

CASE NO.

88

NORTHERN DISTRICT

SAN GREGORIA GRANT

ENCARNACION BUELNA

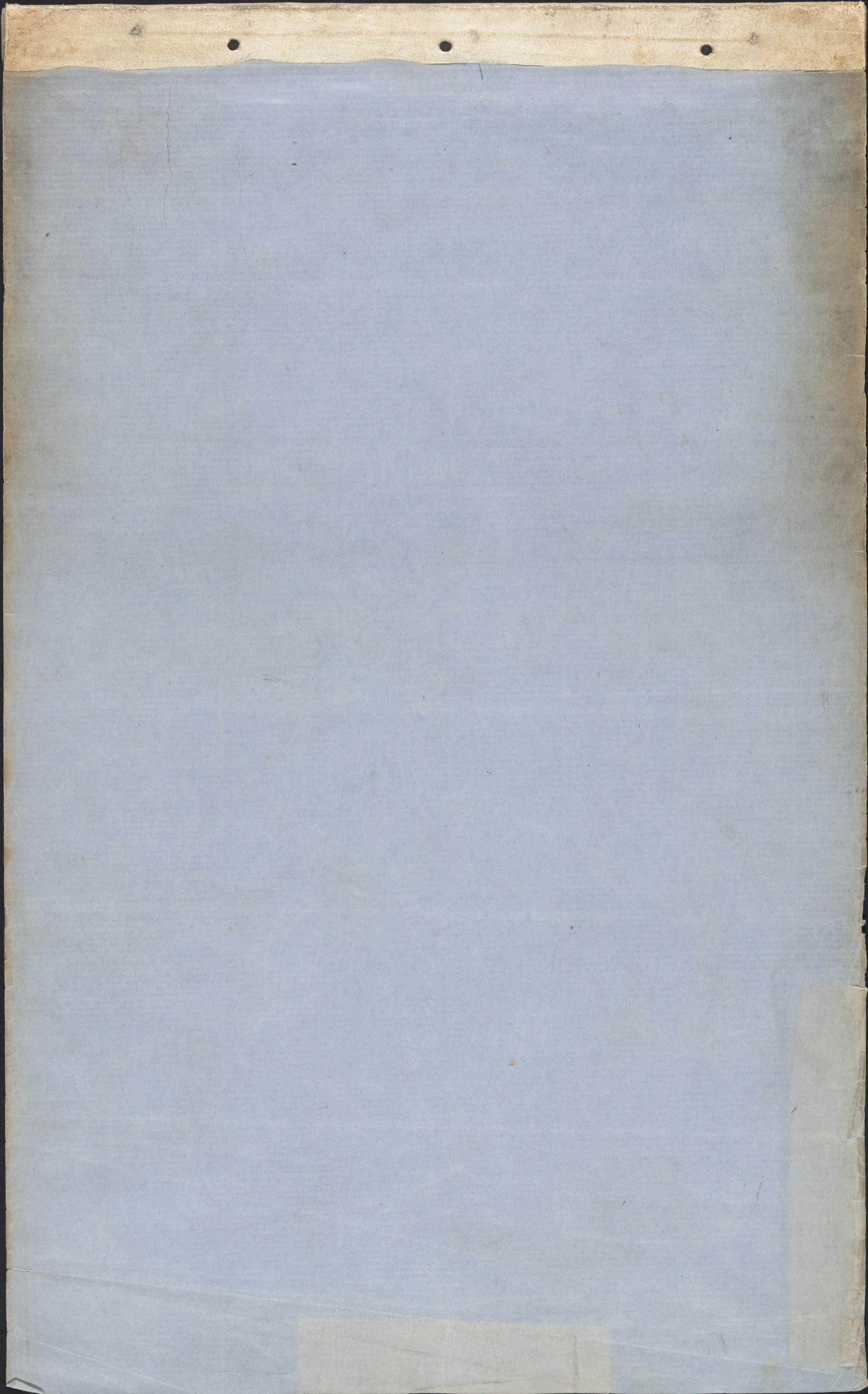
CLAIMANT

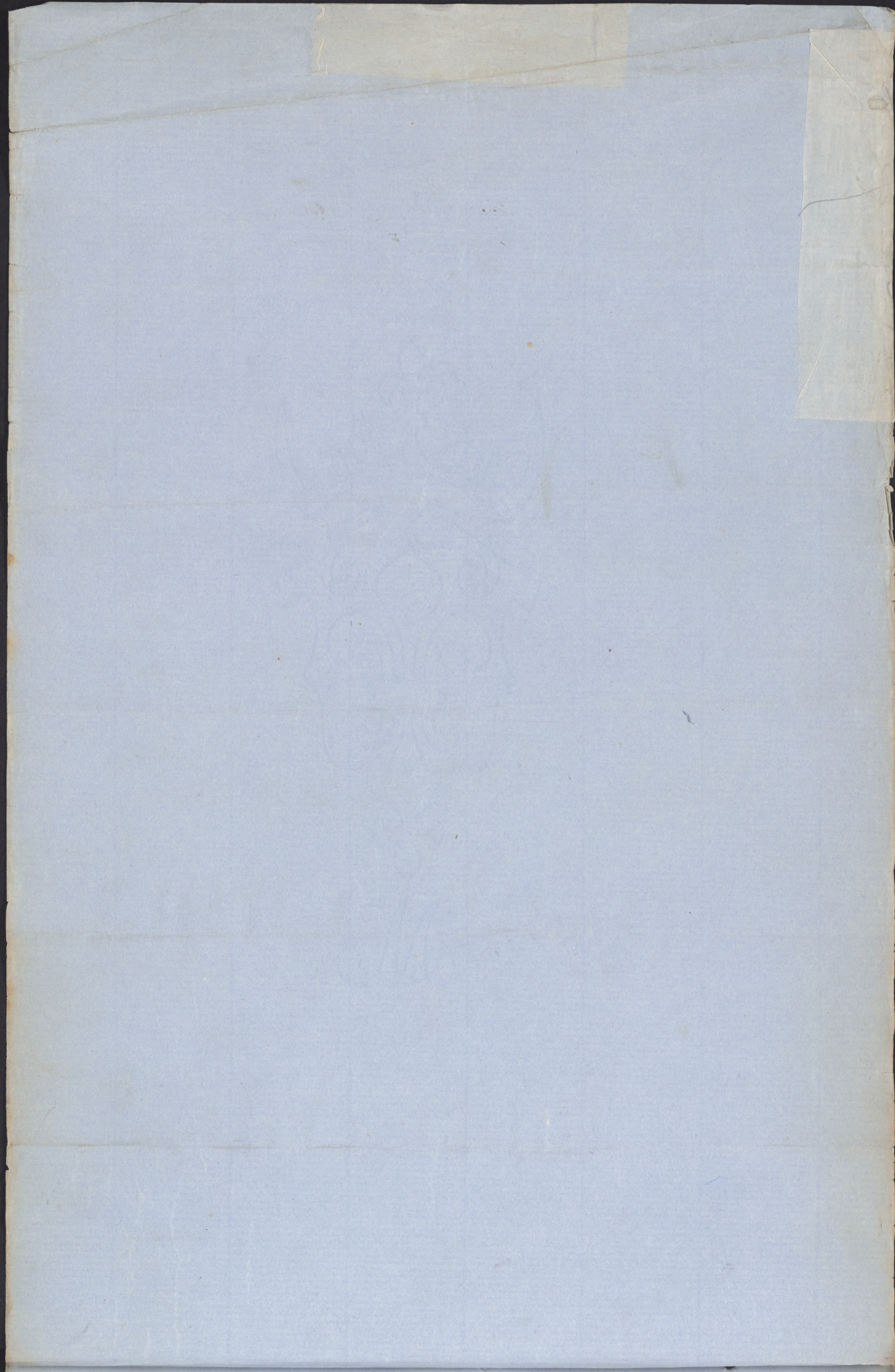
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Land Case # 88
Northern District
San Gregoria Grant

