CASE NO.

68

NORTHERN DISTRICT

TAMALES y BAULENES GRANT

RAFAEL GARCIA

CLAIMANT

Land Case 68 ND

ALSO AVAILABLE ON MICROFILM

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PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 114

Rafael Garcia CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Tamales y Baulenes."

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, that on this twenty third day of March, Anno Domini One Thousand Eight Hundred and Fifty-Two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of Rafael Garcia for the Place named "Tamales y Baulanes" was presented, and ordered to be filed and docketed with No. 114 and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

San Francisco Jan. 28th 1853.

In Case No. 114 Rafael Garcia for the place named "Tamales y Baulanes," the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with document marked N. I. T. No. 1 annexed thereto was filed;

(Vide page 5 of this Transcript)

San Francisco Aug. 9th 1853.

On Motion of the Associate Law Agent Case No. 114 was ordered to be placed on the Trial Docket.

Case No. 114 called; the Counsel for the claimant and the Evidence; Argued, submitted and taken under advisement.

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San Francisco Nov. 22d 1853.

In the same case Commissioner Alpheus Felch delivered the opinion of the Board confirming the claim;

(Vide page 50 of this Transcript)

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Petition of Rafael Garcia

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To the Honorable the U. S. Commissioners for ascertaining and Settling Private Land Claims in California

"The petition of Don Rafael Garcia a resident of the County of Marin respectfully shows that heretofore, to wit, on the 18th day of June 1835 he made and presented his petition in writing to Jose Figueroa then Governor of California, soliciting for himself the grant of a tract of Land containing between two and three leagues of Territory and known under the name of Baulenes y Tomales"

"That on the 28th of July 1835 said Figueroa referred the subject to all the Ayuntamiento of San Francisco, to the Military Commander of Solano and to the person in charge of the Mission of San Rafael in Order to obtain their report thereon

That the report of each of them having been made in favour of your petitioner, said matter was referred back to the Alcalde of Monterey, commanding him at the same time, to summon your petitioner to appear before said Alcalde, and to prove by three qualified Witnesses that he (your petitioner) was a Mexican Citizen by birth that he was a married man and of good Moral Conduct. That the land petitioned for was unoccupied and did not belong to any Corporation Village or individual, and that he was possessed of a Sufficient quantity of Stock and cattle

That all this having been proved to the Satisfaction of said Alcalde in the manner aforesaid - Nicholas Gutierrez at that time Governor of California, on the 18th of March 1836 declared your petitioner the lawful owner of said Lands and directed the proper document constituting title to be Executed and delivered to him

That a formal grant was issued on the 19th day of March 1836 to your petitioner by said Governor.

And your petitioner further saith, that said grant was brought before the Departmental Assembly of California sitting at Monterey in Order to be confirmed, and then and there referred to the Committee on Lands, that said Committee reported in favour of it and that thereupon said Assembly confirmed the same on the 7th of July 1836 That the petition, references, reports, the action of the Assembly and a duly certified Copy of the grant and Maps of the premises are on file in the Archives of California now in the possession of the Surveyor General of the U.S. of America for the State of California, and that duly certified Copies and translations of the same are herewith submitted and prayed to be made a part of this petition. That the Original grant is in the hands of your petitioner and ready to be exhibited whenever required. That said Land lies in the present County of Marin and North of Wm A Richardson's Rancho de Sausalito, Contains two Square leagues and is known under the name of Tamales y Baulenes. That it is bounded on the N.N.E. by the Arroyo de la Cabrera - on the S.S.W by the Arroyo de Olemos Lobos - on the E.S.E. by the "Canada del Cerro" on the W.N.W by by the mouth of the Sonsales. That he obtained juridical possession of said Land on the 18th of Oct 1841 and that translations of the respective documents are herewith submitted. And your petitioner further states that he took possession of said Land immediately after obtaining said grant has thence hitherto been in possession of it exercising full and undisputed Ownership over the same and is not aware of the Existence of any title conflicting with or superior to his own. He therefore claims to be the legal Owner of the same and prays, that your Honorable Body after due inspection of the aforesaid documents may Confirm and Validate his title thereto.

Clark Taylor & Beckett Attys

Filed in Office March 23rd 1852
Geo: Fisher
Secy

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San Francesco Jany 28th 1853

Deposition of
W A R Richardson

On this day before Wm Hany I Thornton came Wm A Rich ardson a Witness on behalf of the Claimant Rafael Garcia - petition No 114 and was duly sworn his testimony being given in English

The U.S. Associate Law Agent was present

Question by Claimant

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Question 1st What is your name age and place of residence
Answer. My name is William Richardson My age fifty seven I reside on my Rancho of Sacalito Marin County
Quest. Look on the original Document now shown you marked Exhibit 1 now attached to your deposition and placed on file in this Cause - State whether said Document is genuine and whether you are acquainted with the Signatures to said document
Ans. I have examined the document referred to and have no doubts of its genuineness I am acquainting with the hand writing of Rafael Garcia, Salvador Vallejo, Juan B Alvarado Fernando Feles Ignacio Pacheco Nicholas Gutierres, Francisco Nepote, Timothy Murphy Antonio Castro Jacome R Bame. The signatures purporting to be the signatures of those persons whose as they Occur on said documents I know to be genuine.
Ques - State what you know in regard to the occupancy of the Land mentioned in the petition
Answ - It has been occupied by Rafael Garcia ever since the year 1837 and perhaps from an earlier period

Wm A Richardson

Sworn to And subscribed before me
This 28th of Jany 1853 Hany I Thornton Com &
Service acknowledged. Asst Law Agent U.S.

Filed in Office Jany 28. 1853 Geo. Fisher Dep'y

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L. Tam.co 1834

Espediente

Sobre el Sitio nombrado

Tamales i Bambues

Solicitado por

Rafael Garcia

En su apoderado
D.n Juan B. Alvarado

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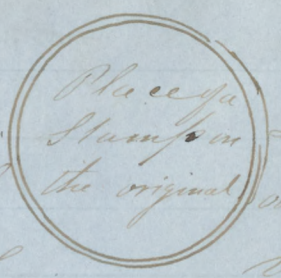
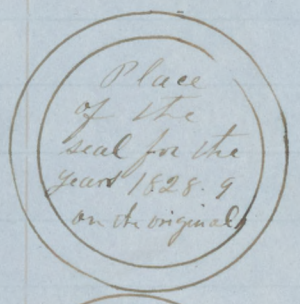
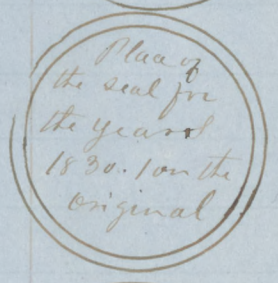
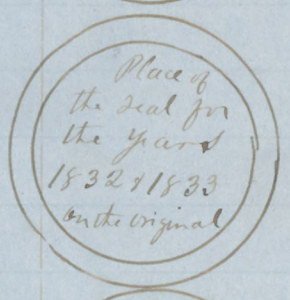
Sello Tercero Para los años de mil seis y ochocientos

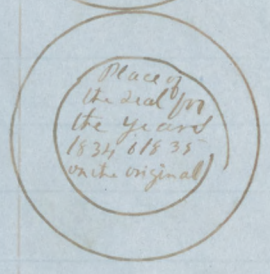


Dos Reales ochocientos veinte y veinte y siete









Sr. Gefe Politico

Rafael Garcia Cabo gl. fue de la Compa. de S.n Fran.co y natural del Presidio de S.n Diego casado con Ma. Loreto Altamirano natural del Pueblo de S.n José Guadalupe, y actual Mayordomo del de S.n Rafael ante U.S. se presenta p.r medio de este escrito y dice. Que teniendo algunos viene semovientes de Ganado Bacuno y Caballar y no tener un trabajo donde ponerlos con seguridad y radicarme en estos terrenos de esta parte y poner un ranchito, solicito se me concedan dos sitios en propiedad en las inmediaciones del Estero de los Famales y los Baules, terreno que no está ocupado, ni pertenece a ningun particular ni Mision, como lo demuestra el diseño gl. acompaño y ha marcado los linderos. Suplico se me atienda en esta peticion p.a subvenir al sostenimiento de mi familia pues me hallo imposibilitado sin embargo de gl. tengo algunos adelantos de mis sueldos

Monterey Julio 28 de 1835

De conformidad con las leyes de la materia informe el Ayuntamiento de San Francisco si el interesado en esta instancia a V.S. obtiene los requisitos prevenidos p.r ser atendido en su solicitud si el terreno

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que pertenece este comprehendido en las 20 leguas limitrofes a lo litoral en q. espresa la ley de 18 de Agosto de 1824 si pertenece a

p.e. lo q. interesa al Cumplimiento esta gracia es su mismo sentido

Pueblo de S.n Rafael 15 de Junio de 1835

Rafael Garcia

la propiedad de algunos particulares, Mision de San Rafael, con todo lo demas q. sea concerniente a ilustrar la materia. Concluida esta diligencia pasara este espediente al Comandante Militar de S.n Solano i al comisionado de S.n Rafael p.a q. espongan lo q. les ocurra sobre el particular. El Sr. D.n José Figueroa General de Brigada Comand.te General Inspector y Gefe P. Politico de la alta California hizo lo mandó decretó y firmo de q. doy fee

José Figueroa

José
Fr.co del Castillo
Negrete

Rec.d Junio 18 de 1835

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que pertenden
esta comprehen-
dido en las 20
leguas limitro-
fes o lo fituen
los q. expresa
la ley de 18 de
Agosto de 1824
si pertenece á

la propiedad de algun particular, Mision ca-
poracion ó Pueblo, en todo lo demas q. sea con-
cerniente á ilustrar la materia, Encarada esta
diligencia pasara este expediente al Comandante
Militar de S.n Diego i al comisionado de S.ª
Rafael p.ª q. espongan lo q. les ocurra sobre
el particular. El Sr. D.n Jose Figuera General
de Brigada Comand.te General Inspector y
Gefe S. Politico de la alta California hace lo man-
dó decretó y firmo de q. doy fee

Jose Figueroa

Pueblo de S.ª Ra-
fael 15 de Junio de 1835

Rafael Garcia

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Jose Castro Mayor

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S. L. D. R.

En Cumplimiento de lo prevenido pr. el Supl. Decreto de 28 de Julio del Presente año, que se haga en la presente solicitud que hace el Ciudadano Rafael Garcia: El Ayuntamto. de esta Demarcacion dice lo siguiente, que el interesado obtiene los Requisitos necesarios para ser atendido; el terreno que pretende no esta comprendido en las veinte leguas limitrofes, y si en las diez litorales, es de Egidos, Tunjanal y abrevadero, no pertenece a la propiedad de ningun particular, Corporn. ni pueblo, es enteramente valdio, circunstancias todas por las cuales cree no haber embarazo pr. que se le conceda. S.n Francisco Septiembre 30 de 1825

Francisco de Haro

Francisco Sanchez

Sello Tercero
Para los años de mil
seis y ochocientos

Place of the Stamp on the original

Dos Reales
ochocientos veinte y
veinte y siete

Place & Seal of the years 1826. 7 on the original

Jefe Supt. Politico

Place & seal of the years 1830. 1 on the original

El Ciudadano Rafael Garcia obtiene los Requisitos pr. ser atendido en su solicitud: el terreno q. pretende es de los exceptuados por la ley de 18 de Agosto de 1824 con respecto a estas no las diez leguas litorales; lo ha solicitado con anterioridad el Ciudn. Henrique D. Fitch, y no le fue concedido por pertenecer pegun se quiso persuadir

Place & seal of the years 1832. 3 on the original

Place & seal of the years 1834 1835 on the original

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a V.S. del pueblo de S. Rafl es y ha sido
valdío desde antes de dar esta Comand.a
militar el primer informe en el es-
pediente que promovio el Sr. Fitch, y no
pertenece a propiedad particular ni
pueblo alguno.

Sonoma Obre 14 de 1835

M.no G. Vallejo

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El Contenido en esta instancia
acerca del terreno q.e solicita, debo in-
formar es de los expresados q.e previe-
ne la ley 18 de Agosto de 1824 p.r es-
tar á las diez leguas litorales, pues
aun sin embargo de haverlo solicita-
do primero D.n Enrique D. Fitch
no se Concedio p.r su mala inteligen-
cia de haverle puesto al Parage el
nombre de San Geronimo y Como
p.r este nombre es conocido el que
esta á las tres leguas de este Pueblo
de San Rafael, esta fue la causa
p.r lo que el Gov.no Politico no lo con-
cedio. Y en vista a no pertenecer
este terreno a Mis.n ni particular
alguno, ni menos ser tierras q.e per-
tenescan al Ejido de dha Poblacion
y ser enteram.te valdío y a mas ser
acredor el solicitante, no hay em-
barazo en q.e se le conceda el sitio
ó tierras q.e pretende, y p.r falta
de papel sellado se entrega es-
te informe en papel simple

Pueblo de S.n Rafael 27 de
Obre de 1835

Ygn.o Martinez

Rubric

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Terrey Marzo 16 de 1836 (8.s.2k.)

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Pase al Alcalde de este puerto ante quien la parte del Sr. Rafael García producirá una informacion de testigos idoneos en numero de tres que sercan interrogados sobre los puntos siguientes 1º=Si el solicitante es ciudadano Mexicano por nacimiento, si es casado y tiene hijos: si es de buena conducta: 2º=Si el terreno que pretende pertenece a la propiedad de alguna particular Mision, pueblo ó corporacion: si es de regadio temporal ó abundero y que extencion tendra. 3º Si tiene bienes de cumplo con que subsista ó posibilidad de adquirirlos. Evacuadas estas diligencias buelva el espediente para su Enclusion. El Sor. Dn. Nicolas Gutierres Gefe Superior Politico interino del Territorio de la Alta California, asi lo mando decreto y firmó de que doy fe

Nicolas Gutierres

Fco del Castillo
Negrete
Secio

9.s.2k. Monterrey Marzo 17 de 1836

Dn 4 pss. Notifiquese al interesado presente los testigos q.e se han de examinar bajo los puntos a q.e se contrae el anterior Superior decreto i tomese la informacion q.e se pide y vuelva el espediente al S. Gefe Politico para q.e dicte las q.es q.e haya lugar Asi yo el Alcalde 1º Constitucional

de este Puerto lo determiné, mandé y firmé con los de ass.ª

Jose R. Estrada

José María Maldonado — De ass.ª Santiago Aguilar

En la ffha presente el C. Rafael García se le notificó el auto q.ª antecede y dijo: lo oye y q.ª presenta a los SS. Tomas Barrio, Antonio Buelna y José Fernandez y lo firmó conmigo y los de asa M.

Estrada — Rafl. García

De ass.ª José María Maldonado — De ass.ª Santiago Aguilar

En el mismo presente el C. Tomas Barreto, le recivi juramento en forma de derecho bajo el cual ofrecio decir verdad en lo que supiere y fuere preguntado, y siendo por su nombre, estado, edad y vecindad dijo: se llama como queda dho q.ª es casado de veinte y siete años y vecino de este Puerto.

Preguntado = Por el tenor del interrogatorio q.ª antecede Dijo:

A lo 1º = Que si es ciudadano mejicano por nacimiento el que solicita, que es casado tiene hijos, y es de buena conducta y Responde

A lo 2º Que el terreno que pretende le conoce pues valdio pr. no pertenece a ninguna persona de las q.ª trata las preguntas que tiene las tres condiciones q.ª se le preguntan, y q.ª su estencion sera de tres leguas, y contesta

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A lo 3º = Que tiene viens de campo bacuno y caballar y q.e tambien tiene posibilidad de adquirir unas: q.e lo dho es la verdad a cargo de juramto q.e hecho tiene en el q.e se afirmó y ratifico leida q.e le fué su declaracion y no firmó p.r q.e dijo no saber lo hizé yo y los de ana.

J.=

Jn.e R. Estrada — De ana
Santiago Aguilar

De ana,
Jose Maria
Maldonado

Y q.e continuando siendo presente el C. Antonino Bu =

(Sello Tesoro Dos Reales.

Habilitado provicionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete

Gutierrez — A. Ramirez)

= Acto se le recivio juramto q.e hizo en forma de dro bajo el cual ofrecio decir verdad en lo q.e supiere y fuere preguntado y siendo p.r su nombre, estado, edad patria y vecindad Dijo se llama como queda referido: que es casado de edad de cuarenta y cinco años y vecino de esta municipalidad

Preguntado = Como lo fué el primer testigo

Dijo:

A lo 1º = Que el solicitante es C. Mejicano p.r nacimiento: que es casado, tiene hijos y es de buena conducta, y Responde

A lo 2º = Que el terreno solicitado no pertenece a particulares, minon ni pueblo y q.e lo reconoce p.r valdio, que es de las tres condiciones de q.e trata la pregunta y su extencion poco mas o menos

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de tres leguas, y Contesta
A lo 3º = Que tiene los suficientes bienes de campo, y q. lo dho es la verdad a cargo del juramto q. tiene hecho en el q. se afirmó y ratificó leida q. le fue su declaracion y lo firmo con migo y los de asi. J=

Jose R. Estrada — Antonino Buelna

De asi.
Jose Maria Maldonado

De asi.
Santiago Aguilar.

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12 Dk. En la misma fha. Presente el testigo, se le recivio juramto q. hizo en forma de derecho, bajo el cual ofrecio decir verdad en lo que supiere y fuere preguntado, y siendolo por su nombre, estado, edad, patria y religion Dijo; se llama Jose Fernandez; q. es casado, de treinta y dos años y vecino de esta Poblacion
Preguntado = Por el tenor q. lo fueron los dos antecedentes testigos Dijo:
A lo 1º = Que es el q. solicita C. mujicano por nacimiento; q. es casado, tiene hijos, y es de buena conducta, y responde
A lo 2º = Que el terreno que pretende no pertenece a ninguna propiedad; q. es de regadio, temporal y abrevadero y q. lo q. pretende tendra de estension poco mas de tres leguas, y Contesta
A lo 3º = Que si tiene bienes de campo; q. lo dho es la verdad a cargo del juramto q. tiene hecho en lo q. se afirmo y ratificó leida q. le fue su declaracion y lo firmo con migo y los de asa. J=

Jose R. Estrada — Jose Fernandez

De asa
Jose Maria Maldonado

De asa
Santiago Aguilar

Concluio=

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(13 S.Dk)

Sello Tercero Dos Reales

Habilitado provicionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California, para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete

Gutierrez — A. Ramirez

= da la informacion gf. anteced se devuelve el expediente al S.G. Politico en 7 fs. utiles; en cumplimto de lo mandado en auto de esta fha, y para constancia lo anoto y rubrico

R.

Monterey Mys 18 de 1836

Vista la peticion con gf. da principio este expediente el informe de la autoridad municipal la informacion de los testigos con todo lo demas gf. se debe prevenir i bien combino de conformidad con las leyes i reglamentos de la materia se declara dueño en propiedad del terreno conocido con el nombre de Tamales y Vaqueros al Sno Rafael Garcia acreedor de la aprovacion de Exma Dipon. El Sr. Dn. Nicolas Gutierrez Tnte Coml comandte Grad. Gefe Politico de la Alta California asi lo mando dicto i firmo de gf dos fee

Nicolas Gutierrez

Fco del Castillo
Negrete
Srio

11 S.Dk — En 31 de Mayo, pasó á la Comn. de terreno

Maldonado

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Exmo Sor

14 S.D.R. La Comision de terrenos habiendo impuesta del Expediente q. se manda Apracticar a peticion del Ciudno Rafael Garcia del Paraje nombrado Tamales y Baulines y no encontrando en el objeccion alguna q. hacer siendo en todo Conforme al art 5 del Reglamto de 21 de Noviembre de 1828 y a la Ley de 18 de Agosto de 824 opina a la deliberacion de Vsa. la Superioridad sigte.

Se aprueba la Comision hecha al Ciudno Rafael Garcia del Paraje nombrado Tamales y Baulines Concedido en 18 de Marzo de este año

Monterey 27 de junio de 1836

Jose Anto de la Guerra y Carrillo

Jose Joaquin Gomez

15 S.D.R. Monterey Julio 9 de 1836

En sesion de este dia aprovó la E. Junta Departamental la unica proposicion en q. concluye el antecedente dictamen, y se acordo pase el expediente al S. Gefe Politico para su conclusion

Juan B Alvarado
Presidte

Jose Maria Maldonado
Secrio

Monterey 17 de Abril de 1839

En vista de la aprovacion otorgada en 5 de Julio de 1836 por la Exma Junta Departamental; libren testimonio

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de ella, con insercion de este decreto a la parte del Cap.no Rafael Garcia, en confirmacion a la concesion del terreno de los Tamales y Bateques que obtuvo en 18 de Marzo de 1836= El Señor Dn. Juan B. Alvarado Gobernador del Departamento de las Californias, asi lo mando decreto y firmo de que doy fee.

16 S D K

En la misma fecha se espidio el testimonio q.e se manda por el Sor. Gobernador en el decreto anterior

Manuel Jimeno

Office of the Surveyor General of the United States for California

X

I, Samuel D. King, Surveyor General of the United States for the State of California and as such, now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the Sixteen preceding and hereunto annexed pages of tracing papers numbered from one to Sixteen inclusive and each of which is verified by my initials (S D K) exhibit true and accurate Copies of Certain documents on file and forming part of the said archives in this Office.

In testimony whereof I have hereunto signed my name and affixed my private seal (not having a seal of Office) at the City of San Francisco Cal. this Sixth day of March 1852

Seal

Sam.l D. King
Surv. Gen.l Cal

X

Filed in Office March 23.d 1852
Geo. Fisher
Secy

Translation of Espediente "C"

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To the Honorable the Chief Political Authority. Chief

Monterey July 28th 1835

In conformity with the laws and the matter let the Municipal corporation (Ayuntamiento) of San Francisco report whether the party concerned in this petition the purposes the necessary requisites to be attended to, whether the parcel of land he asks for is comprised within the twenty bounding leagues or the ten littoral leagues expressed in the Laws of August 18th 1824 whether it belongs to any private individual Mission Corporation or Pueblo with whatever else may be conducive to elucidate the subject. This proceeding being performed of this record of proceedings shall be sent to the chief Military authority of San Solano and to the "Comandante" of San Rafael in order that they may represent what may occur to them on the subject. The Hon Don Jose Figueroa of Brigade, general "General Commandante" Inspector and Gefe Superior Political of these Californias and this Order decreed and sign

Rafael Garcia late a corporal of the Company of San Francisco and a native of the Presidio of San Diego Married to Maria Salamajana a native of the Pueblo of San Jose de Guadalupe and at present Superintendant (Mayordomo) of that of San Rafael appears before Ay & by means of this writing and represents. That having some personal personal property such as black Cattle and horses and not having a location wherein to place them with decency to fix myself on these lands and to form a Ranchito I ask that there may be granted to me two Square leagues in the immediate Neighborhood Estuary de los Tamales y los Bankenos which land is not occupied nor does it belong to any private individual or Mission as the accompanying sketch shows and the boundaries and marked on it. I entreat your Honor to be attended to in this petition in order to provide for the support of my family for I find myself insolvent although I have some balance in my favour for my pay Therefore I expect to obtain this

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and I attest it
(Signed) Jose Figueroa
(Signed) Fran.co del Castillo
Negrete. Secretary

peticion.
Pueblo de San Rafael
June 15th 1835
(Signed) Rafael Garcia

In compliance with the directions of the Superior decree of the 28th day of July of the present year to be found upon the preceding peticion made by the Citizen Rafael Garcia the Municipal corporation (Ayuntamiento) of this Demarcation proceeds to report as follows that the party concerned is in possession of the requisites necessary to be attended to. The parcel of land he asks for is not comprised within the twenty boundary leagues of frontier (limitrofes) but it is comprised within the ten littoral leagues, it is ungable farming and pasturing it does not belong to any private individual corporation or Pueblo it is entirely vacant all which circumstances lead the Ayuntamiento to think that there is no impediment to the grant

San Francisco Sept.br 30th 1835
(Signed) Francisco de Haro
(Signed) Francisco Sanchez Secretary

To the Honorable the Superior Political Chief
The citizen Rafael Garcia proposes the requisites to be attended to in his request. The parcel of land he asks for is of those excepted by the Law of August the 18th 1824 because it lies within the ten littoral leagues, the Citizen Henrique D Fitch has asked for it previously and it was not granted to him because it belonged as it was attempted to persuade by him to the Pueblo of San Rafael, it is, and it has been (lying) vacant since previous to the time when the Commanding Military Authority pronounced its first report in the record of proceedings at the instance of

Mr Fickt and it does not belong to private individual
or Pueblo. Sonoma Octobr 14th 1835

(Signed) Mariano G Vallejo

I ought to report relating to the parcels of land
asked for in this petition, that it is of those Excepted
in the Law of the 18th of August 1824 On account of
its being within the ten Leagual leagues; Notwithst
anding Don Henrique de Fickt asked for it first
it was not granted to him on account of his mistake
in having called the location by the name of San
Geronimo as by this name is known that which
lies three leagues distant from the Pueblo de San
Rafael, for this reason the grant was refused by
the Political Government. And since this land
does not belong to any Mission or private individual
nor is it land pertaining to the Commons of said
Village, and as it is entirely Vacant and moreover
since the party who solicits is entitled by his merits
there is nothing to prevent the grant to him of the
Site or lands which he asks for. This report is made
on Common paper for want of the proper Stamped
Pueblo de San Rafael Octobr the 27th 1835

(Signed) Ignacio Martinez

Monterey March 16th 1836

Let it pass to the Alcalde of this Port before whom
the party of the letter Rafael Garcia will produce
an information by Competent Witnesses amounting to
to three who shall be interrogated upon the following
Points.

1 Whether the party who solicits is a Mexican
Citizen by birth whether he is a married man
and whether he has Children, whether he is a man
of good Conduct.

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2.ª Whether the parcel of land he asks for belongs to any private individual Missions Pueblo or Corporation whether it is or is not capable farming or pasturing Land and what may be its extent.
3.ª Whether he has personal property (cattle) to occupy it with or the means of acquiring it, after these enquiries shall have been made let the record of proceedings be returned for resolution — The Honorable Don Nicolas Gutierrez (Juez Superior Político) and interim of the Secretary of Superior Government directs this Order decrees and signs, which I attest

(Signed) Nicolas Gutierrez
(Signed) Francisco del Castillo Negrete
Secretary

Monterey March the 17th 1836

[Fees 4 ps]

Let it be notified to the party Concerned that he may produce the Witnesses to be Examined as to the points referred to in the preceding Superior decree let the information required be taken and the Record of proceedings be returned to the Honorable the Chief Political for such further ends — Thus decd I the 1st Constitutional Alcalde provide Order and sign it with my Assistant Witnesses

(Signed) Jose R Estrada
Assistant Witness
(Signed) Santiago Aguila. (Signed) Jose Maria Maldonado

On the same day Citizen Roque Garcia being present was duly notified of the preceding Juridical act — and and said that he heard it and produces as witnesses to Juan Bautista Antonio Buelna and Jose Fernandez

and he signed this with me and my assistant Witnesses

(Signed) Estrada. Signed Rafael Garcia
Apistant Witness Apistant Witness
(Signed) Jose Maria Maldonado Santiago Aguila

Immediately after Citizen Fulcan Bando being present I formely admenistered to him the usual legal Oath under which he promised to answer the truth to the extent of his knowledge to the questions put to him and being interrogated as to his name State age and place of residence, he said his Name was as before mentioned that he is a married man of twenty seven years of age and a resident of this port
Being questioned according to the tenor of the interrog atory that precedes, he said as to the 1st- That the party who solicits is a Mexican Citizen by birth a Married man having Children & a man of good conduct.
To the 2d That he knows the Lands asked for to be Vacant-Not-belonging to any of those mentioned in the question- that it has the three conditions about which he is asked and that its extent may be three Leagues
To the 3d That he has personal property both black cattle and horses and that he likewise has the power of acquiring more, that what he has said is true under the Oath he took which he confirmed and ratified after this deposition was read to him and he did not sign because he said he did not know how- I did and do declare my Apistant Witnesses

(Signed) Jose R Estrada
Apistant Witnesses
(Signed) Jose Maria Maldonado
(Signed) Santiago Aguilar

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Immediately after Ciudadano Antonio Buelna being present was duly sworn according to the usual forms under which Oath he offered to answer the truth to the best of his knowledge to the questions put to him and being interrogated as to his name State age Country and place of residence he said his name was as before mentioned, that he is a married man of forty five years of age and a resident of this municipality. Being interrogated as the former he said To the 1st That the party who solicits is a Mexican Ciudadano by birth has children and is a man of good conduct and To the 2d That the parcel of Land he asks for does not belong to any private individual Mission or Pueblo and that he knows it to be Vacant, that it is of the three conditions of which the question treats and contains is three leagues a little more or less and he answers to the 3d That the party has sufficient personal property and that what he has said is the truth under the Oath he has taken which he confirmed and ratified after his declaration had been read to him and he signed it with me and my Assistant Witnesses

(Signed) Jose R Estrada
(Signed) Antonio Buelna
Assistant Witness (Signed) Jose Maria Maldonado
Assistant Witness (Signed) Santiago Aguilar

On the same day the third Witness being present was duly sworn according to legal forms under which Oath he promised to answer the truth to the best of his knowledge to the questions put to him and being interrogated as to his name State age Country and Religion he said his name was Jose Fernandez, that he is a married man of the age of thirty two and a resident of this Village.

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Being interrogated according to the tenor of the interrogatory for the preceding testimony he says.
To the 1st That the party who solicits is a Mexican Citizen by birth that he is a married man has Children and a man of good Conduct and he answers to the
2d That the tract of Land he asks for does not belong to any other party that it is irrigable farming and pasturing land its extent may be of a little above three leagues and he answers to the
3d That he has personal property that what he has said is the truth under the Oath he has taken which he confirmed and ratifies after his deposition had been read to him and he signed it with me and my opposite Witnesses -
(Signed) Jose R Estrada
Signed Jose Fernandez
Assistant Witness - (Signed) Jose Maria Maldonado
(Signed) Santiago Aguilar.
The preceding information being ended - the Record of the proceedings is returned to the Honorable the Chief Political [Authority] in seven written sheets, thereby Comply with the directions of the general Act of this day. In Witness whereof I have duly Notified it with my flourish (here is a flourish)

Monterey March 18th 1836
After the examination of the petition at the head of Record of proceedings, the report of the Municipal Authority the information of Witness together with what ever else was thought proper in conformation with the Laws and the regulations on the Matter.
The Citizen Rafael Garcia is declared the Owner in fee of the parcel of Land known under the name of

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Tamales and Vanlanes subject to the approval of the Excellent Diputation

The Sor Don Nicolas Gutierrez Lieutenant Colonel General Commandante inspector and political chief of Upper Calefornia did thus Order Decre and Sign which I attest.

(Signed) Nicolas Gutierrez
(Signed) Francisco del Castillo Negrete
Secretary

On the 31st of May it passed to the Committee On Lands (Signed) Maldonado
Secretary

Excellent Sir

The Committee on Vacant Lands after taking due Notice of the Record of proceedings at the instances of the Citizen Rafael Garcia who solicits a parcel of Land called Tamales y Banlanes, not finding any Objection against it since it is wholly in Conformity with Article 5th of the Regulations of November 21st 1828 and the law of August the 18th 1834 offers for y Ex deliberation the following proposition

They approve the grant made to the Citizen Rafael Garcia of the Site called Tamales y Banlanes which grant was made on the 18th day of March of the present year Monterey June 27th 1836

(Signed) Jose Joaquin Gomez
(Signed) Jose Adelin Guerra Carrillo

Monterey July the 9th 1836

The most Excellent the Departmental Junta decided in their Sessions of to day approve of the Single proposition which Constitutes the End of the preceding Opinion, and it was determined that the Record of proceedings should be sent to the Honorable

the Chief Political for the conclusion thereof
(Signed) Juan Bautista Alvarado
President
(Signed) Jose Maria Maldonado - Secretary

Monterey April the 17th 1839
In consideration of the Approval granted on the 5th of July 1836 by the excellent departmental Junta let testimony thereof together with a copy of this decree be issued to the Citizen Rafael Gurrea in confirmation of which he obtained on the 18th day of March 1836 - the grant of Lands of Samales Y Bautanes. The Honorable Don Juan Bautista Alvarado Governor of the Department of both Californias did this Order decree and sign which I attest
Under same date was issued the testimony which the Honorable Governor directed by the foregoing decree
Ignacio Maria Limeno
Ex.
R P.

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Filed in Office March 23d 1852
Jer. Fisher
Secy

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(15.2.K)

Nicolas Gutierrez Tnte Coron.l Co-
mandte Gen.l é Ynspector i Gefe Politico
de la Alta California

D

Certified Copy
of Grant

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X

Nº 97

En cuanto el Cno Rafael
Garcia ha pretendido pr. su beneficio
personal i el de su familia el terre-
no conocido con el nombre de Ja-
males i Bacheno practicadas pre-
viamente las diligencias i aberiguaciones
convenientes segun lo dispuesto por las
leyes i Reglamentos de la materia usan-
do de las facultades q. me han confe-
ridas en dcto de este dia, i a nombre de la
Nacion Mejicana he venido en con-
ceder el referido terreno de-
clarandole la propiedad de el pr. las pre-
sentes letras a reserva de la aprovacion
de la Exma Dp.on i bajo las condiciones siguientes

1ª= Que se sometera a las q. es-
tablecire el Reglamento q. se ha de formar
p.r la distribucion de terrenos baldios
y entre tanto ni el agraciado ni sus
herederos podran dividir ni enagenar
el q. se les adjudica imponer censo, vin-
culo ypoteca hipoteca ni otro gravamen
aunque sea por causa piadosa ni poseerlo
a manos muertas

2ª= Podrá cercarlo sin perjudicar
las travesias caminos y servidumbres
lo disfrutara libre i exclusivamente
destinandolo al uso i cultivo q. mas
le acomode p.r dentro de un año pobla-
cara Casa i estara habitada.

