four

(Signed) Manuel Micheltorena
(") Manuel Jimeno
Secretary

A record of this Title has been made in the respective Book as folio 6.
(Signed) Jimeno

I the undersigned do hereby certify the foregoing to be a true and faithful translation of its original
Office of State Translator
Monterey 4th December 1851 } W. E. P. Hartnell
State Translator

Filed in Office March 17th 1853
Geo Fisher
Secy

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6/35

Sebastian Ramoz
vs
The United States

For the place called Quetumba containing six square leagues of land

Opinion

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The traced copy of the Expediente which is filed in the case exhibits the petition of the claimant for the grant bearing date February 14th. 1844 an order for information by Governor Micheltorena reports by Manuel Jiménez the Secretary & Francisco Rey Pacheco the reported owner of lands adjoining that which was solicited and an order of concession signed by the Governor all bearing date within said month of February. The grant duly proved is also filed It bears date on the 22d of the same month is made subject to the approval of the Departmental assembly & to other specified conditions The land is described as bounded North by the river of San Joaquin on the South by Don Francisco Rey Pacheco on the east by Don Luis Gonzaga & on the west by Don Mariano & Pedro Bernuudez. Six square leagues of land are granted of which prudential possession was required to be obtained. There appears never to have been any application for prudential possession & no approval by the Departmental assembly was ever had. The claimant has therefore no legal estate in the land. Has he so far performed the duty in reference to the object & condition of the grant as to entitle him on his equities to title under the United States authorities The applicant states in his petition for the grant that he wanted for himself & family a tract of land by cultivating which he may insure his livelihood & he appends the promise that he will at the same time comply with the conditions required by the

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law It was the policy of the government in all cases to encourage the cultivation of the country & grants were made on that consideration, In the present instance the land granted was far in the interior & a double object existed in inducing settlement & improvement of the country as is disclosed in the report made to the Governor by Francisco Ruiz Pachico, under the Regulations of 1828 the object of securing the cultivation of the land is referred to as a reason for making grants, Even without an express stipulation in the concession where land is solicited for that purpose, the law imposes the obligation to cultivate the premises conceded, In this case both the law & the express terms of the contract impose the obligation on the claimant to cultivate the land as a consideration for the grant Has he performed this condition? The only testimony given on the subject is found in the Deposition of Francisco Ruiz Pacheco, From this it appears that the place was occupied by the claimant since some time in the Spring of 1830, that a house & cattle & some pieces of land were by him about that time or perhaps a little earlier & the house was inhabited. From February 1844 when the grant was made until as late as the same date in 1850 the claimant does not seem to have concerned himself about the land During that time it does not appear that he attempted to cultivate it, improve it, build upon it or in any manner to have claim or control over it, During this period of six years, at least he did nothing towards the performance of his obligation to cultivate it In the meantime the Government under which he obtained his concession

300

27/35

and from which he might have obtained a title if he had performed the obligations on his part ceded the land to the present proprietor subject only to any equities which he might possess. It was then too late to perform the conditions His own remissness had extinguished all his equitable rights & he must abide the consequences. It is attempted to excuse the failure on his part to comply with the terms of the grant. The proof relied on for this purpose is contained in a single sentence in Pacheco's Deposition, stating that there was no security in putting cattle on the Rancho for several years after the grant. The land was not obtained for pasturage but for cultivation There is no reason why he did not cultivate or attempt to cultivate the premises. Nor indeed would this isolated declaration be sufficient to excuse the party even if pasturage was the object of the grant or release him from that condition The case as made by the claimant shows a failure on his part to perform the duty imposed upon him & no reason is presented why he should receive a title to the land The confirmation is refused

200

Filed in office October 25th 1853
Geo Fisher
Secy

32

57 ND
PAGE 29

Sebastian Kenny
vs
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the said claim of the petitioner is not valid and his application for a confirmation thereof is therefore denied

Denie

Alphens Felch
Thompson Campbell
R Aug Thompson
Comrs

Filed in office Oct 25th 1853
Lu Fisher
Clk

65

30½ Fol

57 ND
PAGE 30

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 thirty two pages, numbered from 1 to 32, 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. 35 on the Docket of the said Board, wherein

Sebastian Nunez

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

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this 9th day of August A. D. 1854, and of the Independence of the United States of America the seventy-ninth

Geo: Fisher
Sy

ND 57

U. S. DISTRICT COURT,

Northern District of California.

No. 57 - NORD

THE UNITED STATES,

vs. 57

Sebastian Nunez

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 85

Filed, August 5th 1856

John A. Monroe

Cl.

1 57

Case No. 35. — On appeal from the Board of U. S. Land Commissioners.

Sebastian Nunez
appltt.
vs.
The United States
applee.

} claim for "Orestimba"

Sir!

Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours respectfully
Campbell, Taylor & Peck
Atty. for claimant

San Fco
Dec. 8th 1854.

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

No 57

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

Sebastian Nunez
appl^t.
vs.
The United States
appl^ee.

Claim for:
"Orestimba"

Notice of appeal.

Campbell, Taylor & Beckh
atty^s for claimant

Filed Dec: 11. 1854.
John A. Monroe,
Clerk

(Ne) 57 ND
PAGE 32

Docket No. 57

Sebastien Nunez
vs
The United States.

Appeal.

To the Hon.ble Ogden Hoffman Jun.r Judge of the United States District Court for the Northern District of California

The petition of Sebastien Nunez a citizen of California respectfully represents.

That under the provisions of the Act of Congress of the 3 March 1851, he presented a petition to the Commissioners appointed under said Act to examine claims to land in California praying for the confirmation of his claim to the tract of land therein described called "Cristinba" situate in the present County of Tuolumne California under a grant from Mr Micheltorena Governor of California dated 22d February 1844, and accompanied it by evidence of his title, and to which for more full and particular description he begs leave to refer.

That his said claim, being designated as No. 35 on the Docket of the said Commissioners, was rejected by them on the 25th of October 1853; that the said land is situate within the limits of the Northern District of California; that a transcript of the proceedings and decision of the Commissioners in the case, was filed in the Office of the Clerk of the Court for that District on the 5th of August 1854; and, on the 11th December 1854 Notice was filed with the said Clerk that your petitioner appealed from such decision.

Your petitioner prays for a rehearing of the case upon this appeal; that the said

decision of the Board in premises may be reversed and annulled; and that the Court will make such decree and order as may be necessary and proper to recognize, confirm, and declare valid his title and claim to the premises mentioned and referred to in his said petition and evidence of claim.

57 ND
PAGE 34

And your petitioner will ever pray &c

Stanly Wing
Atty for claimant

San Francisco
11th June 1855.

No 57.

Sebastian Nunez
vs
The United States
} Land Appeal

"Cestumba"

Filed June 11, 1855,
by Chevers
Deputy

Received a copy this
day
11 June '55.

57 ND
PAGE 35

P. W. Page
U. S. Dist Atty
pr John A. Godfrey

Petition for review.