ALSO AVAILABLE ON MICROFILM





TRANSCRIPT
OF THE
PROCEEDINGS

IN CASE

NO. 542

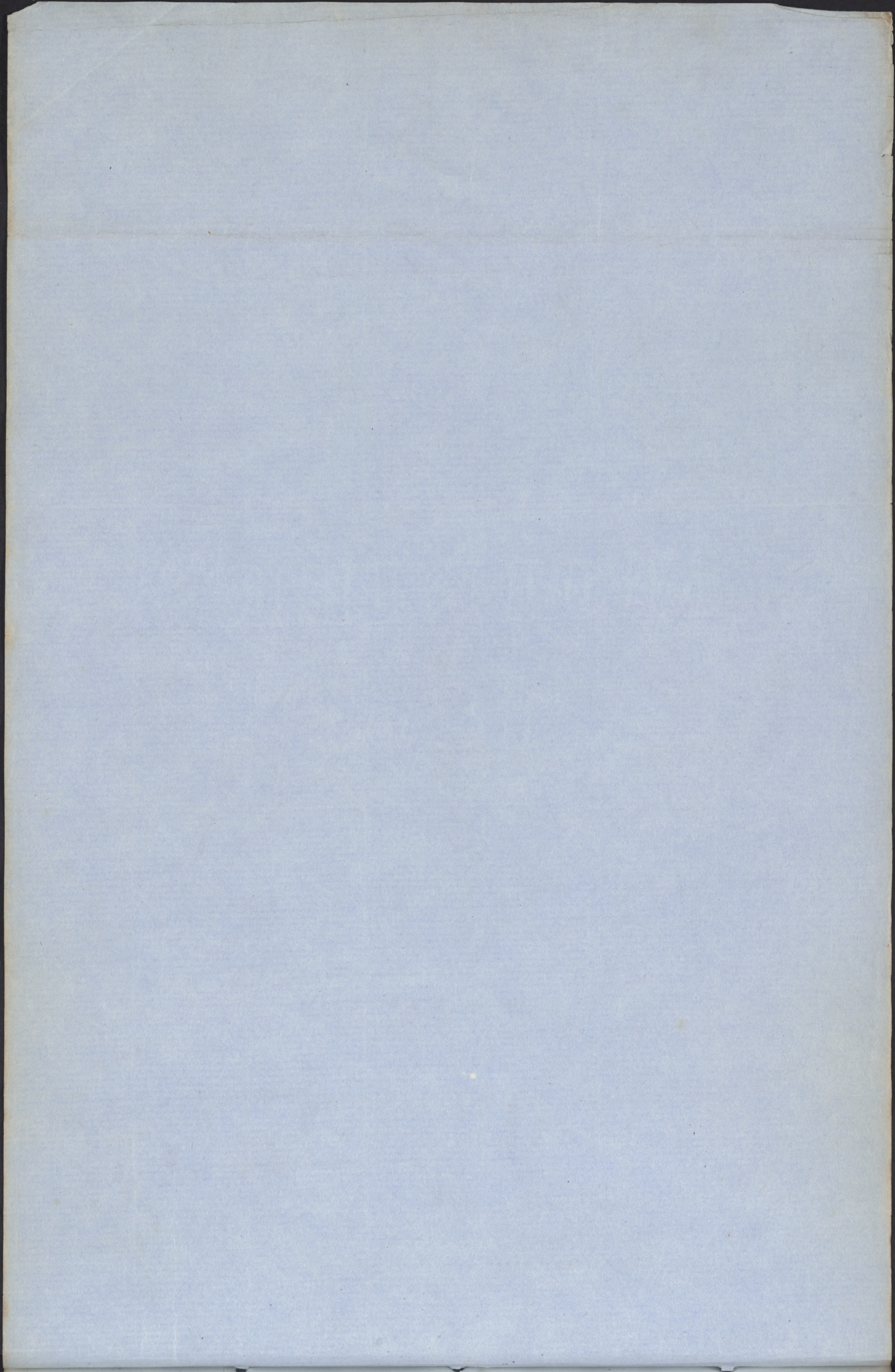
Encarnacion Buena CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

San Gregoria



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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Be it Remembered, that on this first day of February, Anno Domini One Thousand Eight Hundred and Fifty-Three, 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 Encarnacion Buena
for the Place named
San Gregoria
was presented, and ordered to be filed and docketed with No. 542 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 February 1st 1852
In Case No. 542 Encarnacion Buena for the place named "San Gregoria" the deposition of William A. Richardson, a witness in behalf of the Claimant taken before Commissioner Richard Hall with occurrence marked N. H. No. 1, was filed;

(Vide page 3 of the Transcript)

San Francisco March 30th 1853
In the same case the deposition of William Castro, a witness in behalf of the Claimant, taken before Commissioner Harry J. Spooner was filed;

(Vide page 6 of the Transcript)

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San Francisco Sept. 16th 1853.

Case No. 542 called: Submitted on Briefs
on both sides and taken under advisement.

San Francisco December 27th 1853

In the same case Commissioner Thompson
Campbell delivered the opinion of the Board
respecting the claim.

(See page 9 of this Transcript)

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To the U. S. Land Commission for the
ascertaining and settling of Private Land Claims
in California.

Petition

The Petition of Encarnacion Buelna, the
widow of Don Antonio Buelna, deceased, now
married to Olinio Rodrigues, and of the others
heirs of said Buelna respectfully sheweth
unto your Honorable Body, that she is the
claimant of three Spanish square leagues
of land on the tract of land known as
"Rancho de San Gregorio" and heretofore granted
to said Antonio Buelna, deceased and for
further explanation alleges:

That said Antonio Buelna on the 2nd
of March A. D. 1833 made and presented
his petition in writing to the Government
of California, soliciting for himself the
grant of a tract of land hereinafter des-
cribed, and that such petition was referred
to the prefect of the first District and
to the administration of Santa Cruz to
report to said Government about the
practicability of such grant.

That Jose Castro, Prefect of said
District as well as Francisco Soto,
Administrator of Santa Cruz, reported
in favor of said petitioners, and that
alvarado then and there as Constitutional
Governor of California on the 16th of April
1839 declared said Buelna the lawful
owner of said tract of land and directed
the proper documents, constituting
title to be executed.

That a formal grant issued on 2nd
May 1839, and was approved by the

Departmental Assembly on the 26th day of the same month.

And your Petitioners further states, that the original petitions of said Buelna, the referances, reports, a copy of the original grant and map are on file among the Archives of California, now in possession of the U.S. Surveyor General for the State of California, and that certified copies and translations of the same are filed with the petition of Simeon Castro for a part of said Land, and marked among the Cases arows before Your Honorable Body as N^o. 358,

That the original grant is in the hands of Your Petitioners and ready to be exhibited in evidence whenever required

And your petitioners further states, that the Land so granted is situate in the present County of Santa Cruz, known as the Rancho Ude San Gregorio and that the same is bounded as follows:

West by the Arroyo de las Lobitos,

North by the Sierra Grande;

East by the lands of Brian Gonzalez,

South by the Pacific Ocean,

containing four square leagues more or less.

And your petitioners further saith, that said Buelna from the time of obtaining such grant always during his life time had and exercised full and undisputed ownership over said Land;

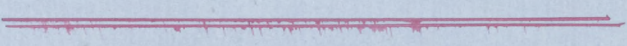
That said Buelna died during the month of, 1845, and that your petitioner as widow of the same, now claims

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To be the lawful owner of said Rancho and
pray that Your Honorable Body, would
confirm her claim and title thereto,
Clark Taylor & Beckh.

Filed in Office July 1st 1883,
Geo. Fishers Sec.



San Francisco July 1st 1883.

Deposition
of Wm. A.
Richardson

On this day before Court, Wiland Keall
came Wm. A. Richardson, a witness on
behalf of the Claimant - Encarnacion Buelna,
Petition No. 542, and was duly sworn,
his evidence being interpreted by
the Secretary.

The U.S. Associate Land Agent was
present.

Question. What's your name, age,
and place of residence?

Answers. My name is Wm. A. Richardson
my age, 56 years, my residence the rancho
de Sancilito, Marin County.

Question. Look at the document -
shown you, marked H. H. No. 1, and
annexed to your deposition, purporting
to be the original grant, given by Juan
B. Alvarado to Antonio Buelna on
the 3rd day of May 1839, of a tract of
land called the "San Gregorio".

State what you know about the
genuineness of the signatures attached to

it.

Answer. The grant shown me, appears to be genuine. I know the signature of Juan B. Alvarado, and that of Manuel Jimeno, having often seen them write, I believe the signatures of said Alvarado and M. Jimeno, attached to said grant to be genuine.

William A. Richardson
Sworn & Subscribed

Before me
Melan Heall Comr.

Service acknowledged
Asst. Land Agent R. Greenhow.

Filed in Office Feb 1st 1853,
Geo. Fisher
See

Deposition of
Manuel Castro

San Francisco March 30th 1853,
On this day before Comr. Henry D. Thornton I came Manuel Castro a witness on behalf of the Claimant Encarnacion Buelna, Petition N^o. 542, and was duly sworn, his evidence being interpreted by the Secretary.

Questions by Claimant

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

Ans^r. My name is Manuel Castro my age is thirty one, I reside at this time in Upper California.

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Quest. 2nd Are you acquainted with the place called San Gregorio, claimed in this case, and if yes, state what you know of its occupation.

Ans. I am acquainted with this place and since the year 1840 it has been in the possession of the claimant who had a house on it, and cultivated a portion of it.

Of this land Salvador Castro occupies a part, and the widow of the grantee the remainder.

Manl. Castro

W. S. Land Agent present
sworn to and subscribed

Before me this 30th March 1853
Henry D. Thornton
Com^r.

Filed in Office March 30th 1853

Geo. Fisher
Sec

"A"
Translation
of Grant.

Enano B. Alvarado, Governor ad interim
of the Californias.

Whereas Don Antonio Buelna has solicited for his personal benefit and that of his family the extent of four square leagues, sitios de ganado mayor, a little more or less, as the plan attached to the respective Expediente will show, said place situate on the coast of the settlement of Santa Cruz towards the North; having previously taken the necessary steps and investigations

concerning it, according to the laws and regulations, using the power vested in me and in conformity with the law of the 18th of August, 1824, ^{and the Regulations of 21st of January 1828} I hereby grant to him in the name of the Mexican Nation the land mentioned, declaring it his property by these present letters, subject to the Approval or disapproval of the most Excellent Departmental Assembly and under the following conditions.

1st He shall be at liberty to fence it, without prejudice to the paths, roads and servitudes; he shall enjoy it freely and exclusively, destining it to the use or cultivation which may suit him best; but within the space of one year he shall build a house, which shall be inhabited.

2nd He shall solicit of the respective judge to give him juridical possession thereof, in virtue of this decree, by which the boundaries shall be marked, in whose limits he shall place as land marks some fruit trees or wild ones of some utility.

3rd The land of which mention is made is of four square leagues, "sitios de ganado mayor" a little more or less, as the plan attached to the Expediente explains. The judge who will give possession thereof will have it measured according to ordinance; keeping the surplus which may result, for the nation for its convenient use.

4th If he contravene to these conditions,

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he shall lose his right to the land and it shall be denounceable by another.

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In consequence I order this to be held as firm and valid, that this title shall be recorded in the corresponding Book, and be delivered to the interested party for his safety and other ends,

Given in Monterey upper California, on the second of May, eighteen hundred and thirty nine.

This was written upon common paper for want of a corresponding stamp.

