CASE NO.

122

NORTHERN DISTRICT

PART OF NAPA GRANT

HORACE INGHRAM

CLAIMANT

Land Case ND 122

58 pages.

720

Northern District

122 ND
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 720

Horace Ingham CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR Part of THE PLACE NAMED

"Napa."

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* Second day of March, *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 Horace Ingham, *for* part of *the Place named* "Napa", *was presented, and ordered to be filed and docketed with No.* 720, *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, March 9th 1853.

In Case No. 720, Horace Ingham for part of the place named "Napa", the Counsel for the Claimant filed the following Stipulation, to wit;

(Vide page 17 of this Transcript.)

San Francisco, March 15th 1854.

In the same Case the Counsel for the Claimant filed the following Stipulation, to wit;

(Vide page 17 of this Transcript.)

San Francisco, March 25 1854.

In the same Case the Deposition of Joseph D. Bristol, a witness in behalf of the Claimant, taken before Commissioner Peter Sott, was filed;

(Vide page 4 of this Transcript.)

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San Francisco, April 4th 1854.

Case No. 720 was submitted on Briefs and taken under advisement by the Board.

San Francisco, April 11th 1854.

In the same Case Commissioner Alpheus Felch delivered the opinion of the Board confirming the claim:

(Vide page 19. of this Transcript.)

San Francisco, Aug. 15th 1854.

In the same Case, On motion of the United States Law Agent, the following order was made, to wit:

(Vide page 22 of this Transcript)

1180

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To the Hon the Board of Commissioners for settling private land claims in Calif.

The petition of Horace Ingraham respectfully shows.

Petition

That on the 21st of Sep 1835 Juan B Alvarado Gov of California by authority of the laws of Mexico granted to Salvador Vallejo a certain tract of land called Napa situate in the present County of Napa with the boundaries described in the present County of Napa with the grantee accompanying map which original grant & map with the approval of the Departmental assembly & act of Judicial possession are filed in Claim No 195 in the Secretary's Office of this Board & prayed to be taken as part of this petition –

That on the 12th April 1845 said Salvador sold & conveyed to Nicholas Carriger a certain portion of said tract more particularly described in the deed of conveyance a certified copy of which is herewith submitted marked B.

That on the 30th Sep 1850 said Carriger sold & conveyed to Edward H Cage said portion of land as set forth in the deed of conveyance herewith submitted marked C.

That on the 11th Oct 1852 said Carriger sold & conveyed said portion of land to Dom petitioner as set forth in the deed of conveyance herewith submitted marked D.

That said portion contains twenty four acres (24). Dom petitioner further shows that said land has been for some fifteen years & is now in the quiet & undisputed possession of Dom petitioner & those under whom he holds.

That he knows of no conflicting claim

That he sets forth for information of his said

claim upon the original title papers above referred to & upon such other & further proofs as he may be advised are necessary.

Wherefore he prays confirmation of his title to said land.

Rose for claimant.

Filed in Office March 2, 1853.

(Signed) Geo. Fisher Secy.

United States of America
State of California } ss.
San Francisco March 25, 1852.

This day came before Peter Lott a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State Joseph R Bristol a witness on behalf of the claimant in case No 720 on the docket of said Board in which Horace Ingraham & Petitioner and the said Joseph R Bristol being duly sworn on oath disposed in the English Language as follows to wit.

Deposition of J. R. Bristol.

J. H. McKune Esq the Law Agent is present.

Questioned by R. Rose Esq attorney for claimant.

1. Question – What is your name age and present residence?

Answer. My name is Joseph R Bristol my age 30 years. My residence City of San Francisco California –

2. Question – Do you know the boundaries of the Rancho de Napa in Napa County originally granted to Salvador Vallejo – If so please to describe them?

Answer. I do know them. Sk. Commences

at the Camens Creek at a point where there is a tree marked. thence runs up said creek to the mountains to a point a little north of the road or trail which leads from Sonoma to Gunts Ranch in a northerly direction thence westerly to Mr Yents South Western Corner thence along said Yents Southern line to Napa river thence down Napa river to the mouth of the Arroyo de Napa thence north westerly with said Arroyo de Napa to a point on said Arroyo opposite where the northern line of Nicholas Higuera strikes said Arroyo. thence westerly along said Nicolas Higueras northern line to the Camenos Creek the place of beginning

3. Question — Do you or not know that the land reported and mentioned from the records and otherwise to have been solely said Salvador Vallejo to Nicolas Carrillo & not to belong to Horace Ingraham the Claimant in this case lies within the boundaries described by you in your last answer?

Answer. I do know that it lies within them.

Cross Examined by U. S. Law Agent.

1 Question — What are your means of the knowledge of what you have stated of the boundaries?

Answer. I have several times been at all the principal points of the boundaries of the Rancho except the point on the mountains which is rather an inaccessible point, not often visited by any person. I have lived at Napa City within 20 feet of one of the lines for some 3 years. I have seen probably three acres of the land fifty times except some small portion in the Canyons in the hills. I am very familiar with the neighborhood the points have been pointed out to me by the Surveyor & others.