Read, filing petition
(two)

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

The United States
vs Appellants
Sebastian Nunez
Appellee:

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 decreed to be invalid

A. Blassell,
Asst. U.S. Atty.

No 37 In the District Court of the United States for the Northern District of California

Sebastian Nunez

vs

The United States

Answer of U. States

Filed June 11, 1855.
J. Chevell
Deputy

True

57 ND
PAGE 37

57

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, Sept 30 18 55

ON this day, before Inot. Monroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Lucinto Rodriguez a witness produced on behalf of the Claimant in Case No. 57, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 35 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows—his evidence being interpreted by Juo B. Romero a sworn interpreter

PRESENT: A. Glossell on behalf of the U.S. and Edward Stanley for claimant

QUESTION BY Claimant

Are you acquainted with the Rancho Orestimba—?
Answer Yes.
Have examined the original papers in the Archives and am personally acquainted with the localities mentioned in the grant.
Question Could you or any one else acquainted with the country in question and taking the calls of the grant for your guides have any difficulty in locating this claim? Answer

there would be no difficulty in locating the claim whatever

2. Are the natural objects mentioned in the grant well known

Answer - They are very well known -

2. Is the description as accurate as could be made without a survey?

Answer The best that could be given.

Q. Do you know when the first settlement was made there?

Answer

Can't tell certainly when the first settlement was made but it was taken possession of as soon as it was safe to do so on account of the savage state of the wild Indians.

2. What are your means of knowing these facts.

Answer - As a private man I used to go there to catch wild horses and as a soldier to pursue the indians I am about 42 years of age and a native of California & have resided in the vicinity

I have no interest in this claim

Sworn to before me this 3d Sept 1855 - Jacinto Rodriguez

Inst A Monroe
U.S. Commrs.

57

57 ND
PAGE 40

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, Sept 3d 1853

ON this day, before Jno A. Monroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Benito Diaz a witness produced on behalf of the Claimants

in Case No. 57, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 35 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by Jno B Romero a sworn interpreter

PRESENT: A Glassell for the U.S. & Edward Stanley for Claimant.

QUESTION BY E. Stanley

I am acquainted with the Rancho Cuestimba.
Have examined the original papers on file in the Archives and am personally acquainted with the localities mentioned in the Archives.

Q. Could you or any one else acquainted with the country & guided by the calls of the grant locate the claim
Answer yes.
The natural objects mentioned in the grant are very well known. and the

description is as accurate as could be made without a survey.

Question 2. Do you know when the first settlement was made.

Answer I do not know exactly but I know that possession was taken as soon as the sovereign state of the wild Indians permitted, and I know that the hostility of the Indians prevented possession from being taken.

I know these facts because I was living in the neighborhood and frequently passed there.

I am 41 years of age and have lived in that neighborhood many years.

I have no interest in this claim

Benito Díaz

Sworn to before me
this 3d Sept 1855
Lucas Manrow
U.S. Commisp.

119

No 57

U. S. Dist. Court.

The United States

vs

Sebastian Nunez.

Depositions of
Jacinto Rodriguez.
and
Benito Diaz.

Filed September 3. 1855
by W. H. Chevers
Deputy

57 ND
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(from)

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

Court No 57.
Land Cases No 35.

Sebastian Nunez vs Appellant The United States Appellee	Court No 57. Transcript No 35. Decree of Confirmation "Orestimba"

Stated Term, held 4th May 1857.

This cause coming on this day to be heard upon the transcript of the proceedings and the decision of the Board of Land Commissioners of the United States to ascertain and settle the private land claims in the State of California, and the papers and evidence in the case, and the pleadings filed in this Court, and Counsel having been heard on the part of the United States and for the claimant,

In consideration of all which the Court is of opinion that there is error in the decision of the said Board, and that the same should be and is, hereby reversed.

And this Court doth adjudge, order, and decree, that the title of the said Claimant to the land described in said Transcript is valid, and the same is hereby Confirmed.

The land of which Confirmation is

hereby made is of the extent of Six square leagues and no more, and is known by the name of "Orestimba," as garsas and is bounded on the North by the River San Joaquin, on the South by the lands of Francisco Perez Pacheco, on the East by "San Luis Gonzaga" and on the West by the lands of Mariano and Pedro Hernandez, as described in the Original grant of the same by Governor Micheltorena to the claimant on the 22 day of Feby 1844, and the map copy of which put on file in the manuscript in the case therein referred to, and to which reference is made to show the lands now confirmed.

Ogden Hoffman
U.S. Dist. Judge
By Lewis A Monroe
Clk.

The signature of the Judge was affixed to the above decree by his direction and in his presence the Judge being at the time unable deprived of the use of his hand

Oct. 10. 1857 Ogden Hoffman

57

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

Court No 57.
Transcript No 35.

Sebastian Nunez
vs
The United States.

"Orestimba"

Decree of Confirmation.

Filed May 4. 1857.
W. H. Chenis.
Deputy.

57 ND

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

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v.
Sebastian Nunez

D.C. 57; L.C. 35.

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

57

United States District Court, Northern District of California.

The United States

vs.

Sebastian Nunez.

ORDER.

Granting appeal

Filed September 3, 1857

John A. Monroe,

CLERK.

By W. H. Chevez

DEPUTY.

Seven

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court room in the City of SAN FRANCISCO, on Friday the third day of September in the year of our Lord one thousand eight hundred and fifty-Eight.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

Sebastian Nunes vs The United States	No: 57. N. States District Court &c for "Crestimba"

And now at this day comes the said claimant Sebastian Nunes, by his Attorney Edward Stanly, and presents the mandate of the Supreme Court of the United States dismissing the appeal made herein on behalf of the United States to the said Supreme Court, whereupon, and on motion of said claimants by their said Attorney, It is ordered that said Mandate be filed and made a part of the record of this court, in this cause, and that the said claimants may proceed under the decree of this court heretofore rendered in favor of the claim of said claimant as under final decree

Ogden Hoffman
Dist Judge

No. 57

United States District Court, Northern District of California.

The United States,

vs.

Sebastian Nunez,

Order to file Mandate U. S. Supreme Court.

Filed September 3d, 1858,

W. H. Chevers

Clerk.

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Deputy.

57 ND

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UNITED STATES OF AMERICA, SS.

57 ND

PAGE 50 THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District of California before you, in a cause between Sebastian Nunez, appellant and the United States, appellees, (No. 57, for "Orestimba") - Wherein a decree was rendered in favor of the said appellant

as by the inspection of the transcript of the record _____

_____ of the said District

Court, which was brought into the Supreme Court of the United States, by virtue of an appeal

taken by the United States _____

agreeably to the act of Congress, _____

_____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty seven the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and ~~was argued by counsel. On consideration whereof,~~ on the motion of Mr. Black, Attorney General of the United States, and of counsel for the appellants, it is now here considered, adjudged and decreed by this court that this appeal be and the same is hereby dismissed.— Feb: 28—

You, therefore, are hereby commanded that such further _____ proceedings be had in said cause, _____

as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding:

Witness the Honorable Roger B. Taney Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and fifty seven. —

COSTS,

Clerk,.....$

Attorney,....$

$

~~*Taxed by*~~

Wm Thos Carroll

Clerk of the Supreme Court of the United States.

No. 222

No. 222, December Term, 1857.

MANDATE

SUPREME COURT UNITED STATES.

U. States vs Nancy

Filed Sept. 3, 1858,

W. T. Carroll,

Clerk.

57 ND
PAGE 54

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court House, in the City of SAN FRANCISCO, on Monday the Seventh day of November in the year of our Lord one thousand eight hundred and fifty-nine,

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
vs.
Sebastian Nunez

No 57; L.C. 35.
"Orestimba".

It being suggested to the Court that the survey of the land claimed in this case made under final decree and approved by the U. S. Surveyor General for California, is erroneous; on application of Sully R. Mix Esq. Acting U.S. Atty, it is ordered that the said Surveyor General return to this Court a certified copy of the plat of said approved survey, and that the United States be allowed fifteen days from and after the return thereof to file exceptions thereto; and it is further ordered that a certified copy of this order be served upon the said Surveyor General for his information.