(Signed) Juan B. Alvarado
(Signed) Manuel Jimenez
Secretary of State

Filed in Office July 10th 1853.
Gen. Fisher
Sec

Encarnacion Buelna
Widow of Antonio Buelna
deceased and the other heirs
of the said Antonio
as
The United States

Opinion by
Commissioner
Thompson Camp.
Bell

The petitioners in this case represents that she is the widow of Antonio Buelna who was the original grantee of the piece called "Rancho de San Esregorio" that in connection with the other heirs of her said husband, she claims a confirmation of title to said

place. This is further represented by the said petitioner that, the said Antonio in his lifetime, to wit; on the 2nd day of May 1839, obtained from Governor Alvarado a grant for said tract of land, and that on the 26th day of the same month, the same was duly approved by the Departmental Assembly. And the petitioner also represents that the original grant is in her hands and ready to be exhibited in evidence whenever required.

In support of the foregoing allegations and averments the petitioner has produced and placed on file as evidence in her cause. 1st The original grant made to Antonio Buelna, which is satisfactorily proved to be genuine; 2nd A copy of the traced copy filed in the case of Salvador Castro N^o 388 and 3rd the depositions of Mr. A. Richardson and Manuel Castro.

There is no proof adduced that any judicial measurement was ever made, or that any judicial possession was ever given.

The first question which is presented in the investigation of this case is, the right of the claimant to a confirmation as the wife or heir of the original grantee, Antonio Buelna deceased. The right of the petitioner is set out in the petition in the following words. The petition of Encarnacion Buelna, the widow of Don Antonio Buelna deceased, now married to Chino Rodriguez, and of the other heirs of said Buelna, respectfully sheweth,

//

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unto Your Honorable Body, that she is the claimant of three Spanish square leagues of land on the tract of land known as "Rancho de San Gregorio"; and heretofore granted to said Antonio Buelna deceased.

The paragraph of the claimant's petition just quoted discloses, that she is the widow of Antonio Buelna, and that as his heir she files her present claim; and it further discloses the fact that there are other heirs whose names are not mentioned, but notwithstanding this, she claims three leagues of the land owned by her deceased husband.

For a more perfect understanding of this case, it is necessary to refer to another claim filed before this Board by Salvador Castro, for one league of land originally granted to the said Antonio Buelna, and which was submitted for decision simultaneous with the case now under consideration, and with the understanding, that they should be considered together.

The first item of proof which the averments in the claimant's petition, devolved upon her to produce was that Antonio Buelna was dead and that she was his widow and heir.

The only testimony upon this point is to be found in the deposition of Manuel Castro which is as follows: I am acquainted with this place (meaning the place in question) and since the year 1840 it has been in the possession of the claimant, who had a house on it and cultivated a portion of it. Of this land

Salvador Castro occupies a part, and the widow of the grantee the remainder." This is all the testimony adduced by the petitioners either in regard to the occupation of the land, or in regard to the claimant being the widow of Antonio Buelna, the original grantee.

It would seem from this that the original grantee was dead, and that the land which had been granted to him, was occupied by his widow and Salvador Castro in common, but the petitioners is not shown to be the same person described by the witness as the widow of the original grantee, neither does the deposition show who the grantee was. If it appeared from the papers in the case that the original grantee was dead, and that the present petitioners was his widow, the question of heirship which is particularly put in issue in this case, and is the foundation of the petitioners right, might be considered as proved, but this is not the case, the deposition quoted contains all the evidence produced on that point. The rule of evidence in regard to the proof of heirship is well established, and is laid down by Mr. Greenleaf in the following words "When 'A' claims as the heir of 'B' it will be necessary to establish, first, affirmatively, their relationships through a - common ancestor; and secondly, negatively, that no other descendent from

the same Ancestors exists to impede the descent to "A" (see 2 Greenleaf on evidence page 339.) It therefore appears that according to the principle laid down it devolved upon the claimant to prove that she was the widow of the original grantee, as whose heir she now claims, and besides it further devolved upon her, as she had alleged that there were other heirs, to prove that fact. by showing who they were, and their relationship to the deceased.

This important fact this petitioner has not attempted to prove. Another important question is involved in the same enquiry which is, whether the grantee died intestate, or whether he left a will. By referring to case No. 358 it will be found that the Claimant in that case, Salvador Castro, claims one square league of the land originally granted to the said Buelna deceased, and that he deduces his title through two mesne conveyances executed by one Francisco J. Rodrigues and Maria Concession his wife. The first of said conveyances bears date the 29th of January 1849, and contains the following recitals, first, that he sold Salvador Castro one league of land in the location known by the name of San Gregorio, and which land he states was the property of the deceased Antonio Buelna, secondly, he recites, that he sold said land for the consideration of \$1500.00 to cover debts of the deceased Antonio

Buelna, which debts he recites are shown in the testament of said deceased. It is here disclosed that said Antonio Buelna, made a will, and that the acre league claimed by Castro, was sold to pay debts provided for by that will.

This will should then have been produced, that the Commission could have seen who his legal heirs were.

The deed referred to does not even aver that mona Concession Valencia, was the widow of Antonio Buelna, and no evidence is introduced either in that case or in the one now before us to connect the grantors of Salvador Castro, with the title to the land granted to Antonio Buelna. I am therefore clearly of the opinion that, until the petitioner proves by legal evidence that she is the heir of the original grantee of the place called Gregorio, her claim to any part of it must be denied. Under the Mexican Laws, the wife was entitled to one half of the property obtained during coverture, and after the death of the husband, she could claim such portion of her own right, but in this case she claims as heir of her husband, and claims all that remains after paying his debts. I think the evidence in this case is clearly defective.

The decision of the question of heirship makes enquiry into the other questions which arise in the case unnecessary. The claim is therefore rejected.

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Encarnacion Buelna
widow of Antonio Buelna
deceased, and the other heirs
of the said Antonio,
vs
The United States

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

Alphens Deleh
Thompson Campbell
R. Aug. Thompson
Commissioners

Filed in Office December 25, 1853,
Chas. Fisher
Sec

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Villa de Branciforte. Año de 1839.

Expediente promovido por el C. Antonio Buena
en solicitud de ampliacion de terreno.

197.

Montevideo, 1. Mayo, 1834.

Su Señoría Sr. Gobernador.

El ciudadano Antonio Buclna, natural de Sta Cruz lo combato y amparado en la villa de Sta Cruz lo combato y amparado ante V. S. con el debido respeto para iente y dirigirse para manifestar q. en tiempo q. gobernaba mismo con el Sr. Piqueroa, presento una representacion al Sr. Piqueroa con respecto de q. se le concediese al teniente de la villa sin elevarle su instancia por primer distrito en aquel tiempo se currió. Como ahora un parage que no tiene apunto fijo limite

alvarado.

Leicho Sr. Piqueroa (que en paz que) dicto favorablemente con titulo de posesion. Despues en vista de q. las huercas se multiplicaron para de presentar mucha instancia ante el Sr. Gutierrez a efecto de pedir mas terreno; y estando presente la solicitud en la oficina, quizá coniendo sustancias necesarias siervo haberse trasgado; y por tanto ahora ante V. S. presenta esta suplicando se le conceda la ampliacion del terreno q. actualmente posee en la carta de la Sr. Misión de Sta Cruz hacia al norte, distante de esta como doce o trece leguas; en cuatro liguas de ganado mayor que considera necesarias para la propagacion de sus huercas. Dado que no duela al causar de la hermandad de V. S. se apuro Subdito.

Montevideo, Mayo 4. de 1834.

A

primando Antonio Buclna.

S. S.

El Administrador de Sta Cruz, conplacido con lo prevenido en el decreto original q. V. S. le hizo mandarlo extender con fha. y del corriente en la presente instancia dice: que el sabrante con las calidades necesarias para obtener el terreno, a que se refiere; y que así como esta leyenda se ve en su representacion, a tanta distancia del establecimiento de mi cargo, el establecimiento inutil para la gran comunidad incorporari V. S. que es de acuerdo de la ciudad de Sr. Dn. Antonio Buclna.

Sta Cruz Mayo 20 de 1834.

primando Juan Soto.

Dado de Sr. Juan Castro Mayo 20 de 1834

Visto lo contenido en esta instancia el Sr. Piqueroa del primer distrito inferior; que no parece vision heicete para que el interesado sea agraciado.

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Con el tenor que precede, firmando José Castro Montenegro. Abril 16. de 1839.

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Vista la petición con que
sta principio este expediente, el informe del Sr. Jefe de
del 1er distrito, con lo demás que se tubo presente, y
ser conforme de conformidad con lo dispuesto por las
leyes y reglamentos de la materia se declaró al Sr.
Antonio Buena. Dueño en propiedad.

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Ben. Salvo en materia de...

la estancia de cuatro sitios de ganado mayor
poco mas o menos segun demuestra el croquis.
que agregado en este expediente que promovio para
el fin indicado. Librese el correspondiente despacho
al interesado con las condiciones acostumbradas
tomarse razon en el libro respectivo y remita este expediente
para la debida aprobacion de la Santa Junta Dep-
-arumental. El Señor D. Juan M. Alvarado, Sub-
-encargado del Departamento de las Californias, lo
mandé, oíste y firmé de que doy fe.
firmando. Alvarado. (rubrica)

En la fta se le notifico a D. Antonio Buena el abacto
que Señor Gobernador que resultando y escuchado de el
digo que lo oye y lo firmé con miso para constancia
firmando Antonio Buena. (rubrica)
Montenegro. 3 de Mayo de 1840.

La do cuenta a la Santa Junta Departamental acordio
en sesión de hoy que pase a la comision de la
agricultura. José F. Fernandez. Ind.

