CASE NO.

74

NORTHERN DISTRICT

LOS PUTOS GRANT

MANUEL VACA

AND

FELIPE PENA

CLAIMANT

Land Case no. 74, Northern District

USE MICROFILM
INSTEAD OF ORIGINALS

74 ND
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 57

Manuel Vaca & Felipe Peña — CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Las Putas."

/

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

74 N D

PAGE 2

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

The Petition of Manuel Vaca and Felipe Pena for the Place named "Los Putos"

was presented, and ordered to be filed and docketed with No. 57 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 Aug. 14th 1852.

On motion of the Counsel for the Claimants the following Order was granted to wit;

(Vide page 61 of this Transcript)

San Francisco Jan. 17th 1853.

In the same case the deposition of Salvio Pacheco, a witness in behalf of the Claimants taken before Commissioner Harry I. Thornton was filed.

(Vide page 7 of this Transcript)

San Francisco Mar. 12 1853.

In the same case the deposition of William Wolfskill, a witness in behalf of the Claimants, taken before Commissioner

Hiland Hall was filed;
(Vide page 8 of this Transcript)

74 ND
PAGE 3

San Francisco Aug. 23d 1853.
In the same Case the deposition of Jacob P. Leese, a witness in behalf of the Claimants taken before Commissioner Alpheus Felch with documents marked L. R. M. T. O., and A. F. with Translations thereof marked H. J. I. V. P. annexed thereto, was filed;
(Vide page 13 of this Transcript)

San Francisco Aug. 24 1853.
Case No. 57 called; The Counsel for the Claimants read the Evidence; argued, submitted and taken under advisement. (
)
In the same Case the deposition of John C. Hays, a witness in behalf of the United States was taken before the Board. (Vide Page 11 of this Transcript.)
In the same Case the deposition of H. W. Halleck, a witness in behalf of the Claimants was taken before the Board. (Vide Page 9 of this Transcript)

San Francisco Nov. 15 1853
In the same Case Commissioner Thompson Campbell delivered the opinion of the Board rejecting the Claim;
(Vide page 62 of this Transcript)

3

Before the Honorable The Commissioners of the United States to ascertain and settle Private Land Claims in the State of California.

Petition of Juan Manuel Vaca et al

74 ND
PAGE 4.

Juan Manuel Vaca and Juan Felipe Peña citizens of California, give notice that they claim by virtue of a grant from the Mexican Nation a tract of land situated in the County of Solano in said State known by the name of Los Pulos lying on the waters of the Creek of that name containing the quantity of ten sitios de ganado mayor or square leagues (Mexican Measurement) and bounded as follows to-wit: From the North eastern corner of the land of William Wolfskill by a continuance of the Northern line of said land Eastwardly to the Tulare or Marsh Lands second line; from the place last mentioned, Southerly along the Margin of the Tulare or Marsh Lands to a certain Sausal or Willow Thicket; thence by a straight line in the direction of the hills called the Sulpines- Third line: from the said Northeastern corner of Wolfskills land Southerly along the Eastern line of said land to its Southern corner. Fourth line: from the place last mentioned Westwardly by the Southern line of Wolfskills land to the foot of the Sierra or range of hills. Fifth line: from the place last mentioned Southerly along the foot of the Sierra till by that line and the second line, the before mentioned quantity of ten Sitios be completed.

The claimants respectfully show, that they are Mexican Citizens by birth, that they emigrated from the Department of New Mexico to California with their families and herds in the year 1842 for the purpose of establishing themselves in this Department, according to the Laws of the Country and the invitation of the Supreme Government. That accordingly they were adjudged worthy from the age of their respective families the

4

74 ND

PAGE 5

amount of the stock which they wished to pasture and for their personal services, to receive a concession of the before mentioned quantity of land, and the same was granted to them on the 27th of January 1843 by Don Manuel Micheltorena Governor of the Department of California, and as such authorized to make such grant. The Original of said grant is in the Archives of the former Governments of California having been returned as hereinafter stated; and a copy of the same will be hereinwith filed as soon as it can be procured from said Archives. Claimants thereupon entered upon their said granted land and occupied it with their stock, and on the 18th of April 1844 presented themselves by a petition of said Vaca, pursuant to law, and the and the directions of their said grant before the proper Magistrate and asked juridical possession and ascertainment of limits of their said Land to be given them which said act, owing to the opposition of said William Wolfskill who set up a claim for a portion of this said granted land, said Magistrate without any fault or laches on the part of these claimants, refused.
Whereupon on the 31st of May of said year claimants appealed by petition in the name of said Vaca to the Superior Authority of the Department, to wit, said Governor Micheltorena who by an Order of the same day directed them to be given juridical possession according to their said request. (See Exhibit B.C.)
Before said Order could be executed a revolution occurred whereby said Governor Micheltorena was deposed; and by the unsettled state of the country the lack of of established authority, and the continuance of the question in which they were involved with Wolfskill the claimants were a long long time hindered from further proceedings to consolidate and establish their said possession

5

74 ND
PAGE 6

After various proceedings of which claimants do not possess any written memorial, in respect of the said question between the claimants and said Wolfskill, Governor Pico Pico on the 27th July 1845 made an Order to the effect that said Wolfskill should retain the lands which he claimed and a new grant should be given to the present claimants for the location of their Lands without prejudice to the occupation of said Wolfskill. On the 30th of said July said Governor being by Virtue of his said Office thereto authorized, made said proposed new grant to the claimants which on the 1st of October of said year was approved by an act of the Departmental Assembly. By subsequent Acts before the said Governor, the claimants and said Wolfskill entered into a full and satisfactory arrangement respecting their said Lands which was approved and signed by the said Governor who on the 18th of November 1845 made an Order that the said Wolfskill should proceed to Sonoma, and by the Judge of that District, be placed in possession of the Land that had been conceded to him and after wards the proceedings be had in reference to the Lands of the present claimants

Before these measures could be accomplished another civil war arose in the Country and the War between the United States and Mexico and the consequent change of government and interruption of proceedings in relation to grants of lands, occurred.

A copy of said grant of 18th November 1845 and a copy of the Official testimonial of the approval of the same by the Departmental Assembly, and a copy of so much of the Records of the Other proceedings above mentioned as is in possession of claimants, are herewith presented Marked E and F

There is no conflicting claim grant for said Land or any

74 ND

PAGE 7

petition of it in the knowledge of claimants

The claimants further respectfully show, that they are now thirteen in years, that the property for which they present this their respectful petition, is the sole fruit of their long lives of industry and sobriety, and the only support of their large and growing families, that they are unlettered and simple men unable to read or write their native language and totally ignorant of the language and laws under which they now live, and that if in their ignorance they have omitted anything which they ought to have done to perfect their title they still look with confidence to be confirmed through the justice and magnanimity of the government to which their allegiance is transferred, in what they owed to the bounty of that under which they were born

Jones Simpkins & Rhodes
Attorneys for claimants

Filed in office Feb. 20th 1852
Geo. Fisher Sec'y

7

San Francesco Jan 17th 1853

On this day before Com Harry I Thornton came Salvio Pacheco a witness in behalf of the claimants Juan Manuel Vaca & Filepe Pena Petition No 57 and was duly sworn his evidence being given in Spanish and interpreted by the Secretary.

Deposition of Salvio Pacheco

74 ND

PAGE 8

Salvio Pacheco a witness called on behalf of the claimants in answer to interrogatories of claimants Counsel testifies as follows. The Associate Law Agent was present

My name is Salvio Pacheco. I am of fifty five (55) years old and reside at my Rancho in Contra Costa I am a native of California. I am acquainted with the Ranchos of Don Manuel Vaca and Don Filepe Pena on the Pueblos river in the County of Solano, which is the same Land claimed in this case. Said claimants have their houses on said land and live there with their families. They have herds of cattle and horses on the land and cultivate different parts of it in wheat barley and vegitables. They have occupied the land and had their houses and cattle upon it nine or ten years almost ever since they arrived in California from New Mexico. Some of their sons are also established on the same tract with their families There are five or six different houses on the tract occupied by the claimants and different Members of their families

Salvio Pacheco

Service accepted R Greenhow
U.S. Law Agent

Sworn to and subscribed before me this 17th of Jany 1853
Harry I Thornton Comr &c

Filed in office January 17th 1853
Geo. Fisher Secy

8

74 ND
PAGE 9

San Francisco Feby 26 1853

On this day before Comr Heland Hall came Wm Wolfskill a witness in behalf of the claimants Juan Manuel Vaca et al Petition No 57 and was duly sworn his evidence being given in English - The U S Associate Law Agent was present

Deposition of W Wolfskill

William Wolfskill a witness on behalf of the claimants in answer to interrogatories by claimants counsel testified as follows -

My name is William Wolfskill, my age 55 years residence Los Angeles I have a tract of land on the river Puntos granted to me in 1842 - It adjoins the rancho of Pena and Vaca - Those persons and myself had a dispute of location and boundary which was settled by a compromise made with the knowledge and authorization of Governor Pio Pico in the fall of 1845 - By that compromise and the Order of the Governor my lands were directed to be first measured and afterwards those of said Vaca and Pena - After that time I was not able to procure the juridical measurement and possession during the existence of the Mexican Government in this Country and consequently my tract was never measured until during the past Summer (1852) when it was surveyed by the Surveyor General of the United States pursuant to an Order of this Board The exact location & measurement of said Lands of Vaca & Pena were by said compromise and the Order of the Governor subject to the prior measurement of Mine

William Wolfskill

Sworn & subscribed before me

Heland Hall Comr

Service Admitted - Robt. Greenhow. Apt. Law Agent U. S

Filed in Office March 12 1853. Geo. Fisher Secy

9

Deposition of H. M. Halleck

74 ND
PAGE 10

Personally appeared before the Commission to ascertain and settle the Private Land claims in the State of California sitting as a board this 24th day of August 1853 H. M. Halleck a witness in behalf of the Claimants Juan Manuel Vaca et al case No. 57 who after being duly sworn deposeth and saeth as follows, to wit,

Questions - Mr Jones Counsel for the Claimants

Question 1st State whether you have ever been the keeper of the archives of the former Governments of California?

2. and have you been in the habit of examining the Espedientes and the other papers therein relating to the Land Titles? Answer. I have.

Question 2d State whether the Maps attached to the Espediente are usually in the hand writing of the Secretary or Other Officer of the Government?

Ans. Usually they are not, sometimes they are in the hand writing of the grantees, sometimes in that of other persons whose names are not even mentioned in the papers

Question 3d. Examine the map attached to the paper marked 424 and endorsed "Espediente promovido por Cindoclano Juan Manuel Vaca insoticitud del paraje Conocido con el nombre de Lihuaytos en Sonoma" and state whose flourishes or rubrics are those on the said Map

Ans - I have examined the said Map and I believe the rubrics are those of Manuel Jimeno - I have compared them with the rubrics of which said Jimeno has sworn to as his own and I think there is a close resemblance between them. One of those on the map seems to have been very lately made, and if it stood alone I might doubt its genuineness - I think however they are both genuine rubrics - I have frequently seen him make his rubric, and have compared in his presence rubrics made by him at different periods, which I think differed more than these

Cross examined by the U.S. Law Agent Mr Howard
1st Cross Interg. State what a Rubric is of which you speak.
Ans. It is a flourish usually placed at the end of a Signature & under it, it is also frequently used without a Signature & then considered as taking the place of a full Signature. It is frequently used in this way on Spanish and Mexican Documents
2d Cross Intg. State if you know where Lemens now resides?
Answ. He resides in the City of Mexico
3d Cross Intg. State whether the writing on the map is in the same hand as any in the documents
Answ. I do not think it is

Wm. H. Stallcup

Attest -
Geo. Fisher Secy

Filed in Office August 24 1853
Geo. Fisher Secy

11

Deposition of Jno. C Hays.

74 ND
PAGE 12

Personally appeared before the Commissioners to ascertain and settle the private Land claims in the State of California sitting as a Board this 24th day of August 1853 John C Hays a witness in behalf of the United States in case No. 57 Juan Manuel Vaca et al. who after being duly sworn deposeth and saith as follows to wit:

Questions by the U S Law Agent

Quest 1. Are you the Surveyor General of the U.S. for California

Ans: I am

Ques. 2d Is the paper shown you now and marked 424 and endorsed "Espediente Promovido por Cindadano Juan Manuel Vaca insoticitud de porage Conocido con el Nombre de Lihuaytos en Sonoma" One of the documents on file in your Office relating to grants of Land?

Ans. It is.

Ques. 3d Look at the map or diseno attached to said paper and state whether it is in a different hand writing from the Other portions of the same Document?

Ans. The hand writing on the map does not appear as the balance of the Document, but I know nothing of the paper except as it appears on the document.

Ques. 4 Whether the rubrics or flourishes on the map appear either or both of them with the rubric or flourish of Manuel Jimeno on the paper

Ans. I do think there is some resemblance, but by close Examination I do not think they are precisely alike

Cross examined by Mr Jones the Counsel for the Claimant

1st Cross Inter: Are you in the habit of examining the Espedientes or papers relating to Land titles on file in your Office and do you know whether it is usual for the maps contained in the said papers to appear in the handwriting of the Secretary or Other Officer of the Government?

Ans. I am not in the habit of Examining them personally, they

12

are generally examined by the Translator of my Office. The Maps I have not examined enough in able me to know whether they are in the same hand writing as the papers

John C Hays

74 ND
PAGE 13

Attest - Geo. Fisher Secy

Filed in Office Aug 24. 1853

Geo. Fisher Secy

13

Office of the Commissioners of Land Claims in California
San Francisco Aug 23. 1853

Deposition of Jacob P Lease

This day before Commissioner Alpheus Felch came Jacob P Lease a witness in behalf of the Claimants Juan Manuel Vieca et al. Case No 57 - and after being duly sworn deposed as follows

74 N.D
PAGE 14

Question by Mr Jones for the Claimants

1 Question. What is your name age and place of residence? how long have you resided in California?

Answer. My name Jacob P Lease my age forty four years and I reside at Monterey I have ~~resided~~ in lived in California twenty years.

2 Question - Are you acquainted with the hand writing of Manuel Michelloreno Pio Pico Jose Mario Covarrubias If you look at the papers here shown to you & marked as Exibits I.K.M and T filed in this case and having also the initials "A. F." hereon and say whether the signatures of the above named persons appearing thereon are their true and genuine signatures

Answer. I have examined such papers. The signatures of the above named persons thereon are their several true and genuine signatures.

3 Question Examine the paper now presented to you marked as Exibit O filed in this Case and having also thereon the initials "A F" and whether the signature thereon purporting to be that of Jacob P Lease is your signature and whether the same was made by you at at the time and in the character which appears by said paper?

Answer: I have examined it. It is my signature and was made at the time and in the character as there appears

Question by Mr Howard Law Agent

Ans 1 Why did you not give the juridical possession and make the survey at the time of your orders as contained

in the above named exibit marked "O" with the initials A. F.?

Answer - I did not give the possession in consequence of the conflict about the boundaries between Vacu and the adjoining proprietors

74 ND
PAGE 15

Question 2. Have you often given juridical possession and if so, state the method of your proceeding?

Answer. I have often given such possession my method of proceeding was as follows: The application was made by the grantee of the Land - the authority applied to - that is the Alcalde - then gave notice to the persons who held the adjoining Lands to appear at a specified time when juridical possession was to be given - At the time appointed the boundaries were examined in presence of all parties - The Alcalde also then examined the title of the grantee and appointed two men as measurers. If he had not a clerk he would have two assistant witnesses who would sign the documents which were made out. The alcalde then proceeded to measure the land commencing with the boundary line first described in the title The measuring was done with a hemp cord of the length of fifty varas - After measuring the first boundary line as near to the compass as possible the survey was continued around the Land following the boundary line as described in the title - In case of coming to any water or swamp lands a calculation was made as near as possible by the eye of the distance across it, and so continued to the place of Beginning - After it was completed all was noted down as a record of the same and was signed by all parties present - that is by all the adjoining proprietors or persons who appeared for them in presence of the Alcalde and the assistant witnesses

3 Question. Was it the custom to use a compass in making such juridical measurements?

Answer. There was no such thing as a surveyor's compass in the country that I could obtain. I used a pocket compass and got the direction or course by the eye as near as I could. Other Alcaldes used a pocket

15

Compass. I never knew any other compass to be used except in one instance - That was in 1844 When M O Farrell was appointed Surveyor by Governor Micheltorena. There was never any other Government Surveyor under the Mexican Authorities to my knowledge in California - O Farrel was appointed for the District of Sonoma - I think it was on request of that year that he was appointed.

74 ND
PAGE 16

4 Question. At whose expense were the pretended Surveys made and prospecting going on in California?

Answer. At the expense of the parties

I P Leese

Subscribed and sworn to before me
at San Francisco this 23rd day of August 1853

Alpheus Felch
Com'rs

Filed in Office Aug. 23rd 1853
Geo. Fisher Dep'y

16

57

1.S.D.12.

74 ND
PAGE 17

1845

Expediente promovido por los C. C. Manuel Vaca y Juan Felipe Armijo en pretencion del parage nombrado los "Putos"

465

17

2. S. D. R

Espediente

74 ND
PAGE 18

3. S. D. R

Exmo Señor Gobernador.

Juan Manuel Vaca mejicano de nacimiento por si y a nombre de su compañero Dn. Juan Felipe Armijo ambos residentes en este departamento ante V. E con el debido respeto comparesco y digo; que habiendo transijido amigablemente Dn. Guillermo Wolfskill y yo en el titulo que por ocupacion de terreno en virtud de consesiones del Gobierno se sucito, à causa de una mala intelligencia; Suplica à V. E que à fin de que se quite toda duda y no dar lugar a que en lo futuro se presente algun pretexto que pudiera causar disgusto se sirve concederme en cesion de mi compañero la propriedad del terreno de los Ritos donde pensamos establecernos a las margenes del rio el cual colinda à la parte del Este con el parage de Dn. Guillermo Wolfskill de cuyo terreno pretende la estencion de diez Sitios de ganado Mayor segun y conforme se tuvo à bien agraciarnos por el superior Gobierno de este Departamento desde el año de mil ochocientos cuarenta y tres como lo comprueba el despacho que atentamt. acompaño; advirtiendolo que à causa de la larga distancia que hay de aqui y la eficacia que quiero tener de que el diseño que se forme sea correcta en virtud de la prolijidad pues debera haber a tiempo que se de la posecion juridica no me es accesible presentarlo ahora; pero protesto verificarlo

Angeles Agosto 30. de 1845. Vista la presente peticion que forma este espediente lo cual consta al Gobierno atendiendo à lo que anteriormente se practico para agraciar à los solicitantes con un terreno en la jurisdiccion de sonoma como lo acredita el despacho adjunto todo lo demas que se tuvo presente y ver convino declarar à los Ciudadanos Juan Manuel Vaca y Juan Felipe Armijo dueños en propriedad del parage conocido con el nombre de los Ritos en las Margenes del Rio colindante al Este con el de Dn. Guillmo. Wolfskill en estencion de diez sitios de ganado

18

74 ND
PAGE 19

Mayor. Librese el correspondte. titulo tomese razon en el libro respectivo y dirijan este expedte. à la Excma Asamblea Departamental para su aprovacion. Pio Pico.

tan luego como queda hecho lo que dejo indicada y para porque tenga su efecto oportunamente. A cuya gracia que no dudo alcanzar de V. E. de lo q. seré firmemente reconocido. Sirvo lo necesario &a. y suplico se me dispense el uso de papel comun por falta de sellado.

Angeles Agosto 30 de 1845.

Juan Manuel Baca.

4. S. D. K

Vocal de la Honorable Asamblea y encargado del Gobo. por ministerio de la ley lo decreté mandé y firmé doy fé.

Pio Pico.

Pio Pico Vocal mas antiguo de la Honorable Asamblea del Departamento de California y encargado del Gobierno del mismo por el ministro de la ley. Por cuanto Dn. Juan Manuel Baca y Dn. Juan Felipe Armijo mejicanos por nacimiento han pretendido para sus beneficios personales y el de sus familias el parage conocido con el nombre de los putos en las margenes del Rio colindante al Este con el rancho de Dn. Guillermo Wolfskill sin perjuicio de las medidas que se hagan de los Ranchos inmediatos consedidos con anterioridad: practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas à nombre de la nacion Mejicana he venido en concederles el terreno mencianado declarandoles la propriedad de el por las presentes letras sugetandose à la aprobacion de la Excma Junta Departamental y bajo las condiciones siguientes.

5. S. D. K

1a. Podran cercarlo sin perjudicar las travesias caminos y servidumbres lo disfrutara libremente y esclusivamente destinandolo al uso que mas le convenge. 2a. Solicitara del Juez respectivo q. les de la posecion juridica en Virtud de este despacho quien

74 ND
PAGE 20

tendra cuidado de respetar las Antiguas propiedades y demarcar à los linderos segun la presente concesion. en cuyos lugares pondran sus mojoneras correspondientes y algunos arboles ~~arboles~~ frutales ò silvestres de alguna utilidad. 3ª El terreno de que se hace donacion es de diez sitios de ganado mayor segun y conforme antes se les habia concedido. El juez que diere la posecion juridica lo hara medir conforme à Ordenanza dejando el sobrante que resulte à la nacion pª los usos convenientes. En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon en el libro que corresponda y le entregue à los interesados para su resguardo y demas fines

U.S. D. R.

Dada en la Ciudad de las Angeles Capital del Departamento de California a 30 de Agtº de 1845.

Manuel Micheltorena Gobernador Comandtª General è Inspector del Departamento de las Californias.

Por cuanto Dn Juan Manuel Vaca y Dn Juan Felipe Armijo, mejicanos por nacimiento, han pretendido para sus beneficios personales y el de sus familias el paraje conocido con el nombre de Cahuaytos colindante al Oriente con el Rio del Sacramento, al Poniente con la Sierra de Napa al Norte con el Arroyo de Cahuaytos y al Sud con el Suisun sin perjuicio de las medidas que se deben hacer à los ranchos inmediatos practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas à nombre de la Nacion Mejicana, he venido en concederles el terreno mencionado declarandoles la propiedad de el por las presentes letras; sugetandose

211

à la aprobacion de la Exma Junta departamt.
y bajo las condiciones siguientes. 1ª No dran
se cerrarla sin perjudicar las travesias caminos
y servidumbres la disfrutaran libre y esclusi
=vamente destinandolo al uso que mas les
7. S. D. R convenga pero dentro de año no fabricara casa
y estara habitada. 2ª Cuando se les confir
me la propriedad, solicitara del Juez respec=
=tivo que les de la posecion juridica en Virtud
de este Despacho por el cual se demarcaran
los linderos en cuyos limites pondra majo=
=neras y algunos arboles frutales ò silvestres
de alguna utilidad. 3ª El terreno de que
se hace donacion es de diez sitios de ganado
mayor segun esplica el diseño que corre a=
=gregado en el espediente respectivo. El juez
que diere la posecion la hará medir conforme
à ordenanza quedando el sobrante que resul
=te à la Nacion para los usos convenientes. 4ª
Si contravinieren à estas condiciones perde
=ran su derecho al terreno y sera denunciable
por otro. En consecuencia mando que
teniendose por firme y valedero el presente
titulo se tome razon de el en el libro à que
corresponda y se entregue al interesado
para su resguardo y demas fines. Dado en
la Ciudad de los Angeles à Veinte y Siete
de Enero de mil ochocientos cuarenta y tres
Manl. Jimeno Srio // Manl. Michelta
8. S. D. R. Angeles Setiembre 24 de 1845
Dada cuenta en Sesion de hoy con este espdte
à la Exma Asamblea Departamental
se mando pasar à la comision de terrenos
Valdios.

Pio Pico. Presdte

Agustin Olvera. Srio.

9. 7. D. R Exmo Sor
La Comision de terrenos Valdios se ha
hecho cargo del espediente promovido

74 ND
PAGE 21

21

74 ND
PAGE 22

10 S. D. 12

pr. los Ciudns. Manuel Vaca y Juan Felipe Armijo, en pretencion del parage conocido con el nombre de los Putos situado en la jurisdiccion de Sonoma y satisfecha de que las diligencias practicadas en dicho espediente fueron bastantes pa. q. el superior Gobierno del Departamento les hubiese concedido el mencionado terreno propone á la deliberacion de V. E el siguiente Articulo ensio Se aprueba la concesion hecha pr. el superior Gobierno de este Departamento en titulo librado con fha 30. de Agto. p.p dv. en favor de los Ciudns. Manuel Vaca y Juan Felipe Armijo del terreno conocido con el nombre de los putos situado en la Juris-diccion de Sonoma en estencion de diez sitios de ganado mayor de conformidad con la ley de 18 de Agosto de 1824 y el Articulo 5o. del reglamento de 21 de Noviembre de 1828 y bajo la precisa condicion q. dentro del termino de cuatro meses contados desde esta feha. pondran en manos del Excmo Sor Gobernador el diseño respectivo; en la intelligencia q. de no verificarlo. asi quedaran sin derecho al terreno y sera denunciable por otro.
Sala de comisiones en la Ciudad de los Angeles Setiembre 25. de 1845.
Franco de la Guerra Narciso Botella
Angeles Octubre 1o de 1845.
En Sesion de hoy se aprobó por la Exma Asamblea Departamental la proposicion del dictamen que antecede mandando devuelva el espediente orginal al E. S. Gobernador para los fines convenientes.
Pio Pico Presidte
Agustin Olvera
En la fha se libró á los interesados la copia respectiva.