Re Examined by Mr Rose Attorney for Claimant —

1. Question. Do you or not know that the land reputed and understood from the records and otherwise to have been sold by Salvador Vallejo and to be now owned and claimed by James M Harbin in Case No 721. by Hannah McCoombs in Case No 722. by Mark McGarry in case No 723. by Hatton Coombs in Case No 724. by Anderson Farley in case No 725 by Hugh Cornwells in Case No 726 by John Trubody in Case No 727 by Angus L Boggs in Case No 729. by Jacob McCoombs in Case No 730 and Ogden and Wise in Case No 731 as the docket of the Board of the U. S. Land Commission are all embraced within the boundaries of the Rancho granted to Salvador Vallejo as described by you in your answer to 2d Question in Your Examination in Chief in this deposition?

Answer. Yes. I know that they are all respectively within those limits.

Cross Examined by U. S. Law Agent.

1 Question — What are your means of knowing what you last stated?

Answer. I know all the Claimants named personally. they were my neighbors and all lived on their respective claims or near them. they all lived on their claims and I know near about the locality of Every one of the claims they are as familiar to me as most everything that in this City. I mean their houses and principal improvements —

J R Bristol

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Subscribed and sworn to
before me on this 25th day
of March AD 1852.
Peter Lott Commissioner
for taking testimony &c.

It is agreed between the U. S Law and
Agent and Claimants Counsel that the above
deposition may be considered as taken and filed
in Each of the Cases numbered and referred
to in the above Questions and answers and also
in No 791. and that the same may be read in
Evidence in said Cases.
San Francisco March 25. 1852.
D. N. McKeme
Law Agent.
R. Rose for Claimants

Filed in Office March 25. 1852.
(Signed) Geo Fisher Secy.

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"B"

Deed

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Deed.

Salvador Vallejo To Nicholas Carriger filed for Record October 4. 1852 at 9 O'clock AM.

This Indenture made and concluded this 12th day of April in the year of our Lord one thousand Eight hundred and forty Eight between, Salvador Vallejo of the town of Sonoma in the District of Sonoma in the Northern Department of Upper California of the one part, and Nicholas Carriger of the same town and same District of the other part Witnesseth that the said Salvador Vallejo for and in consideration of the sum of One hundred and forty Eight dollars ($148) well and truly paid at or before the Ensealing and delivery hereof the receipt whereof is hereby acknowledged hath granted bargained sold transferred and conveyed, and by these presents do grant bargain sell transfer and convey unto the said Nicholas Carriger his heirs or assigns forever all his right title and interest of in and to a certain piece or parcel of land lying and being and situated in Napa Valley in the District and County aforesaid, Being a part of the Rancho of the said Vallejo in Napa containing seventy four (74) acres, bounded and described as follows, to wit — Commencing at the corner of Nicholas Higuras Rancho on the Creek that said Nicholas Higuera's Rancho on the Creek that said Nicholas Higuras lives on, at the place where the line of the said Vallejo's Rancho crosses said creek thence up said creek a short distance to the mouth of a small creek the first that enters into the creek aforesaid thence up said small

creek at the entire of the main channel of said creek a sufficient distance to make the distance of nine hundred yards on a straight line and there stop, then commence again at the point first mentioned and following the line between the said Vallejo and Reiguera to the foot or base of the hill thence westerly to within Eight yards of where the line stops on the aforesaid small creek, thence straight across to said point on the said small creek. To have and To hold all and singular the above bounded and described parcel of land together with all the rights profits privileges and appurtenances whatsoever thereunto belonging as fully as the same was held and possessed by the said Vallejo aforesaid unto the said Nicholas Carrigo himself his heirs and assigns to their only proper use benefit and behoof forever and the said Salvador Vallejo for himself his heirs and assigns doth hereby covenant to and with the said Nicholas Carrigo himself his heirs and assigns to warrant and to promise to defend the title to the said bargained premises from the lawful claim or demand of any person or persons claiming or to claim the same that he has a good right to convey the same that the land is free from all incumbrance —

In witness whereof the said Salvador Vallejo has hereunto set his hand and seal the day and date above mentioned interlined before signing.

Salvador Vallejo.

Ed Platt Crosby.
Wm M Biggs witnesses

The words "dollars" between the words light and will in the 5th line" said " between the words the and Vallejo in 9th line "bounded and" between "acres and described in the 10th line "the first "in the twelfth line between "Creek and that " and "on the said small Creek "on the 17th line between "point" and "to" were interlined on original deed.

State of California
County of Napa } J. John H. Seawell
County Recorder in and for the County of Napa and State of California hereby certify that the foregoing is a full true and correct copy of the Record of a deed from Salvador Vallejo to Nicholas Carriger as Recorded in Book B pages 229 and 230 in the Records of said County Napa County.

Seal

Witness my hand and official seal at Napa City this 20th day of January AD 1859.
Jno H. Seawell Recorder
By C. S. Caffribery Dep Recorder

Filed in Office March 2, 1853.
(signed)
Geo Fisher Secy

"C"
Deed

Deed
Nicholas Carriger to Edward K. Cage filed for Record AD 1852. October 4th at 9 O'Clock am.