U S Marshal's Office
San Francisco, Nov: 8th 1859

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

P L Solomon
U S Marshal

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.*

57

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States

vs.

Sebastian Murcy

Order to return survey and allowing U.S. 15 days to file exceptions.

Filed Nov 8, 1859.

M. A. Akers Clerk.

By ..... Deputy.

57 ND

PAGE 55

U. S. District Court.

57 ND
PAGE 56

The United States
v.
Sebastian Nunez

} No. 57: L. C. No. 35.
"Orestimba".

And now come the United States by their acting attorney Lully R. Wise, and except to the survey of the land confirmed herein, made under final decree and approved by the U. S. Surveyor General for Cala; a certified copy of the plat whereof was filed in this Court, pursuant to its order, on Dec 7. 1859:

And the U. S. aver: —

1st. That the said Survey is erroneous, because the said final decree refers for a more particular description of the land confirmed to the original diseño in the expediente, which diseño represents the land petitioned for and granted as a tract lying between four natural boundaries, to wit, the San Joaquin river, the low hills, the arroyito de Orestimba and the arroyo de los Gortos, and greater in extent between said arroyo's than between said river and low hills; whereas the said survey locates a tract bordering but a short distance upon the San Joaquin river, its greatest length running southwesterly and at right angles with said river, and beyond the

low hills delineated on said diseño, including land to the North and west of said arroyo Orestimba, not shown upon said diseño, and excluding land to the south and east of said arroyo which is shown on said diseño as the land petitioned for and granted.

2. That said survey is erroneous because it conflicts with the true ~~an~~ intent and meaning of said final decree, which decree by said survey is construed so as to conflict with the prior decree of this court in case No. 330, confirming the Rancho El Puerto, which said last mentioned decree describes the southern exterior line of said Rancho El Puerto to be the said arroyo de Orestimba.

Wherefore, the United States pray that the said survey be set aside as erroneous, and that the said Surveyor General be ordered to cause a re-survey to be made in conformity with the true intent and meaning of said final decree.

San Francisco, Dec 20. 1859.

Jully R. Wise
Acting U. S. Atty.

57

U. S. District Court

The United States

v.

Sebastian Nunez

Exceptions to survey by United States

Served copy within on Stanley & King by leaving it at Williams office in his absence, Dec 20, 1859

Jno B Williams

Filed Dec: 20. 1859

W. A. Chenery

Clerk

11 57 ND

District Court of the United States
Northern District of California

The United States vs Sebastian Nuñez } No 57. L. C. No 35 Orestimba

And the Claimant by his attorneys excepts to the objections made on behalf of the United States, to the survey of the said Rancho of Orestimba, made by the Surveyor General of the United States for California, and approved by him on the 3d of December 1859, a certified copy of which has been filed in this Court pursuant to its order, and denies all the allegations in said written objections contained, except so far as they may be hereinafter expressly admitted.

And now the Claimant objects to said survey, and for grounds of objection thereto says:

1st. That the said survey is not made in conformity with the final decree and the original diseño to which said final decree refers for a more particular description of said land, in this, that said diseño makes said Rancho extend

on the river San Joaquin, from a line marked as the boundary of J. P. Pacheco, striking said river above the Creek of Las Garzas, down and along said river San Joaquin, to a point thereon, where a line marked on said diseño as the boundary of Antonio Maria Pico, strikes said river San Joaquin being a point thereon below the Creek of Orestimba, and below its point of discharge into the said river San Joaquin, where the upper boundary line of the Rancho de la Puerta, or del Puerto, strikes said river San Joaquin, the upper boundary line of said last mentioned rancho, being the line so described on said diseño, as the boundary of Antonio Maria Pico.

And the Claimant admits so much of the objections made on behalf of the United States, as says that the rancho of Claimant ought to be surveyed along the River San Joaquin, from the upper boundary line as shown by said diseño, to the lower boundary thereof on said river, as shown by said diseño, but denies that according to said final decree and diseño the said Creeks of Las Garzas

and Orestimba farm respectively the upper and lower limits thereof on said river San Joaquin, but says that said Creeks are included therein, and within the upper and lower limits first above set forth.

2d And the Claimant denies that the limits of the rancho claimed by him, as exhibited on said diseño and above set forth, conflict with those of the grant confirmed in Claim No 330, on the Docket of this Court for the Rancho el Puerto, or la Puerta, above mentioned, and says that the truth is as follows, to-wit- That the Grant of the Rancho El Puerto, contained no mention of boundary on the upper side, or the side towards the Orestimba, and was in reality bounded at the point below the Orestimba Creek, where said diseño represents the upper boundary line thereof to be, and that the mention of the Orestimba Creek in the decree in said case No 330, was an error in a proceeding to which the Claimant herein was a stranger, and cannot prejudice him herein; that moreover said Rancho El Puerto, has been surveyed, and the upper boundary thereof on the

river San Joaquin, has been fixed to the satisfaction of all parties in said Claim No 330, at the point below the Orestimba, which has always been known and admitted to be the point where the two ranchos were co-terminous; as the whole will more fully appear from the sketch hereto annexed, showing the relative positions of said ranchos as the one, that called El Puerto, has been surveyed, and as the rancho of Claimant ought to be surveyed, in conformity to said final decree, and the grant and diseno referred to therein.

Wherefore the Claimant prays that the said survey be rejected as erroneous, and that the Surveyor General of the United States for California, be ordered to make a new survey in conformity with the limits of said Rancho as herein-before set forth

Shurtz & Ring
Attys: for Claimant

Johnson & Rose
of counsel for claimant

U. S. District Court
Northern Dist. Cal.a

No. 57. ND

Bd 35

United States
vs.
Sebastian Nuñez

Rancho de Chestimba

No 57. L. C. No 35

Claimant's
Objections to Survey

57 ND

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Service acknowledged
of a Copy of the within.
San Francisco April 1. 1860
Lully R. Mae,
Acting U. S. atty.

Filed April 11. 1860.
W. H. Chevers,
Clerk.

57 ND
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United States of America,
Northern District of California. } SS.

THE UNITED STATES
IN LAND CASES
Northern District of Cali
U STATES DISTR

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. 57, to Sebastian Nunez known as "Orestimba, Stanislaus", and situated in the County of ~~Mariposa~~ 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 3rd 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 27th day of August A. D., 1860.

A. A. Chevers

CLERK.

The within Monition was received by me on Monday the 27th day of August 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for Four consecutive Wednesdays, in the San Francisco Herald, commencing on the 29th day of August 1860; and for 4 consecutive Saturdays, in the San Joaquin Republican a paper published nearest the land, commencing on the 27th day of August 1860,

Dated San Francisco, Aug. 27th 1860

P. L. Solomon U. S. Marshal.

(2)

No. 57

UNITED STATES DISTRICT COURT,

Northern District of California.

IN LAND CASES.

THE UNITED STATES.

v.

Sebastian Nunez.

MONITION.

Returnable Oct. 3. 1860.

Issued Aug. 27. 1860.

Filed Oct. 3d 1860.

W. H. Chevers

Clerk.

57 N.D.

12 PAGE 65

57 ND
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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 third 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.

Sebastian Nunez,

IN LAND CASES.

District Court No. 57.

Land Com. No. 35.

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 Calhoun Benham Attorney for the United States, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and intervene for the protection of such interest; the U. S. Attorney, and John B. Williams, appeared in behalf of the U. S. and Edward Stanly, and Sidney L. Johnson for the Claimant, and 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. 57.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Sebastian Arnez,

ORDER ON RETURN OF MONITION.

Filed October 3d 1860.