Enviado y de el mismo se eleva con el dictamen
que se acompaña. Fernandez

Mautrey. 14 de Junio de 1840. En vista de la
aprobacion otorgada en veinte y seis del mes p.pdo anterior
por el S. Junta Departamental, libre testimonio de ella
a la parte de Dn Antonio Buena en conformidad
en conformidad con el tenor que precede. Constante de
Cuatro Libros de ganado mayor, y activo en diez y
seis de abril del año propio p.pdo. Dn Don Juan
B. Alvarado Gobernador Constitucional del
Departamento de las Californias así lo pruebo
y firmo de que así feè.
firmado. Alvarado. (margue)
E. J.

La Comisión de Agricultura y Comercio en cargo de las
p.pdo. de determinar las especies presentadas
por el Sr. Gobernador en la Sesión anterior.
Visto lo actuado e informes y demas q. se le
hubo presentado, propone a la deliberación de la
Comisión las siguientes.

Art. 1º. Se aprueba la concecion hecha por el
Junta Departamental con fecha de abril de 1835
de la ocupacion de cuatro Libros de ganado mayor
propio mas ó menos, en la persona de Dn Antonio
Buena.

Mautrey. Mayo 15 de 1840.

firmado. José Rafael Longales.
firmado S. Anguillo

Mautrey. 26 de Mayo de 1840

En Sesión de esta día aprueba la S. Junta
Departamental las atas articulos con que conduce
el dictamen anterior.

firmado. Manuel Jimeno Presidente
firmado. José L. Fernandez. Sec.

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

I Samuel L. King Surveyor General
of the United States for the State of California and
as such now having in my office and under my
charge and custody a portion of the archives of the
former Spanish and Mexican territory in Department
of Upper California, do hereby certify that the nine
preceding and hereunto annexed pages of tracing
paper numbered from one to nine inclusive, and
each of which is verified by my initials (S. L. K.)
constitute true and accurate Copies of certain documents

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on file and forming part of the said archives in this office.
In testimony whereof I have herewith signed my
name officially and affixed my private seal (not having
a seal of office) at the city of San Francisco Cal. the 21st
Day of August 1852.

Signed. Samuel D. King.
Surveyor G. Cal.

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I George Fisher, Secretary of the board of United States
Commissioners to ascertain and settle private lands in Calif.
Do hereby certify that the foregoing is a true copy of
a Spanish Document on file in this office in Case
358 Salvador Castro and in my charge and custody
as such Secretary.

Geo. Fisher.
Secretary.

Filed in office Sept^r 27. 1852.

Geo. Fisher.
Secy.

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Juan B. Alvarado, Gobernador interino del Departamento de las Californias.

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Por cuanto Dⁿ Antonio Buelna ha pretendido para su beneficio personal y el de su familia la estension de cuatro sitios de Ganado mayor poro' mas o' menos segun alegamos con el dictamen que cono' agregado en el expediente respectivo otorgado dicho forraje en la costa del Establecimiento de Sta Cruz asi al Norte; practica las prevenciones las diligencias y arreguciones convenientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas y de conformidad con la ley de 18 de Agosto de 1824 y el Reglamento de 21 de Noviembre de 1828, he venido conferido a nombre de la nacion mexicana el mencionado terreno declarandole la propiedad de el por las presentes letras sujetandose a la aprobacion o' desaprobacion de la Junta Departamental y a las condiciones siguientes.

1^a Para cercarlo sin perjudicar las trancas lamiang y semi alumbas: lo disputara libre y exclusivamente otorgandole al uso o' cultivo que mas le acomode; pero' dicho terreno fabricara' casa y estana habitada.

2^a Solicitara' del Jefe respectivo le de posesion Juris dica en virtud de este despacho por el cual se demarcan los limites en cuyos limites pondra' o' mas P. las mojoneras algunos arboles frutales o' silvestres de alguna utilidad.

3^a El terreno de que se hace mension es de cuatro sitios de Ganado mayor poro' mas o' menos segun explico' el dictamen que cono' agregado al expediente. El Jefe que tiene la posesion lo hara' medir conforme a ordenanza quedando el sobrante que resulte a la nacion por los usos convenientes.

4^a Si contraviene a estas condiciones perdera' su derecho al terreno y sera' denunciado por otro.

En consecuencia mandose que teniendose por firme y valido se tome razon de este titulo en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey en la alta California a Dos de Mayo de mil ochocientos treinta y nueve.

Entendiose en papel comun por no haber all el huero correspondiente.

Manuel Jimenez

Juan B. Alvarado.

Jefe del Despacho.

Queda tomada razon de este despacho en el libro correspondiente a fajar 5. vuelta.

Manuel Jimenez.

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El Sr. Gobernador ha visto el expediente de este
titulo en la prefectura del primer distrito.

Limón.

Fiscal in office. Feby. 1. 1853.

Er. Fisher.

Secretary.

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Sello si. una Cuatilla.

Habilitado provisoriamente por la Comisaria Subalterna Interior de Montevideo por los años de 1831 y 1832. Lomas.

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Sr. Jefe Sup^{te} Político.

El ciudadano Antonio Buelna ante la Consideración de V.S. en la mejor forma me presento y digo que habiéndome representado al Jefe Superior Político de este territorio en el mes p^{ro} p^{ro} presentándole el paraje hatario llamado San Gregorio q. está en el intermedio de la Misión de Sta Cruz y el puerto de San Francisco por lo que no he podido o fabricar de V.S. que en consecuencia me conceda la comisión de el; intermedio o comensar a fomentar lo según imposibilidad mientras que se cumpla sobre mi expediente anterior solicitud a lo q. acompaña el abyecto correspondiente en conformidad de la ley y el reglamento de colonización de 26 de noviembre de 1828.

Por tanto

A. V. S. Sup^{te} se sirva acceder a esta mi solicitud de lo q. se pide gracia y merecimiento.

Montevideo. 1^o de Mayo de 1831.

Antonio Buelna.

Montevideo. Abril. 11 de 1831.

V.S. Conformidad con lo q. el interesado solicita en inteligencia de q. ha de ocupar p^{ro} si el terreno y mantener cultivarlo. Witna.

✓ Filed in office 26. 1853.

Geo Fisher.

Seej.

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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 seven* pages, numbered from 1 to *27*, 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. *512* on the Docket of the said Board, wherein

Encarnacion Buena

the Claimant against the *United States*, for the place known by the name of *San Gregorio*



In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this *twelfth* day of September A. D. 185*1*, and of the Independence of the United States of America the seventy=*ninth*

Geo. Fisher

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U. S. DISTRICT COURT,
Northern District of California.

No. 88 —

THE UNITED STATES,

vs.

Encarnacion Bull

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS

In Case No. 512

Filed, *Sept. 13th* 1854

J. M. G. Minner
Clk.

No. 512

Case No 542. - On appeal from the Board of
U. S. Land Commissioners.

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Antoniño Puelna
app^l } claim for
vs. } "San Gregorio"
The United States
app^{lee} }

Sir!

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

Yours respectfully,
Campbell, Taylor & Peckh
att^y for claimant

San F^{co}
Dec. 8th 1854

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

No 88
U. S. District Court
for the Northern
District of California

Antoniino Puelna
app^t

vs.
The United States
app^{lee}

claim for
"San Gregorio"

Notice of
appeal

Campbell, Taylor & Beeth
attys. for claimant.

Filed Dec 11. 1854.

John A. Monroe,

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Clark

Docket No. 88.

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Eucanacia Buena, widow
of Antonio Buena deceased
and the other Heirs of the
said Antonio
vs.
The United States.

} Appeal.

To the Hon^{ble} Ogden Hoffman Junr. Judge of the
United States Court for the Northern District
of California.

The petition of Eucanacia Buena widow
of Antonio Buena deceased, and the other
Heirs of the said Antonio, Citizens of
California, respectfully represent.

That under the provisions of the Act of Congress
of the 3^d March 1851, they presented a petition to
the Commissioners appointed under said act
to examine claims to land in California praying
for the Confirmation of their claim to a part of the
tract of land therein described called
"San Gregorio", situate in the present County
of San Francisco California under a grant
from J. B. Alvarado, Governor of California dated
2^d May 1839 to the said Antonio Buena,
and accompanied by evidence of their title;
and to which for more full and particular
description they beg leave to refer.

That their said claim, being designated as No
542 in the Docket of the said Commissioners,
was reported by them on the 27th December 1853;
that the said land is situate within the
limits of the Northern District of California;
that a transcript of the proceedings and
decision of the Commissioners in this case

was filed in the Office of the Clerk of the Court
for that District on the 13th of September 1854;
And, on the 11 December 1854 notice was filed
with the said Clerk that your petitioners appealed
from such decision.

Your petitioners pray for a rehearing of the
Case upon this appeal; that the said decision
of the former judges may be reversed & annulled
and that the Court will make such decree
and order as may be necessary and proper to
recognize confirm and declare valid their
title and claim to the premises mentioned
and referred to in their said petition and
evidence of claim.

And your petitioners will ever pray to

Stanley & King
Att^{ys} for claimants

San Francisco }
14th June 1855. }

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

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Encarnacion Buena,
widow of Antonio Buena,
deceased, and the other heirs
of the said Antonio.

Appellants

Appeal.
No. 88

vs.

The United States of America
Respondents

It is hereby stipulated that the pe-
tition in the above entitled action cause
filed on the 11th day of June A.D. 1855,
may be, and the same is hereby withdrawn
dated: Aug. 27, 1855.

Stanley & King.
Attys for Appellants

1858

Eucarnacion Buelna
other other item of } Land
Antonia Buelna. } appeal.
vs
The United States.

Part of "San Gregorio"

Filed June 11, 1858,
by Cheever
Deputy

Received a copy this
day

88 ND

11 June 58

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J. W. Page
U.S. Dist Atty
for John A. Godfrey

Petition for return

Shanty & Mining proclamation

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

Encarnacion Buelna
Appellant

vs
No. 88 (L. C. Docket No. 542)
The United States

Your Petitioner Encarnacion Buelna respectfully shows: that heretofore viz. on the 21st day of January 1853 she filed before the United States Board of Land Commissioners a petition for the confirmation of her claim to a tract of land situate in the Northern District of California viz in the County of Santa Cruz; for a description of which land and the title of your petitioner thereto, reference is hereby made to said Petition.