Know all men by these presents that I Nicholas Carriger of the County of Sonoma and State of California for and in Consideration of one thousand and five hundred dollars ($1500.00)

to me paid by Edward H Cage of this City and County of Napa and State aforesaid the receipt whereof I do hereby acknowledge have remised released and forever quit claimed and do for myself and my heirs by these presents remise release and forever quit claim unto the said Edward H Cage and to his heirs and assigns forever all my right title and interest Estate claim and demand of in and to all that certain tract of land lying and being in the said County of Napa and State of California and bounded and described as follows to wit. Beginning at the corner of the Rancho of Nicholas Higuera, on the creek on which said Higuera lives at the point where the line of Salvador Vallejo Rancho crosses said creek thence up said creek a short distance to the mouth of the first small creek that enters into the creek aforesaid thence up said small creek in the centre of the main channel of said creek to sufficient distance to make the distance of nine hundred yards on a straight line and there stop, then commence again at the point first mentioned and following the line between the said Vallejo and the said Higuera to the foot or base of the hill thence easterly to within eighty yards of the point where the line stops on the aforesaid small creek thence straight across to said point on the said small creek containing seventy four (74) acres. Being the same tract of land deeded by the said Nicholas Higuera by and from the said Salvador Vallejo dated the 12th day of April AD 1848 and Recorded in Book 6. pages 118 and 119 of Sonoma County Alcaldes Records.

To Have and To Hold the aforementioned

premises with all the privileges and appurtenances thereunto belonging to him the said Edward H Cage and to his heirs and assigns forever so that neither I the said Nicholas Cainger myself nor my heirs or any other person or persons claiming from or under me or them or in the name right or stead of myself or them, shall or will by any way or means have claim or demand any right or title to the aforesaid premises or their appurtenances or to any part or parcel thereof.

In Witness whereof I the said Nicholas Cainger have hereunto set my hand and seal at Sonoma City on this the 30th day of September in the year of our Lord one thousand Eight hundred and fifty two.

Nicholas Cainger. (Seal)

Signed Sealed and delivered in the presence of us.
John A Brewster.

State of California }
County of Sonoma }

On this 30th day of September AD 1852 before me the undersigned County clerk of Sonoma County personally appeared Nicholas Cainger to me known to be the person discribed in and who Executed the foregoing instrument and acknowledged to me that he Executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Testimony whereof I have hereunto set my hand and seal of Court affixed at Office in the City of Sonoma on this day and year aforesaid.

(Seal) John A Brewster Deputy
Clerk of Sonoma County.

State of California
County of Napa

I, John H Seawell County Recorder in and for the County of Napa and State of California hereby certify that the foregoing is a full true and correct copy of the record of a deed from Nicholas Carriger to Edward Hoage as recorded in Book B pages 225 and 226, in the Records of said Napa County.

Witness my hand and official seal at Napa City this 26th day of January AD 1853.

Seal

Jno H Seawell Recorder.
By C. S. Coffingberry Dy Recorder

Filed in Office March 2d, 1853.
(Signed)
Geo. Fisher Secy.

"16"

Deed

Deed.
Edward Hoage to Horace Ingraham.

Know all men by these presents that I Edward Hoage of the County of Napa and State of California for and in Consideration of Two thousand two hundred and fifty dollars ($2250) to me paid by Horace Ingraham of the City and County of Napa and State aforesaid the receipt whereof I do hereby acknowledge, have remised released and forever quit claimed and do for myself and my heirs by these presents remise, release and forever quit claim unto the said Horace Ingraham and to his heirs and assigns forever all my

right title interest Estate claim and demand
of in and to all that certain tract of land
lying and being in the said County of Napa
and State of California and bounded and
described as follows. Beginning at the corner of
the Rancho of Nicholas Higuera on the creek
on which said Higuera lives at the point where
the line of Salvador Vallejo's Rancho crosses
said creek thence up said creek that enters
into the creek aforesaid thence up said small
creek in the centre of the main channel of said
creek a sufficient distance to make the dis-
tance Nine hundred yards on a straight line
and then stop. Then commence again at the
point first mentioned and following the line be-
tween the said Vallejo and the said Higuera to
the foot or base of the hill thence westerly to with
in Eighty yards of the point where the line
stops on the aforesaid small creek thence stra-
ight across said point on said small creek
containing Seventy four (74) acres. It being
the same tract of land deeded to the said Ed-
ward H Cage by and from Nicholas Carrigan
To Have and To Hold the aforementioned
premises with all the privileges and appur-
tenances thereunto belonging to him the said
Horace Dyrsahan and to his heirs and
assigns forever. So that neither I the said
Edward H Cage myself nor my heirs or any
other persons claiming from or under me or
them or in the name right or stead of myself or
them shall or will by any way or means have
claim or demand any right or title to the afore-
said premises or their appurtenances or to any
part or parcel thereof forever.

In Witness Whereof I the said
Edward H Cage have hereunto set my hand

and seal at Napa City on this the Eleventh day of October in the year of our Lord One thousand Eight hundred and Fifty two (1852)-

Edward H Cage (Seal)

In the presence of:
Edw McGarry
Chas E Hart.

State of California
Napa County } On this 11th day of October AD 1852 before me the undersigned Notary Public for said County personally appeared Edward H Cage to me known to be the person discribed in and who Executed the foregoing instrument and acknowledged to me that he Executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and private seal not having a Notarial Seal on this the day and year aforesaid.

Edw McGarry. (Seal)
Notary Public

Received for Record Oct 15th AD 1852 at 2 O'clock P.M. and Recorded at the request of Horace Ingraham.

State of California } I John H Seawell County
County of Napa } Recorder in and for the County of Napa and State of California hereby certify that the foregoing is a full true and correct copy of the Record of a deed from Edward H Cage to Horace Ingraham as recorded in Book pages 236 and 237 in the Records of said County.

Witness my hand and official seal at Napa City this 27th day of January AD 1853. John H Seawell Recorder
By C. S. Coffingsberry Dy. Recorder

Filed in Office March 2, 1853.
Geo Fisher
Secy.

