CASE NO.

77

NORTHERN DISTRICT

POTRERO DE SANTA CLARA GRANT

ROBERT F. STOCKTON

CLAIMANT

LAND CASE 77 ND pgs. 61

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TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 8

Robert F. Stockton CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Potrero de Santa Clara."

/

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Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, *that on this* twenty fourth day of January, *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 Robert F. Stockton *for the Place named* "Potrero de Santa Clara" *was presented, and ordered to be filed and docketed with No.* 8 *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 June 2d 1852.

In Case No. 8 Robert F. Stockton for the place named "Potrero de Santa Clara", the deposition of James F. Kennedy, a witness in behalf of the claimant, taken before Commissioner Hiram Wall, was filed;

(Vide page 6 of this Transcript.)

San Francisco January 4th 1853

In the same Case the deposition of William F. M. Howard, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T. No. 1 Annexed thereto, was filed;

(Vide page 5 of this Transcript.)

San Francisco Aug. 11th 1853.
Case No 8 (R. B. Stockton) was, by consent of parties, placed on the trial docket, and called; The Counsel for the claimant read the Evidence – Argued, submitted and taken under advisement.

San Francisco November 15 1853
In the same Case Commissioner Robert A. Thompson delivered the Opinion of the Board, confirming the claim;
(vide page 16 of this Transcript)

In the same Case Commissioner Alpheus Felch delivered his Opinion dissenting in some points, but concurring in the issue;
(vide page of this Transcript)

In the same Case Commissioner Thompson Campbell delivered his Opinion dissenting in some points, but concurring in the issue.
(vide page of this Transcript)

Petition of R. F. Stockton

To the Honorable Commissioners to settle private Land Claims in California

Robert F. Stockton of the State of New Jersey respectfully shows that on the twenty ninth day of February 1844 Manuel Micheltorena Governor of the Department of the Californias by virtue of the authority of his Office, granted to James Alexander Forbes the tract of land known by the name of the Potrero de Santa Clara situated in the present County of Santa Clara, containing a little less than One Square League, with the limits described in the grant and shown by the map accompanying the grant: a copy of which grant and map is hereto annexed marked A with a translation B.

And the said Stockton says that on the 23rd day of September A D 1847 by a proper deed the said James Alexander Forbes conveyed the said land to him, the said Stockton a copy of which deed in Spanish is hereto annexed marked C with a translation marked D.

And the said Stockton says that immediately after the grant was made, the land was occupied by the said Forbes and since the making of said deed has been and now is possessed and occupied by himself, fully and exclusively

He further says that, though the land has not been surveyed by the Surveyor General the precise position and boundaries granted being the "Potrero de Santa Clara" were at the time of the grant well known as shown by the map accompanying the grant - and that the same are well known and unmistakeable now, the land, to the Northward, Westward and Southward being bounded by the Old ditch mentioned in the grant and to the Eastward by the river Guadalupe

He further says, he knows of no interfering claim: that the land claimed is less than one league, and that he relies for confirmation of the title upon the grant and deed, copies of which are hereto annexed: upon the papers and minutes relating to the title now in the archives in the possession of the Surveyor General: And upon such proofs of boundaries and possession as he may believe necessary.

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Therefore he prays confirmation of the said grant of land to himself

By his attorneys
Halleck Peachy & Billings

Filed in office June 24-1852

A B Clun Secy

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Deposition of W. D. M. Howard

San Francisco Jany 4th 1853

On this day before Hon Harry J. Thornton came Wm D M Howard a Witness in behalf of the claimant Robert F Stockton petition No. 8 and was duly sworn his evidence being given in English

The U. S. Associate Law Agent was present

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My name is William D M Howard, my age is 32 years and I have resided in California 11 years. I am acquainted with the signatures of Manuel Micheltorena, Manuel Jimeno, Diego Alexander Forbes, Isaac Branham and Guillermo Fisher. Their signatures to the document before me marked A & filed herewith are genuine. I am acquainted with the Rancho called "Potrero de Santa Clara" and described in these papers: James Alexander Forbes occupied it in 1844 and had a house on it and considerable stock of cattle. He continued to occupy it until the latter part of 1847, when he sold it to Commodore Stockton who has since occupied it by his employees with horses and cattle and a large portion of it cultivated

Wm D. M. Howard

U. S. Law Agent present
Sworn to and subscribed before me
this 4th of January 1853 — (1853)

Filed in office Jany 4 1853 (1853
Geo. Fisher Secy

1853 Corrected by
Geo. Fisher
Secy

Office of the Board of Land Commissioners
for California. San Francisco June 2d 1852

Deposition of Jas. F Kenedy

On this day before Sherland Hall one of the Commissioners for ascertaining and settling private Land claims in California came James F Kenedy a witness produced in behalf of the claimant Robert F Stockton whose petition is No. 8 On the Commissioners Docket – and was duly sworn –

The U. S. Law Agent present

In answer to questions in behalf of the claimant the witness testified as follows
My name is James F Kenedy my age Forty years & I reside near San Jose in Santa Clara County.
I have known the Rancho Potrero de Santa Clara in Santa Clara County & have resided on the same ever since the latter part of February 1850. I have had charge of it as Agent of Commodore Stockton the claimant during that period & have had charge of it for him – The whole tract is fenced in with an iron fence. The fence was put up in 1850. Before the building of the fence there was a ditch from the Guadalupe river round the land to the river again with a row of trees along the ditch. About Eighteen hundred acres of the land is under cultivation & we use for grain, mowing & pasturage, about three hundred of which have been plowed. The quantity of land in the whole tract is about nineteen hundred acres. It is all in use except swamps Lands. There was a substantial frame house on the land when I first knew it, which was then occupied by an agent of Commodore Stockton. Since then nine double frame houses and a large barn have been erected on the place. The improvements which have been made on the land since I have occupied it, made by Commodore Stockton have cost over forty few thousand dollars
Sworn and subscribed James F Kenedy
Before me
Sherland Hall Com
Filed in Office June 2d 1852 Geo. Fisher Secy

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Exhibit A.