W. H. Chevers,

Clerk.

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

The United States
vs
Sebastian Nunes } No: 57

In this case, on motion of Sidney Johnson & Edward Stanly, attys for claimants, — the District atty & J. B. Williams appearing the U. S. Attorney consenting thereto, — it is ordered that the fourth Monday in December next is fixed as the time, within which the proofs in this case shall be closed. —

No: 57

The United States
vs
Sebastian Mines

Order fixing time
for closing the proofs.

Due notice admitted
Proofs to be closed earlier
if desired

Buckham
U. S. Atty
J R Williams
Asso Counsel

Filed Nov: 27, 1860.
W. H. Chesney
Clerk

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57 ND
PAGE 69

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 20th day of February in the year of our Lord one thousand eight hundred and sixty-one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,
v.
Francisco Rico, et al.

No. 413.

And now at this day of motion of A. S. Love, Esq. P. Della Torre, of Counsel for the United States being present, and consenting thereto, it is ordered by the Court that the default heretofore entered in this case be, and the same is hereby opened so far as to allow James C. Stebbins, Salisbury Haley, and Albert Packard to intervene herein, and that they have 10 days therefor.

No. 413.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States,

v.

Francisco Rico, et al.

Order allowing Stebbins et al. to intervene, etc

Filed February 20, 1861.

W. H. Chevers,

Clerk.

A. S. Love,

Attorney,

District Court of the United States
Northern District of California.

The United States
vs
Sebastian Nuñez

D. C. No 257

In this case the United States by their attorney, offer in evidence in the matter of the objections to the survey herein, the following exhibits, to wit.

Exhibit U.S. No 1. containing a duly certified copy of the decree of the Land Commissioners of the United States, in the case of Samuel Reid & al vs the United States, confirming the claim to the Rancho known as the Rancho del Puerto. granted to Mariano and Pedro Hernandez by the Mexican Government by grant of the 20th of January 1844.

also containing a duly certified copy of said grant so confirmed, and a correct

translation thereof.

Exhibit U.S. No 2. being a duly certified copy of the diseño contained in the expediente or Mexican record of the proceedings in said grant to said M & P Hernandez

Exhibit U.S. No 3. being a duly certified copy of the diseño contain=ed in the espediente or Mexican record of the proceedings, in the matter of the grant of the rancho of San Luis Gonzaga;

and also offer to prove by E Conway who is employed in the office of the Surveyor General of the United States for Califor=nia, that according to the plats of surveys of ranchos and township lines in said office it is about Twenty seven and a half miles in a straight line from the sink of the Baños del Padre Arroyo, which is one of the Creeks or Arroyos rep=resented on said diseño of the Rancho San Luis Gonzaga, to the junction of the Orestim=ba Creek with the river San Joaquin;

and that it is at least Thirty five miles from the nearest point of the rancho of H P Pacheco as surveyed, to the junction of the Orestimba Creek with the river San Joaquin; that it is about Thirty miles to the Southern boundary of the Pescadero Rancho, the part granted to A. M Pico, from the junction of the Orestimba Creek with the river San Joaquin; and that between the said grant to A. M. Pico, and the Orestimba grant there are two other grants fronting on the same side of said river San Joaquin, to wit, the said rancho del Puerto granted to M. & P Hernandez, which is the one mentioned in the grant of said Orestimba rancho as the western boundary thereof, and the Pescadero rancho, which was granted to Higuera and Feliz.

And the Counsel for the Claimant admit said exhibits to be true copies of genuine originals, without farther proof, but they object to the admission of said decree confirming the claim of Samuel Reid et al, because said decree was entered in a proceeding to which the claimant of the Orestimba rancho was not a party; that it was res inter alios

acta, and is wholly irrelevant and immaterial. And they object to the introduction of the diseño of the Rancho San Luis Gonzaga, as being irrelevant and immaterial. They admit that the plats and surveys in the Surveyor General's Office show the several distances to be such or nearly such, as it is offered to prove them to be by said E Conway, but they object to the introduction of any proof thereof as being irrelevant and immaterial.

And the Counsel for Claimant offer in evidence the original grant of the Orestimba Rancho to the Claimant, the expediente of the same, & the final decree of confirmation, all of which are a part of the record of the above-entitled case. And it is agreed that the case be at once submitted upon the above-mentioned proofs, subject to the exceptions taken, and upon the exceptions to the survey taken by both parties, and that either party may file a brief within a fortnight from the date hereof.

Calhoun Benham U.S. Atty
& Robt B Williams atty in aid.

Edward Stanly
and Sidney L. Thurston for Claimant

U. S. District Court.

57.

Northern District of California

The United States vs Sebastian Nuñez

D. C. No 25.57

Admissions & agreements on Exceptions to Survey

Filed april 18. 1861.

W. H. Clevers.
Clerk

18

57 ND

PAGE 76

1.

No 509.

Samuel Reid et al
vs.
The United States.

In this case on hearing the proofs & allegations, it is adjudged by the Commission that the claim of the said petitioners is valid, & it is therefore decreed that the same be confirmed. The land, of which information is made, is situated in the County of San Joaquin, & is known by the name of Rancho del Puerto & is bounded as follows. On the East, by the River of San Joaquin, on the West, by the Sierra, on the South, by the Arroyo de Huestembre and on the North, by the Arroyo de la Puerta & the boundary of Don Valentin Higuera, to contain three square leagues, a little more or less, for a more particular description, reference to be had to the original grant & map contained in the Expediente, except that the positions of the river & mountains are to be reversed on the map, so as to ~~make~~ locate the lands on the West

Exhibit U.S. No. 1

2

side of the River, instead of the East as thereon represented.

R. Aug. Thompson.

S. B. Farrell.

Commissioners.

{Endorsed as follows}

No. 569.

Samuel G. Reid et al.

El Puerto.— Decree of Confirmation

Filed in Office May 22. 1855.

Geo. Fisher

Secy.

Recorded in Record of decisions Vol. 3d Page. 36

Geo. Fisher

Secy.

Exhibit B

Sello Primero. Ochos Pesos

Adopted provisionally for the Maritime Custom House of the Port of Monterey, in the Department of the California for the years of one thousand eight hundred & forty. four, and one thousand eight hundred & forty. five

Michelorena. Pablo de la Guerra

Manuel Michelorena, General of Brigade of the Mexican Army, Adjutant General of the highest rank therein, Governor Commandant General & Inspector of the Department of the Californias—

Whereas the Citizens, Mariano & Pedro Hernandez have solicited for their own personal benefit & that of their families, three leagues of land (tres sitios de ganado mayor) between the River San Joaquin the mountain of the Pueblo, & as far as where it reaches the boundary of the lands of Don Valentino Higuera; despatch & investigating concerning it being first made as is directed by the laws & regulations; exercising the authorities which are conferred on me in the name of the Mexican nation, has concluded to grant to them the land mentioned declaring to them the proprietorship of it by these letters present, ~~they~~ subjecting them to the approval of the most Excellent Departmental Assembly— under the following conditions.

First.

They shall not be able to sell it, to alienate it, impose upon it, annuity

(4)

bond, pledge, mortgage, nor any other incumbrance.

Second. They shall have power to enclose it, without prejudicing the cross-ways, roads & drains. They shall enjoy it freely & exclusively, devoting it to the use or culture, which best suits it, but within one year shall build a house and it shall be lived in.

Third – when the proprietorship shall be confirmed to them, they shall desire the respective Judge that he give them judicial possession, by virtue of this grant, by which they shall mark out the boundaries, on whose limits he shall place, besides the land marks, some fruit trees, or forest trees of some use.