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Horace Ingraham
vs.
The United States.
} Claim No 720.

Stipulation

In as much as the above claim is a portion of the original claim No 195 filed before the Board of Land Commissioners it is hereby agreed by & between the Counsel for Claimant & the U. S. Law Agent that the testimony taken in said original claim may be used as testimony in this claim.

R. Rose Geary for Claimt.
Robert Greenhow
Asst. Law Agent.

Filed in Office March 9, 1853.
Signed
Geo. Fisher Secy.

Claims Nos. 720, 1.2.3.4.5.6 7. 9. 30. 731 & 791. Cases before the U. S. Board of Land Comrs.

Stipulation

It is hereby agreed by & between the parties hereto by their respective attys that the original paper filed in Claim No 195 marked A & translation marked B may be considered as filed and may be read as Evidence in Each of the above cases and also that the transfers marked, B. C. D. E. F. G. H. I. J. & K. & filed in Claim 721. B in 720 C. in 722. B. C. E. F & H in 724. B & F in 725. E & F. in 726. D & E. in 727. B in 729 B. in 730 & B. & C in 791. shall be deemed & taken as proved & may be read in Evidence by the Petitioners in said Claims all pertaining

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to Rancho de Nasa decided in 1195.
March. 15. 1854.

S. H. McKeme
Law Agent

R. Rose
Atty for Claimants.

Filed in Office March 15. 1854.
(Signed)
Geo. Fisher
Secy.

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Horace Ingraham
vs
The United States

For a part of land containing 44 acres part of the place called Napa in Napa County.

The land claimed in this case is alleged to be a portion of the Rancho called Napa originally granted to Salvador Vallejo from whom through several mesne conveyances the present claimant derives title.

By two stipulations filed in the case the testimony and certain original documents filed in Case No 195, relating to the said grant are to be regarded as Evidence herein. By these proofs is made of the grant to said Vallejo by Governor Alvarado on the 21st day of December 1838 the approval thereof by the Departmental Assembly on the 23d day of the same month and the giving of juridical possession of the premises to the grantee on the 8th day of February 1841. They also show that said grantee went into possession of the land in 1838. or 1839 and occupied the same built a house had horses and cattle upon the place and cultivated the land. This proof is sufficient to establish Vallejos right to the land designated in his grant and to make said conveyance of it.

To prove title in himself to the portion of land claimed in this case the present claimant has given Evidence of the following conveyances thereof. First. A deed from said Vallejo to Nicholas Canizo Executed on the 17th day of April 1848.

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Second. A deed from said Caniger to Edward H Carp dated September 30th 1852.
Third. A deed from said Carp to the present claimant.

These documents show a title in the Claimant derived from the original grantee and he is entitled to a confirmation of his claim

Confirmed.

Filed in Office April 11. 1854.
Signed
Geo. Fisher Secy

Horace Ingraham
vs.
The United States

In this case on hearing the proofs and allegations it is adjudged by the Commission that the claim of the said petitioner is valid and it is therefore decreed that the same be confirmed.

The lands of which confirmation is hereby made are a part of the place known by the name of Napa in Napa County which was granted to Salvador Vallejo which place which is bounded and described as follows to wit, Commencing on the arroyo of Napa at the boundary of Nicolas Higuera thence following a southerly direction to the lower pass of the arroyo de las Carneros. Six thousand varas to a pile of stones. thence towards the north east along the arroyo Six thousand varas to the Upper road which goes to Napa. thence

along the same arroyo North. [illegible]

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along the same arroyo North. North West to the Napa road which goes to the Rancho of Genth four thousand six hundred varas thence, continuing on the same course to the said boundary of said Genth, by Estimation ten thousand varas thence towards the North. North East three thousand two hundred and fifty varas to the River Napa. thence down the same River course South East to the arroyo of Napa fifteen thousand one hundred and sixty five varas and thence following the same arroyo westwardly two thousand six hundred varas to the place of beginning containing four square leagues of land agreeably to the grant to said Vallejo and the judicial measurement.

That portion of the above described premises of which confirmation is hereby made is bounded and described as follows to wit. Beginning at the corner of the Rancho of Nicolas Higuera on the creek in which said Higuera lives at the present point where the line of said Salvador Vallejo Rancho crosses said creek thence up said creek a short distance to the mouth of the first small creek that enters into the creek aforesaid, thence up said small creek in the centre of the main channel of said creek a sufficient distance to make the distance of nine hundred yards on a straight line and there stop. then commence again at the point first mentioned and following the line between the said Vallejo and the said Higuera to the foot or base of the hill. thence westerly to within eighty yards of the point where the line stops on the aforesaid small creek. thence

straight across to said point on said Suisun creek, containing seventy four acres of land, it being the same tract of land described in a deed from Edward H Cage to said Ingraham dated October 11th 1852

Alphens Felch
Thompson Campbell
R. Aug. Thompson
Commissioners

Filed in Office April 11. 1854.
(signed) Geo. Fisher Secy.

And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California is is hereby

Ordered; that two transcripts of the Proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded be made out and duly certified by the Secretary, one of which transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States.

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 two — pages, numbered from 1 to 22, 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. 726 on the Docket of the said Board, wherein Horace Ingraham is — the Claimant against the United States, for Part of the place known by the name of "Napa"

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

Geo: Fisher
Sec'y

122 ND

U. S. DISTRICT COURT,

Northern District of California.

No. — 122 —

THE UNITED STATES,

vs.