(2.S.DK) 3ª Solicitara del Juez Ecclesiastico q.
le de la posesion juridica en virtud

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de este despacho p.r el cual se demarca-
ran los linderos en cuyos límites pon-
draan a mas de las señaleras algunos ar-
boles frutales ó silbestres de alguna utilidad.

4.ª= El terreno de q.e se hace mencion es de dos sitios de ganado mayor segun explica el dueño q.e corre en el espediente. El Juez q.e dice la posicion lo hara medir conforme a ord.a quedando el sobrante q.e resulte á la nacion p.a los usos convenientes

5.ª= Si contravinieis a estas condiciones perdera su derecho al terreno i sera denunciable por otro

En consecuencia mando q.e librandole de titulo el presente i linderos por firme y valedero se tome razon de el en el libro q.e corresponde i se entregue al interesado p.a su resguardo y demas fines. Dado en Monterrei a 19 de Marzo de 1836 = Nicolas Gutierrez = R.o de Castillo Negrete Srio

Castillo Negrete

Office of the Surveyor General of the United States for California

I Samuel D. King Surveyor General of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory of Department of Upper California

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do hereby Certify that the two preceding and hereunto annexed pages of Tracing paper numbered one and two and each of which is verified by my initials (S D K) exhibit true and accurate Copies of the writing upon two of the pages of an unbound book entitled "Deeds" on file and forming part of the said archives in this Office.

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 Sixth day of March 1852

Seal

Sam'l D Kirk
Surgn U.S.A.

5 1/2 fos

Filed in Office March 23d 1852

Geo. Fisher
Secy

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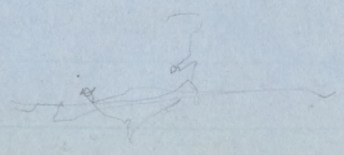

E

Translation of Grant

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Nicolas Gutierrez Lieutenant Colonel General Commanding Officer, Inspector and chief Political Authority of Upper California

Whereas the Citizen Rafael Garcia has solicited for his personal benefit and that of his family the tract of Land known under the name of "Tamales y Baulanes, all the necessary investigations having been made according to the Laws and regulations on the matter by virtue of the authority in me vested I have thought proper in the name of the Mexican Nation by my decree of this days date to grant him the aforementioned tract of Land declaring by the present Letters the same to be his property, subject to the approval of the Most Excellent the Departmental Assembly and under the following Conditions

1st He shall submit himself to what conditions may be established by the regulation to be formed for the distribution of Vacant Lands and meanwhile neither the grantee nor his heirs shall divide or alienate that which is adjudged to them nor to burden it with any Annuity entail security Mortgage or any other burthen even for a pious Cause, nor can they transfer it in Mortmain.

2d He may enclose it without obstructing the paths roads and servitudes, he shall at freely and exclusively appropriating to the use or Cultivation that may best suit him but within a year he shall build a house and it shall be inhabited

3 He shall solicit the respective Judge to give him juridical possession by Virtue of this Patent by whom the boundaries will be designated & the limits of, they shall set be based on the Land marks some fruit trees or fruit trees of some useful help

4 The land mentioned is of two Square Leagues (do Sitios)

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de Cunado mayor) as the Sketch accompanying the the Record of Proceedings shows - The Juez who shall pass the posesion will cause it to be measured according to Ordenance, & the Surplus remaining to the nation for the convenient purposes.

5-lt If he shall contravene these Conditions he will lose his right to the Land which may be denounced by any other party - Consequently I draw that the present writing answering to him the purpose of a title deed and being held as firm and Valid, the same be entered in the Corresponding book, and be returned to the party concerned for his Security and any other purpose -

Given in Monterey on the 19th day of March 1836

(Signed) Nicolas Gutierrez

(Signed) Francisco del Castillo Negrete
Secretary

(Signed) Castillo

Filed in Office March 23d 1852
Geo. Fisher Secretary

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Juzgado de Sonoma

Espedte

Ygnstruido Fza medir y dar posesion de dos sitios de ganado mayor en el rancho de Baulenes del Ciudo Rafael Garcia en 18 de Obre de 1841

Juez D. Salvador Vallejo
Testigos de assa D. Fernando Feliz
D. Juan Cooper

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Doc H.J.T
No 1 anx? to
the Depo of Wm
A. Richardson

Sello Primero Seis Pesos

Habilitado provicionalmente por la Administracion de la Aduana Maritima de Monterey de la alta California para los años de mil ochocientos treinta y cuatro y ochocientos treinta y cinco

Figueroa

A. Ramirez

Revalidado para el bienio de 1836 y 1837

Gutierrez

A. Ramirez

Nicolas Gutierrez Teniente Coronel de Caballeria permanente Comandante General Inspector y Gefe Superior Politico interino de la Alta California

Por Cuanto el C.o Rafael Garcia Mejicano por nacimiento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Tamales y Bartolomé: practicadas previamente las diligencias y averiguaciones segun lo dispuesto por las leyes y Reglamentos de la materia, cuando de las facultades que me son conferidas, en decreto de este dia y a nombre de la Nacion Mejicana he venido en concederle el mencionado Terreno declarandole la propiedad de él por las presentes letras a reserva de la aprobacion de la Excma Diputacion Territorial y bajo las Condiciones siguientes.—

1a— Que se sumetera a las que establezca el Reglamento que se ha de formar para la distribucion de Terrenos baldios y que entre tanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjudica, ni poner censo, tributo, fianza, hipoteca ni otro gravamen aunque sea por causa judicial ni pasarlo a manos muertas

2a— Podrá cercarlo sin perjudicar las travesias, Caminos y Servidumbres, lo disfrutará

libre y exclusivamente destinandolo al uso y cultivo que mas le acomode pues dentro de un año a lo mas fabricara casa y estara habitada.
3ª- Solicitara del Juez Respectivo que le dé la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondran a mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad.
4ª- El terreno de que hace denuncia es de dos sitios de ganado mayor segun especifica el diseño que corre en el espediente segun especifica. El Juez que dicte la posesion lo hara medir conforme a ordenanza guardando el sobrante que resulte a la Nacion para los usos comunales.
5ª Si contraviniere a estas Condiciones perdera su derecho al terreno y sera denunciable por otro.

En Consecuencia mando que se le expida el titulo el presente y teniendose por firme y valedero se tome razon de el en el Libro que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterrey a los diez y nueve dias del mes de Marzo del año mil ochocientos treinta y seis

. Nicolas Gutierrez

. F.º del Castillo

. Secretario

. Rubrica.

Pieza tomada razon a fojas 100 y señalada con el Nº 97 del libro que corresponde y obra en la Secretaria de mi cargo. . Monterrey . Marzo 19 de 1836

Castillo

Derechos

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Sello Tercero (Whitesal) Dos Reales
Para los años de mil ochocientos Cuarenta
y mil ochocientos Cuarenta y uno

S.r Comandte Militar, y Encargado de la Jurisdiccion civil de la frontera del Norte

Rafael Garcia, vecino de esta jurisdiccion, dueño del Rancho de los Baculines, Como mejor proceda en dro ante V. parezco y digo: Que Como consta del titulo q.e presento con la solemnidad y juramto. necesario, tengo en mi dho Rancho dos sitios de ganado mayor, bajo los linderos q.e expresa dho titulo, y pos q.e necesito p.a q.e en todo tiempo Conste, hasta donde llegan, y si me perjudicaran ó perjudico á alguno de los circunvecinos ó ellos; se ha de servir ad mandar q.e precediendo las diligencias acostumbradas de identidad, vista de ojos y Reconocimiento, se proceda con citacion de los circunvecinos á la medida de mis dhas tierras, p.a cuyo efecto nombro desde ahora y p.a cuando el Caso ocurra, p.r medidor á D. Anto. Ortega vecino de esta jurisdiccion, intelig.te en la materia; y los demas q.e fueren interesados nombren por las suyas otros p.r. la suya, y habiendo hecho asi, los q.e nombren con el referido D. Anto Ortega, p.r su Nombrado, apercivan acepten, y juren y en su conformidad se proceda á dhas medidas. P. V.

S. V. Suplico q.e habiendo p.r presentado dho documento se sirva mandar hacer como Pido Judicialmente, y hecho q.e sea se me devuelvan dhos Recaudos con las diligencias originales q.e se hicieren p.a en guarda de mi dro, este escrito y todo lo necesario &c.

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Bautista Obre 13/841
Rafael Garcia

En el Pueblo de Sonoma, a catorce del mes de Obre de mil ochocientos cuarenta y uno ante mi el Ciud.o Salvador Vallejo, Comdte militar y encargado de justicia de esta jurisdiccion, se leyo esta peticion, y vista la hube por presentada con el documento q.e expresa, y mando q.e con citacion de los circunvecinos, se haga informacion de identidad vista de ojos, y reconocimto de dhos terrenos a q.e doy punto a cuyo fin personalmte. a dho Pueblo pase, mando y firme con los de mi asta etc.
Salvador Vallejo

Juan B.a R.s Crespo
Fernan.o Feliz

En el expresado Pueblo de S.n Rafael a quince de Obre de mil ochocientos cuarenta y uno, yo el Referido Juez con los de mi asist.a p.a practicar la informacion de identidad, hize parecer ante mi, al Ciud.o Santiago Barry, vecino de esta jurisdiccion labrador, del cual recibi juramto q.e hizo p.r Dios y la Señal de la Cruz en forma, a cargo del cual prometio decir verdad, y siendo preguntado p.r el Conocimto de las tierras y parages, terminos y linderos pertenecientes al Rancho de Bautista, Dijo que hace diez años q.e es vecino de esta jurisdiccion, y sabe q.e las tierras pertenecen a dho Rancho son del Ciud.o Rafael Garcia y tienen p.r linderos al N. N. E. el arroyo de Tolenglume al S. S. O la boca de Tamales, y al E. S. E. la cañada del Tigre; q.e las ha visto y reconocido varias veces, y q.e desde q.e las posee el Referido Ciud.o Rafael Garcia, las ha labrado y cultivado, y han pastado

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en ellas sus ganados y p.ª prueba de lo que tiene dho, esta presto a ir a dhas tierras con el Supte. Juez y señalarle los parages, terminos y linderos donde llegan, y q.e lo que lleva dho es la verdad p.r el juram.to q.e tiene hecho, en q.e se afirmo y ratifico. Declaro ser de treinta y nueve años de edad, y no tocarle las generales de la ley, firmo conmigo y los de asa.

Salvador Vallejo
Juan B.R. Cooper Rem.do Feliz

Acto continuo hize parecer ante mi el Cuid.o Domingo Gregorio Briones, vecino de esta jurisdiccion, de oficio labrador del cual recibi juram.to q.e hizo p.r Dios y la señal de la Cruz en forma a cargo del cual prometio decir verdad. Y siendo preguntado p.r el conocim.to de las tierras y parages, terminos y linderos pertenec.s al Rancho de Baulines dijo q.e hace cuatro años es vecino de esta jurisdiccion, y sabe q.e las tierras pertenec.s a dho Rancho son del Cuid.o Rafael Garcia, y tienen p.r linderos: Al N.N.E. el arroyo de Tcheglume, al S.S.O el arroyo de Olemos Yoke, al S.S.E. la cañada del Cinco y al O.N.O la boca de Pannatal; q.e los ha visto y reconocido varias veces y q.e desde q.e los posee el referido Rafael Garcia los ha labrado y cultivado y hecho pastar en ellos sus ganados; y p.ª prueba de lo q.e tiene dho esta presto a ir a dhas tierras con el Supte. Juez, y señalarle los parages, terminos y linderos donde llegan; y q.e lo que lleva dho es la verdad p.r el juram.to q.e tiene hecho, en q.e se afirmo y ratifico. Declaro ser de treinta y nueve años de edad, y no tocarle las generales de la ley y firmo

conmigo y los de assa

Gregorio Briones Salvador Vallejo

Juan B. R. Crespes Fern.do Feliz

A continuacion, hize parecer ante mi el Ciud.o Yg.no Pacheco vecino de esta jurisdiccion de oficio labrador, casado, del cual Recibi juram.to q.e hizo p.r Dios y la señal de la cruz en forma de decir verdad. Y preguntado p.r el conocim.to de las tierras y parages terminos y lindros pertenec.tes al Rancho de Bandini, Dijo: Que hace cinco años es vecino de esta jurisdiccion y sabe q.e las tierras pertenec.n a dho Rancho son del Ciud.o Rafael Garcia, y tienen por lindros: Al N. N. E. el arroyo de Tolenglame Al E. S. E. el arroyo de Olimos Lake al E. S. E. la cañada del Cerro, y al O. N. O la Boca de Tamales, q.e les ha visto y reconocido muchas veces y q.e desde q.e las posee el referido Rafael Garcia, las ha labrado, cultivado y han pastado en ellas sus ganados y esto.a prueba de lo q.e lleva dicho, esta pronto a ir a dhas tierras con el pres.te Juez, y señalarle los parages terminos y lindros donde llegan y q.e lo q.e ha dicho es la verdad p.r el juram.to q.e tiene hecho en q.e se afirmo y ratifico. Declaro ser de treinta y ocho años de edad, y no tocarle las gratas de la ley. Firmo conmigo y los de assa—

Yg.no Pacheco

Salvador Vallejo

Juan B. R. Crespes

Fern.do Feliz

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Estando en el Campo en el Paraje nombrado Boca de Tamales termino O. N. O. de los Baulines á diez y seis de Octubre del mismo año, yo el Juez actuando p.r Escribania con dos testigos de asistencia p.r falta de Escribano Publico, los testigos p.r mi examinados, para el Ciud.o Rafael Garcia, dueño de dhas tierras, y Ciud.os Colindantes y Circunvecinos; medidores D.n Antonio Ortega y D. Timoteo Murphy procedi á ver, reconocer y medir las tierras de dho Rancho, mandando á los medidores q.e midiesen con Cordel de Cincuenta vas. de cuatro Jarmes Castellanos, y midieron los Parages terminos y linderos q.e los testigos les señalasen, y p.a mayor claridad, puesto a caballo, en Compañia de todas las partes y testigos referidos de Juicio al Reconocim.to de dhas Tierras, y a sus medidas, comenzando p.r la Boca de Tamal siguiendo el rumbo E. todo el Arroyo de Tulegluene llegamos con dos mil Setecientas vas. a la Cañada del Cerro donde levanto el interesado un monton de piedras en señal de mohonera q.e allí pondria un Sesto; de este punto siguiendo la medida hacia el S. S. O. llegamos al arroyo de Olmos Seco con dos mil Seiscientas vas. donde puso la Correspondte señal p.a punto allí la mohonera respectiva, y se prosiguió midiendo rumbo al O. N. O. hasta llegar a la boca de Tamal con doce mil setecientas vas donde asi mismo puso otra señal p.a levantar en ella otra mohonera; y continuando hacia el N. N. E. llegamos con doce mil Seiscientas vas. al mismo punto de donde comenzamos a medir, donde pondria igualm.te q.e en las anteriores la Correspondte mohonera. De manera que dandose p.r concluida la medida del terreno q.e comprende el rancho de Baulines del Esp.o D. Rafael

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García, Eusta q.p. forma un cuadrilongo de
doce mil setecientas vrs. de longitud y dos
mil doscientas de latitud; y declaramos los
nombrados medidores, estar enterado el ciud.º
Rafael García de las tierras q.e le corresponden
segun el titulo q.e se halla a la cabeza de este
Espd.te; p.r lo cual y en señal de verdadera
posesion y ceremonial acostumbrado arran-
co piedras y yerbas q.e tiro p.r los cuatro
vientos, en manifestacion de su legal y legi-
tima posesion q.e tomó p.r sí. En consecuen-
cia el Espdo. Juez mando que para
mas claridad de los linderos q.e van espresados,
hicien a su costa y manion unas medianeras
de piedra y cal, en altura de mas de vara, p.a
q.e en todo tiempo conste, reconozcan y que-
den p.r terminos y linderos de sus tierras,
y señales; p.r las demas circunvecinas de ellas,
y de haberse ejecutado dhas medidas quieta
y pacificamente sin contradiccion de per-
sona alguna, lo pidió p.r testimonio, y
yo el espdo. Juez en los de mi cargo lo doy
de haber pasado como dho. es; y q.e las es-
presadas medidas han sido practicadas
a todo el leal saber y entender de los me-
didores segun declararon sin dolo, fraude
ni engaño, en contra de ninguna per-
sona; y p.a q.e mas seguridad y feha-
ficacion del juram.to q.e tienen hecho, fir-
maron conmigo y los de mi cargo.

Antonio Ortega

Rafael García

Timoteo Murphy

Jaime R.de Berg

Gregorio Briones

Yg.cio Pacheco

Juan B. R. Cuéllar

Fernando Feliz

En

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vista de hallarse Concluido este Espediente en q.e Consta haberse dado posesion jurídica del Rancho nombrado Bonlenet, á distancia de cinco leguas de este pueblo al Ciud.o Rafael Garcia q.e la tomó p.r si, entregando á la parte el original p.a los usos q.e le Convengan, con los documentos q.e presento. El Ciud.o Salvador Vallejo encargado de justicia de esta jurisdiccion actuando p.r ecsistencia con dos testigos de asa. p.r falta de Escribano publico; asi lo proveí mando y firmé á diez y ocho de Octubre de mil ochocientos cuarenta y uno

Salvador Vallejo

Juan B. R. Cooper Fernando Feliz

Sello Tercero (White seal) Dos Reales
Para los años de mil ochocientos Cuarenta
y mil ochocientos y uno

Filed in Office Jany 28th 1853.

Geo. Pinkus
Secy.

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Translation of juridical posesion

Justices Court of Sonoma
Record of Proceedings instituted to measure and give posesion of two Square leagues in the Rancho of Banlenes of the Citizen Rafael Garcia on the 18th of Octobe 1841.
Judge D Salvador Vallejo
Attesting Witnesses D Fernando Feliz
D Juan Cooper

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Nicholas Gutierrez Lieutenant Colonel of the permanent Cavalry Commander General Inspector and Superior Political Chief ad interim of Upper California
Whereas the Citizen Rafael Garcia a Mexican by birth has Solicited for his personal benefit and that of his family the Land known by the name of Tamales and Banlenes after having previously taken the actions and made the investigations required by the laws and regulations in the matter in exercise of the powers vested in me and by decree of this day and in the name of the Mexican Nation - I have conceded to grant him the mentioned Land declaring it thus property by the present letters patent under reservation of the approbation of the Ex. Territorial Deputation and under the following conditions
1st That he is subject to the rules which shall be established by the regulations for the distribution of Vacant Lands and that in the meantime neither the grantee nor his heirs shall have the power to divide or alienate the lands hereby adjudged, not to subject it to rent entail bond mortgage or any other incumbrance even though it be for a pious purpose nor to convey it into Mortmain
2d He may fence it without prejudicing the crossings roads and servitudes, he will enjoy it freely and exclusively appropriating it to the use and culture that best may suit him but within One year at most he shall a house to be inhabited -

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3a Se shall select of the respectiue Judge to give him
juredical posepsion in virtue of this documente by whom
the boundaries are to be designatedo on whose Extremeties
they will put besides the Land marks some fruit trees
or wold ones of some usefulness
4 The Land donated is two Square leagues (Sitios de ganada
mayor) according to what is shown in the sketch annexed
to the Expediente. The Judge who shall give the posep
ion will cause it to be measured Conformably to
Ordinance leaving the surplus that may result to the
Nation for its Convenient purposes
5th If he should violate these Conditions he will lose his
right to the land, and it may be denounced by any
other party. Consequently I order that these presents
serving him as a title deed and being held as firm
and Valid it be entered in the Corresponding Book and
delivered to the interested party for his security and
other purposes. Given in Monterey on the 19th day of the
Month of March in the year 1836

Nicolas Gutierrez

For de Castello Negrete

Entered On Folio 100 and inscribed No. 97 of the corresponding Book kept in the Secretarys Office in my charge
Monterey March 19th 1836

Castillo

Sir Military Commandin and Officer of the Civil jurisdiction
of the Nothern Frontier.
I Rafael Garcia a resident of this jurisdiction, owner of
the Rancho of los Banlenes as best may lend to the purpose
appear before you and say, That as appears from the title
deeds which I present with the necessary Solemnity and
Oath, I have in my said Rancho two Square Leagues within
the boundaries Expressed in the said title deeds which for

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I want it to be clear in all time to what limits they go and whether any body of the Surrounding Neighbors thereto can prejudice me, You will be pleased to Order, that preceding the Customary Action of identity inspection and Recognizance a Citation be made of the Surrounding Neighbors to the Measurement of my said Lands to which effect I nominate from Now and from the time when the Case may Come on, as Measurer D Antonio Ortega resident of this jurisdiction Skilful in that Matter and that the Others which shall be interested appoint themselves another; and having done so let him who shall be appointed appear Accept and Swear and accordingly proceed to said Measurement Therefore I pray that in Consideration of said document you will be pleased to Order which I have asked and when done to transmit to me said document with the Original proceedings that shall be made out in Security of my right, This Favor and all Necessary etc

Barlenes Octob 13th 1841

Rafael Garcia

In the Pueblo of Sonoma on the 14th day of the month of October 1841 before me the Citizen Salvador Vallejo Military Commandante and Officiating Justice of this jurisdiction was read this petition and in view of the documents therein Mentioned, I Order that with Citation of the Surrounding Neighbors there be had information of identity inspection and Recognizance of said Lands to which I am ready to Assist personally.

This I provide Order and Signed with my Assistants

Salvador Vallejo

Juan B R Cooper. Fernando Feliz

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In the said Pueblo of San Rafael on the fifteenth of October 1841. I the said Judge with my assistants in due form proceeded to the information of identity, summoned before me the Ciudadano Santiago Barry a resident of this jurisdiction a husbandman who took Oath which he made formerly by God and the Sign of the cross under sanction of which he promised to speak the truth and being questioned on the knowledge of the grounds, boundaries and boundaries appertaining to the Rancho of Baulenes, he said that it is ten years since he became a resident of this jurisdiction and knows that the grounds appertaining to said Rancho and the Ciudadano Rafael Garcia, and have for boundaries to North N East the creek Tokelyumo to the South S West the creek Olemos to the West N West the Mouth of Tamales and to the East S East la Canada del Cervo, which he has seen and recognized various times, and that ever since the said Ciudadano Rafael Garcia has possessed them he has labored and cultivated them and has cattle & horses on them, and to prove what he has said he is ready to go to said Lands with the present Judge and designate to him the location bounds and boundaries where they go and that what he has said is the truth in the Oath he has made which he affirmed and ratified He declares himself to be 48 years old and that the disabilities of the Law dont affect him. He signed with me and the assistants.

Jaime Barry — Salvador Vallejo
Juan B R Cooper — Fernando Feliz

In continuation I summoned before me the Ciudadano Domingo Gregorio Briones a resident of this jurisdiction and by profession a husbandman who took Oath which he formerly made by God and the Sign of the Cross under sanction of which he promised to speak truth and being asked

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his knowledge of the grounds and the location bridges and boundaries appertaining to said Rancho of Banlanes He said it is four years since he became a resident of this jurisdiction and knows that the grounds appertaining to said Rancho and the Citizen Rafael Garcia and have for boundaries to North N East- the Creek of Tolelume, to the South S West the Creek of Olemos Lope to the East- S East- la Canada del Cerro and to West- N West- the Mouth of Tomales which he has seen and recognized various times and that now ever since the said Rafael Garcia has possessed them he has labored and cultivated them and his Cattle have pastured on them and to prove what he has said he is ready to go to said Lands with the present Juez and designate to him the location bridges and boundaries where they go and what he has said is the truth on the oath he has made which he affirmed and ratified- He declared himself to be 32 years old and that the disabilities of the Law dont affect him and he signed with me and the assistants

Gregorio Briones — Salvador Vallejo
Juan B Alvarado — Fran^co Felix

In continuance I made appear before me the Citizen Ignacio Pacheco resident of this jurisdiction by profession a husbandman married who took Oath which he made formely by God and the Sign of the cross to speak the truth and questioned upon the knowledge of the grounds and locations bridges and boundaries appertaining to the Rancho Banlenes he says: that it is five years since he became a resident of this jurisdiction, and knows that the pounds appertaining to said Rancho are the Citizen Rafael Garcia and have for boundaries to the North N East- the Creek of Tolelume

to the South Sllest the Creek of Olemas Lobo: to the East- S East la Canada del Sierro and to the West N West, the Mouth of Tomales, which he has seen and recognized Various times, that ever Since the Said Rafael Garcia has possessed them, he has labored and cultivated them, and his Cattle have pastured in them, and to prove what he has said he is ready to go to Said Lands with the present Judge and designate to him the localities bordes and boundaries where they go and that what he has said is the truth which he affirmed and ratified he declares himself to be 38 Years old and that the disabilities of the Law dont affect him - He Signed with me and the Assistants

Ignacio Pacheco — Salvador Vallejo
Juan B R Cooper — Fernandez Feler

Being in the County on the locality called Boca de Tomales in the borders to West N West of los Banlenes on the 16th of October of the Same year I the Justice acting as delegate Judge with two Attesting Witnesses for want of a Notary Public the witnesses having been by me Examined, the Citizen Rafael Garcia Owner of Said Lands and the bordering Land Owners and Surrounding Neighbors the Measurers Dn Antonio Ortega and D Timoteo Murphy being present proceeded to the recognize and measure the Lands of Said Rancho ordering the Measurers to measure a line of fifty Varas = four = of Castillian Palmos and to measure the localities bordes and boundaries which the Attesting Witnesses should designate to them and for greater clearness being on horseback in Company with all the Said parties and Witnesses the recognizance of Said Lands proceeded and the measurement Commenced at la Cienega de Tomales following East- S E along the Creek

of Tolelame amounting to 12.700 Varas to the Canadas del Cerro where the interested party caused a pile of Stones as a Sign of Land Mark which there should effectually be put from this point continuing the measurement towards the South & West- they came to the Creek of Olemos & the with 2.600 Varas where he put the Corresponding Sign in Order to put there the respective Land mark, and they Continued measuring in a West-N Western Course until arriving at La Boca de Tamal with 12.700 Varas where likewise he put another Sign to Raise & it another Land Mark and continuing towards North N East they made out 2.600 Varas at the same point from whence they commenced to measure where also should be put as in the foregoing the corresponding Land Mark, so that the Measurement of Land comprising the Ranchos of Banlenes belonging to Rafael Garcia being included proves to form an Oblong Square of 12.700 Varas in length and 2.600 in breadth, and the said Measurers declared the Citizen Rafael Garcia to be awarded the Land which corresponds to him. According to the title deed Subjoined at the head of this Espediente, by means of all which and as a Sign of true possession, and customary ceremony he rooted up Stones and grass which he threw in a direction of the four winds in manifestation of his legal legitimate possession, which he took for himself -

In Consequence the said Justice Ordered that for the sake of more clearness as to the boundaries running as aforesaid he should make at his Cost & trouble some Land marks of Stone and Lime in height one Vara at most in Order that every time the bounds and boundaries of his Land may be clear recognized and retained by the Surrounding Neighbors to them

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and said measurements being executed quietly & peaceably without contradiction from any person he asked for his testimonial & the said Justice with the assistants put it as having been done as aforesaid, and that and that the said measurements have been made to the best of the measurers knowledge and understanding according to what they depose without any imposition fraud & deceit against any person and for better security and in ratification of the oath they have made they signed with me And the assistants

Rafael Garcia — Antonio Ortega
Francisco Murphy — Jaime R Berry
Gregorio Briones — Ignacio Pacheco
Salvador Vallejo — Juan B Cooper
Fernando Feliz

In view of this Expediente having been concluded in which it appears that Juridical posession has been given of the Rancho called Barlenes. distant 5 leagues from this Pueblo to the Citizen Rafael Garcia who took it for himself, Let it be delivered in Original to the party for such purposes as may suit him together with the documents presented. The Citizen Salvador Vallejo Justice of this Jurisdiction acting as Delegate Judge presiding with the two Attesting Witnesses for want of a Notary Public this proceded Ordered and Signed on the 18th of August 1841

Salvador Vallejo

Juan B Cooper. — Fernando Feliz

Filed in office January 27th 1853
Geo. Fisher Secy

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Rafael Garcia
vs
The United States

} For the place called Tamales y Banlenes being two square leagues of Land in Marin County.

Opinion

This claim is supported by the proof of a grant made to the claimant by Nicholas Gastreres, Political Chief ad interim bearing date March 19th 1836 and made subject to the approbation of the Territorial Deputation and certain specified conditions. The Original grant is introduced in evidence and also a traced copy of the proceedings to obtain it and the Original documents showing that juridical possession of the Land was given to the claimant on the 15th day of October 1841. The concession by the Governor was made March 18 1836 the conditional grant above mentioned was issued the next day and on the 9th of July following the approbation of the Territorial Deputation was had. The preliminary survey seems to have been conducted with much regularity. The land was located in a parallelogram the four sides of which it is certified were run and measured and the angles and lines are defined and the whole plotted on a map. The testimony in the case shows that the Land in question is situated within ten leagues of the Sea Coast and no special consent of Supreme Executive of Mexico to the grant is proved. The question whether the absence of such approval must defeat the application for confirmation is presented.

This question arises under the Colonization Law of 1824 and the regulations of 1828. The fourth article of the former declares that the lands within ten leagues of the Sea Coast shall not be colonized without the previous consent of the Supreme Executive and the last article requires the same Department of the Government to proceed to the colonization of the Territories

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in conformity to the principles established by the Law of
In the argument of this question before the Commission
it was insisted by the Counsel for the claimants that the
restriction in reference to the Lands situated in the
Mexican States and did not apply to those within
a Territory such as was California. That if it did apply
here, still it did not prohibit the granting the lands
within the ten littoral leagues, but only required the
Consent of the Supreme Executive to such Colonization
and that this Consent was given by the Law Regulations
of 1828 which provided for the grant of the National
Domain in the Territories by the Governors with the
Consent of the Departmental Assembly. The Law Agent
does not contend that grants in the Sea Coast are
absolutely prohibited nor does he claim that applica-
tions for grants within the ten littoral leagues could
not be entertained by the Governor proceedings to be
had both by him and the Departmental Assembly towards
perfecting a grant but he claims that before the fee
could pass from the nation the special Consent of the Supreme
Executive was indispensible. Admitting for the purpose
of Considering the question, that the restriction applies
to Lands in the Territories as well as within the State
Organization, We are of Opinion that the inchoate
titles depending upon the Concession of the Governor
with or without the approval of the Departmental Assembly
which would be entitled to Confirmation under the rules
applied generally to such cases would not be defeated
by showing that the Land granted was within ten
leagues of the sea Coast, And no evidence given of the special
Consent of the Supreme Executive to the grant
There is enough in Our Opinion in the evidence given to
the Commission of the Course of Action and policy
of the former Government of the

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And decision of the Supreme Executive of the proceedings in making such grants, Considered in connection with the Laws and regulations on the subject, to require us under the liberal rules laid down for our guidance in the Law organizing this Commission to regard such Concessions on the foundation of Equitable rights. In all cases then of grants within the ten littoral leagues where the requisites proved are such as otherwise to entitle the party to a confirmation it seems to me the reasonable presumption is that the Mexican Nation would never have refused such a grant to her own citizen or have deprived of them lands a people constituting almost the entire population of one of her Territories settled on their homes under her own auspices. A construction that should bring such a result could be admitted only when unavoidable under the strict letter of the Law. It would in my Opinion be a construction inconsistent with the guaranty contained in the treaty of Cession and One not required by the terms of the Law authorizing the the Confirmation of this Commission of claims resting in Equity and founded both on the law of the Custom under the former government

The case under Consideration is one of strong equitable right, and under the views above expressed will rest on the same grounds whether the restrictions pertaining to the Coast Lands be applicable or not. In either event it is an Equity which no proper proof of performance of conditions by the claimant may be the foundation for a Confirmation of title. We deem it therefore unnecessary here to discuss or decide the question whether the restrictions above mentioned applies here, or to Express any further views on the subject. When a case shall be presented where the question arises and the decision of it One way or the Other will

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affect the rights of the parties and influence the result of the adjudication it will receive the full and careful consideration.

The claimant in this case has given no evidence of long and exclusive possession; and the records of the proceedings giving juridical possession shows that he had occupied and cultivated the Lands from the time he obtained the cession of it. He appears to have complied faithfully with the conditions of the grant and the terms of the Colonization Laws and is entitled to a confirmation.