Office of the Surveyor General of the

22

74 ND
PAGE 23

United States for California.
I Samuel D. King Surveyor General of the United States for the State of California and as such now having in my office and under my charge and Custody a portion of the Archives a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby Certify that the ten preceeding and hereunto annexed pages of tracing paper numbered from One to ten inclusive and each of which is verified by my initials (S. D. K) exhibit true and accurate copies of certain documents now on file and forming a part of the said Ar=chives in my Office.

In testimony whereof I have hereun=to signed my name officially and affixed my private Seal (not having a Seal of Office at the City of San Francisco this 2nd day of January 1852

Saml. D. King
Survy. Genl. Calr.

Filed in Office Aug: 5th 1852.
Geo: Fisher
Secry.

11/57

23

(Endorsed)

Espediente of Citizens Manuel Vaca & Juan Felipe Armijo soliciting the place called Los Putos

465.

Translation of Espediente

Mt Excellent Sor Governor

Angeles 30th August 1845 In view of the present petition that forms this espediente which is proved to the Government Attending wh

74 ND
PAGE 24

Angeles 30th August 1845 In view of the present petition, that forms this Espediente which is proved to the Government Attending what was previously practised for donating to the settlers the tract in the jurisdiction of Sonoma as the annexed title proves & that was represented & right to have been considered - I declare citizens Juan Manuel Vaca & Juan Filip Armijo Owners of right of the place known by the name of "Los Putos" on the Margins of the river adjoining at the East, that of Don Guillermo Wolfskill to the extent of ten Sitios de ganada mayor

Juan Manuel Vaca, Mexican by birth for himself and in the name of his Companion Juan Felipe Armijo, both of them residents in this Department, before Y. E. with due respect appears & says: that Dn Guillermo Wolfskill & myself having amicably settled the Law suit which for this Occupacion of the land by virtue of Concession from the government, was raised on account of a misunderstanding I pray that in order to throw off all doubt and not to give cause to any pretension being made in the future which might occasion further disturbance Y. E. be pleased to concede to me in union with my Companion the Ownership of the tract "Los Putos", where we think of settling on the Margins of the river which is adjoining at the East the place of Dn Guillermo Wolfskill of which tract I solicit the Extension of ten sitios de ganada mayor in entire conformity with the donation made to us by the Superior Government of this Department since the year one thousand eight hundred and forty three as shown by the title which I duly annex hereto. Observing that on account of the long distance that there is from here & the efficacy which I wish to have that

74 ND
PAGE 25

Let the corresponding title be issued - an entry be made in the respective book & this Espediente be directed to the Departmll Assembly for its approval.

Pio Pico member of the Honorable Assembly & in charge of the Government by the Ministry of the Law thus decreed ordered & signed

I testify Pio Pico

sketch to be drawn be correct and for the accuracy of which there ought to be at the time the juridical possession be given, it is not accessible to me to present it now, but I protest to do so as soon as what I indicated above be performed & I will endeavor that it may have its effect opportunity For which favor that I dont doubt to obtain from Y. E. I shall be firmly grateful I swear the necessary &c and entreat to excuse the use of common paper for want of the sealed

Angeles 30 August 1845

Juan Manuel Vaca

Pio Pico Senior member of the Honorable Assembly of the Department of California and encharged of the government of the same by the Ministry of the Law

Whereas Dn Juan Manuel Vaca & Dn Juan Felipe Armijo Mexicans by birth have solicited for their personal benefit & that of their families, the place known by the ~~place~~ name of Los Pitos on the Margins of the river adjoining at the East the Rancho of Dn Guillermo Ulofskill without prejudice to the measurement to be made of the contiguous ranchos heretofore conceded - all the steps & investigations relating thereto having been previously had and performed according to the disposition of the Laws and regulations exercising the powers, which are conferred on me in the name of the Mexican nation I have conceded to them the said tract declaring to them the Ownership thereof by the present letters - subject to the approval of the Mt Excellt Departmental Board and under the following conditions

1st They may enclose it without injuring the crossings roads

25

roads and easements & shall enjoy it freely and exclusively applying it to the use that best suits them

2d They shall solicit the proper Judge to give them juridical possession by virtue of this title - who shall take care to respect the old properties and shall mark out the boundaries according to the present Concession in which places they shall put proper Land marks & some fruit trees or useful forest trees

74 ND
PAGE 26

3d The tract of which donation is made is of ten sitios de ganado mayor in entire Conformity as heretofore it had been Conceded to them, The Judge giving the possession shall cause it to be measured agreeably to ordinance leaving the surplus for the proper uses of the Nation Wherefore I order that the present title being held firm and valid - Entry thereof be made in the corresponding Book and it be delivered to the parties interested for their safety and other ends.

Given at the Office of Los Angeles Capital of the Department of California on the 30th of August 1845

(Seal) Manuel Michelltorena Governor Commanding General & Inspector of the Department of the Californias

Whereas Don Juan Manuel Vaca & Dn Juan Felipe Armoyo Mexicans by birth had solicited for their personal benefit and that of their family the place known by the name of "Lihuaytos" bounded at the East by the Sacramento River at the West by the Sierra of Napa at the North by the Creek (or arroyo) de Lehuaytos and at the South by the river Suisun without injury to the measurements which are to be made of the Contiguous Ranchos, all the steps and investigations thereto having been previously had according to the provisions of the laws and regulations, using the powers, that are conferred on me in the name of the Mexican Nation I have conceded to them the said tract declaring to them the ownership thereof by the present letters subject to the approval of the Mt Excellent Departmental Board and under

74 ND
PAGE 27

the following conditions –
1st They may enclose it without injuring the crossways roads and easements may enjoy it freely and exclusively applying it to the use that best suits them – but within one year they shall build a house & it shall be inhabited
2d When the Ownership be confirmed to them they shall solicit the proper Judge to give them juridical possession by virtue of this title by whom the boundaries shall be marked out in the limits of which they shall put land marks and some fruit or useful forest trees
3d The tract of which donation is made is of ten sitios de ganado mayor as shown in the sketch annexed to the respective Espediente – The Judge giving the possession shall cause it to be measured according to Ordinance, the surplus thereof to remain for the Convenient uses of the Nation –
4th If they contravene these Conditions they shall forfeit their right to the tract and it shall be liable to be denounceable by another
Wherefore I order that the present title being held as firm and valid Entry thereof be made in the corresponding Book & it be delivered to the parties interested for their guard & other ends
Given at the City of Los Angeles on the 27 January 1843 –
Manuel Michelltorena
Manuel Jimeno Sec'y

27

74 ND
PAGE 28

Angeles 24th September 1845

Account having been given at the session of this day of this Espediente to the Mt Excellt Departmental Assembly it was Ordered to be refered to the Committee on Government Lands. Pio Pico. President

Augustin Olvera Secy

The Committee on Govern't lands has examined the Espediente of Citizens of Manuel Vaca & Juan Felipe Armijo in application for the place known by the name of Los Puntos" situated in the jurisdiction of Sonoma and being satisfied that the steps taken in regard to said Espediente were sufficient for the Superior Government of the Department to grant them the said tract propose for the deliberation of G. E. the following article -

That the Concession made by the Superior Government of this Department in title issued under date the 30th of August last past in favour of Citizens Manuel Vaca Juan Felipe Armijo of the tract known by the name of "Los Puntos" situated in the jurisdiction of Sonoma for the extention of ten sitios de ganado mayor be approved in conformity with the Law of 18th of August 1824 & the Article of the Regulations of the 21st of November 1828 and under the precise Condition that within the term of four Months to be computed from this date they shall put into the hands of the Mt Excellt Sor Governor a proper sketh with the understanding from their not doing so they shall forfeit their right to the tract and it shall be liable to be denounced by another. Hall of Committee in the City of Los Angeles 25th Septr 1845

Franco de la Guerra . Narciso Botello

74 ND
PAGE 29

Angeles 1st October 1845

At the desire of to day the proposition of the foregoing Openion is approved by the Mt Excellt Departmental Assembly the Original Expedediente being ordered to be returned to Mt Excellt Senor Governor for the proper ends—

Pio Pico. President

Augustin Olvera Secy

A Copy hereof was on the same date issued to the parties interested respectively—

Filed in Office August 5th 1852

Geo. Fisher Secy

29

Exmo Señor Gobernador. Guillermo Wolfskill mejicano por naturalisacion y vecino de esta ciudad, ante V. E. con el debido respecto y bajo los terminos del derecho me presento y digo: que en vista del Superior decreto de V. E. fecha 24 del ultimo Mayo constantes à fojas 14 frente del adjunto expediente ofrecio al Señor Dn. Manuel Vaca presentar al juzgado de esta ciudad los documentos que el Gobierno pidio para con unos y otros resolver lo Justo en el asunto del rancho de mi propriedad que poseia con justo y legal titulo al Norte de este Departamento y del que ha sido privado quedando à verificarlo dicho Señor por si ò por su apoderado Dn. Agustin Olvera à mediados del presente mes como lo vera V. E. à fojas 15. del citado expediente y como es pasado ya el termino que el Señor Vaca se puso ocurrè ayer al señor Alcalde 1o. de esta ciudad à ver si se habia cumplido ya y resultò qe. en lugar de esto ni tampoco el Señor Olvera es tal apoderado lo que me hace creer que solo se trata de eludir el negocio y hacerme sufrir mas perjuicios y trastornos qe. los qe. hasta hoy me tiene originados como es publico pues dos viages me ha hecho hacer a Monterey porque alli residia el Gobierno y nunca pudo presentar sus documentos de Guerte que si como afortunadamente ahora se haga V. S. en esta Ciudad no sucedera volveria yo à hacer el mismo camino para ser chasqueado como antes; en tal Virtud siendo considerables los perjuicios que se me estan causando con el entorpecimto. de este asunto y creyendo de las atenciones del Gobierno procurar por la conservacion y seguridad de las propriedades, vuelvo à ocurrir à V. E suplicandole tome en consideracion la Justicia que me asiste y se sirva determinar de una vez el citado asunto de mi rancho pues en ello recibirè gracia y justicia que repito por-

Nº Exhibit A Jr. annexed to Depo of Jacob. P. Geese

74 ND
PAGE 30

74 ND
PAGE 31

por conclusion, dignandose admitirme en este papel comun por falta de Sello =dv. Angeles Agosto 26 de 1845. Habiendo llegado à esta Capital Dn. Manuel Vaca, ocurra la parte q= se presenta al Señor Alcalde 1º. de esta Ciudad para los efectos prevenidos en el decreto de este Gobierno de 24 de Mayo ultimo: Pico. Angeles Agosto 27 de 1845. Cum =plase lo que ordena la superioridad y hagan comparecer à Dn. Manuel Va= =ca para notificarle citado decreto: Asi yo Vicente Sanchez Alcalde 1º y Juez de 1ª instancia decrete y mande con los de asistencia segun derecho. ——— Vicente Sanchez ## assa Ygnacio Co= =ronel ## assa Francisco R. Lopez ## En seguida compareció Dn. Manuel Vaca y siendo presente se le notificó el auto q= antecede y entendido dijo q= lo oye y los presentara cuanto antes: esto contes =to y no firmo por no saber lo hice yo con los de asistencia segun derecho: Vicente Sanchez = assa Ygnacio Coronel Assa Ygnacio R. Lopez = Angeles Julio 2ª de 1845. Habiendo manifestado à este Gobierno los Señores Dn. Guillermo Wolf =skill y Dn. Manuel Vaca que deseos de contar el progreso de el litis que el primero promovio por derecho de propie =dad con q= se consideraba à una parte de terreno q= estaba ocupando en Ca ju =risdiccion de Sonoma Dn. Manuel Vaca estaban convenidos de libre y es =pontanea Voluntad en que el segundo haria su traslacion con todos sus in= =tereses à la parte del este del terre no de Dn. Guillermo Wolfskill en el Rio de los putos presentando al Gobierno nuevo pedido para que se espidiese el titulo correspondiente por ser este el terreno q= legitimamt. le pertenece se= gun su antigua Solicitud quedando el primero en el q= actualmt. ocupa

31

74 ND
PAGE 32

y q.e para la debida aclaracion tambien impetraria la revalisacion de su titulo; dirijan el presente expediente al juez de primera instancia de esta Capital para q.e asiente en el la correspondiente diligencia previa citacion de las partes quienes ante su autoridad haran claro su convenio firmando en testimonio y concluido esto vuelva al Gobierno para q.e teniendo el asunto por fenecido se archive en la Secretaria de su despacho. Pio Pico Gobernador interino de las Californias lo decreta y firme Doy fè. Pio Pico. Angeles Octubre 28 de 1845. En cumplimiento del Superior decreto que antecede hagase saber y emparecer à los señores Don Guillermo Wolfskill y Don Manuel Vaca para que notificados de el contesten conforme esta dispuesto y fecho devuelvarsele al Exmo Sor Gobernador para satisfacer su determinacion. Asi yo Vicente Sanchez Alcalde 1º y Juez de 1ª instancia decrete, mandè y firmè con los de asistencia segun derecho Vicente Sanchez # Assa: A. Fe Coronel Assa # Luis Dordan. Angeles Novmbre 17 de 1845. En la fecha comparecieron los Señores Don Guillermo Wolfskill y Don Manuel Vaca, y siendo presentes se les notifico la determinacion superior antecedente y entendidos; dijo el Sor Vaca. Que en efecto en eso convinieron y quiere que se cumpla; pero que habiendo reflexionado que al tener este convenio nada se trato de medidas y considerando que al hacer las del terreno del Sor Wolfskill abrasarian todo el Rio, quedandole à el la parte mas inutil propone al Sor Wolfskill se midiese desde la Orilla de la Sierra hasta la de los tulares y se partiese la diferencia por mitad entre ambos. Alegò el Sor Wolfskill que ya una Vez hecho el convenio a presencia del Exmo Sor Gobernador se debio

74 ND
PAGE 33

llevar a efecto sin poder entrar en el convenio que le propone el Señor Vaca porque le seria de desmerito al terreno de su propie=dad. Mas esto no obstante, despues de algunos reflesiones que hicieron las partes convinieron à proposicion del Sor Wolfskill que se midan los cuatro sitios que el Gobierno le concedio segun y conforme manifiesta el titulo y diseño; y que se de esta operacion despues de hecha, resultare que para la parte de abajo del Sor Wolf=skill en el mismo sio fuese tan corto la limitarlo que no prestè al Sor Vaca las comodidades necesarias para que sus bienes de Campo abreven con amplitud se obliga el Sor Wolfskill à comprarle al Sor Vaca la parte de terreno que resul=te à favor de este dicho Señor, siempre que no quiere quedar ocupandolo y que para quitar toda mala intelligencia, si llegare ese caso, en el supuesto que no se conven=ga en el precio, nombraran dos peritos uno por cada parte para que lo justipre=cien y a cuyo avaluo quedan sujetos. Esto convinieron y formaron conmigo y los de asistencia segun derecho: Vicente Sanchez # Guillermo Wolfskill # A ruego del Sor Manuel Vaca por no saber firmar. Leonardo Coto # Assa: A. de Coronel Assa: Jacobo Frenchfort #

Angeles Noviembre 17 de 1845. Remitanse el presente expediente al Excmo Sor Gober=nador por estar concluida su disposicion y en cumplimiento de lo determinado. Asi lo Vicente Sanchez Alcalde 1o y Juez de 1a instancia, decretè mandè y firmè Vte Sanchez # Assa A. de Coronel. Assa Leonardo Cota. En la misma fecha se le remitio al Excmo Sor Gobernador en dos pliegos uno conteniendo diez y seis fojas utiles y el otro cinco. Rubrica.

Angeles Noviembre 18 de 1845. # Estan=do y a conforme las partes de Don Guil=lermo Wolfskill y Don Manuel Vaca

33

74 N.D
PAGE 34

ocurra el primero al Juez de Sonoma para que lo ponga en posecion de los cuatro sitios de ganado mayor que le concedio el Gobierno Departamental; evacuada esta posecion ocurrira al mismo Juez la parte de Don Manuel Vaca en prosecucion de la posecion del terreno que tambien le ha sido concedido por el mismo Gobierno y en caso de que a este ultimo no le convenga la ocupacion de su terreno llevese à debido efecto el convenio que ambos partes celebraron ante el Alcalde 1º de este Capital el dia de ayer y consta en este Espediente; Librese testimonio de este à Don Manuel Vaca y entregue se el Original à Don Guillermo Wolfskill. Pio Pico Gobernador del departamento de las Californias asi lo mando decretò y firmè de que doy fè Pio Pico. Jose Mª Covarrubias Secrio.

Es testimonio fiel del Original que ha sido entregado à Don Guillermo Wolfskill. En fè de lo cual lo firmò

Angeles Noviembre 19. de 1845.

Jose Mª Covarrubias

M. B. Pico

Filed in Office March 15th 1853. Geo: Fisher Secry.

34

74 ND
PAGE 35

To His Excellency. The Governor
Sir

William Wolfskill a Mexican by Naturalization and a resident of this City present myself before your Exc.cy. with due respect and in the manner prescribed by Law and say. That in consequence of the suspension decree of Your Exc.cy. dated the 24th of May last appearing at page 14th of the Record hereto annexed Don Manuel Vuco was forced to present to the Court in this City the documents which the Government called for in order with all of them to determine that which is just in the matter of the farm belonging to me, which I held under a just and legal title, to the Northward of this Department and of which I have been dispossed the said gentleman having been bound to comply therewith either personally or through his Attorney-
Don Augustin Olvera - About the middle of this present month as Your Excellency will find at page 15th of the aforesaid Record and as the person which Mr Vuco himself, appointed, has already gone by - I called yesterday upon His Honor the First Judge of this City to see whether the same had as yet been complied with. The result of which was that instead of this Mr Olvera is not now his Attorney, from which I am led to believe that he is merely endeavoring to avoid the matter and to subject me to more expenses and inconveniences, than those which, up to this day, he has, as is publicly known caused me: He obliged me to make two trips to Monterey because that was the seat of Government, and he has never presented his documents but as Your Exc.cy is fortunately in this City at present should he fail to do so, I would be compelled to make the same journey Over again to be despatched as before, in this Conjuncture, the Corps which are

74 ND
PAGE 36

occasioned me by the delay of this affair being considerable and believing it to be the aim of the Government to adopt measures for the preservation and security of property - I again appeal to your Exc^y requesting that you will be pleased to take it into Consideration the equity of my demands, and to decide at once the matter relating to my farm (Rancho) in all of which I shall receive favor and Justice, which in Conclusion I repeat and hope you will be pleased to admit this in ordinary paper there being none that is stamped - Angeles August 31st 1845 -

William Wolfskill

Angeles August 26th 1845. Don Manuel Vacca having arrived at this Capital let the plaintiff present himself before the First Judge of this City for the purposes set forth in the decree of this Government dated 24th of May last -

Pico

Angeles August 27th 1845 - Let the above order of this Exc^y be complied with, and Don Manuel Vacca be summoned to appear, in order to give him notice of the aforesaid decree - Thus I Vicente Sanchez First Magistrate of the primary Court of Claims decreed and ordered with the assistants as provided by Law

Vicente Sanchez = Asst. Ignacio Coronel = asst -
Francisco R Lopez -

In conformity with the above Don Manuel Vacca appeared and being present, the foregoing act was made known to him and having understood the same he said I hear and will present them immediately = Thus he answered - but did not sign, not knowing how - I did so with the assistants as provided by Law

Vicente Sanchez Asst. Ignacio Coronel = Asst.
Francisco R Lopez

36

74 ND
PAGE 37

Angeles July 27th 1845. Messieurs Don Guillermo Wolfskill and Don Manuel Vaca having signified to this Government, that, desirous of putting a stop to the suit which the first mentioned party instituted for the right of property which he claimed to a portion of the Land which Don Manuel Vaca was occupying within the jurisdiction of Sonoma they had of their own fee will, fully agreed in that the second party should remove with all his interests to the Eastward of the Land of Don Guillermo Wolfskill situate on the river of "Los Putos" presenting to the govern=ment another petition for the grant of the proper title thereon, this being the Land which legitimately belongs to him agreeably to his former petition — the first mentioned party remaining on the land which he now actually occupies — and that for a clear and full understanding in the matter, he also should petition for the reconfirmation of his title — Let the present order be sent to the Judge of the primary Court of claims of this Capital, that he may issue thereon the proper juridical summons for the appearance of the parties, who before His Honor shall fully and clearly define their Agreement and sign the same under Oath; and this having been done let the same be returned to the Government who holding the case as at and end shall have it recorded in the Office of the Secretary of State — J. Pio Pico Governor ad interim of the Californias, in Witness have decreed and signed Pio. Pico

Angeles October 28th 1845
In compliance with the foregoing superior decree let Messrs Don Guillermo Wolfskill and Don Manuel Vaca be summoned to appear, and after hearing the same answer as thereon provided. Which being done let this be returned to his Excy: the Governor as greeable to his direction

37

74 N.D
PAGE 38

Thus I Vicente Sanchez Just Magistrado and Judge of the primary Court of claims decreed Ordered and Agreed with the Assistants as provided by Law- Vicente Sanchez
Asst. A. J Coronel = Assist. Luis Jordan =

Angeles November 17th 1845= On this day appeared before me. Mesprs. Guillermo Wolfskill and Manuel Vaca who being personally present were informed of the foregoing Superior decision which having both heard they did agree as stated and he do desires to comply with the Same; but that having reflected that after the time of making this Agreement Nothing was said respecting the measurement of the lands and that in measuring those of Mr Wolfskill they would include the entire River, the most useless part remaining as his portion, he now proposes to Mr Wolfskill that the Same be measured Say- Commencing at the edge of the Mountain as far as that of the tulares (Swamps) and that the difference be divided into equal parts between both Mr Wolfskill alledges that in as much as the Agreement has already been made in the presence of this Excy the Governor it should be carried out without entering into further Agreement as proposed by Mr Vaca, because it would be prejudicial to the Rancho belonging to him Mr Wolfskill However and Notwithstanding this, after some further Consideration between the parties they agreed at the instance of Mr Wolfskill that the four Suertes which the Government granted him should be measured as set forth in the title and Breth of the Same, and if from the Said measurement after it shall have been made it should result, that the portion below Mr Wolfskill on said River should be so small or limited in extent as not to afford to Mr Wolfskill the necessary facilities for pasturing his Stock Conveniently Mr Wolfskill Obligates

38

74 ND
PAGE 39

himself to purchase from Mr Vaca the land which shall so result in favor of said Gentleman provided that he does not wish to retain possession of the same and to do away with any possible misunderstanding which migh arise from their not agreeing as the value they shall appoint two competent appraisers, one by each party, to fairly estimate the value thereof and to whose award they shall submit To this they agreed and signed the same with me and the assistants as provided by Law - Vicente Sanchez =
= Guillermo Wolfskill =
At the request of Mr Manuel Vaca as he could not sign = Leonard Cota = Assist. A. F Coronel
Assist. Jacob Franckfort. ~
Angeles - November 17th 1845. Let this present record be returned to his Exc'y the Governor in compliance with his Order which has been carried into effect Thus I Vincente Sanchez First Magistrate and Judge of the Court of Primary claims have decreed ordered and signed - Vte Sanchez = Assist = A F Coronel
assist = Leonard Cota =
On the same day the said Record was handed to his Exc'y the Governor under two distinct covers, one containing sixteen pages of writing and the other five pages of writing and the other five pages = Rubric =

Angeles, November 18th 1845 = The parties hereunto Don Guillermo Wolfskill and Don Manuel Vaca having come to an amicable adjustment of their differences the first party shall apply to the Judge of Sonoma and by him be put in possession of the four square leagues of land [Cuatro sitios de ganado Mayor] granted to him by the Government of the Department - When said possession shall have been granted, Don Manuel Vaca

39

74 ND
PAGE 40

the deceased party herein shall apply to the same Judge and claim possession of the land which has thereto been granted him by the same government: and in the event of the occupation of his said Land should not meet the views of the last-mentioned party, then the agreement entered into by both parties on the day of yesterday before the 2d Judge 1st of this Capital shall be carried into full effect, & the which appears in this Record — Let a copy of this be given to Don Manuel Vuca and the Original be placed in the hands of Don Guillermo Wolfskiel

I Pio Pico Governor of the Department of the Californias have this Ordered Decreed and Signed — In Witness Whereof

(Signed) Pio Pico

Jose Mª Covarrubias
Secty

This is a true Copy of the Original which has been handed to Don. Guillermo Wolfskill
In testimony whereof I sign the same at Angeles Novembr 19th 1845

Jose Mª Covarrubias

Filed in Office March 15th 1853
Geo. Fisher Secy

40

74 ND
PAGE 41

Sello primero ocho pesos.
Habilitado provisionalmente por la aduana
marítima del puerto de Monterey en el Depar
-tamento de las Californias para los años
de mil ocho cientos cuarenta y cuatro y mil
ocho cientos cuarenta y cinco
Michel Torena Pablo de la Guerra

Pio Pico Vocal decano mas an=
-tiguo de la Honorable Asamblea
departamental de Californias y
encargado del Gobierno del mismo por
el ministerio de la ley

Por cuanto Dn. Juan
Manuel Vaca y Dn. Juan Felipe Arrigo me
=jicano por nacimiento han pretendido para
sus beneficios personales y el de sus familias
el parage conocido con el nombre de los Putos
en las Margenes del rio colindante al Este
con el rancho de Don Guillermo Wolfskill
sin perjuicio de las medidas que se hagan de
los ranchos inmediatos concedidos. con ante=
=rioridad practicadas previamente las di
=ligencias y averiguaciones consernientes
segun lo dispuesto por leyes y reglamentos
usando de las facultades que me son con=
=feridas à nombre de la nacion Mejicana
he venido en concederles el terreno mencionado
declarandoles la propiedad de el por la pre
-sentes letras: sugetandose à la aprobacion
de la Excma Junta departamental y
bajo las condiciones siguientes. 1ª Podran
cercarlo sin perjudicar las travesias cami
=nos y servidumbres lo disfrutaran libre y
esclusivamente destinandolo al uso que mas
le acomode. 2ª Solicitara del Juez respec
=tivo que les de la posecion juridica verifi
=cada de este despacho quien tendra cuida
=do de respetar las antiguas propiedades
y demarca los linderos segun lo previene
concesion en cuyos lugares pondran sus
mojoneras correspondtes y algunos arboles
frutales ó silvestres de alguna utilidad
3ª El terreno de que se hace donacion es de
diez sitios de ganado Mayor segun y con

41

74 N.D
PAGE 42

=forme antes se les habia concedido. El Juez que diese la posecion lo hara medi= conforme à Ordenanza dejando el sobrante que resulte à la Nacion para los usos conv=enientes.