Isaac Ingham

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 720

Filed, November 2d 1854

Wm A Moore

Clk

No 720

Office of the Attorney General of the United States,

Washington, 10th February 1855.

Horace Ingraham
vs.
The United States. } 720.

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 12th day of November 1854, the appeal in the district court of the United States for the Northern Judicial district of California will be prosecuted by the United States.

Cushing

Attorney General.

U. S. District Court for
Northern District, Cala.

The United States

vs

Horace Ingraham

No. 122

Notice of Appeal.

Filed, March 20. 1855,

John A. Monroe,
Clerk

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Office of the Attorney General of the United States,

Washington, 10th February 1855.

Horace Ingraham
vs.
The United States. } 720.

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 12th day of November 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.

No 122

U.S.D. Court N. Dist.

The United States
vs.
Horace Ingraham

Appeal Notice.

Filed May 5. 1855,
by Chevers,
Deputy

To the Hon Dist Court of the U. S. in &
for the Northern Dist of Cala

The United States
v
Horace Ingraham
} D. C. 122: L. C. 720

The petition of the United States by their attorney represents that this cause is ~~a petite~~ an application for a review of the decision of the U. S. Land Commission wherein the title of the appellee was confirmed. as will appear by reference to the record in the case: that a transcript of said record was filed in this Court on the 2d day of Novr 1854: that ~~the land claimed lies~~ a notice of appeal was filed on the 20th day of Mch 1855: that the land claimed lies in this said District and that said claim is invalid.

Wherefore appellants pray that said decision be reversed and that said title be decreed invalid by this Court.

San Francisco, July 13. 1857

Blanding
U. S. A.

122

U. S. Dist Court

The United States

v

Horace Ingraham

Petition

Filed Feby 13. 1857,
W. H. Chevers,
Deputy.

Blanding
ufa

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

The United States
v.s.
Horatio Ingraham

U.S. District Court
No 122
Land Com No 720

To the Hon Ogden Hoffman Jr Judge

The petition of Otto H. Frank respectfully shows: that on the 23d day of February A.D. 1857, there was finally confirmed to him by a decree of this Honorable Court duly entered, on appeal by the United States, from a decree of Confirmation, of the same land, by the Honorable the Commission which had prior to said date been organized under the Act of Congress of March 3d 1851 Entitled "an Act to ascertain and settle the private land claims in the State of California" for the purpose of ascertaining and settling private land claims in said State, a portion of what was then and is known as the Rancho of Napa, in Napa County in said State, which Rancho was granted by the Republic of Mexico to Salvador Vallejo on the 21st day of September A.D. 1838, containing

Four Square leagues more or less.

Your petitioner further shows, that the land so confirmed to him is described as follows, to wit, All that portion of the said Rancho which was conveyed to your petitioner by Herman Wohler by deed dated on the 20th day of March A. D. 1852, and recorded in the Recorders Office in the said County of Napa in Book B. on pages 160 & 161, and more particularly described as all the lands in said Rancho, which had not been before the date of said deed sold and conveyed by the said Salvador Vallejo, or said Herman Wohler by deed, before that time, to wit, the 20th day of March A. D. 1852, duly recorded in the Office of the Recorder of the said County of Napa; reference being made, in the said decree of confirmation, entered in this Court, to the said deed from Wohler to your petitioner

Your petitioner further shows that in the proceedings before the said Commission, and before this Honorable Court which resulted in the said decrees of confirmation, he claimed to derive and did derive and

derraign his title to the land confirmed to him, from the said Salvador Vallejo, deriving his title as aforesaid, through the said Wohler, and from no other source,

Now petitioner further shows, that on or about the 2nd day of March A.D. 1853 the said Ingraham under the Christian name of "Horace" which is his true Christian name, filed his application before the said Commission for a confirmation to him of a portion of the said Rancho described as follows, to wit, Beginning at the corner of the Rancho of Nicholas Higuera on the Creek on which said Higuera lives, at the present point where the line of Salvador Vallejo's Rancho crosses said Creek, thence up said Creek a short distance to the mouth of the ~~first~~ small Creek that enters into the Creek aforesaid, thence up said small Creek, in the center of the channel of said Creek, a sufficient distance to make the distance of one hundred yards on a straight line, and then stop; thence commence again at the point first mentioned and follow the line between the said Vallejo and the said Higuera to the

foot or base of the hill, thence Westerly to within Eighty yards of the point where the line stops on the aforesaid small Creek; thence straight across to said point on the said small Creek Containing Seventy four Acres of land.

Your petitioner further shows that on the 11th day of April A.D. 1854 the said Commission Confirmed to the said Ingraham the title to the said land. For the Confirmation of which he had made application as aforesaid according to the description aforesaid.

Your petitioner further shows that in the proceedings before the said Commission on the said application of Ingraham which resulted in the Confirmation to him as aforesaid, he claimed to have derived his title and to deraign his title to the land Confirmed to him through divers mesne Conveyances, from and under said Vallejo as his Original source of title and from and under the Grant to said Vallejo as aforesaid, and from no other source.

Your petitioner further shows that

on or about the 12th day of November A.D. 1854 an appeal was taken from the decree of the said Commission confirming the said land to said Ingraham, to this Honorable Court, which appeal is now pending herein.