Filed in Office Nov. 22nd 1852
Geo. Fisher
Secy

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Rafael Garcia
vs
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmation is hereby made are known by the name of "Tamales y Barlenes" being the same occupied by the said petitioner and bounded and described as follows to wit: Commencing at the Boca de Tamal and running East South East along the creek of Tchelume twelve thousand seven hundred varas to the Canada del Ciervo at a pile of stones placed for a boundary. Thence towards the South South West two thousand six hundred varas to the Creek of Olemos Lake. Thence in a West North Westerly course twelve thousand seven hundred varas and thence to La Boca de Tamal at the place of Beginning the same being and Oblong square twelve thousand seven hundred varas in length and two thousand six hundred varas in breadth reference for a more particular description of said premises to be had to the Original grant of the same the description contained in the records of juridical proceedings and the Map made part of the Espediente all of which are filed in this case.

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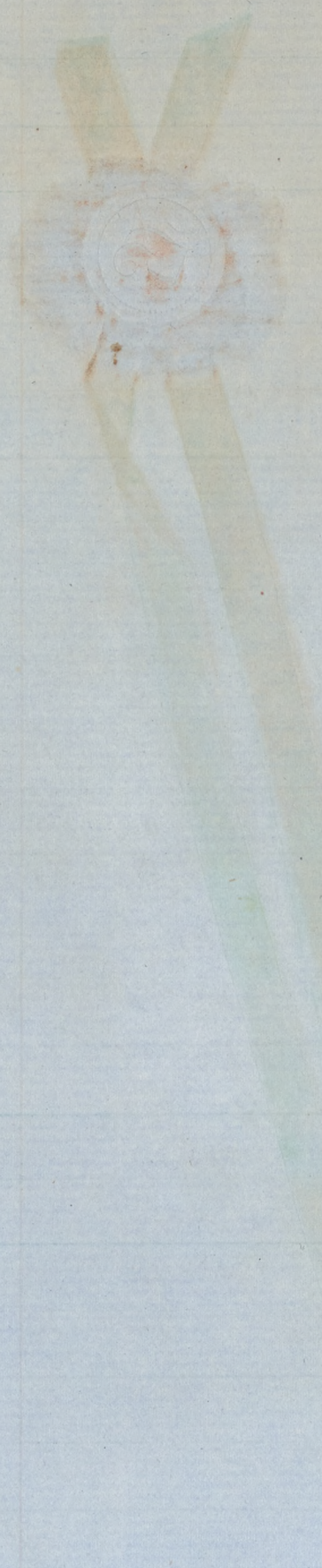
Alpheus Felch
Thompson Campbell
R. Aug. Thompson
Commissioners

Filed in Office Nov. 22nd 1853
Geo. Fisher
Secy



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Office of the Board of Commissioners,

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

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing fifty four ——— pages, numbered from 1 to 54, 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. 114 on the Docket of the said Board, wherein Rafael Garcia is ———

the Claimant "against the United States, for the place known by the name of Tamales y Baulines" ———

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

Geo. Fisher

Secr.

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U. S. DISTRICT
Northern Distri
No. 68 — N
THE UNITED STA
6
43.
Rafael Garci

TRANSCRIPT OF THE
FROM THE
BOARD OF U. S. LAND COM
In Case No. 114

Filed, August t
John A
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Office of the Attorney General of the United States,

Washington, 30th November 1854.

Rafael Garcia
vs.
The United States } 114.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of August 1854 the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Attorney General.

No 68

U. S. District Court

Northern District

The United States

vs.

Rafael Garcia

Appeal Notice

Tomaleo J Bautenes

Agt 23/54

Filed Jany 8. 1855.

John A. Monroe,

Clerk

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

The United States
Appellants
vs
Rafael Garcia
No 68.

The petition of the United States by
their Attorney represents: that this cause
is an application for a review of the
decision of the Board of Commissioners whereby
the Claim of the said Appellee was confirmed
as appears by reference to the records in
the Case: That a transcript of the
said Records was filed in this Court
on the day of ; that a
notice of appeal was filed on the
day of and that the
land claimed lies in the said District.
That the said claim is invalid.
Wherefore appellants pray that the said
decision of the Board be reversed and
that this Court decree the said title
to be invalid. Respectfully &c

~~Asst~~
W Wassell
Asst U.S. Atty.

U. S. District Court

No 68

The United States

Appellants

vs

Rafael Garcia

Petition

Filed June 27, 1855,

by Chaves

Deputy

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A. Glassell

Asst. U. S. Atty.

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District Court of the United States
Northern District of California

The United States
Appellants
vs
Rafael Garcia

No. 68 (L. C. Docket No. 174)

Rafael Garcia the Appellee and claimant in the above entitled cause in answer to the Petition therein filed avers and says, that his title to the land therein claimed is valid.

He therefore prays that the decision of the Board of Land Commissioners be affirmed and the title of the said claimant be decreed to be valid

J. Charles Atty
for Claimant.

U. S. District Court

No 68.

The United States

Appellants

vs

Rafael Garcia

Answer

Filed June 29, 1855

by Chevers

Deputy

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J. Clarke Atty

for Claimants

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

Case No. 68.

Rafael Garcia
— vs —
United States

In pursuance of a Notice from the Attorney General of the United States ~~xxxxxxx~~ ~~xxxxxxx~~, it is hereby stipulated and agreed that no further appeal shall be taken in this Case on the part of the United States and that the Claimant have leave to proceed under the Decree of this Court heretofore rendered in his favor as under final decree—

Dated San Francisco
October ~~xxxx~~ 19th A.D. 1858

P. Della Torre
U.S. Attn
J. Clarke

District Court of the U. S
Northern District of California

Rafael Garcia
vs
The United States

Stipulation

Case No 68

Register of
Land claims No 1. Page 68

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Filed Oct: 19. 1858.
W. A. Clerke
Clerk

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Tuesday the 19th day of October in the year of our Lord one thousand eight hundred and fifty-eight.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Rafael Garcia.

} D.C. 68 & L.C. 114

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case on the part of the United States, and a stipulation to that effect having been entered into, on motion of P. Della Torre Esq. U. S. attorney, it is Ordered that claimant have leave to proceed under the decree of the Board of U. S. Land Commissioners heretofore rendered in his favor, as under Final Decree.

Ogden Hoffman
U. S. Dist Judge

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UNITED STATES DISTRICT COURT,
Northern District of California.

The United States

vs.

Rafael Garcia.

Order vacating appeal.

Filed October 19. 1858.

W. H. Chevers
CLERK.

By

DEPUTY.

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

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At a Statid Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court House, in the City of San Francisco, on Friday the Second day of December in the year of our Lord one thousand eight hundred and fifty-nine,

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States,
vs.
Rafael Garcia.

No. 68.

" Tomales, y Baulenas, "

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 B. F. Randolph, Esq. of Counsel for the Claimant, 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 Claimant be allowed ten 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.

No. 68.

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States,

vs.

Rafael Garcia,

Order to return Survey, etc,

Filed December 2nd 1859.

W. A. Chesebrough *Clerk.*

By .....

..... *Deputy.*

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PAGE 68.

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.*

The United States } In District Court of the United
v } States for Northern District of
Rafael Garcia } California.

No. 68.

The petition of O. L. Shafter,
Jas McM. Shafter, T. W. Park, & Sol. Heydenfeldt,
respectfully shews, That the Survey of the land
finally confirmed herein was approved by
the Surveyor General of the United States
for California on the 19th Jany. 1860.

That the date of the first
publication by said Surveyor General under the
provisions of the 1st Section of the act of June
14th 1860, was October 30th 1860, that the petitioners
have an interest in the survey and location
by reason of being the Successors in interest of
Bethuel Phelps to whom certain lands
colindante with said Claim of said Garcia
was confirmed by this Court in Case No. 418.

And your petitioners further
shew that the said Survey is erroneous
as appears by the affidavit of Jas McM. Shafter
hereto annexed.

Wherefore your petitioners pray that
an order may issue directing the said
Surveyor General to return into this Court
the plat of his said Official Survey, on or
before a day to be therein prescribed: and that
the monition of this Court issue to the U.

S. Marshal, Commanding him to give notice to all parties in interest that objection has been made to the Survey and location of the land finally confirmed herein, according to the practice of this Court.

And Your petitioners will Ever pray &c.

Dated San Francisco Oct. 1860.

Shafter & Key Verified

Attys for Petitioners.

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United States District Court.
Southern District of California.

The United States
vs
Rafael Garcia.

Jas. M. M. Shafter having been sworn says. That he has examined the Survey and location of the land claimed herein, and that the same is erroneous, in that it includes land which belongs to the petitioner named in the annexed petition as the successors in interest of Bennet Phelps to whom the lands in said petition referred to were confirmed.

That the said Surveyor General has duly advertised the plot of said Survey and location commencing on the 3d Oct. 1860 in San Francisco.

Subscribed & Sworn to
before me this 30th day
of October 1860.

J. M. M. Shafter

Henry Haight
Notary Public

No. 68.

In U. S. District Court

The United States

v

Rafael Garcia.

Petition & affts. for return of Survey. by Shelton Bank & Heydenfeldt.

Filed Oct: 30. 1860.
W. H. H. Chever.
Clerk

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Shelton Heydenfeldt
Attys. for Petitioners

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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 Mesday the 30th 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.

Rafael Garcia.

IN LAND CASES.

District Court No. 68

Land Com. No. 1114.

AND now at this day on application of Mathias, Park & Heydenfeldt Attorneys for themselves IT IS ORDERED, that the Surveyor General of the United States for California return into this Court, on or before Wednesday, the 14th day of November A. D. 1860, his Official Survey and Plat of the land finally confirmed in the above entitled cause, known as "Gonsales y Bandenas" and situated in the County of Marin in said District; AND IT IS FURTHER ORDERED, that the United States Marshal for this District serve upon the said Surveyor General, without delay, a certified copy of this order, and make due return hereon.

No. 68.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Rafael Garcia,

ORDER TO RETURN SURVEY.

Returnable Nov. 14, 1860.

Issued Oct. 30, 1860.

Filed Oct. 31, 1860.

W. A. Reed

Clerk.

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Survey returnable on the 14th November
U. S. District Court for California
San Francisco
October 30th 1860

By order
W. A. Reed
Clerk
By E. D. Sherman
Deputy

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the CITY OF SAN FRANCISCO, on Wednesday the 14th day of November in the year of our Lord one thousand eight hundred and sixty,

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

v.

Rafael García,

IN LAND CASES.

District Court No. 68,

Land Com. No.

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

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

No. 68.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Rafael García,

ORDER ON RETURN OF MONITION.

Filed Nov. 14, 1860

W. H. Chevers,

Clerk.

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

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

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 68, to Rafael García known as "Tomales y Baulinas," and situated in the County of Marin 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 14th day of November 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 30th day of October A. D., 1860.

W. A. Chever S.

CLERK.

The within Moxition was received by me on Tuesday the 30th day of October 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for 3 consecutive Wednesdays, in the San Francisco Herald, commencing on the 31st day of October 1860, and for 2 consecutive Saturdays, in the Sonoma County Journal a paper published nearest the land, commencing on the 3rd day of Novemb 1860.

Dated San Francisco, Oct. 14 1860

P. L. Solomon
U. S. Marshal.

No. 68.

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

THE UNITED STATES.

V.

Rafael Garcia.

MONITION.

Returnable Nov. 14, 1860.

Issued Oct. 30th 1860.

Filed Nov. 14th 1860.

W. A. Chevers
Clerk.

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

The United States,
v
Rafael Garcia.
} No. 68

Shafter Park & Heydenfeldt
intervenors herein object to the survey of the
United States Surveyor General for California filed
herein, and for cause of objection say,
That the said survey is located entirely
upon land heretofore confirmed by this
Court to Bethuel Phelps (in case No. 418)
as the owner of a grant made by the
Mexican Government to James R. Berry,
which said grant is older in date than
the alleged grant to said Garcia: and that
said survey is not in accordance with said grant, or the
decree reference thereto.
Wherefore intervenors pray that
the said survey may be decreed erroneous
and be postponed to the location of said
grant to Berry.

Shafter, Park & Heydenfeldt
per Lese.

No. 68

In U. S. Dist. Court

The United States

v

Rafael Garcia

Exceptions to Survey of
Shafter Park & Hydraulics

Filed Nov: 28. 1860.
W. A. Ahern,
Clerk

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Shafter Park Hydraulics
per se

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

The United States } No. 68.
v.
Rafael Garcia.

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Wm B. Fleming having been
sworn says that he is with Shafter Park & Key deceased
who are Intervenors in this case, and upon whose
application the survey of the land herein claimed
was ordered to be returned. That the said Shafter
Park & Key deceased names are regularly entered
on the minutes of this Court as intervenors on their
own behalf on the return of the monition issued
to the Marshal.

That the failure of said
Intervenors to file their exceptions to said survey
was through mistake alone; as affiant is fully
aware of the intention of said parties so to do: that
affiant states that he was informed by Jas. McM.
Shafter that the said objections were filed by him
& affiant verily believes that said Shafter so believed,
but on examination of the record, it is ascertained
by affiant that said Shafter was mistaken: and
that the objections to which he had reference were
in a conflicting claim. And further that the
said Jas. McM. Shafter has the charge, more
particularly than the other members of the
firm, of matters arising out of their claim to
lands in Marin County, where the land
claimed in this case is situated.

W. B. Fleming.

Subscribed & sworn to before me
this 28th Nov. A. D. 1860
W. A. Clevenger
N. P. Com.

On reading & filing the foregoing affidavit
it is Ordered.

That the said Intervenors, Shafter
Park & Hey accordingly have leave to file
their objections to the survey in this cause
this day, as of the 19th day of November
1860.

November 28th 1860.

Ogden Hoffman
Dist Judge

No 68
In U. S. Dist Court

The United States
vs
Rafael Garcia,

Affidavit & order to
file objections nunc
pro tunc.

Filed Nov 28, 1860.
W. H. Chevers
Clerk

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S. F. Law Paper Mfg Co Limited

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

The United States
vs
Rafael Garcia

No 96.

No 68.

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

Your petitioner Sarah Randall respectfully showeth, that she is the widow and relict of William E. Randall late of Marin County, deceased. That the said William E. Randall departed this life on the 8th day of June 1860 leaving your petitioner his widow and five children all infants now surviving. That at the time of his death the said William E. Randall was carrying on a large dairy Establishment and was extensively engaged in fencing his land hereafter mentioned. That the said William E. Randall was killed when in good health and in no wise apprehending death and had made no preparation in a business point of view therefor. That your petitioner at the time of the decease of the said William E. Randall had never been accustomed to nor had any but a very limited Knowledge of business affairs or transactions, other than the management of her family and honshold affairs and the conduct of the industrial part of the dairy affairs and was wholly unaccustomed to and unacquainted with legal affairs. That letters of administration in due form of law have issued to your petitioner by the County Judge of Marin County, setting as Judge of Probate on the estate of said William E. Randall who at the time of his decease resided in said County of Marin, and that your petitioner thereby became and still is administrator of the Estate of the said William E. Randall deceased. That on the 1st day of May 185- Rafael Garcia and his wife by deed under their hands and seals, duly acknowledged, certified and recorded did convey unto the said

William E. Randall and one John Nelson a portion of the Rancho known as the Rancho Tomales & Bolinas situate in the said County of Marin which is bounded and described as follows: to wit: "All that certain portion of the Rancho known as the Rancho Tomales & Bolinas situate in said County of Marin, described as follows, to wit: Commencing at a Stake and Stones that mark the Southwest Corner of the tract of land belonging to D. & N. H. Olds thence in a Southeasterly direction along the centre of the Creek to the corner of the above named Rancho to a Stake and Stones; thence in a Northeasterly direction along the line between said Rancho Tomales & Bolinas and the Rancho Bolinas to the road on the top of the ridge known as redwood ridge; thence in a northwesterly direction in a straight line following the general direction of said road to the point where the line of D. & N. H. Olds intersects or crosses said road on the top of said ridge; thence in a South-westerly direction along the line of said D. & N. H. Olds to the place of beginning." That shortly before the death of the said William E. Randall the said John Nelson did by deed under his hand and seal convey to the said William E. Randall his, the said Nelson's, undivided half of the land above described. That said Nelson had not before such conveyance to said William E. Randall sold, transferred or conveyed said above described land or any part thereof to any other person and that said William E. Randall and your petitioners were owners at the time of the decease of the said William E. Randall of the land above described as common property of the said William E. Randall

and your petitioner. That your petitioner is informed and believes that the said Rancho Tomales and Bolinas has been finally confirmed to the said Rafael Garcia to the extent of two leagues within the boundaries contained in the original grant of said rancho Tomales and Bolinas and leaving all of the land contained within said boundaries except said extent of two leagues unconfirmed to said Rafael Garcia and that such surplus over two leagues amounts to about two thousand acres that a survey of said rancho under the decree of confirmation has been made and returned into this court and that such survey has been so made and the lines so run as to leave a greater portion of the land above described and mentioned as the property of the said William E. Randall and your petitioner outside of such survey and that unless such survey be corrected such land so left outside will not be included in the patent for said lands hereafter to be issued. That the said William E. Randall after purchasing said land made extensive and valuable improvements thereon in buildings and fences nearly all of which will be lost to your petitioner and the infant heirs of said William E. Randall unless such survey be corrected or a new one ordered. That your petitioner was not informed and was not aware until within a very short time past that it would be necessary, proper or useful to take any measures to have such survey corrected or set aside. That your petitioner is, and ever since the decease of the said William E. Randall has been much occupied with the care of her young family and the management of the estate of the said William E. Randall deceased who was to some considerable extent indebted at

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the time of his decease and that unless such survey be set aside and a new one ordered on such principles as to include within such survey the land above described your petitioner and said infant Heirs of said William E. Randall will be left nearly if not wholly destitute of the means of support. That if such survey should be set aside a new survey may be so made as to protect all purchasers from said Rafael Garcia in the land so purchased and yet leave to the United States all of the land included within the boundary lines of said rancho Tomales & Bolinas over and above two leagues. That your petitioner never saw or heard of the Monition published by the United States Surveyor after the return of said survey to this Court ~~and~~ did not know the meaning thereof if she did.

A. F. Williams
Atty for Petitioner

City & County of San Francisco ss

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Samuel Aldsberry duly sworn deposes that he was an intimate acquaintance and near neighbor of William E. Randall, late of Marin County deceased, in his lifetime and has since the death been an intimate acquaintance of the family left by the said William E. Randall him surviving That deponent was well acquainted with the said Randalls business affairs and his pecuniary condition ~~That the petitioner the~~ petitioner named is very industrious and devotes herself incessantly to the care of her family and the conduct of her dairy operations and as deponent verily believes is little informed & knows as little of common business transactions and especially of legal matters as the majority of American Matrons That deponent resided on said Rancho Tomales & Bolinas before said Randall came thereon or purchased any part thereof and has resided there ever since That deponent is as deponent verily believes better acquainted with said Randalls affairs & the condition of his estate than the said Sarah Randall as deponent has been ever

since the said Randall came on the said Ranchos Tomales & Bolinas to reside a period of nearly four years the Confidential friend and adviser of said Randall and since the death of said Randall the trusted and Confidential friend and adviser of his relict Widow that the said Sarah resides in a remote and inaccessible part of said County of Marin & that it would be very inconvenient & expensive for her to go before the proper Officer to verify the annexed petition that deponent has read the annexed petition and knows the contents thereof and that the same is as deponent verily believes in all respects true and that deponent knows of deponents own knowledge that almost all of said petition is true

Daniel Olds Jr

Subscribed & Sworn to before me this 26th day of March 1861

W. H. Clement
N. P. Com.

No 68.

U. S. Dist: Court.

The United States.

—vs—

Rafael Garcia.

Pet: and affidavit to open default and allow Sarah Randall to intervene.

Filed March 27. 1861.
W. H. Chenet,
Clerk.

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A. J. Wilson.
atty: for Pet

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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 30th day of April in the year of our Lord one thousand eight hundred and sixty one,

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Rafael Garcia.

No. 68.
L. C. 114.

And now at this day, on motion of A. J. Willson, Esq. it is ordered by the Court that Sarah Randall have leave to intervene herein.

No. 68.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Rafael Garcia.

Order allowing Sarah Randall to intervene.

Filed April 30, 1861.

W. H. Chevers,
Clerk.

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District Court Of The United States
For the Northern District Of California
The United States
vs
Rafael Garcia

Take notice

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That on papers
with a copy whereof you are
herewith served and on the moving
papers on file in this Cause
I shall move this Court on
the 26th day of April inst
at the opening thereof or as soon
thereafter as Counsel Can be heard
to permit Sarah Randall widow
of William E Randall late of Marin
County deceased & administratrix
of his Estate to intervene for her interest
& the interest of the heirs of said
Randall in the above entitled
Cause and for that purpose that
all defaults heretofore entered Cutting
off such right of intervention be
set aside & for such & other & further
relief as to the Court shall seem
just and proper Dated San

San Francisco April 18th 1861

To
Messrs Shafter &
Heydenfeldt
& C Bonham
U S Dist Atty

A. T. Wilson
Atty for S Randall

Due notice admitted of the
within motion & answer
thereto April 23d 1861

C Bonham
U. S. Dist Atty

Dist. Court of the United States
Northern Dist. of California

The United States
vs
Gabriel Garcia

Notice

Served me this 23d day of April 1861
Shafter Park &
Heydenfeldt & Bro
Attys

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Distrct Court of The United States for
The Northern Distrct of Calefornia
The United States }
vs
Rafael Garcia }

To Hon Ogden Hoffman
Judge of said Court

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The petition of Sarah Randall respectfully showeth that she is the widow of William E Randall late of Marin County State of California deceased, and administratrix of his estate That on the 1st day of May 1857 the said Rafael Garcia by a deed under his hand and seal duly acknowledged & proved and recorded did convey to the said William E Randall and one John Nelson a portion of the Ranchos known as the Ranchos Bolinas & Tomales hereinafter described & that the said John Nelson has since conveyed his undivided half of said land hereby described by deed to the said William E Randall which said land so conveyed to said Randall & Nelson was & is bounded & described as follows viz "Beginning at a stake and stones that mark the Southwest Corner of a tract of land belonging to D & N H Olds thence in a Southeasterly

direction along the center of the Creek to the Corner of the above named Rancho to a stake & stones Thence in a North Easterly direction along the line between said Ranchos Tomales & Bolinas, and the ~~rancho Bolinas to the~~ Road on the top of the ridge known as Redwood ridge. Thence in a Northwesterly direction in a straight line following the general direction of said Road to the point where the line of D & N H Olds intersects or Crosses said Road on the top of said ridge Thence in a South westerly direction along the line of said D & N H Olds to the place of beginning

That on the Seventh day of June 1860 the said William E Randall while in good health and in his mind ~~& memory~~ sound and without having made any preparations therefor was suddenly Mortally wounded of which wound on the day following he died That at the time of his said decease he was busily and extensively engaged in fencing his said land & in Carrying on a large dairy establishment That the said William E Randall left surviving his widow and five children himself surviving all of which children are infants

under the age of Eleven years That the said William E Randall was considerably indebted at the time of his decease That your petitioner had never previous to the death of her said husband had any experience in business transactions or knowledge thereof and especially was your petitioner utterly ignorant of legal affairs or proceedings That ever since the decease of her said husband your petitioner has had charge of said dairy and the Care of the settlement of the estate of said William E Randall over and above the nurture and instruction of her children and the management of her household affairs That your petitioner has ever since the decease of her said husband resided in a remote part of the County of Marin at a distance from the City of San Francisco That your petitioner did not know and had received no information previous to the Month of January last that any Application for any of said Ranchos Bolinas & Tomales had been made or that it would be necessary or useful to take any proceedings whatever to protect the interests of herself & children in said Ranchos or all

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That as soon after receiving such in-
formation as it was in the power of
your petitioner to do your petitioner
took Measures to obtain permission from
this Court ~~permission~~ to intervene for
her interest in the above entitled Cause
and for the interest of her said infant
children. but was much hindered and
delayed in so doing by your petitioners
remote residence. the inclemency of
the weather the difficulties in
travelling. and by your petitioners other
many and pressing duties & obligations
That the delay in bringing this matter
before this Court has been in no
degree the result of carelessness on
your petitioners part but solely by reasons
and difficulties over which your petitioner
had no Control Your petitioner further
shows that the Survey of said Ran-
cho made by the United States Sur-
veyor general for California & returned
into this Court has been so Made as
to exclude nearly all of the above
described land of the said William
E Randall & your petitioner together
with all of the buildings erected there-
on and most of the fencing. That
the said William E Randall has

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previous to his decease built upon said
land is excluded a good dwelling house
barn & Convenient dairy house to-
gether with Much valuable fencing
That in Making such survey the
said Surveyor stopped Monte Short
of the Cañada de Cervo which was
one of the boundaries of the land
above described as your petitioner is
informed & believes & that all of the
land above described is within the
limits of the land confirmed in the
above entitled Cause to the said
Rafael Garcia as your petitioner is in-
formed & believes

State of California }
County of Sonoma } ss

Sarah Randall being duly sworn deposes that she has read the foregoing petition & knows the contents thereof & that the same is true

Subscribed & sworn before me this 17th day of April 1861

Sarah Randall

John T. Forlano
Justice of the Peace

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State of California }
County of Sonoma } ss

Sarah Randall being duly sworn deposes that she has read the foregoing petition & knows the contents thereof & that the same is true of her own knowledge except the matters stated on information & belief and as to those matters she believes it to be true

Sarah Randall

Subscribed & sworn before me this 17th day of April 1861

D. O'Connor
Notary Public

Dist. Court of the United States
Northern Dist. of California

No. 68.

The United States

vs

Rafael Garcia

Petition
of Sarah Randal

Served on Shaftus
April 29 1861 –

Shaftus Park Atty
Hey dempfelt for Petr

Filed April 30. 1861.
W. H. Chevers.
Clerk

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A. T. Wilson.
Atty for Petitioner.

District Court Of The United States For
The Northern District Of California
The United States
vs
Rafael Garcia

Sarah Randall widow
and administratrix of the estate of William
E Randall late of the County of Marin in
said State deceased returning for her return
and the return of the heirs of the said William
E Randall deceased hereby excepts to the
final survey of the Ranchos Tomales &
Bolinas made & returned into this Court
in the above entitled Cause and shows
to this Court that heretofore to wit on
the 1st day of May 1857 the said Rafael Garcia
sold & conveyed by deed under his hand & seal as
a portion of said Rancho Tomales & Bolinas a tract
of a land a description of which is given at the
end of this exception to the said William E
Randall & John Nelson That subsequent-
ly and before the 7th day of June 1860 the
said John Nelson sold & conveyed by deed under
his hand & seal all of his the said John
Nelsons interest in & right & title to the
said tract of land, so as aforesaid sold & convey
-ed by the said Rafael Garcia, to the said
William E Randall That the said William

E Randall departed this life on the 7th day of June 1860 leaving this intervenor his widow & four children all of whom are still Minors, him surviving That this intervenor has been appointed by the Court of Probate of said County of Marin administratrix of the Estate of the said William E Randall deceased That the land so sold & conveyed by the said Rafael Garcia to the said William E Randall & John Nelson is within the boundaries of the land confirmed to the said Rafael Garcia under the name of Tomales & Baisas by the United States Board of Land Commissioners in this Cause That one of said boundaries was & is a certain Valley or depression of land Called the Cañada de Cicero that judicial position was given to the said Rafael Garcia to said Cañada de Cicero That in Making the final survey of said Rancho the Surveyor general stopped far short of said Cañada de Cicero and so run the lines of said Rancho as to exclude nearly all of the land so as aforesaid sold & conveyed by the said Rafael Garcia to the said William E Randall & John Nelson That the said William E

Randall & John Nelson made extensive & valuable improvements by the erection of buildings & fences on the land so sold to them by the said Rafael Garcia after so purchasing the same from the said Rafael & before the making of said survey all of which buildings and nearly all of which improvements will be lost to this intervenor and the heirs of the said William E Randall if said survey shall not be reformed because as this intervenor shows the same were & are on the land so excluded by the said survey that there remains a large portion of said Rancho Tomales & Bolinas still in the hands of the said Rafael Garcia and that the survey of said Rancho may be so made as not to include a greater quantity of land than two leagues and yet include within the same all land sold as a part of said Rancho by said Rafael Garcia and a large amount yet unsold by him This intervenor insists 1st that said survey should be reformed

as to include all of the land of which judicial possession was given to the said Rafael Garcia which would include all of the land so sold to the said William & Randall & Isham Wilson

2d That if this Court should hold that only two leagues in quantity was granted and has been confirmed to the said Rafael Garcia. the said survey should be so reformed as that the land so sold by the said Rafael Garcia to the said William & Randall shall be included in the survey of said ranchs and that if any of the land of which judicial possession was given to the said to the said Rafael Garcia must be excluded from said survey it shall be of that which remains unsold & still claimed by the said Rafael Garcia

A. J. Wilson Atty
For Intervenor Sarah Randall

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

The United States

vs

Rafael Garcia

Exceptions to Survey

A. S. Wilson
atty for Exceptor

68.

U. S. Dist. Court.

The United States.

—vs—

Rafael Garcia.

Exceptions to Survey.

Filed August 27, 1861.
W. H. Chevers.
Clerk.

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A. S. Nelson.
Atty

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Rafael Garcia

IN LAND CASES.

Dist. Court No. 68

Land Com. No. 114

BE IT REMEMBERED, that on this 19th day of January A. D., 1863, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Nelson A. Olds a witness produced in behalf of Lnt. Randall in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being ~~interpreted by a sworn interpreter~~ taken by consent.

PRESENT: A. P. Wilson Esq for Lnt. Randall, H. H. Sharp U. S. Atty for the U. S.

QUESTIONS IN BEHALF OF THE Lnt. Randall.

Question 1st,

What is your name, age and place of residence?

Ans.

My name is Nelson A. Olds my age is 37 years, I reside

Olema
in ~~Petaluma~~ Marin County, Cal.

2.

Do you know the ranche Tomales y Bolenas confirmed to Rafael Garcia, and do you reside there?

Ans.

I do. I have resided there six years.

3.

Have you made a search recently in the County Recorders office of Marin County to ascertain whether any portion of that ranche remains unsold and in the hands of Rafael Garcia, if so when did you make that search and what was its result?

Ans.

I made the search on the 12th of this present month. At the Northwest end of the ranche there remains unsold about 2000 acres.

4.

Have you ever known or heard of any sale of that

200 acres?

Ans.

I have not. I was talking to Garcia on Monday last, and he said he had not sold it.

Cross Examination
Questions by Counsel for the U.S.

Ques: 5.

Look upon the official survey in this case, and point out upon it the location of the Boca de Tomales?

Objected to on the ground that it assumes that the witness can point it out.

Ans.

I cannot point it out.

6.

State how many streams are there which empty into the head of Tomales bay?

Ans.

Ans.

7.

What are their names?

Ans.

The Olema Lake and ~~Tokeglume~~ Tokeglume.

8.

Is there any other stream emptying directly into said Bay within three or four miles of the head of the Bay?

Ans.

I do not know of any.

9.

Where does the Tokeglume creek take it's rise?

Ans.

~~I~~ I don't know.

Deposition closed

Nelson W. Olds

Subscribed and sworn to this 19th day of January A.D. 1863 before me.

W. A. Reed,

N. P. Com.

No. 68

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

Rafael Garcia

DEPOSITION OF

S. H. Olds

on part of Intervenor

Randall

Filed January 20, 1863,

W. H. Chas.

Clerk.

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Rafael Garcia

IN LAND CASES.

Dist. Court No. 68

Land Com. No. 114

BE IT REMEMBERED, that on this 27th day of October A. D., 1862, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Daniel Olds Jr. a witness produced in behalf of Intervenor S. Randall in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: ~~his evidence being interpreted by a sworn interpreter.~~

PRESENT: A. P. Hillson Esq for Int. Randall, W. H. Shafter U. S. Atty. for the U. S. and S. W. M. Shafter for Intr. Shafters Park & Heydenfeldt

QUESTIONS IN BEHALF OF THE Int. Randall

Question 1st,

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

Ans.

My name is Daniel Olds Jr. my age is 49 years & reside

in Marin County.

~~Witness examined~~

2.

Do you reside on any part of the rancho Domales y Polenas, claimed in this case, if so point out on the certified copy plat of the official survey herein, where you do reside?

Ans.

I do. I reside at the place marked on the map "Daniel Old's house", where I have resided very nearly six years.

3.

Were you present when the official survey was made in this case by R. C. Matthewson U. S. Deputy Surveyor?

Ans.

I was present when the Southeast line was run.

4.

Q. Did you hear the

testimony of Salvador Vallejo and Ignacio Pacheco just given?

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Ans.

I did.

5.

Were you present on the 4th of October inst. when the Cañada del Cierro was pointed out by Salvador Vallejo?

Ans.

I was.

6.

State whether the South east line of the official survey was run in or near the Cañada del Cierro?

Ans.

It was not.

7.

State how far distant and in what direction is the said Southeast line from the Cañada del Cierro?

Objected to as the ground that the question calls for information in conflict with the terms of the deed, fixing the external limits of the land to be surveyed.

Ans.

I should think about a mile and a half Northwest of the Canada.

8.

Look at the deed now shown you, being a deed from Rafael Garcia et al to John Nelson and Wm E. Randall, marked Exhibit Olds No. 1. to be annexed to this deposition, and state if you know the land conveyed in that deed?