Fourth – The land of which donation has been made to them, is of three leagues (tres sitios de ganado mayor) more or less. The Judge who may give them possession, shall make it extend conformably to the ordinance which gives the surplus which remains to the nation, for convenient uses.

Fifth. If they shall contravene

these conditions, they shall lose their right to the land, & it shall be denouncable by another.

Wherefore these presents, ~~demand~~ command to serve for title to them & to be kept firm & valid, that the object of them should be copied in the Book which is proper for them, & should be delivered to those interested, for their own safety & other ends.

Dated at Monterey on the twentieth of January, one thousand eight hundred & forty-four.

Manuel Michelorena

Manuel Jimeno
Secretary-

Luce
~~Clerk~~

(Endorsed)
Recorded in the Book of Records marked A page. 42.
Alcalde's Office
T. M. Leavenworth
Alcalde

Alcalde's Office
San Francisco
William. P. Toler

(Endorsed)
Recorded in a Book of Records entitled Register of Lands. Page. 109.
Charles. White, Clerk.

(Copy) from the warrant to be inscribed in the proper Book
J. Jimeno.

b

Further Endorsed -

No. 509.

Samuel G. Reid et al.

Rancho del Puerto.

6.

Translation of A. J. C.

Filed in Office Jany 7th 1853

Geo Fisher.

Secy.

Recorded in 17 Vol Evidence

Eq Dt G. p. 795.

Geo Fisher.

Jan. 20. Secy.

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

57 ND
PAGE 83

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 Six preceding, and hereunto annexed pages, numbered from one to Six inclusive, exhibit a true, full, and correct copy, of two original documents filed in Case No. 509 on the Docket of the Board of Commissioners aforesaid, together with the endorsements thereon, as the same now appear on file in my Office, among the Archives of said Board,

EXAMINED AND 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 tenth day of December 1860

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

57

U. S. District Court

The United States

v.

Sebastian Nunez.

Exhibit U. S. No. 1.

Filed April 18. 1861.

W. H. Chevers

Clerk

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 fifteenth day of July in the year One thousand Eight hundred and sixty one.

Present the Honorable Ogden Hoffman. District Judge.

The United States vs Sebastian Nuñez } No 57. "Orestimba"

This cause came on to be heard upon exceptions to the official survey of the land confirmed, a certified copy of the plat whereof was filed December 7th 1859: and counsel for the respective parties having been heard, and due deliberation had, it is hereby ordered, adjudged and decreed, that the said survey is erroneous and the same is hereby annulled and set aside. And it is further ordered that the Surveyor General of the

United States for California, cause a new survey to be made without delay, in conformity with this order, and return a plat of the same for confirmation and approval.

And it is further ordered that the said survey be made as follows: beginning at a point on the Westerly side of the San Joaquin River, where, as nearly as can be ascertained, the line marked on the diseño in the expediente of this claim "Lindero de Don Antonio Maria Pico" strikes said river; thence in a ~~northerly~~ southerly direction along said river to a point on the said Westerly side thereof, where, as nearly as can be ascertained, the line marked on said diseño "Lindero de Don Juan Perez Pacheco" strikes said river; making said river between said two points, the boundary of the tract to be surveyed, on the said river front or easterly side thereof; and making the northerly and southerly side lines of said tract commence respectively at the points on the

westerly side of said river before mentioned, where the said lines on said diseño strike said river as aforesaid, and run back to the rear or Westerly line of said tract, which rear or Westerly line is to be run from one of said side lines to the other, along the sectional or subdivision lines of the United States surveys, so as to make the whole tract so surveyed and enclosed within said lines equal to six square Mexican leagues, and no more: And it is further ordered that the position of said lines marked on the said diseño, "Linderos de Don Antonio Maria Pico" and "Linderos de Don Juan Perez Pacheco," and of the points where said lines strike the river San Joaquin respectively, be determined as nearly as it can reasonably be done, by reference to said diseño, and to the natural objects delineated thereon, and to their relative distances; provided that said Northerly side line shall not go farther North than the Southerly side line of the Rancho del Puerto, as the same is now surveyed, and as

it is represented on the official plat of survey now on file in this case. And it is further Ordered that a certified copy of this order be served upon the Surveyor General of the United States for California by the United States Marshal of this District.

Ogden Hoffman
U. S. Dist Judge

U. S. District Court
Northern District
of California

The United States
v
Sebastian Nunez

Order directing
Surveyor
General

Filed July 20, 1861
W. H. Chevers,
Clerk.

57 ND
PAGE 89

I have this day served a certified Copy of the within order upon the Chief Clerk of the U. S. Surveyor General's Office in San Francisco
July 20 1861

Wm Rabe
U. S. Marshall

by James F. Curtis
Dpty

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 Thursday the first day of August A D 1861.
Present the Honorable Ogden Hoffman District Judge.

The United States vs Sebastian Nunez } No 57. L. C. No 35. Orestimba

Appearing to the Court that the land claimed in this case was confirmed to the said Sebastian Nunez, by a decree of this Court dated and filed herein on the 4th of May 1857: that on appeal there from to the Supreme Court of the United States, a decree was entered by said Supreme Court at its December term of the year 1857, dismissing said appeal: that on the 3rd of September 1858, by order of this Court, the mandate of said Supreme Court was filed herein and the claimant

allowed to proceed under the decree of this Court as under final decree: that under said order, the United States Surveyor General for California caused a survey to be made of the land confirmed: that on application made on behalf of the United States, and by order of this Court, a certified copy of the plat of the survey so made was filed herein on the 7th of December 1859. and exceptions to said survey were made on behalf of the United States and filed herein on the 20th of December 1859. and the claimant appeared and answered the exceptions made on behalf of the United States and also excepted to said survey: that on a monition duly issued and published, returnable herein on the 3d of October 1860. the said parties appeared, and the defaults of all other parties were duly entered on said day 3d of October 1860: that on Monday the 15th of July 1861. the said cause came regularly to a hearing, and by decree of that date, herein filed the 20th of July 1861. the said survey was adjudged to be erroneous, and it was ordered that the Surveyor General of the United States should cause a new

survey to be made without delay, and

survey to be made without delay, and in conformity with the order, and should return a plat of the same for confirmation and approval: that the Surveyor General of the United States for California, thereupon made a new plat of survey of said land and certified the same on the 27th of July 1861, as correctly exhibiting the location of the rancho Orestimba finally confirmed to Sebastian Nuñez in accordance with said decree of July 15th 1861, which plat was returned into this Court and filed herein on the 30th of July 1861, and that on this first day of August 1861, all parties being present by their attorneys, and being heard, the said new survey was approved and confirmed: Now therefore it is ordered adjudged and decreed, that the land known as the Orestimba Rancho, situated partly in the County of Stanislaus and partly in the County of Merced, in the State of California and in the Northern District thereof, containing within its exterior boundaries six square leagues, be, and the same hereby is, finally confirmed to the said Sebastian Nuñez: And it is further

ordered adjudged and decreed that the land hereby finally confirmed to the said Sebastian Nuñez, is the same land as that represented on said new plat of Survey herein filed on the 30 of July 1861. and marked "Approved

Ogden Hoffman

And that for a more particular and exact description of the exterior boundaries of the land so confirmed and surveyed, said plat be hereto attached and made part hereof.

Ogden Hoffman

U. S. Dist Judge

No. 57. ND

Bd 35

U. S. District Court.

The United States.

vs.

Sebastian Nunez.

Decree

approving Survey.

Filed August 2d 1861,

W. H. Chever,

Clerk.