Your petitioner further shows that in the proceedings before said Commission which resulted in a decree of confirmation in favor of the said Ingraham as aforesaid, the said Ingraham relied exclusively upon the following which he claimed to be his true and only derangement or chain of title to the said land confirmed to him, that is to say, what purported to be a deed from said Vallejo to Nicholas Carriger which purported to have been dated April 12. 1848 and which purported to have been recorded in the Recorders Office of the said County of Napa on the 4th day of October A.D. 1852, and a deed from said Carriger to Edward H. Cage dated September 30th 1852, and a deed from said Cage to said Ingraham dated October 11th 1852

Your petitioner further shows that

in the said deed from Carriger to Cage, and that from Cage to Ingraham the description of the land they purported to convey and which was confirmed to Ingraham as afore said is the same as the description in what purports to be a deed from Vallejo to Carriger heretofore mentioned except that in the deed from Carriger to Cage and that from Cage to Ingraham the line therein mentioned is described as running westerly from the base of the hill mentioned therein to within "Eighty" yards of the point where the line stops in the small creek mentioned in the said deeds, whilst in what purports to be the deed from Vallejo to Carriger that line is described as running westerly to within "Eight" yards of the said last mentioned point.

Your petitioner further shows that by the substitution of the word "Eighty" for "Eight" in the deed from Carriger to Cage, and that from Cage to Ingraham a larger area of land is embraced than that described in what purports to be the deed from Vallejo to Carriger, as appears from the annexed

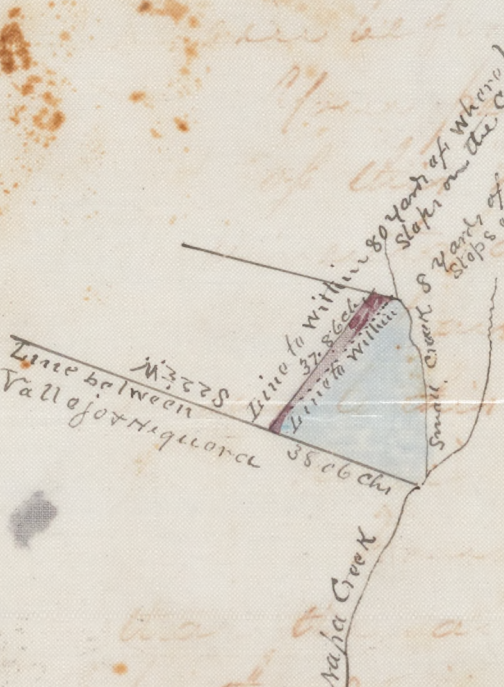
diagram made part hereof marked Exhibit A.

Petitioner further shows that said Vallejo has made no other sale or disposition of said land except the sale or disposition of the same which he may have made by what purports to be his said deed to Carriger and the deed herein before mentioned to Herman Wohler.

Your petitioner hereby refers in support of this his petition to the transcript documents, depositions and the whole record transmitted by the said Commission to this Honorable Court and on file herein.

Therefore your petitioner prays that the said decree of Confirmation by the said Commission be reformed or modified, so as to conform to the description in what purports to be the deed from Vallejo to Carriger as aforesaid, or that the decree of this Court shall conform to the last mentioned deed or that it shall contain a proviso that the land to be surveyed to said Ingraham under the decree of this Court shall be found within the exterior limits of the land described in said deed from Vallejo to Carriger

The part of the Plat Colored blue, describes the land as in purported deed. Vallejo to A. Carrigan. Blue & Red as described in the decree of Confirmation by the land Commission



and that if not reformed, so much thereof as shall be found within said Exterior limits, and that your petitioner shall have such further or other relief as may be just and proper on consideration of the facts herein before set forth.

W. H. Tompkins
Atty for petitioner

State of California
City and County of San Francisco

Otto H. Frank being duly sworn says. he has read the foregoing petition and knows its contents. that the same is true of his own knowledge. Except matters therein stated on his information or belief and as to those matters. that he believes them to be true

Subscribed and sworn to before me this 2d day of January A.D. 1880

O. H. Frank

James C. Ward
Notary Public

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District Court of the United States for the District of California

The United States
v.
Horatio Negrahane

Land Commission No 720.
U. S. D. Ct No 122

Petition of Otto H. Frank in opposition to proposed Decree of Confirmation

Filed January 6 1880
Southard Hoffman Clerk
By H. W. Linnwood Deputy Clerk

Due service of the within and foregoing petition acknowledged this 3d day of January A D 1880

Philip Teare
U. S. Attorney

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

The United States
Appellant
v.s.
Horatio Ingraham

U.S.D.C.
No 122

In the matter of the petition of Otto H. Frank for modification of the decree of confirmation to Horatio Ingraham by the U S Board of Land Commissioners for land, in the Rancho de Napa, in Napa County California.

Brief for petitioner.

The petition in this case shows, that the decree of confirmation by the Board embraces more land than the proof in the case before the Board warranted.

The record in the case before this Court on appeal embraces all the proof adduced by the claimant before the Board; this record shows with the exception of the confirmation to the petitioner, that all the allegations of the petitioner are true. An application

is now made to enter a decree affirming in all things the decree of Confirmation by the Land Commission.

Admitting the truth of the allegation in the petition, of the Confirmation to petitioner, which petitioner is ready to show as alleged by reference to the records of this Court, there is only one question to be considered, and that is. Does the record authorize the entry of the decree presented to the Court for its approval and for entry? Clearly it does not. There is in the record, as shown by the petition, manifest error in the description of the land conveyed by Vallejo, from whom the appellee derived title. This is not a matter of speculation, but of positive fact, as shown by the record. No presumption can be indulged in, that proof was introduced before the Board, on the subject, which induced the decree of the Board about which the record is silent. because all the testimony taken before that body, was either original documentary testimony, or in the shape of depositions. All these, the

law and the practice of this Court and of the board, required to be transmitted to this Court on appeal and constituted the record in the case.