Ans.

I do.

9.

State if any portion of it is, if so what portion, lies

between the Cañada del Cierro and the Southeast line of the official survey?

Ans.

I should judge about 800 acres of the land described in this deed.

10.

State if the grantees or either of them, in the said deed, had made any improvements previous to the official survey, if so state their position with reference to the said Southeast line of the official survey?

Ans.

They both made improvements consisting of a house barn and fences, and the house barn and most of the fences lie to the Southeast of the said Southeast line.

+

Counsel for Intervenor Randall offers in evidence a

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deed from John Nelson to Hon. E. Randall, marked Exhibit Olds No. 2, to be annexed to this deposition.

11.

Shake who is now in possession of the said house, barn and lands enclosed by the fences?

Ans.

Mrs. Sarah Randall wife of Wm. E. Randall.

12.

Is Wm E Randall still living if not, when did he die?

Ans.

He died two years ago, the 7th of June last.

Cross Examination

Questions by Counsel for Intervenors Shafters Park and Sleepenfeldt.

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Ques: 13.

Will you describe the Canada del Cierro, how extensive is it, how long and how wide, and in what direction does it run?

Ans.

It is a canon running each of the mountains where there was a summit one. It is to the Southeast of the Southeast line of the official survey. At it's mouth it was probably fifty yards wide and grows narrow as it goes up. I should judge it to be a mile and a half long, and I should judge it runs about Southeast and Northwest.

14.

Does this Cañada reach either of the streams called Alamo Lake, or that called on the official map San

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Geronimo?

Ans.

It forms the headwaters of the Alemus Lake. It does not touch the San Geronimo.

15.

How far is it from the San Geronimo, and how is it seperated from that stream?

Ans.

It is about two miles distant, and is seperated by a ridge of mountains.

16

Will you explain your answer in which you say that the Canada del Cierro forms the headwaters of the Alemus Lake?

Ans.

The waters coming out of the Cañada forms a little lake, and the Alemus Lake runs off from that Lake.

17.

Is the Canada del Cierro the one that debauches directly from the mountains upon this little lake, of which you speak?

Ans.

It is.

18.

Is this little lake the one about sixty or eighty rods from the house of Benjamin Miller?

Ans.

I Yes sir. I think a little further than that, but it is the only one in that vicinity.

Direct examination resumed.

Questions by Counsel for Intervenor Randall.

Ques: 19.

In answer to ques: 13 you
say the course of the
Cañada ~~xxx~~ is about
Southeast and Northwest.
Upon reflection do you
think that is correct?

Ans.
I should think it is
nearer right to call it
about East and West.

Deposition closed.

David Olds Jr.

Subscribed and sworn to this
22nd day of October A.D. 1862 before me

W. A. T. Cheverd.
U. S. Com.—

No. 68

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

Rafael Garcia

DEPOSITION OF

Daniel Ades Jr

on part of Lnt. S.

Randall

Filed January 12, 1863,

W. H. Chevers,

Clerk.

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2 Exhibits

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Rafael Garcia

IN LAND CASES.

Dist. Court No. 68

Land Com. No. 114

BE IT REMEMBERED, that on this 24th day of October A. D., 1862, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Ignacio Pacheco a witness produced in behalf of Intervenor S. Randall in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Chas. D. Galan a sworn interpreter.

PRESENT:

A. P. Dickson Esq for Intervenor Randall. W. H. Sharp U. S. Atty for the U. S.

QUESTIONS IN BEHALF OF THE Int. Randall

Question 1st,

What is your name, age and place of residence?

Ans.

My name is Ignacio Pacheco, my age is 55 years, and I

reside in Marin County.

2.

Did you hear the evidence just given by Salvador Vallejo?

Ans.

I did.

3.

Were you present when juridical posession of the Rancho Tomales y Bolinas claimed in this case, was given by Don Salvador Vallejo to Rafael Garcia?

Ans.

I was.

4

Were you one of the assisting witnesses at the giving of that juridical posession?

Ans.

I was.

5.

When were you last upon the ground, of which the said juridical posession was given?

Ans.

On the 4th of the present October.

6.

Was the place known as the Cañada del Cierro at the time such juridical posession was given, pointed out by any one, when you were last upon the ground?

Ans.

It was.

7.

Who so pointed it out?

Ans.

Salvador Vallejo, the one who was Judge at the time juridica posession was given.

8.

Who were present when Salvador Vallejo pointed out the location of the Cañada del Cierro, besides yourself and Vallejo?

Ans.

The gentlemen upon present- Wm. Daniel Esq and Danl. H.

Leaver.

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Cross Examination waived

Dep. 9.

Look at the document now shown you marked "Doc: N.S. "P. St. A. annexed to depo. of "Wm A. Richardson taken "before Comr. Harry S Thornton" produced from the office of the U. S. Surveyor General, by R. C. Hopkins, and state whether your signatures where they appear in said document are your genuine signatures?

Ans.

They are.

Cross examination waived

Deposition closed.

Sworn to and subscribed
Oct. 24. 1862. before me.
N. A. Chevers.
U. S. Com.

Y pt. parker

No. 68.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Rafael Garcia.

DEPOSITION OF

Ygnacio Pacheco,

on part of Intervenor

Sarah Randall.

Filed January 12, 1853.

W. A. Beard.

Clerk.

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4 Notices.
2 Subs.

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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The United States,

v.

Rafael Garcia,

IN LAND CASES.

Dist. Court No. 68,

Land Com. No. 114,

To Wm. D. Sharp, U. S. Attorney,
Jeremiah Clarke, and
Shafters, Park & Heydenfeldt,

You are hereby notified that the testimony of
Salvador Vallejo, Ignacio Pacheco,
Daniel Old and Nelson Old,

in the above entitled cause in behalf of the
Intervenor Sarah Randall,

will be taken before me, the undersigned, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, commencing on Friday the 24th day of October A. D. 1862, at 11 o'clock A.M., and continuing from day to day until finished, at my office No. 17, U. S. Court Rooms; and you are hereby further notified to then and there appear and propound such questions to the said witness as you deem fit.

Witness my hand and official seal at the City of San Francisco, in said District, this 15th day of October A. D. 1862.

W. D. Chevers,

U. S. Commissioner.

68.

Oct: 24. 1862,

Copy of the within
Notice this day
received by me.
Oct: 15. 1862.

J. Catlin Jr
for Clk
Wm H Sharp
U. S. Atty
Shelton

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In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

Rafael Garcia

IN LAND CASES.

Dist. Court No. 68

Land Com. No. 114

BE IT REMEMBERED, that on this 24th day of October A. D., 1862, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Salvador Vallejo a witness produced in behalf of the Intervenor S. Randall in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Charles D. Gaskan a sworn interpreter.

PRESENT: M. P. Hillson Esq for Intervenor Randall, H. H. Sharp U. S. Atty. for the U. S.

QUESTIONS IN BEHALF OF THE Int: Randall

Question 1st,

What is your name age and place of residence?

Ans.

My name is Salvador Vallejo, my age is 48 years, I reside in

Napa.

Q.

Look at the document now shown you produced from the Office of the U. S. Surveyor General, by R. C. Hopkins, marked "Doc: N. S. T. No 1 annexed to the Depn. of Wm. A. Richardson taken before Comr. Harry S. Thornton," and state if your signatures where they appear on said document, are your genuine signatures?

Ans.

They are.

3.

Look at the Record of juridical possession, in said document, and state if the facts therein stated are true of your own knowledge?

Ans.

Without ~~doubt~~ doubt they are.

4.

When ~~were~~ ~~you~~ were your last upon the ground described in the said Record of juridical possession?

Ans.

Ans.

About three weeks ago I think in company with Ignacio Pacheco and many other persons whom I don't know.

5.

Did you point out at that time, on the ground the Southeast line of the tract of land of which you gave juridical posesion?

Ans.

I was there, and pointed out all the boundaries, and among them the Southeast line, as I remember them.

6.

Did you point out at that time, the place known, at the time you gave juridical posesion, as Cañada del Cierro?

Ans.

I did.

7.

Is the Ignacio Pacheco now present the same Ignacio

Packers mentioned in the
Record of juridical proceedings.
Ans.
He is.

Cross Examination waived.
Deposition closed.

Abad Abeyo

Sworn to and subscribed this
24th October. 1862. before me,
W. A. Chevers,
U. S. Comm—

No. 68.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

Rafael García.

DEPOSITION OF

Salvador Vallejo

on part of Intervenor

Sarah Randall,

Filed January 12, 1863,

W. H. Chevers.

Clerk.

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State of California,
County of San Francisco, } ss.

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Know all Men by these Presents: That

We Rafael Garcia and Altmirano Suarez — Garcia his Wife, both of the County of Marin _____ parties of the first part, for and in consideration of the sum of _____ Two Thousand _____ Dollars, lawful money of the United States of America, to them in hand duly paid by _____ John Nelson and William E. Randall _____ parties of the second part, the receipt whereof is hereby achnowledged, have granted, bargained, sold, and quit-claimed, and by these presents do — grant, bargain, sell, and quit-claim, to said parties of the second part, their heirs and afsigns:

All that certain portion of the Rancho of said parties of the first part known as the Rancho "Tomales and Bolines" situates in said County of Marin and said portion hereby conveyed is generally described as follows, towit- "Commencing at a stake and stones that marks the south west corner of the tract of land belonging to D & N. H. Olds, thence in a south easterly direction along the center of the creek to the corner of above named Rancho to a stake and stones, thence in a northerly direction along the line between said rancho Tomales and Bolines and the rancho Bolines to the road on the top of the ridge known as redwood ridge, thence in a north westerly direction in a strait line following the general direction of said road to the point where the line of D. & N. H. Olds intersects or crosses said road on the top of said ridge, thence in a south westerly direction along the line of said D & N. H. Olds to the place of beginning. _____

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, ifsues, and profits thereof, and also, all the estate, right, title, and interest of ers — the said parties of the first part, of, in, and to said premises, and every part and parcel thereof.

To Have and To Hold all and singular, the above mentioned and described premises, together

with the appurtenances, unto the said parties of the second part, their heirs and assigns for ever.

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In Witness Whereof, we the said parties of the first part, have hereunto set our hands and affixed our seals this First day of May one thousand, eight hundred and fifty seven.

Rafael Garcia (L.S.)
by Attorney in fact
Mark.

Signed, Sealed, and Delivered
In Presence of
R. V. Swat.
Geo. F. Nash
Nelson H. Ebbs
W. H. Swasey

State of California,
County of ~~San Francisco~~ Marin } ss.

On this Twenty Ninth day of April A. D., one thousand, eight hundred and fifty Seven personally appeared before me, Benj. F. Winslow Justice of the Peace ~~a Notary Public~~ in and for said County, Rafael Garcia, personally known to me to be one of the persons described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and affixed my private seal (having no official seal) the day and year last above written.

Benj. F. Winslow
Justice of the Peace

State of California
County of San Francisco } ss

On this 1st day of May A.D. 1857. before me W. F. Swasey a Notary Public in and for said County, personally appeared Altimirano Loreto Garcia Wife of Rafael Garcia, to me personally known to be the person described in and who executed the annexed Instrument as a party thereto. And the said Altimirano Loreto Garcia having been by me first made acquainted with the contents of said Instrument acknowledged to me on examination apart from, and without the hearing of her said husband that she executed the same freely and voluntarily without fear, compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same.

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

W. F. Swasey

Notary Public

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No. 68.

U. S. Dist. Court

The United States

vs.

Rafael Garcia

Exhibit Olds No 1
annexed to Depo.
of Danl. Olds Jr.

Filed January 12, 1863,
W. H. Chevers,
Clerk,

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Dated 1st day of May 1857

Deed.

Rafael Garcia Hoyo

To

John Nelson &
William E. Randall

Recorded at the request of
John Nelson May 2 1857 at
10 o'clock am, in Book "A" of
Deeds page 94-5.
D. S. Tayler
Recorder Marin Co
By S. B. Harris Depy.

G. F. & W. H. Sharp,
Attorneys, &c.,
No. 165 Montgomery St.,
San Francisco.

$3.00

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In the Probate Court of the County of Marin State of California

In the Matter of the Estate of William E. Randall

Petition

The Petition of Sarah Randall respectfully shows to this Court that William E. Randall died in the County of Marin on the 7th day of June AD 1860, that at the time of his death said William E. was a resident of said County of Marin that Petitioner is the widow of deceased, that said deceased left real and personal property in said County.
That due search and examination has been made to ascertain if said deceased left any will and testament, but none has been found, and according to petitioners belief said deceased died intestate, That the heirs at Law of said deceased are Elizabeth B. William J. Fanny J. Raymond L. and Mary L. Randall minor children and your Petitioner.

Wherefore your petitioner prays that a day may be appointed for hearing this application, that due notice thereof be given by the Clerk of this Court by posting notice

according to law, and that upon said hearing, and the proofs to be adduced letters of administration upon said Estate may be issued to your Petitioner.

Sarah Randall
By her atty W. W. Stow

Dated June 13 1860

Endorsed Petition for Letters of Administration.

Filed July 20 1860
D. T. Taylor
Clk

In the Probate Court of Marin County State of California

In the Matter of the Estate of William Randall deceased

Order

On reading and filing the Petition of Sarah Randall the wife of the deceased praying that letters of administration may issue to said Petitioner &c.
It is hereby ordered that due notice be

given according to law by the Clerk of this Court by posting notices according to law in such Cases made and provided to all persons next of kin and interested in said estate to appear and show cause if any they can why said Petitioner should not be granted. And it is hereby ordered that monday the sixth day of August that being a day of the regular terms of said Court be appointed for the Hearing of said Petition at 2 Oclock P. M Dated at San Rafael this 20 day of July 1860

R. B. Swain County Judge & Ex officio Judge of the Probate Court.

Endorsed Order
Filed July 20 1860
D. Taylor
Clerk

State of California } In Probate Court
County of Marin }

Notice

Notice is hereby given that Sarah Randall having filed her Petition in this Court praying for letters of Administration upon the Estate of William E. Randall deceased, the hearing of the same will be had on Monday the 6th day of August 1860 at four Oclock in the afternoon of said day at the Court room of the Probate Court at San Rafael County of Marin and all persons interested in said Estate are hereby notified then and there to appear and show cause if any they can why the said petition should not be acted upon by the Court and the prayer of said Petitioner granted.

Dated at San Rafael July 20 1860

By Order of the Court

Daniel T. Taylor

Clerk

Indorsed Notice
Filed August 6th 1860.

Probate Court Marion County August Term ad 1860.

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Order of Court

In the Matter of the Estate of William E. Randall deard } August 6 1860

Satisfactory proof was this day made to the Court that notice had been given according to law, of the time and place for hearing the petition of Sarah Randall praying that letters of administration may be granted to her, upon the Estate of William E. Randall deceased.

Probate Court Marion County August Term 1860

Order of Court

In the Matter of the Estate of William E. Randall deceased } August 6 1860

Application being made by Sarah Randall to be appointed administratrix of said deceased, and it appearing to this Court that there are minors interested in said estate. It is hereby ordered that Thomas D. Hanson Esq be and he is hereby

appointed the attorney to represent said minors.

R. B. Smith County Judge
& Ex officio Judge of the Probate
Court of Marin County.

In the Probate Court-

State of California }
County of Marin }

In the Matter of the Estate of William O. Randall deceased } Order appointing administratrix

Order appointing Admtrx

The Petition of Sarah Randall praying for letters of Administration upon the Estate of said deceased, coming on to be heard; and due proof having been made to this Court that the clerk had given notice thereof by causing notices to be posted up in at least three public places in the County, one of which was at the place where the Court is held- stating the name of the deceased, the name of the applicant, and the term of the Court

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at which the application would be heard, the same having been given at least ten days before the hearing, and that the notice was in all respects according to law, and it being proved by the oath of the petitioner and of

that the said William E. Randall died on the seventh day of June 1860, intestate, in the County of Macon and that he was a resident of said County of Macon at or immediately before his death, and has left estate in this County, and within the jurisdiction of this Court; and no persons interested in said estate appearing to contest the application of the said petitioner and S. H. Watson having been appointed Guardian of the minor children and in open Court assenting thereto.

It is Ordered that Letters of Administration upon the Estate of the said William E. Randall deceased issue to Sarah Randall upon her taking the oath and filing a bond according to law, in the sum of Fifteen hundred Dollars.

R. B. Frank County Judge
& Ex officio Judge of the Probate
Court of Macon County.

Indorsed Filed Dec 6th 1860

S. B. Harris
Dekvs clk

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State of California }
County of Marin } ss

I, Daniel T. Taylor County Clerk of said County and Ex officio Clerk of the Probate Court in and for said County, hereby certify that the foregoing and annexed papers are true full and correct copies of the original Petition, Order of Court requiring notice to be given, Notice, Order of Court showing that satisfactory proof of notice was given, Order appointing to represent Minor heirs and order appointing Administrator, in the Estate of Wm E. Randall deceased, as taken from the original papers now on file in my office and from the records of said Court, And I further certify that said Administratrix Sarah Randall duly filed her bond, took the oath of office and that letters of Administration was duly issued to her on the 6th day of August 1860

Attest my hand and seal of said Court this Second day of January 1863

Daniel T. Taylor
Clerk

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U. S. Distt. Court.

The United States.

—vs—

Rafael Garcia.

Certified transcript from Probate Court of Marin County. Intervention Randall.

Filed January 20. 1863.
W. H. Chevers.
Clerk

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68 no

U. S.
vs
Rafael Garcia

Objections to Survey. 68

On the 15th June 1835 Rafael Garcia petitioned the Governor for a grant of two leagues of land bordering on the Estero of Tomales & Bahias "en las inmediaciones del Estero de las Tomales y Las Bahias according to the map, on which the boundaries are marked. The diseño thus referred to, represents the Esteros or bays of Tomales & Bahias and near the head of the former a rectangular parallelogram is drawn, evidently intended to indicate the land solicited.

After the usual proceedings the Governor on the 18th March 1836 granted to Garcia the land asked for. describing it as known by the name of "Tomales y Bahias," "of the extent of two leagues as shown by the diseño."

On the 9th day of July this grant to Garcia was approved by the

Litorial deputation—
On the 3d October 1841 Garcia
applied to Salvador Gallejo then
acting as Justice Alcalde & Justice
of the Peace for the Jurisdiction of Sonoma
for the Judicial posses
sion of the land—
The neighbors were accordingly
cited and then testimony
taken under oath, as to the
limits and boundaries of the Ran
cho of "Raulmas."—
Among these witnesses were James
Berry and Gregorio Briones—
They all testify, with some slight
variations as to the cardinal points of
the Compass, that the land was
bounded on the North East by
the creek of Tokeyhume, called
(on the official map San Geronimo,)
on the South West by the creek
of Olemus Lake on the South &
South East by the Canada del
Cieva and on the North &
West by the Roca de Tomales—
The land within these boundaries was accordingly measured
and Garcia was placed in le
gal possession of the Specific

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3 tract thus measured out to
him —
It substantially corresponds both
in figure and location with
the rectangal figure represented
on his diseño —
It thus appears that Garcia
obtained from the Mexican Gov
ernment, with every formality
required by law, a perfect title
to two leagues of land the
boundaries of which were desig
nated and established
In the decree of Confirmation
by the Board the language of
the act of possession is adopted
without change — and the Board
therefore observes "The juridical
survey appears to have been con
ducted with much regularity —
" The land was located in a par
" allelogram - four sides of which as
" aforesaid were run and
" measured and the angles and
" lines defined - and the whole
" plotted on a map."
In the decree, the Boundaries
are described as Commencing at

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" the Bocca de Tamales and run
" ning East South East along the creek
" of Tokelume 12700 varas to the Cañada
" da del Reivo at a pile of stones
" placed for a boundary thence
" towards the South South West
" 2600 varas to the creek of Olemus
" Lake" thence in a West North West
" Course 12700 varas and thence
" to the Bocca de Tomal at the place
" of beginning the same being an
" oblong square 12700 varas in
" length and 2600 varas in breadth
" reference for a more particular
" description being had to the
" original grant, the record of Juridical
" Possession & the diseño" — the approval
which having become final by the municipal
Thus done, ~~[illegible]~~ the Survey now
Objected to, has been made ~~[illegible]~~
~~[illegible]~~.

On the 25th November 1835 James
Richard Berry petitioned the Gover
nor for a tract of land situated
" on the north side of San Francis
" Co, designated on the annexed
" plat"

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thus referred to
The map A shows a large tract
of country from the Port of San
Francisco on the South to the
Bay of Tomales on the North A
by extending due to the Eastward -
The distance is now
known found with the Expe-
dente but has undoubtedly undergone considerable alterations - It
therefore fails to afford reliable
evidence as to the land originally
petitioned for
The petition was as usual affixed
for information -
Among the witnesses examined
was Rafael Garcia who testified
that the land solicited did not
belong to any one and that
it was vacant - His deposition
was taken on the 18th March 1836
nearly a year after subsequently
to the date of his own petition
for Tomales y Baulines, and only
two days prior to the date of
his grant of that Rancho -
It is evident from the language
of his deposition that he did
not consider Rey's application
as embracing any of the land long

6

previously asked for by himself and the proceedings on which had advanced so far, that the title issued two days afterwards— On the 17th day of March the grant to Henry issued— It describes the land as "four leagues in "length on by two in breadth as "appears by the map annexed to "the Expediente"—

The grant was submitted to the Sentonial deputation and on the 5th September 1836 nearly two months after the approval of Garcia's grant the Committee on vacant Lands made its report—

This report sets forth "that in "the Concession made to Citizen "Rafael Garcia of the lands of Tomales y Baulinas it appears that there "is a mistake because he, Garcia "solicited two leagues in the Canada "de Baulinas as is seen in the Ex "pediente on file in the office of the "Secretary of State and besides in the "declaration of the said Garcia as "found in this Expediente in which "he says that the land petitioned

" for by Bury does not belong to
" any one but that it is vacant
" ~~[illegible]~~ This proves that Lomales
" y Bauhinas conceded to said Bury
" one not conceded to Garcia
" but only two leagues in the Can
" ada de Bauhinas ~~to~~ and that there
" fore the land asked for by in and
" granted to Bury remains vacant
" in virtue whereof the land asked
" for by Bury may be granted leaving
" Citizen Garcia in peaceable possession
" of two sitios in the Cañada de Bau
" hinas -"

The ~~[illegible]~~ Committee then proposes the following resolution

" The grant made by the Pohheal
" Chief on the 17th March last of the
" land called Lomales y Bauhinas
" is approved with the exception of
" two sitios already granted to
" Citizen Rafael Garcia in the Can
" da de Bauhinas from its centre to
" wards the points of the same
" name"

This resolution was adopted by the Deputation

8 It is not easy to reconcile the statements contained in this report with the facts as disclosed by the Expediente -

It is not true that the grant to Beny was for the "land called Lomales y Bankuas"

His petition ~~described~~ ~~the~~ ~~land~~ as for a tract of land on the North of San Francisco - and the grant describes it as "four leagues in length "by two in breadth to the North "of San Francisco as designated "on the map"

Nor is it true that Garcia solicited two leagues in sitio in the Cañada de Bankuas - His petition was for two leagues bordering on the Estero of Lomales y Bankuas -

The map and especially the reclamation jegine upon it showed that the tract was situated on the Estero of Lomales - and the grant was for two leagues as shown by the map - and This grant had been finally approved by the Deputation nearly two

9 months previously
It is evident therefore that the Committee mis understood the facts of the case
It is true that the map of Berry shows, if its present indications are to be relied on that the Cañada de Tamales was included in the land solicited –
It also exhibits a house misciated Rancho de Garcia at the Punta de Bamburas –
But the map of Garcia shows still more unequivocally that the land asked for by him was at the Estero de Tamales – & his petition describes it as situated in that vicinity –
If then Berry in fact desired his land at the Estero de Tamales it is difficult to account for Garcia's certificate that it was vacant, and it is more difficult to understand why Berry five years afterwards assisted at the Juridical measurement of Garcia's land and testified under oath to its boundaries as

10 they are now claimed by Garcias
representatives
That either by subsequent arrange
ment, or in accordance with
the original intentions of the parties
when they petitioned the Governor
it was understood that Garcias
land was to be sealed between
the two creeks and to run southe
ly from the Estero de Samales
while Berrys was to include the
Punta de Reyes on towards the
west is evident from the proceedings
on Berrys application for a judi
cial measurement —
~~On his petition to the~~
Throughout these proceedings
the Rancho which Berry claimed
under the title issued by the Gover
nor and the resolution of approval
of the Deputation designated as the Rancho
Punta de Reyes and thought
the record of the measurement
is so obscure and confused that
its boundaries cannot be traced
with precision, yet it is abundantly
clear that a possession was
given to him of the whole point

" the Rancho remaining as stated
in the Record all surrounded
by the Sea -
This proceedings took place
in June 1842
~~Here appears~~ But previous to that
time new parties had appeared
and new interests seen created
in this somewhat intricate affair
On the 6th June 1839 Benj. Ray
L. J. Shook petitioned the Governor
for two leagues to be taken out
of the Rancho of 8 leagues ~~conceded~~
~~to conceded to Reny~~ "called Punta
" La de Reyes Conceded to Reny
" under the name of Sausales" -
Here This petition was accompanied
by a certificate from Reny that
he did not require the land
Conceded to the grant
On the 19th of June the title
issued - The land is described
as that called Punta de Reyes
and adjoining the lands of Don
J. Reny.
On the 20th May 1840 the Concession
was approved by the Deputation

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12 The map found in the Book
of Expedients clearly shows what as
the name given to the Rancho
also indicates) that Berry's grant
was for the Punta de Reyes—
The two leagues carved out
of it for Brook being situated
nearly due west, and towards
the Point from Berrys house
It was but one year afterwards
that Berry as we have seen
attended at the judicial measure
ment of Garcia's land and
assisted to boundaries which
included the Canada de Alen
hisar—

On the 3d October 1840 Jose
Antonio Dios petitioned the Governor
setting forth that there had been
four leagues granted in the
Rancho Punta de Reyes, and
as there was more land in that
place than had been granted
he solicited the remaining
vacant land not exceeding
the maximum allowed by
law

Without so far as appears taking

13

Any informes or giving any notice to Beny the Governor by a Magistrado who Concedes the land to the understanding that in order to obtain the Corresponding title the party shall present himself with the respective dilio and take the Customary proceedings —

On the 6th October 1843 Dilio again petitioned the Governor setting forth that in 1839 he bought of Mr Joseph Snook the land Conceded to him, and that he had also asked for and obtained the remaining vacant land to an extent not exceeding the maximum allowed by law — He further states that when about to place his cattle on the Rancho he was informed by Salvador Vallejo that he had already given to Beny [illegible] all the land — That he protested against this but was advised to wait until his Excellency's Arrival (Michel Torena's) Arrival — He therefore claims

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asks that a title be made
to him for the land provisionally
granted and that Mr Berry
be informed that he has no
rights whatever in the Punta de
Reyes - and that the possession
given to him is null & void in all
its parts and that he be restricted
to the sitio's given to him in
the Cañada del Estero de Tomales
as the Expediente made in 1836
clearly expresses -
On this Juzgado reports that from
an examination of the Expedientes
it results that 8 sitios were
granted to Berry in the place
called Cañada de Tomales y Baulines
and two sitios in the same
place of Baulines to Señor Garcia
without any right to the con-
tiguous lands much less to the
place granted to Don Ant. Mar.a
Osio which is separated from it
by Mountains"
On the 30th November 1843 the Gov
ernor issued his decree of Concession
declaring Osio owner of the place
called Punta de Reyes bounded by

15

James Remy & Don Rafael Garcia, the Sea and the Creek of Tomales to the extent of eleven leagues without including the two Sitios granted to Snook

On the same day the formal title issued

On the 9th January 1844 Remy having heard of these proceedings addressed the Governor setting forth that he was the owner of lands known as the Punta de Reyes and Tamales with juridical possession of the same; that he had ceded two leagues to Señor Snook who had sold his right to Don Antonio Osio - that he had ascertained that Osio had denounced the remainder of his property - and that inasmuch as he Remy was ready to deliver the two leagues to Señor Snook he prayed that his Excellency would order him justice &c -

This petition having been referred by the Governor to Jimeno the latter reports "that there had been one

16 ceded to Beny eight leagues
" in the Canada of Tamales y
" Bamba as with the exception of
" 2 leagues conceded to Simon Gar
" cia in the same Canada of
" Bamba as. As is indicated by
" the map attached to the Expe
" diente which is most legal
" and conformable to the conces
" sion made"-

On the 14th Feb. 1864 the Governor having failed to bring the parties to an amicable settlement referred the matter to the Supreme Tribunal of Justice -

On the 23d February Otéo presented a long Memorial to the Tribunal in support of his claim.
He states in substance that he has cited from the beginning of the Controversy on the Expediente of Beny - by which there were conceded to him eight leagues in the Canada de Tamales as is seen by his decree and the conclusive language used by the Territorial Diputation, at the time of approving the concession, explaining

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17 the Mistake in the names of Tamales and Bahuias

That in 1842 Berry obtained a possession from the Military Commandant of Sonoma, which left out on one side 2 leagues of the land conceded to him taken and took them on the lands conceded to him (Dico) -

That in conference upon the matter Berry had said that he relied on the Juridical possession given him - but that such possession was null on accounts of its having been given without competent authority and because it included lands belonging to another.

He further explained that Tamales and Bahuias are one and the same Canada -

That Garcia had three had been conceded in Bahuias two leagues to Garcia and that he had built a house which he had occupied several years - That Berry had at the same time a house at the head of the Estero of Tamales That Garcia had ejected Berry

18 pour his house, and Baulnias
was left vacant in order that
it might be applied for by the
good Bruno— But it happened
that Gov Alvarado to whom Bruno
applied had in 1835 seen the
Attorney for Garcia and obtained
for him his grants He therefor
advised Bruno that he could
not give him the lands, as they
had been granted to another—

This memorial to which Berry
does not appear to have replied
was referred to the Fiscal of the
Superior Tribunal

On the 28th February that Officer
reported at length

He states that it appears from
the Expedientes that the two sitios
granted to Garcia were in the
Cañada de Baulnias measured
from its Centre to the point of the
same name— That Garcia agreed
to this concession for he built his
house within those limits and
made no objection to reporting
the remainder as vacant when
Señor Berry applied for it—

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19 The Departmental Government in
Conceding to Reny & Leagues re-
quired that they should be
measured from the boundaries
of the two sitios of Garcia for-
ward — But Garcia subsequently
to these Concessions abandoned
his possession and moved for-
ward (i.e towards Tamales) thus
occupying lands belonging to Reny
and the latter in order not to
lose the part of his eight sitios
taken from him by Garcia ad-
vanced upon the lands of Otio
all these operations resulting in
considerable damage to Otio —
The Fiscalia further shows
that the possession given by Vallejo
was illegal as the Military Com-
mandant had no authority —
and the reason of its inexactness
and not forming any regular
figure

He also The Fiscalia also calls the
attention of the Governor to the
discrepancy between the map of
Reny found in his Ex pediente &
that presented to the Military Authority

20 Dhen he obtained possession
The result at which the Lescala
arrives is as follows
1. That Señor García must accu
by the two sitios conceded to
him in the Canada of Palmas
measured from its Centre to
the Point of the same name -
2 That from the limits of García's
land thus to measured to Bury
& sitios conceded: but in such
the x Case noting the title for the 2
leagues conceded to Smoke: or he
can receive a new title for six
leagues.
3 That if the Departmental Govt
desire to favor Otio there may
be granted to him the residue
that remains after the Eyact
measurement of the lands of
Bury and García and that
Otio shall pay the expenses of the
measurement
4 That Señor Bury shall receive
possession from Competent Author
ity and upon his diario making
it conform to the one presented
to the departmental Goverment when

21 he obtained his Exaltation
This report was adopted in all
its parts by the Superior Tribunal
The determination of the Superior
Tribunal having been communicated
to the Governmts a decree was
made on the 19th February 1844 that
it be carried into execution —
And on the 28 December of the
same year, this decree together
with a copy of the Sentence of
the Superior Tribunal was com-
municated by Simeno to the Justice
of the Peace of San Rafael with
directions that the Measurement
indicated, should be made after
citation of the Colindantes =
Here all proceedings seem to
have stopped under the for-
mer Govermt.