57 ND

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20

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of San Francisco, on Thursday the eighth day of August in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty one

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v
Sebastian Nunez
} No. 57

This cause having come on to be heard on objections filed to the survey and location by the Surveyor General of the United States for California, of the lands heretofore confirmed to the claimant, pursuant to the provisions of the Act of Congress approved June 14, 1860; and the said survey and location having been disapproved by the Court and a new survey ordered, which has accordingly been made, and by the final decree of this Court made and entered on the second day of August, 1861, approved and ~~con~~ adopted, Now, on motion of ~~Calhoun Benham Esq~~ William H. Sharp Esq, U. S. Attorney, made in open Court, It is Ordered, by the Court, that an appeal in behalf of the United States from said final decision 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.

57

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs.

Sebastian Nuner

Order granting appeal in behalf of United States.

Filed August 8th 1861.

W. H. Chenery

CLERK.

By

DEPUTY.

57 ND 2/

PAGE 96

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

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 Twenty Seventh day of November, in the year of our Lord, One thousand Eight hundred and Sixty One.

Present.

The Honorable Ogden Hoffman
District Judge.

The United States v. Sebastian Nuñez	N° 57. L.C. N° 35. Opestimba.

On motion of Edward Stanly and S. L. Johnson Esqrs. of Counsel for Claimant, and on giving the Court to understand and be informed that a decree of this Court was made and entered at this term of this Court, and herein filed on the 2nd of August last approving a plat which the Surveyor General of the United States for California returned to this Court under date of the 27th of July last (1861) as exhibiting correctly the location of the rancho herein claimed in accordance with the decree herein rendered by this

Hon Court on the 15th of July last, and herein filed on the 20th of July last, and on further showing that said plat was so made and returned before the lines and corners represented thereon had been all run and marked upon the ground, and that since then said Surveyor General has caused the same to be run and marked upon the ground by actual survey thereof, and will soon be able to furnish an approved plat of said actual survey, made in con=formity with the decree of July 15th 1861, aforesaid, and with the said plat herein before filed and approved by said decree herein filed on the 2nd of August last:
It appearing further that on the 8th of August last, an order was herein entered on motion of Wm H Sharp Esqr. U S Attorney, granting an appeal on behalf of the United States from said decree herein filed on the 2nd of August last, the United States being present and represented by their said attorney, and assenting hereto:
It is therefore ordered that the enrollment of said decree filed herein on the Second day of August last be suspended until the further order of this Court, and that the Claimant have

Court. and that the Claimant have

leave to submit the approved plat of actual Survey of said Rancho to this Court for the final action of the Court thereon; and that said order of appeal be, and is hereby vacated. and all further proceedings herein Stayed until the further order of this Court.

57.

U. S. District Court.

The United States.

v.

Sebastian Nunez.

Order vacating appeal, and staying proceedings under Decree of 2d Aug: last, until further order of Court, etc. etc. etc.

Filed Nov: 27. 1861.

W. H. Chevert.
Clerk.

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 Wednesday the fifteenth day of January 1862.

Present the Honorable Ogden Hoffman
District Judge.

The United States vs Sebastian Nuñez } No 57. L. C. No 35. "Orestimba."

It appearing to the Court that the land claimed in this case, was confirmed to the said Sebastian Nuñez by a decree of this Court, dated, and filed herein, on the 4th of May 1857: that on appeal therefrom to the Supreme Court of the United States, a decree was entered by said Supreme Court at its December term of the year 1857 - dismissing said appeal: that on the 3rd of September 1858, by order of this Court, the mandate of said Supreme Court was filed herein, and the Claimant allowed to proceed under the decree of this Court, as under final

decree; that under said order, the United States Surveyor General for California, caused a survey to be made of the land confirmed; that on application made on behalf of the United States, and by order of this Court, a certified copy of the plat of the survey so made, was filed herein on the 7th of December 1859, and exceptions to said survey were made on behalf of the United States and filed herein on the 20th of December 1859, and the Claimant appeared and answered the exceptions made on behalf of the United States, and also excepted to said survey; that on a monition duly issued and published, returnable herein on the 3rd of October 1860, the said parties appeared, and the defaults of all other parties were duly entered on said day, 3rd of October 1860; that on Monday, the 15th of July 1861, the said cause came regularly to a hearing, and by decree of that date, herein filed the 20th of July 1861, the said survey was adjudged to be erroneous, and it was ordered that the Surveyor General of the United States for California, should cause a new survey to be made without delay, and in

conformity with the order, and should return a plat of the same for confirm=ation and approval; that the Surveyor General for California, thereupon made a new plat of survey of said land, and certified the same on the 27th of July 1861, as correctly exhibiting the location of the Rancho Orestimba finally confirmed to Sebastian Nuñez, in accord=ance with said decree of July 15th 1861, and that on the first day of August 1861, all parties being present by their attorneys, and being heard, the said new survey was approved and confirmed, and a decree entered approving and confirming the same, which was after=wards, during the same term, on motion of Claimant, and by order of this Court, made on the 27th of November 1861, set aside, in order that a plat of actual survey of said Rancho, made in accordance with said decree, herein filed the 20th of July 1861, might be returned into Court by said Surveyor General; and the said Surveyor General having returned and filed herein, on the eighth of January instant (1862) a

plat of the survey of said rancho, made by E. H. Dyer, Deputy Surveyor, and approved by said Surveyor General on the third of January 1862, and now, on this fifteenth day of January 1862, all parties being present by their attorneys and being heard; and it appearing to the Court that said plat of survey approved by the United States Surveyor General for California on the third of January 1862, and herein filed on the eighth of January 1862, is in accordance with the decree of this Court herein filed on the 20th of July 1861, and that the same ought to be approved and confirmed: Now therefore, it is Ordered adjudged and decreed, that the land known as the Orestimba Rancho situated partly in the County of Stanislaus, and partly in the County of Merced, in the State of California, and in the Northern District thereof, containing within its exterior boundaries six square leagues, be, and the same hereby is, finally confirmed to the said Sebastian Nuñez; and it is further, ordered, adjudged and decreed, that the land hereby finally confirmed to

the said Sebastian Nuñez, is the same land as that represented on said new plat of survey, herein filed on the eighth day of January 1862, marked "approved January 15th 1862. Ogden Hoffman U.S. Dist Judge," and that for a more particular and exact description of the exterior boundaries of the land so confirmed and surveyed, said plat be hereto attached and made part hereof.

Ogden Hoffman
Dist Judge

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

Orestimba. No 57 ND
Bd. 35

United States
vs
Sebastian Nuñez

Decree approving
Survey.

Filed January 15. 1862.
W. H. Chevers.
Clerk.

57 ND
PAGE 106

57 ND
PAGE 107

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 eighteenth day of February in the year of our Lord one thousand eight hundred and ~~fifty-~~ sixty two.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v
Sebastian Nunez
} No. 57.

This cause having come on to be heard on objections filed to the survey and location by the Surveyor General of the United States for California of the land heretofore confirmed to the claimants, pursuant to the provisions of the Act of Congress approved June 14. 1860; and the said survey and location having been approved by the Court by its final decree entered January 15th 1862: Now, on application of Wm. H. Sharp Esq. United States attorney, It is ordered, that an appeal in behalf of the United States from said final decree be and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions and proceedings in said cause be sent to the Supreme Court of the United States without delay.

57

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States

vs.

Sebastian Nunez

Order granting appeal in behalf of U.S.

Filed Feb 18th 1862

W. H. Chevers,
CLERK.

By

DEPUTY.