En consecuencia mando que teniendo=se por firme y valedero el presente titulo se tome razon en el libro à que corresponde y se entregue à los interesados para sus resguardas y demas fines.

Dado en la ciudad de los Angeles Capital del departamento de Californias @ 10 de Julio de 1843.

Pio. Pico

Josè Mª Covarrubias

Srio

Queda tomada razon de este superior despacho en el libro respectivo

Angeles fecha ut supra

Covarrubias

Sealed in Office March 15th 1853.

Geo Fisher Decy.

42

Seal First – Eight Dollars

Translation of Grant

74 ND
PAGE 43

Established provisionally by the Maritime Custom House of the Port of Monterey in the Department of the California for the years One thousand Eight hundred & forty Four and One thousand Eight hundred and forty five Michettorena Pablo de la Guerra

Maritime Seal Custom House of Monterey

Pio Pico the Senior Speaker of the Honorable Assembly of the Department of the Californias and entrusted with the Government of the same by the by the Supreme Court of Laws

Whereas Dn Juan Manuel Vaca and Dn Juan Filipe Arm ijo mexicans by birth have solicited for their personal benefit and that of their families the place known by the name of Los Puntos on the banks of the river bounding on the Eastern boundary of the Rancho of William Wolfskill without infringing upon the measurements which may be made of the adjacent Ranchos previously granted: the preliminary formalities and investigations relative to the same having first been made as provided by the laws and regulations – by virtue of the authority in me vested and in the name of the Mexican Nation, I have granted to them the aforesaid Land declaring by these presents, the Ownership thereof to be in them subject to the approbation of the Most Honorable Assembly of this Department and under the following conditions

1st They shall have authority to fence the same without detriment to the crossings roads and easements they shall enjoy the same freely and exclusively making such uses thereof as they shall deem best

2d They shall solicit from the Competent Judge that juridical possession thereof be given them in virtue of

43

74 ND
PAGE 44

this decree; said judge shall be careful to respect the former possessions and he shall mark out the limits thereof agreeably to the present grant, in which places they shall place their proper monuments and some fruit or other useful trees-

3a The land of which the grant is made is ten square leagues in extent [dedez sitios de ganada mayor] as originally conceded to them. The judge who shall give possession thereof will cause it to be measured agreeably to the ordenanza reserving the remanente which may arise therefrom to the nation for its proper uses

Therefore I command that this present title being held both valid and binding a record of the same be made in the proper books and that it be delivered to the interested parties for their keeping and other purposes Given at the City of Los Angeles Capital of the Department of the California this 30th day of July A D 1845

Pio Pico

Jose Ma: Covarrubias
Secy

A record of this Superior Warrant has been made in the proper Book - Angeles date as above

Covarrubias

Filed in Office March 15th 1853

Geo. Fisher Secy

44

Pio Pico Gobernador interim del Departamento de las Californias.

La Exma Asamblea Departamental en Sesion de hoy ha acordado lo siguiente.

Se aprueba la concesion hecha por el Superior Gobierno de este Departamento en titulo librado con fecha 30 de Agosto proximo pasado en favor de los Ciudadanos Manuel Vaca y Juan Felipe Armijo del terreno conocido con el nombre de los putos situado en la jurisdiccion de Sonoma en estencion de diez sitios de ganado mayor de conformidad con la ley de 18 de Agosto de 1824 y el Articulo 5to del reglamento de 21 de Noviembre de 1828 y bajo la precisa condicion que dentro el termino de cuatro meses contados desde esta fecha pondran en manos del Exmo Señor Gobernador el diseño respectivo en la intelligencia que de no verificarlo asi quedaran sin derecho al terreno y sera denunciable por otro. Y para resguardo de las partes de Dn Juan Manuel Vaca y Dn Juan Felipe Armijo lo haga asi saber. Dado en la ciudad de los Angeles en este papel comun por falta de Sellado à primero de Octubre de mil ocho cientos cuarenta y cinco.

R. Testimonial of the Approval of the Departamental Assembly

74 ND
PAGE 45

Pio Pico

Josè Ma Covarrubias
Srio.

2.00

Filed in Office March 15th 1853

Geo: Fisher Leery.

45

Translation of Approval

74 ND

PAGE 46

Pio Pico Governor ad interim of the Department of the California

The most Honorable Assembly of this Department in its Session of this day has decreed as follows
"The concession made by the Supreme Government of this Department in its Warrant Grant under date of the 30th of August last past is hereby approved in favor of the Citizens Manuel Vaca and Juan Felipe Arrejo to the land known by the name of Los Pixlos situate within the jurisdiction of Sonoma, the extent of which is of Ten Square Leagues [Diez Sitios de ganado Mayor] according to the Law of the 18th of August 1824 and the article 5th of the Regulations of the 21st of November 1828 and under the express Condition that within the term of four months from and after this date they shall place in the hands of his Excy the Governor the plan relating to the same it being understood that if they should fail in so doing they shall lose their title to the Land and it shall be subject to be denounced by another person.
And for the decency of the parties herein Don Juan Manuel Vaca and Don Juan Felipe Arrejo I hereby give notice thereof
Given at the City of Los Angeles On this Ordinary paper for want of Stamped paper this first day of October One thousand Eight hundred and forty five

Pio Pico

Jose Mª Covarrubias

Secty

Filed in Office March 15th 1853

Geo. Fisher

Secty

57

46

Sello tercero un Peso
Habilitado provisionalmte. por la Aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco
Micheltorena Pablo de la Guerra

O
Application for possession

74 ND
PAGE 47

Sn. Alcalde 1o. de esta jurisdcn.
José Manuel Baca vecino de esta demarcacion, dueño del rancho de Guaytos como mejor proceda de dro ante V. parezco y digo

Que como consta del titulo qe. presenta con la solemnidad y juramto. necesario tengo en mi dcho rancho, diez sitios de ganado mayor debajo de los linderos qe. espresa dho titulo y porqe. necesito para qe. en todo tiempo conste hasta donde llegan y si me perjudican ò perjudico a alguno de los circumvecinos à ellas. suplico à V. se sirva mandar qe. precediendo las diligencias acustumbradas de identidad con citacion de los circumvecinos à la medida de mis dhas tierras pa. cuyo efecto, nombro desde ahora y pa. cuando el caso llegue pa. medidor al Cuidno. Julien Jordan intelligente en esta materia y qe. los demas qe. fueren interesados aparezcan, acepten y juren y en su conformidad se proceda à dcha medida P. C. A. V. suplico qe. habiendo por presentado dcho documento. se sirva mandar hacer como llebo pedido y fecho que sea se me devuelvan dhos recados con las diligencs. Originales que se hicieren pa. en guarda de mi dro. este escrito y todo lo necesario etc.

Sonoma Abril 18/844
Jose Manuel Baca +

Juzgado de 1a. Nominacion

47

Sonoma Abl. 18 de 1844.
No se puede conseder la posecion q.e pide el interesado hasta que no se confirme la propriedad q.e esplica la condicion segunda del titulo concedido por el Exmo Sor Gober=nador y n mas tener q.e sugetarse à las po=seciones de los colindantes las q.e aun no se han Verificado

74 ND
PAGE 48

3.10

Jacob. P. Leese

Filed in Office March 15th 1853

Geo: Fisher Secry.

48

Seal Third One Dollar

Translater "C"

74 ND
PAGE 49

Established provisionally by the Maritime Custom house of the Port of Monterey in the Department of the Californias for the years One thousand eight hundred and forty four and one thousand eight hundred and forty five

Micheltorena

Pablo de la Guerra

Maritime Custom House Seal of Monterey

To the First Alcalde of this Jurisdiction

Sir

Jose Manuel Baca a resident of this district owner of the rancho of "Lunayos" as in Law I may best proceed. I present myself before you and say - That as it appears from the title which I exhibit with the formality and oath required - that I possess in my in my said Rancho an extent of Ten square Leagues of Land [Diez Sitios de Ganado Mayor] under the boundaries set forth in said title and as I must know, to save me now and in all time to come how far they extend, and whether I am trespassed upon or I trespass on any of those adjacent thereto I request your Honor to Order - after the Customary proceedings in such cases of identity inspection and survey and after notice thereof - to the neighbors, that my said lands be measured and for that purpose I from this day appoint the Citizen Julian Linden as measurer thereof and for whensoever said measurement may be made, he being skilled in such matters and that all such others as may be interested hereon appear accept and swear and that the said measurement may be carried into effect as provided for by Law

Wherefore I beg your Honor that in view of the present action of said document you will be pleased to Command to be done that which I have asked

74 ND
PAGE 50

and when so done- that the said record be returned to me together with the Original proceedings which may be instituted for the protection of my rights relating both to this present writing, and to all other necessary forms of Law

Sonoma April 18th 1844

Jose Manl Barea X

County of

Court of 1st Nomination

Sonoma April 18th 1844

The possession asked by the interested party cannot be granted him until the property shall have been confirmed to him as provided for in the decree stipulation of the title granted him by His Excellency the Governor and furthermore as he is bound to respect the possession of his neighbors which as yet have not been ascertained

Jacob P Leese

Filed in office March 15th 1853

Geo. Fisher Secy

50

Sello Quinto un Real
Habilitado provisionalmte. por la Aduana
Maritima del puerto de Monterey en el depar
=tamento de las Californias, para los años de
mil ochocientos cuarenta y cuatro y mil ocho
cientos cuarenta y cinco.
Michel Torena Pablo de la Guerra
E. S

74 ND
PAGE 51

Jose Manuel Vaca vecino de So=
=noma ante V. E como mejor halla
lugar en dro y con el debido respeto es=
=pongo que en 27 de Enero del año ppdo. se
me concedio por el Supremo Gobo.
Departamental el terreno convi
=do con el nombre de Lihuaytos
cuyo diceño acompaño con las
condiciones generales y como una
de estas sea que en el termino de
un año debo fabricar casa y culto
=varlo so pena de perder el Dro
de propriedad solicite del
Juez de Paz de mi Jurisdiccion
se me diese la respectiva pose
=cion juridica pero esta autori
=dad se nego à hacerlo en virtud
que debia esperar la aprobacion
de la Exma. Asamblea segun
el sentido de otra de dichas con
=diciones (requisito que quiza
por olvido ha perdonado à otros
a quienes ha dado posecion y
como entre tanto concigo aquella
superior Aprovacion puede muy
bien caulesquiera otro indivi=
=duo de mala fè. Querer se usu
=par por mi propiedad como lo
pretende ya el estrangero Wis=
kall quien sin embargo de una
orden del Juez para que des
=ocupe mi terreno se radico

Monterey Mayo
10. de 1844
El Juez respec
=tivo concurra
à si ambos di
=ceños y titulos
de Vaca y
Wiskell y si
fuere cierto lo q.
diga el supli
=cante inme
diatamte. Obli
=gare à aquel
de salir del
terreno de Vaca
y limitarse al
suyo en el concep
=to q. el Gobno.
Supremo depar=
=tamental vela
en conservar a
cada uno su
propriedad y q.
caso de resisten
=cia o desolidi
=ancia habra lu
=gar a otros pro
=cedimientos

51

74 ND
PAGE 52

fuertes y à la responsibilidad del Juez y respecto à la posecion juridica q. se pretende en este escrito no esta en la facultad del Gob.o mandar lo dar, sin q. prese de la aprobacion de la Exma Junta Departamt.l Mas no podra medirsele el terreno y reconocerse sus linderos interim aquella recayere à el respectivo titulo.

Micheltorena

y permanesca en el impunemente me veo en la necesidad de recurrir à V. E. suplicandole se digne mandar que el juez de Paz de mi jurisdiccion me de la posecion respectiva, sin perjuicio de sugetarme à la aprovacion de la Exma Junta Departam.tal y q. igualmte haga previa la debida informacion q. el estrangero Wiskall salga de mi terreno dejandome en completa y pacifica posecion de el P. J. A V. E. suplico se sirva proveer como pido en lo que recibire justicia y gracia

Monterey Mayo 1º de 1844

Fe. Manl. Vaca

Filed in Office March 15th 1853
Geo Fisher Secry.

450

52

Seal Fifth One Real (12½ cts)

Monterey May 1st
A D 1844
The Judge having
cognizance of case

Translation of T

Established provisionally by the Maritime Custom House of the port of Monterey in the Department of the Californias for the years One thousand Eight hundred Forty four and One thousand Eight hundred and Forty five

Micheltorena Pablo de la Guerra

Maritime Custom House Monterey Seal

Most Excellent Sir

Jose Manuel Vaca a Citizen of Sonoma, as far as in Law he may be entitled to, and with the due respect presents himself before your Ex'cy and says that on the 27th day of January of the year last past the Land known by the name of "Likelaytos" was granted to me by the Supreme Government of the Department A plan of which I send herewith with the general Conditions of the same, and as one of these was that I should build a house thereon and cultivate the ground on pain of losing the right of property thereto I solicited from the Justice of the Place of my jurisdiction that juridical possession of the same might be given me but that functionary declined doing so upon the ground that I should await the approbation of the Most Honorable Assembly of this Department agreeably to the intent of another of said conditions (a requisite which perhaps from forgetfulness he has overlooked in others to whom he has given possession and as in the interim of my obtaining that higher approbation any other person may

74 ND
PAGE 53

Monterey May 1st
A D 1844
The Judge having cognizance of this case shall send for the plans and both of Vaca & Ulliskell and if that which the petitioner alledges should prove to be true he shall at one compel the latter to quit the land belonging to Vaca in as much as the Supreme Government of the Department looks to the preservation of the property of every one of its Citizens and that in the event of resistance or disobedience other & stronger measures will be adopted for which the Judge shall be held accountable. And

53

74 ND
PAGE 54

and with regard to the juridical possession which is claimed in this writing the Government is not authorized to order it to be given without the previous approbation thereof by the Most Honorable Assembly of the Department. However the land may be measured for him and its boundaries ascertained that meanwhile

deceitfully desire to usurp my property as the Foreigner Wiskell already attempts to do who notwithstanding the order of the Judge to quit my land has settle upon it & still remains thereon with impunity. I find myself under the necessity of appealing to your Excy: intreating you to be pleased to direct the Justice of the peace of my jurisdiction to give me possession of the same without compelling me to await the approbation of the Most Honorable Assembly of the Department and likewise to cause after due information therein the Stranger Wiskell to quit my land leaving me in full and peaceful possession thereof. Wherefore I pray you to decree as I ask in all of which I shall receive Justice and Favor

Michelton

Monterey May 1st 1844

Jl Manl Vaca

Filed in office March 15th 1853

Geo. Fisher Sec'y

No 57

Nº 57

54

Espediente promovido por Cuidadano Juan Manuel Vaca en Solicitud del parage conocido con el Nombre de Lyhuaytos en Sonoma

72
74 ND
PAGE 55

424

55

2

Sor Comandte Gral

El ciudadano Juan Manuel Vaca originario del Departamto del Nuevo Mexico y avecindado en la Alta California ante V. E con el debido respeto y en la mejor forma se presenta y dice q. habiendo abandonado su pais natal y adoptan este en virtud de las garantias q. V. E afoecio al q. subscribe desde el año de 1837 de darle terrenos en Colonisacion &c. ha llegado por fin à esta frontera con algunas familias y solicita el parage de Lihuantos; lindando al Sur con el Suisan al Norte con los putos, al oriente con los esteros q. forman la bahia interior del estrecho de Carquines constando de diez sitios de Ganado Mayor. Por lo tanto. A. V. E pide y suplica atienda à su Solicitud por las razones expuestas y admita esta en papel comun por no haver en este lugar del sello q. corresponde.

Espediente

Sonoma Junio 6. 1842 Concedo provisionalmente à Dn Juan Manl Vaca y las famas q. conduce el terreno que se menciona en esta Solicitud sugetandose à las medidas de los ranchos colindantes y a recabar los titulos de estilo por el Gobo Politico departamtl A. V. E Vallejo.

Sonoma Junio 6. de 1842

Juan Manuel Vaca

74 ND
PAGE 56

3

Exmo Sor

Juan Manuel Vaca vecino de la demarcacn de Sonoma ante V. E en la mas bastante forma y como mas haya lugar en derecho digo Que haviendo ingresado a este departamto con un numero respectable de familia q. traje de Nueva Mexico me concedio el Sor a Guadalupe Vallejo el titulo provicionl q. debidamte acompaña con la condicion de q. ocurriese al supremo Gobierno departamtl a pedir confirmase la propriedad mas como la distancia en q. me

Angl Enero 13. de 1843 Infl del S. Srio del Gobo Dn Manl Jimeno Micheltorena

56

74 ND
PAGE 57

57-1
4

me hallo es enorme y dificultoso el pasar con brevedad no ocurri al momento. Hoy q.e he conseguido el papy q V. C se halla à la cabeza del Govierno, acudo à la notoria beniguidad de V. C. p.a q.e en uso de sus amplias facultades me conceda la propriedad de diez sitios que obtenga, en los que procuraré cumplir con lo prevenido por las leyes y cultivar el terreno con empeño. Por tanto. A. V. C. suplico haga como pida en lo que recivere gracia jura no ser de malicia. y lo necesario &c. Sirviendose admitir la presente en papel comun por falta del Sellado.

Ang.s Ener.o 13 de 1843

Juan Manuel Baca

Exmo Señor Gobernador

El terreno que se solicita esta en estado de concederse segun el informe del Sr D.n Guadalupe Vallejo y puede darsele la estencion que se menciona atendiendo à la laboriosidad è intereses del pretendiente y familias que le acompañan pero antes de todo parece necesario que el interesado acompañe el diseño del terreno. Lo espuesto queda à la disposicion de V. E.

1.50

Ang.s 14 de Enero de 1843

Man.l Jimeno

5.

Here follows

map.

57

74 ND
PAGE 58

Office of the Surveyor General of the United States for California

I John C. Hays, Surveyor General of the United States for the State of California and as such now having in my charge and custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California by Virtue of the powers vested in me by Law do hereby certify, that the five preceeding and hereunto attached pages of Traeing Paper numbered from one to five inclusive, exhibit a true and accurate copy of a certain document now on file and forming a part of the said Archives in this Office

In Testimony whereof I have hereunto signed my name officially and caused my Seal of Office to be affixed at the City of San Francisco the 24th day of August 1853

John C. Hays
Surv. Genl. Cal.

100
5.72

Filed in Office Aug: 24th 1853
Geo: Fisher Secy.

58

Record moved by Citizen Juan Manuel Vaca in soliciting the place known with the name of Lihuaytos in Sonoma

424.

Translation of Exhibit Z

74 ND

PAGE 59

Senor Commandant General: The citizen Juan Manuel Vaca native of the Department of New Mexico and establishes in Alta California before Y. E. with due respect and in the best form presents himself and says: that having abandoned his native Country and adopted this, in view of the guarantees which Y. E. offered to him who subscribes since the year 1837 to gave him Lands in Colonization &c. has finally arrived at this frontier with some families and solicits the place of Lihuaytos bounded at the South the Suisun at the North with the Puntos at the East with the Estuaries that form the exterior Bay of the straits of Carquenez consisting of ten sitios of ganado mayor Wherefore to Y E he asks and petitions that he will attend to his petition for the reasons expressed and that he will admit this on Common paper there not being at this place any of the Corresponding Stamps

Sonoma June 6th 1842

Juan Manuel Baca.

Sonoma June 6th 1842

I grant provisionaly to Manuel Baca and the families which he brings the land that is mentioned in this petition subject to the measurement of the adjoining Ranchos and to apply for the usual title from the Political Departmental Government

Signed Vallejo

Most Excellent Sir

I Manuel Vaca citizen of the District of Sonoma in due form and in the manner prescribed by Law, say before your Excellency that having come to this Department with a respectable number of families which I brought from New Mexico Senor Don Guadalupe Vallejo granted me the provisional title which is hereto duly annexed with the condition that

Angeles January 13. 1843
Let the Secretary of the Government Don Manl. Jimeno inform

Michelta

74 ND
PAGE 60

That I should apply to the Supreme Departmental Government to solicit the Confirmation to me of the property: but as the distance is very great and it was extremely difficult to go immediately, I did not proceed at the moment Now that I have been able to come and your Excellency is at the seat of government, I address myself to your Excellency's well known benignity in order that in use of your Excellency's most Ample powers you may grant me the property of ten Sitios which obtained I should endeavor to Comply with the provisions of the Law and Cultivate the Land with industry — Wherefore I beseech your Excellency to do according to My petition in which I shall receive favor swearing not to proceed from Malice and all that is necessary &c Your Excellency being pleased to admit the present petition &c Common paper for lack of the Stamped —

Angeles Jan. 13 — 1843 Juan Manuel Baca

Senior Governor

The land solicited is in a condition to be granted to be granted, according to the information of Don Don Guadalupe Vallejo, and may be given to the extent which is mentioned, Considering the great industry and property of the petitioner & families which accompany him, but first of all it appears necessary that the party interested furnish the plat of the Land —

The matter above stated remaining at the disposition of Your Excellency — Angeles 14 January 1843

Manl. Jimeno

Filed in Office Aug. 24. 1853

Geo. Fisher Secy

60

M. G. Vallejo Coronl. de Caballeria.
Certifico que el paraje conocido con el nombre de Luguaytos fue concedido à Dn. Manuel Vaca por el que suscribe cuando estubo de Director de la Colinisacion de esta frontera
Asimismo certifico que el paraje de los Putos se consedio à M Wolfskill colindante con el primero. Aunqe. en el mismo rio hacia el Sausal ò desembocadero de la bahia de Sayssun.

74 ND
PAGE 61

Y pa. que conste doy el presente à pidimto. del interesado pa. los fines qe. le convengan en Sonoma @ 4 de Agosto de 1845.

M. G. Vallejo

1.00 Filed in Office March 15th. 1853
Geo Fisher Secry.

61.