With reference to this sentence
of the Superior Tribunal it is
to be observed —
1st That it not only decides the dis-
pute between Bmy & Olio by ~~dis~~
~~ing the~~ setting aside the possession
obtained by the latter and by
directing a new Measurement to

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of eight sitios in the Canada de Tomales, commencing at Gan Oá's boundary which was declared to be the centre of the Cañada de Banhias, but it also incidentally sets aside the possession given to Garcia and requires him to locate himself towards the Point of Banhias-

2d That it appears to have adopted the view taken by the Committee to whom Reny's Expediente was referred, with respect to Garcia's Concession- It states that the lands granted to Garcia were in the Cañada de Banhias- measured from its centre to the point of the same name- But we have seen that the lands asked for by Garcia were described by him as bordering on the Estero de Tamales y Bulinas "en las inmediaciones del Estero de Bahias Tamales y Banhias" As only one estero is here spoken of it might perhaps be doubtful to which he referred- But the grant describes the land as that

23

known as Lamales y Blancas
as shown by the map - and
the map indicates no mistake
by that it was situated at the
head of Lamales Bay - The grant
in this form had been approved
by the Deputation before Bingo's
Expediente was submitted -

3d - There seems to be no reason
for assuming that the Superior Tribunal does
that the possession was given by
Vallejo as Military Commandante
He appears the archives show that
he had been appointed Juez de
Paz or alcalde of the ~~Pueblo of San~~ Juris diction of Sonoma
~~Rafael~~ - and the petitions of Garcia
and of Berry for juridical possession
are addressed to him in that
capacity -

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4th These proceedings by which Garcia's rights were so immediately affected appear to have been conducted without any citation or notice to him and apparently without his knowledge -

The fact that Otis so readily obtained a grant of the whole island to the extent of eleven leagues without furnishing any reports & ~~in~~ or citation of the neighbors, and previous to the measurement & establishment of the boundaries of the adjoining ranchos — together with the fact that without notice to Garcia he obtained from the Tribunal a sentence the effect of which was to eject Garcia from lands of which he had obtained possession 3 years previously, suggest the suspicion that Otis may have been as much indebted for these favorable determinations to his personal or official influence as to the justice of his claims It is not improbable however so far as I can discover that the

25 the decision of the Tribunal
may have been correct —
The language of Garcias petition
and of his grant is equivocal
and may be taken to refer to
lands at either Estero - for ~~both~~ ~~the Esteros~~ the names of both
are given —
The rectangular figure which on
the diseño which conclusively in
dicates the location of the tract
may have been subsequently delin
eated upon it — perhaps at the time
he obtained possession —
There is no doubt that his first
house was built near Bauliras
and he seems to have acquiesced
in Berry's application which I
think notwithstanding the allega
tions in the diseño must have
have ~~been~~ for the land at the head of
Tomales Bay —
If then all the questions in the
Case remained open for decision
it might perhaps be a difficult
to adopt in all respects the sentence
of the Inferior Tribunal - and to
direct Garcia's land to be measured

26

from the Centre of the Canada de Raulmas ~~to the~~ towards the Point of the same name from this boundary eights Bay's eight leagues including the two ceded to Snook ~~shou~~ would then be measured while the Obrante grant to Otis would be satisfied out of the remainder—

But the case is complicated by the decrees of confirmation rendered by the Board—

The land confirmed to Garcia is not the land which the Tribunal adjudged him to be entitled to, but the land judicially measured to him by Vallejo— It is described in the decree by metes and bounds with entire precision under that decree there can be no doubt as to the location of the land—

~~In the Bray Case~~

Under the Bray grant (presented by Bethuel Phelps claimant) there were confirmed eight ~~leagues~~ square leagues to be located according to the grant the approval

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27 of the deputation and the de
cree of the Superior Tribunal—

Under the Spanish grant to two
leagues were separately confirmed
and under the Mexican grant
eleven leagues, more or less, were
confirmed bounded on ~~two~~ ~~sides~~
on one side by the Estero de Souales
on two sides by the Ocean, & on
the other sides by the Ranchos of
Reyes & Garcia—
It is evident that these decrees
are inconsistent and that some
of them must be erroneous—
If Garcia was entitled to the
land measured for him by Vallejo
and confirmed to him by the
Board, then Reyes land ought
not to be measured as directed by
the Sentence of the Superior Tribunal
for it will include all the land
confirmed to Garcia — On the
other hand if the Sentence is to be
followed Garcias land should
be located from the Centre of
the Cañada de Raymas towards
the Point of the same name

28 Which will constitute an unduly
affluent tract from that ascribed
in the decree of Confirmation —
Again Berry though he obtained
8 leagues was duly entitled to
six he having ceded two sitios
to Snook —
Next these decree of Confirmation
gives to him eight leagues
while the two leagues of Snook
are separately confirmed —
The effect of this is to entitle Berry
Berry's representatives to take
his whole eight leagues or six
in addition to the two ceded
to Snook leaving and to diminish
by that quantity the land left
to satisfy the Colorado grant
of Osio —
It has happened however that though
separate Confirmations were obtain
ed the interests in the three grants
of Berry Snook and Osio have
all been united in the same
parties —
The official survey
has located the Osio grant so as
to include the whole Punta de

29 Reyes, and to cover the greater part of what according to the sentence of the Superior Tribunal was granted to Garcia —
The Shook grant has also been located on the Punta but it embraces land which if the sentence of the Tribunal be followed would probably not fall within the Berry grant —
Both of these surveys have been finally approved and patents issued —
The Garcia grant has been located substantially as called for according to the possession given by Vallejo and the calls of the decree but in entire disregard of the sentence of the Tribunal —
The Berry grant has been surveyed so as to include only 14172. acres or 12459 less than the 6 leagues in fact he was entitled to, and 20335 acres less than the eight leagues confirmed to him. It is located far to the South ward and Eastward and at a great distance from its true location under any possible view

3d of the Case — If the sentence of the Tribunal be followed his land should begin at the centre of the Cañada de Bañuelas and be run thence towards the Estero de Bañuelas including the tract surveyed to Garcia — or else if Garcia's survey is to be rejected Berry's should be land should be surveyed on the Punta de Reyes so as to include within his eight leagues the two leagues conceded to Snook.

But in the first case the land from the centre of the Cañada de Bañuelas towards the Point of the same name should be surveyed to Garcia — which can not be done under the terms of his decree — and moreover it has in great part been already patented to the claimants covered by the patents issued under the Orio grant —

But if Berry's grant be located on the Punta it will exactly be entirely within the limits of the same patents claimed while the Rancho

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31 grant will remain almost entirely unsatisfied, its limits restricting it to the specified boundaries.

As the titles to the Berry and Otis claims were united in the same parties no objection was made by the claimants under Berry to the location of the Otis grant which covered a great part of their land - While the claimants under Garcia were satisfied with a survey in accordance with the possession given by Vallejo and the calls of the decree of confirmation

But the claimants under Berry now object to this location of Garcia and desire that the sentence of the Superior Tribunal which in the location of the land owned by them under the Otis grant has been entirely disregarded, should with respect to Garcia be carried into effect -

But this is now impracticable for the patent for Otis's grant which is held by the same parties owns

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32 As has already been stated a great part of the land to which Garcia by the sentence of the tribunal was entitled — And it moreover includes 11 leagues of land being a quantity two or 3 times as great as would have been left to him had all three ranchos been located as decided by the ~~same~~ Superior Tribunal

~~But the conclusion arrived at to this pretension is found in the~~ ~~terms of the decree of confirmation~~ ~~in Garcia's case~~ founded by

~~The land is therein described~~ Nor should the Reny claimants now be heard under all the circumstances to urge this objection For Reny himself not only assisted at ~~at~~ the measurement of the ~~the~~ land but ~~~~ to its boundaries as it has since been confirmed to him —

The conclusion answer however to this pretension is founded by the terms of ~~the~~ the decree of confirmation in Garcia's case That decree describes the land

33

by metes and bounds- It is the same land as has been surveyed except that it is claimed that one of the calls has not been followed -

Under that decree Garcia must get that land or none- I have no authority, under color of reforming the survey to cause to be surveyed to him land in an entirely different place and especially where the land it is proposed to assign to him is already owned by a patent held by the very parties who urge the change

Assuming then that the land of Garcia must be measured to him as described in the judicial possession and final decree of confirmation, we come to the inquiry whether those descriptions have been followed -

The Intervenor Sarah Randall objects to the official survey on the ground that it conforms neither to the description given in the decree of confirmation nor to the

34

juridical possession—

We have seen that in the preliminary testimony taken by the Alcalde all the rochepes including Bury described the Rancho as extending between the arroyos from the Boca de Tamal to the Cañada de Cieno—

In the final measurement the boundary is described "as commencing at the boca de Tamal and following thence E. S. E. the arroyo de Sokelglume until reaching with 12700 varas the Cañada del Cieno, where the interested party erected a pile of stones to serve as a land mark ("mohonera") from this place returning the measurement to the S. S. W. until reaching the Olemus Lake with 2600 varas where was placed the corresponding land mark. The decree of confirmation follows exactly this description "the cañada del Cieno thus designated as the South East boundary of the Rancho appears to be a well known

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natural object as to the identity of which there seems to be no question - It has been recently appealed by Vallejo the Alcalde who gave, and Pacheco the witness who assisted at the possession. The only reason suggested why it should not be adopted as the boundary is that it was said not to extend to the Tekelghume creek, whereas the act of possession seems to imply that it was reached by the Alcalde while following that creek - But it is not alleged that there is any other Cañada which does debouch upon the creek and which might have been the one designated - It is quite probable and in accordance with the usual practice, that the Alcalde though he describes the measurements as following the creeks in fact made but one measurement - A supposition confirmed by the fact that he makes the distance from the Boca de Tamal along the Tokel

36 - ghume to the Canada del
Cievo exactly equal to the
distance back to Lambs Bay
along the Plemms Loke — to the
number of paces being in each case
12700 — The side lines are also
of exactly equal length — A glance
at the map shows that this
could not have been the case
if either book had been scrupu-
lously followed — especially as
the Lokelghume makes near its
mouth a very large deflection
nearly at right angles to its general
course —

It is therefore almost certain
that in fact only two lines were
measured one to ascertain the
length of the track from the
Bay to the Canada del Cievo
and the other to ascertain its
width or the average distance
between the brooks —

If the measurement for length
was made along or near the
Plemms-loke the Canada del
Cievo would have been met
and undoubtedly adopted in

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In accordance with the testimony of the witnesses as the boundary of the rancho in that direction

The land included within the above
what exceeds one league in extent
the quantity mentioned in the grant
But it has frequently been held
in this Court that where a judicial
possession has been given of a
specific tract of which the
boundaries are designated by the
officer and a formal tradition
of the premises made the grantee
is entitled to hold it even though
where gross error or fraud seems
to have been committed.
In like manner where less land
than the quantity granted has
been measured, the grantee.
will not be restricted to the tract
which according to Mexican
law and usage has been deliv-
ered to him —
My opinion therefore is that the
claimants under Garcia are
entitled to the land described
in the act of possession and

38 dance of confirmation and the official survey should be extended so as to make the Cañada del Arroyo the South East boundary of the Rancho — For the identification & description of said Cañada reference to be had to the depositions of Valle jo. & Ignacio Pacheco and Daniel Olds.

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4th The survey of the land confirmed to Gregorio Briones is objected to on the part of the claimants under Bury and by the U. S. On the part of the former it is suggested 1st that the claim is invalid and ought not to be confirmed and 2d that the grant to Bury being the older grant should first be satisfied notwithstanding that the survey may embrace a part of the lands confirmed to Briones.

In answer to the first objection it is sufficient to say that the claim was confirmed by the Board in August. 1854— In January 1857 that decree was affirmed by this Court without argument and by consent of the District Attorney— The formal appeal taken from the decree of this Court was subsequently dismissed by order of the Attorney General— The decree therefore determining the validity of the claim has thus become final and I have no authority in this proceeding to reopen that question.

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2dly The land confirmed to Bromes is described as follows—"Bounded on the North west by the place called Canada Cibo known as the land of Rafael Garcia— on the South East by the place called Sancelito known as the Rancho of William A. Richardson— on the North East by the ridge or Mountains known as the Tamal plais running South East and North West and on the South west by the Pacific Ocean containing two Square leagues of land more or less."—

It is not pretended by the representatives of Bruny that the land surveyed is not within these limits: but they claim the right to come within them to obtain the quantity called for in their own grant—

But it is a sufficient answer to this claim to say that by no possible construction of their grant can any portion of the land confirmed to Gaidias Bromes be

41 included within ~~ex~~ exteriour
boundaries—
If, ~~I~~as they contend as against
Garcia the decree of the Superior
Tribunal is to be followed
their ~~ex~~extreme Southern boundary
~~was~~ is ~~alone~~ a line drawn through
the centre of the Cañada, de
Bolinas, and the measurement
should be made from thence
~~forward~~ "forward", that is towards
Samales Bay and the Punta de
Reyes and so as to include if
possible the land ceded to Spook—
But if the Judicial possession
given to Berry
and that given to Garcia (in
which Berry acquiesced), are to
be followed, then that land is
to be measured on the Punta
de Reyes and so as to include
~~the~~ two leagues of Spook—
This of course ~~if~~ the claimants
under Berry for do not desire
for the whole Punta, has already
been patented to ~~Spook~~ the Ohio claimants
whose title they have acquired—
As they have acquiesced in that
survey or at all events have become

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42 the owners of the land included
under the Ord grant, they have
no cause to complain if some
of the land which they might
have claimed under their own
grant has been surveyed and
is now owned by them under
the Ord title —
But in no view of their rights
can they encroach upon the Briones
Rancho - for those lands were
not ~~were~~ given to them by their
grant, by the Judicial possession
they obtained or by the sentence
of the Superior Tribunal — and
Bray's own cession to Hook
clearly establishes what in his own
understanding was the location
of his grant —
It is objected by the U. S that
the official survey in progress
has followed the line of the Land
to Rancho as surveyed and not
the line of that Rancho as estab
lished by the Judicial measure
ment —
The grant to Briones is by its terms
bounded by the Rancho of Williams

43

A. Richardson or the "Sanchito" Rancho — This of Course means the Sancillito Rancho according to its then established boundaries — If in the official survey of Sanchito all the land within its boundaries has not been included the portion left out, will revert to the U. S as a Sobrante ~~It could not be conveyed to~~ and not to the neighbors of Richardson —

But I have not been able to discover any discrepancy between the lines of Sanchito as surveyed and its boundaries as established by the Judicial Measurement of Sanchito.

W. L. Lewis testifies that the lines of the official survey of Sanchito in all respects conforms to the indications of the Sanchito diseño and the description given in the act of Judicial possession —

Some testimony was taken to show that the parties at the time when a private survey was made of one of the Ranchos pointed out a different line — But this

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seems to me immaterial —
They both agree now on the
line as established by the official
survey and by the Judicial measurement
and Bruce's had no
right to ~~contest that~~ to bind by
the U. S by a consent that
Sausalito Vallejo should be removed
so as to include any land
not within the lines of the Judicial
possession —

I am therefore unable to see
any ground for this objection
on the part of the U. S.

~~To the~~ It is also objected that
the Bruce grant is not located
so as to include lands sold by
Bruce to third parties —

~~Whether~~ That Bruce has sold some
lands not included within the
survey appears in proof — But whether
by changing the location so as to
include these we would not
exclude other lands the towns of
which have equal or superior equi-
ties does not appear — The grant
is located in a compact form
and I ~~do not~~ have not been able
to discover any good reasons for

45 destructing the location — If however it can be made to ap pear that Briones has elected a different location within his exterior limits by sales for value to third parties, ~~of~~ dates of a date which would give them prior equities the location may be changed so as to protect them.

At present the case now stands the facts are not sufficiently be fore the Court to enable it to form an intelligent judgment or to jus tify it in destructing the official Survey.

No 68.

U. S. District Court.

The United States.

vs.

Rafael Garcia,

No 189. (N D)

U. S. District Court.

The United States.

vs.

Gregorio Briones,

No. 418. (N D)

U. S. District Court,

The United States.

vs.

Bethuel Phelps.

Opinion on Survey.

Filed March 9. 1864.

W. H. H. Chevers,

Clerk

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State of California

The United States
vs
Raphael Garcia

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

W. W. Stowe is hereby substituted as Attorney for the Claimant in my stead in the above entitled Cause

J. Edwards

No. 68

U. S. Dist: Court

The United States

vs.

Rafael Garcia

Substitution of
Attorneys.

Filed Feby: 13th 1865
W. D. Rockwell
Clerk

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United States of America

The United States
vs
Raphael Garcia

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

It is hereby stipulated, that the form or draft of decree, herewith filed is in substantial accordance with the opinion of this Court, filed herein March 9 A.D. 1864, and the parties herein consent that said decree be entered herein by this Court, modifying the said survey, in accordance thereto.

Delos Lake
U.S. Atty

Shafter Park & Hyde for plaintiff

A. J. Wilson
Atty for Sarah Randall
Intervenor

W. H. Stowe
for Garcia

No 68.

U. S. District Court,

The United States.

vs.

Rafael Garcia,

Stipulation that order modifying official survey is in accordance with opinion of the Court.

Filed Febry: 20. 1865.

W. H. Chevers.

Clerk

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United States of America

The United States vs Raphael Garcia } In the District Court of the United States for the Northern District of California.

This Case coming on for hearing, and the proofs arguments of Counsel and all things being duly considered. and the reading & filing the Stipulation hereunto attached It is hereby said Court ordered, adjudged and decreed that the survey in this Case be so modified, that the line of said Rancho de Garcia, claimed in this Case shall be the Creek of Olemas Lake, from its mouth to its source, on the western side thereof, thence northeasterly up the centre of the Canada Lago to the top of the ridge, Redwood thence north westerly along said ridge to a point where the south eastern line of lands of Daniel and Nelson Clyde crosses the road, upon the top of said ridge, thence north easterly upon said Clyde line to the Creek of Tokubume or Daniels Creek, thence down said Creek, and tide waters to the place of beginning.

x Amendment by order of Court June 2nd 1865 See Minutes

Ogden Hoffman
Dist Judge

No 68.

U. S. District Court.

The United States.

vs.

Rafael Garcia.

Stipulation and Order modifying official Survey.

Filed Feby 20, 1865.

W. A. Chevers

Clerk

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United States
"
Rafael Garcia
and
United States
"
Bethuel Phelps

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

Upon filing the stipulation of all the parties in interest and the same being duly considered, upon motion of D. McShafter attorney for Shafter Dark and Heydenfeldt interveners in the first and for the Claimant in the second of the above mentioned causes. It is ordered that the decree entered in the first of the said cases entered upon the 20th day of February A.D. 1865. be amended by inserting after the words "north westerly" the words, "along said ridge"

And the decree of the same date in said second case be amended

No. 68

United States

v

Rafael Garcia

et

same

v

Bettinus Phelps

Order modifying decree of July 20 – 1865

Filed June 21st 1865

Geo. C. Graham Clerk

Jas. Dan. Tillou Jun

Deputy

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To comply herewith.

[illegible]

[illegible]

[illegible]

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United States
v
Rafael Garcia
and
United States
v
Bethuel Phelps

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

In the above cases it is stipulated that the decree entered herein directing the survey be amended by inserting after the words Northwesterly the words "along said ridge"

Shafter & Hydenfeldt
for Intervenors in
U. States v Garcia
and for claimants
in U. States v Phelps

A. J. Wellborn
Atty for
Lynde Randall
Delos Lake
U.S. Atty

No. 68.

United States

vs.

Rafael Garcia

and

United States

vs.

Bonnie Phelps

Stipulation

Filed June 21st 1865

Geo. C. Gorham Clerk

per D. Am. C. J. Sullivan

Deputy

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District Court of the United States
for the Northern District of California
The United States
vs
Rafael Garcia } Sarah Randall
Intervenor.

State of California
City and County of San Francisco } ss

James M Seawell being
duly sworn according to law de-
poses and says that he did
on the twenty eighth day of October
1865, in the City and County of
San Francisco, serve personally
upon the within named W. W.
Stow a notice of which within
is a copy by delivering to said
W. W. Stow personally, in said
City and County, the said notice.
That this deponent did also, on
the twenty eighth day of October
1865 in said City and County
serve upon ~~the within named~~ Jere-
miah Clark Esq. a notice of
which within is a copy by leaving
said notice at the office of
said Jeremiah Clark Esq in said
City and County, with T. H.

Hillell who was then and there
in charge of said office, and
that said Clark was then
absent from his said office.
Deponent is a white male citizen
of the United States over twenty
one years of age and competent
to be a witness on the trial
of this cause

Subscribed and sworn
to before me this second
day of ~~October~~ November A. D. 1865

J. M. Seawell

Jno. H. Clark
D. Clk

District Court Of The United States for the
Northern District of California
The United States }
vs } Sarah Randall
Rafael Garcia } Intervenor
Take Notice

That a plat of a
survey of the Rancho Tomales
y Baulines made by the Surve
-or general of the United States
for the State of California has been
returned to & filed in the above
named Court in the above enti-
-tled Cause which said survey
was made in pursuance of a
decree of this Court in the above
entitled Cause entered on the
20th day of February 1865 as since
amended reforming the origin
-al survey of said Rancho as
conformed to the said Garcia in
said Cause: & that a Motion will
be made before said Court in the
above entitled Cause on the second
day of November 1865 at eleven o'clock
A.M. or as soon thereafter as Counsel
can be heard that said survey
be confirmed & approved as the

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final survey of said Rancho under the decree of Confirmation in this cause Dated October 26th 1865

A. T. Wellborn
Atty for
Sarah Randell
Intervenor

To
W. W. Stow atty for said Garcia & To the Distrct Atty of the United States for the Northern Distrct of California & To Myers Shafter Hayden & Field & Park

Served Stow on Oct 28. 1865
— J. Clark —

District Court
United States
Northern District
California

No 68

United States

vs

Rafael Garcia

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Notice of motion to approve survey

We submit service of a notice of this motion is a copy of October 28. 1865

Delos Lake
U. S. Atty

Hagerman Field & Hagerman Pacific R.R. Co.

Filed Nov 2. 1865

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 the 21st day of February A.D. 1866.

Present Hon. Ogden Hoffman
District Judge.

The United States
vs
Rafail Garcia. } D.C. 68; L.C. 114.

And now on this day it appearing to the Court that the Surveyor General of the United States for the State of California has returned to the Court the Survey and location of the land confirmed herein, made in pursuance of an order of the Court of the 20th day of February A.D. 1865 and an order modifying the same of the 21st day of June A.D. 1865 and which Survey and location is shown by the certified Copy plat filed 21st February 1866 And Counsel for the respective

parties having been duly notified and having filed their Stipulation herein:- it is ordered adjudged and decreed that the Survey and location of the land confirmed in this cause ~~and~~ the Field Notes of which Survey were approved by L. Upson United States Surveyor General for California on the 6th day of October A.D. 1865 - is a good & valid Survey of the land confirmed to the said Rafael Garcia claimant herein and that the Survey and location be and the same is hereby approved.

And it is further ordered adjudged and decreed that the certified Copy plat of said Survey and location filed February A.D. 1866 and marked Approved February 21. 1866 Ogden Hoffman Dist Judge be attached to and made part of this Decree for a more full and particular description of the tract of land of the area Nine thousand four hundred & sixty seven $\frac{77}{100}$ (9467 $\frac{77}{100}$) acres now finally confirmed to the said Rafael Garcia.

Ogden Hoffman
Dist Judge

No. 68 ND
114 Bd

U. S. Dist. Court

The United States

vs

Rafael Garcia

Final Decree
approving Survey

Filed Feby 21st 1906
Geo. Colpoys Clerk
By David Sullivan Dpty

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This Indenture,
made the thirty first (31st)
day of January in the
year of our Lord One thous-
-and Eight hundred and
sixty (1860) Between

John Nelson
of Marin Co. Cal of the
first part And William
E. Randall of the second
part. Witnesseth,

That the said party of
the first part, for and
in consideration of the
sum of Three thousand
Dollars, lawful money
of the United States of
America, to him in hand
paid by the said party
of the second part, at
or before the unsealing

and delivery of these
presents, the receipt whereof
is hereby acknowledged.
Hath Granted, bargained
and sold, conveyed and
confirmed, and by these
presents. Doth Grant,
bargain and sell, convey
and confirm unto the said
party of the second part
and to his heirs and
assigns forever. All the
equal undivided half part
of those certain lands and
premises hereinbefore conveyed
by Rafael Garcia and
wife to the parties hereto
as Tenants in Common,
and being known as a
portion of the Rancho
Tomales Y Bolinas situate
in said County of Marin
& generally described as
follows; commencing at a
stake & stones that marks
the South West corner of
the tract of land belonging
to D & N. H. Olds, thence

ni a South Easterly direction
along the centre of the
Creek to the corner of
above named Rancho to a
stake & stones, Thence ni
a North easterly direction
along the line between said
Rancho Tomales y Bolinas
and the Rancho Bolinas to
the road on the top of the
ridge known as Red Wood
ridge, Thence ni a North
westerly direction ni a
straight line following the
general direction of said
road to the point where
the line of D & H. H.
Qds. intersects or crosses
said road on the top of
said ridge. Thence ni a
Southwesterly direction along
the line of said D & H.
H. Qds to the place of
beginning.

Together with all
and singular the tenements,
hereditaments and appurtenances
thereunto belonging, or ni

any wise appertaining, and the reversion and reversions remainder and remainders rents, issues and profits thereof. And also, all the estate, right, title, interest, Homestead property, possession claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances

To Have and to Hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, His heirs and assigns forever.

In Witness whereof, the said party of the

first part has hereunto
set his hand and seal
the day and year first
above written

Signed, Sealed
and delivered
in the presence of
Wm H. Patterson

John Nelson (Seal)

State of California
City and County of San Francisco } ss

On this thirty first
day of January A. D. One
Thousand Eight Hundred
and Sixty before me
Samuel Wetmore a Notary
Public in and for said
City and County duly
commissioned and sworn
personally appeared the
within named John

Nelson whose name is subscribed
to the annexed Instrument
as a party thereto, personally
known to me to be the individ-
=ual described in and who
executed the said annexed
instruments and the said
John Nelson, acknowledged
to me that he executed
the same freely and vol-
=untarily, and for the uses
and purposes therein men-
=tioned.

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

Samuel Newman
Notary Public

End

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Northern District of California ss.

I Geo. C Gorham
clerk of the District Court of the United
States for the Northern District of
California do hereby certify that the
foregoing is a true full and
correct copy of an original
deed from John Nelson to
William E. Randall dated
January 31. 1865. which is
marked as "Exhibit No 2." an-
nexed to Deposition of Dan'l Olds
Jr." and on file in the
Clerks office of the District
Court aforesaid having been filed
therein January 12th 1865. in
the case United States vs Rafael
Garcia No. 68 in said Court.

Witness my hand
& Seal of said office
hereto affixed this
3d day of July A.D.
1865

Geo. C Gorham Clk
Ind'd. U. Sullivan
Deputy

John Nelson

To

Wm E. Randall

Copy of Deed

Filed March 3d 1866
Geo. C. Cochrane Clerk
By Daniel Sullivan Deputy

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

The United States
vs
Rafael Garcia

Entitled Cause

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That on the papers on file in this Cause and among others on a certified petition of Sarah Randall relict & widow of William E Randall late of Marin County deceased I shall move this Court at the opening thereof on the 25th day of March inst or as soon thereafter as Counsel can be heard that the default heretofore entered against all persons desiring to intervene for their interest in the above entitled Cause after the return of the writ by the Surveyor general of the United States for California be set aside & opened so far as the said Sarah Randall is concerned & that she be permitted to intervene for her interest in the above entitled Cause, the same as she might have done before such default entered And for such other and further relief as to this Court shall seem meet March 26th 1861

To C Bonham Esqr
& Messrs Shafter &
Hyde Sanfield

A. J. Wilson
Atty for Sarah Randall

68

~~96~~

N 15

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA.

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COUNTY OF SAN FRANCISCO.

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

The United States,
vs.
Rafael Garcia,

No. 68.

The President of the United States of America,

TO Ignacio Pacheco,

GREETING:

You are hereby required, That all and singular business and excuses being set aside, you appear and attend before the District Court of the United States for the Northern District of California, to be held at the Court House in the City of San Francisco, on the 24th day of October A. D. 1862, at 11 o'clock, A. M., then and there to testify in the above stated cause now pending in said District Court, on the part of the ~~above named~~ Intervenor Sarah Randall, And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggreived,

Witness, the Hon. OGDEN HOFFMAN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, this 15th day of October in the year of our Lord one thousand eight hundred and Sixty Two and of our independence the eighty-7th.

Attest, J. A. Shepard, *Clerk.*

By *Deputy Clerk.*

Marin County SS.

James M Harris being duly sworn says that he is over 21 years of age & that he is a white male citizen of the United States and a Resident of Marin County State of California and that he personally served a copy of the within subpoena on the within named Ygnacio Pacheco personally by delivering to him at his said Pacheco's residence in said Marin County a copy of the same, on the 22d day of October AD 1862. & that I paid him as Witness Fee $6.75

Sworn & subscribed before me this 23rd day of October 1862.
Daniel H. Taylor
Clerk Marin County

James M Harris

(No 65.)

District Court of the United States
FOR THE
Northern District of California.

The United States,
vs.
Pedro Pacheco,

SUBPŒNA
FOR
Ignacio Pacheco.

Filed ..... 18 .....
Clerk.
By ..... Deputy.

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MARSHAL'S RETURN.

I have served this Writ personally by copy on .....

this ..... day of ..... 18 .....

U. S. Marshal.

By .....

Deputy.

In the United States of America
In the District Court of the United States
for the Southern District of California
The United States }
vs. }
Raphael Garcia }

This case coming on for hearing and the proofs arguments of Counsel, and all things being duly considered and the reading & filing the stipulation hereunto attached, It is hereby said Court ordered, adjudged and decreed that the survey in this case be so modified that the lines of said rancho de Garcia claimed in this case shall be the creek of Alamos Lake from its mouth to its source, on the Western side thereof thence Southeasterly up the centre of the Cañada Leona to the top of the Redwood ridge thence Southwesterly to a point where the Southeastern line of lands of Daniel and Nelson Olds, crosses the road upon the top

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of said ridge thence South-easterly upon said Olds line to the creek of Tokulumne or Daniels Creek, thence down said creek and tide waters to the place of beginning.

Ogden Hoffman
Dist: Judge.

Endorsed:

Filed February 20. 1865.
W. H. Chevers
Clerk.

I, William H. Chevers Clerk of the District Court of the United States for the Northern District of California do hereby certify the foregoing to be a full true and correct copy of the original "Order modifying Official Survey" now on file and remaining of record in my office in the cause entitled "The United States vs. Rafael Garcia No. 68."

"vs. Rafael Garcia No. 68."

In testimony whereof
I have hereunto
set my hand and
affixed the seal of
said Court this
25th day of February
A. D. 1865.

N. A. Cheever
Clerk.

Dist Ct U.S. N. Dist Calif
The United States }
vs }
Rafael Garcia }

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In this case juri
dical position was given to the
claim and the land now
claimed by him was confirmed
to him according to such juris
-dical position. It appears by
the record of such juridical
position that the Cañada del
Cierro was one of the south eastern
-ly boundary. Such record of
juridical position is contained
in the transcript from page
42 to page 49 and on page 47 ~~48~~ 49
~~49~~ is a statement of the measure
-ment of the land and on
third line of 2d page 48 the Caña
-da del Cierro is stated as one of
the boundaries. Now this Court
has held frequently & it is the
settled law that the final
survey must conform to the
juridical position a fortiori
~~Patent~~ should it in this case
where the confirmation is ac-
cording to the juridical position
and binds in the decree of
confirmation itself the Cañada
del Cierro is given as one of the
boundaries. Now the intervenor
in this case called as witness

Salvador Vallejo the Judge who gave juridical possession and Ygnacio Vallejo one of the assisting witnesses and bounded by them the South of the wood and further that within the year last they pointed out on the ground the plan thereof as the Cañada del Cierro to Nelson Celis & Daniel Celis who were both examined as witnesses on behalf of the intervenor Sarah Randall and found that the house to which Mrs Randall excepts stops short of the Cañada del Cierro and by so doing cuts off about ~~500~~ 600 acres including her dwelling house, barns &c &c We ask that the decree may be so reformed as to include all of the lands within the boundaries of the land of which juridical possession was given If that cannot be then we ask to have it so reformed as to include the land of the intervenor & that the exception be cut from the lands still owned by ~~the grantee~~ Grantee We again call attention to the settled law that when juridical possession was given in good faith as it was here as the record by Vallejo

& Pacho that juridical possession must govern especially when as to the Conformation was according to such juridical possession H. L. Holden

If any question is made as to the power of Vallejo to give juridical possession I would say that it was according to the juridical possession given by him that the land was Confirmed by the board of Land Commissioners to Salvio. All that we ask is that the Grant give to us the land confirmed to us

H. L. H

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United States of America

State of California County of San Francisco. In the District Court of the United States for the Northern District of California.

The United States
Rafael Garcia vs. } No. 68.

The President of the United States of America To.

Ignacio Pacheco.

Greeting:

You are hereby required, That all and singular business and excuses being set aside you appear, and attend before the District Court of the United States for the Northern District of California to be held at the Court House in the City of San Francisco on the 24th. day of October A.D. 1862 at 11 o'clock A.M. then and there to testify in the above stated cause now pending in said District Court, on the part of the intervenor Sarah Randall. And for a failure to attend you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved.

Witness the Hon. Ogden Hoffman, Judge of the District Court of the United States of America for the Northern district of California. This 15th. day of October in the year of our Lord one thousand eight hundred and Sixty two. and of our independence the eighty seventh

L.S.

Attest R. H Chevers, Clerk

(No. 68.)

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

The United States
Vs.
Rafael Garcia

Subpeona for
Ignacio Pacheco

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

San Francisco, August 23. 1854

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

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 114 on the Docket of the said Board, wherein

Rafael, Garcia &

the Claimant against the United States, for the place known by the name of "Tamales y Baulenes"

and request your receipt for the same.

I am, Respectfully,
Your Obt Servant,

Geo: Fisher

3

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District Court of the Northern District,

STATE OF CALIFORNIA.