57 ND
PAGE 108

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

I have served the within order on the U.S. Attorney General for Cal.a, by delivering a certified copy of the same to Edw. Conway, Chief Clerk in his office, this 18th day of February, 1862.

Dated San Francisco February 18th 1862

Wm. Blake
Marshal

At a Stated Term of the District Court of the United States Of Amerida for the Northern District of California held at the Court Room in the City of San Francisco on Thursday the Eight day of August in the year of our Lord one thousand eight hundred and Sixty one

Present

The Honorable Ogden Hoffman District Judge

The United States
vs
Sebastian Iturey
} No 57

This cause having come on to be heard on objections filed to the survey and location by the Surveyor General of the United States for California of the lands heretofore Confirmed to the Claimant pursuant to the provisions of the Act of Congress approved June 14 1860, and the said survey and location having been disapproved by the Court and a new survey ordered which has accordingly been made and by the final decree of this Court made and entered on the second day of August 1861 approved and adopted. Now on motion of William H Sharp Esq. U S Attorney made in open Court It is ordered by the Court that an appeal in behalf of the United States from said final decision be and the same is hereby granted and that a transcript of the pleadings evidence depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay

U. S. District Court
1857.

The United States
vs
Sebastian Nunez.

Order granting appeal
in behalf of U. S.

Court No 57. Land Cases No 35.

57 ND
PAGE 111

Sebastian Nunez
vs
The United States.
"Oristimba"

Appeal in U S Court for the Northern District of California

Page of Manuscript	
21.	Translation of petition of S Nunez
15	Map forming part of Expediente
9 & 27	Translation of Grant from Gov Micheltorena to Sebastian Nunez dated 22 Feby 1844.
6.	David Spence proves the title papers
11	Wm A Richardson same
4.	F. P. Pacheco - (4 May 1852) Knows the Rancho - it has been occupied for about 2 years by claimant - there was no security in putting Cattle on the Rancho for several years after the grant - there is a house & cattle yard on the tract which had not been there between two & three years - the house is inhabited
12	Juan P. Pacheco - (23 March 1853.) Has known the tract for eight years during which time it has been in the possession of the petitioner who has used it for grazing purposes, having several houses thereon occupied by himself & those in his employ - Has large corrals, and has cultivated portions of the land during the whole of that time
29	Opinion of the Board.
32.	Decree of the Board rejecting the claim.

Additional Testimony

Jacinto

Jacinto Rodriguez. I acquainted with the Rancho
Has examined the title papers in Archives - There could
be no difficulty in locating the claim from the calls in
the Grant, the natural objects being very well known
The description is the best that could be given without
a Survey - Cannot tell when the first settlement was
made, but the tract was taken possession of as soon
as it was safe to do so on account of the Indians

Benito Diaz Has examined the title papers in the
Archives and is personally acquainted with the localities
therein mentioned. Any one knowing the Country and
guided by the calls in the grant could locate the
claim as the natural objects are well known &
accurately described. Knows that the tract was
taken possession of as soon as the savage state of the
Indians permitted; and that they prevented its
being done sooner. Has lived in the neighborhood
for several years -

Shurtz & King
for Claimants

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

Sebastian Nunez
vs
The United States

No 57.

Abstract of Title
& Evidence –

57 ND
PAGE 113

Stanly & Keith
for claimant

Office of the Board of Commissioners,

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

San Francisco, Aug 5 1854

John A. Munroe 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. 35 on the Docket of the said Board, wherein

Sebastian Nunez is

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

and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,

Geo: Fisher.

3

Plants

The United States
vs
Sebastian Nunez } No. 57.

57 ND

165

The claim in this case was rejected by the Board
The grant was issued on the 22d Feb. 1844 but no approval of the Departmental assembly was obtained nor was juridical possession given —
~~There seems~~ The authenticity of the grant seems sufficiently established — The original documents is produced and the expediente is found in the archives of the former government. The confirmation of the claim is however opposed by the U. S on the ground that the claimant from the date of his grant until long after the acquisition of the country neglected to comply with any of the conditions —
~~Under the decisions of the Supreme Court the only inquiry is whether any thing done or omitted to be done by the grantee during~~

2

"the existence of the Mexican
"government has forfeited the
"interest he had acquired &
"vested it in the former govern-
"ment" U.S. v. Fremont 17. How. 557

The mission referred to by
the Supreme Court ~~are~~ as ap-
pears from a subsequent part
of their opinion, the failure to
perform the conditions of the
grant — and the question
is — "has there been such unreas
"onable delay or want of effort
"~~to~~ on ~~his~~ the part of the claimants to fulfil the
"conditions as to create the pre-
sumption that he had aban-
doned his claim before the
Mexican Government ceased to
exist and is now endeavoring
to assume it from its enhanced
value under that of the U.S.
id. p. 561

The grant ~~in~~ ~~this~~ ~~case~~ ~~at bar~~
was issued as has been stated
in 1844 — It clearly appears that
from that time until about the
year 1850 two years after the acquisition

of the country the claimant neither occupied cultivated or took possession of the land conceded - No effort whatever on his part to perform the conditions appears to have been made, and the only explanation of the delay to be found in the evidence submitted to the Board is contained in a single sentence of the deposition of Juan Asco Perez Pacheco. to the effect that there was no security in putting cattle on the Rancho for several years after the grant.

The testimony of Jacinto Rodriguez and Benito Diaz has been taken in this court and is chiefly relied on as affording the necessary explanation of the omission of the claimant to fulfil the conditions - But this ~~testimony~~ evidence is ~~[illegible]~~ not very satisfactory -

The first of these witnesses states that he cannot tell certainly when the first settlement was

made but the land was taken possession of as soon as it was safe to do so on account of the savage state of the wild Indians - In reply to an inquiry as to his means of knowing these facts he states that he used to go there to catch wild horses and also as a soldier to pursue the Indians

Benito Diaz testifies in nearly the same terms that he does not know exactly when the first settlement was made but that he knows possession was taken as soon as the wild state of the savage Indians permitted and that the hostility of the Indians prevented possession from being taken - He adds that he knows these facts because he was mining in the neighborhood and frequently passed there - that he is 41 years of age and has lived in that neighbor

hood many years.
If ~~the~~ by mining the witness means gold mining then his knowledge of the country derived from that occupation could not have ~~been~~ extended further back than 1849 ~~[illegible]~~ But if he means some other kind of mining carried on before the conquest of the country it is not ~~[illegible]~~ explained why the claimant could not have cultivated his rancho with as much security as the witness carried on his own business of mining—
If ~~the~~ he has, as he states resided many years in the vicinity that fact would seem to show that the claimant might have done the like—
In his petition to the Governor the claimant represents that he desires to obtain a tract of land by cultivating which he may insure his livelihood—

8 But another witness was produced before the Board whose testimony however is not alluded to in their opinion — probably for the reason that it was considered unworthy of credit — Francisco Reyes Pacheco testifies ~~as has been stated~~ that the land has been occupied by the present claimants "for about 2 years" (the deposition bears date May 4. 1852) He also says that a house and corral have ~~also~~ been on the land between 2 & 3 years — This witness is ~~as we have seen~~ a colindante and one to whom the Governor referred for information and on whose report the grant was made — His means of ~~information~~ knowledge must therefore have been as good as those of any other person —

José Arego however, ignorant apparently of the previous testimony of Pacheco, and with a zeal somewhat outstripping his discretion does not hesitate to swear (March 3. 1853) that "during the last eight years the land has been in