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Sello Primero ocho pesos

Habilitado provisionalmente por la Adriana Maritima del puerto de Monterrey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cinco
Micheltorena. Pablo de la Guerra.

Manuel Micheltorena General de Brigada del Ejercito Mejicano, Ayudante Gral. de la plana Mayor del mismo, Gobernador, Comandte Gral. é Inspector del Departamento de Californias.

ADA. MARITA DE MONTY. [Place of the Eagle]

Por cuanto Dn. Diego Forbes Mejicano por naturalizacion ha pretendido para el beneficio personal y el de su familia el terreno conocido con el nombre de Potrero de Sta. Clara circundado de un ballado que actualmte. tiene escepturando las tierras de regadio de las que hace uso la Mision de Sta. Clara que estan por la parte del Norte de la huerta y con la precisa condicion de dejar á beneficio de dha. Mision las mil varas de terreno que se le habian concedido en el parage nombrado Sn. Pedro y Sn. Pablo como igualmente no impedir la introduccion en el Potrero de la caballada mansa de la espresada Mision: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la Nacion Mejicana he venido en concederle el terreno

mencionado bajo las obligaciones que se expresan y sujeto á la aprobacion de la Excma. Asamblea Departamental y á las condiciones siguientes.

1ª No podra venderlo, enagenarlo ni hipotecarlo, imponer censo, vinculo fianza ni otro gravamen alguno aunque sea piadosa, ni pasarlo á manos muertas.

2ª Podra cercarlo sin perjudicar las travesias, caminos y servidumbres, lo disfrutará libre y esclusivamente destinandole al uso y cultivo que mas le acomode, pero dentro de un año fabricará casa y estará habitada.

3ª Cuando se confirme la propiedad de él solicitará del Juez respectivo que le dé posesion juridica en virtud de este despacho por el cual se demarcarán los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

4ª El terreno de que se hace donacion es poco menos de un sitio de ganado mayor. El Juez que dire la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulta á la Nacion para los usos convenientes.

5ª Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por valedero el presente se tome razon de él en el libro respectivo. Dado en Monterrey á veinte y nueve de Febrero de mil ochocientos cuarenta y cuatro.

Manl. Michelta.

Manl. Jimeno
Srio.

Queda tomada razon de este Despacho en el libro respectivo fojas 6 tta. Jimeno.

En el Pueblo de San José Guadalupe de la Alta California, á los veinte y tres dias del mes de Setiembre de mil ocho cientos cuarenta y siete, ante mi Guillermo Weeks, Juez de Paz de esta demarcacion, y ante los testigos de mi asistencia, que despues se nombraran; y con quienes actuo en forma debida; compareció Don Diego Alejandro Forbes, a quien doy fé conozco, y dijo: que por si y á nombre de sus hijos, herederos y sucesores, y de quienes de ellos hubiese título, vos y causa en cualquiera manera; vende y da en venta solemne y enagenacion perpetua á Don Roberts T. Stockton; ciudadano de los Estados Unidos; todo el derecho interes y titulo que tiene al terreno conocido con el nombre de Potrero de Santa Clara, que antes pertenecia á la mision del mismo nombre; cuya descripcion esta demarcado en el título de concesion espedido por el Gobierno de este Departamento, y declara y asegura el enunciado Señor Forbes, no tener vendido, enagenado ni empeñado el espresado terreno, y que está libre de todo gravamen perpetuo, temporal especial, general, tacito y espero; y como tal se lo vende en precio y cantidad de diez mil y quinientos pesos (10,500) con la condicion de que queda incluso en esta venta, todo el ganado vacuno que actualmente existe dicho terreno, y en el tiene su querencia; cuyo valor espresado, tiene entregado el comprador y recibido el otorgante á su entera satisfaccion; y asi mismo declara que el justo precio y verdadero valor del espresado terreno y del ganado que en el existe y ahora vende en la mencionada cantidad de

diez mil y quinientos pesos ($10,500) y que no vale mas y aun en el caso de que mas valga, ó valer pueda del exceso en poca ó mucha suma hace donacion á favor del comprador y de sus herederos y sucesores; y esta donacion y gracia pura perfecta é irrevocable que le hace, se llama en derecho intervivos con insinuacion en demas firmezas legales: con la condicion que se le entregará al referido Don Roberto F. Stockton ó á quien le represente, el enunciado terreno y ganado inmediatamente habiendo condescendido en ello el comprador.

Y el mencionado Don Diego Alejandro Forbes, renuncia las leyes que tratan de contratos, ventas, tratos, y de otras en que hay lesion en mas ó menos de la mitad del justo precio: y queda obligado en que desde ahora, en adelante y para siempre jamas, se apodera, quita y aparta á si y á sus herederos y sucesores, y de quienes de ellos hubiese titulo, voz y causa, del dominio, propiedad, posesion titulo, voz, recursos, y otros cualesquiera derechos que le competan al enunciado terreno llamado el Potrero de Santa Clara y al ganado expresado. Todo lo cual cede, renuncia y traspasa en el comprador y quien le represente para que lo posea, goce, cambie use, enagene y disponga del lo como de cosa suya adquirida con justo y legitimo titulo: y se obliga ademas el otorgante á recabar del Gobierno Mejicano la confirmacion del titulo original. Y a la observancia de todo lo referido, se obliga con todos sus bienes habidos y por haber: y con ellos se sonete á los Sres Jueces y Justicias que de sus causas puedan y deban conocer conforme á derecho para que á su cumplimiento le

le compelan y aprenien como por sentencia definitiva constituda y pasada en cosa juzgada. Que por tal la recibe y renuncia las leyes que en el caso le favorezcan. En cuyo testimonio asi lo otorgó y firmó conmigo y los testigos de que doy fé.