Order of survey

74 ND
PAGE 63

For the purpose of determining with precision and certainty the limits and boundaries of the land claimed by Manuel Vaca and Felipe Pena in the petition No. 57 pending the before the commissioners it is on motion by the Counsel the of Claimant, ordered that an initiatory survey under the superintendance of the United States Surveyor General of California be made of the land known by the name of Sitios tos or Pintos to the extent of ten sitios de ganado mayor within the limits of the river Sacramento, the Sierra of Napa, the creek of Lehmaytos or Pintos and the Suisun and adjoining the lands of William Wolfskill in the State of California locating the said quantity of ten leagues square or sitios according to the claim of the said Vaca and Pena and having reference to the sketch or plan annexed to his petition and the description and calls of their several grants, but in such manner as to confine said location within the said limits and to include in the survey on to be made the said quantity of ten sitios

But this order is not in any manner to determine as against the United States either the question of title the construction of the grant the location boundaries or extent of the land to which the claimants may be entitled

Filed in office Aug. 14th 1852

Geo. Fisher Secy

62

Juan Manuel Vaca &
Juan Felipe Pina
vs
The United States

Los Puntos
Containing ten Leagues

Opinion of Comr. Campbell

74 ND
PAGE 63

The papers filed in this case present the following state of facts to wit, on the 6th day of June A D 1842 Juan Manuel Baca (Vaca) presented his petition to Commandant General Vallejo asking him for a grant of ten leagues of Land for himself and some families in whose behalf he also petitioned; General Vallejo replied to this petition by making a marginal note of Concession of the Land asked for, to the petitioner and the families he had brought with him. This concession contains the proviso, that the Concession is made subject to the measurement of the adjoining Ranchos, and that the petitioner shall apply to the Political Departmental Government for the usual title. No further further notice seems to have been taken of this Concession made to Baca for the benefit of the families refered to in his petition. The next proceeding is for a grant for the same place called Lihuaytos made by Governor Micheltorena to One Manuel Vaca and Juan Felipe Armijo. This grant bears date January 27th 1843. The next proceeding as appears from papers on file is an Agreement judicially entered into between One William Wolfskill and Don Manuel Vaca for an arrangement of their boundary lines which seemed to conflict with each other. In this proceeding it was agreed that Vaca should remove with all his interests to the Eastward of the Lands claimed by Wolfskill situated on the river "Los Potos" and that he (Vaca) should petition anew for a grant of the proper title therein, which Land legitimately belonged to him agreeably to his former petition. In pursuance of said Agreement the said Juan Manuel Vaca for himself, and in the name of his Companion Juan Felipe Amijo on the 30th day of August A D 1845 petitioned Governor Pio Pico to concede to him in union with his Companion the Ownership of the tract "Los Potos" which tract he describes as adjoining on the East the place of Don Guillermo Wolfskill containing ten square leagues which he represents in his petition is in entire conformity with the donation made to them in the year

63

74 ND
PAGE 64

One thousand eight hundred and forty three as the despatch which he owned fully verified. The despatch refered to is the Grant made by Govenor Micheltorena of that date On the same day to wit August 30th 1845 Govenor Pio Pico made his Marginal Note of Concepion in which he refers to the previous grant made by Govenor Micheltorena and directs that the Corresponding title be issued. The title which issued in Conformity with this decree and which is on file and made part of the evidence in this case bears date the 30 of July 1845, this is evidently a mistake it should be the 30th of August. It further appears that the grant issued by Govenor Pico was on the 1st day of October 1845 approved by the Departmental Assembly under the precise Condition that within four Months from the date of approval the grantee should file a Map of the premises granted with the Govenor with the understanding that if they failed to file such Map within the time Prescribed that right to the tract should be forfeited and the land would be liable to be denounced by another. It is not to be overlooked that in all the several Concepcions and grants which it seems were made to the parties of the land claimed, the precise Condition was inserted was to be without injury to the Measures to be made of the contiguous Ranchos which had been previously Conceded. It is further shown by papers and documents on file that before the Agreement between Wolfskill and Vacca had been judicially Confirmed and subsequent to the issuing of the grant by Govenor Pio Pico One of the parties. Don Manuel Vacca refused to Carry out the terms of the Agreement, On the ground that he had been deceived in the location of the land which he had agreed to take as his part, whereupon another Agreement was made and judicially Sanctioned between the parties to the effect that the four leagues which the government had granted to Wolfskill should be measured as set forth in the title and Sketch of the same, And if after such Measurement it should turn out that the portion allotted to Vacca should be too small as not to afford him facilities for pasturing his Stock, then Wolfskill obligated himself to purchase at a fair Valuation, the land which might so result to Vacca. The Agreement on the same day it was made was handed to

64

74 ND
PAGE 65

the Governor who on the 18th day of November A.D. 1845 made the following decree or Order." The parties hereunto Don Guillermo Wolfskill and Don Manuel Vacca having come to an amicable adjustment of their differences, the first party shall apply to the Judge of Sonoma and by him be put in possession of the four square leagues of land granted to him by the Government of the Department; when said possession shall have been granted Don Manuel Vacca the second party herein shall apply to the same Judge and claim possession of the Land which has likewise been granted him by the same Government, and in the event that the occupation of the said Land should not meet the views of this last mentioned party, then the agreement entered into by both parties on the day of Yesterday, before the Judge of this Capital shall be carried into full effect. It also appears that Jose Manuel Vacca by his petition bearing date the 18th of April A.D. 1844 applied to the First Alcalde of the Jurisdiction of Sonoma for the juridical measurement of the ten leagues of Land which had been granted to him in the preceding year by Governor Micheltorena, to which the Alcalde made the following reply

Court of 1st Nomination. Sonoma April 18th 1844.

The possession asked for by the interested party cannot be granted him, until the property shall have been confirmed to him, as provided for in the second Stipulation of the title granted him by his Excellency the Governor and furthermore as he is bound to respect the possessions of his Neighbors which as yet have not been ascertained

(Signed) Jacob Leese

On the 1st day of May A.D. 1844 Jose Manuel Vacca addressed a Communication to Governor Micheltorena in regard to the refusal of the Alcalde to order the juridical measurement and possession asked for by him in his said petition and in which he makes the following statement to wit, that on the 27th day of January of the year last past the Land known by the name of "Liberaytos" was granted to me by the Supreme Government of the Department a plan of which I send herewith with the general conditions of the same and as one of these was that I should build a house thereon and cultivate the ground on pain of losing the right of property thereto. I solicited from the Justice of the Peace of my Jurisdiction that Juridical possession of the same might be given me, but that functionary

74 ND
PAGE 66

declined doing so upon the ground that I should await the approbation of the Most Honorable Assembly of this Department, agreeably to the intent of an Act of Said Conditions &c. To this Communication Governor Micheltorena replied, and amongst other things he says that with regard to the juridical possession which is claimed in this writing the Government is not authorized to order it to be given without the previous approbation of the Most Honorable Assembly of the Department, but he also says that, in the meantime the Land may be measured and its boundaries ascertained. The judicial proceedings between Vaca and Wolfskill heretofore refered to conclude the difficulty between those parties but there is no evidence which tends to show that any Juridical measurement of the said tract was ever made by the Mexican Authorities, and there is no proff that any of the adjoining tracts was ever judicially measured or their boundaries designated in any way. It is proved by the deposition of William Wolfskill on file in this case that he has a tract of Land on the river Potos which adjoins the Ranchos of the Claimants, that he had a despute with them (Claimants) of location and boundary which was settled by a Compromise made with the sanction of Governor Pico in the fall of 1845 by which Compromise and the Order of the Governor his lands were were directed to be first measured, then the Land of Vaca and Pena were to be measured. He further states in his deposition that he was not able to procure the Juridical Measurement and possession of his lands during the Existence of the Mexican Government in this Country and that his tract was never measured untill the summer of 1852. When it was surveyed by the Surveyor General of the United States for this State and that the Exact location and measurement of said Lands of Vaca and Pena were by said Compromise and the Order of the Governor subject to the prior measurement of his Lands. It is further proved by the deposition of Salvio Pacheco that the claimants in this case occupied the premises claimed for the last nine or ten years, that they have houses on the land and live there, that they have herds of cattle and horses on the land and cultivate different parts of it, in wheat Barley and vegetables, that some of their sons are also

66

74 ND
PAGE 67

established on the same tract with their families and that there are five or six different houses on the tract occupied by the Claimants and different members of their families. The signatures attached to the several Documents and papers adduced by the Claimants are all satisfactorily proved to be genuine. There are other depositions on file both on the part of the Claimants and the Government, but their contents are not deemed to be material. There is one point which it may well to notice before I proceed to an investigation of the main question in the case, although it is not very material in any point of view, in what way it is decided. It has been insisted on the part of the government that the map which is found amongst the papers is not sufficiently proved by the Certificate of the Surveyor General, and that there is no proof that the map on file was furnished in compliance with the condition imposed by the approval of the Departmental Assembly. It is true the Departmental Assembly made the condition of furnishing a map within a certain period of time essential to the validity of their approval; without enquiring into their authority to impose any such condition I am clearly of opinion that sufficient appears in the papers to justify the conclusion that the same map which is now in the Archives, was not only placed there by the party in interest but that it was there before and at the time the Departmental Assembly made their approval. It will be remembered that the proof shows that two grants were made one by Micheltorena in 1843 and the other by Pio Pico in 1845 and that it was Picos grant which the Assembly approved. By reference to the paper containing the communication of Jose Manuel Vacca addressed to Governor Micheltorena bearing date the 1st of May 1844 it will be found that reference is there made to the plan of the tract in question. In the following words he says "that on the 27th day of January of the year last past the Land known by the name of "Lihuaylos" was granted to me by the Supreme Government of the Department a plan of which I send herewith with the general conditions of the same". The plan here referred to I have no doubt is the map now found in the Archives. It was sent to Governor Micheltorena after he had made the grant and was doubtless there at the time Pico made

67

74 ND
PAGE 68

made his grant but was not made a part of the Expediente which went before the Departmental Assembly. The Assembly no doubt considered a plan of the premises a necessary and indispensable requisite of the Law and instead of refusing to approve altogether as they might have done they made the Conditional Approval already refered to. The land granted was first known by the name of "Liuaytos" but after the arrangement had been made between the claimants and Wolfskill it took the name of "Los Putos" by which name it is designated in the grant made by Governor Pico, the petition is presented in the names of Juan Manuel Vaca and Juan Felipe Peña both the grants on file were made to Juan Manuel Vaca and Juan Felipe Arrigo, how the name of Peña came to take the place of Arrigo does not appear and has not been Explained.

The first question which presents itself is whether the land claimed was severed from the public domain by authority of the Government from which the claim is derived at the time the jurisdiction of that Government ceased & the jurisdiction of the United States attached. For a correct understanding of the intention of all the parties to the grant on which the claimants base their rights it is necessary to consult the precise language by which the boundaries are defined. In the grant made by Michelorena the description runs as follows "for the place known by the name Liuaytos bounding at the East by the Sacramento river on the West by the Sierra of Napa on the North by the Creek "de Liuaytos" and at the South by the river Sacson without injury to the measures which ought to be made of the Contiguous Ranchos". The second grant for the same place although by a different name made by Pico is for the place known by the name of "Los Putos" on the margin of the river adjoined at the East with the Rancho of Guillermo Wolfskill without injury to the measures of the Contiguous Ranchos heretofore conceded. It will be seen that the boundaries within which the ten Leagues were to be located are not so specifically described in the grant made by Pico, as they are in the grant made by Michelorena. The description of the boundaries as presented on the map filed in the case correspondends accurately with the description given in Michelorena's grant

68

74 ND
PAGE 69

The conditions annexed to both grants are absolutely the same and the third Condition in each grant requires that the Judge giving the possession shall cause it to be measured leaving the surplus to the nation for its uses. The Counsel for the claimants in a brief which they have recently filed rely upon the boundaries as described in the grant made by Michelorena and after enumerating them they say "These boundaries are all natural, plain and distinct and there is not the least difficulty in ascertaining the lands granted. If they had assumed the position that there was not the least difficulty in ascertaining the boundaries within which the Lands granted were to be located, there would have been no difference of Opinion between us, but the error of their position consists in not making the distinction which the Law makes between a general and a located description of the Lands granted. The natural boundaries referred in the grant, are intended to embrace a particular region of country out of which the grant is to be satisfied. It was therefore for the Mexican Authorities to locate the ten Sqlare Leagues of Land mentioned in the grant, in any part of the entire tract lying within the boundaries therein described, but until this was done there was no location made, no severance of the particular ten leagues granted from the mass of the public domain had taken place and no right of private property had attached to any particular spot or place. The Supreme Court of the United States has in so many Cases established the doctrine here laid down, that it is no longer an Open question. These decisions are fully quoted and referred to in the Opinion which I delivered in the Case of Hubbs vs The United States heretofore decided by the Commission that I deem it unnecessary to recapitulate, the doctrine is fully accepted and clearly laid down in the following decisions 10 P. 331 - 15 P. 184. 215 - 275 - 319 - 16 P. 159 160 and 11 How 127. It will certainly not be contended that it was the intention of the Government to give the grantee all the land lying within the boundaries described in the grant, Yet it would seem such is the view taken by the Counsel in their brief. The boundary on the East is the Sacramento River. This is certainly very indefinite the quantity lying in that area is not stated there is

74 ND
PAGE 70

no point fixed where a surveyor could begin to meas
ure the land, the other three sides are bounded by great
natural objects equally indefinite in extent, evidently
embracing a much larger quantity of land than the
grant calls for. The Governor did not know the quantity
embraced in the limits of his grant and for that reason
he required the officer who should make the measure
ment, to mark off the precise quantity granted leav
ing the surplus to the nation. But the Governor did
not stop here, the party was informed not to infringe
upon the measurements which were to be made of
the adjacent Ranchos previously granted to other parties
and the measurement of those Ranchos, was a condition
precedent which had to be performed before the measure
ment and location of the claimants could be made.
Manuel Vanca represents to the Governor that his bound
aries are unknown and complains of the Alcalde because
he did not order the measurement prayed for his petition
The Governor in his reply sustains the Alcalde in his
refusal to order a measurement of the land and in
express terms says that the Government had no power
to order judicial possession to be given until the assem
bly had approved the grant, but that in the meantime
he might have the land measured. If the natural
boundaries as described in the grant and represented
on the map were intended as the limits of the land
granted no judicial measurement would have been
necessary, and the reservation of the surplus to the
nation was an idle and unnecessary ceremony.
But it is clear that neither the Governor nor the
parties interested considered the grant in that view
Manuel Vaca the party who transacted all the business
expresses his fears to the Governor in his communication
of the 1st of May 1844 that for want of having his grant
measured and its boundaries ascertained he may
lose his right, under the condition which required him
to build a house and cultivate the land this
condition he could not perform until his land was
measured and its boundaries ascertained he may lose
his right under the condition which required him to
build a house and cultivate the land, this condition
he could not perform until his land was measured and
his boundaries defined. The law suit which he had
with Wolfskill was caused by him taking possession

40

74 ND
PAGE 71

before any measurement either of his own lands or the lands of the adjacent proprietors had been made— Wolfskill had received a previous grant of four leagues of land to be located within certain boundaries, one of which was the Rio Los Putos, but before his land was measured and his boundaries fixed the claimants entered into the possession of their grants Wolfskill alleges that they were trespassing upon him, and instituted a judicial proceeding against them which terminated in the claimants agreeing to move to another part of the country with the understanding that if the part to which they moved were also the Wolfskill's boundaries were fixed prove to be unsatisfactory the latter was to purchase them right at a fair valuation. Wolfskill in his depositions on file states that his lands were never measured during the existence of the Mexican Government in this country, and there is no proof that any judicial measurement was ever made of the lands of the Claimants, Consequently they remained at the time the change of Government took place in precisely the same Condition they were at the date of the grant in 1843 and by the terms of the treaty with Mexico passed to the United States with the map of the Other public lands. It is insisted in the brief filed by the Claimants Counsel that the Claimants did all they were required to do, to procure the measurement of the lands they were authorized to locate and that the neglect is attributable to the neglect of the Mexican Government and not to the Claimants. If the Condition of location was a subsequent Condition which the party was required to perform and he was prevented from doing so by the act of the grantor, then the law would excuse the performance of the Condition, This rule is clearly laid in the Arredondo Case 6 Pet 745. but the Counsel have wholly misapprehended the question raised by the facts in the present Case and have made a wrong application of the rule as above laid down— In a case like the One before us, where there is no description of the lands granted and no survey measurement or identity made by a Competent Authority, it is wholly immaterial whether such Neglect is the fault of the grantor or grantee a stranger of the land granted from the Other lands

71

74 ND
PAGE 72

being indispensable to the creation of a right of private property it is plain that without such severance the party can take nothing by his grant and he has no right that could be maintained in a Court of Justice. The most solemn deed with every sanction which the Law can give, if the subject conveyed is not identified confers no right of property, and is wholly valueless in the hands of the person for whose benefit intended to be made. Chief Justice Marshall in his Opinion in the Case of Chenoweth et al vs Lessee of Haskell et al 3 Pet 96 says - It is an obvious principle that a grant must describe the Land to be conveyed and that the subject granted must be identified by the description given of it in the instrument itself. For the purpose of furnishing such description the Governor required the ten square leagues of Land mentioned in his grant to be measured and located within certain limits until this Act of identification took place the grant was a more float an unlocated order of survey which did not attach to any particular parcel or tract of Land. The act of severance belonged to the former government, and when such severance is not made to appear, this Commiss have no power to supply so vital a defect in the Claimants testimony - After a careful examination of the Voluminous documents filed in this case I am clearly of the Opinion that the grant was not intended and was not so understood by either of the parties as being made by metes and bounds indeed the Claimants themselves in their conduct with Wolfskell admit that they did not know the location of their grant and in every stage of the proceeding show a commendable zeal to secure its location in the manner pointed out by the Law - This case falls within the rule established in the Honcut Case heretofore decided by this Commission in regard to the question of identity & location and although the case may be one of great hardship and one which addresses itself strongly to the political department of our government for relief the Law has confined no such power in this Commission We are therefore of Opinion that the Claim in this case should be rejected

Filed in Office Nov. 15th 1853

Geo. Fisher Sec'y

72

Juan Manuel Vaca
vs
The United States

74 ND
PAGE 73

In this case in hearing the proofs and allegations it is adjudged by the Commission that the said claim of the petitioners is not valid, and their application for confirmation thereof is therefore denied

Alphens Fileh
Thompson Campbell
R Aug Thompson
Commissioners

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

74 ND
PAGE 74

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 Seventy two ——— pages, numbered from 1 to 72, 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. 57 on the Docket of the said Board, wherein Manuel Vaca & Felipe Pena are the Claimants against the United States, for the place known by the name of "Los Putos." ———

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.

Sec'y.

74 ND

U. S. DISTRICT COURT,

Northern District of California.

No. 74 —

THE UNITED STATES,

vs.

Manuel Vaca
and
Felipe Pena

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 57

Filed, August 23d 1854
Jno A. Morrow.
Clk

74 ND
PAGE 75

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

In the matter of Manuel Vaca et al., claiming the Rancho de los Putos.

Notice is hereby given, That it is the intention of the claimants in the above case to prosecute the appeal from the decision therein of the Board of Commissioners appointed under the act of Congress of 3d March, 1851, entitled "An act to ascertain the Private Land Claims in California."

By their attorneys,

Jones and Shode,

Survivors of Jones, Tompkins & Shode.

To the clerk of the U. S. District Court for said Northern District.

U. S. Dist. Court
N. D. of California

No. 74 —

Manuel Vaca et al.
v. claimants
The United States.

Notice to prosecute Appeal.

Filed Sept 21. 1834
Jno A Monroe
CA

74 ND
PAGE 76

Jones & Strode
attys.

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

74 ND
PAGE 77

The petition of Juan Manuel Vaca and Juan Felipe Peña (otherwise called Arrojo) ~~citizens of~~ respectfully shows: That in accordance with the act of Congress of 3d March, 1851, entitled "An act to ascertain & settle the Private Land Claims in the State of California" they presented before the Board of Commissioners established under said act their claim to a certain tract of land situated in said State & known by the name of Los Putos; that afterward said Board proceeded to examine said claim, and decided the same to be invalid, and rejected it. Wherefore the said claimants present this petition, and pray this court to decide on the validity of their said claim.

The present petitioners are the original & the present claimants to said tract of land; and for an account of the nature of their claim they further respectfully show: that they were Mexican citizens, & the

74 ND
PAGE 78

Department of New Mexico, whence they emigrated to the Department of California with their families & herds, in the year 1842, for the purpose of establishing themselves in this department according to the laws of the country & the institutions of the Supreme government; that, accordingly, on their arrival here, they were adjudged worthy, from the numbers composing their respective families, the amount of stock which they wished to pasture, and for their personal services, to receive a concession of ten square leagues, or sitios de ganado mayor of land, and the same was granted to them on the 27th January 1843, by Don Manuel Micheltorena, governor of California, and invested with the power of making such grant; that they there-upon entered on their said granted land, and occupied it personally, and by cultivation, and the pasturage of their stock, that on the 18th April 1844, they

74 ND
PAGE 79

pursuited themselves by a petition of said Vaca, pursuant to law, and the directions of their said grant, before the proper magistrate, and asked juridical measurement and delivery to be given them of their said land; which act, owing to the opposition of William Wolfskill who set up a claim to a portion of their said granted land, said magistrate, without any fault or laches, on the part of said claimants, refused to perform; that thereupon on the 1st May of said year they appealed, by petition of said Vaca to the superior authority of the department said Govr. Micheltorena; and pending the execution of the order given by him therein, a civil revolution broke out, and said Micheltorena was deposed; in consequence of which & the disturbed state of the country, the claimants were for a long time thereafter hindered from further proceedings in the premises: that subsequently various proceedings took

74 ND
PAGE 80

place in respect of the question between the claimants and said Wolfskill, and on the 27 July 1845, the then governor of the Department, Don Pio Pico, made an order to the effect that said Wolfskill should retain the land that he claimed, and a new grant be issued to the present claim-ants; which was accordingly done on the 30 July 1845, and on the 1st October following duly approved by the government Council at that time known as the Departmental assembly.

By subsequent acts before said Govr. Pico, & approved by him, the claimants & said Wolfskill entered into an arrange-ment respecting their said lands; and the governor, on the 18th November 1845, made an order that said Wolfskill should proceed to Sonoma, and by the judge of that district be placed in possession of the lands that had been conceded to

him, and afterwards the like proceedings be had in reference to these claimants. — Before these measures could be accomplished the war between the United States and Mexico, & the consequent change of government, & interruption of proceedings took place.

74 ND
PAGE 81

All which appears in the report of said Board of Commissioners, and the documentary evidence & testimony upon which it is founded, a transcript of which is on file in the office of the clerk of this court, & prayed to be taken, & here referred to as a part of this petition.

The land herein claimed is situated in the State of California, north of the 37° North latitude.

By their attorneys,

Jones & Strode,

Survivors of Jones, Hopkins & Strode

74 ND
PAGE 82

Service of the within petition acknowledge, this the 25th of Sept 1854.

[illegible]

No. 74.

Manuel Vaca
et al.
claimants
vs.
The United States

Petition for a Review.

Filed Sept 25, 1834
Jno A Monroe
Cl

74 ND
PAGE 83

2

Jones & Strode,
attys for claimants.

74 ND
PAGE 84

At a Special Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of SAN FRANCISCO, on Friday the 29th day of September in the year of our Lord one thousand eight hundred and fifty-four.

Present:

The Honorable ~~OGDEN HOFFMAN, JR.,~~ O. K. Ogden *District Judge.*

Manuel Paca et al.

vs.

The United States.

In this case, on motion of counsel for claimants, and by consent of the district attorney, it is ordered, that either party have leave to take further testimony on reasonable notice, before the United States Commissioner of this court.

U. S. Dist. Court.

No 74

Manuel Vaca, et al

— vs —

The United States.

Order allowing all parties to take further evidence.

Filed Sept 29, 1854.
Wm. M. Monroe
Clk

74 ND
PAGE 85

3

U.S. Dist Court
Northern Dist. of Cala

Manuel Vaca
&
Filipe Pena
vs
The United States

Testimony taken before J.A. Monroe U.S. Commiss. Oct. 31st 1854

Present the U.S. Dist. attyg by A Glassell & the Counsel for Claimants

Mariano G. Vallejo being duly sworn deposes & says:

Question - What is your name age and residence -

Answer - M. G. Vallejo, aged forty seven and reside in Sonoma -

I am acquainted with the Rancho Los Putos wherein the above Manuel Vaca and Filipe Pena are claimants - It is in Solano County - Have know the Ranch since 38 or 39 - Map marked 5 gives a general idea of the land to one acquainted with the land.

The

Question - Decribe the boundaries of the land -

Answer - A rock in the Suisun track of land marked a long time ago and the whole line of the Suisun land ~~west~~ northwardly between the low

hills to Wolfs Kill Ranch
and meet with the boundaries
of said Wolfs Kill Ranch -
thence East about eight or
nine miles, and thence
South nine or ten miles
more or less, and to the
Suisun line - and thence
West to along Suisun line
to the place of beginning -
The natural boundaries from
the starting point to of the
first course I have described
was along the low hills
this side of a large Mountain
between Suisun and Sacra-
mento - The contents of the
Rancho is ten leagues -
The Claimants lived there
in Sixty eight & Sixty nine
before they obtained the title
they had large improvements
large house and barn and
improved enclosed fields -
and have occupied it to the
present time -

M. G. Vallejo

Cross Examination

What are your means
of ascertaining the metes and
boundaries above stated to be
the boundaries of said Rancho

Answer - I have been on the
land about 20 years and
Knew the ten league tract

74 ND
PAGE 88

I lived there along time and know the land better than those who have made the map - I know every creek and stone on it - I first granted the land to Vaca first as direction of Colonization in that part of the country, without any reference to the Government, and I pointed him out the spot myself - and always advised the Elder Vaca to fix those boundaries - I have no interest in the land -

M. G. Vallejo

Direct resumed - The natural boundaries are such as could be readily ascertained - and and are defined on the map

M. G. Vallejo

Salvador Vallejo being duly sworn deposes and says
I am forty two years old and reside in Napa County -
I am acquainted with the tract of land claimed by Vaca and Pena - The claimants have resided there from 1838 or 39 to the present day -

They built houses on there at the time of their first residence thereon -

The lines of the Rancho Suisun lies on the southerly side - The cordiera, or chain of mountains known as the Napa mountains lie on the westerly sides - and on the northerly by the lands of William Wolf-skin -
and on the east the plains of Sacramento -

There are about ten leagues in the boundries I have described - There is a range of hills between the Suisun Ranch and Vaca's tract - There are some low hills which have been recognised as boundaries between the two Ranchos of Vacas and Wolf-skin -

The sons of Vaca and Pena are not on the Rancho -

Do not know where Demetrio ~~Vaca~~ Pena is located -
I have heard lately that Filipe Pena was formerly called Felipe Arrejo.

Edward Kellogg

C. L. Richards being duly sworn deposes and says -
I am twenty one years of age and reside in San Francisco

74 ND
PAGE 90

I am a Surveyor and Civil Engineer by profession.

I have surveyed the Rancho de las Putas. When I went to survey the Rancho, the instructions were given to me by the Surveyor General and I supposed they were taken from the Spanish papers. The survey was made for the Claimants in this case. We had a map from the Expedients & also descriptions explaining the Map. Map Marked No 5 is the Map we had.