THE UNITED STATES OF AMERICA
vs.
RAFAEL GARCIA.

ARGUMENT IN FAVOR OF SARAH RANDALL, WIDOW AND ADMINISTRATRIX OF WILLIAM E. RANDALL, DECEASED, GRANTEE OF RAFAEL GARCIA, IN SUPPORT OF HER EXCEPTIONS TO THE OFFICIAL SURVEY IN THIS CASE, AND IN OPPOSITION TO THE EXCEPTIONS OF SHAFTERS, PARK & HEYDENFELDT.

The intervenor, Sarah Randall, excepts to the survey on the ground that it, the survey, conforms neither to the description given in the decree of confirmation, nor to the juridical possession. According to *both*, the southeastern boundary was the *Cañada de Ciervo;* and the survey as made stopped far short of that boundary; in consequence of which, most of the intervenor's land is left outside of the survey. We refer to the decree of confirmation, the record of juridical possession, the testimony of Ignacio Pacheco, Salvador Vallejo, and Daniel Olds, taken and filed in support of our exceptions, to the deed from Rafael Garcia to William E. Randall and John Nelson, the deed from Nelson to Randall (the testimony of Daniel Olds showing *inter alia* the death of Randall,) and the certified transcript of the proceedings before the Probate Court of Marin County in the matter of the estate of said William E. Randall, resulting in letters of administration to the intervenor. The excess beyond two leagues will be very little in case the survey is reformed by making the *Cañada de Ciervo* the southeastern boundary; and we understand it to be the settled law of this Court, that in all such cases at least, the survey must conform to the juridical possession, especially where, as here, there is no question of the good faith of it. The objection that the *Cañada de Ciervo* does not extend to the Tokeglume, or San Geronimo, seems to us to be neither supported by the proof, nor of any moment if supported. The record of juridical possession is explicit that they proceeded from the starting point along the Tokeglume to the Cañada de Ciervo; and Vallejo and Pacheco, the first of whom was the Alcalde who gave, and the latter one of the witnesses who assisted at the giving of the juridical possession, being examined in support of our exceptions, affirm the truth of the record; and to this Mr. Shafter opposes the testimony which he drew out on the cross-examination of Daniel Olds, that what he now understands to be the Cañada de Ciervo does not extend to the San Geronimo, and the supposed testimony of Dr. Mathewson that there is one unbroken range of mountains between the Olimos Loke and the Tokeglume or San Geronimo.—Upon this we remark, 1st, that the question is not what Mr. Olds *now* understands the Cañada de Ciervo to be, but what was called the Cañada de Ciervo when juridical possession was given; and 2d, that Dr. Mathewson has given no such testimony, so far as we can ascertain; certainly not in this case, nor in the case of the United States *v.* Bethuel Phelps. In the latter case is a deposition of his (Mathewson's) in which he testifies that there is a range of hills or

mountains between the two streams above mentioned, rising higher to the southeast, but he says nothing about an *unbroken* range, and his testimony would be consistent with the fact that there are half a hundred passes through the hills from one stream to the other. Besides, the testimony was not taken in support of Mr. Shafter's exceptions to the survey in the Garcia case, and cannot be used to impugn it. We maintain here, as everywhere in this case, that *none* of the depositions or other papers in the case of the United States *v.* Bethuel Phelps are in evidence in support of the exceptions of Messrs. Shafters, Park & Heydenfeldt, nor can be used in support of their intervention. But, even if the Court should hold it as proved that the Cañada de Ciervo does not extend to the San Geronimo, we urge that that is of no moment, for if the Court reads the words, "thence following" &c. &c. "*to the Cañada de Ciervo,*" as meaning that they went along, &c. &c. as far southeast as the Cañada de Ciervo, instead of meaning that they came actually to it on the Tokeglume, still, the record adds that Garcia raised a mound of stones to mark the point, and thence they proceeded at right angles to the Olimos Loke, where another mound was raised; and Vallejo and Pacheco, in their testimony in this case, say that they showed this line to the witness Daniel Olds; and he says the surveyor in this case stopped a half a mile or so short of that line, and thereby left most of Mrs. Randall's land outside the survey. But, if the Court should hold that we must, notwithstanding juridical possession given, be limited to exactly two leagues, then we say that still the survey should be reformed, and the excess cut off the northwest end, which still remains unsold in Garcia's hands. (See evidence of Nelson Olds taken in support of our exceptions in this case.)

As to the exceptions of Messrs. Shafters, Park & Heydenfeldt, we say that they have no standing in Court, or, in other words, that the petition and affidavit by which they make their application to have the survey returned, show no interest in them which warrants such application. Their allegation in their petition that they are colindantes with Garcia, the single thing that, in any possible view shows any interest in them, is not supported by the confirmatory affidavit, and must, therefore, both under the law of 1860, and rule second in land cases, adopted by this Court, be rejected, even if, as simple colindantes, without any conflict of lines, which they do not allege, they would be interested, and then their application stands on the allegation in the *affidavit* of J. McM. Shafter, "that the survey and location of the land claimed herein is erroneous, in that it includes land which belongs to the petitioners in the annexed petition named, as the successors in interest of Bethuel Phelps, to whom the lands in said *petition* referred to were confirmed." We shall not urge laboriously the position, though we think it good, that the 2d rule in land cases, adopted by this Court, under the law of 1860, and thus a portion of the law governing this case, requires the *petition* to show that the party asking a return of the survey is interested in that survey, and that the petition shall be verified by the affidavit; neither of which requisitions is complied with in this case, and that for that reason they have no standing in Court; but even then, and treating the allegations of the affidavit, as in both petition and affidavit, there is nothing about being colindante. Besides, the *exceptions* raise no question about any line of ours conflicting with their lines, or any line of theirs; but their exception is, broadly and simply, that they have an older confirmed grant for the whole of the land surveyed, and that, too, without *any hint or suggestion that the land surveyed to us was either in whole or in part other than that confirmed to us.* Thus the bare, bald question is raised, can a third person come into a litigation between the United States and Rafael Garcia, *after judgment final* in favor of Garcia, and be heard to allege that which, if heard at all, can only be heard with an eye to an utter and complete denial of *every thing* which had in such litigation been adjudged to him, Garcia? The confirmation by the United States judiciary becomes, in this way, instead of a shield to protect, a mere decoy to entrap. Relying on the confirmation, Randall purchases a homestead on land indisputably covered by the confirmation, as appears in evidence; and how many others have done the same thing does not appear directly, but may be inferred from Nelson Olds' testimony, that out of the whole amount confirmed only about three thousand acres remain unsold. It is true that in their *exceptions,* after saying "that the survey is located *entirely on land* heretofore confirmed by this Court

to Bethuel Phelps," &c. &c., they add, "that the said survey is not in accordance with said grant or the deseño referred to therein." But the matter last quoted from the exceptions, even if standing alone, and in no wise connected with or enlarged or explained by that part going before, which asserts that our survey is located *entirely on their lands*, raises no question of conflict or incongruity of boundary lines, and hence, in view neither of their affidavit or exceptions have they any position in Court as colindantes; and, anticipating somewhat another part of the case, what they call their proof does not show any conflict or question of lines, so far as they stand as objecting to the survey already made. As *colindantes*, they have not, while questioning the correctness of the *present survey*, either on their pleadings or proofs, any standing before the Court, and must maintain themselves, if at all, on their assertion that they own the land, and that although finally and irrevocably confirmed to us, we shall be denied all benefit under that confirmation.

We urge that the law of 1860 contemplates no such thing; that the whole purpose and aim of that law was to enable the Court in some expeditious manner to supervise the action of the surveyor general, and to see whether he has done what, under the decree of confirmation, he ought to have done. It is an *appeal* from the surveyor to this Court, and it is a universal principle of appellate jurisdiction, that the Court *to* which the appeal lies, can do no other thing than what the judicature or officer *from* which or whom the appeal is taken, could legally have done. Could he, the surveyor general, *on any showing that could possibly have been made*, have properly surveyed off to Garcia any other land than such as was confirmed to him, such as is mentioned and specified in the decree of confirmation? Mr. Shafter, when arraigning the action of the surveyor general in directing the survey in the case of the United States *v.* Phelps, spoke in terms of just indignation, as this Court will probably remember, of the action of that officer in assuming to limit the quantity confirmed to Phelps, *or in anywise departing from the decree of confirmation*. That we are right in saying that the duty of the Court is simply to review the action of the surveyor, not this Court or Land Commissioners, and see whether he, the surveyor, has done anything he should not, will, we think, appear from section second of the act, where the *main general thing* for the Court to do is pointed out; all the subsequent provisions being merely subsidiary to that end. That section says that the Courts may make an order "requiring any *survey of a private land claim*" &c. "to be returned into Court *for examination and adjudication*." It is the *survey*, not the decree of confirmation, that is to be examined and adjudged. Any person who has an interest in that survey, *i. e.* in the proper location of the land confirmed, and who is prepared to show that his interest is affected in this, that other lands than those confirmed have been included, or any portion of the lands confirmed excluded, has a standing in Court, and no other one properly has. And hence, a colindante whose land may be bounded on the land confirmed, or who holds a *younger* grant than the one surveyed, and which is overlapped by the disputed survey, may properly raise his voice in Court, if he is prepared to show that the survey departs from the decree of confirmation, and that by such departure his boundaries are infringed. Messrs. Shafters, Park & Heydenfeldt fill neither of these categories; they neither allege that the survey does not conform to the decree of confirmation, nor do they show that, if it does, they are in anywise injured; indeed, they show affirmatively that they are not, for if they own the land under an older confirmed grant, it is utterly indifferent to *them* whether our survey overlaps theirs or not. We would point out to the Court, when examining the petition and affidavit through which Messrs. Shafters, Park & Heydenfeldt sought the order for the return of the survey into Court, and their exceptions, how the affidavit departs from the petition, and the exceptions from both—perhaps an indication of that aspiration after extent which is strongly manifested by them in this controversy.

In this as in all other cases, the party appealing to the Court for justice, should show by the *papers through which he makes his appeal*, that there are sufficient grounds for the interference of the Court, or, in other words, that he has rights, that those rights have in some way been infringed, who has infringed them, and that the Court is competent to aid him; and he ought not to be permitted to vex the ear of justice with his cries unless he can do so. We are not driven to mere

general principles to support our position. for the second rule in land cases, which has all the force of law, requires the petition by which the return of the survey into Court must be sought, to contain a statement of the interest of the party, which statement shall be verified by affidavit. This of course means that the petition shall state facts, verified by affidavit, from which the Court can see judicially that the petitioner has interests that are injuriously affected by an improper survey. Otherwise, the time of the Court, to the great detriment of suitors in other cases, may be occupied in trying what will amount to nothing in the end, to say nothing of inconvenience to the witnesses, and cost and damage to contesting parties. It is as necessary to the safety of parties litigant in such cases as these, as it is in others, that the party seeking the aid of the Court should state distinctly and fully what he wants, and what facts he relies on to get it, and that he should be held closely to them.

But even if they, Shafters, Park & Heydenfeldt, have any standing in Court, on their pleadings, or what answers to such, they have utterly failed to make it good by proof; for so far as we can learn, *not one particle of evidence has been given or offered by them.* Mr. Shafter asserted on the opening of the oral argument, that by some stipulation in the case, the records in the cases of the United States *v.* Phelps, and the United States *v.* Briones, were in evidence in support of those exceptions in the Garcia case. I have searched the records carefully for such a stipulation but can find none such. I asked Mr. Shafter on the oral argument to point out such a stipulation, but he asserted that it was among the papers, and directed me to go there and get it. I have been there, again and again, and can find no stipulation signed by Garcia in person or by attorney, nor by or for any person claiming under Garcia. Of course, if there is a stipulation on file signed by the proper person making the record and proceeding in the Phelps, or, as it is commonly called, the Berry case, evidence in support of their exceptions to the survey in the Garcia case, and furthermore to show their interest in such survey, there is no more to be said on that head; but if there is not, upon what principle of law or right reason can any effect be given to them. They are in every sense, even supposing Garcia to be the only person injuriously affected by a decision adverse to him, *res inter alios acta.* He, much less those who claim under him, never had any day or place in Court in the so called Berry case. They had no opportunity to cross-examine the witnesses produced to contradict them, or to show them unworthy of credit. It certainly is not too much to say, that if Garcia may be defeated in this way, any other grant in the State might, easily enough, if the matter had been undertaken in time. We repeat again, that not the first particle of evidence has been given by Messrs. Shafters, Park & Heydenfeldt, either to show that they have any interest in the matter, or that their exceptions are well founded, unless, at any rate, the records in the Berry case are in evidence in this, *and not even then, for it in no wise appears that they, Messrs. Shafters, Park & Heydenfeldt, or either of them,* HAVE SUCCEEDED *to Phelps' rights,* or any part of them; or if it does in any wise appear, we don't know how. If we are right here, then, on this last ground, if on no other, must these exceptions be overruled, for the intervention is by them, *for themselves* and no one else, and if they have proved that the survey is wrong in every particular, and that in consequence the holders of the Berry grant will be stripped of every inch of their eight leagues, still they must fail because it does not appear that the holders of that grant have clamored before the ear of justice.

But aside from this objection, the records in The United States *v.* Phelps, if they are to be considered in evidence in this case, show that if any one has title to the land which we claim, under the grant to Berry, it is Berry's heirs, at any rate, not Phelps or Randall, or the present exceptors, for the deed or concession from Berry to Smith, under which they claim, and which is the only conveyance *from Berry,* is only of "the right which I" (he Berry) "have acquired in the place called Punte de Reyes," and which is dated on the 14th day of February, 1844, which, by the way, is just fourteen days before the fiscal's opinion is dated, which is supposed by Messrs. Shafters, Park & Heydenfeldt to be the close-up of a litigation in which Berry claimed that he did not own Punte Reyes, but did own Tomales y Baulinas, for it will be seen that in the deed to Smith, he speaks of the grant under which he claims as of 1836, and in Smith's deed to Phelps the date is given with more particularity, as of the 17th of March, 1836. Is it to be credited, that if he had

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been prosecuting a suit against Garcia for Tomales y Baulinas, he would, just as he was expecting judgment in that case, be selling Punte de Reyes as the land granted to him? But be this as it may, the only land conceded by Berry to Smith is Punte de Reyes; and unless it is proved that the land they now claim was then known as Punte de Reyes, how can they expect to have it substantially decreed to them?

We maintain, further, that in no view of the case, and supposing all our previous objections ruled against us, can these exceptions of Shafters, Park & Heydenfeldt be maintained, even waiving for the present the estoppel by reason of Berry's testimony and acts at the time juridical possession was given to Garcia. We understand them as resting their hopes of relief on what they call the judgment of the Superior Tribunal, invoking it as a *judgement, inter partes*, by one of the regular judicatures of the land, and as such, and whether executed or not, fixing forever the rights of the parties in relation to the matter adjudicated.

We say, that it is not a judgment *inter partes*, nor a *judgment* in any proper sense at all, much less in a litigation to which Garcia was a party. We may premise, that judicial proceedings were as regular and formal, at least, in the Mexican Courts as in those of the United States, as will be seen by reference to the Curia Filipica, pages 62 to 100, from which it appears that they were commenced by filing the complaint or *libello;* after which followed the *citacion*, then the exception *dilatorio* including special demurrer and plea in abatement, then the answer, then the replication, then the setting the case for trial, next the hearing the proof, and finally the sentence. All of which proceedings were, after the judgment, attached together and made up the judgment record, which was called in Mexican law proceedings *Los Autos*. See Escriche Dic. de Leg. and J., page 310, under head *Autos*, also under title *Proceso*, page 1386; and in real actions the judgment ordered a delivery of the land claimed, when judgment was for the plaintiff, with damages for detention, (which damages were fixed in the judgment) besides costs. Escriche Dic. de Leg. and J., page 1453, where it is said:

"En los pleitos sobre accion real debe (la sentencia) mandar la entregada de la cosa con los frutos percibidos y que se pudieron percibir desde la contestacion tasandolos y moderandolos por lo que resultara de los probanzas sin remitirlo á contadores."

We translate as follows: In real actions, the judgment must command the delivery of the property, with the rents and profits received, or that might have been received, during the litigation, fixing the amount by the proofs, without sending it to a referee.

This single fact, in the light of the strictness with which the Mexicans adhered to their forms of proceeding is very indicative of the real character of the paper.

Again, it was no part of the duty of the fiscal to act as an assessor to the Court, or to assist or lead its deliberations, or indicate or form its judgments. He was simply an attorney to prosecute criminal cases, and defend for the King treasury suits. See Escriche Dic. de Leg. and J., page 692, title *Fiscal*, where the definition given is "Each one of the advocates named by the king to prosecute or defend in the Supreme or Superior Tribunals of the Kingdom, the interests of the treasury and the causes pertaining to the vindication of the public."

Then follows a statement in detail of his powers and duties, which shows that he has, as fiscal, no judicial powers or *quasi* judicial powers; although he might, for want of sufficient judges, act by special commission as one of the judges of the Court, just as a common law judge in England sometimes sat by special commission in Equity, in which case he voted as one of the judges of the Court in making up the judgmentto be pronounced, but did not lead or direct the Court, and gave no opinion, *as fiscal*. This view is also sustained by Escriche, page 955, title "Juicio Civil Ordinario," pages 967 to 973 inclusive, where the regular course of an ordinary civil suit is given, and in which neither the fiscal nor the fiscalia takes or acts any part. But even if the fiscal, ordinarily, led the deliberations of the Court, as the Procureur du Roy at one time did in France, yet still there would be not the slightest reason for attributing to the paper under consideration such a character. In the first place *it is addressed to the Governor and not the Court;* it makes a suggestion that could with no sort of propriety be addressed to a judge, or even the Governor, if he were acting in any sense judicially, but which was perfectly

proper, supposing him, the fiscal, to be addressing him, the Governor, in his executive capacity. We instance that part where the fiscal says: "That in case the departmental government wishes to favor Sr. Osio, it can do so with the remainder of the land," &c., &c. If this were a suit at law before the Superior Tribunal, how utterly out of place would be such a suggestion. Again, the conclusion of the opinion is to the Governor and not the Court: "This, *Sir*, is the opinion of the fiscal's office, but *your Excellency* will resolve what you may consider most agreeable to justice." It was evidently and simply, and has every characteristic of a mere opinion, of the law adviser of the departmental government, addressed to the Governor. Such an opinion would naturally be, as this is, addressed to the Governor. There is no award of damages or costs either in the opinion of the fiscal or the confirmation by the President, Malarin; the language of the only part of the opinion which says anything about expense being, "that as the person benefited by the measurement of the sitios is Señor Snook, he pays the *expense of the survey*," not the costs of the suit. If this had been a judgment of the Court ejecting *Garcai*, the costs would have been awarded against *him*. The remainder of the paper utterly fails to give it the character of a judgment of the Court. No Court is named in it; no parties are named in it; it is not dated at, nor does it appear to have come from ,the Court House. It is not entitled as a proceeding in a cause; all there is about it, is, that the fiscal gives his opinion to the Governor and the President of the Tribunal, but not *as President;* after a few observations that have no characteristic of a judgment "*approves*" the *opinion* of the fiscal, and signs "Juan Malarin," not Juan Malarin, President, much less Juan Malarin, President of the Superior Tribunal, but simply "Juan Malarin," without title or addition. If there could be any doubt that it is not a judgment in a regular litigation *inter partes*, in view of other circumstances and indications, it seems to us that none can remain when we consider what the fiscal says about the foundation of his opinion. He says: "The fiscal of this Superior Tribunal makes known to your Excellency that he has examined the expedientes of" &c., &c., naming them, "and *remarks thereon*," &c., &c. Surely a judgment in a suit, *inter partes*, would not be tried and determined by a mere examination of their expedientes; there is nothing about hearing the allegations of the parties or their witnesses, nothing about their having been cited, not one single formula where forms were adhered to so stoutly. There is not a single hint that either of the parties were ever called or heard, but the whole conclusion was arrived at on a simple examination of the Expedientes.

This case illustrates the wide difference between a judgment after hearing the parties, and any conclusion that can be arrived at, or opinion that can be formed without doing so. The fiscal asserts that the land granted to Garcia was in the Cañada de Baulinas, measured from its centre to the point of the same name; an error he never could have fallen into, as will be hereafter shown, if he had but called the parties before him, for there is not a single *hint* to that effect in Garcia's expediente, where certainly one would look to see what land was granted him. We maintain that it is simply what the paper purports to be in itself, aside from the character given to it at the head, (and that in the translation only,) a mere opinion of the Attorney General, confirmed by the President of the Court in his private, or at least, non-judicial character. It is true, in the translation the Secretary Jimeno, in communicating it to some one, is made to call it a sentence, which would be a *literal* translation for the word *sentencia*, which in Spanish law language answers to our word "judgment;" but the translation is wrong, the word in the Spanish being, instead of sentencia, "acordado," and which cannot be translated by the words "sentence, decree, or judgment," but by the word "resolution;" and in the supposed communication from the Alcalde, at San Rafael, to Garcia, of the date of 21st of April, 1845, he says that the Governor had transcribed to him a "disposicion," not "sentencia" "del Superior Tribunal de Justicia ordenando me que cumpla exactamente con cuanto dicho Superior Tribunal tuvo á bien *resolver*," which agrees with what Jimeno calls the act. an acordado, or resolution.

No one, we presume, would ever mistrust from the paper itself that it was the judgment of a Court in a suit *inter partes*. We maintain, further, that there is no evidence, or at least not sufficient to show that the *Tribunal* acted at all, either in

adjudicating, decreeing, sentencing or resolving, that the opinion of the fiscal and approval by Malarin were their individual acts alone. The papers themselves, as Jimeno professes to recite them, say nothing about any Tribunal. It is true that the translator has squeezed the Tribunal into the translation, but it is no where found in the original. The word Tribunal is found twice in the translation, once where it says, "this Tribunal bearing in mind that he ceded the two sitios to Mr. Snook," &c.; and again near the end, "it (this Tribunal) approves in all its parts the opinion of the fiscal, and signs, Juan Malarin," but in neither case is there any authority for putting in the word "Tribunal." In the original it says merely "aprueba," the indicative mood, present tense, third person singular of "aprobar" to approve; who approves or what approves is not distinctly said: but it is evidently Juan Malarin, who speaks of himself in the third person, a form of speech as common in Spanish as in English.

Is it not much more likely that Manuel Jimeno has mistaken the character of the paper, or tried to impose it upon the Alcalde at San Rafael for what it was not, than that the judgment of the *Superior* Tribunal should be in the form of an address to the Governor by the Attorney General, should be authenticated by no seal and should be merely signed by the President of the Tribunal with his name without his title of office? If not a lawyer, Jimeno might honestly, perhaps, mistake an opinion of the Attorney General, approved by the President of the Tribunal, as a sentence of the Tribunal. At best it is but a *copy* of the judgment of the Court, not properly authenticated. If the judgment had ever been executed it would be another thing, but it never was, and its whole force, if any it has, is as a *judgment*, and it is not too much to say that a mere copy of the *judgment* of the Court, unconnected with any other part of the record, to have any weight, must be duly authenticated, and that, too, under the seal of the Court. But it is at least doubtful if we have a copy. The language is, "El Gobierno por su decreto de 29 de Febrero, ultimo *dispone* se ponga en ejecucion *lo ac rdado* por el Tribunal Superior de Justicia de este departmento, *lo que a la copia digo;*" which we translate as follows: The Government, by its decree of the 29th of February last, arranges (disposes or prepares) that the *resolution* of the Supreme Tribunal of Justice of this department shall be put in execution, the which by the copy I say to you. This translation is in some very important respects different from that of Hartnell, but he translated it without special reference to the question now made, and a reference to any Spanish and English dictionary will show that we are right. The word "dispone," which is the word "disponer" in the indicative mood, present tense, third person singular, does not mean "to command" or "to order," nor is any such or any like signification given to it in any of the dictionaries. Again, the word "acordado" is incorrectly translated by the word "sentence," which would be a literal translation of the word "sentencia," which in Spanish law language means the same as "judgment" in ours, whereas the word "acordado" can only be fairly translated by the word "resolution," being the past participle from the verb "acordar," to resolve. Again, the words, "lo que a la copia digo," cannot be translated literally, by any means, by the words "of which the following is a copy." Translated literally, it means "the which, by the copy, I say;" and may, and most likely does, mean "the which according to a copy I say to you," or "of which by a copy before me I inform you." He, Jimeno, the Secretary, having what he supposes to be a copy, undertakes to communicate it. Thus we should not have the Secretary's certificate from his own knowledge that it was a copy, but only his certificate from some other person's certificate; and this idea is borne out by the fact that Jimeno was not the Secretary of the Court.

And the introduction with which Jimeno begins, fits in exactly with what he adds at the end: "And I *transcribe* it to you," &c.; transcribe being much more apt, when applied to re-writing a mere copy than to copying an original. Jimeno says, in substance: The Government is about to enforce a resolution of the Tribunal, which by the copy before me, I communicate to you; and then after having given it, he adds: "And I have rewritten it to you." This is certainly much nearer the strict meaning of the Spanish, and this view is borne out by the fact that Jimeno was not the Clerk or Secretary of the Court, and by the fact that Bonilla was. The face of the paper, and the language of Jimeno, show that he

had a copy before him under the hand of the Secretary of the Court; for if Jimeno had copied directly from the records of the Court, there would have been no use for Bonilla's name. Hence, too, Jimeno's mistake in calling it a resolution of the *Tribunal* instead of an opinion of the President. If there is a fair doubt of the character of the paper, that doubt condemns it. The citizen, after a lifetime of possession, is not to be stripped of his estate, and his grantees injured, on old documents of doubtful character and import. We call attention of this Court to the fact that there is not, in any part of this controversy however viewed, any evidence whatever that Garcia ever knew or heard of the so-called judgment, for the letter addressed to him, produced from the archives at San Rafael, in nowise appears ever to have been sent, or in anywise communicated to him.

We would ask the particular attention of the Court to this, that there is *no where in any of the records or papers before the Court*, so far as repeated and careful searches enable us to say, either in The United States *v.* Briones, the Same *v.* Phelp or the Same *v.* Garcia, certainly not in the last, any account or history of this same so-called judgment of the Superior Tribunal at all. Its first appearance is as Exhibit "J," annexed to the etition of Andrew Randall, in the case of The United States. *v.* Andrew Randall. If this so-called judgment had ever been enforced by execution, it would have carried much more weight with it, as a mere judgment; but the Executive never did enforce it as a judgment, and, to say the least of it, it is of too doubtful and uncertain a character to warrant a Court, now, in giving it such importance as would be implied in supporting the exceptions of Messrs. Shafters, Park and Heydenfeldt on its authority.

But supposing it to be a judgment of the Superior Tribunal, it is utterly void, so far as Garcia is concerned, unless he was *both a party and was cited in due form of law*. This is not only a principle of universal justice, but of Spanish law, and could be dispensed with by neither Sovereigns nor laws, say the Spanish law writers, as appears from the following quotations from Curia Filipica, under heads "Citacion," and "Cosa Juzgada," which follow, with accompanying translation:

Curia Filipica, Title Citacion, Page 66, Sections 1 and 2.

"Citacion es una juridica citacion y llamamiento, que se hace a álguno, para parecer en Juicio ante el Juez á estar á derecho, y cumplir su mandamiento, como consta de una ley de Partida. Y asi es el principio, fundamento y cabeza substancial de la orden del Juicio, aunque no se empieza por ella propria sino impropriamente. Es introducido por todo derecho divino, natural y positivo, como lo resuelve Paz.

"De lo dicho se sigue, que todo Juicio (aunque se trate ante el principe) en que fué omisa la citacion, es nulo. Siguese tambien que si en alguno comision se dixere, que se proceden sin guardar la orden del juicio, no se entiende de la citacion, que no puede ser omitida por el principe ni ley; y asi una de la Recopilacion que dice, que la omision de las solemnidades del Juicio no le vicie, se entiende de las demas, y no de la citacion, como lo resuelve Paz. diciendo que aun que por Principe y ley no se puede quitar la citation primera, necesaria para la defensa por ser de derecho divino, y natural, se puede variar y alterar el modo de ella, y quitar las demas citaciones de la causa, inductas para preparacion de la sentencia, por ser de derecho positivo."

Which we translate as follows: Citation is a judicial citation and call, which is made to any one, to appear as a litigant before the Judge in Court, and comply with his command, as is shown by a law of the Partida. And thus, it is the beginning, foundation, and substantial head, of judicial proceedings, although they do not properly begin with it, (meaning, we suppose, that they begin with the filing of the libello.) It is introduced (made a part of judicial proceedings) by all laws, divine, natural and positive, as Paz. resolves.

From what is said it follows that all judicial proceedings (although before the sovereign,) in which the citation was omitted, are null. It follows, also, that if in any commission it is said that proceedings shall not follow judicial order, this is not to extend to the citation, which cannot be omitted by either sovereign or law; and thus a law of the recopilacion, saying that the omission of legal solemnities do not vitiate, is to be understood of the others and not of the citation, as Paz. resolves, saying that neither sovereign nor law can take away the primary citation,

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necessary for the defence, as being of divine and natural right; they may vary and alter the mode of it, and abolish the other citations in the cause introduced to call the parties to hear the judgment as being founded in mere positive law.

Again, it is said in Curia Filipica, page 108, section 1st: "Cosa Juzgada es la definida, y determinada en contradictorio Juicio de Juez competente, en que las partes fueron oidas de cuyo litigio, no se puede mas tratar, ni ha lugar apelacion, ni recurso: la cual de su naturaliza es de gran fuerza, y trae aparajada execucion aunque despues conste ser injusta. Como se de en unas leyes de Partida y Recopilacion."

Which we translate as follows: A thing adjudged is a thing definitely determined, in a litigated suit at law, by a court having jurisdiction in which the parties were heard, in relation to which litigation nothing further remains to be, or can be done, the which, of its own nature, is of great force, and may be executed without further proceedings, although it is afterwards proved to be unjust, as is said by certain laws of the Partidas and Recopilacion.

Again, it is said, Curia Filipica, page 100, section 13: "Asímismo, es nula la sentencia dada en la causa en que haya nulidad notoria y manifiesta que evidente, notoria y manifiestamente, consta de los mismos autos, o de defecto de citacion, o jurisdiccion; las cuales nulidades por ser perpetuas, se pueden pedir en cualquier tiempo, perpetuamente aunque, de la sentencia, no haya apelado."

Which we translate as follows: Thus, in itself is null, the judgment given in a cause, in which there is a notorious and manifest cause of nullity, which evident and manifest nullity appears from the record itself either for want of a citation or jurisdiction, the which nullities, as being perpetual, may be asserted at all times, although no appeal may have been taken.

In other words, unless the record shows both a citation and jurisdiction of the subject matter, the judgment is absolutely void.

But, treating this as substantially an action of ejectment by Berry's successor against Garcia, and supposing all of the papers in The United States *v.* Phelps, and The United States *v.* Garcia, to be before the Court, we most confidently maintain that the successors of Berry must fail, both because the grant to Garcia was for this very land that we claim, and Berry's was not; that if Berry's was, it is a junior grant and must give way to Garcia's; and because Berry's successors are estopped from asserting their title to this land by virtue of their grant, by reason of Berry's testimony when juridical possession was given to Garcia, and the part he took in forwarding that juridical possession, and by the act of Phelps when he petitioned for the confirmation of the Berry grant, of which he was then the holder, in applying it to entirely different lands; by the act of Berry in selling to Smith entirely other lands as those granted to him, Berry, and by the acts of Berry and his successors in taking juridical possession of entirely other lands under his grant and holding them for some eighteen years.

And in setting out upon this inquiry, we would call the attention of the Court to the fact that there is not the first faint spark of evidence from the beginning to the end, nor in any outskirt or branch of any of these cases, that Garcia ever claimed or sought *any other* lands *under his grant* than those which we now claim. It does appear, from some of the papers in the Berry case, that Garcia lived down at the head of Baulinas Bay, but that he claimed that as the land covered by his grant, or that he claimed any title to it at all, there is not any proof; but it appears that while living there at Baulinas he claimed the land which we now claim, and had a house, Indians and cattle on it. (See deposition of Black.) Surely there was nothing to prevent a man having two pieces of land, or living on one and owning the other. If, because he lived under the circumstances he did at Baulinas, Garcia's grant is to be located there, although the grant, the deseño, the juridical possession and confirmation, all fix it clearly and distinctly in another place, how will the holders of the Berry grant stand when he not only fixed himself on other lands, but sold other lands as a part of his grant, and took juridical possession of other lands, and his successor, Phelps, petitioned for the confirmation of his grant to other lands, and in addition to all this he never had possession of any portion of the land we now claim, and, to say the least, the actual location of the land from the petition and accompanying deseño being very doubtful. Indeed, the first decree of confirmation was for lands known as Punte de Reyes. We

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will premise further, that some confusion has been created in using the word *estero* as applicable to either Baulinas or Tomales *Bay*. It means no such thing, and cannot properly be so applied. We shall not deny that during the course of proceedings in these cases it has in some instances been used in that sense, but such is not the sense of the word, nor can it be supposed to have been used in that sense, at any rate, at any time before the conquest by the United States. The definition given in the dictionary is as follows: Salt marsh, lake; matting; small creek. Now, take Garcia's petition asking for lands *contiguous* to the *esteros* Tomales y Baulinos, and especially in conjunction with his deseño, and it fixes his grant exactly where we ask it to be, that is, with its northeasterly end abutting on Tomales Bay, and being "contiguous to," to use the language of the petition, the esteros Tomales y Baulinas. In determining the location of the land we wish to know the meaning of the words used at the time they were used. Using the word "estero" in the sense for which we contend, the petition and deseño of Garcia agree, but applying the word "estero" to the *bays*, then the petition and deseño are in a measure discordant, for by the petition alone and using "estero" in that sense the land would lie as near, but even then no nearer, to Baulinas as Tomales Bay; whereas, as shown in the deseño, the land abuts on Tomales Bay, but comes nowhere near the other. That the term *estero* was applied by the Californians to such creeks as the Olimos Loke and Tokeglume, see the answer of Vallejo to the first question of Mr. Greenhow, in The United States *v.* Phelps, record, page 10 or 11.