That after hearing said Petition with the proofs and the arguments of Counsel in the cause the said Board on the 27th day of December A. D. 1853 rejected said Claim as invalid. That on the 18th day of September 1854 a transcript of the record of said cause was filed in this Court; by virtue whereof and by force of the Statute in that case made and provided, an appeal to this

Court was duly effected.

That on the 11th day of December 1854 your petitioner filed in this Court a notice of her intention to prosecute said appeal.

Your Petitioner prays that the decision of said Board may be reversed and that this Court may confirm her title to the said land

Respectfully
J. Clarke Atty.
for Claimant.

U. S. District Court

No. 88

Encarnacion Pacha

Appellant

vs

The United States

June 30. 1855. filed

by George

Clarke

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J. Clarke Atty for
Claimant.

UNITED STATES DISTRICT COURT,
Northern District of California.

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United States adv. Encarnacion Buena
for "Rancho de San Gregorio."
San Francisco, July 21 1855

ON this day, before

W. D. Church a

Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *José Antonio*

Alviso
Claimants

a witness produced on behalf of the

in Case No. 88, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 542 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — his evidence being interpreted by

Francisco Casanueva a sworn interpreter

PRESENT:

B. W. Leigh Attorney for Claimants
and the U. S. Dist. Atty by
John. A. Godfrey, Esq.

QUESTION BY

1st Claimants,

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

Answer: My name is José Antonio Alviso, my age is sixty three years, or thereabouts, and my residence is in the county of Santa Clara.

Second: Are you acquainted with the Rancho de San Gregorio?

Answer: I am and have been acquainted with that Rancho for about fifteen years?

Third: Do you know whether Antonio Buena deceased had a grant ^{of that Rancho} from the Government of California during the Mexican domination?

Answer: Yes: I know that he did have

such a grant many years before the Americans got the Country: Buelna often told me that he had such a grant. He lived on the land many years. He had two houses; two corrals; two maradas; eight or nine hundred head of cattle; three or four hundred sheep on the Rancho. I know all this because I lived on an adjoining Rancho and went on the Rancho de San Gregorio every day to separate my cattle from Senor Buelna's. Every year I helped to brand Buelna's cattle and horses. He cultivated Barley, Wheat, maize, and vegetables, every year on that Rancho. He made a wagon road from that Rancho to another Rancho which belonged to him called "San Francisquito." Some years before his death he moved to "San Francisquito" at which place he lived until his death.

Question. Are you acquainted with the boundaries of the Rancho de San Gregorio? If yea, describe the said boundaries.

Answer. I know the boundaries of the Rancho de San Gregorio. I lived on an adjoining Rancho, as I have already stated. The Rancho was bounded on the North - West by the Pacific Ocean; on the North by the Arroyo de los Sobitos, which separates it from my rancho of "La Purisima"; on the East by the ridge of the Sierra Morena which separates it from the lands of Maximino Martinez; and on the South by the land of Juan Gonzalez

~ formerly the land of Francisco Gonzalez;
this last line is the Cañada Lendero
of Juan Gonzalez; - embracing about
four leagues more or less.

^{Fifth} Question: How long did you know
Antonino Buelna before his death?

Answer: I knew him about thirty years
before his death. ~~He~~ was older than
~~me~~. He died a few years before the
Americans got possession of the Coun-
try.

Sixth. Did he leave any legitimate
children?

Answer: He left one girl named
Salomé - the daughter of himself and
his wife Maria Concepcion Valencia
who is now his widow and the present
claimant. The child lived about six
or seven years; and died after its father.
Antonino Buelna left no other legi-
timate heirs.

Seventh: Do you know Maria Concepcion
Valencia de Rodriguez? If yes, state
whether she was the wife of Antonino
Buelna and whether she has married
a second time?

Answer: I know Maria Concepcion
Valencia de Rodriguez; she was the
wife of Antonino Buelna for many
years; since his death she has married
as her second husband, Francisco de
Rodriguez; she is the present claim-
ant.

Cross-examined by J. A. Godfrey,
Esq., on behalf of the U. S. District Attorney.
Question. Have you any interest
in the event of this claim?

Answer: I have none
and further the deponent says not.
From the subscribed Jose Antonio ^{his} Alviso,
before me this 21. July, 1855, mark.
St. H. Chaves, U. S. Com^r;

It is hereby stipulated between the
Counsel of the respective parties
that the within deposition be used
for all purposes of testimony in
this case, and that the order of
Court allowing such testimony be
considered as ^{duly} made.

Dated San Francisco July 21. 1855

John A. Godfrey
for U. S. Dist Attorney
M. W. Tish
for claimant

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

No. 88

Appeal from United
States Land Commission

The United States
vs

Encarnacion Buelna
for Rancho de San
Gregorio.

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Deposition
of
Jose Antonio Moiso.

Filed: July 21st, A.D. 1855.

by Cheverus,
Deputy.

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

The United States
Appellants
vs
Encarnacion Rueda

No. 88.

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. —

J. W. Sage

U.S. Dist Attorney
per John A. Hooprey

No 88.

U.S. District Court

The United States

vs

Encarnacion Bu-

elva

Answer
Filed Sept. 3, 1855,
by Cheever
Deputy.

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St. Louis U.S. City

Docket No. 88.

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

Encarnacion Buelsa,
widow of Antonio Buelsa,
deceased, and the other
heirs of the said Antonio
Appellants

vs.
The United States,
Respondents.

On appeal from the Board of Com-
missioners to ascertain and settle
private land claims etc.

To the Clerk of the above-named
Court.

Sir,

Take notice that we, the
undersigned, the attorneys for the
appellants in the above-entitled
cause, hereby withdraw from the
said cause.

Dated this 28th day of August
A. D. 1855.

Respectfully.

Stanby & King

No 88

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

Docket No. 88.

Encarnacion

Buelna, etc., et al.

vs. Appellants

The United States
Respondents

Notice of With-
drawal of Messrs.
Stanly and King
Attorneys for Appellants.

Filed Sept. 4. 1853.

by Chenard,
Deputy

Docket No. 88.

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

Encarnacion Buena,
widow of Antonio Buena,
deceased, and the other
heirs of the said Antonio
Appellants,

v.
The United States,
Appellees.

In the above-entitled cause, it appearing to the satisfaction of the Court that the proceedings heretofore had therein as well before the Board of Commissioners to ascertain and settle private land claims in the State of California as in this Court were and are erroneous in that the claimant therein mentioned is not therein designated and described by her true name and description; and also in that the said claim is therein prosecuted in the name of other heirs of the person alleged to have been the original grantee of the tract of land therein mentioned besides the widow of the said alleged original grantee whereas the said widow alleges that she is the only surviving heir of the said alleged original grantee and the only person entitled to his estate; it is, therefore, on motion of Mrs. Leigh, attorney ^{for the U. S. District Attorney} being present and not ^{for the said widow} opposing this application ^{for this order},
Ordered that the said wid-

or have leave to file with the clerk of
this court ^{amended} ~~an~~ petition on appeal from
the said Board of Commissioners by her
true name and description in the stead
of the petition on appeal from the said
decision heretofore filed in the said cause;
that the said new petition, when so filed,
be deemed and taken for all intents
and purposes as a substitute for the
said petition heretofore filed; and that
the title of the said cause be amended
so as to conform to the facts alleged in
the said new petition.

Sept. 4th 1855

Edw Hoffman Jr
U. S. District Judge

Doct. to. 88.

In the District Court
of the United States
for the Southern Dis-
trict of California.

Encarnacion Buena
etc. et al. 88

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The United States.

Order allowing
filing of new petition

Given Sept 4. 1855,

J. Chermis

Clk. Deputy

B. H. Leigh
Attorney for Appellant.

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

Encarnacion Buena, widow
of Antonio Buena, deceased,
and the other heirs of the said
Antonio,

Appellants,

v.
The United States,

Appellees,

or

Maria Concepcion Valencia
de Rodriguez, formerly Ma-
ria Concepcion Valencia de
Buena, widow of Antonino
Buena, deceased,

Appellant,

v.
The United States

Appellees.

Petition on Appeal from the
Board of Commissioners to ascertain
etc. private land claims etc.