Testigos de asta. Diego Alejd. Forbes
Isaac Bromham James W. Weeks
Guillermo Fisher Alcalde

This foregoing document is recorded in the book of Archives apertaing to the record of Lands in page 128 and 129, giving a true copy from the original of the Lands called the Potrero de Flores the same formerly belonged to Dn. Diego A. Forbes and now actually apertains to Robert F. Stockton.

Given under my hands at my Office of the Pueblo de San Jose this 2d. day of October A.D. 1847.

James W. Weekes
Alcalde

Costs $2. 4 reals.

Filed in Office Jany. 2d. 1853.
Geo: Fisher
Secy.

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B

Translation of the Grant

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Stamp First Eight Dollars

Provisionally authorized 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 (Signed) Micheltorena (Signed) Pablo de la Guerra

Maritime Custom House of Monterey

Manuel Micheltorena General of Brigade of the Mexican Army, Adjutant General of the Staff of the Same, Governor Commandant-General and Inspector of the departments of the Californias.

Whereas Don Diego Forbes a Mexican by Naturalization has for his own personal benefit and that of his family asked for the Land known by the name of "Potrero de Santa Clara" now enclosed by a ditch, (a line of Earth thrown up) except the irrigated lands now used by the Mission of Santa Clara which lie at the North of the Garden, and on condition of leaving for the benefit of said Mission the thousand Varas which have been granted to him in the place called "San Pedro y San Pablo" and also of not impeding the introduction into the Potrero of the tame horses of the said Mission, the proper measures and Examinations having previously been taken as required by the laws and regulations using the faculties conferred on me in the name of the Mexican Nation. I have granted him the aforesaid land under the obligations above expressed and subject to the approbation of the most Excellent Departmental Assembly and to the following Conditions:

1st He cannot sell it, alienate or hypothecate it, impose tax on it, pledge or other incumbrances even for pious purposes nor place it in Mortmain

2d He may enclose it without prejudice to the crossings and servitudes enjoy it freely and Exclusively making such use and cultivation of it as he may see fit but within one year he shall build a house and it shall be inhabited.

3d When the Ownership is consumed he will ask the respective Magistrate to give him juridical possession in

competent
+ grant
^ by whom
⊥ landmarks

virtue of this (despatch) (for which purpose) the boundaries shall be marked out, and in their limits there shall be placed besides the (Monuments) some fruit trees or wild ones of some utility

4th The land hereby granted is little less than one sitio de ganado mayor (One square league) The Magistrate who may give the possession will have it measured conformably to Ordinance leaving the surplus to the nation for its own convenient using

5th If he should contravene these conditions he shall lose his right to the land, and it shall be denounced by another.

Wherefore

In (Consequence) I order that this present being held as Valid, note be taken of it in the corresponding book. Given in Monterey the 29th day of February one thousand Eight hundred and forty four

(Signed) Manuel Micheltorena
(Signed) Manuel Jimeno
Secretary

D
or jurisdiction

In the Pueblo of San Jose Guadalupe in Alta California on the 23rd day of September 1847 before Guillermo Ulcks Justice of the peace of this (Demarcation) and before my assisting witnesses hereinafter named with whom I act in due form, appeared Don Diego Alexander Forbes whom I certify I know and (said) that for himself

who declares

and in the name of his children heirs and successors and of any claiming in any manner title (right) or cause under them, he sells and gives in solemn sale and perpetual alienation to Don Robert F Stockton, citizen of the United States all the right, interest and title which he has to the land known by the name of Potrero of Santa Clara which formerly pertained to the Mission of the same name, the description of which is given in the title of usufruct by the Government of this Department:

present

and said Forbes declares and asserts that he has not sold alienated or pledged said Land and that it is free from any encumbrance perpetual temporary special general tacit or expressed, and as such sells it to him for the price and sum of $10.500 with the the condition

that this sale includes all the neat cattle now existing on said land, and which were raised on it, which aforesaid sum the purchaser has paid and the seller has received to his entire satisfaction he (himself) declares that the just price and true value of said land and the cattle (existing on it) which he now sells, is the aforesaid sum of $10.500 and that it is not worth more and even in case it is or may be worth more of the excess be it great or small he makes a gift to the purchaser and to his heirs and successors and this donation and gift, pure perfect and irrevocable which he makes to him is called in Law intervivos with the judicial intervention and other legal securities: with the condition that said land and cattle shall be delivered to said Don Robert F Stockton or his representatives as the purchaser shall ask them

Also pertaining

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And the said Don Diego Alexander Forbes renounces the laws in regard to contracts sales, exchanges and others in which there is lesion in more or less of the half of the just price, and he (is binding himself) now in future and forever, that he himself will and his heirs and successors and any claiming under them right title or claim, shall give up, dispossess themselves of, retire from the dominion ownership, possession, title (claim voice) recourse and whatever other right belongs to the aforesaid tract called "El Potrero de Santa Clara" and the said cattle. All of which he cedes renounces and transfers to purchaser and his representatives to possess enjoy exchange use alienate and dispose of as a thing (belonging to themselves) acquired by just and legitimate title. And the Vendor also binds himself to procure from the Mexican Government the confirmation of the original title. And for the observance of all the foregoing; he binds himself and all his property which he now has or may acquire and with it he submits himself to the Magistrates and tribunals which in this matter may or ought to take jurisdiction according to Law, that they may compel and oblige him to fulfil the same, as by a definitive sentence consented to and passed of res judicata

having the force

That as such he receives it and renounces the laws in his favour - In testimony of which he thus made and signed with me and the witnesses of which I certify