The question presented, does not involve the consideration, whether or not the Court should open this case for proof, after the lapse of so many years. but whether or not, when called upon, the Court should allow the entry of a decree not warranted by the record, and should refuse to modify it according to the facts presented by the record.

The petitioner is not responsible for the length of time that this appeal has been pending. It was not his duty to apply for a final decree of confirmation, and this is the first opportunity that has been presented to him to oppose the entry.

This case is still not only within the jurisdiction of the Court, but entirely within its control. and the attention of the Court is here called by this petition to the error in the decree of the Land Commission, as presented by the record, when the correction of that error is not only within its

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power. but is a matter of duty.

It is a familiar principle of law. that a Court will not only reform or modify its decree rendered in mistake or error so long as it shall have Control of the Case, but will on a proper showing set it aside; how much more strongly then, may an appeal be made to this Court to modify or reform the decree of the Land Commission, in respect to an error perfectly apparent from the record, when an application is made to enter a decree affirming in all things the decree from which this appeal has been taken.

A very strong reason, and perhaps a stronger reason than any heretofore urged, why the Court not only has the power to grant, but should grant, the prayer of the petitioner. This is, that in proceedings on appeal from the Land Commission to this Court. according to the act of Congress March 3 1851. and the practice of this Court in such Cases, the judgment here is not one of simple affirmance or reversal, but an independent or new judgment, based on the facts

disclosed in the record or such further testimony as may be taken by order of the Court

Act of March 3. 1851. Sec 10.

Hence it follows, that the whole matter embraced by and prayed for in the petition, is strictly within the power and Control of the Court.

In Conclusion we Call the attention of the Court to the fact, that both in the decree of the Land Commission, and in that presented to this Court for approval, any reference to the deed from Salvador Vallejo, the original grantee, the actual foundation of the title of Claimant, has been studiously avoided. Now if the Court can do nothing else, it can certainly require that its decree shall refer to that deed as the source of title.

Respectfully submitted

W. H. Tompkins
Atty for petitioner

No 122

U.S. District Court
for the State of California

United States
vs
Horatio Ingraham

Matter of the petition
of Otto H. Frank
for modification
of decree of land com-
mission

Brief for petitioner

Filed January 10th 1880
Service of a
copy of the within
brief is hereby acknowledged
this 10th day of Jan
1880

Philip Teare
U.S. Atty

District Court of the United States for the District of California

The United States
vs
Horatio Ingraham } Land Case No 720
M.S. Diller. No 122

It is hereby stipulated that the petition of Otto H. Frank for a reformation of the decree of confirmation in the above entitled case be and the same is hereby withdrawn and that the same be dismissed.

Dated Novr 15, 1880. W. W. Tompkins
Atty for petitioner.

122.

U. S. Dist Court

District of California

United States

vs

Horatio Ingraham

Stipulation to dismiss petition of Otto H. Frank

U. S. Land Commission

vs. Dist Court House

Filed November 16th A.D. 1880 -

Lorhard Hoffman Clerk

By R. D. Grimwood

Deputy Clerk

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At a Stated Term of the District Court of the United States for the District of California, held at the Court Rooms of said Court in the City of San Francisco on the day of December A. D. 1879.

Present Hon. Ogden Hoffman - Judge

The United States vs Horace Ingraham } No. 122. Decree of Confirmation Part of Napa

It appearing to the Court upon inspecting the minutes and entries in the Register of the Clerk on the 2nd day of March A. D. 1857, that an order was made by the Court affirming the decree of the Board of Land Commissioners made in the above cause and confirming to the claimant therein, the lands set forth and described in said decree. It further appearing that said order of confirmation was made on an appeal duly taken from the decision of the said Board of Land Commissioners and was made with the consent of the District Attorney in open

Court: and it further appearing to the Court that by neglect or omission of the claimant's Attorney, no formal decree of confirmation was presented to the Court for signature, and that no such decree has been signed by the Judge or filed of record, and it being suggested to the Court by Philip Leare Esquire, United States Attorney, that the Surveyor General has informed him that it was necessary for the prosecution of public Surveys, that a decree in the said cause, describing and defining the boundaries of the land so confirmed as aforesaid, should be entered; and it further appearing to the Court, from statements of the District Attorney that no objection exists to the entry of the decree of confirmation of the said lands of claimant, Nunc pro tunc, as of the day when said order of confirmation was made as shown by the entry in the minutes and in the Register of the Clerk.

Now therefore on the motion of Philip Leare, District Attorney, it is ordered that a decree of confirmation in said cause, be entered, Nunc pro tunc, as of said day.

Wherefore in consideration of

the premises, it is hereby ordered, adjudged and decreed that the said decree is hereby affirmed, and it is further ordered, adjudged, and decreed that the claim of the said appellee is a good and valid claim and the same is hereby confirmed.