I made the Survey under instructions and the map both of which or copies of which are in the Transcript in this case. I commenced on the Southern bounding of Wolf Skins Ranch one mile & one half in an easterly direction from the South West corner of Wolf Skins Ranch. then along the Southern Bounding of Wolf Skins Ranch and struck the Putas River then continued down the River to a point about one mile east of Marcas Vacas House. then returned to the point I commenced down the Napa Mountains to a small range of hills that

divide Arisun valley from what is called Laguna valley about 2½ miles from Filipe Penas house - and from there in an easterly direction for five miles & one quarter into the Sacramento valley. The western boundary is as definitely defined as any Ranch by the foot of the Napa Mountains - on the North by Wolfskins line - a surveyed line - on the South there is no definite boundary but a low range of hills, and I run along the top of those hills till I struck the Sacramento Valley

A surveyor could make a survey easily from the description in the grant -

If Wolf-skins line is the true line there are three sides defined in Ranch of claimed in this case

Peña house and Vacas House were on the Ranch -

Cross Examined -

2 About what number of leagues of land is contained in the description in the Map

Answer I would judge it would contain twice as much

as ten leagues - The Map I
believe is drawn from the
description in the grant
I know it contains twice
as much as ten leagues
I run the fourth line from
instructions received from the
Surveyor Generals Office
I was paid by the Claimants
for making the Survey -

C. L. Richards

The foregoing depositions were taken in pursuance
of an Order of Court Entered on the 29th day of
September A.D. 1854 -

Sworn to & subscribed before
me this 31st day of October A.D. 1854
Isaac A. Monroe
U. S. Commr

U. S. Dist Court

No 74

Manuel Vaca

Et al

vs

The United States

Depositions of
M. G. Vallejo
S. Vallejo &
[C. L. Richards]

Filed Oct. 31. 1834
Jno A Moore
Cy

74 ND

PAGE 93

4

74 ND
PAGE 94

UNITED STATES DISTRICT COURT,
Northern District of California.

San Francisco, December 28th 1854.

ON this day, before W. H. Chevers a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came John Wolfskill a witness produced on behalf of the Claimants, in Case No. 74, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 57 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: Edwin A. Sarrence, and John Currey, claimants' attys. and the U. S. Dist. Atty. by A. Glassell, Esq.

QUESTION BY Claimants.

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

Answer.

John Wolfskill, fifty years of age, and I reside in Solano County, on what is known as Wolfskill's rancho.

Question 2d —

Are you acquainted with Manuel Vaca, and Felipe Peña, claimants in this case, If yea, state how long you have known them,

Answer.

I am acquainted with the said Vaca, and Peña, I have known them both since the year 1842.

74 ND
PAGE 95

Question 3d.

Are you acquainted with the Rancho called "Las Putos" claimed in this case, If yea, how long have you known it.

Answer.

I did not know it by that name, but know the Rancho in question, I knew it as Vaca & Peña Rancho. I have known it since 1842.

Question 4th.

Are you acquainted with the boundaries of said Rancho. If yea. State them.

Answer.

I am acquainted with the boundaries of said Rancho, they are as follows, On the North, by the Wolfskill Rancho, On the west by the Napa Mountain range, On the South, by the range of hills, which divides the Suisun valley from the Vaca valley, and on the East, by an open plain.

Question 5th.

Are you particularly acquainted with the Wolfskill rancho aforesaid, If yea, how many leagues does it contain.

Answer.

I am particularly acquainted with said Wolfskill Rancho, It contains four leagues.

Question 6th.

What proportion of the Wolfskill Rancho lies between the River "Los Putos" and the Rancho in question.

74 ND
PAGE 96

Answer. A little more than half.

Question 7th. State if there is a range of hills extending from the Napa range of mountains eastward, between Wolfskills' rancho, and the one in question Answer. There is a range of hills extending eastward about three miles.

Question 8th. Do you know where the Olamos rancho, claimed by Armijo, lies, and in what direction from the one in question,

Answer. I know where the Armijo rancho is, It lies in a westerly direction from the one in question, and adjoining it.

Question 9th. Do you know that the claimants in this cause occupied the rancho in question, If yea, when did they first occupy it, Answer, and in what manner.

Answer. They did, They first occupied it in 1842, They built a house on it in the same year, and lived in it, and had a large number of cattle on it, also a large number of horses, the year following. They cultivated the land, by raising corn, peas, beans &c,

Question 10th. Have they continued the occupation of said rancho up to the present time, and do they live there now,

Answer. They have continued the occupation up to this time, and reside on it still.

74 ND
PAGE 97

Question 11th

State about what number of horses, and cattle they kept on said rancho.

Answer.

I think it was in the year 1846. they had there about 2000 cattle, and from 200 to 300 head of horses. During the whole of their occupation they have kept on the place, a large number of horses, and cattle.

Question 12th.

State whether Vaca, and Peña, each had a family, and if yea, how large they were,

Answer.

They each had a family, Peña had a wife, and six children, Vaca had seven children. The children lived on the rancho. One of Vaca's sons married shortly after the men upon the rancho, and another, two or three years after. They continued to live on the rancho with their wives.

Question 13th.

Did you ever know the rancho in question by any other name, than the Vaca & Peña rancho. If yea, state by what name.

Answer.

I have known it by the name of "Olatties." Witness is here shown the map attached to the Transcript in this cause, and says, that the boundary lines described on said map, and "la arroya de los legueitas," I understand to be what is now called "Rio de los Putos" "Legueitas" was the name

of an Indian Village situate on the South-erly side of "Los Putas" creek, about four Miles from the base of the Napa Mountains.

Question 14th.

Was the country immediately about said Indian Village known by the name of "Sequeitas".

Answer.

It was.

Cross examined by U. S. Attorney.

Question 1st.

State all the means which you had for ascertaining the limits of the said rancho in question, and how, and when you ascertained those which you have described to be the correct limits.

Answer.

The only means which I had for ascertaining the limits of said rancho, were from what Vaca, and Peña told me were their boundaries, except as to the boundary by the Wolfskill rancho, which I know independent, and except that they occupied within those limits. My information from those parties was obtained in 1843, and since.

Question 2d

Are you the claimant of the Wolfskill rancho which you refer to, as one of the said limits of the rancho in question.

Answer.

I am not, neither have I any interest in it.

Direct resumed,
Question 15th.

Were the boundaries of said Rancho you have mentioned, well known objects, and were they respected by the adjoining proprietors.

Answer.

They were, so far as I know they were respected by the adjoining neighbors.

Cross examination resumed.
Question 3d.

Did you ever know of any neighbor doing any act recognizing the said boundaries, and if so, what act, and when.

Answer.

All I know, is, ~~that~~ the way neighbors recognized the right of these claimants to the land in question was that, from year to year, said claimants made a Rodeo, or a collecting of all the cattle on the land in question, whereupon the said claimants would notify their neighbors to attend and each one gather his own cattle. These are the only acts of recognition that I speak of.

John his mark Wolfskill.

Sworn to, and subscribed before me this 28th day of December A. D. 1854.

W. H. Chevers
U. S. Com mr.

No 74

U. S. Dist: Court.

Manuel Vaca. et al.

— vs —

The United States.

Deposition of
John Wolfskill,

Filed Dec: 28. 1854.
John. A. Monroe.
Clerk

74 ND
PAGE 100

5

74 ND
PAGE 101

U.S. Dist. Court
N.D. of Cala.

Juan Manuel Baca
Juan Filipe Peña
vs
The United States

Testimony taken before
Juan A Munroe U.S. Commissioner N.D. of Cala.
April 10th 1873.

Demetrio Peña being duly sworn deposes & says. I am twenty six years of age and reside in Solano County - I Know Juan Filipe Peña - He is my father. My father came from New Mexico to this country in the year 1840. My fathers mother married a second time a man by the name of Armijo and my father being then young was called Armijo. When my father arrived here he went by the name of Juan Filipe Peña. My father and Juan Manuel Baca were acquainted in New Mexico - Baca used to call my father by the name he received from his step-father (Juan Filipe Armijo). The mother of my mother was a cousin of Don Manuel Baca - I was with Don Manuel Baca when he applied for the grant.

of the tract of land in question - My father was not present - Baca told him it was unnecessary, he might remain on the land and he Baca would apply for it. Baca was a next friend or partner of my fathers (a compadre) of Juan Filipe Peña and Juan Filipe Armijo were the same person - I know no other person called Don Filipe Filipe Armijo.

Cross-Examination - I have no security from my father for any portion of the land - I reside on the land and my father may give me some portion if the same is eventually confirmed - My father gave me permission to settle on the land - I am the legitimate son of my father.

The Dist. Atty by Glassell objects to the testimony on the ground of interest of the witness

Demetrio his mark X Peña

Witness
Jno A. Monroe
U.S. Commiss.

~~No 74~~

U.S. Dist. Court
N.D. of Cala.

United States
ads.
Juan Manuel Baca
&
Juan Filipo Peña

Deposition of
Demetrio Peña

Taken & filed
April 10th 55
2 A.M.

Filed April 10. 1855,
John. A. Monroe,
Clerk

6

74 ND
PAGE 103

74 ND
PAGE 104

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

The United States
Appellees
vs
Manuel Vaca Et al
Claiming "Los Putos"

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

A. C. Hassell
Asst. U.S. Atty

No 74

U. S. Dist Court

The U. S. of America

vs

Manuel Vaca Et al.

Answer of U. S.

No 74.

Filed June 20, 1855,

by Chevers

Deputy

74 ND

PAGE 105

7

74 ND
PAGE 106

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of San Francisco, on Thursday the Fifth day of July in the year of our Lord one thousand eight hundred and fifty-five

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

The United States.
—vs—
Manuel Vaca. et al } No 74—

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

No 74

United States District Court, Northern District of California.

The United States,

—vs.—

Manuel Vaca, et al.

Order granting Appeal, &c.

Filed July fifth 1855

John A. Monroe, Clerk.

by R. F. Thieves Deputy.

74 ND
PAGE 107

9

NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES DISTRICT COURT.

The United States } "Las Putas."
vs. } CLERK'S FEES. Case No 74
Manuel Vaca, + } on the Docket of this
Felipe Peña, } Court.

1854

August	23	Filed Transcript from U. S. Land Comm	"	20
Sept	21	" Notice & prosecute Appeal,	"	20
"	25	" Petition for Review,	"	20
"	29	" Entered order for further testimony,	1	10
Oct	31	" Depositions of M. G. Vallejo, S. Vallejo & Richards,	"	60
Dec	28	" Do of John Wolfskill,	"	20
1855				
April	10	" Do of Demetrio Peña,	"	15
June	20	" Answer of U. S.	"	15
July	5	" Entering Decree confirming Claim,	1	30
"	1	" " + " order granting Appeal &c	1	10
		Judgment Record 275 fol at 22½ cts	61	87
		Docket &c	6	00
			#	73 27

74 ND
PAGE 108

TAXED AT Seventy three 27/100 DOLLARS.

John A. Monroe, CLERK.
by W. H. Chevers,
Deputy

United States District Court
Northern District of California.

No 74

The United States,

vs.

Vaca & Peña

Clerk's Fees, $ 73 27/100

Filed July 16, 1855.

74 ND
PAGE 109

74 ND
PAGE 110

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the City of San Francisco, on Thursday the third day of December in the year of our Lord one thousand eight hundred and fifty- seven

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

In the Matter of the Petition of D. Gibbs & als praying an injunction restraining the issue of a Patent to Jacob P Leese & Salvador Vallejo -

In the matter of the above petition it is ordered by the Court that the said Petitioners show cause to morrow at 11 Oclock why the said Petition should not be dismissed and that a copy of this order be served on the Counsel for said Petitioners

Ogden Hoffman
U. S. Dist Judge

#74

United States District Court, Northern District of California.

Daniel Gibb et al

vs.

Jacob P. Leese et al

Filed December 3rd 1857

John A Monroe CLERK.

By J Edgar Gaynor DEPUTY.

74 ND

PAGE 111

74 ND
PAGE 112

State of California
City & County of San Francisco

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

Nepomuceno
~~Thomas~~ Vaca
Marcus Vaca
Jose Antonio Pico &
Madalina Vaca his wife
Teofilo Vaca
Jesus Vaca
John Adamson & Paulina Vaca his wife
Miguel Vaca, infant by John Adamson his next friend
Juan Vaca } the sons of Juan Vaca and
Jose Vaca } also infants by John Adamson their next friend

vs

Wm McDaniel
John Curry
S C Hastings } Defendants
R. H. Vance
Wm Wilson

To the Hon Judge Hoffman Judge of the U. S. District Court in and for the Northern District of California.

Your Petitioners in

74 ND
PAGE 113

The above entitled complainants respectfully state to your Honor that they are the only heirs and legal representatives of Don Juan Manuel Vaca their father who died in the month of April 1856 in the county of Solano & State of California where he left a considerable real estate to your petitioners as his heirs.

Your Petitioners represent to your Honor that on the 30th day of August 1845 there was granted to the said Juan Manuel Vaca now deceased with one Don Felipe Arrigo alias Peña Ten square leagues of land to be located on the Los Putos creek & below & adjoining on the east the Rancho of one William Wolfskill now lying in said county of Solano & which said tract of land was confirmed to them by this court which was also affirmed by the Supreme Court of the United States & ordered to be located on the said Putos creek & adjoinining on the said Wolfskills Rancho on the eastern line thereof, all of which will more fully appear by reference to the petition for the grant, also the grant itself & other papers now on file in this Court and being numbered on the docket of the Board of Private Land Claims as fifty seven (57) & on the docket of this court as

which said grant was finally con-
-firmed by the Supreme Court of the United

74 ND
PAGE 114

States. Your Petitioners further say that the Surveyor General of California issued on or about the ~~day of~~ months of July or August A D 1857 an order for a survey of the same a copy of which order is here made a part of this complaint marked A & there has been a survey thereof a copy of which is here made a part of this complaint marked B & which will be produced on the hearing of this motion & complaint.

Your complainants or rather a majority of them, reside on the land so granted on the said Pitos creek east of said Wolfskills Rancho where the said grant & other papers show the same ought to be & was located & where alone it can by law be located & where, if located as called for, the same would be at least twenty thousand dollars more valuable than where it has been surveyed as they believe & a very large portion thereof as located by the said fraudulent survey so made is many miles both South and West of the place where the grant and others papers above referred to call for its location

Your Petitioners further represent that said survey has been transmitted to the commissioner of the General Land office & application, as these complainants are informed and believe has been made by the defendants

or some of them for a patent according to said survey.

Your complainants further say that the said above named defendants or some of them have combined together to defraud your complainants out of their just rights & claiming to have some interests in the said Rancho have fraudulently to the effect of lessening the value of your complainants ~~land~~ interests colluded with & wrongfully influenced the surveyor who made the survey & Col Hays & his Deputies who were in office when said survey was made so that they have caused a large portion of land to be included in the said survey which lies Ten or twelve miles South & West of where the grant & other papers granted the same & much of the land embraced in said survey is included in the grant to Francisco Armijo made in 1842, more than three years before the grant to the father of your complainants & the said Don Felipe Peña which last named grant expressly forbids the grantees to interfere with the measurements of those Ranches previously granted.

Your complainants say that all the land included in said survey so made South & West of the Alamo creek was included in the said Armijo grant

74 ND
PAGE 116

made in 1842 & was not subject to be included in the Baca & Peña grant.

Your complainants further say there is no grant of previous date on the Rutos creek to interfere with the Baca & Peña grant & that there is ample room for the location of the ten leagues according to the grant & on first rate land without any interference even if the grant was double the size it is.

Your Complainants say that the said defendants who have thus procured the unjust, unreasonable & fraudulent survey to be made only pretend to claim a small portion of land laid out by metes and bounds on & south west of the said Utatus creek & have thus caused & procured the said survey to be stretched out in a zig zag, crooked & irregular form so as to stretch it over their pretended claims lying as before stated. They, said defendants hold no common interests in said Rancho known to these complainants & their claim amounts to but a small portion of said Rancho & these complainants say that they are informed and believe that these claims are not just & have been acquired in an unlawful & fraudulent manner & these complainants deny from information & belief that they said defendants have any just claim to the same even if this said they claim was located within the

limits of the said grant.

Your complainants say that this survey was made without any notice to them until after the same had been commenced and proceeded with to a large extent & they are informed & believe the same has been made in total violation of the laws, of the calls of the grant, & contrary to the rules & regulations in such matters made & ordered by the land department at Washington city D.C. which not only require the survey to be made of the land granted, but also requires the same to be made in a compact form & your petitioners beg to call your Honors attention to the said survey which has been ~~made~~ fraudulently made to suit the special interests of the defendants or some of them & which totally destroys nearly three fourths of the interests of your complainants

74 ND
PAGE 117

This survey was made in defiance of & contrary to the wishes of your complainants & has been sent to Washington to obtain a patent according thereto & if this is ~~done~~ your complainants will be injured at least Twenty thousand dollars

Your complainants say this survey was made while J.C. Hays was Surveyor General of California & they are informed & believe & charge the same to be so, that while in office he did not officially

approve the same and that since J.W. Mandi-

74 ND
PAGE 118

approve the same and that since J W Mandeville succeeded Hays he has given through courtesy to Col Hays his official approval of the survey, because he understood that Col Hays had given a verbal promise to some of the defendants to approve the same & that the said Mandeville did not examine the same to see whether the same was correctly made or not & without any examination on his part he gave it his official approval & upon this approval these defendants expect a patent for the land with their small tracts of land included therein which are not & never was a part of said grant to the ruin of your complainants. as they believe

Your complainants further say that they are informed & believe that the Commissioner of the General Land office has determined that he has no control over a survey certified by the Surveyor General of California & that he is obliged to issue a patent therefor accordingly, unless the parties complaining thereof shall apply to your Honor & obtain an injunction under the provisions of the 13th Section of the act of Congress of the 3rd of March 1851 & for evidence of this see papers marked C. being a copy of an original letter which these complainants will produce on the hearing hereof written by the present Commissioner of the General

74 ND
PAGE 119

Land office to John Wilson.

These complainants say further that the deputy surveyor who made the said survey was paid for the same by the said defendants contrary to law as they are advised, & contrary to justice & that the particular manner of making the same was directed by the said defendants or ~~this~~ some of them to suit their own individual interests by taking in a piece of good land – a spring or a fine improvement of a preemption or in leaving out such as they considered of less value thus interfering with many honest settlers more than ten miles distant from the utmost southern ~~or~~ western boundary called for in the grant, so as to include the ten leagues as called for on the Putos creek & East of Wolfskill's eastern line as your Honor will see by reference to a copy of this fraudulent survey before referred to in this Complaint.

Your complainants further show that they are wholly without a remedy unless your Honor will hear this application and grant the injunction as pointed out in the said law of 1851, before referred to.

Your Petitioners therefore pray your Honor

74 ND
PAGE 120

will appoint a day for the hearing thereof & also grant them the injunction therein contemplated so that they may proceed in a legal manner, which they intend to do, to have the said survey set aside & one made in conformity to the calls of the grants, & whatsoever else may be just & proper & necessary in the premises as in duty they will ever pray.

Nepomuceno Baca
Teofilo Baca
Marcos his + mark Baca
John Adamson

State of California
City & County
of San Francisco

I Teofilo Baca alias Vaca being sworn says that he has heard the above petition read ~~read~~ & that the facts stated and set forth therein are true of his own knowledge, except as to the matters which are therein stated on ~~his~~ information & belief & as to those matters he believes them to be true

Teofilo Baca

Subscribed and Sworn to before me this 4th day of January AD 1857
C. P. Peckham
Notary Public

74 ND
PAGE 121

~~It is ordered that the within named Mr McDaniel John Curry, S C Hastings R A Vance & Wilson, Show cause before me at the Court Room of the district of the United~~

Room

74 ND
PAGE 122

It is ordered that the within named Wm M Daniel John Curry, A. C. Hastings R. Vance & A. Wilson show cause before me at the Court Room of the district Court of the United States in the City of San Francisco on the 15th day of February 1858 which day is hereby set for the hearing of the within petition at 11 Oclock A. M. Why an injunction should not issue in accordance with the prayer of the foregoing petition & that a copy of this petition be served on one of the defendants & a copy of this order on all the defendants 20 days at least prior to the said hearing dated This 4th Jany 1858

Ogden Hoffman
U. S. Dist. Judge

74 ND

Tomas and Baca
alias Baca
et al

vs

Wm M Daniel
et al

Pet. for Injunction.

Filed Jany 12. 1858.

74 ND
PAGE 123

74 ND
PAGE 124

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court House, in the City of SAN FRANCISCO, on Monday the 27th day of August in the year of our Lord one thousand eight hundred and ~~fifty nine~~ sixty.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States. vs. Vaca + Peña. } No 74.

And now at this day comes John. Wilson. Esq, an Attorney of this Court and presents a duplicate Mandate of the Supreme Court of the United States. duly certified by the Clerk thereof, and moves that the said Mandate be filed. Whereupon it is ordered by this Court that said Mandate be filed, and made part of the record of this Court. in this Cause,

No 74.

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States.

vs.

Vaca + Peña.

Order to file Mandate U.S. Sup: Court.

Filed Aug: 27. 1860.

W. H. Chevers Clerk.

By ..... Deputy.

74 ND

PAGE 125

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.

74 ND
PAGE 126

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District of California before you, _____ in a cause between Juan Manuel Vaca and Juan Felipe Peña, claimants and appellants, and The United States, appellees, the decree of the said District Court was in the following words, viz:-

"It is hereby ordered, adjudged and decreed that the said decision of the said Commissioners be, and the same is hereby reversed, annulled and set aside, and it is hereby further ordered, adjudged and decreed, that the claim of the appellants, Juan Manuel Vaca and Juan Felipe Peña be, and the same is hereby confirmed, and adjudged to be a good and valid claim, to the extent of ten square leagues, or Sitois de ganado Mayor, and for no more, in the land described in the original grant, and the map annexed thereto set forth in the record, subject to any measurement of adjoining ranchos, held by grantees under grant issued prior to the 30th August, 1845, the date of the grant made by Governor Pio Pico, set forth in the record, provided said quantity of land to them granted, and now to them to confirmed, be contained within the boundaries called for in said grant, and map to which the grant refers, and if there be less than ten square leagues, or Sitios de ganado Mayor, within said limits, then there is confirmed to them the said less quantity."-

74 ND
PAGE 127

as by the inspection of the transcript of the record _____

_____ of the said District

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

agreeably to the act of Congress, _____

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

74 ND
PAGE 128

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty five the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be and the same is hereby affirmed. — May 12th

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

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

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

COSTS,

Clerk,.....$

Attorney,....$

$

~~Taxed by~~

Wm Thos Carroll

Clerk of the Supreme Court of the United States.

No. 74,

No. 94, December Term, 1855.

MANDATE

SUPREME COURT UNITED STATES.

United States vs Vaca Val

Duplicate.

Filed Aug: 27, 1860,

W. H. Phenix,

Clerk.

74 ND

PAGE 129

We the undersigned Hans Paten & Wm. W. Fitch both residents of the county of Solano & State of California being duly sworn, say that we are Surveyors by profession, that the said Paten has been for two years the county surveyor of the said Solano County & the said Fitch has been deputy county surveyor & both are well acquainted with nearly all parts of the said County & are in particular well acquainted with the land granted to Wolfskill Vaca & Pena, Armijo & also that granted to Solano & we are also well acquainted with the Los Putos, the Oleatus the alamo Suisun & other creek's which rise in the Nappa Mountains & run into the Sacramento River or Suisun Bay & they say the said Los Putos, the Oleatus & the Alamo as a general & avarage course run nearly east that the Los Putos is the most northerly of these three last, & is near about twelve miles a little more or less north of the said Oleatus Creek the latter named

runs through the town of Vacaville in Solano county.