Assisting Witness (Signed) Diego Alex. Forbes
(Signed) Isaac Branham (Signed) James W Weeks
" Guillermo Fisher Alcalde

The above translation, with the margined & other Emendations made by me are correct

Laurey

Filed in Office Jany 24th 1852
Geo. Fisher Secy

Robert F Stockton
vs
The United States
} Potrero de Santa Clara

Opinion of Com. Thompson

The claimant in this case derives his title by virtue of a Conveyance from James Alexander Forbes dated the 23d day of September 1847. The Original grant was made to said Forbes on the 25th day of February 1844 by Gov. Manuel Micheltorena and describes the land as the "Potrero de Santa Clara" now enclosed by a ditch & line of Earth thrown up, Except the magueya lands now used by the Mission of Santa Clara, which is at the North of the garden. The grant is made on the condition of leaving for the benefit of said Mission the thousand Varas which have been granted here in the place called San Pedro y San Pueblo and also of not impeding the introduction into the Potrero of the tame horses of the said Mission and subject and subject to the approval of the Departmental Assembly There follow the usual Conditions of Occupation Cultivation and juridical possession &c. And in addition the following Numbered No 1 in the enumeration Contained in the grant 1st She can not sell it, alienate hypothecate it impose tax entail pledge or Other encumbrances, non for pious purposes. No part in Mortmain

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The genuineness of the grant and deed of transfer from Forbes to the claimants are duly proven and also that in 1844 Forbes had a house on the Land and a Stock of cattle and Occupied it until the sale to Claimant in 1847 as he seems during all that period to have continued in the undisputed and uninterrupted possession and enjoyment of the Land, we may reasonably infer that the first named Conditions were Complied with and although there is no approval by the Departmental Assembly, or juridical Survey, yet as the boundaries are well defined and proven to Contain less than One leage the case

would be clearly within those equitable rules heretofore settled by the Board, and entitled to confirmation, but for the condition first enumerated in the grant and given above. This condition although not common to all the grants of Land made by the Mexican Authority in California, is found in many of them. It is therefore, proper to consider here very briefly its legal effect & operation. The evident object in the Spanish government ~~in granting lands in~~ her distant Colonies was to secure their permanent settlement and occupation, and with that view the alienation of the lands by the grantees was generally discouraged, and in some cases positively prohibited. For the regulations of Don Felipe de Neve for the granting of lands in California dated June 1st 1779 and approved by the King on the 24th of October 1781 lands to be granted and declared to be ~~inalienable~~ inalienable forever. Neither would the grantee in his hands impose on it either Law entail reversion Mortgage or any other burden even for pious purposes. The regulations and instructions of Morales for conceding lands in Louisiana and West-Florida dated July 17th 1799 provide that those who obtain Lands shall clear and put in cultivation a proportion of the Land within three years during which time he shall not sell or dispose of the land nor after its expiration, without the consent in writing of the intendency, which consent should not be granted unless the conditions had been fulfilled.
The decree of the Spanish Cortes of the 4th of January 1813 seems to have intended an entire new system in relation to the granting of the public domain and to have abrogated all the previously existing laws & regulations on the subject. This law together with the Constitution under which it was framed was annulled by the Decree of Ferdinand 7th of May 4 1814 but the

revolution 1820 which restored the Constitution of 1812 and all laws of the Cortes passed under its Authority again brought it into operation, since which time it has been in force in Mexico, Except so far as it is incompatible with the plan of Iguala, the treaty of Cordova and the Mexican Constitution, or has been repealed by subsequent legislation. That Decree declares all lands which may be hereafter granted shall be granted in full Ownership and property to the grantees and their successors, but with the proviso that they shall not alienate them until the expiration of four years from the date of the grant, nor can subject them to entail, or transfer them in Mortmain

That this law has always been considered as in force in Mexico we have the Authority of Galvan and also of Rodriguez de San Miguel an eminent Delegiuenera Mexican Jurist, both of them include it in their collection of Spanish Laws in force in Mexico: that the former published in 1829 and the latter under the title of "Pandectas Hispano Mexicanas" in 1840 in which he calls attention particularly to the provision that all Lands granted shall be in full Ownership. And it is and it is by virtue of its Authority that all grants of land under the Laws of Mexico have since been considered and held as grants in full property - According to the principles of the Common Law such a Condition in a grant as that now under consideration would be clearly void it being a repugnant Condition and inconsistent with the estate granted. In such a case the absolute would vest in the grantee Notwithstanding the Condition and he might dispose of it as fully as if it had not been inserted in the grant. Bac Ab. Condition. 9 Wheaton 325. Ves. Jr. 324. And the same doctrine though not so distinctly laid down in the Civil Law, is clearly inferrable from those principles, which class is repugnant

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condition with those which are impossible and therefore null. Assuming then that such a condition in the abstract would be absolutely void and of no effect. The Governor would have no authority to insert it in the grant unless that authority was expressly conferred by the Law - And to this point we will now direct the inquiry The whole power of the Governor of California to grant lands is derived from the Mexican Colonization Law of the 18th August 1824 and the Executive regulations of the 21st of November 1828. And the power to impose such a restriction if it exist at all must be derived from them or from the Law of the Spanish Cortes of the 4th of January 1813 before referred to and we have already seen that the latter limits the restriction to the term of four years, neither of the two first mentioned acts confer on the governor any such authority, the only direct restriction which they impose is that contained in the 13th section of the Law of the 18 August 1821 which prohibits the transfer of the premises in mortmain.