To the Honorable the Dis-
trict Court of the United States
for the Northern District of Cali-
fornia,

The Petition of Maria
Concepcion Valencia de Rodriguez,
formerly Maria Concepcion Valen-
cia de Buena, widow of Antonino

Buelna, deceased, who is incorrectly designated in the first above-entitled cause as Encarnacion Buelna, widow of Antonio Buelna, deceased, respectfully represents:

That in accordance with the provisions of the Act of Congress, entitled an "Act to ascertain and settle the Private Land Claims of California," approved March 3, 1851, a claim was presented before the board of Commissioners appointed under the said Act, to a certain tract of land situated in the said State of California known as the Rancho de San Gregorio; which said tract was alleged to have been granted to the said Antonio or Antonino Buelna deceased, on the 2d day of June 1839, by Juan B. Alvarado, at that time Governor of the California; and in support of the said claim documentary and other evidence was adduced before the said Board of Commissioners - as by the transcript of the proceedings in and before the said Board concerning the said claim hereinafter mentioned, reference being thereto had, will more fully appear;

That the said claim, being designated on the Docket of the said Board of Commissioners as Docket Number 542, was rejected by the said Board of Commission

ers on the 27th day of December, 1853;

That the said tract of land is situated within the limits of the present County of Santa Cruz, or partly within the limits of the said County of Santa Cruz and partly within the limits of the present County of San Francisco, in the said State of California, and within the limits of the Northern District of California;

That a transcript of the proceedings and of the decision of the said Board of Commissioners in and upon the said claim was duly filed in the office of the clerk of the said District Court of the United States for the Northern District of California on the 13th day of September, 1854; and on the 11th day of December, 1854, notice of appeal from the said decision of the said Board was duly filed with the said clerk of the said court;

That through the ignorance or mistake of the attorneys for the claimants of the said tract who prosecuted the said claim before the said Board of Commissioners the proceedings in the said claim in and before the said Board were erroneous in the following particulars, that is to say:

First. The said proceedings were erroneous in that the petitioner was in the said proceedings desig-

rated and described by the name and description of Encarnacion Buelna, widow of Antonio Buelna, deceased, whereas the petitioner respectfully represents that her true name and ^{description} correct is and ought to have been in the said proceedings as hereinbefore set forth, that is to say, Maria Concepcion Talencia de Rodriguez, formerly Maria Concepcion Talencia de Buelna, widow of Antonio Buelna, deceased;

Second. The said proceedings were erroneous in that it is therein set forth that there were other heirs of the said Antonio Buelna, deceased, therein called Antonio Buelna, deceased, besides the petitioner; whereas the petitioner represents that in truth and in fact she, the said petitioner, is and was the sole heir of the Estate of the said Antonio Buelna, deceased, inasmuch as she, the said petitioner, was the lawful wife of the said Antonio Buelna, deceased, and survived him, and, also, survived the only child of the said Antonio Buelna living at the time of his death; which child, whose name was Salomé Buelna, was also the child of the petitioner and died several years before the said claim was presented;

That the claim of your petitioner to the said tract of land is just and

valid;

Your petitioner therefore prays that the said claim may be reheard by this Honorable Court on appeal from the decision of the said Board of Commissioners; that the said decision may be in all things reversed; and that this Honorable Court will decree the said claim to be just and valid, and that the said tract of land as described in the said transcript of the proceedings before the said Board be confirmed to your petitioner in and by her true name as herein before set forth.

And your petitioner will ever pray etc.

Dated: Sept. 3, 1855.

M. W. T. G.

Attorney for the Petitioner.

No. 88.

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

Encarnacion Buena
etc.,

vs.

The United States

88

ND

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^{or}
Maria C. T. de Rodriguez

vs.

The United States

Petition on Appeal.

Filed Sept 4, 1855,

by Cheever
Deputy

B. W. Leigh
Attorney for Petitioner.

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on *Friday* the *24th* 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

vs

~~Encarnacion Puelva~~

Maria Concepcion Valencia de Rodriguez

D. C. 88: L. C. 542.

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

On motion of the U. S. Attorney it is ordered, adjudged and decreed that claimant have leave to proceed under the decree of this Court heretofore rendered in her favor, as under Final Decree.

Ogden Hoffman
U. S. Dist Judge

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United States District Court, Northern
District of California.

The United States

vs.

~~Encarnacion Puella~~
Maria Concepcion Valencia Rodriguez.

ORDER.

vacating appeal

Filed July 24. 1857

John C. Murree,

CLERK.

By W. St. Charles

DEPUTY.

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

The United States

vs

4
3
2 D.C. 88: L.C. 542.

~~Encarnacion Puellos~~

Maria Concepcion Valencia de Rodriguez.

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

San Francisco: July 20, A.D. 1857.

P. Sella Torre

U. S. Attorney

M. W. T. J. P.
in
Attorney for the claimant

88

U. S. District Court

The United States

vs

~~Eucaracion Buelva~~

Maria Concepcion Valencia de Rodriguez

Stipulation

Filed July 24. 1857.

W. H. Chesebrough,
Deputy Clerk

Valencia

✓

The United States

Notes of motion
Je

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Mana Concepcion Valencia de Rodriguez

vs

The United States

No. 88-

88 ND

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

Personally appeared Henry Wilkins, who made oath that he has succeeded to the title of the Appellant to the land claimed in this case -

That the title to the said land consists of two grants, one made to Antonio Pulna, now deceased, in the year 1831, and another made in the year 1839, also to the said Pulna, being an enlargement of the first grant.

That both said grants were filed among the proceedings before the Land Commission.

That the decree heretofore entered in this cause confirmed the grant made in 1839, and did not notice the grant made in 1831, and consequently is erroneous -

He, therefore, prays the Court to open the same for further proof.

I witness and subscribed
before me this 23rd

Henry Wilkins

23rd March 1857

W. H. Cheever,

Deputy Clerk U.S. Dist. Court,

W. Dist. of Cal.

No 88
In the District Court of
the United States

Maria Concepcion Valencin
de Rodriguez

of
The United States

aff. David of Henry Williams

88 ND

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In the District Court of the United
States for the Northern District of
California special term, Oct. 1855.

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Maria Concepcion Valencia
de Rodriguez, formerly
M. C. V. de Buena, widow
of Antonio Buena, deceased,
Appellant

The United States,
Appellee.

No. 88. Appeal from the final
decision of the Board of Commissioners,
to ascertain and settle private
land claims in the State of Cali-
fornia.

Decree.

This cause came on to be
heard at ~~the~~ ^{a special term of court} term upon the plead-
on an appeal from the final decision of the Comrs. to
ascertain & settle land claims in the State of California

Under an Act of Congress, approved 3. March
1851 upon the Transcript of the proceed-
ings and notes, on which former
decision was founded and on
a detailed testimony taken before
the Court, and it appearing to the
Court that said Transcript has been
only filed according to law and
cannot for the respective parties
having been heard. It is ordered,
adjudged and decreed that said
decision be, and the same is hereby
set aside, annulled, and

~~it is the order, adjudged, and~~
decree, that the claim of the
-land is a good & valid claim
& that the same is hereby conveyed
to the extent of three square leagues
to the land within the boundaries
described in the plan attached to
the exhibits and referred to in
the original copies of volume and of
file in this case;

~~ings, the Transcript of the Proceedings before the Board of Commissioners, to ascertain and settle private land claims in the State of California and of the decision of the said Board, and the additional evidence taken during the pendency of the said cause before this Court, and was argued by counsel. On consideration whereof, the Court is of opinion and doth adjudge order and decree that the claim of the appellant to the tract of land in the proceedings mentioned as set forth and described therein in the said proceedings, is a good and valid claim; and the Court doth further adjudge order and decree that the decision of the said Board of Commissioners, rejecting the said claim be and the~~

same is hereby reversed, set aside, and annulled; and the Court doth further adjudge, order, and decree that the claim of the said appellant to the said tract of land be and the same is hereby confirmed to the extent of three square leagues, or sitios de ganado mayor, within the boundaries specified in the original grant according to the map or plan accompanying the same in the said proceedings, set forth - provided that the said ^{three square leagues} quantity of ~~land~~ ^{land} so granted and hereby confirmed be contained within the said boundaries, but that if there be less than the said quantity of land contained in the

said boundaries, then the said claim is confirmed to the extent of such up quantity and no more.

[Faint mirrored handwriting, likely bleed-through from the reverse side]

[Faint mirrored handwriting, likely bleed-through from the reverse side]

U. S. Dist. Court

No. 88.

Maria C. P. de
Rodriguez etc.,
Appellant

v.
The United States,
Appellee.

Draft for decree.

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B. W. Leigh
Att'y for Appell't.

Correct as enclosed
Dr 1122

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

No. 80.
Maria C. de Rodriguez etc.
Appellant

v.
The United States,
Appellees.

On appeal from the Board of Commissioners etc.

Supplementary Note
to
Index etc.

The point suggested by the Court this morning (Oct. 17) was not considered by the counsel for the Appellant, is preparing this cause for decision, as raised in the record and therefore was not noticed in the Index etc. handed to the Court. To complete that Index, it is submitted:

1. That this cause is to be decided upon the facts as presented by the Record in this case and without reference to any matter or thing whatsoever not appearing therein.

There is no stipulation on file or anywhere even alluded to by which it is agreed that this cause is to be considered in connection

with Case No. 89 or any other case. There is a stipulation in that case, (Case No. 89) between the counsel for the claimants and the United States District Attorney that that case shall be considered in connection with this; but to that stipulation the claimant in this case is in no wise a party and cannot be bound by it. The stipulation referred to by Judge Campbell in the opinion of the Board of Commissioners in this case is on file in re that case so far as appears; and if it were does not bind the claimant in this case before this Court. This case (No. 80) has ^{been} prepared and submitted by itself; and, it is contended, must stand on its own merits. The errors and deficiencies in the proceedings in the Board of Commissioners etc. have been corrected and supplied in this Court; and the case submitted upon the amended pleadings and additional testimony. The claimant in this case is not to be prejudiced by the proceedings in another case to which she is no party and with which she has no right to interfere. Having made out and established a complete and perfect case for herself, the deficiencies of any other claim cannot be allowed to prejudice her.

2. As to controversies between persons having or claiming to have different interests in the land which is the subject-matter of the claim, it is well settled that the United States do not consider themselves called ^{upon to provide} and have not provided any means for the determination of such ^{in this proceeding} controversies.

It is sufficient for the United States to ascertain and settle land claims in the State of California so far as they are concerned; and the effect of a confirmation is simply to release the interest of the United States to those who show a good claim against them. If any party is or conceives himself to be aggrieved by such confirmation and the issuance of a patent thereon, he has his remedy by injunction against the issuance of such patent, and if he sustains his objection, the patent is modified accordingly. This is expressly provided in the section of the Act of Congress of . . . And, moreover, he can have his rights ascertained by proceedings at law or in equity as the case may be, against the party obtaining the patent; and if he establishes any right the confirmation will enure to his benefit to the extent of such right.