The undersigned say they have seen the the grant & desend made to William Wolfskill, and are well acquainted with its calls & also with its lines as the same has been finally located & Patented by the United States, they are intimately acquainted, with the land on both sides of the Los Putos creek & low least of the said Wolfskills land, they have also seen the petition by Vaca & Pena for their grant with the grant thereof dated the 20th day of August 1843, by Goevnor Pio Pico & they have seen the approval thereof by the departmental assembly in October of the same year they have also seen the decree of the United States district court, confirming to them the ten leagues granted to them, & they have also seen the proceedings of a land suit between the said Wolfskill & the said Vaca & the final

order of Governor Pico thereto attached directing how judicial possession should be given to the said Vaca & Peña of the land so granted to them, we have carefully & often considered all these papers & with our full & accurate knowledge of the locality & with especial knowledge of the land on both Banks of the said Los Putos creek, were those papers placed in our hands & we fully sworn to locate the said ten leagues according to the true intent & meaning of the said petition grant & other papers as above specified we should be compelled & to locate the same on both Banks of the said Los Putos taking all the land on both banks of said creek which lies to the east of & below the said Wolfskills land going down to the Tule or Swamp land & as well as we are able to judge of the ten leagues

74 ND
PAGE 133

we ~~they~~ think about one fourth part, would be on the North side & the other three parts would be on the South side of the said creek We further say that in making the said location according to the papers before named & according to our well considered opinions as to how it should be located, we are fully of opinion no part of the said location could come nearer to the Alcatus Creek at any point than ten miles, nor would the location reach nearer than ten miles to Vacaville and we further say that having seen the Petition filed in the Board to ascertain & settle Private land claims by the attornies of the said Vaca & Pena & where the location made as they there request it to be done, no part of the land included would be within eight or ten miles of the Alcatus Creek

& would all be more than that
distance north from any part
of the said Oleatus Creek &
the affiant Paten speaks of;
this from actual surveys
which he has Made across
between the Oleatus & the
Los Rutos Creek, & the affiant
Paten says Vacaville is on
the North West quarter of Section
twenty and Township Six North &
Range & one West from Mount
diablo base & Maridian, that
Evan Dollarhide lives on the South
E quarter of Section seven
teen, same Township &
Range & Pond is on
South E quarter of Section
thirty six, Township seven
north & Range two West
& that Dollarhide lives on
the south side & the said
Pond on the north side
& adjoining both of them on
the Oleatus Creek & the affiant
Paten says if Wolfskills east
line as the same is laid down
in the Patent issued by the

74 ND
PAGE 135

to Wolfskill should be extended in the same course it is there laid down till it reached as far South as Vacaville it would be near if not altogether fifteen miles east of that town

The affiant Paten says he has examined the Map made by the United States Survey of the Vaca & Pena grant & says there is about fourteen thousand acres taken in inclosed in said Survey which lies South of the said Alcatus creek

H. Patton
Wm W Fitch

Subscribed and
Sworn to before me
this 18th day of October
A.D. 1859

G.R. Minis
Justice of the Peace
of Solano County
California

State of California
County of Solano

George Olinger being duly sworn says that he on the 17th day of September 1860 served a true copy of the foregoing affidavit on Juan Phillips Pena the person therein named at his residence by them & there delivering to him in person a true copy of Olinger sworn & subscribed to before me the 17th Septr 1860

J. H. Thompson
Notary Public

74th States vs. No 74 Vaca & Pena

affidavit of Paten & Fitch about the survey

(14)

Filed Sept. 29. 1860.
W. Sr. Cheeves,
Clerk.

74 ND
PAGE 136

C.

74 ND
PAGE 137

State of California
County of San Francisco }

The United States
Case 74. U.S. District
vs. Court for northern Dist. of
Manuel C. Vaca California
Juan Fillipe Peña

To the above
named Juan Fillipe Peña

Take notice that the following
named persons, George Olinger
E. W. Dollarhide, W. J. Parks, D.
Thompson, R.C. Marshall, Robin
McCoy, J.J. Barrett, and Oliver
Barrett the first parties because
they own & possess a portion
of the claim of Arrillaga which
is older than above grant
to Vaca & Peña & which has
been included in the survey
of the above case contrary to
the grant & confirmation
and also Thomas and Vaca
& eight others his brothers & sisters
& the husbands of the latter who

are the children & only heirs
of the above named Manuel
C. Vaca one of the grantees
in the above intitled cause
come as second parties &
because the survey had been
improperly made contrary to
the grant & confirmation
by the district court of the
United States
and also C. L. Brown, G. F.
Brown & Jerome Dabs
parties of the third part
because they live within the
grant on the north side
of the Putos Creek & that
they own the land within
the grant on the north
side of the said Creek
all of the above persons
by their attorney John Wilson
will move the United States
district court for the Northern
district of California at
the court Room in the City
of San Francisco at the
hour of Eleven Oclock

A. M. on the 29th day of September 1860, to order the said survey so improperly made to be brought into the said Court, for the purpose of being allowed to contest the same & if the motion cannot then be heard, as soon thereafter as counsel can be heard which motion will be based upon the petition affidavits & exhibits thereto attached copies of which are here handed you with a copy of this notice, where you may attend with our title papers on Record & the papers in file in the above case

John Wilson
for petitioners

State of California
County of Solano } George Olinger being duly sworn says that he served a true copy of the above and foregoing notice on Phillipe Pena at his residence in said County on the 17th day of September 1860 by then and there delivering him in person

G Olinger

a true copy
Sworn and subscribed to before me the 17th Septr 1860
J H Thompson
Notary Public

74

United States
vs
Manuel C. Vaca
Juan F. Peña

notice to
Peña

John Wilson
for petitioners
No 100 Merchant
Street
San Francisco
Cala

(4)

Filed Sept. 29. 1860.
W. H. Chevers, Clerk

74 ND
PAGE 140

Being sworn says that on the day of August 1860 I gave to Juan Fillipe Peña the person named in the within notice as a grantee in the within entitled cause a copy of this notice & a copy of papers marked A. & B. & C. & D. & E. hereto attached these copies I gave him in Solano County the papers A. B. C. D. & E. are each marked under the letters with my name & this date

74 ND
PAGE 141

State of California
County of San Francisco

The United States
vs. Case No. 74. In Board 57.
Dist. court. N. dist. of Calif.
Manuel C. Vaca
Juan Fillipe Peña

George
Olinger, E. W. Dollarhide, W. T. Parks,
D. V. Thompson, R. C. Marshall
Robin McCoy, J. J. Barrett and
Oliver L. Barrett appear before
this honorable court, and ask
leave to be allowed to contest
the survey made in the above
case, because they own an
interest in the older grant
made to one Jose F. Armijo which
interest they are possessed of &
because their homesteads thus
held are included within the
survey made in the above
case as will appear by their
affidavit accompanying this
petition & other papers of title hereto attached.
Thomasana Vaca &
Eight others his brothers &

74 ND
PAGE 142

sisters & the husbands of the latter who are the children & only heirs of Manuel C. Vaca one of the grantees in the above case come & ask leave to contest the survey made in the above case because the same was not made in pursuance of the said grant, as is stated in the affidavit hereto annexed. C. L. Brown G. F. Brown, Jerome Davis come & ask leave to contest the survey made in the above case because the grant in the above case expressly granted the land to be located on both sides of the Putos Creek, whereas the same is all located by the survey to the south of the said Putos Creek, because they are the purchasers under a regular chain of title from the grantees in the above entitled cause of a large portion of land within the calls of the said grant on the North side of said Putos Creek

of which said land so purchased we & those from whome we derive title have been in the peaceable open & quiet possession from the ~~said~~ ~~Year & Penn in~~ the year 1850 & which survey has been withdrawn from the north side of the said Rutos creek four homesteads left out for which we & those from whom we immediately derive title paid large & valuable prices & have ever since 1850 had the full & open possession thereof we therefore desire to be heard against the said survey & to show that the land on the North side of said Rutos should be taken in to said survey beginning at the North East Corner of Wm Wolfskills grant & survey & that his North line should be extended down to the Marsh or low swamp lands to form the North line

A

of the survey in the above case, which would take in the lands bought as aforesaid & possessed by us on the North side of said Rutos Creek & we state there is no grant on the north side of said creek to any other which can interfere with it as the one made to Vaca & Prudon on that side which is junior to the one made to Vaca & Peña has been finally rejected as fraudulent & void, these applicants refer also to their affidavit hereto attached as part of this petition & to their title papers showing their title. Your petitioners all join in this application & pray that the said survey may be ordered into this court & that they may be heard & allowed to object to the said survey according to their several interests as aforesaid & also make the following joint statements & ask that the said survey may

brought into court &
be entirely vacated & set aside
& held null & void.

74 ND
PAGE 145

These applicants
state jointly the following facts
That by a certified copy
of the Map or Survey on file
in the office of the Surveyor
General of the United States
for California duly certified
by the present Surveyor
General J. W. Mandeville
which is here presented as
part of this petition, it appears
that the same was approved
by John C. Hayes then Surveyor
or. General of the United
States for California ~~That~~
~~the same was approved~~ by
him on the 5th day of July
1857 whereas your petitioners
say & can prove, that the
field notes of said Survey
as made by the deputy
Cage who made the same
were never officially returned to
the said Surveyor General
Hayes til the 14th of July
1857.

74 ND
PAGE 146

Your petitioners charge & say that the said field Notes so made & returned of the said survey were not approved by the said John C. Hayes. as Surveyor General Till the 2nd of October 1857. & that the said Hayes. was not then the Surveyor General of California but had been removed by the President of the United States & J. W. Mandeville appointed in his place & that before the said 2nd day of October 1857 viz on or about the 9th day of September 1857 the said Mandeville had duly qualified in said office & the said Hayes delivered up all the Records & Papers of the said office to the said Mandeville

These petitioners also charge & state that the said Mandeville never

74 ND
PAGE 147

approved of said Survey & charge
therefore these petitioners the
same is void.

Your Petitioners
further charge & state that
when this Court reversed
the decree of the Board of
private land claims which
rejected the claim of the
grantees & confirmed their
said claim the United States
took an appeal from the
said decision of this Court
to the Supreme Court of the
United States, the decree of
confirmation was entered in
the said District Court on
or about the 5th July 1855.
& the appeal ordered on
the same day & the papers
fully made out were
forwarded to the Supreme
Court on or about the
16th July 1855.

Your Petitioners further
say the said appeal has
never since been dismissed
by the attorney general of

the united, nor has there been
any final decree affirming
the same ever been
entered either
in the Supreme Court of
the United States, nor in
this court confirming the
said grant or affirming the decree of this court
nor is there on
file, nor was there any
such decree shown on
file in the Surbey or
Generals office which
allowed authorised or
required the said Surbeyor
general to make the said
Surbey & that the same was
wholly made without any
authority in law to do so
& therefore the same is for
these reasons wholly fraud-
ulent & void

Your petitioners further
charge & state the Surbey was
fraudulently made that the
claimants who controlled
& directed the Surbey as
made by the deputy Surveyor
paid for the same out of

Their own money which was against both the law & the orders & usages of the land department & the surveyor general was directed not to approve surveys so paid for.

These petitioners also charge & state that the whole survey is made of lands lying south of the Rutos Creek contrary to the express calls & direction of the grant & expressly contrary to the decree of confirmation made by this district court & that the same is not made in a compact form as the law & the regulations of the general land office require the same to be made & that the said survey is extended in a zig zag form to suit the taste of those who paid for & directed the same regardless of the law or justice & that in

74 ND
PAGE 150

this unlawful extension To the South & More to the South west there is included within the lines near about 14000 acres within the calls of the grant & deseno of Jose L. Armijo made in the year 1840 near five years before the grant to Vaca & Peña in which latter grant & also in the said decree of Confirmation made by this Court as before stated, it is there expressly forbidden that in the measurment ~~Thereof~~ Thereof they should ~~not~~ interfere with other grants previously made.

They also state that on these 14000 acres so taken into the survey that are within the calls & deseno of the armijo grant the first named petitioners are in possession of under their chain of title from the said armijo & claim to own

74 ND
PAGE 151

large parts of the same as their title papers will show which are here made a part of this petition & also their affid avit which is here made a part of this complaint.

Your petitioners Thomas Vaca & his brothers & sisters the heirs of Manuel A Vaca one of the grantees state & set forth their reasons for asking to be allowed to contest the said Survey upon the facts stated in their affidavit here filed & attached to this petition A.

Your petitioners C. L. Brown F. G. Brown and Jerome Davis ask to be allowed to contest the said survey upon the grounds stated above as will more fully appear by the affidavit of C. L Brown & others hereto attached as part of this petition & also their title papers which are here also made part of this petition

74 ND
PAGE 152

Your petitioners further state that the said survey was made by fraud expressly to take from your first named petitioners their homes on which most of them had quietly & peaceably resided from the years 1851 & 1852. & to injure the rights of Vaca in the selection of the land expressly to suit & advance the interest of speculators

That the same was made without any final decree of confirmation being entered in this ~~said~~ any other Court that the said survey never has been approved by any officer of the United States who had authority to approve the same, & that the survey made was made in fraud & not as the grant or decree of confirmation of this Court ordered it to be located that the same

74 ND
PAGE 153

is not made in a compact form as the lands of the United States requires all such surveys to be made, that the same includes near 14000 acres of a prior Mexican grant that has also been confirmed by this court & that if it had been made, ~~in no possible~~ of a reasonable shape the same could not have reached within eight or 10 miles of the homes and lands of your first petitioners they living south of the Alcatraz Creek & that if it had been properly located it could not have reached the homes of your first petitioners but would have been in its nearest point 12 or 15 miles east of them as the affidavit of themselves, that of Patten & Fitch & the connected plat of the said survey in this cause and & that of Wm.

Wolfskill as they are actually connected, all of which are here made part of this petition marked A. B. & C with their several title papers to show their several lights are also presented as part hereof.

your last petitioners Brodus & Davis say by the surveying the land all south of the Los Putas creek has left them & their homesteads which they or those from whom they claim have had from the year 1850 & have ever since been in the full possession thereof under the purchases aforesaid but as they thrown out of the survey their purchase is of no value to them while their lands are expressly within the grant & ought to have been surveyed in & for this see the grant confirmation & affidavits & proofs here

74 ND
PAGE 155

submitted & to which they
can prove beyond all doubt
or cavil if allowed to
produce it in Court
& therefore your petitioners
pray that the said Decree
may be wholly set aside
ordered into Court
& that as soon as a final
decree is made in the
said Cause to order a new
one as in duty they
will ever pray &c for
whatever else is just
& proper in the premises

John Wilson
for Petitioners

State of California
County of Solano

George Olinger being duly Sworn Says that on the 17th September 1860 he Served on Juan Phillipe Pena the person herein named at his residence in Said County a true copy of the foregoing Petition by them And there delivering to Said Pena a true copy of the Same G Olinger

Sworn and Subscribed to before me the 17th September 1860

J W Thompson
Notary Public

U. States
vs
Vaca & Peña
Filed Sept. 29, 1860
W. H. Chevers
Clerk
Petition of
George Olinger
et al
to bring into
Court & vacate
the Surrey in
the above case
John Wilson
for petitioners
No 100 merchant
Street
San Francisco

74 ND
PAGE 156

74 ND
PAGE 157

United States District Court.
for the northren District of California

United States
vs. } case No. 74 Dist Court
Manuel C Vaca case No. 57 Board
Fellipe Pena

The undersigned being duly sworn depose and say that ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~that~~ a survey has been made & approved by the surveyor general of California in the above intitled cause as a final survey thereon under the act of 1851, & each of these affiants says that the land on which they reside are included in said survey which was made contrary to their wishes and against their remonstrances & objections & each of their places where they reside are included with in the grant & Desena of a grant made to one Jose de Armigo which is dated in the year 1840 & that being several years,

74 ND
PAGE 158

before the grant to the said Vaca & Pena which was made in the year 1845 & which latter grant declared that in its measurement they should not interfere with other Ranches granted previous to that date, These affiants say that the said arrijo lived & died possessed of said Ranch & that the same has been confirmed by this Court as a reference to the said case will more fully show & these affiants say each of them also are possessed of a full right & title by a regular Chain of title from the said Jose de arrijo & have ever possessed of the said land long before the said survey was made these affiants further say that the grant made to the said Vaca & Pena calls for the land so granted to be located on both banks of the Pescado creek, adjoining on the east

74 ND
PAGE 159

line of William Wolfskills grant which is numbered two hundred & thirtwo in this Court & two hundred & thirty in the Board to which reference is here made & from that down to the low lands on both sides of said Putah creek These affiants further state the Oleatus Creek is the Northern line in the grant & deseno of the arroyo grant & the said Oleatus & Putah Creeks rise both in what is usually called the Napa Mountains & run nearly parallel in an eastern direction after the reach the plains are more than ten Miles from each other in any part of their course the Oleatus being that far or more South of the said Putah creek They also say that from Wolfskills east line to the Marsh land on the said Putah Creek is over Six teen Miles & that on both sides of the said creek the lands

74 ND
PAGE 160

are very rich & valuable & they are informed & believe there is no grant of an elder date which claims any part of the lands where the grant calls for its location These affiants further say that if the east line of Wolfskills grant & survey was extended due south when it reached the line of the Cleatus Creek before named the most eastern settlement of these affiants would be more than Six Miles west thereof These affiants further say that if the land confirmed to Vaca & Pena was surveyed where the grant calls for it in a reasonable compact form the most southeren portion thereof could not come nearer to any one of the farms of these affiants which they hold by a fair chain of title from the legal heirs of Armijo than ten miles all or them on the

northren side of the armijo grant & within the words of the grant & the deseno and they further say that they are informed & believe the same to be true & state the fact to be so that no final decree has ever been entered in the said Vaca & Pena's case confirming the same & that the said survey was made without authority of law & that the claimants or some of them paid the Deputy surveyor for making the same & directed him how to make the same which they are also informed & believe was contrary to the law of the United States & that if a chance is afforded them in this court they can fully sustain & prove these facts set forth in this affidavit They further say by this premature and corrupt survey they are about to lose their homesteads which they have

bought & for several years occupied & very much improved & they further say they are informed & believe the same to be true that the Supreme Court of the State of California hold these surveys so made & approved by the Surveyor general as conclusive without the issuing of a Patent on these defendants & will not allow these defendants to show their chain of title under the army so as a defence to those who claim under the Vaca & Pena claim because as yet there is no final decree of confirmation made in the army claim & yet a survey made for them without any final decree is held conclusive on these affiants & therefore by this unlawful survey made without and also

against the law they are bound to
lose their homes. They also state
that they are informed & believe
the same to be true that there
is surveyed into the said
survey for Vaca & Pena
about fourteen thousand acres
south of the Olcatus Creek &
within the armijo grant
before named & for this they
refer to the affidavits of
Paten & Fitch here made
part of this & also to a
duly certified map of the
said Vaca & Pena as the
same is connected with
the Wolfskill grant & on which
the Olcatus Creek is also
marked as showing its
locality These affiants therefore
pray that this Honorable Court
will order the said survey
to be brought into court &
these affiants with others
who are also interested to
contest the same when they
will be able to the
entire satisfaction of

74 ND
PAGE 164

this court to prove the facts above stated & more & whatever else is just & proper. and also beg that this affidavit may be added to as part of the petition filed herewith by our attorney in this case.

G Olinger
E W Dollerhide
W T Parks
D V Thompson
R C Marshall
Robins McCoy
J J Barritt
Oliver L Barritt

Sworn and Subscribed
to before me J H Thompson
a Notary Public in and
for the County of Solano
State of California
this the fifth day of
September A D One thousand
Eight hundred and Sixty
J H Thompson
Notary Public

74 ND
PAGE 165

State of California
County of Solano

George Olinger being duly sworn says that on the 17th September A.D. 1860 he served a true copy of the above and foregoing affidavit on Juan Phelps Pena at his residence in said County by then and there delivering to him in person a true copy of the same

Sworn and G Olinger subscribed to
before me this 17
Sept 1860

J H Thompson
Notary Public

"B"

74

U. States
vs No 74
Manuel C. Vaca
Juan Filipe Peru

affidavit of
George Olinger
et al.

D

Filed Sept. 29, 1860.
W. H. Chevers
Clerk.

74 ND
PAGE 166

74 ND
PAGE 167

(Endorsed)

Expediente of Citizens Manuel Vaca & Juan Felipe Arrijo, soliciting the place called "Los Putos"

465

Angeles 30th August 1845

In view of the present petition, that forms this Expediente which is proved to the government attending what was previously practiced for donating to the petitioner the tract in the jurisdiction of Sonoma, as the annexed title proves, and all that was represented and ought to have been considered, I declare Citizens Juan Manuel Vaca & Juan Felipe Arrijo owners of right of the place known by the name of "Los Putos" on the margins of the river adjoining at the East that of Don Guillermo

Mt. Excellent Sor Governor

Juan Manuel Vaca, Mexican by birth, for himself, and in the name of his companion Dn Juan Felipe Arrijo, both of them residents in this Department, before your Ex. with due respect appears and says: that Dn Guillermo Wolfskill & myself having amicably settled the lawsuit which for the occupation of the land by virtue of concessions from the government, was raised on account of a misunderstanding, I pray that, in order to throw off all doubt, and not to give cause to any pretension being made in the future, which might occasion further disturbance, V. E. be pleased to concede to me in union with my companion the ownership of the tract "Los Putos," where we think of settling on the margins of the river which is adjoining at the East side the place of Dn Guillermo Wolfskill of which tract, I solicit the extent of ten sitios de ganado mayor in entire conformity with the

Wolfskill to the extent of ten sitios de ganado Mayor Let a corresponding title be issued — an entry be made in the respective book, & this Expediente be directed to the Mt. Excell. Departmt. assembly for its approval — Pio Pico member of the Honorable Assembly & encharged of the government by the Ministery of the law thus decreed, ordered & signed I testify Pio Pico

donation made to us by the Superior Government of this Department since the year One thousand eight hundred and forty three, as shown by the title which I duly annex hereto: observing that on account of the long distance that there is from here, & the efficacy I wish to have, that the sketch to be drawn be correct, and for the accuracy which there ought to be at the time of the juridical possession be given, it is not accessible to me to present it now; but I protest to do so as soon as what I indicated above, be performed, & I will endeavor that it may have its effect opportunely —

For which favor, that I do not doubt to obtain from V. E. I shall be firmly grateful.

I swear the necessary &c — and entreat to excuse the use of the Common paper for want of the Sealed.

Angeles 30th August 1845

Juan Manl. Vaca

74 ND
PAGE 169

I, John C. Hays, Surveyor General of the United States for the State of California, and as such having in my Charge and Custody the papers of the late Board of Commissioners to ascertain and settle the private land Claims in California, Do hereby certify that foregoing two pages exhibit a true copy of the first portion of a document filed in case n° 57 on the docket of said Board, which document is endorsed as follows " N° 57 = Juan Man^l Vaca & Juan Felipe Peña – Rancho de los Putos = H.

Translation of Expediente G = Filed in Office Augt. 5th 1852 Geo Fisher Sec^y.

Recorded in Record of Evidence Vol 7 p 731 Geo Fisher Sec^y – Jones Thompkins & Strode.

Given under my hand and official Seal at the City of San Francisco Cal this sixth day of June 1857

John C. Hays
U. S. Sur Gen Cal

74 ND
PAGE 170

74

Translation of the Marginal grant to Vaca & Peña

case in Board No 57

Marked in Hopkin's deposition

D. Dailey
Notary Public

two

7

Translation of Vacas Marginal order to

in Vaca's case

A.

Copied

Filed Sept. 29. 1860.

W. H. Chevers
Clerk

No 2.

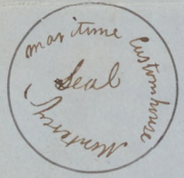
74 ND
PAGE 171

Seal First. Eight Dollars

Established provisionally by the maritime Custom House of the Port of Monterrey in the Department of the Californias, for the years one thousand eight hundred and forty four and one thousand eight hundred and forty five.

Micheltorena Pablo de la Guerra.

maritime Custom house Seal Monterrey



Pio Pico, the Senior Speaker of the Honorable Assembly of the Department of the Californias and entrusted with the Government of the same by the Supreme Court of Laws.

Whereas, Don Juan Manuel Vaca, and Dn Juan Felipe Armijo, Mexicans by birth have solicited for their personal benefit and that of their families, the place known by the name of "Los Patos," on the banks of the river bounding on the Eastern boundary of the rancho of William Wolfskill, without infringing upon the measurements which may be made of the adjacent ranchos previously granted: the preliminary formalities and investigations relative to the same, having first been made as provided by the laws and regulations - by virtue of the authority in me vested, and in the name of the Mexican Nation, I have granted to them the aforesaid land, declaring, by these presents, the ownership thereof to be in them, subject to the approbation of the most Honorable Assembly of this Department and under the following conditions.

1st. They shall have authority to fence the same without detriment to the crossings, roads and easements; they shall enjoy the same freely and exclusively, making such use thereof as they shall deem best.

2d. They shall solicit from the competent Judge that judicial possession thereof be given them, in virtue of this decree; said

judge shall be careful to respect the former possessions and he shall mark out the limits thereof agreeably to the present grant, in which places they shall plant their proper monuments, and some fruit or other useful trees.

3d. The grant of which the grant is made is ten Sytuate leagues in extent (de diez sitios de ganado Mayor.) as originally conceded to them. The judge who shall give possession thereof will cause it to be measured agreeably to the ordinance, reserving the remainder which may arise therefrom to the Nation for its proper uses.

Therefore, I command, that this present title being held both valid and binding, a record of the same be made in the proper Book, and that it be delivered to the interested parties for their keeping and other purposes.

Given at the City of Los Angeles, Capital of the Department of the Californias this 30th day of July A.D. 1845

Pio Pico

Jose Ma. Covarrubias
Secty

A record of this superior warrant has been made in the proper Book Angeles, date as above

Covarrubias.

(Endorsed)

No 57 = Juan Manuel Vaca et al — Los Putos
J. Translation of Grant I = Filed in Office
March 15th 1853 Geo Fisher Secy. =
Recorded in Record of Evidence vol 7 page 734.
Geo Fisher Secy.

74 ND
PAGE 173

I, John C. Hays, Surveyor General of the United States, for the State of California, and as such having in my Charge and Custody the papers of the late Board of Commissioners to ascertain and settle the private land Claims in California, Do hereby certify that the foregoing two pages exhibit a true copy of a document together with the endorsements thereon filed in Case No 57 in the docket of said Board wherein Juan Manuel Vaca et al. are Claimants against the United States.

Given under my hand and official Seal at the City of San Francisco, Cal, this fifth day of June 1857

John C Hays U. S. Sur Gen Cal

74 ND
PAGE 174

Translation of the grant in Vaca & Peña

74

Filed in the Board in Case No. 57.

marked in Hopkin's deposition "~~E~~".