"This limitation as we have seen is contained in the Law of the Spanish Cortes of the 4th January 1813 from which it seems to have been incorporated into the Mexican Colonization Law of 1824 that law having adopted or retained this restriction and entirely omitted the other in relation to the right of alienation contained in the same section, it is fair to conclude reasoning from inferentially that it was not the intention of the law to impose the latter at all. The restriction concerning entails had already been provided for by the Law of the Mexican Congress of the 7th of August 1823 which reaffirms the Law of the Spanish Cortes of the 27th of September 1820 abolishing all kinds of entails and declares that all Mayorazgos Fideicomisos or other

heirs of entails shall be free property, and no one shall be permitted in future to entail either such or any other heirs of property. Escriche in his Law Dictionary edition of 1851 page 610 after giving a summary of the old Spanish laws on prohibitions against alienations, concludes as follows." But now no entail can be established on any class of property or rights, nor can their alienation be prohibited either directly or indirectly - From the above brief view of the Mexican Laws on this point it appears very clear that the government had no authority to impose the restriction now under consideration prohibiting perpetually the alienation of the land granted and that the condition of the grant before quoted is therefore a nullity. A question however might arise whether a temporary restriction on the right to alienate may not exist by implication growing out of the conditions on which the grant was made - From the resume of the Spanish Laws and regulations on this point contained in a former part of this Opinion it is very evident that the principal object of the restrictions which they impose on the power to alienate was to insure the settlement occupation and cultivation of the lands by the grantees and the Mexican Laws for the granting of lands seem clearly to be framed with a view to the accomplishment of the same and the first article of the regulations of 1828 makes the object and purpose of the grant to be the occupation or cultivation of the land and imposes on the grantee an implied obligation to carry out that object as the condition on which the grant was made and the consideration which he is to render for it, In case therefore of an imperfect or inchoate title until such conditions are performed, his rights under the grant must be considered to a certain extent incomplete and consequently to be defeated

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by denouncement, and transferred to another. It might therefore well be questioned whether a conveyance made prior to such performance would in strict law have any validity or if it had whether the alienee would not take the estate subject to all the objections which might exist to the claim of the Original grantee it is not however necessary to consider those questions here - It was obviously the intention of the Mexican Colonization laws that all grants made under them should be in full property and that whenever the grantee has perfected his right by substantial compliance with the conditions imposed by the laws he became the absolute Owner of the fee and might dispose of it in any manner he thought proper - This view of the subject of the subject of the is fully sustained by what appears to have been the usage and Customs of the Country in relation to it - In a few cases where this restriction deems the parties have applied to the Government to be released from it, and the applications seem to have been readily acceded to, but most generally alienations have been made without regard to the restrictions and such alienations have been respected by the Authorities and the aliences under them have continued in the unmolested enjoyment and possession of the premises conveyed nor does it appear that any forfeitures were ever attempted to be enforced in consequence of them. In this case it appears that the Original grantee Forbes entered on the Land immediately after he obtained the grant, that he had on it a house and a large stock of cattle, that he was in continued occupation ~~occupation~~ from that time until the Mexican Authority in the Country ceased to exist - For far more than a year after the American occupation commenced - This consideration such a compliance with the conditions of the grant

as would have made his claim so far as this question is concerned a valid one against the Mexican Government, and would under Laws have had the effect to invest him with the full property in the same
That the right so vested could not be divested or impaired by the subsequent sale to the present claimant who under the deed of conveyance succeeds to all the right and interest which the original grantee had in the premises –
The claim is therefore confirmed

Filed in Office Nov. 15 1853
Geo. Fisher Secy

Case No.

Robert F Stockton
vs
The United States } For the place called Potrero de Santa Clara

In this case on hearing the proofs and allegations, it is adjudged by the Commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed. The land of which a more full information is made is known by the name of Potrero de Santa Clara by the being the same which has been held and occupied by the Claimant since the year 1847 and is bounded to the Eastward by the River Guadalupe to the Northward West Ward and Southward by a ditch or line of Earth thrown up excluding therefrom the irrigated lands which at the date of the Original grant to wit on the 29th of February 1844 were used by the Mexicans of Santa Clara lying at the North of the garden as described in said grant to which reference may be had for a more particular description, and containing a little less than one League

Alpheus Felch
Thompson Campbell
R. Aug. Thompson

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Office of the Board of Commissioners,

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

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Twenty-three pages, numbered from 1 to 23, 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. 8 on the Docket of the said Board, wherein Robert F. Stockton is

the Claimant against the United States, for the place known by the name of "Potrero de Santa Clara".

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

77 ND

U. S. DISTRICT COURT,

Northern District of California.

No. 77—

THE UNITED STATES,

vs.

Robert F. Stockton

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 8,

Filed, August 23 1854

John A. Monroe.

Clk.

Office of the Attorney General of the United States,

Washington, 26th October 1854.

Robert F. Stockton -
vs.
The United States

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 26th day of July 1854 the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

Cushing

Attorney General.

U S Dist Court
N D California

~~Robert F~~
The United States
v
Robert F Stockton
No 77 one

Appeal notice

Filed Dec. 2d 1854
Jno A Morrow
Cl

No. 77.

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

The United States Appellant vs. Robert F. Stockton Appellee	Potrero of Santa Clara - 1 League Santa Clara County.

The Answer of Robert F. Stockton the Appellee, to the petition filed by the United States District Attorney for the aforesaid District in behalf of the United States, respectfully shows to this Honorable Court:

That the title issued by Manuel Micheltorena, Governor of California, on the 9th day of February A.D. 1844. to James Alexander Forbes, and by said Forbes transferred to this claimant, for the tract of land, called the Potrero of Santa Clara, as more particularly described in his petition filed before the Board of Land Commissioners on the 24th of January 1852. is a good and valid Title; and the claimant prays this Honorable Court to affirm the decision of the Board of Commissioners and to decree the title of the claimant to be valid

Halleck Peachy & Billings
Attys for appellee

No. 77

United States Dist. Court
Northern Dist. of California.