The lands of which confirmation is hereby made are a part of the place known by the name of Napa in Napa County, which was granted to Salvador Vallejo, which place is bounded and described as follows to wit:

Commencing on the Arroyo of Napa at the boundary of Nicolas Higuera thence following a Southerly direction to the lower pass of the Arroyo de los Carneros, six thousand varas to a pile of stones, thence toward the North West along the Arroyo, six thousand varas to the upper road which goes to Napa, thence along the same Arroyo North North West, to the upper road, which goes to the Rancho of Yunti four thousand six hundred varas, thence continuing on the same course to the boundary of said Yunti, by estimation, ten thousand varas, thence toward the North North East, three thousand two hundred and fifty varas

to the river Napa, thence down the same river course South East to the arroyo of Napa, fifteen thousand one hundred and seventy five varas, and thence following the same arroyo, westwardly two thousand six hundred varas, to the place of beginning, containing four square leagues of land, agreeable to the grant, to said Vallejo and the Judicial Measurement.

That portion of the above described premises of which confirmation is hereby made is bounded and described as follows to wit: beginning at the corner of the rancho of Nicolas Higuera, on the creek on which said Higuera lives, at the ~~point where~~ the line of said Salvador Vallejo's ranch crosses said creek, thence up said creek a short distance to the mouth of the first small creek that enters into the creek aforesaid, thence up said small creek in the center of the main channel of said creek a sufficient distance, to make the distance of nine hundred yards on a straight line and there stop. Then commence again at the point first mentioned and following the line between the said Vallejo and the said Higuera to the foot or base of the hill, thence westerly to within eighty yards of the point where the line stops at the aforesaid small

or base of the hill, thence westerly to within eighty yards of the point where the line stops on the aforesaid small creek, thence straight across, to said point in said small creek, containing 7½ acres of land, it being the same tract of land, described in a deed from Edward H. Cage to said Ingrahams, dated October 11th A. D. 1852.

Ogden Hoffman
Clerk Judge

No. 122 N.D.

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

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The United States

vs.

Horace Ingraham

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Decree of Confirmation

Filed November 16th AD 1880 as of March 2nd AD 1857 nunc pro tunc.

Southard Hoffman Clerk

By S. D. Grimwood

Deputy Clerk

Entered in BK 2 Judgments & Decrees of Page 518-19

Lodged in Clerk's Office U.S. District Court Dist of California January 6. 1880

Southard Hoffman Clerk

By S. D. Grimwood

Deputy Clerk

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

Stated Term. Febry 23, 1857.

The United States
vs
Otto H. Frank

This cause coming on to be heard upon the transcript of the record therein before the Board of Commissioners for the ascertainment and settlement of Land titles in California, and upon the pleadings and evidence on file in this Court, and it appearing to the Court that said record was duly filed; argument of counsel on the part of claimants and of the United States having been heard, it is now finally adjudged and decreed that the decree of said Board confirming the claim of claimant, Otto H. Frank be and the same is hereby affirmed; and it is adjudged and decreed that the claim of said Otto H. Frank is a good and valid claim, and the same is hereby confirmed — The land of which confirmation is hereby made is a part of

the place known as the Rancho of Napa, situate in Napa County, which was granted to Salvador Vallejo, which place is bounded and described as follows to wit -

Commencing on the Arroyo of Napa at the boundary of Nicolas Higuera, thence following a southerly direction to the lower pass of the Arroyo de los Carnesas, six thousand varas to the upper road which goes to Napa, thence along the same Arroyo North north west to the upper road which goes to the Rancho of Smith four thousand six hundred varas - thence continuing on the same course to the boundary of said Smith by estimation Ten Thousand varas, thence towards the North North east Three Thousand two hundred and fifty varas to the river Napa - thence down the said river course South east to the arroyo of Napa Fifteen thousand one hundred and seventy five varas, and thence following the same Arroyo Westwardly Two ~~hundred~~ Thousand six hundred varas to the place of beginning, containing four square leagues of land, agreeably to the grant to said Vallejo, and the judicial measurment thereof

The ~~portion~~ portion of the above described

premises, of which confirmation is hereby made to said Otto H. Frank comprises all that part thereof which was conveyed to said Otto H Frank, by Herman Wahler by deed dated on the twentieth day of March in the year Eighteen Hundred and Fifty Two and recorded in the Recorders office in the County of Napa in Book B. pages 160 and 161, said premises being described as all the lands in said Rancho, which had not been before the date of said deed sold and conveyed by said Salvador Vallejo or the said Herman Wahler by deed before that time duly recorded in the ~~[illegible]~~ office of the Recorder of Napa County; reference for further description of the premises hereby confirmed to be had to the said deed to said Frank, it being intended hereby to confirm his Title to the lands within said Rancho of Napa as above described which passed to him, under and by virtue of said deed and no more

Ogden Hoffman U.S. Dist Judge

[Endorsed] Filed June 12, 1858 W H Chevers Clerk

I, Southard Hoffman, Clerk of the District Court of the United States for the District of California, do hereby certify the foregoing to be a full, true and correct copy of "Decree" in the case of the United States vs. Otto H. Frank, Land case No. 149. N.D., now remaining of record and on file in my office

Attest my hand and seal of said District Court, this 21st day of January A.D. 1880.

Southard Hoffman Clerk
By P. D. Armwood
Deputy Clerk.

Dist. Court of the United States. Northern District
The United States
vs.
Otto H. Frank
Stated Term
February 23rd 1857
Decree

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Office of the Board of Commissioners,

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

San Francisco, 1854

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

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 720 on the Docket of the said Board, wherein Horace Ingham is the Claimant against the United States, for part of the place known by the name of "Napa"

and request your receipt for the same.

I am, Respectfully,
Your Ob't Servant,
Geo. Fisher
Sy