"the possession and occupa-
"tion of the claimant that he
"has used it principally for
"grazing purposes,—constructed
"and occupied several small
"houses by himself and those
"in his employment—has con-
"structed several large corrals
"for the herding of cattle &
"has cultivated portions of
"the land during all that
time". This witness does not
seem ~~[illegible]~~ to have seen a
wave that the theory of the
case on the part of the claimant
was, not that he had short-
ly after his grant occupied
cultivated and stocked his
rancho, and fully performed
all the conditions — but that
he had been prevented from
doing so by Indian hostilities.
Nor does he ~~seem~~ appear to have
considered that the Court
would be slow to believe
that such extensive improvements
could have been made, &
the rancho stocked with cattle

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~~that~~ conducing necessary the construction of "second large corrals," and the fact seem wholly unknown to the ~~nearest~~ nearest neighbor of so enterprising a ranchero. The testimony of this ~~witness~~ witness suggests a painful doubt as to the reliability of much of the evidence taken in this class of cases and perhaps justifies a regret that we are not authorized to reject in every ~~case~~ instance evidence of occupation & cultivation under the former government as the best if not the only check upon forgeries and frauds

But in cases where the archives contain no evidence of the grant

In this case however it has appeared to us that the claimant has not shown such an excuse or given such an explanation of his ~~long~~ delay in fulfilling the conditions of his grant as to repel the presumption of abandonment ~~of his grant~~ to which his inter

Rejecting then the testimony of this witness as wholly unworthy of credit. The question seems Has their claim been forfeited by neglect to perform the conditions —

Under the view formerly taken by this Court the grant of the Governor ~~unauthorizedly~~ issued before the approbation of the assembly was obtained was regarded as inchoate or imperfect and as conveying of itself no title to the land — It was considered however that ~~if~~ where the grantee ~~could show that~~ had on the faith of this imperfect title ~~has~~ ~~had~~ fulfilled the conditions and thus rendered to the Government the only consideration for the grant exacted by their laws or policy he had, on showing that fact or a performance cy-pres, or perhaps an effort to perform which had been frustrated by unforeseen obstacles, an equitable right to a confirmation

XIIa

It was not supposed by this Court, that if by the grant an estate vested in ~~him~~ the grantee, that that estate could be divested unless by a proceeding by way of denouncement lands seen under the former government. It was considered, as observed by the Supreme Court in U. S. v. Fremont "that the grant subjects the lands "to be denounced by another but "that the conditions do not declare "the land forfeited to the State "on the failure of the grantee to "perform them." When therefore no denouncement had taken place it was not deemed competent for this Court to inquire into and declare forfeitures which might have accrued under the Mexican Government. It is decided however, by the Supreme Court as right that by an unapproved grant a right or interest vested in the grantee which remained in him unless forfeited or divested under the former government. Such a failure

It was also considered by this court that inasmuch as the assembly and Supreme Government had the right at their discretion to declare ~~the~~ annul the grants our government had succeeded to that right — and was at liberty to exercise it unless under circumstances which would have made it inequitable in the former government to have done so — If ~~therefore~~ then so radical a change as that which has since occurred, had taken place in the value of the land the condition of the country and the policy and own duty of the Government, the Mexican authorities would clearly have seen ~~at liberty to to with~~ justified in withholding their approval — unless it by the settlement and occupation of the land, on the faith of the grant they had already received the Consideration for which the equitable obligations which were founded on them are binding ones — But none of this — the substantial equity of the claimant was ~~therefore~~ supposed to consist in the fact

XII E

that he had received an imperfect or inchoate title, and had performed the conditions during the existence of the former Government —
Where however the grant was ~~a~~ complete ~~title had passed~~ by the approval of the assembly, and the title of the Mexican nation had been finally divested it was not considered that we could inquire into previous forfeitures — unless such as had been taken advantage of and declared by the former Government.
It is decided however by the Supreme Court that by an improper grant a right or interest vested in the grantee which remained in him unless forfeited or divested under the former Government
Such forfeiture ——

did not however accrue in those cases alone, when a denouncement of the land was made - It also took place and must be declared by this Court whenever there has been unreasonable delay in performing the conditions - and such as to authorise the presumption of abandonment.

What delay is to be considered unreasonable, and as giving rise to this presumption the Court does not explicitly state - nor does it perhaps admit of precise definition - It would seem more in accordance with the generous and benignant spirit with which the Supreme Court has viewed these cases to hold that no delay shall be considered so unreasonable as to forfeit the land unless such as would have not been excused by the former government if the land had been denounced - The time assigned for the performance of the condi

tions was usually one year But this rested wholly in the discretion of the Governor — By the usage of the country the excuses of the grantee for non performance were indulgently received — and even when the land was denounced as vacant a further time to fulfill the conditions was usually allowed, if the government was satisfied that the grantee intended to occupy his land and had been unexpectedly prevented

~~Harsh~~ The delay which the Supreme Court regarded as working a forfeiture of the ~~rights~~ vested interest of the grantee, is evidently something more than a ~~mere~~ such as would constitute a technical breach of the conditions — It must be such "unreasonable" delay as justifies the belief that in point of fact the grantee voluntarily abandoned his land —

But such an inference could hardly be drawn unless ~~the~~ ~~neglect~~

his negligence was protracted and susceptible of no other explanation — or unless he had left the country, or obtained and settled upon some other grant, or had by some other unequivocal act or omission clearly indicated his intention to renounce and surrender his property.

When therefore the Court is called upon to declare that a grantee of land has voluntarily abandoned the rights he ~~has~~ is admitted to have acquired, ~~it is not easy to say what circumstances~~ the ~~in question~~ question is not unattended with difficulty — and perhaps the test already suggested may be found as safe as any other — viz. that he shall be deemed to have forfeited his lands only under such circumstances as would under the laws and usages have defined him of it if it had been denounced by another.

In the case at Bar the grant was made in 1844 — The grantee had then for only 2 years and some months during the

existence of the former government, within which to perform the conditions — The political and other disturbances which were received by the Supreme Court ~~as~~ in Fremonts case, as excusing or accounting for Alvarado's neglect to perform, must have presented equal obstacles to the grantee in this case — and the hostility of the Indians in this case as in that, probably tho' the fact is not very satisfactorily shown increased the difficulty of effecting a settlement.

It is true that others appear to have settled upon neighboring ranchos. For the grant is bounded by the ranchos of two colindantes — and Francisco Pacheco by the informe & his own deposition is shown to have a rancho in the vicinity — But a settlement might have been practicable to a wealthy man with numerous dependents While a poor man might have found it impossible to occupy alone

an extensive tract separated from his nearest neighbor by a distance of several leagues — ~~Dar the~~ I am inclined to think that if under the circumstances of this case the land had been denounced the Mexican authorities would under their laws & customs have accepted the excuses of the grantee and allowed him a "prorroga" or extension of time and the fact that no denouncement was made is of some weight as showing that ~~this~~ no one else offered or found it practicable to fulfil the conditions —

I have felt much hesitation & difficulty in arriving at a conclusion in this case —

But assuming as I am bound to do that the grantee acquired a vested interest by his grant I have not felt authorised to say that the circumstances show that he voluntarily abandoned or surrendered his rights during the existence of the former government.

What circumstances the Supreme Court

XVIII

may hereafter regard as authorising the presumption of abandonment ~~I am~~ we cannot now say. But it has seemed to me that they should be strong and unequivocal before we can declare that a right of property once vested in a grantee of the former government has been forfeited or lost by an abandonment of ~~them~~ it.

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U. S. No. 57.

vs

Sebastian Nunes

Opinion

May 4th 1857

Fine