The United States
Appellant.

vs.

R. F. Stockton
Appellee.

Answers of Appellee.

two

Filed Aug. 10th 55
J. A. Morrow
Clk

Halleck, Peachy & Billings
Attorneys for Appellees.

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

The United States
Appellants
vs
R. F. Stockton
} 77.

The Petition of the United States by their Atty represents: that this cause is an application for a review of the decision of the Board of Commissioners whereby the Claim of the said Appellee was confirmed as appears by reference to the records in the Case: That a transcript of the said Records was filed in this Court on the 1st day of Jany. 1855: that a notice of Appeal was filed on the 1st day of Jany. 1855 and that the land claimed lies in the said District.

That the said claim is invalid. Wherefore Appellants pray that the said decision of the Board be reversed & that this Court decree the said title to be invalid. Respectfully &c

A. G. Glassell
Asst U.S. Atty

No 77

U.S. Dist. Court

The U. States
vs.
R. F. Stockton
Petition

True

Filed August 10, 1875,
by Chevers
Deputy.

77 ND
PAGE 31

Glassell

No 77

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

The United States, appellants
vs.
Robert F. Stockton, appellee

Claim for "El Potrero de Santa Clara". Transcript from Board of Coms No 8.

Stated Term October 29th 1855

On appeal from the final decision of the Board of Commissioners to ascertain and settle Private Land Claims in the State of California.

Decree

This cause came on to be heard at a Stated Term of the court on appeal from the final decision of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California under an Act of Congress approved on the 3d of March AD 1851, upon the Transcript of the proceedings and decision of the said Board of Commissioners and the papers and evidence upon which the said decision was founded; and it appearing to the court that the said Transcript has been duly filed according to law, and Counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged and decreed, that the said decision be, and the same is, hereby in all things affirmed; and it is likewise further ordered, adjudged and decreed that the claim of the appellee is a good and valid claim, and that the said claim be, and the same is, hereby confirmed

to the extent and quantity of one square league, being the same land described in the grant, and of which the possession was proved to have been long enjoyed; Provided that the said quantity of one square league now confirmed to the claimants be contained within the boundaries called for in the said grant and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimant that less quantity.

Ogden Hoffman Acc'd
M. C. Dick Judge

No 77

United States Dist Court
Northern Dist. of Cala.

The United States, appellants
vs.
R. J. Stockton, appellee

Decree.

5

Oct 29/55

Filed Oct: 29. 1855.
W. H. Chenery,
Deputy.

77 ND
PAGE 35

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Tuesday the 28th day of July in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States, appellants v Robert F. Stockton, appellee	D.C. 77 : L.C. 8.

In this case on the application of the U. S. Attorney, made in open Court, it is ordered by the Court that an appeal in behalf of the United States from the final decision of this Court rendered in said cause at the June term, 1855, 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.

77

United States District Court, Northern District of California.

The United States appellants

vs.

Robt F. Stockton appellee

ORDER.

granting appeal

Filed July 28th 1857

John A. Monroe, Clerk.

By W. H. Chevers Deputy.

Dix

77 ND

PAGE 36

77 ND
PAGE 37

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

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v.
Robert F. Stockton.

D. C. No. 77: L. C. No. 8.

In this case, on application of P. Della Torre, Esq. U. S. Attorney, it is ordered that an appeal in behalf of the United States from the final decision of the Court rendered in said Court at the June 1855 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; and the appellants are ordered to serve the usual citation according to law.

Ogden Hoffman
Dist Judge

77

United States District Court, Northern District of California.

The United States

vs.

Robt. F. Stockton

ORDER.

granting appeal

Filed July 1st 1858.

W. H. Chevers

Clerk.

By

Deputy.

77 ND

PAGE 38

United States of America,

To Robert F. Stockton,

Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to an order of appeal granted on the thirtieth day of June, A.D. 1858, in open Court, by the District Judge of the District Court of the United States for the Northern District of California in a certain suit wherein The United States are plaintiffs and you are defendant on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at San Francisco, this thirtieth day of June in the year of our Lord one thousand eight hundred and fifty eight.

Ogden Hoffman
Dist Judge

77

U. S. District Court.

The United States

v.

Robt R. Stockton.

Citation

Due service of copy within admitted this 2 day of July 1858.

Hallett Pewley & Billings

Filed July 2, 1858.

W. H. Chevers
Clerk

77 ND
PAGE 41

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 17th day of November in the year of our Lord one thousand eight hundred and ~~fifty~~ eighty.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v.
Robert F. Stockton
} No. 77; L. C. 8.

And now comes the claimant herein, Robert F. Stockton, by his attorneys Halleck, Peachy and Billings, and ask for leave to file the Mandate of the Supreme Court of the United States herein: Whereupon It is Ordered, the U. S. attorney being present and consenting thereto, that the claimant herein have leave to file the said Mandate and to proceed under the decree of this Court heretofore rendered in his favor as under final decree.

Ogden Hoffman
Dist Judge

No 77. L.C. 8.

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States Appellants

vs.

Robt F. Stockton Appellee

Order to file Mandate Sup: Court.

Filed November 17, 1860,

W. H. Chevers,

CLERK.

By

DEPUTY.

77 ND

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

77 ND
PAGE 43

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 the United States, appellants and Robert F. Stockton, appellee - /No. 77/ - wherein the decree was rendered in favor of the said appelle -

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.

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

(12th Dec.

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 nine.

~~COSTS OF~~

~~Clerk~~.....$

~~Attorney~~....$

$

~~Taxed by~~

Wm. D. Carroll

Clerk of the Supreme Court of the United States.