3. As to the question of
heirship. It is shown conclusively
by the evidence of Bloiss that the
claimant in this case is the wid-
ow of the grantee, and the mother
of his only legitimate child and
that she had survived her hus-
band and also their child, which
child survived its father.

In the absence of any evi-
dence to the contrary these facts es-
tablish the rights of the claimant
as heir of her husband and child.
See Greenleaf on Evid, vol. 2, p. 357
& ~~337~~. 354.

If there is any reliance upon
a will to destroy the prima facie
case, such will must be set up
by the party objecting; and must
be proved by such party according
to the requirements of the law
of the place - the Lex Loci.

Otherwise the heir would
be required to prove a negative
- in contradiction of both Law
and Logic. The heirship being
established, it is for those claim-
ing under an alleged will to
establish: first, the existence
of a will; second: that the will
deprives the heir of that to which
he would have been entitled if
no will had been made.

Dr. Mansfield in Denn v. Gaskin,

2 Cooper's R. p. 601.

In this case, no such evidence is adduced; no such allegation made. There is simply an allusion in the opinion of the ^{Board of Commissioners} Court to matters appearing elsewhere ^{altogether before the record} than in this case; and this allusion merely raises a suspicion that the grantee in this case did make a will. Such a suspicion the claimant in this case is not bound to repel; nor is any opportunity afforded her of repelling it.

Upon the whole it is submitted that this mere suspicion cannot prejudice the claim of the Petitioner, as it rests upon the allegations and the proof offered in support of her claim. If there be any foundation for this suspicion, the confirmation of this claim accrues to the benefit of the parties entitled under this suspected will, if there be such a will or such parties. Otherwise the claimant is deprived of the benefits to which she is entitled by the case she has made, and with her rights fall those of the imaginary devisees too.

Respectfully submitted

Oct. 17, 1855.

M. W. L. G.

In the District Court
of the United States
for the Northern District
of California 88 ND

M. C. T. de Rodriguez
etc. Appellant

v.
The United States
88 ND Appellee
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Supplementary Note
to
Index etc.

For the Court

B. H. Leigh
For Appellant

The United States

N^o 88.

Encarnacion Rueda

88 ND

In this case an appeal was taken from the decision of the Board rejecting the claim. The cause was argued by Counsel and on the 29th October 1855, a decree was rendered confirming the claim of the Appellee to the land demanded, to the extent and in the manner insisted on by her before the Board and in this Court. A motion is now made to open that decree in order that she or some one in her name may assert ~~the~~ right to a much larger tract than that confirmed to her, or which ~~she has~~ during the entire progress of the case she has ~~been~~ by either her Counsel, the Board or the Court been supposed to pretend to. The first and most obvious

Objection to granting this Motion is, that it would in effect be the making a new claim in this Court after the expiration ^{of the period} allowed by the Act for the presenting of claims. It is said however that this land was in fact demanded first in the petition to the Board - first because the boundaries within which it is contained are there mentioned as the boundaries of the tract claimed - & ^{only} because the grant on which it is founded was filed before the Board - tho no rights acquired under it ^{may have been} were either claimed in the petition or contended for by Counsel during the entire progress of the suit -

The petition of ~~the~~ ^{E. Buchna} claimant to the Board sets forth that she is the claimant ^{of} 3 Spanish leagues on the tract known as "San Gregorio & heretofore granted

to Antonio Buena deceased
 that the said Antonio on
 the 2^d March 1833 presented
 his petition to the Govt of
 California for the grant of
 and that after the usual
 references and reports Gov.
 Alvarado on the 16 April
 1839 granted the land -
 that the grant duly found
 and was approved on the
 26th of the same month -
 that the said petition, references,
 and reports, and copies of
 the map and original grant
 are on file among the archives
 and that certified copies thereof
 are on file with the petition
 of Castro in case No 358

The petition thus sets forth
 the boundaries of the land
 and avers that it contains
 4 square leagues more or
 less -

The grant by Alvarado con-
 tains no description of the
 boundaries - but it refers to a
 deslino from which the bound

acres as described in the pe-
 tition are evidently derived
 There can thus be no
 room for doubt that the
 only land claimed in the
 petition was three leagues
 out of the four granted
 by Alvarado. ^{a portion} ~~one~~ league hav-
 ing been previously sold by
 Castro in whose name a
 separate petition was presen-
 ted - The grant under which
alone the petition claimed
 is for four leagues a little
 more or less - and the four
 daines are set forth as de-
 lineated on the desiño which
 accompanies it -

But it is said that the
 alleged grant by Victoria
 was also filed and that
 this was a sufficient presen-
 tment of the claim to satis-
 fy the law of 1851 -

But in the first place
 no claim whatsoever ~~was~~
 made for any land under
 that grant was made either

before the Board or in
 this Court by any of the nu-
 merous Counsel who have
 been engaged in this case
 The Victoria grant was not
 proved or alluded to, through-
 out the entire proceeding
 and the decree of this Court
 confirming 3 leagues to E.
 Bueha gave to her all
 that she claimed ^{or that} ~~and by~~
~~that~~ she was by any one
 supposed to be entitled to.

In the 2^d place it appears
 that even if the filing of the
 Victoria grant was a present-
 ment of a claim to the
 land decanted in it, the claim
 was not presented in time
 for the grant was not filed
 until November 1853 some
 months after the time limited
 by the Act of 1851 —

To allow this case to be
 opened for the purpose
 of asserting a right claimed
 under that grant would
 thus be to allow a claim
 to be made in this Court

which was not made before the Board, and the supposed evidence of which was not even filed before the Commissions within the time limited by law.

I should however arrive at this conclusion with some reluctance if I could persuade myself that the claimant had a valid or even plausible title to land, which this ignorance or mistake had not been presented for confirmation —

But I think there can be no doubt that ^{who presented her claims to the Board} the Council were right in supposing that the document signed by Victoria afforded no foundation whatever for the pretension now set up —

It appears that document consists of a petition by Antonio Bueha and an order made by Gov. Victoria —

The petition represents is dated ~~May 2. 1833~~ March 1. 1831 — It ~~and~~ represents that he had in

The previous year presented a petition to the Political Chief "for a place called San Geronimo" which is between the Mission of Santa Cruz and the Port of San Francisco Co, ^{but} ~~which~~ ^{that if} had not been acted upon, he therefore asks to be permitted to cultivate it (fomentarlo) until a decision he had ("mientras se resuelva") "on his former before mentioned anterior petition" which is accompanied by a ^{corresponding} "diseño en conformidad with law 2^a"

Beneath this the Governor ^{writes} "In conformity with what the interested party ~~sheds~~ ^{sheds} with the understanding that he is to occupy the land and maintain its cultivation" "Victoria"

It is obvious that this order was nothing but a permission to occupy the land until the Government should act upon ^{the} ~~his~~ petition for a grant

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which was already before
it —

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On March 1833 Bulhua
presented another petition
in which he states that
"in the time of the late
Governor Figueroa he had
presented a petition for one
"sitio" without describing its limits
as at that time a "sitio"
was understood to mean
a place without fixed bound-
aries — That Gov. Figueroa
had decreed favorably upon
this petition "with title of prop-
erty" — That since ^{that time} as his
cattle had multiplied he had
presented a new petition to
Gov. Gutierrez asking for more
land which however ^{had} ~~was~~
been for some reason delayed
in the office (oficina) — He
therefore prayed the Governor
to grant him ^{the} ~~the~~ ^{enlargement} ~~enlargement~~
(ampliacion) ^{of the land} which
he actually possessed ~~and~~ ^{to}
on the coast of the Ex-
Mission of Santa Cruz towards
the North and the extent of

square leagues (sitios de ganado mayor) 1^o
 In accordance with this petition the Governor granted and the Assembly approved a title for an the extension of 4 square leagues a little more or less according to the desire - ~~There was this~~ The title to this land has been confirmed by this Court -

It is now contended 1st that the order of Victoria was a grant of the place called San Geronio - whatever its limits may be shown to be - and 2^d that Alvarado's grant was an extension or augmentation of this grant by the addition of 4 square leagues more.

But 1st the order of Victoria was as we have seen, in no sense a grant - it was merely a provisional permission to occupy - and 2^d - ~~the~~ It is obvious that

Though the four leagues granted by Alvarado was an amplification or extension; it was an extension of the one league or "sitio" previously granted by Figueroa - and which the petitioner had erroneously supposed to be ^{mean} a place without fixed limits - instead of a determinate quantity of land.

The governor therefore grants an extension so as to include the land actually occupied by him - and to the extent asked for by the petitioner namely four leagues - The petitioner does not solicit 4 leagues in addition to the land actually occupied by him ^{but the amplification of that land into} ~~but~~ 4 leagues ~~in~~ ~~the~~ ~~land~~ ~~so~~ ~~occupied~~ and the ^{his} obvious intention was, inasmuch as his former grant of ^a "sitio" only included one square league, to obtain an extension of that grant so as to embrace 4 leagues of the

land actually occupied
by him—

But at all events if this grant was an augmentation of land previously granted it was an augmentation to the extent of 4 leagues of the one league granted by Figueroa. This grant is in no manner referred to the provisional permission to occupy, given by Victoria.