W Pedey
Notary Public

Translation of Grant to Vaca & Peña
30 Augt 1845

Three

B

DJW

Filed Sept. 29. 1860.
W. ~~H.~~ Chevers,
Clerk

No 4
Augt. 30th 1845

74 ND
PAGE 175

U. S. District Court,
Nor. District Cala.

Juan Manuel Vaca
& Juan Felipe Peña
v.
The United States.

No. 74. Decree.
Stated Term, July 5, 1855.

Appeal from the final decision of the Commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard at a stated term of this Court on appeal from the final decision of the Commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress March 3d, 1851, upon the transcripts of the proceedings, decision, and the papers and evidence on which said decision was founded, and upon testimony taken in this Court, and counsel for both parties having appeared in Court, It is hereby ordered, adjudged and decreed that the said decision of the said Commissioners be and the same is hereby reversed, annulled, and set aside; and it is hereby further ordered, adjudged and decreed that the claim of the appellants Juan Manual Vaca and Juan Felipe Peña be and the

74 ND
PAGE 176

same is hereby confirmed and adjudged to be a good and valid claim to the extent of ten square leagues or sitios de ganado mayor, and for no more, in the land described in the original grant and the map annexed thereto, set forth in the Record, subject to any measurement of adjoining Ranchos held by grantees under grants issued prior to the 30th August, 1845, the date of the grant made by Governor Pio Pico set forth in the Record; provided said quantity of land to them granted and now to them so confirmed be contained within the boundaries called for in said grant and map to which the grant refers; and if there be less than ten square leagues or sitios de ganado mayor within said limits, then there is confirmed to them the said less quantity.

M. Hall McAllister,
Circuit Judge.

Ogden Hoffman Jr
Dist. Judge.

Endorsed: Filed July 5. 1855.
Jno. A. Monroe, Clerk,
by W. H. Chevers, Deputy

---

74 ND
PAGE 177

I, W. H. Chevers, Clerk of the District Court of the United States for the Northern District of California do hereby certify the annexed and foregoing two pages of writing to exhibit a full, true and correct copy of the decree of this Court in the case of Juan Manuel Vaca and Juan Felipe Peña v. The United States, No. 74, now on file and of record in this office; and I also certify that said decree is the only decree ever entered or directed to be entered by the Court; that said decree was appealed from by the United States to the Supreme Court on the 5th day of July, 1855, and that a duly certified transcript of the record was sent to the Clerk of the Supreme Court on the 16th day of July 1855; and that no mandate from the Supreme Court in said case has ever been filed or directed to be filed in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court this 11th day of October A. D. 1859, and of our Independence the 84th.

W. H. Chevers.
Clerk.

74

Vaca & Pena

certificate of

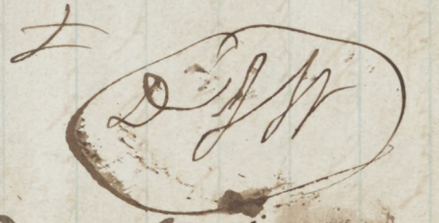
Clerk of Dist

Court.

(E)

&

D J W



Filed Sept. 29. 1860.

W. H. Chevers.

Clerk

74 ND

PAGE 178

74 ND
PAGE 179

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the City of San Francisco, on Saturday the 29th day of September in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
—vs—
Manuel Vaca et al.

No. 74.

And now at this day comes Mr Johny Wilson, Counsel for Geo. Olinger et al, and moves the Court to order the survey in the above case to be returned into Court for Review, and correction, and he reads, and files the affidavits and other papers hereto annexed. On hearing whereof, and it being suggested to the Court, and admitted by Counsel, that a patent for the land so surveyed, has long since issued to the Claimants, and the Court, being of opinion that it has no jurisdiction to grant the said order, It is adjudged, and decreed that the said motion be denied, and a motion being thereupon made, for an appeal from the said order of the Court denying said motion, it is further ordered that said motion be denied, and said appeal refused, and on the further motion of Mr Wilson, it is ordered that the Clerk furnish to him ~~#~~ certified copies

of the said affidavits and other papers, and of this order,

Ogden Hoffman
Dist Judge

No. 74. 2

United States District Court, Northern District of California.

The United States,
vs.
Manuel Vaca, et al.

Order denying motion to return survey, etc.

Filed September 29, 1860.
W. H. Chevers,
Clerk.

Deputy.

74 ND
PAGE 180

To the Hon: Ogden Hoffman Judge of the District Court of the United States for the Northern district of California

C. L. Brown & L. L. Brown, Jerome Davis, Evan Dollarhide & A R Pond your petitioners

74 ND
PAGE 181

State to your honor That the Mexican government, on the 20th day of August 1845, made a grant to the extent of ten square leagues to one Manuel C. Vaca & one Juan Felipe Arrijo, alias Pena, as will be seen by their petition therefor & the grant & approval thereof by the departmental assembly, ~~it will be seen~~ by the papers marked A. B. & C. here made part of this petition, which ten square leagues were to be located on both banks of the Rutos creek below & adjoining on the east line of the grant of one Wm Wolfskill, which said creek runs nearly east coming out of the Napa mountains above Wolfskills grant & passing centrally through it.

The grant to Wolfskill was made on the 24th May 1842 & was located on both Banks of the said Rutos creek beginning

near where the said creek comes out of the Nappa mountains ~~lying~~ centrally through the said grant for four leagues being one league wide, which grant & the deseno referred to therein is here made part of this petition marked D. & E. the place asked for by the said vaca & Pena was called the Los Putos & was asked by themselves & granted to be located below, and adjoining on the east line of the said Wolfskills grant on both sides of the said Putos creek & so was the grant confirmed by the departmental assembly of Mexican Government, ~~as appears by the~~ The said grant to vaca & Pena also delared that in the measurement thereof it should not interfere with that of other neighboring Ranches which had been previously granted.

the grant

74 ND
PAGE 182

Your petitioners further say that before the date of the grant to vaca & Pena a similar grant had been made to Jose Francisco Armijo bearing date the 4th of March 1840, for which reference is made to the grant & papers on file in said Case & especially do we refer to the grant

74 ND
PAGE 183

& deseno accompanying the same as part of this petition the northren line of which was the Oulatus Creek running nearly on a parallel course with but several miles south of the said Los Putos creek, both of which Ranches or grants, the one to Wolfskill & the one to Armijo have be confirmed by the united States district court as will appear by the records thereof remaining in the Surveyor General office & of this court.

Your petitioners further say the said Vaca & Pena applied to the Board to ascertain & settle the Private Land claims in California & filed their petition praying for a confirmation of the same as will appear by the papers on file in this court in said case & in particular by their petition which is here made part of this petition, the said Board rejected the same & they appealed to this court & this court in due & proper time reversed the decision of the said Board & confirmed to them the ten leques so asked for & granted directing the same to located according to their original petition & grant, as

will more fully appear by said decree
which is here referred to as part of
this petition, bearing date the 5th July 1855
by which it will appear
that the same was to be located on
both banks of the said Rutos creek
below & adjoining on Wolfskills
east line down to the tule
lands, at or near the mouth of
said creek & from this decree the
united States on the same day it
was given appealed from the same
to the Supreme Court of the United
States & the same was duly entered on the record thereof
as the law directed & the transcript of the record of the said
case was transmitted to that Court
on the 16th of July 1855,
your petitioners state that since that
decree so appealed from, no other decree
or other proceeding of any kind or
character whatsoever, has ever been
given by the said district court nor
has there been any dismissal of the
said appeal so properly taken, either
by the Supreme Court of the United
States, nor by the attorney General
of the United States nor is there any
mandate or other paper on file

74 ND
PAGE 184

or swamp

Taken or

in the said district court or in the office of the Surveyor General from the Supreme Court or any other authority which shows that the said case so on appeal had ever been disposed of by the Supreme Court or that the same had been dismissed by the attorney General.

These petitioners further say there has been no final or other decree entered in this court save & except the one before made a part of this petition & they positively charge that was no final decree, & that was & is no authority upon which the Surveyor general had any right or power to make a survey of the said land, which however the said Surveyor General has made which is contrary to law & void as these petitioners are advised & believe to be true & charge the same to be so. a copy of which survey is here made part of the petition & connected with the survey of Wolfskill which has also been properly made & also on the same plat the connexion between the said survey of the Vaca & Pena

74 ND
PAGE 186

& the grant & deseno of the armijo grant, the Aulatus Creek being laid down on the said Map & all the land south of the said Aulatus creek, taken in by the vaca & Pena Survey amounting to near about 14000 acres is within the calls & grant to the said Armijo granted previously to their grant & with which the latter itself declared should not be interfered with in making their measurment & is within the decree of confermation made by this court of the said armijo grant, here made a part of this your petitioners beg leave further to state, that by the certificate of Surveyor General Hays attached to the map made a part of this petition it is declared the same was approved on the 5th day of July 1857, whilst your petitioners are informed & believe the same to be true & thereupon charge the same to be true in fact, that the deputy survey Cage who made the same did not return the same to the office of the surveyor general till the 14th of July 1857 & his return appears to be & is without any evidence that an

74 ND
PAGE 187

oath having been administered
to the men who carried the chain
& they are informed & believe the same
to be true & thereupon charge it to
be so in fact the return of the
field notes in all cases should
~~they~~ that such oath had been
administered to them & therefore
these ~~petitioners~~ say they
are advised these field notes
are imperfect & also void
These petitioners further say that
they are informed & believe the same
to be true & upon such information
& belief state the same to be true
in fact that the only approval
of the said field notes which
appears on file in the Surveyor
Generals office which is signed
by the said Hays who was the
Surveyor General when the orders
were issued for the survey is
dated on the 23rd day of Octr
1857 whereas the said Hays had
been removed from the said office
by the President of the United
States & had handed over all
the papers in said office

to his successor I. W. Mandeville
on the 9th day of September 1857
This approval being over forty days after he
had ceased to be clothed with
74 ND any authority to approve the
PAGE 188 same, & therefore these petitioners
charge the same is void & the
survey wholly void & has had
as yet no approval by the
Surveyor General as the law
requires it should. & from these
facts alone these petitioners
are advised & charge the same
to be is void & of none effect.
These petitioners upon information
& belief charge that they can prove
as soon as they can obtain a
subpeona from this Court to
compell witnesses to attend, ~~they~~
that they can & will prove as they are informed & believe & so state the fact
to be that the parties interested
in having the survey made as
it was made paid ~~the Surveyor~~
the deputy Surveyor who made
the same for his work therein
out of their own money

74 ND
PAGE 189

& which was fully known by
surveyor General Hays & these
same parties gave the special
directions to the said deputy
showing him what land to take
in & what to leave out all of
which as these petitioners are
advised & believe is not only
against law, against justice
& in direct controvention to
the orders of the land
department at Washington city
a copy of one of their orders
on this subject is here made
part of this petition marked
P. & for these reasons these petitioners
say they are also advised & so charge
it to be the said survey is void
These petitioners further say that
by the orders of the department
at Washington city given in pursu-
ance to law this & all other surveys
of grants of land in California
should be made according to
the grant & in a compact form
& these petitioners deny that the said
survey was made according to the
calls of the grant or its spirit & meaning
& they deny

that it was made in a compact form, & for this they refer to the papers on file in this court, in the Vaca & Pena case to the plat already made apart of this petition made & certified by the Surveyor General as a plat of the Survey of Wolfskill & the said Vaca & Pena as they stand connected & upon which map in a different colored Ink has been laid down by a skilfull Surveyor who is exactly informed about and acquainted with the land as his affidavit of Paten will shord & all the land included in the Survey & which land lies south of the said Oulatus Creek is land within the calls of the grant to Armijo as laid down by the desens thereof & is also within the bounds limited by the decree of this Court confirming the said Armijo claim already made part of

this petition
one of these petitioners A R Pond settled
on the S E quarter of Section thirty six Town seven north and
Range two west which lies north of the Olates Creek
without the arroijo grant without
the Vaca & Pena grant and about
10 miles south of the Los Ratos
creek & about 20 miles west
of the said Walpskill East line
extended which settlement was made on or
about the day of Sept 1864
which settlement was made under
& by virtue of the Preemption
laws of the United States in Cali-
fornia & he says he was then a citizen
of the United States over twenty one
years of age he selected the same
as his preemption in good faith
as public lands of the United
States, Then unsurveyed & still surveyed into Sections
believing the same not to be
within any Mexican or Spanish
grant that he has built a house
on the same has cultivated parts
thereof & has resided on it ever
since his settlement was made
owning claiming & using it as
his own under the said preemption
laws & the charges that he believed when

his settlement was made & still believes the same to be public land of the united & that it will prove to be so if this court will allow this question to be mooted & investigated & afford to this affiant the opertunity to show the same as he verily believes & that the same is not within the vaca & Pena grant. & that he was when he made the settlement a citizen of the United States and the said petitioner E. Dollarhide states specially for himself that he settled upon the S. E. quarter of section seventeen in Township Six north & Range one West which lies south of the said Oloatus creek & within the calls of the said armijo grant which settlement was made on or about the day of Sept 1853 & the said Dollarhide says when he made his said settlement he was a citizen of the United States & supposed that while the same was within the general calls of the armijo grant, still he then supposed that as the armijo homestead was several miles south of the Oloatus creek that as the calls claimed a larger

~~amount of acres~~ boundary than was granted that in its location it would not reach the land settled upon by this petitioner & the states that he is informed & believes the same to be true & so charges it to be that the same is not within the grant to Baca & Luna & that if this court will allow the question to be investigated in this court, he can show that it is not within the same & urges all the objections stated in this affidavit & petition, he says he made his settlement & supposing the same to be public land of the united & has cultivated & held the same ever since his settlement on the same as his preemption & has entered the same with the register of the proper land office as will appear by a paper marked D. made a part of this petition signed by the said Register thereof, & this petitioner, says when he made his

settlement he believed the same was not within the Vaca & Pena & this he charges he can show if this court will allow that question to be mooted before it & he charges all that has been before charged in this petition he says he has built a house & made other improvements on the land he so settled upon & has continued to reside thereon ever since claiming the same as his own under the preemption laws of the United & says this district of country has not yet been sectionized as public land & to secure himself against any contingency in regard to the armijo claim he has ~~bout~~ bought from one of the heirs of Armijo since ~~who is dead~~ his death as will be seen by a deed from Isabel Armijo dated the day of 1858 here made part of this petition marked Q. by which this petitioner claims he has a right to be

74 ND
PAGE 195

heard as well under This purchase as under his settlement & claim of a preemption, in litigation against the illegal extension of the Vaca & Pena claim over the land the tract so settled upon & claimed as his preemption under his said purchase, for as he can show the land he so occupies to be without the limits of the Vaca & Pena grant, that is a full objection even if it shall appear to be within the limits of the Arroyo grant then it is an authority for him to object to the survey because in the said Vaca & Pena grant there is an express provision that in its measurement, the limits of previous made grant should not be interfered with & therefore he charges he has the right to object to this survey.

The other petitioners C. L. Brown, G. F. Brown, Jerome Davis, state for themselves, that ~~on or about~~ in the year

74 ND
PAGE 196

1850, the said E. L. Brown on the
day of 1850 purchased
from the said Vaca & Pena by
a full & proper warranty
deed here made a part of
this petition, of a portion of
their said grant lying on
the north bank of the said
Rutos Creek & has held and
resided on the same ever
since which land so purcha
sed lies on the north bank
of said creek below & east
of the land granted to the
said Wolfskill which said
land these petitioner say &
charge that the same is within
the calls of & is part of the
said Vaca & Pena grant
and they say also that heretofore
viz on or about the day
of 1850 one Joseph B.
Childs purchased of the said
Vaca & Pena a portion of their
said grant lying on the
north bank of the said
Los Rutos Creek, which lies

74 ND
PAGE 197

below & east of the said grant to Wolfskill & that the said Childs sold the same to the said Davis & G. F. Brown & that they now are its owners & possessors & these deeds are here made part of this petition. & these petitioners say that these several purchases were made in good faith & for a large & valuable consideration paid by the purchasers to the said Vaca & Pena & that the said Vaca & Pena gave full warrantee deeds & fully & positively asserted that the said land so sold was a part of their said grant & warranted the same to be so. & these petitioners charge that it is a part thereof, these purchases covers a space up & down the creek beginning on the north bank of the said Putos creek a short distance below the grant to Wolfskill & about four & one half Miles upon the said north bank of the said creek

74 ND
PAGE 198

parts thereof
& reaches north from the said north
bank of said creek three English
miles, for three miles of the distance
& the other parts a mile or less &
the whole quantity of the land
so sold as before stated amounts
to near about a league & a half
& has ever since been occupied
& owned by the persons afore
said, & these petitioners claim &
charge that the same is part of the
Vaca & Pena grant & they
also state that in the survey
which has been made thereof
as has been before stated in
this petition the land so purchased
has been left out of said
survey by the fraudulent and
improper manner the same has
been made & which survey has
not been made in a compact
form but in a zig zag and attenuated
form so that its length from the
north East corner of the said
survey as made is over 20
miles in a direct line from
its South west corner & the most
part of the land so surveyed

is more than ten miles south besides
being as many west of any land
which would be included if
the same had been made as the
same is called for in their grant
as will apper by the affidavit
of Paten & Fitch hereto attached
to this petition
These petitioners say that they are
informed & believe the same to
be true & therefore state the same
to be so, that Manuel E. Vaca
one of the grantees has been
dead several years & that his
children & heirs who were of the
proper age opposed the said
survey, alledging the same should
be located on the said Rita
creek when it was granted
& they also filed a petition in
this Court to put a stop to or
vacate the said survey &
applied to this Court under
the law of 1851, for an injunction
as will appear by the said petion
on file also referred to as part
of this petition, but this Court they held it had no jurisdic
and the said
survey so paid for as before

74 ND
PAGE 200

stated was made against their
desire & remonstrance.
Now these petitioners charge, that there
has been no final decree entered
in this court in this court ~~in this case~~
& therefore the surveyor
general had no authority to
make a survey & therefore it is void
They charge that the survey itself
was paid for by Pena & others
interested with him out of their
own money on a contract
with the deputy who made
it, which is contrary to law &
therefore the same is void.
They charge that it was not
made in compact some contrary
to the law & express instructions
of the said department & therefore
void
They charge the said survey is
not legally certified & properly
returned by the deputy who
made it & that the chain men
were not sworn & therefore it is
void
They charge it has not been

74 ND
PAGE 201

approved even to this day by a surveyor
General & has only the approval
Col L. C. Hayes, after he had
been turned out of office
& delivered the same over
to his successor, & therefore
the same is void
The said Dollarhide & Pond say
when they respectively entered
upon their preemptions as before
stated, the same was unoccupied
unsurveyed public lands, as
they in good faith believed
then & still believe & that the
same has not yet been surveyed
as public lands into sections
by the united States.
your petitioners charge they are
informed & believe & so state
it to be, that our State Courts
including the State Supreme
Court have held & do hold that
a survey so made & approved
by the Surveyor General as
this Vaca & Peña bears on
its face is conclusive as
against settlers & claiming pre-
emptions & will not let parties

74 ND
PAGE 202

go behind the said approval to show how the survey was made or how it was approved. & will not allow parties to show however able they may be to do so to show by proof that such a survey includes land not within the grant & therefore as this Court has the only jurisdiction in this matter & has full power & authority to do so should allow these parties to this petition to show the truth & have the same corrected accordingly.

Therefore your petitioners pray that this Honorable court will enquire into all these allegations & allow your petitioners the opportunity to prove what they have alledged in this petition & that the present survey be set aside & a new one ordered whereupon the case shall be proceeded in till a proper & final decree shall be entered

therein. & whatever else may be
just & proper.

A. R. Pond
& Dollar Ride

74 ND
PAGE 203

I ~~hereby certify that the~~ above Sitters ~~subscribed~~
and ~~Sworn~~

Subscribed on & sworn to before
me this 19th Day of October A.D.
1859

E. D. Ward
Justice of the Peace
of Solano County
Vaccaville Twp

Subscribed and Sworn to
By E. L. Brown before me
This 22nd day of October 1859
Merritt Tillery Justice
of the peace for Solano county

E. L. Brown

The information as to dates of
the acts of the Surveyor
General stated in the above
case they were obtained Through
me. I find upon a recent examina
tion that the final order of the
approval of the field notes in
the above case is stated to be

74 ND
PAGE 204

In the 23rd of October 1857 Whereas on a recent examination I find it was the 3rd of Octr 1857 & not being 23 days after he had ceased to be Surveyor General & after J. W. Mandeville had not only qualified but entered on the actual discharge of his duties please consider the error in the affidavit as to that date corrected by this memorandum

Sept. 6th 1860. John Wilson

U. States
vs.
Vacca & Perea
No 74

Brown et al
vs
Perea et al

Affidavit of
C. L. Brown
& others.

74 ND
PAGE 205

State of California
County of Solano

George Olinger
being duly Sworn Says
that on the 17th September
A.D. 1860 he Served on Juan
Phillipe Pena a true Copy
of the above and foregoing
Petition at his residence
in Said County by then
and there delivering to him
in person a true Copy of
the Same — J Olinger

Sworn and
Subscribed To
before me this
the 17th September
A.D. 1860

J H Thompson
Notary Public

74

U. S. Vs. Vacat & Pence

Statement & affdt

of

E. L. Brown
G. F. Brown
Gerome Davis
& others.

(C)

Filed Sept. 29, 1860,
W. ~~A.~~ Chevers,
Clerk

74 ND
PAGE 206

74 ND
PAGE 207

Mr Wickson having suggested to the Court that he is the Attorney for certain parties whose interests he desires to represent in this Court - ordered that he be allowed to appear for such parties and to take such proceedings in their behalfs as he may be advised —

74

U. S. Dist. Court.

The United States.

—vs—

Vaca & Peña.

Order allowing John Wilson to appear as atty for certain parties.

Filed October 6. 1860.
W. H. Chevers.
Clerk

74 ND
PAGE 208

74 ND
PAGE 209

United States

vs. { United States Dist. Court for the northren Dist of Cal^a Case No. 74.

Manuel C. Vaca
Juan Fillipe Peña

To C. Benham
United States Dist. attorney
Wm Cary Jones } esquires.
V. E. Howard }
attornies of Record for the above named Vaca & Peña in the above intilled cause.

Take notice that on the 6th day of October 1860, at the hour of Eleven Oclock, A. M. of that day, or as soon thereafter as counsel can be heard we will move the United States district court, for the northren district of California, at the court Room of said Court, in the city of San Francisco for leave of said court, to enter of Record ~~[illegible]~~ the above case the name of John Wilson as our attorney to represent our

74 ND
PAGE 210

interests in the above intitled
Cause. we being part owners of
the said Ranch therein being
litigated. when & where you
may attend

L. H. Brown
C. L. Brown
J. E. Davis

owners of part of the above
named Ranch lying on the
north side of the Rutah Creek.

E. W. Dollarhide
George Klinger
Nancy Hall
L. R. Barnett
L. R. Collins
Oliver L. Barnett
Robin McCoy
Walter L. Jeans
John L. Barnett
Moses Sproul
Nancy Parks

owners of part of said Ranch
on the South side of the
Rutah creek

74

United States
vs
Vaca & Peña

Left a copy of this on Mr C. Jones table in his office this 2nd Octr 1860 at 2 P. M. met him as I came out & told him of it he said it was all right

Filed Oct. 6. 1860.
W. H. Clevers,
Clerk

Rec'd a copy of this this 2nd Octr 1860.

Calhoun Benham
U. S. Atty
by
C. E. Clifford

Left a copy at his office on the 5th Octr 1860 JH

74 ND
PAGE 211

I was the original counsel for the Claimants in this case and am still counsel for them & have not the least objection that John Wilson be entered as the attorney with me for the parties named in the within petition

Wm Carey Jones
Survivor of Jones Hopkins & Stanley

U. S Vs. Vaca & Pena

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

74 ND
PAGE 212

U. States
vs
Vaca & Pena

Case No 74.

John Wilson being sworn says, That he is employed by the persons named in the petition here presented as part of this, & desire me to act as their attorney in the above cause now still pending as this affiant believes in this court, & to attend to their interest therein & they claim to have an interest in the said grant made to the said Manuel C. Vaca & Juan Fillipe Pena by deeds & other papers from the said Vaca & Pena.

The said G. H. Brown & the said Jerome C. Davis derive their interest under deeds & other papers of transfer from the

74 ND
PAGE 213

grantees. Vaca & Peña here ready to be exhibited to the court

The other parties claim by a deed by one of Vacas, Sons & heirs (the old man being dead) to H. H. Hartly & by the latter to E. W. Dollarhide & by him to the other petitioners, all of which I have here to show to the court — These papers as your affiant believes gives them an interest in the Ranch at least sufficient that they should be allowed to appear for the protection of their interests — This affiant has examined the above case & he believes the same is still pending in this court, no final decree having yet as he is informed & believes been entered in the above case & his clients as he believes have an interest in the matter & that the same needs the attention of an attorney

John Wilson

Sworn to and subscribed this 6th Oct, 1860. before me,

W. H. Chevers,
N. S. Com.

74

U. States
Vs
Vaca & Pena

affidavit
of John Wilson

Filed Oct: 6, 1860,
W. H. Chevers,
Clerk

74 ND
PAGE 214

74 ND
PAGE 215

U. States
vs.
Manuel C. Vaca
Juan Fillipe Peña
C. Benham U.S. Dist. attorney
& Wm. Cary Jones
U. C. Howard
attorneys of Record for claimants.