No. 73 December Term, 1859.

MANDATE

SUPREME COURT UNITED STATES.

U. Scott vs Stockton

Filed Nov. 15, 1860.

W. A. Crawford, Clerk.

77 ND
PAGE 46

Robert F. Stockton
vs
The United States } Potrero de Santa Clara.

The Claimant in this case derives his title by virtue of a conveyance from James Alexander Forbes dated the 23rd day of September 1847. The original grant was made to Forbes on the 25th day of February 1844 by Gov. Manuel Micheltorena and describes the land as the "Potrero de Santa Clara" now enclosed by a ditch or line of earth thrown up, except the irrigated lands now used by the Mission of Santa Clara, which "lie" is at the north of the garden. The grant is made on the condition of leaving for the benefit of the said Mission the thousand varas which have been granted him in the place called San Pedro y San Pueblo and also of not impeding the introduction into the Potrero of the tame horses of the said Mission and subject to the approval of the Departmental Assembly. Then follow the usual conditions of occupation, cultivation and juridical possession, &c. And in addition the following, numbered No 1 in the enumeration contained in the grant. 1st He can not sell it, alienate, hypothecate it, impose tax entail pledge or other encumbrances even for pious purposes, nor pass it in mortmain.

The genuineness of the grant and deed of transfer from Forbes to the Claimant are duly proven and also that in 1844 Forbes had a house on the land and a stock of cattle, and occupied it until the sale to Claimant in 1847. As he seems during all that period to have continued in the undisturbed and uninterrupted possession and enjoyment of the land, we may reasonably infer that the first named conditions were complied with, and although there is no approval by the Departmental Assembly, or judicial survey, yet as the boundaries are well defined, are proved to contain less than one league, the case would be clearly within those equitable rules heretofore settled by the Board and entitled to confirmation but for the condition first enumerated in the grant and quoted above. This condition although not common to all the grants of land made by the Mexican authority in California, is found in many of them. It is therefore proper to consider here very briefly its legal effects and operation. The evident object in the Spanish government in granting lands in her distant colonies was to secure their permanent settlement and occupation, and with that view the alienation of the lands by the grantees was generally discouraged and in some cases positively prohibited. In the regulations of Don Felipe de Neve for the granting of lands in

California dated June 1st 1779 and approved by the King on the 24th of October 1781, to be granted and declared to be inalienable, and inalienable for ever. Neither would the grantee or his heirs impose on it either tax entail, reversion, mortgage or any other burden even for pious purposes. The regulations and instructions of Morales for conceding lands in Louisiana and West Florida, dated July 17, 1799 provide that those who obtain lands shall clear and put in cultivation a proportion of the land within three years, during which time he shall not sell or dispose of the land, nor after its expiration without the consent in writing of intendancy, which consent should not be granted unless the conditions had been fulfilled. The Decree of the Spanish Cortes of the 4th of January 1813 seems to have intended an entire new system in relation to the granting of the public domain and to have abrogated all the previously existing laws and regulations on the subject. This law together with the constitution under which it was framed was annulled by the Decree of Ferdinand 7th of May 1814, but the revolution 1820 which restored the Constitution of 1812 and all laws of the Cortes passed under its authority again brought it into operation, since which time it has been in force in Mexico except so far as it is incompatible with the plan of Iguala, the

Treaty of Cordova and the Mexican Constitution, or had been repealed by subsequent legislation. That Decree declared all lands which may be hereafter granted shall be granted in full ownership and property to the grantees and their successors, but with this proviso that they shall not alienate them until the expiration of four years from the date of the grant, nor lay subject them to entail, or transfer them in mortmain.

That this law has always been considered as in force in Mexico we have the authority of Galvan and also of Rodriguez de San Miguel, an eminent and enlightened Mexican jurist, both of whom include it in their collection of Spanish laws in force in Mexico; that the former published in 1829 and the latter under the title of "Pandectas Hispano Mexicanas" in 1840, in which he calls attention particularly to the provision that all lands granted shall be in full ownership. And it is by virtue of its authority that all grants of lands under the laws of Mexico have since been considered and held as grants in full property. According to the principles of the Common Law such a condition in a grant as that now under consideration would be clearly a nullity, it being a repugnant condition and inconsistent with the estate granted. In such a case the absolute (estate) would rest in the grantee notwithstanding the

condition and he might dispose of it as freely as if it had not been inserted in the grant. Bac. ab. Conditions of Wheaton 325 Vin. Ab. 324 And the same doctrine though not so distinctly laid down in the Civil Law, is clearly inferable from those principles which class repugnant conditions with those which are impossible and therefore null. Assuming then that such a condition in the abstract would be absolutely void and of no effect, the Governor would have no authority to insert it in the grant unless that authority was expressly conferred by the Law, and to this point we will now direct the inquiry.

The whole power of the Governor of California to grant lands is derived from the Mexican Colonization Law of the ~~[illegible]~~ 18th of August 1824 and the Executive Regulations of the 21st of November 1828, and the power to impose such a restriction, if it exists at all, must be derived from them or from the Law of the Spanish Cortes of the 4th of January 1813 before referred to, and we have already seen that the latter limits the restriction to the term of four years. Neither of the two first-mentioned acts confer on the Governor any such authority; the only direct restriction which they impose is that contained in the 13th section of the Law of the 18th of August 1821 which prohibits the transfer of the premises in mortmain.