The grant of one sitio has not been produced—and even if it had been I cannot doubt that the ^{Alovarado} ~~Alvarado~~ only intended to give to Buelna to ask for a grant of 4 leagues in the place already occupied by the latter under the Figueroa grant of one sitio—and so to enlarge that grant as to ^{make} ~~extend~~ the petition title to embrace 4 leagues in all, within the bounds ~~was delineated~~ to the desire his title ^{claim} to this has been ~~confined~~—and ~~was~~ ~~it~~

The Desimo which Alvarado's grant refers to and which is found in the Expediente contains a memo: or note stating that the land delineated on it contains 4 sitios de granada mayor. This showing that the petition represented and the Governor supposed that land represented ~~was~~ the four leagues which he granted would embrace all the land within the boundaries - It is clear that whatever other grants may have been obtained Gov. Alvarado, in that under consideration intended to grant the land represented on the Desimo to the extent of 4 square leagues a little more or less - under the supposition that ~~the~~ that was the quantity included within the boundaries -

This fact is fatal to the idea that the land now claimed was claimed before the Board - For as has been

Assured altho' the boundaries
are mentioned in the petition
they are precisely the bounda-
ries delineated on the decree
which itself declares that they
only claim ^{in whole} four leagues.
And some of this quantity
the petitioners only claimed
3 square leagues -

If the 4 leagues and above
4 leagues, included within
the boundaries, ~~but~~ ^{is} so small
as to fairly come within the
terms "4 leagues more or less."
It is possible that the claimant
might have maintained his
title to the whole - But this
right would be derived from
the Alvarado grant alone
and she has only claimed
in this Court or before the
Board 3 leagues of the tract
so included -

If there for I possessed
the power, I can see ^{reason} no
to open a decree made
^{some} ~~some~~ ^{eighteen} ~~eighteen~~ months ago for the
purpose of allowing the claim
now set up, to be preferred.

U. S.

ads No 88.

Exam^r Buelwa

Opinion

on Mo. to open deuce

April 25. 1857

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

Maria Concepcion Talencia de Rodriguez, formerly Maria Concepcion Talencia de Buelna, widow of Antonio Buelna, dec'd.
Appellant

v.
The United States,
Appellees.

No. 88.

On Appeal from the Board of Commissioners to ascertain and settle private land claims in the State of California.

Index.

II. To Transcript of Proceedings before the Board of Commissioners etc.

- Petition, p. 3.
- Deposition of W. A. Richardson, p. 5.
- " " M. Castro, p. 6.
- Exhibit "A" Translation of Original Grant, p. 7.
- Opinion of Board of Commissioners etc., p. 9.
- Decree of Rejection, p. 15.
- Copy of Original Grant, p. 17.
- Certificate of Secretary, p. 28 and fin.

III. To Pleadings and Proceedings
before the United States District Court.

1. Letter from the Secretary of the Board of Commissioners to the Clerk of the U. S. District Court transmitting transcript of Proceedings etc. p. - dated Sept. 13, 1854.
2. Notice of Appeal etc. dated Dec. 8, 1854.
3. Petition of Appellants for Review, dated June 11, 1855.
4. Answer of U. S. by Dist. Atty. dated Sept. 3, 1855.
5. Notice of Withdrawal of Messrs. Stanley & King attorneys for Appellants. dated Sept. Aug. 28, 1855.
6. Order allowing filing of an amended Petition etc. dated Sept. 4, 1855.
7. Amended Petition on Appeal. dated Sept. 3, 1855.
8. Deposition of Jose Antonio Moiso dated July 21, 1855.

N. B. All the pleadings, proceedings and papers above-referred to as being had etc. before the United States District Court are contained in loose papers filed along with the Transcript by the Clerk of the said U. S. District Court.

Notes

explanatory of the Proceedings etc.
in the within entitled cause.

1854.

Feb. 1. A petition was presented before the Board of Commissioners etc. in the name and behalf of Encarnacion Buena, widow of Antonio Buena, deceased, "now" the wife of Chino Rodriguez and of the other heirs of the said Antonio," stating that "she" is the claimant "of three (3) Spanish Square leagues of land on the tract known as, the "Rancho de San Gregorio"
The Petition alleges:

1. That the said Antonio Buena on the 2d day of March 1853 presented a petition to the then Government of California soliciting a grant of the said "Rancho de San Gregorio," and that such Petition was referred to certain officers of the Government for their report thereon.

2. That such officers reported in favour of the said Petitioner, and that thereupon Juan B. Alvarado, Governor etc. on the 16th of April 1839, declared the petitioner lawful owner of the land and di-

the proper documents con-
stituting title to be issued.

3. That a formal grant
accordingly was issued on
the 2nd of May 1839, and
was approved by the Depart-
mental Assembly on the 26th
of the same month.

4. That copies of all the
documents in these proceed-
ings are among the archives
of the U. S. Surveyor General
etc.

5. That the original grant
is ready to be produced.

6. That the land is situ-
ated in Santa Cruz County
and bounded etc.

7. That the said Buelna
from the time of obtaining the
grant had always during his
lifetime exercised ownership
(full and undisputed) over
the said tract of land.

8. That Buelna died
in 1845 and that the Peti-
tioner is his widow

9. That the Petitioner
prays for a confirmation
etc.

3 See p. 3 of Transcript.

1854
Feb. 1. The deposition of William
A. Richardson was taken
proving the genuineness of the

signatures of Alvarado (Gov-
ernor) and Jimeno (Secretary)
to the Grant.

11 3
1854 See p. 5 of Transcript.

March 30. The deposition of Manuel
Castro was taken proving
the occupation and culti-
vation of the Ranch and
the building a house there-
on.

See p. 6 of Transcript.

3
1854
Sept. 16. The claim was submitted
on briefs and taken under
advisement by the Board
of Commissioners etc.

See p. 2 of Transcript.

1853
Dec. 27. Commissioner Thompson
Campbell delivered the o-
pinion of the Board of
Commissioners etc. reject-
ing the claim

See pp 9-12 of Transcript

1853.
Dec. 27. Decree of Rejection filed.
See p. 13 of Transcript.

A. B. The Transcript con-
tains (See pp. 17-26) copies
of the Espediente etc. in the
original (Spanish); and a
translation of the Grant, (See
pp. 8-9)

1854.

Sept. 12. The Secretary of the Board of Commissioners certifies the Transcript.
(See p. 20 of Transcript ad finem.)

The foregoing embrace all that was done in the cause before the Board of Commissioners etc.

In the U. S. District Court.

1854.

Sept. 13. The Secretary of the Board of Commissioners etc. transmits the Transcript of Proceedings to the Clerk of the U. S. District Court.
See this Letter among the papers on file.

1854

Dec. 2. Notice of Appeal filed.
See Notice on file.

1855.

June 11. Petition for Review filed
See Petition on file.

1855

Apr. 3. Answer of U. S. by dist. Atty
See Answer on file.

1855

Aug. 28. Withdrawal of Stanly & King Attorneys for Appellants
See Withdrawal on file

1855.

Sept. 4, On motion of B. W. Leigh,

for Appellants, ~~and~~ and after hearing evidence to sustain the facts alleged in the Petition, Order of U. S. District Court allowing the Appellants to file an amended petition of Appeal and changing the title of the cause.

See Order on file.

1855

Sept. 3. Amended Petition filed
See Amended Petition on file.

This Petition sets out:

1. The presentation of the claim and its rejection
2. The situation of the land within the Northern District of California.
3. The filing of the Transcript etc.
4. That by ignorance or mistake, the previous proceedings had been erroneous:
 - a. In designating the claimant by a wrong name - giving her correct name;
 - b. In stating that there were other heirs of Antonio (not Antonio as incorrectly stated in the previous proceedings) Buelva than the Petitioner whereas there were and are no such heirs.
5. That the claim is valid
6. Praying a confirmation etc. of the claim.

Left blank by Mistake

B. H. L.

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1855

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July 21. Deposition of Jose Antonio
Alvizo taken in U. S. Dis-
trict Court.

See Deposition of Alvizo
on file.

This deposition proves:

1. The occupation, and cul-
tivation of the land.
2. The Boundaries of the Rancho.
3. The fact that Antonino
Buelna died before the con-
quest or cession of California
leaving a widow (the present
claimant, whose name and
identity are proved also) and
only one legitimate child
who died after ~~to~~ her father.

Also the subsequent marriage
of the widow (the Petitioner)
with Francisco Rodriguez.

1855

Oct. 15. The cause was submitted
for decision.

See Minutes of the Court
held by Hon. M. Hall
McAllister, Oct. 15, 1855.

The foregoing comprises a
full and correct statement of
all the proceedings in the case
- as is believed.

Upon a perusal of the
papers it will be seen at once
that the claim is perfect and

complete in every respect.

II. The Grant was duly made by lawful authority.

See Grant (pp. 8-9) and the testimony of Richardson, (p. 5).

III. ~~All the conditions were complied with.~~ It was approved by the Departmental Assembly.

See p. 20-21 of Transcript.

This is an advantage possessed by few claims in California; and though not necessary to the validity of the claim tends to give it additional completeness and regularity.

IV. All the conditions of the Grant were complied with.

See Testimony of Alviso taken in U. S. Dist. Court of this fact the same remark as that immediately preceding may be made mutatis mutandis.

V. The ~~the~~ rights of the present claimant as derived from the deceased original grantee are now fully established.

See Testimony of Alviso above-referred to.

The opinion of Commissioners Campbell, (p. 9-12 of Transcript) shows that the claim was rejected by the Board of Commissioners for want of evidence establishing the rights of the

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Petitioned as derived from the original grantee. This objection is obviated by the testimony of Morris. The difficulty as to the failure of proof as to the alleged other heirs of Antonio Buelna, deceased is removed by proof that no such heirs existed and that the allegation of their existence was made by mistake. In the amended Petition upon which the case is now to be ~~heard~~ decided, the existence of such heirs is negatived and the error corrected.

V. As to want of proof of juridical measurement, the decisions of the Supreme Court of the United States and of this Court in cases so numerous that it is unnecessary to refer to them have settled it that such measurement and, of course, proof thereof, are wholly unnecessary.

Respectfully submitted
Oct. 16, 1855.

J. W. Giff
For Appellant.

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

M. C. T. de Rodriguez,
etc.

Appellants
v. & No. 88.

The United States,
Appellees.

Index etc.
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Transcript & Proceedings

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B. H. Leigh,
For Appellant.