The lands are described in every paper in the expedient as the lands of *Tomales y* Baulinos, except in the proceedings attending the juridical possession, of which we shall speak hereafter, an expression that would be utterly incorrect if the words Tomales and Baulinas are to be applied to the bays now known by those names instead of the creeks now called Olimos Loke and Tokeglume; especially if the land lies to the southward of a line midway between the two, and besides, in the grant the lands are specified as those shown in the deseño. Mr. Shafter is welcome to all he can make out of the fact that Garcia, when asking for juridical possession, speaks in his petition of the rancho Las Baulinas and out of the fact that the proceedings are entitled "Proceedings instituted," &c., to give possession to "rancho Las Baulinas," when *those very proceedings show as clearly as human language can that the land thus spoken of was the very land we now claim*, especially as Berry, under oath in those proceedings, said he knew the rancho Las Baulinas, and then went on to describe it and gave the exact boundaries we claim.

Garcia's expediente is perfectly consistent and plain from beginning to end, and shows a perfect title, both at law and in equity, for the specific land which we now claim. Berry's is the reverse of all this. The land he asks is two leagues by four in the Cañada de Tomales, his deseño showing, or rather purporting to show, the Cañadas Tomales and Baulinas, but the land solicited lies in the *Cañada de Tomales alone*. Now, according to their own showing the land cannot be located there for that Cañada is not either four leagues long or two wide, or anything like it. And they have no authority, (according to the doctrine on which they rely, to avoid the effect of the juridical possession given by Vallejo, that a grantee must be restricted to the land granted, and that even juridical possession of other lands will not save him) for taking any other land. Again, from Berry's deseño it is at least extremely doubtful whether the Cañada de Tomales there laid down is the valley of the San Geronimo or of the Necasio Creek. But Berry never settled or fixed himself in any wise in the valley of either of those creeks, but went over between Tomales Bay and the Ocean and fixed himself, and sold two leagues of land there to Snook as a part of his grant; juridical possession was given him of land there; it was that land that Phelps petitioned to have confirmed to him under the Berry grant; and it was with a view to obtaining a patent for the land, of which Vallejo gave possession to Berry, that Phelps filed his petition in The United States *v.* Phelps, and took the depositions of both Richardson and Vallejo, and it was not *until after Randall, who claimed the same land under another grant, had purchased the Berry grant from Phelps*, that an effort was made to apply the same to other lands than those lying between Tomales Bay and the Ocean, all of which will be seen by reference to the petition, &c., in the record in the Phelps, or as it is called, the Berry case.

But whether the juridical possession given by Vallejo fixed the Berry grant to that land or not, one thing is clear, no possession *was ever given* to Berry or any successor, of the land which we now claim.

But supposing these two grants to be specifically for the same land, how do they stand as hostile to each other, and which is senior and which junior?

The following double columns will aid us to determine:

THE UNITED STATES, *v.* BETHUEL PHELPS.	THE UNITED STATES, *v.* RAFAEL GARCIA.
Date of petition. Nov. 25th, 1835.	Date of petition, June 15th, 1835.
Marginal decree, Nov. 27th, 1835.	Marginal decree, July 28th, 1835.
Report of Ayuntamiento, Feb. 29th, 1836.	Report of Ayuntamiento, Sept. 30th, 1835.
Order to take testimony, March 14th, 1836.	Order to take testimony, March 16th, 1836.
Petitioner notified and testimony taken, March 16th, 1836.	Petitioner notified and testimony taken, March 17th, 1836.
Vista dated March 17th, 1836.	Vista dated March 18th, 1836.
Reference to Committee on Lands, March 31st, 1836.	Reference to Committee on Lands, May 31st, 1836.
Report of Committee, Sept. 9th, 1836.	Report of Committee, June 27th, 1836.
Report approved, Sept. 9th. 1836.	Report approved, July 5th, 1836.
Grant dated, March 17th, 1836.	Grant dated March 19th, 1836.
Juridical possession, June 12th, 1842.	Juridical possession, Oct. 13th, 1841.

It will thus be seen that our petition, marginal decree and report of ayuntamiento, were earlier than theirs; that their vista and grant were earlier than ours, the grant by two days; that *our approval* by the Departmental Assembly was some two months and more earlier than theirs, and that our juridical possession was earlier than theirs; but this of course is indifferent, because they *have never yet* had juridcial possession of the land which they now claim. The most significant fact is, that the approval by the Departmental Assembly in the Berry case, the Berry grant is postponed to ours, and this we contend would of itself settle the matter against them, even although the committee in its report in the Berry case undertook to say that the lands granted to Garcia were those lying between Baulinas Point and the middle of the space between that and the head of Tomales Bay. And here, and here only, the fiscal finds authority for saying what he alleges in that behalf, and which is contradicted by every part of the expediente in Garcia's case. We say, that the committee in acting on the grant to Berry were competent to postpone the confirmation in his case to the one in Garcia's case made more than two months before, but they were not competent, after Garcia's grant to the land which we claim had been approved for two months, to give it an entirely different location. Indeed, the committee do not undertake to *change* the location, they merely make a mistake in relation to it, because the expediente which the committee refer to does not in any of its parts, (for the juridicial possession in which alone it is spoken of as the Rancho Baulinas, was not given until long after,) say that Garcia asked for two sitios in the Cañada *de Baulinas*, much less that it was to be measured from its center to a point of the same name. And on what they say about Garcia having reported the land vacant, etc., we would remark that it *was* all of it, so, then, for Garcia did not *get his grant* until *afterwards*; he was simply asking for it, and he could not, with truth, have said otherwise than that it was vacant and did not belong to any one. And if he had said so, it must have defeated his own purpose to get a grant. Now, and supposing Berry's grant not to have been in direct terms postponed by the Departmental Assembly, to Garcia's, as both Berry's and Garcia's grants were made *subject to the approval of the Departmental Assembly*, he who got the first approval got the first grant. Suppose both grants to have been for exactly the same lands, and both made subject to the approval of the Departmental Assembly, of course it lay with the Assembly to approve of either, but could it in a legal sense be said to be able to approve *both*? And is not the approval of one the disapproval of the other? And was not the approval of Garcia's on the 5th day of July, 1836,

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the *dis*approval of Berry's? Suppose no other condition in the grant than the approval of the Departmental Assembly, was not Garcia's title, as soon as he got the approval of the Assembly, perfect? And if he (Garcia) had found Berry in possession at any time *before* the time when he (Berry) got his grant approved, could not Garcia have ejected him?

As it seems to us that this view of the case is decisive in our favor, let us suppose the only condition in each grant to be that of the approval by the Departmental Assembly; that the petitions of both Garcia and Berry for the grants were presented at the dates they respectively were, and that the subsequent proceedings occurred at the respective dates they appear to have done up to the approval by the Departmental Assembly of Garcia's grant. Let us suppose, further, that at this stage of the proceedings Berry takes possession of the land covered by the grant, and that Garcia has brought ejectment to recover it, can there be a doubt that he must do so? It seems to us, not. The Mexican Nation is the owner of land; two different men apply, each for himself and in hostility to the other, for the same, to the Governor. He says to each, "Yes, you can have it, provided the Departmental Assembly says so, too." One of them applies to the Departmental Assembly for its affirmative say-so, and gets it: or, in other words, it confirms and makes final, so far as the action of the Government is concerned, what was before only conditional and contingent. Now, under these circumstances, is not the approval of Garcia's grant by the Departmental Assembly, in and of itself, a disapproval of Berry's? Does not the act of the Departmental Assembly, in saying to Garcia, "Yes, you shall have it," amount in and of itself to a declaration to Berry, "No, you cannot have it?" They cannot *both* have it, for here is no question of a joint ownership. Besides, if the approval by the Departmental Assembly did not give title to Garcia, he, following up that approval by getting juridical possession, and holding possession for nearly thirty years, how could the approval by the Departmental Assembly give Berry such rights, who never got juridical possession, *or any* possession of it, but on the contrary assisted his opponent to do so, and he and his successors took, claimed and held entirely other lands, for over eighteen years before he made any pretence to ours?

We maintain that the approval of Garcia's was, in and of itself a *dis*approval of Berry's, supposing the grants to be for the same land; or suppose Berry's for the same land as Garcia's, and more too, then the approval of Garcia's was a disapproval of Berry's, *pro tanto*.

The approval of Garcia's amounted to *this*, or it amounted to nothing. Surely this is clear. The approval is quite different from the grant, for the grant is conditional and contingent, by its express terms, and in and of itself is of no force, and the giving a grant to B, after previously having given one to A, does not injure the latter, for if he gets the approval the grant to B does not effect him, and if he does not, his grant is good for nothing any way. The grant to B merely enables him to ask the approval; and a hundred may ask, but only one can have. It is like the case of two suitors. A and B, bachelors, are suitors to C, spinster, for her hand, with the consent of D, her guardian. Now here, as in the case of the land, the approval of the suit of one is the most explicit and decisive, and forever conclusive, disapproval of the other that the nature of the case admits of. We say, then, that as between the rival pretenders to Tomales y Baulinas, the acceptance of Rafael, was a clear, explicit, decisive, and finally conclusive, rejection of Jaime, and that no power existed in the Most Excellent Deputation, afterwards, to interfere with the land or the owner. Aside from any hostile claim, what is the effect of the approval by the Departmental Assembly? Is it not to transfer the title from the nation to the grantee? If so, Garcia became owner on the 5th day of July, 1836, and the Departmental Assembly had no power on the 9th day of September to strip his title from him. If the effect of the approval of the Departmental Assembly is not to transfer such title, where and when did Berry get *his*, on the strength of which he desires such action from this Court as will dispossess Garcia and put him in.

Besides, in the approval of Berry's grant, the Departmental Assembly expressly postpone and make it subject to Garcia's. Is it said, "yes, the Departmental Assembly make the approval of Berry's subject to the grant to Garcia, but it at the same time asserts that Garcia's grant is located on other lands than those he now

claims?" we reply that the Assembly was competent, in approving Berry's grant, to except from it the land previously granted to Garcia, but it was not competent to decide on the loc tion of the latter, and that the doing of what they had the power to do, to wit, in approving Berry's grant, to except from it the land previously granted to Garcia, was not vitiated by the Most Excellent Deputation trying to do what they had no power to do, to wit, deciding where Garcia's grant was located.

Another rule of law is applicable here to our salvation, if necessary, that when two acts of any department of government are in apparent conflict, or partial conflict, they shall be so construed, if possible, as that *both* may stand. Now, by giving Berry's grant the priority, it utterly extinguishes Garcia's, but by giving Garcia's the priority it has no such effect, for there are some six of the eight leagues of Berry's grant left unaffected by it.

Even if the Departmental Assembly had judicial powers, it was not competent to bind Garcia by its decision, without first citing and hearing him, of which there is no pretense. Berry's successors, (supposing Messrs. Shafters, Park & Heydenfeldt to be such, of which there is no proof,) are in an entirely different if not contrary position from the one they would fill, if the Departmental Government had actually dispossessed Garcia and put Berry into the possession of this land, under what they call the decree of the Superior Tribunal, or under the declaration of the Departmental Assembly that Garcia's land was to be measured from the middle of the Cañada de Baulinas to the point of the same name, for all the intendments and doubts that would then tell in their favor, now tell in ours.

Again, as to the location of Garcia's land, we would call the attention of the Court, that there is not from the beginning to the end of Garcia's expediente any hint, either in words, pictures, maps or plats, about any *Baulinas Point*, and that there is not the first point of solid ground or even cloud land on which to rest their assertion that Garcia's land was to be measured from the center of the Cañada of Baulinas to the point of the same name, if by that they mean the Punte de Baulinas shown on Berry's deseño; and we repeat here, that not only does not Garcia's deseño show any such thing, but it is utterly inconsistent with it; for whether we translate "Estero Baulinas" to be the creek in the Cañada de Baulinas, as shown on Berry's deseño, or to be Baulinas Bay, the land cannot be located as they claim, consistent either with Garcia's petition or deseño, with reference to which the grant is made, for the petition speaks of the land as contiguous to the esteros of *Tomales y* Baulinas, and the deseño shows it as abutting on Tomales Bay. Even if "estero" is to be translated by the word "estuary," it would be applicable to neither one of those bays—much less to Baulinas, into which no stream, however small, seems to fall. The deseño of Garcia shows what he meant, then, by the esteros of Tomales y Baulinas, for the two creeks called "Tomales and Baulinas" in Berry's deseño, according to the construction Mr. Shafter puts on it, are shown in Garcia's deseño, each bearing the same relation to the land as the other, and hence the propriety of calling it *Tomales y* Baulinas, of which there would be none if it were located down on Baulinas Bay. We call attention of the Court further to the fact that the juridical possession given by Vallejo to Berry was good, even according to the law as laid down by the fiscal, for both the record of the giving of such possession, and his testimony when examined for the claimant in The United States *v.* Phelps, show that he was at least *de facto* Alcalde, and gave such possession in that capacity, as he did also in ours. (See record in U. States *v.* Phelps, page 8 or 9, the 3d question by claimant. and answer of Vallejo.)

But supposing Berry's grant properly approved, and that it is distinctly for the land which we now claim, that approval left the further condition of getting juridical possession of the land granted. to be fulfilled. This he does not do, but applies for and gets possession of *entirely other lands*, and takes and holds them, such *other lands*, according to the testimony of both Richardson and Vallejo, both witnesses sworn for the claimant, until the time of his death; and neither he nor his successors, until eighteen years after the grant, made any claim to the land which they now say was granted to Berry, but during *all* that time held and claimed other lands; and not only so conducted, but assisted Garcia to complete his title to the lands they now claim. Was not this a complete abandonment of

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all claim to the land? He, Berry, *never* had juridical possession of the lands which they now claim, and hence never had anything more than an equity. Did not his acts above stated amount to an abandonment of that equity? What more could he have done, or what else could he have done, that would have been so significant of such an intention?

However the case may stand on other grounds, to permit Berry's successor to recover the lands now, after his testimony and other acts in the proceedings, to give juridical possession, and in claiming and holding other lands, would be to violate every principle of justice. It appears directly that William E. Randall, not Andrew Randall, bought some 1400 acres from Garcia, which his widow now endeavors to obtain by her exceptions, and from Nelson Olds' testimony, taken in support of our exceptions, that only about three thousand acres out of the whole two leagues and over yet remain unsold. But, says Mr. Shafter, Berry's signature to the deposition is not genuine. Vallejo, their own witness, in The United States *v.* Phelps, swears, in support of our exceptions in the Garcia case, that the record of juridical possession is in all its parts true, and that record states that Berry appeared before him on that occasion and so testified; and even if it were proved beyond controversy that the signature is not Berry's, it would amount to nothing more than to show that the name of the affiant in an affidavit was not in his own hand-writing. There are a thousand reasons why he might have so sworn and yet not signed his name. The authenticity of such a paper does not rest on the signature of the person, but the certificate of the judge. We must either suppose that Berry so testified, or that the judge whom they have endorsed by making him a witness, not only committed perjury, but forgery, and that, too, where apparently he could have no motive. And all that there is to make that out, is that Mr. Hopkins, who has seen a number of signatures purporting to be Berry's, says that it does not seem like his. But it does not rest here, for at the close of the proceedings, where the truth of the whole record is asserted, appears Berry's signature, affirming it, and this signature appears, according to Mr. Hopkins, to be genuine. If his testimony, his acts in assisting to give Garcia juridical possession, his acts in claiming and taking possession of entirely other land, as his, under his grant, his holding it until the time of his death, and these acts followed by acts consistent therewith, on the part of his grantees, in asking to have the grant confirmed for entirely other land—if this does not amount to an estoppel, we are at a loss to imagine what would.

A. T. WILLSON,

Of Counsel Sarah Randall, Garcia and others.

No. 68.

U. S.
— vs —
Rafael García.

Brief in behalf of
Intervenor Randall.

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District Court of the Northern District,

STATE OF CALIFORNIA.

THE UNITED STATES OF AMERICA
vs.
RAFAEL GARCIA.

ARGUMENT IN FAVOR OF SARAH RANDALL, WIDOW AND ADMINISTRATRIX OF WILLIAM E. RANDALL, DECEASED, GRANTEE OF RAFAEL GARCIA, IN SUPPORT OF HER EXCEPTIONS TO THE OFFICIAL SURVEY IN THIS CASE, AND IN OPPOSITION TO THE EXCEPTIONS OF SHAFTERS, PARK & HEYDENFELDT.

The intervenor, Sarah Randall, excepts to the survey on the ground that it, the survey, conforms neither to the description given in the decree of confirmation, nor to the juridical possession. According to *both*, the southeastern boundary was the *Cañada de Ciervo;* and the survey as made stopped far short of that boundary; in consequence of which, most of the intervenor's land is left outside of the survey. We refer to the decree of confirmation, the record of juridical possession, the testimony of Ignacio Pacheco, Salvador Vallejo, and Daniel Olds, taken and filed in support of our exceptions, to the deed from Rafael Garcia to William E. Randall and John Nelson, the deed from Nelson to Randall (the testimony of Daniel Olds showing *inter alia* the death of Randall,) and the certified transcript of the proceedings before the Probate Court of Marin County in the matter of the estate of said William E. Randall, resulting in letters of administration to the intervenor. The excess beyond two leagues will be very little in case the survey is reformed by making the *Cañada de Ciervo* the southeastern boundary; and we understand it to be the settled law of this Court, that in all such cases at least, the survey must conform to the juridical possession, especially where, as here, there is no question of the good faith of it. The objection that the *Cañada de Ciervo* does not extend to the Tokeglume, or San Geronimo, seems to us to be neither supported by the proof, nor of any moment if supported. The record of juridical possession is explicit that they proceeded from the starting point along the Tokeglume to the Cañada de Ciervo; and Vallejo and Pacheco, the first of whom was the Alcalde who gave, and the latter one of the witnesses who assisted at the giving of the juridical possession, being examined in support of our exceptions, affirm the truth of the record; and to this Mr. Shafter opposes the testimony which he drew out on the cross-examination of Daniel Olds, that what he now understands to be the Cañada de Ciervo does not extend to the San Geronimo, and the supposed testimony of Dr. Mathewson that there is one unbroken range of mountains between the Olimos Loke and the Tokeglume or San Geronimo.—Upon this we remark, 1st, that the question is not what Mr. Olds *now* understands the Cañada de Ciervo to be, but what was called the Cañada de Ciervo when juridical possession was given; and 2d, that Dr. Mathewson has given no such testimony, so far as we can ascertain; certainly not in this case, nor in the case of the United States *v.* Bethuel Phelps. In the latter case is a deposition of his (Mathewson's) in which he testifies that there is a range of hills or

mountains between the two streams above mentioned, rising higher to the southeast, but he says nothing about an *unbroken* range, and his testimony would be consistent with the fact that there are half a hundred passes through the hills from one stream to the other. Besides, the testimony was not taken in support of Mr. Shafter's exceptions to the survey in the Garcia case, and cannot be used to impugn it. We maintain here, as everywhere in this case, that *none* of the depositions or other papers in the case of the United States *v.* Bethuel Phelps are in evidence in support of the exceptions of Messrs. Shafters, Park & Heydenfeldt, nor can be used in support of their intervention. But, even if the Court should hold it as proved that the Cañada de Ciervo does not extend to the San Geronimo, we urge that that is of no moment, for if the Court reads the words, "thence following" &c. &c. "*to the Cañada de Ciervo*," as meaning that they went along, &c. &c. as far southeast as the Cañada de Ciervo, instead of meaning that they came actually to it on the Tokeglume, still, the record adds that Garcia raised a mound of stones to mark the point, and thence they proceeded at right angles to the Olimos Loke, where another mound was raised; and Vallejo and Pacheco, in their testimony in this case, say that they showed this line to the witness Daniel Olds; and he says the surveyor in this case stopped a half a mile or so short of that line, and thereby left most of Mrs. Randall's land outside the survey. But, if the Court should hold that we must, notwithstanding juridical possession given, be limited to exactly two leagues, then we say that still the survey should be reformed, and the excess cut off the northwest end, which still remains unsold in Garcia's hands. (See evidence of Nelson Olds taken in support of our exceptions in this case.)

As to the exceptions of Messrs. Shafters, Park & Heydenfeldt, we say that they have no standing in Court, or, in other words, that the petition and affidavit by which they make their application to have the survey returned, show no interest in them which warrants such application. Their allegation in their petition that they are colindantes with Garcia, the single thing that, in any possible view shows any interest in them, is not supported by the confirmatory affidavit, and must, therefore, both under the law of 1860, and rule second in land cases, adopted by this Court, be rejected, even if, as simple colindantes, without any conflict of lines, which they do not allege, they would be interested, and then their application stands on the allegation in the *affidavit* of J. McM. Shafter, "that the survey and location of the land claimed herein is erroneous, in that it includes land which belongs to the petitioners in the annexed petition named, as the successors in interest of Bethuel Phelps, to whom the lands in said *petition* referred to were confirmed." We shall not urge laboriously the position, though we think it good, that the 2d rule in land cases, adopted by this Court, under the law of 1860, and thus a portion of the law governing this case, requires the *petition* to show that the party asking a return of the survey is interested in that survey, and that the petition shall be verified by the affidavit; neither of which requisitions is complied with in this case, and that for that reason they have no standing in Court; but even then, and treating the allegations of the affidavit, as in both petition and affidavit, there is nothing about being colindante. Besides, the *exceptions* raise no question about any line of ours conflicting with their lines, or any line of theirs; but their exception is, broadly and simply, that they have an older confirmed grant for the whole of the land surveyed, and that, too, without *any hint or suggestion that the land surveyed to us was either in whole or in part other than that confirmed to us.* Thus the bare, bald question is raised, can a third person come into a litigation between the United States and Rafael Garcia, *after judgment final* in favor of Garcia, and be heard to allege that which, if heard at all, can only be heard with an eye to an utter and complete denial of *every thing* which had in such litigation been adjudged to him, Garcia? The confirmation by the United States judiciary becomes, in this way, instead of a shield to protect, a mere decoy to entrap. Relying on the confirmation, Randall purchases a homestead on land indisputably covered by the confirmation, as appears in evidence; and how many others have done the same thing does not appear directly, but may be inferred from Nelson Olds' testimony, that out of the whole amount confirmed only about three thousand acres remain unsold. It is true that in their *exceptions*, after saying "that the survey is located *entirely on land* heretofore confirmed by this Court

to Bethuel Phelps," &c. &c., they add, "that the said survey is not in accordance with said grant or the deseño referred to therein." But the matter last quoted from the exceptions, even if standing alone, and in no wise connected with or enlarged or explained by that part going before, which asserts that our survey is located *entirely on their lands*, raises no question of conflict or incongruity of boundary lines, and hence, in view neither of their affidavit or exceptions have they any position in Court as colindantes; and, anticipating somewhat another part of the case, what they call their proof does not show any conflict or question of lines, so far as they stand as objecting to the survey already made. As *colindantes*, they have not, while questioning the correctness of the *present survey*, either on their pleadings or proofs, any standing before the Court, and must maintain themselves, if at all, on their assertion that they own the land, and that although finally and irrevocably confirmed to us, we shall be denied all benefit under that confirmation.

We urge that the law of 1860 contemplates no such thing; that the whole purpose and aim of that law was to enable the Court in some expeditious manner to supervise the action of the surveyor general, and to see whether he has done what, under the decree of confirmation, he ought to have done. It is an *appeal* from the surveyor to this Court, and it is a universal principle of appellate jurisdiction, that the Court *to* which the appeal lies, can do no other thing than what the judicature or officer *from* which or whom the appeal is taken, could legally have done. Could he, the surveyor general, *on any showing that could possibly have been made*, have properly surveyed off to Garcia any other land than such as was confirmed to him, such as is mentioned and specified in the decree of confirmation? Mr. Shafter, when arraigning the action of the surveyor general in directing the survey in the case of the United States *v.* Phelps, spoke in terms of just indignation, as this Court will probably remember, of the action of that officer in assuming to limit the quantity confirmed to Phelps, *or in anywise departing from the decree of confirmation.* That we are right in saying that the duty of the Court is simply to review the action of the surveyor, not this Court or Land Commissioners, and see whether he, the surveyor, has done anything he should not, will, we think, appear from section second of the act, where the *main general thing* for the Court to do is pointed out; all the subsequent provisions being merely subsidiary to that end. That section says that the Courts may make an order "requiring any *survey of a private land claim*" &c. "to be returned into Court *for examination and adjudication.*" It is the *survey*, not the decree of confirmation, that is to be examined and adjudged. Any person who has an interest in that survey, *i. e.* in the proper location of the land confirmed, and who is prepared to show that his interest is affected in this, that other lands than those confirmed have been included, or any portion of the lands confirmed excluded, has a standing in Court, and no other one properly has. And hence, a colindante whose land may be bounded on the land confirmed, or who holds a *younger* grant than the one surveyed, and which is overlapped by the disputed survey, may properly raise his voice in Court, if he is prepared to show that the survey departs from the decree of confirmation, and that by such departure his boundaries are infringed. Messrs. Shafters, Park & Heydenfeldt fill neither of these categories; they neither allege that the survey does not conform to the decree of confirmation, nor do they show that, if it does, they are in anywise injured; indeed, they show affirmatively that they are not, for if they own the land under an older confirmed grant, it is utterly indifferent to *them* whether our survey overlaps theirs or not. We would point out to the Court, when examining the petition and affidavit through which Messrs. Shafters, Park & Heydenfeldt sought the order for the return of the survey into Court, and their exceptions, how the affidavit departs from the petition, and the exceptions from both—perhaps an indication of that aspiration after extent which is strongly manifested by them in this controversy.

In this as in all other cases, the party appealing to the Court for justice, should show by the *papers through which he makes his appeal*, that there are sufficient grounds for the interference of the Court, or, in other words, that he has rights, that those rights have in some way been infringed, who has infringed them, and that the Court is competent to aid him; and he ought not to be permitted to vex the ear of justice with his cries unless he can do so. We are not driven to mere

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general principles to support our position. for the second rule in land cases, which has all the force of law, requires the petition by which the return of the survey into Court must be sought, to contain a statement of the interest of the party, which statement shall be verified by affidavit. This of course means that the petition shall state facts, verified by affidavit, from which the Court can see judicially that the petitioner has interests that are injuriously affected by an improper survey. Otherwise, the time of the Court, to the great detriment of suitors in other cases, may be occupied in trying what will amount to nothing in the end, to say nothing of inconvenience to the witnesses, and cost and damage to contesting parties. It is as necessary to the safety of parties litigant in such cases as these, as it is in others, that the party seeking the aid of the Court should state distinctly and fully what he wants, and what facts he relies on to get it, and that he should be held closely to them.

But even if they, Shafters, Park & Heydenfeldt, have any standing in Court, on their pleadings, or what answers to such, they have utterly failed to make it good by proof; for so far as we can learn, *not one particle of evidence has been given or offered by them.* Mr. Shafter asserted on the opening of the oral argument, that by some stipulation in the case, the records in the cases of the United States *v.* Phelps, and the United States *v.* Briones, were in evidence in support of those exceptions in the Garcia case. I have searched the records carefully for such a stipulation but can find none such. I asked Mr. Shafter on the oral argument to point out such a stipulation, but he asserted that it was among the papers, and directed me to go there and get it. I have been there, again and again, and can find no stipulation signed by Garcia in person or by attorney, nor by or for any person claiming under Garcia. Of course, if there is a stipulation on file signed by the proper person making the record and proceeding in the Phelps, or, as it is commonly called, the Berry case, evidence in support of their exceptions to the survey in the Garcia case, and furthermore to show their interest in such survey, there is no more to be said on that head; but if there is not, upon what principle of law or right reason can any effect be given to them. They are in every sense, even supposing Garcia to be the only person injuriously affected by a decision adverse to him, *res inter alios acta.* He, much less those who claim under him, never had any day or place in Court in the so called Berry case. They had no opportunity to cross-examine the witnesses produced to contradict them, or to show them unworthy of credit. It certainly is not too much to say, that if Garcia may be defeated in this way, any other grant in the State might, easily enough, if the matter had been undertaken in time. We repeat again, that not the first particle of evidence has been given by Messrs. Shafters, Park & Heydenfeldt, either to show that they have any interest in the matter, or that their exceptions are well founded, unless, at any rate, the records in the Berry case are in evidence in this, *and not even then, for it in no wise appears that they, Messrs. Shafters, Park & Heydenfeldt, or either of them,* HAVE SUCCEEDED *to Phelps' rights,* or any part of them; or if it does in any wise appear, we don't know how. If we are right here, then, on this last ground, if on no other, must these exceptions be overruled, for the intervention is by them, *for themselves* and no one else, and if they have proved that the survey is wrong in every particular, and that in consequence the holders of the Berry grant will be stripped of every inch of their eight leagues, still they must fail because it does not appear that the holders of that grant have clamored before the ear of justice.

But aside from this objection, the records in The United States *v.* Phelps, if they are to be considered in evidence in this case, show that if any one has title to the land which we claim, under the grant to Berry, it is Berry's heirs, at any rate, not Phelps or Randall, or the present exceptors, for the deed or concession from Berry to Smith, under which they claim, and which is the only conveyance *from Berry,* is only of "the right which I" (he Berry) "have acquired in the place called Punte de Reyes," and which is dated on the 14th day of February, 1844, which, by the way, is just fourteen days before the fiscal's opinion is dated, which is supposed by Messrs. Shafters, Park & Heydenfeldt to be the close-up of a litigation in which Berry claimed that he did not own Punte Reyes, but did own Tomales y Baulinas, for it will be seen that in the deed to Smith, he speaks of the grant under which he claims as of 1836, and in Smith's deed to Phelps the date is given with more particularity, as of the 17th of March, 1836. Is it to be credited, that if he had

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been prosecuting a suit against Garcia for Tomales y Baulinas, he would, just as he was expecting judgment in that case, be selling Punte de Reyes as the land granted to him? But be this as it may, the only land conceded by Berry to Smith is Punte de Reyes; and unless it is proved that the land they now claim was then known as Punte de Reyes, how can they expect to have it substantially decreed to them?

We maintain, further, that in no view of the case, and supposing all our previous objections ruled against us, can these exceptions of Shafters, Park & Heydenfeldt be maintained, even waiving for the present the estoppel by reason of Berry's testimony and acts at the time juridical possession was given to Garcia. We understand them as resting their hopes of relief on what they call the judgment of the Superior Tribunal, invoking it as a *judgement, inter partes*, by one of the regular judicatures of the land, and as such, and whether executed or not, fixing forever the rights of the parties in relation to the matter adjudicated.

We say, that it is not a judgment *inter partes*, nor a *judgment* in any proper sense at all, much less in a litigation to which Garcia was a party. We may premise, that judicial proceedings were as regular and formal, at least, in the Mexican Courts as in those of the United States, as will be seen by reference to the Curia Filipica, pages 62 to 100, from which it appears that they were commenced by filing the complaint or *libello;* after which followed the *citacion*, then the exception *dilatorio* including special demurrer and plea in abatement, then the answer, then the replication, then the setting the case for trial, next the hearing the proof, and finally the sentence. All of which proceedings were, after the judgment, attached together and made up the judgment record, which was called in Mexican law proceedings *Los Autos.* See Escriche Dic. de Leg. and J., page 310, under head *Autos*, also under title *Proceso*, page 1386; and in real actions the judgment ordered a delivery of the land claimed, when judgment was for the plaintiff, with damages for detention, (which damages were fixed in the judgment) besides costs. Escriche Dic. de Leg. and J., page 1453, where it is said:

"En los pleitos sobre accion real debe (la sentencia) mandar la entregada de la cosa con los frutos percibidos y que se pudieron percibir desde la contestacion tasandolos y moderandolos por lo que resultara de los probanzas sin remitirlo á contadores."

We translate as follows: In real actions, the judgment must command the delivery of the property, with the rents and profits received, or that might have been received, during the litigation, fixing the amount by the proofs, without sending it to a referee.

This single fact, in the light of the strictness with which the Mexicans adhered to their forms of proceeding is very indicative of the real character of the paper.

Again, it was no part of the duty of the fiscal to act as an assessor to the Court, or to assist or lead its deliberations, or indicate or form its judgments. He was simply an attorney to prosecute criminal cases, and defend for the King treasury suits. See Escriche Dic. de Leg. and J., page 692, title *Fiscal*, where the definition given is "Each one of the advocates named by the king to prosecute or defend in the Supreme or Superior Tribunals of the Kingdom, the interests of the treasury and the causes pertaining to the vindication of the public."