} U. States District Court for the Northern Dist. of California

} State,
} esquires.

Take notice that on the 17th of October 1860 at the hour of Eleven oclock A.M. on that day at the Court Room of the United States district Court for the northern district of California, I shall as the attorney for a portion of the claimants under Vaca & Peña in the above intitled case for whom I appear as the Record in the above case will more fully appear I shall then & there move the said United States district court, to cause or as soon as counsel can be heard to be entered a final decree in the above intitled cause in favor of the said Vaca & Peña according to the opinion of the Supreme Court of the United States ordering the same to be finally confirmed as the same will more fully appear

from the Remittiter from the said Supreme Court now on file in said case by which the said district court is directed to enter up the same which has not yet been entered.

John Wilson
attorney for J. C. Davis & others claimants in the above case as the Record will show.

I am the survivor of the firm of Jones Tompkins & Strode who brought the petition before the Board for confirmation & have attended to the same throughout as the attorney for the claimants ~~and as There is no final~~ & ask that a decree may be entered according to the decree of the Supreme Court

10th. Oct. 1860

Wm Carey Jones

decree of the [illegible]

10th. Oct 1860 Wm Carey Jones

74 ND
PAGE 217

~~decree entered in this case it is of necessity that one should be entered in this case & therefore assent & ask that the decree may be entered according to the above notice~~

Rec^d. a copy of the within notice this 13th day of Octr 1860

Calhoun Benham
C. E. Clifford

74 ND
PAGE 218

3) ~~74~~

United States
vs
Vaca & Pena

Filed Oct. 17, 1860.
W. Fr. Chevers,
clerk

Notice of motion for final Decree.

~~Gave V. E. Howard a copy of this the 9th Octr 1860~~
~~John Wilson~~

Left a copy of this at E. V. Howard's office this 13th of October 1860.
John Wilson

21.

The United States
vs
Vacca and Peña

No. 74. ND
February 11th.
1861.

74 ND
PAGE 219

The claim in this case having been finally confirmed by the Supreme Court the usual mandate directing that such further proceedings be had in this Court as to according to right and justice ought to be had was issued —

This mandate was not filed or in this Court or presented to it by the attorneys for the claimant: but it was exhibited to the Surveyor General, as evidence that the claim was finally confirmed and in order that a survey and location should be made

The claim was accordingly surveyed and located by that officer — and the survey having been finally approved by the Executive authority at Washington a patent for the

9

land was issued
A duplicate or copy of the
mandate has since been procured
by certain parties who allege
the survey to be erroneous —
and praying the same has been
filed in this Court — A motion
is now made that an order be
entered directing further proceed
ings to be had in obedience
to it — It is not denied that
the object of this motion is to
obtain the order of this Court
that a new survey be made
and that the survey when
so made may be brought
into this Court under the
provisions of the Act of 1861 —

2½ It would undoubtedly
have been more regular to
have filed the mandate in
this Court and entered the
usual order ~~requiring~~ directing
further proceedings to be had
Those further proceedings would
have been the survey and boca

tion of the land — But in strictness the action of the surveyor General in the case would have been rather a compliance with the express requirements of the statute than with any order of this Court from the moment when by the final decree of the Supreme Court the claim was confirmed it became the surveyor's duty to cause all the claim thus "finally confirmed" "to be accurately surveyed" and upon such a patent could lawfully issue — It is true that if in the course of this proceeding questions of a judicial nature arose, as to the boundaries or location the District Court had authority to settle them But this was when a proper case was submitted to it before the patent issued — Such is the express language of the Supreme Court in the

74 ND
PAGE 221

4 Case of Castro vs Henderson
23d How. 442

The "further proceedings" to which above the mandate could refer are the proceedings as to survey and location which the Court might have taken if any questions had arisen and a "proper case" presented before the patent issued.

74 ND
PAGE 222

But when the intervention of this Court has not been asked when the claim has been finally confirmed by the decree of the Supreme Court, and a survey made and patent issued I can discover no authority in this Court to set aside that patent, reform the survey, & direct an amended patent to issue —

In the case before above cited the Supreme Court say — "But
6 it was not the expectation
6 of this Court that the Surveyor
" General should make returns

5 "to the District Court in every
"Case — nor did they imply
"that the validity of a survey
"depended on the recognition
"of that Court or its incorpora-
"tion into a decree of that Court"
It is evident therefore that
the absence of any "recognition"
by this Court of the survey
in the case at bar has no
effect to impair its validity
or that of the patent issued
in pursuance of it —
It is urged however that the
Court is empowered and re-
quired ~~by~~ by the act of 1860
to order this survey into Court
to be returned to it —
~~This~~ It will be perceived
that the interposition of the
Court in this form is claimed
on a ground ~~entirely~~ inconsist-
ent with that on which it
is asked to enter an order
for further proceedings — i.e. for
a survey — For in the last

74 ND
PAGE 223

case the application is based on the supposition that no legal survey has yet been made — ~~that the patent~~ which and that none can be or should have been made until after the filing of the mandate and order of this Court directing further proceedings to be had —

74 ND
PAGE 224

The former application proceeds on the idea that a ~~sur~~ regular survey has been made which by the terms of the act of 1860 ~~are~~ is subjected to the ~~provisions~~ supervision of this Court —

~~But it is~~

~~with~~ As ~~has~~ already intimated I am unable to perceive any reason for treating the survey and patent as absolutely null and void merely because the mandate was not filed in this Court —

& If ~~then it~~ the survey was properly made and a patent has issued

74 ND
PAGE 225

7

in pursuance of the act of
1860 gives this Court no
authority to interpose —
The primary object of that act
was to subject surveys and
locations thereafter to be made
to the supervision of the dis
trict Court and to define &
regulate as its title recites the
jurisdiction already vested in
the Court as was decided
in the Case of U. S vs Forbatt.
But that jurisdiction was ex
pressly declared in that case
to exist over the cause only
until patents issued" and there
could have been no intention
on the part of Congress to
authorise the Court to re-ex
amine and set aside all
surveys which had already
been made and on which
patents had issued —
That the act was was chiefly
intended to be prospective
in its operation further appears

8

from the fact that a special provision was inserted in the 6th section, subjecting all cases in which proceedings were then pending in the district Courts to the operation of the acts- except that no publication was to be made of the survey. But a case where no objection to the survey had been made, and where a patent had issued could in no sense be said to be pending - or embraced within the provisions of either the first or the 6th sections.

74 ND
PAGE 226

In the whole I am of opinion that this Court has no jurisdiction to suspend direct a new survey to be made or to enquire into and set aside or reform the survey that has been made in this case

5

No. 74.

U. S. Dist. Court.

The United States.

—vs—

Vaca + Peña.

Opinion denying motion for further proceedings, etc.

Filed February 11. 1861.

W. A. Shears.

Clerk

74 ND
PAGE 227

74 ND
PAGE 228

United States of America
State of California
United States District
Court for the Northern
District of California
City & County of San Francisco.

United States
vs. } U.S. Dist. Court.
Manuel Vaca
Juan Fidlipe Peña

John Wilson as attorney for
George Olinger & others &
C. L. Brown & others who
appear on the Record of
the above case as parties
thereto & who are claimants
& owners & residents on the
said Ranch granted to the
said Vaca & Peña & who
claim under them by a
direct Chain of title portions
of the said Ranch as will
appear by the Record &
papers on file in this
Case comes here and moves
this Court to grant them
an appeal to the Supreme
Court of the United States
from the order of this Court
Refusing as now asked for
to enter a decree in this
Case in conformity to the

Mandate of the Supreme
Court filed in this Case
as asked for by the said
George Olinger and others
& C. L. Brown & others & as
petitioned for by them which
Mandate petition & all the papers
thereto attached are all on
file in this Case & forms
part of the Record in this
Case & is now referred
to as part of this
prayer for an appeal

John Wilson
atto for the
above named
Petitioners

74.

(6) 3

United States
vs
Vaca & Peña

Petition for
an appeal

Filed June 25. 1861.
W. A. Clevens.
Clerk.

74 ND
PAGE 230

At a Stated Term of the District Court of the United States for the Northern District of California. held at the City of San Francisco. on Thursday, June 27. 1861.

Present.

Hon: Ogden Hoffman,
District Judge.

74 ND
PAGE 231

The United States
vs
Vaca and Pena } No: 74.

A Motion this day been made having for an appeal from the order of this Court entered on the 11th day of February. 1861. refusing to take further jurisdiction of this cause. it is now ordered adjudged and decreed that said Motion be overruled and that the appeal asked for be and is hereby refused.

Ogden Hoffman
Dist Judge

74.

U. S. Dist. Court.

The United States.

v.

Vaca & Peña.

Order denying motion for an appeal.

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

74 ND
PAGE 232

74 ND
PAGE 233

Stated Term of
the District Court of the United
States in and for the Northern
District of California — held at
the City of San Francisco, on
Monday, the eleventh day of
February, A. D. 1861.
Present,
Hon: Ogden Hoffman,
District Judge.

The United States
vs
Vaca and Pena
No: 74 —

The Motion heretofore made by Mr Wilson upon the filing of a copy of the Mandate of the Supreme Court of the United States, that an order be entered directing further proceedings to be had in obedience thereto, was this day argued by counsel: And it appearing to the satisfaction of this Court that the claim to the land herein presented for, had been finally confirmed by decree of said Supreme Court, and that its Mandate in obedience of such

74 ND
PAGE 234

fact had been exhibited to the Surveyor General of the United States for the State of California, who thereupon had caused a final survey of said confirmed lands to be made under the provisions of the Act of Congress of the 3rd of March 1851; And it further appearing that said Survey being finally approved was presented to the General Land Office in the City of Washington, and that a Patent for the said Lands was duly issued to said Claimants under the provisions of the said Act of Congress, long prior to this motion; This Court is of opinion that this cause is no longer pending herein, and that it has no jurisdiction to grant said motion, and doth hereby order adjudge and decree that said Motion be and is hereby denied and overruled -

And it further appearing that no order ~~[illegible]~~ was entered at the time said Motion was overruled, it is now hereby ordered, that this order be entered nunc pro tunc, as of the date when such motion was opposed -

Ogden Hoffman
Dist Judge

4) 74.

U. S. Dist. Court.

The United States.

v.

Vaca & Peña.

Order denying motion for further proceedings under mandate.

Filed nunc pro tunc June 27, 1861, as of February 11, 1861.

W. A. Clement
Clerk

74 ND
PAGE 235

74 ND
PAGE 236

Manuel Vaca & Felipe Peña Appellants vs The United States Apellees.

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

This claim was rejected by the Board of Commissioners to ascertain & settle the private land claims in the State of California" and is now before this Court on appeal.

On the 4. June 1842 Vaca one of the appellants petitioned the Commandant General for the place "Sibraytos" Bounded at the South by the Luysun, on the North by the Los Putos, at the East by the Estuaries that form the interior Bay of the Straits of Carquinez consisting of ten sitios de ganado Mayor. On same day a provisional grant was made of the land subject to the measurement of the adjoining Ranchos and directing petitioner to apply for the usual title from the political Departmental Government. On 13. Jany 1843 a petition was made to Micheltorena for same land, referring to the provisional grant, and after favorable report from the Functionary to whom it

74 ND
PAGE 237

had been referred, a grant was made by Governor Micheltorena under date 27 Jany 1843 to Vaca and Sm Juan Felipe Arrigo for the place known as "Lehuaytos" bounded East by the Sacramento river, West by the Sierra of Napa, North by the creek (or arroyo) de Lehuaytos, South by the river Suisun without injury to the measurements which are to be made of the contiguous Ranchos subject to the approval of the Departmental Board. The usual conditions were annexed to the grant. Among them was the following "The tract of land of which donation is made is of ten sitios de ganado mayor as shown in the sketch annexed to the respective expediente. The Judge giving the possession shall cause it to be measured according to ordinance, the surplus to remain for the convenient use of the nation". On 18 April 1844 Vaca under the name of Baca applied for judicial possession which was refused by the Mexican local authority on the ground he had not obtained the approval of the Departmental

74 ND
PAGE 238

assembly and that he was bound to respect the possession of his neighbours which as yet had not been ascertained. There then ensued between appellants ~~a long controversy with~~ and one William Wolfskill who had received a previous concession of lands a controversy about their respective boundaries. The result of that controversy which had been litigated before the Mexican authority, was a petition by the appellants dated 30 Aug. 1845 to Governor Pico stating that an amicable adjusement of said controversy had been made, and concluding in these words "that in order to throw off all doubt and to give cause to any pretensions being made in the future" &c your Excellency will be pleased to concede the tract "Los Putos" which is adjoining at the East the place of William Wolfskill." This petition was for ten sitios de ganado Mayor and is stated to be in entire conformity with the donation previously made in 1843. On this petition a marginal concession of the Governor is made in which he

74 ND
PAGE 239

treats the land petitioned for as the same previously granted by Micheltorena in 1843 ~~by Micheltorena~~ and directs title to be made to Vaca and Arrigo.

Accordingly on 30 July 1845 (30 August 1845) a grant was issued to appellants for the place "Los Putos" on the margin of the river adjoining at the East the Rancho of William Wolfskill. This grant is for ten square leagues and recites that the tract is in entire conformity as heretofore it had been conceded to them.

This grant is made by Gov. Pio Pico, & is ~~made~~ subject to the measurement to be made of the contiguous Ranchos previously ~~con~~conceded and also subject to the approval of the Departmental Assembly, and it is required by one of its conditions that the Judge giving possession shall cause it to be measured agreeably to the Ordinance, reserving the surplus for the proper use of the nation.

On 1. October 1845 the Departmental Assembly approved of this Grant but annexed to such approval a condition

74 ND
PAGE 240

that within the term of four months after its date the grantees shall place in the hands of his Excellency the Governor ~~the plan relating to~~ a proper sketch with the understanding if ~~they did not do so~~, they should not do so, they sh^d. forfeit their right to the tract and it should be liable ~~to forfeit their right to the tract and it should be liable~~ to be denounced by another. The foregoing documents ascertain that the land was described in the Grant of Michel-toreno by the name of "Limaytos" and in the later grant of Pio Pico by the name of "Los Pu-tos, and that both grants are made to Juan Manuel Vaca and Juan Felipe Ar-ringo. By the testimony taken since the case has been brought into this Court by appeal ~~that~~ it is proved that the boundary line named in the Sketch referred to in the Grant from Michel toreno as the "La arroya los legaytos" is the same as that subsequently known as the "Rio de los Pulos" This will account for the difference of names in the two grants. The marginal concession on the petition made by Pio Pico on 30. Aug. 1845 and the condition annexed to the grant made by him on same day treat the lands alluded to in both grants as identical. From the other evidence in this cause there is little doubt that the lands pe-tioned for are within the boundaries called for by the grant made in 1843 by Michel toreno. The contest which had been waged between Wolfskill & appellants was ~~within~~ for lands, or a portion of them within those boundaries which Wolfskill claimed under a previous concession. As to the discrepancy between the names of Arringo and Peña, the co-appellant of Vaca, that is explained by the deposi-tion of Demetrio Peña which establishes the identity of Arringo with Peña. Judicial possession never was obtained by appellants the reason of which is ex-plained by the witness William Wolfskill who

× the Ranch of Wolfskill constituting one of the boundaries of the land in the accompanying appellants

who refers to the controversy which had existed between himself & the appellants which he states was settled "by a compromise made with the knowledge and authorization of Gov. Pico in the Fall of 1845." By that order of the Governor and compromise his lands were directed to be first measured and afterwards those of the appellants. The witness states "he was "not able to procure the judicial measurement and possession during the existence of the Mexican Government in this "County & consequently my tract was "never measured until the summer of "1862 when it was surveyed by the "Surveyor General of the United States, "The exact location and measurement "of the lands of Vaca and Peña were "by the order of the Governor and the "compromise subject to the prior "measurement of mine".

The paul evidence establishes the fact that appellants have been in possession of the land petitioned for as early as 1842 living on it with their families and cultivating it. One witness establishes the occupation and cultivation from a period some years anterior to the date of the grant of Micheltorena, and stated the appellants had houses and enclosed fields. The occupation of the premises ~~has~~ has continued to the present time. The failure to obtain judicial possession cannot we consider operate to render invalid the claim of appellants under the peculiar circumstances of this case. It was a condition subsequent, and it ~~[illegible]~~ had never availed of by the Mexican Government nor any one of her citizens by process of denouncement

74 ND
PAGE 241

-ment - and the appellants have with large families continued in the cultivation of the soil, thus fulfilling the object the Government had in view in the issue of the grant.

It has been argued, that appellants have failed to comply with the condition annexed to the approval of the assembly viz, that within four months after its date they should place in the hands of the Governor a map or sketch of the premises. The penalty annexed to the breach of this condition was simply to subject the land to being denounced which it never was.

B. Apart from this, there is evidence to lead us to suppose that the sketch or map now in the archives and annexed to the Transcript was there at the time this condition was annexed to the approval of the Deputation. And at this conclusion the Commissioners arrive in their opinion. "It will be remembered (they say) that the proof shows, that two grants were made, one by Micheltorena in 1843, the other by Pio Pico in 1845, and that it was Pico's grant which the assembly approved. - By reference to the paper containing the communication of Vaca addressed to Governor Micheltorena bearing date the 1st October 1844 it will be found that reference is therein made to a plan of the tract in question." "The plan referred to, is no doubt the map found in the Archives. It was sent to Micheltorena after he had made the grant and doubtless was in case there at the time Pico made his grant but was not made a part of the expedient sent to the Departmental assembly". ~~The conclusion to which the commissioners arrive on this point is first fixed~~

74 ND
PAGE 243

The conclusion at which the Commissioners arrive is fortified by the fact that in the third condition annexed to the Grant issued by Michel Torreno distinct reference is made to a map as ~~an~~ in existence at the time ~~as~~ and annexed to the expediente. In view then either of the law or of the evidence in this cause, we cannot deem the objection urged on the ground under consideration ~~as~~ available.

This cause was submitted without argument the parties stating respectively their willingness to rely on the case presented by the Board of Commissioners in their opinion annexed to the transcript. The ~~only~~ ~~obje~~ Board acknowledge the equity of the claim and in the concluding clause of their opinion say, "although the
" case may be one of great hardship &
" one which addresses itself strongly
" to the political department of our
" Government for relief the law has
" conferred no such power on this Com-
" -mission." ~~They~~ ~~[illegible]~~

ing

74 ND
PAGE 244

~~ing the hands left of the case~~ They reject the claim on the alone ground, that the land granted had not been severed from the public domain by the authority of the Government of Mexico by appellants being placed in judicial possession, & that the terms of the grant were so indefinite as to render it impracticable to segregate the quantity granted from the lands included within the boundaries called for by the grant. — In view of the testimony taken in this Court in connexion with that ~~in~~ ~~to~~ before the commissioners we are by no means satisfied that the latter ground taken by the Board of Commissioners is tenable. It would be passing strange, if that should be a floating grant which covered a tract of land the local ~~[illegible]~~ boundaries of which as respects an adjoining proprietor, ~~were~~ had been the subject of litigation for two years before the Mexican authorities as appears from the evidence in this cause, unless it is to be considered that the obtainment of judicial possession by a claimant is necessary to title & no other means of actual segregation of land is to be admitted as evidence of ~~segregation~~ that fact. — But we pass to the consideration of the ground taken by the Board, and their reasons for rejecting this claim.

The grant under which appellants claim is ~~what~~ in common parlance ~~is~~ termed "a sobrante". — It concedes a ~~small~~ ~~land~~ a certain quantity ~~to~~ of land situated within a larger quantity, ~~a~~ the certainty of which latter is ascertained by fixed limits within which are lands which had been previously conceded. There are many such grants, and they arose out of the peculiar conditions

74 ND
PAGE 245

condition of things in California. Neither the Grantor nor the grantee had the means of defining quantity by measurement. No surveys made ~~who~~ during the Mexican Rule have come to the notice of this Court, and we believe that the condition of things not existed is truly stated in the instructions by the Department of the interior U. S. to the Board of Commissioners "That there are it is believed, "no Spanish or Mexican plats of survey "extant of lands in California; no actual "surveys, so far as this office is advised, "having ever been executed during the "sovereignty over the Countries of either Spain "or Mexico". Instructions 11. Sep. 1851.

Under this state of affairs the idea of quantity was not only conjectural but almost abandoned in the granting system in California.

The grantee presented a rude document dignified with the name of a map or sketch, on which were pourtrayed certain boundaries without regard to relative distances and in some instances without true indication as to their bearings, the prominence of which objects seemed to be the inducement for callers for them. Within these exterior boundaries was situate the land needed, and the petitioner in his application for it described as ~~it bounded~~ so much land bounded by ~~within~~ those exterior limits and by such description it was granted. The grantor equally ignorant or careless of quantity protected the public interest by reserving any surplus that might be ascertained on subsequent measurement for Governmental uses. Another applicant owned solicit a certain quantity, ~~with the~~ of land to be taken out

74 ND
PAGE 246

out of the same or partially the same exterior limits called for by the previous grants, and a second concession would be made to him, subjecting his concession to the measurement to be made under the elder grant, + reserving any subject that may be vacant to the nation. Such is the character of the Grant under which appellants claim. These reservations for public uses are very generally introduced into the California Grants, and the effect of such system of granting has been to render it impracticable under the rules of common law applicable to the interpretation of Grants to extend to claimants under Mexican Concessions the protection afforded to them by the Stipulations of the Treaty of Guadalupe Hidalgo. Congress foresaw this, and in passing the act of March 3. 1851 with a view to prefix those stipulations, they have given us a very different rule of interpretation, and among them the principles of equity, and the laws, usages, and customs of the Mexican Government. It is true, among these rules Congress has enumerated the ~~Supreme~~ decisions of the Supreme Court of the United States, but have added with careful forethought, the restriction, "so far as they are applicable." Now it is upon the applicability of certain decisions of the ~~A~~ Supreme Court that the Commissioners rely in rejecting this claim. Those decisions were predicated upon the Act of Congress passed 26 May 1824, and the laws, and ordinances of Spain and France. The ~~venerated~~ Ch. Justice in delivering the opinion of the Supreme Court in the case ~~[illegible]~~ 27 U.S. has demonstrated the difference which exists between that law and the Act of 3. March 1851 under which we act, and "the great diversity which exists between the made and manner

of

granting lands" which existed in Louisiana and Florida on the one hand, and in California on the other — and therefore concludes that the decisions made upon the one law, and one made and manner of granting" are inapplicable to guide the Court when called on to adjudicate in regard to the others.

The Board of Commissioners in their opinion say, "The Counsel for claimants (relying on the boundaries described in the Grant of Micheltorena and the sketch annexed to it) state, these boundaries are all natural, plain, and distinct, and that there is not the least difficulty in ascertaining the lands granted. If they had assumed the position that there was not the least difficulty in ascertaining the boundaries within which the lands granted were to be located, there would have been no difference of opinion between us." Here then is a case, of a grant of a certain quantity of land to be afterwards surveyed, and laid off within a certain territory. Such a grant under the system which prevailed in California conveys under the authority of ~~The United States vs~~ H. Freeman vs The United States a vested and immediate interest which this Court is bound to protect. All the concessions to the appellants were however subject to the measurement to be made of lands previously granted within the boundaries mentioned in the Grant, the Court in confirming the claim of appellants will have to make it subject to the condition originally annexed to it. The folly

74 ND
PAGE 247

74 ND
PAGE 248

decree is directed to be entered

Present

Juan Manuel Vaca
& Juan Felipe Reina
Appellants
v
The United States
Appellees

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

This cause coming on to be heard at a special Term of this Court, on appeal from the final decision of the "Commissioners to ascertain and settle the private land claims in the State of California" under the Act of Congress of March 3 1851 upon the transcript of the proceedings, decision and the papers and evidence on which said decision was founded, and also upon testimony ~~before~~ later in this Court and counsel for both parties having appeared in court, It is hereby ordered, adjudged and decreed that the said decision of the said Commissioners be, and the same is hereby reversed, annulled and set aside, and it is hereby further ordered, adjudged and decreed that the claim of the Appellants Juan Manuel Vaca and Juan Felipe Reina be, and the same is hereby confirmed ~~to the extent of~~ and adjudged to be a good and valid claim to the extent of ten square leagues ~~and no more~~ or sitios de ganado mayor and for no more in the land described in the ~~Record~~ original Grant and the map annexed thereto set forth in the Record, ~~and~~ subject to any measurement of adjoining Ranchos ~~made~~ held by grantees ~~[illegible]~~ under Grants issued prior to the 30. August 1845 the date of the Grant made by Gov. Pio Pico & set forth in the Record; provided ~~[illegible]~~ said quantity of land ~~[illegible]~~

to

to them granted and now to ~~him~~ them so con-
-firmed ~~only~~ be ~~found~~ contained with-
-in the boundaries called for in
said grant and map to which the grant
refers; and if there be less than ten
square leagues, or sitios de ganado
mayor within said limits, then
there is ~~we~~ confirmed to them the said less
quantity.

74 ND
PAGE 249

District Court U.S.
Northern District
of California —

No. 74 —

Manuel Vaca &
Felipe Peña
v
The United States

Opinion & Decree

(July 5. 1855)

74 ND
PAGE 250