This limitation, as we have also seen, is

contained in the Law of the Spanish Cortes of the 4th of January 1813 from which it seems to have been incorporated into the Mexican Colonization Law of 1824, that law having adopted or retained this restriction and entirely omitted the other in relation to the right of alienation contained in the same section, it is fair to conclude, reasoning inferentially, that it was not the intention of the law to impose the latter at all. The restriction concerning entails had already been provided for by the Law of the Mexican Congress of the 7th of August 1823 which reaffirms the Law of the Spanish Cortes of the 27th of September 1820 abolishing all kinds of entails and declares that all ? p19 foot are and other kinds of entails shall be free property, and no one shall be permitted in future to entail either such or any other kind of property. Escriche in his Law Dictionary, Edition of 1857 p 610, after giving a summary of the old Spanish laws on prohibitions against alienating concludes as follows: "But now no entail can be established on any class of property or rights, nor can their alienation be prohibited either directly or indirectly." From the above brief view of the Mexican Law on this point, it appears very clear that the Governor had no authority to impose the restriction now under consideration, prohibiting perpetually the alienation

of the land granted, and that the condition of the grant before quoted is therefore a nullity. A question however might arise whether a temporary restriction on the right to alienate may not exist by implication growing out of the conditions on which the grant was made.

From the resumé of Spanish Laws and Regulations on this point contained in a former part of this Opinion it is very evident that the principal objection of the restrictions which they impose on the grantee to alienate was to ensure the settlement occupation and cultivation of the lands by the grantee, and the Mexican Laws for the granting of Lands seem clearly to be framed with a view to the accomplishment of the same, and the first article of the Regulations of 1828 makes the object and purpose of the grant to be the occupation or cultivation of the land, and imposes on the grantee an implied obligation to carry out that object as the condition on which the grant was made and the consideration which he is to render for it. In case therefore of an imperfect or inchoate title, until such conditions are performed, his rights under the grant must be considered to a certain extent incomplete and even liable to be defeated by denouncement and transferred to another. It might therefore well be questioned whether a conveyance made prior to such performance would in strict law

have any validity, or if it had whether the alienee would not take the estate subject to all the objections which might exist to the claim of the original grantee. It is not however necessary to consider these questions here. It was obviously the intention of the Mexican Colonization Laws that all grants made under them should be in full property, and that whenever the grantee has perfected his right by substantial compliance with the conditions imposed by the laws he became the absolute owner of the fee and might dispose of it in any manner he thought proper. This view of the subject is fully sustained by what appears to have been the usage and custom of the country in relation to it. In some cases where this restriction occurs the parties have applied to the Governor to be relieved from it and the applications seem to have been readily acceded to; but most generally alienations have been made without regard to the restrictions and such alienations have been respected by the authorities and the alienees under them have continued in the unmolested enjoyment and possession of the premises conveyed, nor does it appear that any forfeitures were ever attempted to be enforced in consequence of them. In this case it appears that the original grantee Forbes entered on the land immediately after he obtained the grant, that he had on it a house

and a large stock of cattle, that he was in continued occupation from that time until the Mexican authority in this country ceased to exist, for more than a year after the American occupation commenced. This is considered such a compliance with the conditions of the grants as would have made his claim so far as this question is concerned a valid one against the Mexican government, and would under Laws have had the effect to invest him with the full property in the same. That the right so vested could not be divested or impaired by the subsequent sale to the present claimant who under the deed of conveyance succeeds to all the right and interest which the original grantee held in the premises.

The claim is therefore confirmed.

77 ND

Slocteler

v

N. S

opinion of
Board

77 ND
PAGE 57

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

San Francisco, August 23. 1854

John H. Moore Esq.
Clerk of the U. S. District Court for the
Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 8 on the Docket of the said Board, wherein

Robert F. Stockton is

the Claimant against the United States, for the place known by the name of Potrero de Santa Clara

~~and request your receipt for the same.~~

I am, Respectfully,
Your Ob't Servant,

Geo. Fisher.

3

The United States
appellant
vs
Robert F. Stockton
appellee

On the 29th day of February 1844 a grant was issued by Gov. Micheltorena to one Diego Forbes who on the 23rd day of September 1847 conveyed the granted premises to the appellee. There is no dispute about the documentary title, and the parol testimony ascertains the occupancy of the premises by grantee who he declared as Diego Alexander Forbes, the erection of a house upon it, and the placing on it a considerable stock of cattle, ~~which~~ said grantee who continued to occupy it until his sale to appellee who by his agents from that time ~~continued~~ to the present continued to cultivate it. That the whole tract has been fenced in. That this fence was completed in 1852, that previous to the erection of this enclosure, there had been a ditch around the land, that there are about eighteen hundred acres of the land under

cultivation, the whole tract containing nineteen hundred acres. There was no approval by the departmental assembly, no judicial survey of the land; but the land is described specifically in the grant, & as thus described been in the possession of the grantee and ~~those~~ the appellee claiming under him since 1847, no objection can exist as to ~~this~~ his validity. The only objections which are urged arise out of the conditions annexed to the grant, against alienation by the grantee Number Not.

The legal effect of this condition is so elaborately, and the Court must say, ably considered by the Commissioner who delivered the opinion of the Board, that there can be no necessity to travel through the investigation again. The opinion concludes as follows; "In this case it appears that the original grantee, Forbes, entered on the land immediately after he obtained the grant, that he had on it a house, & a large stock

of cattle, that he was in continued occupation & ~~x~~ from that time until the Mexican authority in the County ceased to exist. For more than a year after the American occupation commenced. This is conclusive such a compliance with the conditions of the Grant as would have made his claim so far as this question is concerned valid as against the Mexican Government and ~~under~~ under the laws would have had the effect to invest him with the free property in the land. That the right so vested could not be divested or impaired by the subsequent Rule to the present claimant who under the Treaty succeeds to all the right and interest which the original grantee held in the premises"

In this conclusion the Court concurs. A decree must therefore be entered affirming the decision of the Court in favor of the validity of this claim.

No 77. 4

Oficio