Then follows a statement in detail of his powers and duties, which shows that he has, as fiscal, no judicial powers or *quasi* judicial powers; although he might, for want of sufficient judges, act by special commission as one of the judges of the Court, just as a common law judge in England sometimes sat by special commission in Equity, in which case he voted as one of the judges of the Court in making up the judgmentto be pronounced, but did not lead or direct the Court, and gave no opinion, *as fiscal.* This view is also sustained by Escriche, page 955, title "Juicio Civil Ordinario," pages 967 to 973 inclusive, where the regular course of an ordinary civil suit is given, and in which neither the fiscal nor the fiscalia takes or acts any part. But even if the fiscal, ordinarily, led the deliberations of the Court, as the Procureur du Roy at one time did in France, yet still there would be not the slightest reason for attributing to the paper under consideration such a character. In the first place *it is addressed to the Governor and not the Court;* it makes a suggestion that could with no sort of propriety be addressed to a judge, or even the Governor, if he were acting in any sense judicially, but which was perfectly

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proper, supposing him, the fiscal, to be addressing him, the Governor, in his executive capacity. We instance that part where the fiscal says: "That in case the departmental government wishes to favor Sr. Osio, it can do so with the remainder of the land," &c., &c. If this were a suit at law before the Superior Tribunal, how utterly out of place would be such a suggestion. Again, the conclusion of the opinion is to the Governor and not the Court: "This, *Sir*, is the opinion of the fiscal's office, but *your Excellency* will resolve what you may consider most agreeable to justice." It was evidently and simply, and has every characteristic of a mere opinion, of the law adviser of the departmental government, addressed to the Governor. Such an opinion would naturally be, as this is, addressed to the Governor. There is no award of damages or costs either in the opinion of the fiscal or the confirmation by the President, Malarin; the language of the only part of the opinion which says anything about expense being, "that as the person benefited by the measurement of the sitios is Señor Snook, he pays the *expense of the survey*," not the costs of the suit. If this had been a judgment of the Court ejecting *Garcai*, the costs would have been awarded against *him*. The remainder of the paper utterly fails to give it the character of a judgment of the Court. No Court is named in it; no parties are named in it; it is not dated at, nor does it appear to have come from the Court House. It is not entitled as a proceeding in a cause; all there is about it, is, that the fiscal gives his opinion to the Governor and the President of the Tribunal, but not *as President;* after a few observations that have no characteristic of a judgment "*approves*" the *opinion* of the fiscal, and signs "Juan Malarin," not Juan Malarin, President, much less Juan Malarin, President of the Superior Tribunal, but simply "Juan Malarin," without title or addition. If there could be any doubt that it is not a judgment in a regular litigation *inter partes*, in view of other circumstances and indications, it seems to us that none can remain when we consider what the fiscal says about the foundation of his opinion. He says: "The fiscal of this Superior Tribunal makes known to your Excellency that he has examined the expedientes of" &c., &c., naming them, "and *remarks thereon*," &c., &c. Surely a judgment in a suit, *inter partes*, would not be tried and determined by a mere examination of their expedientes; there is nothing about hearing the allegations of the parties or their witnesses, nothing about their having been cited, not one single formula where forms were adhered to so stoutly. There is not a single hint that either of the parties were ever called or heard, but the whole conclusion was arrived at on a simple examination of the Expedientes.

This case illustrates the wide difference between a judgment after hearing the parties, and any conclusion that can be arrived at, or opinion that can be formed without doing so. The fiscal asserts that the land granted to Garcia was in the Cañada de Baulinas, measured from its centre to the point of the same name; an error he never could have fallen into, as will be hereafter shown, if he had but called the parties before him, for there is not a single *hint* to that effect in Garcia's expediente, where certainly one would look to see what land was granted him. We maintain that it is simply what the paper purports to be in itself, aside from the character given to it at the head, (and that in the translation only,) a mere opinion of the Attorney General, confirmed by the President of the Court in his private, or at least, non-judicial character. It is true, in the translation the Secretary Jimeno, in communicating it to some one, is made to call it a sentence, which would be a *literal* translation for the word *sentencia*, which in Spanish law language answers to our word "judgment;" but the translation is wrong, the word in the Spanish being, instead of sentencia, "acordado," and which cannot be translated by the words "sentence, decree, or judgment," but by the word "resolution;" and in the supposed communication from the Alcalde, at San Rafael, to Garcia, of the date of 21st of April, 1845, he says that the Governor had transcribed to him a "disposicion," not "sentencia" "del Superior Tribunal de Justicia ordenando me que cumpla exactamente con cuanto dicho Superior Tribunal tuvo á bien *resolver*," which agrees with what Jimeno calls the act. an acordado, or resolution.

No one, we presume, would ever mistrust from the paper itself that it was the judgment of a Court in a suit *inter partes*. We maintain, further, that there is no evidence, or at least not sufficient to show that the *Tribunal* acted at all, either in

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adjudicating, decreeing, sentencing or resolving, that the opinion of the fiscal and approval by Malarin were their individual acts alone. The papers themselves, as Jimeno professes to recite them, say nothing about any Tribunal. It is true that the translator has squeezed the Tribunal into the translation, but it is no where found in the original. The word Tribunal is found twice in the translation, once where it says, "this Tribunal bearing in mind that he ceded the two sitios to Mr. Snook," &c.; and again near the end, "it (this Tribunal) approves in all its parts the opinion of the fiscal, and signs, Juan Malarin," but in neither case is there any authority for putting in the word "Tribunal." In the original it says merely "aprueba," the indicative mood, present tense, third person singular of "aprobar" to approve; who approves or what approves is not distinctly said: but it is evidently Juan Malarin, who speaks of himself in the third person, a form of speech as common in Spanish as in English.

Is it not much more likely that Manuel Jimeno has mistaken the character of the paper, or tried to impose it upon the Alcalde at San Rafael for what it was not, than that the judgment of the *Superior* Tribunal should be in the form of an address to the Governor by the Attorney General, should be authenticated by no seal and should be merely signed by the President of the Tribunal with his name without his title of office? If not a lawyer, Jimeno might honestly, perhaps, mistake an opinion of the Attorney General, approved by the President of the Tribunal, as a sentence of the Tribunal. At best it is but a *copy* of the judgment of the Court, not properly authenticated. If the judgment had ever been executed it would be another thing, but it never was, and its whole force, if any it has, is as a *judgment*, and it is not too much to say that a mere copy of the *judgment* of the Court, unconnected with any other part of the record, to have any weight, must be duly authenticated, and that, too, under the seal of the Court. But it is at least doubtful if we have a copy. The language is, "El Gobierno por su decreto de 29 de Febrero, ultimo *dispone* se ponga en ejecucion *lo ac rdado* por el Tribunal Superior de Justicia de este departmento, *lo que a la copia digo*;" which we translate as follows: The Government, by its decree of the 29th of Febrnary last, arranges (disposes or prepares) that the *resolution* of the Supreme Tribunal of Justice of this department shall be put in execution, the which by the copy I say to you. This translation is in some very important respects different from that of Hartnell, but he translated it without special reference to the question now made, and a reference to any Spanish and English dictionary will show that we are right. The word "dispone," which is the word "disponer" in the indicative mood, present tense, third person singular, does not mean "to command" or "to order," nor is any such or any like signification given to it in any of the dictionaries. Again, the word "acordado" is incorrectly translated by the word "sentence," which would be a literal translation of the word "sentencia," which in Spanish law language means the same as "judgment" in ours, whereas the word "acordado" can only be fairly translated by the word "resolution," being the past participle from the verb "acordar," to resolve. Again, the words, "lo que á la copia digo," cannot be translated literally, by any means, by the words "of which the following is a copy." Translated literally, it means "the which, by the copy, I say;" and may, and most likely does, mean "the which according to a copy I say to you," or "of which by a copy before me I inform you." He, Jimeno, the Secretary, having what he supposes to be a copy, undertakes to communicate it. Thus we should not have the Secretary's certificate from his own knowledge that it was a copy, but only his certificate from some other person's certificate; and this idea is borne out by the fact that Jimeno was not the Secretary of the Court.

And the introduction with which Jimeno begins, fits in exactly with what he adds at the end: "And I *transcribe* it to you," &c.; transcribe being much more apt, when applied to re-writing a mere copy than to copying an original. Jimeno says, in substance: The Government is about to enforce a resolution of the Tribunal, which by the copy before me, I communicate to you; and then after having given it, he adds: "And I have rewritten it to you." This is certainly much nearer the strict meaning of the Spanish, and this view is borne out by the fact that Jimeno was not the Clerk or Secretary of the Court, and by the fact that Bonilla was. The face of the paper, and the language of Jimeno, show that he

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had a copy before him under the hand of the Secretary of the Court; for if Jimeno had copied directly from the records of the Court, there would have been no use for Bonilla's name. Hence, too, Jimeno's mistake in calling it a resolution of the *Tribunal* instead of an opinion of the President. If there is a fair doubt of the character of the paper, that doubt condemns it. The citizen, after a lifetime of possession, is not to be stripped of his estate, and his grantees injured, on old documents of doubtful character and import. We call attention of this Court to the fact that there is not, in any part of this controversy however viewed, any evidence whatever that Garcia ever knew or heard of the so-called judgment, for the letter addressed to him, produced from the archives at San Rafael, in nowise appears ever to have been sent, or in anywise communicated to him.

We would ask the particular attention of the Court to this, that there is *no where in any of the records or papers before the Court*, so far as repeated and careful searches enable us to say, either in The United States *v.* Briones, the Same *v.* Phelp or the Same *v.* Garcia, certainly not in the last, any account or history of this same so-called judgment of the Superior Tribunal at all. Its first appearance is as Exhibit "J," annexed to the etition of Andrew Randall, in the case of The United States. *v.* Andrew Randall. If this so-called judgment had ever been enforced by execution, it would have carried much more weight with it, as a mere judgment; but the Executive never did enforce it as a judgment, and, to say the least of it, it is of too doubtful and uncertain a character to warrant a Court, now, in giving it such importance as would be implied in supporting the exceptions of Messrs. Shafters, Park and Heydenfeldt on its authority.

But supposing it to be a judgment of the Superior Tribunal, it is utterly void, so far as Garcia is concerned, unless he was *both a party and was cited in due form of law*. This is not only a principle of universal justice, but of Spanish law, and could be dispensed with by neither Sovereigns nor laws, say the Spanish law writers, as appears from the following quotations from Curia Filipica, under heads "Citacion," and "Cosa Juzgada," which follow, with accompanying translation:

Curia Filipica, Title Citacion, Page 66, Sections 1 and 2.

"Citacion es una juridica citacion y llamamiento, que se hace a álguno, para parecer en Juicio ante el Juez á estar á derecho, y cumplir su mandamiento, como consta de una ley de Partida. Y asi es el principio, fundamento y cabeza substancial de la orden del Juicio, aunque no se empieza por ella propria sino impropriamente. Es introducido por todo derecho divino, natural y positivo, como lo resuelve Paz.

"De lo dicho se sigue, que todo Juicio (aunque se trate ante el principe) en que fué omisa la citacion, es nulo. Siguese tambien que si en alguno comision se dixere, que se proceden sin guardar la orden del juicio, no se entiende de la citacion, que no puede ser omitida por el principe ni ley; y asi una de la Recopilacion que dice, que la omision de las solemnidades del Juicio no le vicie, se entiende de las demas, y no de la citacion, como lo resuelve Paz. diciendo que aun que por Principe y ley no se puede quitar la citation primera, necesaria para la defensa por ser de derecho divino, y natural, se puede variar y alterar el modo de ella, y quitar las demas citaciones de la causa, inductas para preparacion de la sentencia, por ser de derecho positivo."

Which we translate as follows: Citation is a judicial citation and call, which is made to any one, to appear as a litigant before the Judge in Court, and comply with his command, as is shown by a law of the Partida. And thus, it is the beginning, foundation, and substantial head, of judicial proceedings, although they do not properly begin with it, (meaning, we suppose, that they begin with the filing of the libello.) It is introduced (made a part of judicial proceedings) by all laws, divine, natural and positive, as Paz. resolves.

From what is said it follows that all judicial proceedings (although before the sovereign,) in which the citation was omitted, are null. It follows, also, that if in any commission it is said that proceedings shall not follow judicial order, this is not to extend to the citation, which cannot be omitted by either sovereign or law; and thus a law of the recopilacion, saying that the omission of legal solemnities do not vitiate, is to be understood of the others and not of the citation, as Paz. resolves, saying that neither sovereign nor law can take away the primary citation,

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necessary for the defence, as being of divine and natural right; they may vary and alter the mode of it, and abolish the other citations in the cause introduced to call the parties to hear the judgment as being founded in mere positive law.

Again, it is said in Curia Filipica, page 108, section 1st: "Cosa Juzgada es la definida, y determinada en contradictorio Juicio de Juez competente, en que las partes fueron oidas de cuyo litigio, no se puede mas tratar, ni ha lugar apelacion, ni recurso: la cual de su naturaliza es de gran fuerza, y trae aparajada execucion aunque despues conste ser injusta. Como se de en unas leyes de Partida y Recopilacion."

Which we translate as follows: A thing adjudged is a thing definitely determined, in a litigated suit at law, by a court having jurisdiction in which the parties were heard, in relation to which litigation nothing further remains to be, or can be done, the which, of its own nature, is of great force, and may be executed without further proceedings, although it is afterwards proved to be unjust, as is said by certain laws of the Partidas and Recopilacion.

Again, it is said, Curia Filipica, page 100, section 13: "Asímismo, es nula la sentencia dada en la causa en que haya nulidad notoria y manifiesta que evidente, notoria y manifiestamente, consta de los mismos autos, o de defecto de citacion, o jurisdiccion; las cuales nulidades por ser perpetuas, se pueden pedir en cualquier tiempo, perpetuamente aunque, de la sentencia, no haya apelado."

Which we translate as follows: Thus, in itself is null, the judgment given in a cause, in which there is a notorious and manifest cause of nullity, which evident and manifest nullity appears from the record itself either for want of a citation or jurisdiction, the which nullities, as being perpetual, may be asserted at all times, although no appeal may have been taken.

In other words, unless the record shows both a citation and jurisdiction of the subject matter, the judgment is absolutely void.

But, treating this as substantially an action of ejectment by Berry's successor against Garcia, and supposing all of the papers in The United States *v.* Phelps, and The United States *v.* Garcia, to be before the Court, we most confidently maintain that the successors of Berry must fail, both because the grant to Garcia was for this very land that we claim, and Berry's was not; that if Berry's was, it is a junior grant and must give way to Garcia's; and because Berry's successors are estopped from asserting their title to this land by virtue of their grant, by reason of Berry's testimony when juridical possession was given to Garcia, and the part he took in forwarding that juridical possession, and by the act of Phelps when he petitioned for the confirmation of the Berry grant, of which he was then the holder, in applying it to entirely different lands; by the act of Berry in selling to Smith entirely other lands as those granted to him, Berry, and by the acts of Berry and his successors in taking juridical possession of entirely other lands under his grant and holding them for some eighteen years.

And in setting out upon this inquiry, we would call the attention of the Court to the fact that there is not the first faint spark of evidence from the beginning to the end, nor in any outskirt or branch of any of these cases, that Garcia ever claimed or sought *any other* lands *under his grant* than those which we now claim. It does appear, from some of the papers in the Berry case, that Garcia lived down at the head of Baulinas Bay, but that he claimed that as the land covered by his grant, or that he claimed any title to it at all, there is not any proof; but it appears that while living there at Baulinas he claimed the land which we now claim, and had a house, Indians and cattle on it. (See deposition of Black.) Surely there was nothing to prevent a man having two pieces of land, or living on one and owning the other. If, because he lived under the circumstances he did at Baulinas, Garcia's grant is to be located there, although the grant, the deseño, the juridical possession and confirmation, all fix it clearly and distinctly in another place, how will the holders of the Berry grant stand when he not only fixed himself on other lands, but sold other lands as a part of his grant, and took juridical possession of other lands, and his successor, Phelps, petitioned for the confirmation of his grant to other lands, and in addition to all this he never had possession of any portion of the land we now claim, and, to say the least, the actual location of the land from the petition and accompanying deseño being very doubtful. Indeed, the first decree of confirmation was for lands known as Punte de Reyes. We

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will premise further, that some confusion has been created in using the word *estero* as applicable to either Baulinas or Tomales *Bay*. It means no such thing, and cannot properly be so applied. We shall not deny that during the course of proceedings in these cases it has in some instances been used in that sense, but such is not the sense of the word, nor can it be supposed to have been used in that sense, at any rate, at any time before the conquest by the United States. The definition given in the dictionary is as follows: Salt marsh, lake; matting; small creek. Now, take Garcia's petition asking for lands *contiguous* to the *esteros* Tomales y Baulinos, and especially in conjunction with his deseño, and it fixes his grant exactly where we ask it to be, that is, with its northeasterly end abutting on Tomales Bay, and being "contiguous to," to use the language of the petition, the esteros Tomales y Baulinas. In determining the location of the land we wish to know the meaning of the words used at the time they were used. Using the word "estero" in the sense for which we contend, the petition and deseño of Garcia agree, but applying the word "estero" to the *bays*, then the petition and deseño are in a measure discordant, for by the petition alone and using "estero" in that sense the land would lie as near, but even then no nearer, to Baulinas as Tomales Bay; whereas, as shown in the deseño, the land abuts on Tomales Bay, but comes nowhere near the other. That the term *estero* was applied by the Californians to such creeks as the Olimos Loke and Tokeglume, see the answer of Vallejo to the first question of Mr. Greenhow, in The United States *v.* Phelps, record, page 10 or 11.

The lands are described in every paper in the expedient as the lands of *Tomales y* Baulinos, except in the proceedings attending the juridical possession, of which we shall speak hereafter, an expression that would be utterly incorrect if the words Tomales and Baulinas are to be applied to the bays now known by those names instead of the creeks now called Olimos Loke and Tokeglume; especially if the land lies to the southward of a line midway between the two, and besides, in the grant the lands are specified as those shown in the deseño. Mr. Shafter is welcome to all he can make out of the fact that Garcia, when asking for juridical possession, speaks in his petition of the rancho Las Baulinas and out of the fact that the proceedings are entitled "Proceedings instituted," &c., to give possession to "rancho Las Baulinas," when *those very proceedings show as clearly as human language can that the land thus spoken of was the very land we now claim*, especially as Berry, under oath in those proceedings, said he knew the rancho Las Baulinas, and then went on to describe it and gave the exact boundaries we claim.

arcia's expediente is perfectly consistent and plain from beginning to end, and shows a perfect title, both at law and in equity, for the specific land which we now claim. Berry's is the reverse of all this. The land he asks is two leagues by four in the Cañada de Tomales, his deseño showing, or rather purporting to show, the Cañadas Tomales and Baulinas, but the land solicited lies in the *Cañada de Tomales alone*. Now, according to their own showing the land cannot be located there for that Cañada is not either four leagues long or two wide, or anything like it. And they have no authority, (according to the doctrine on which they rely, to avoid the effect of the juridical possession given by Vallejo, that a grantee must be restricted to the land granted, and that even juridical possession of other lands will not save him) for taking any other land. Again, from Berry's deseño it is at least extremely doubtful whether the Cañada de Tomales there laid down is the valley of the San Geronimo or of the Necasio Creek. But Berry never settled or fixed himself in any wise in the valley of either of those creeks, but went over between Tomales Bay and the Ocean and fixed himself, and sold two leagues of land there to Snook as a part of his grant; juridical possession was given him of land there; it was that land that Phelps petitioned to have confirmed to him under the Berry grant; and it was with a view to obtaining a patent for the land, of which Vallejo gave possession to Berry, that Phelps filed his petition in The United States *v.* Phelps, and took the depositions of both Richardson and Vallejo, and it was not *until after Randall, who claimed the same land under another grant, had purchased the Berry grant from Phelps*, that an effort was made to apply the same to other lands than those lying between Tomales Bay and the Ocean, all of which will be seen by reference to the petition, &c., in the record in the Phelps, or as it is called, the Berry case.

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But whether the juridical possession given by Vallejo fixed the Berry grant to that land or not, one thing is clear, no possession *was ever given* to Berry or any successor, of the land which we now claim.

But supposing these two grants to be specifically for the same land, how do they stand as hostile to each other, and which is senior and which junior?

The following double columns will aid us to determine:

THE UNITED STATES, }
v. }
BETHUEL PHELPS. }

Date of petition, Nov. 25th, 1835.
Marginal decree, Nov. 27th, 1835.
Report of Ayuntamiento, Feb. 29th, 1836.
Order to take testimony, March 14th, 1836.
Petitioner notified and testimony taken, March 16th, 1836.
Vista dated March 17th, 1836.
Reference to Committee on Lands, March 31st, 1836.
Report of Committee, Sept. 9th, 1836.
Report approved, Sept. 9th, 1836.
Grant dated, March 17th, 1836.
Juridical possession, June 12th, 1842.

THE UNITED STATES, }
v. }
RAFAEL GARCIA. }

Date of petition, June 15th, 1835.
Marginal decree, July 28th, 1835.
Report of Ayuntamiento, Sept. 30th, 1835.
Order to take testimony, March 16th, 1836.
Petitioner notified and testimony taken, March 17th, 1836.
Vista dated March 18th, 1836.
Reference to Committee on Lands, May 31st, 1836.
Report of Committee, June 27th, 1836.
Report approved, July 5th, 1836.
Grant dated March 19th, 1836.
Juridical possession, Oct. 13th, 1841.

It will thus be seen that our petition, marginal decree and report of ayuntameinto, were earlier than theirs; that their vista and grant were earlier than ours, the grant by two days: that *our approval* by the Departmental Assembly was some two months and more earlier than theirs, and that our juridical possession was earlier than theirs; but this of course is indifferent, because they *have never yet* had juridcial possession of the land which they now claim. The most significant fact is, that the approval by the Departmental Assembly in the Berry case, the Berry grant is postponed to ours, and this we contend would of itself settle the matter against them, even although the committee in its report in the Berry case undertook to say that the lands granted to Garcia were those lying between Baulinas Point and the middle of the space between that and the head of Tomales Bay. And here, and here only, the fiscal finds authority for saying what he alleges in that behalf, and which is contradicted by every part of the expediente in Garcia's case. We say, that the committee in acting on the grant to Berry were competent to postpone the confirmation in his case to the one in Garcia's case made more than two months before, but they were not competent, after Garcia's grant to the land which we claim had been approved for two months, to give it an entirely different location. Indeed, the committee do not undertake to *change* the location, they merely make a mistake in relation to it, because the expediente which the committee refer to does not in any of its parts, (for the juridicial possession in which alone it is spoken of as the Rancho Baulinas, was not given until long after,) say that Garcia asked for two sitios in the Cañada *de Baulinas*, much less that it was to be measured from its center to a point of the same name. And on what they say about Garcia having reported the land vacant, etc., we would remark that it *was* all of it, so, then, for Garcia did not *get his grant* until *afterwards*; he was simply asking for it, and he could not, with truth, have said otherwise than that it was vacant and did not belong to any one. And if he had said so, it must have defeated his own purpose to get a grant. Now, and supposing Berry's grant not to have been in direct terms postponed by the Departmental Assembly, to Garcia's, as both Berry's and Garcia's grants were made *subject to the approval of the Departmental Assembly*, he who got the first approval got the first grant. Suppose both grants to have been for exactly the same lands, and both made subject to the approval of the Departmental Assembly, of course it lay with the Assembly to approve of either, but could it in a legal sense be said to be able to approve *both*? And is not the approval of one the disapproval of the other? And was not the approval of Garcia's on the 5th day of July, 1836,

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the *dis*approval of Berry's? Suppose no other condition in the grant than the approval of the Departmental Assembly, was not Garcia's title, as soon as he got the approval of the Assembly, perfect? And if he (Garcia) had found Berry in possession at any time *before* the time when he (Berry) got his grant approved, could not Garcia have ejected him?

As it seems to us that this view of the case is decisive in our favor, let us suppose the only condition in each grant to be that of the approval by the Departmental Assembly; that the petitions of both Garcia and Berry for the grants were presented at the dates they respectively were, and that the subsequent proceedings occurred at the respective dates they appear to have done up to the approval by the Departmental Assembly of Garcia's grant. Let us suppose, further, that at this stage of the proceedings Berry takes possession of the land covered by the grant, and that Garcia has brought ejectment to recover it, can there be a doubt that he must do so? It seems to us, not. The Mexican Nation is the owner of land; two different men apply, each for himself and in hostility to the other, for the same, to the Governor. He says to each, "Yes, you can have it, provided the Departmental Assembly says so, too." One of them applies to the Departmental Assembly for its affirmative say-so, and gets it: or, in other words, it confirms and makes final, so far as the action of the Government is concerned, what was before only conditional and contingent. Now, under these circumstances, is not the approval of Garcia's grant by the Departmental Assembly, in and of itself, a disapproval of Berry's? Does not the act of the Departmental Assembly, in saying to Garcia, "Yes, you shall have it," amount in and of itself to a declaration to Berry, "No, you cannot have it?" They cannot *both* have it, for here is no question of a joint ownership. Besides, if the approval by the Departmental Assembly did not give title to Garcia, he, following up that approval by getting juridical possession, and holding possession for nearly thirty years, how could the approval by the Departmental Assembly give Berry such rights, who never got juridical possession, *or any* possession of it, but on the contrary assisted his opponent to do so, and he and his successors took, claimed and held entirely other lands, for over eighteen years before he made any pretence to ours?

We maintain that the approval of Garcia's was, in and of itself a *dis*approval of Berry's, supposing the grants to be for the same land; or suppose Berry's for the same land as Garcia's, and more too, then the approval of Garcia's was a disapproval of Berry's, *pro tanto*.

The approval of Garcia's amounted to *this*, or it amounted to nothing. Surely this is clear. The approval is quite different from the grant, for the grant is conditional and contingent, by its express terms, and in and of itself is of no force, and the giving a grant to B, after previously having given one to A, does not injure the latter, for if he gets the approval the grant to B does not effect him, and if he does not, his grant is good for nothing any way. The grant to B merely enables him to ask the approval; and a hundred may ask, but only one can have. It is like the case of two suitors. A and B, bachelors, are suitors to C, spinster, for her hand, with the consent of D, her guardian. Now here, as in the case of the land, the approval of the suit of one is the most explicit and decisive, and forever conclusive, disapproval of the other that the nature of the case admits of. We say, then, that as between the rival pretenders to Tomales y Baulines, the acceptance of Rafael, was a clear, explicit, decisive, and finally conclusive, rejection of Jaime, and that no power existed in the Most Excellent Deputation, afterwards, to interfere with the land or the owner. Aside from any hostile claim, what is the effect of the approval by the Departmental Assembly? Is it not to transfer the title from the nation to the grantee? If so, Garcia became owner on the 5th day of July, 1836, and the Departmental Assembly had no power on the 9th day of September to strip his title from him. If the effect of the approval of the Departmental Assembly is not to transfer such title, where and when did Berry get *his*, on the strength of which he desires such action from this Court as will dispossess Garcia and put him in.

Besides, in the approval of Berry's grant, the Departmental Assembly expressly postpone and make it subject to Garcia's. Is it said, "yes, the Departmental Assembly make the approval of Berry's subject to the grant to Garcia, but it at the same time asserts that Garcia's grant is located on other lands than those he now

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claims?" we reply that the Assembly was competent, in approving Berry's grant, to except from it the land previously granted to Garcia, but it was not competent to decide on the loc tion of the latter, and that the doing of what they had the power to do, to wit, in approving Berry's grant, to except from it the land previously granted to Garcia, was not vitiated by the Most Excellent Deputation trying to do what they had no power to do, to wit, deciding where Garcia's grant was located.

Another rule of law is applicable here to our salvation, if necessary, that when two acts of any department of government are in apparent conflict, or partial conflict, they shall be so construed, if possible, as that *both* may stand. Now, by giving Berry's grant the priority, it utterly extinguishes Garcia's, but by giving Garcia's the priority it has no such effect, for there are some six of the eight leagues of Berry's grant left unaffected by it.

Even if the Departmental Assembly had judicial powers, it was not competent to bind Garcia by its decision, without first citing and hearing him, of which there is no pretense. Berry's successors, (supposing Messrs. Shafters, Park & Heydenfeldt to be such, of which there is no proof,) are in an entirely different if not contrary position from the one they would fill, if the Departmental Government had actually dispossessed Garcia and put Berry into the possession of this land, under what they call the decree of the Superior Tribunal, or under the declaration of the Departmental Assembly that Garcia's land was to be measured from the middle of the Cañada de Baulinas to the point of the same name, for all the intendments and doubts that would then tell in their favor, now tell in ours.

Again, as to the location of Garcia's land, we would call the attention of the Court, that there is not from the beginning to the end of Garcia's expediente any hint, either in words, pictures, maps or plats, about any *Baulinas Point*, and that there is not the first point of solid ground or even cloud land on which to rest their assertion that Garcia's land was to be measured from the center of the Cañada of Baulinas to the point of the same name, if by that they mean the Punte de Baulinas shown on Berry's deseño; and we repeat here, that not only does not Garcia's deseño show any such thing, but it is utterly inconsistent with it; for whether we translate "Estero Baulinas" to be the creek in the Cañada de Baulinas, as shown on Berry's deseño, or to be Baulinas Bay, the land cannot be located as they claim, consistent either with Garcia's petition or deseño, with reference to which the grant is made, for the petition speaks of the land as contiguous to the esteros of *Tomales y* Baulinas, and the deseño shows it as abutting on Tomales Bay. Even if "estero" is to be translated by the word "estuary," it would be applicable to neither one of those bays—much less to Baulinas, into which no stream, however small, seems to fall. The deseño of Garcia shows what he meant, then, by the esteros of Tomales y Baulinas, for the two creeks called "Tomales and Baulinas" in Berry's deseño, according to the construction Mr. Shafter puts on it, are shown in Garcia's deseño, each bearing the same relation to the land as the other, and hence the propriety of calling it *Tomales y* Baulinas, of which there would be none if it were located down on Baulinas Bay. We call attention of the Court further to the fact that the juridical possession given by Vallejo to Berry was good, even according to the law as laid down by the fiscal, for both the record of the giving of such possession, and his testimony when examined for the claimant in The United States *v.* Phelps, show that he was at least *de facto* Alcalde, and gave such possession in that capacity, as he did also in ours. (See record in U. States *v.* Phelps, page 8 or 9, the 3d question by claimant, and answer of Vallejo.)

But supposing Berry's grant properly approved, and that it is distinctly for the land which we now claim, that approval left the further condition of getting juridical possession of the land granted, to be fulfilled. This he does not do, but applies for and gets possession of *entirely other lands*, and takes and holds them, such *other lands*, according to the testimony of both Richardson and Vallejo, both witnesses sworn for the claimant, until the time of his death; and neither he nor his successors, until eighteen years after the grant, made any claim to the land which they now say was granted to Berry, but during *all* that time held and claimed other lands; and not only so conducted, but assisted Garcia to complete his title to the lands they now claim. Was not this a complete abandonment of

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all claim to the land? He, Berry, *never* had juridical possession of the lands which they now claim, and hence never had anything more than an equity. Did not his acts above stated amount to an abandonment of that equity? What more could he have done, or what else could he have done, that would have been so significant of such an intention?

However the case may stand on other grounds, to permit Berry's successor to recover the lands now, after his testimony and other acts in the proceedings, to give juridical possession, and in claiming and holding other lands, would be to violate every principle of justice. It appears directly that William E. Randall, not Andrew Randall, bought some 1400 acres from Garcia, which his widow now endeavors to obtain by her exceptions, and from Nelson Olds' testimony, taken in support of our exceptions, that only about three thousand acres out of the whole two leagues and over yet remain unsold. But, says Mr. Shafter, Berry's signature to the deposition is not genuine. Vallejo, their own witness, in The United States *v.* Phelps, swears, in support of our exceptions in the Garcia case, that the record of juridical possession is in all its parts true, and that record states that Berry appeared before him on that occasion and so testified; and even if it were proved beyond controversy that the signature is not Berry's, it would amount to nothing more than to show that the name of the affiant in an affidavit was not in his own hand-writing. There are a thousand reasons why he might have so sworn and yet not signed his name. The authenticity of such a paper does not rest on the signature of the person, but the certificate of the judge. We must either suppose that Berry so testified, or that the judge whom they have endorsed by making him a witness, not only committed perjury, but forgery, and that, too, where apparently he could have no motive. And all that there is to make that out, is that Mr. Hopkins, who has seen a number of signatures purporting to be Berry's, says that it does not seem like his. But it does not rest here, for at the close of the proceedings, where the truth of the whole record is asserted, appears Berry's signature, affirming it, and this signature appears, according to Mr. Hopkins, to be genuine. If his testimony, his acts in assisting to give Garcia juridical possession, his acts in claiming and taking possession of entirely other land, as his, under his grant, his holding it until the time of his death, and these acts followed by acts consistent therewith, on the part of his grantees, in asking to have the grant confirmed for entirely other land—if this does not amount to an estoppel, we are at a loss to imagine what would.

A. T. WILLSON,

Of Counsel Sarah Randall, Garcia and others.

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See also - BANC MSS C-I 16 Pt. I: 87

Abstract of Bill of Complaint in claim for land in Tomales and Bolinas