CASE NO.

129

NORTHERN DISTRICT

RINCONADA DEL ARROYO

DE SAN FRANCISQUITO GRANT

MARIA ANTONIA MESA

CLAIMANT

Land Case 129 ND

ALSO AVAILABLE ON MICROFILM

Northern District

129 ND
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 238

María Antonia Mesa CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"*Rinconada del Arroyo de San Francisquito*"

/

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

129 ND
PAGE 2

Be it Remembered, that on this twenty second day of January 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 Maria Antonia Mesa, for the Place named "Rinconada del Arroyo de San Francisquito," was presented, and ordered to be filed and docketed with No. 238, and is as follows, to wit;

(Vide page 3 of this Transcript.)

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

San Francisco, Jan, 22d, 1853.

In Case No. 238, Maria Antonia Mesa, widow of Rafael Soto, for the place named "Rinconada del Arroyo de San Francisquito," the deposition of Nicolas A. Den, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with documents marked N. I. S. nos. 1 & 2, with translations thereof, annexed thereto, was filed;

(Vide page 5 of this Transcript)

San Francisco, March 30 1853.

In the same Case the deposition of Wm. A. Richardson a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, was filed;

(Vide page 6 of this Transcript.)

2

129 ND
PAGE 3

San Francisco, Sept. 6th 1853.
Case no. 238, Called, Argued, Submitted and taken under advisement by the Board.

San Francisco, Jan. 10th 1854.
In the same Case the Counsel for the Claimant filed the following Motion and affidavits of J. Clarke and John Weir, to wit;
(Vide page 29 of this Transcript.)
Which Motion was granted by the Board.

San Francisco, March 21 1854.
In the same Case Commissioner Alpheus Felch delivered the opinion of the Board rejecting the claim.
(Vide page 33 of this Transcript.)

San Francisco, Aug. 15 1854.
In the same Case, On motion of the United States Land Agent, the following order was made, to wit;
(Vide page 36 of this Transcript.)

3

Petition.

129 ND
PAGE 4

To the United States Land Commission for the ascertaining & settling of private land claims in California.

The petition of Doña Maria Antonia Mesa, widow of the late Rafael Soto, respectfully showeth, that heretofore, to wit on the first of August 1838 said Rafael Soto made & presented his petition in writing to Juan B. Alvarado, then Governor of California, soliciting for himself the grant of a piece of land situate in the County of Santa Clara and known by the name of Rincon de San Francisquito.

That said Governor referred the petition to the Ayuntamiento of San José for information upon the subject matter embraced therein. That the reports upon said reference not being deemed by said Alvarado, to be sufficiently full & explicit, said petition accompanied by said reports was subsequently referred by him to the Prefect of the first district who on the 12th of February 1841 reported at length & to the effect, that the land petitioned for was fit & proper to be granted, that the cattle mentioned in one of said previous reports as belonging to said Rafael Soto should not be pasture on the said land, & that the house of Soto referred to in Estrada's report as standing on the land of Doña Ortega de Argüello had in the meantime been abandoned.

That thereupon to wit, on the 16th of Feby 1841, said Alvarado by virtue of the authority vested in him as constitutional Governor of California, declared your petitioner Doña Maria Antonia Mesa the owner of said land, as Rafael Soto, her husband, had died in the meantime, & decided the proper documents, conveyances title to be executed & delivered to said Mesa.

That a formal grant would be your petitioner on the same day.

And your petitioner further saith, that the petition, references, reports, decree, a duly certified copy of said grant & original map are on file in the archives of California now in the possession of the U. S. Surveyor General for the

4/238

129 ND
PAGE 5

State of California, & that duly certified copies & translations of the same are herewith submitted & prayed to be made a part of this petition.

That the original grant is in the hands of your petitioner & ready to be offered in evidence whenever required.

And your petitioner further saith, that said land is situate in the present county of Santa Clara, is known by the name of Rinconada de San Francisquito & bounded as follows. Commencing at the place where the Arroyo de San Francisquito empties into the bay of San Francisco thence running South 11° 59' West 135 chains, thence North 78° 01 West 15 3 chains 35 links, thence North 11° 59' East 114 chains 19 links to a large oak tree standing between the road of San Francisco, & the Arroyo de San Francisquito, thence North 33° 45 East 5 chains 40 links, thence along the middle of said Arroyo to the place of beginning containing half a square league more or less.

And your petitioner further states, that said Rafael Soto had been in possession of said land before said grant owned up to the time of his death & that from & after said Soto's death both before & after obtaining said grant your petitioner has continued to be in possession & in the exercise of full & undisputed ownership thereof to this date, without being aware of the existence of any title conflicting with or paramount to his own.

She therefore claims to be the lawful owner of said land & prays that your honorable body will confirm & validate her claim & title thereto.

Clarke, Taylor & Beckh.
Attys for Dña Mesa.

Filed in Office May 25th 1852.
Geo. Fisher.
Secy.

5

Deposition of Nicholas A. Den.

129 ND
PAGE 6

San Francisco Jany 22nd 1853.

On this day before Comr Harry I. Thornton, came Nicholas A. Den, a witness in behalf of the claimant Maria Antonia Mesa, petition No 238, & was duly sworn, his evidence being given in English.

The U. S. Associate Law Agent was present.

Judium by Claimant

Quest 1st. What is your name, age & place of residence.
Answer. My name is Nicholas A. Den, my age forty years, my residence Santa Barbara.
Quest 2d. Look at the documents now shown you, marked Exhibits 1 & 2. respectively, now attached to your deposition & purporting the one to be an original grant, with translation thereto, from Juan B. Alvarado to Maria Antonia Mesa, of the land known as Rinconada y Arroyo de San Francisquito, the other a certificate from José Castro to Doña Maria Antonia Mesa, with translation thereto. State what you know concerning said documents. if you are acquainted with any signatures thereon, and whether they are genuine.
Answer. I have examined the documents above exhibited marked Nos 1 & 2 & filed with this deposition. I have no doubt of their genuineness, I am well acquainted with the hand writing of Juan B. Alvarado & Manuel Jimeno & José Castro, having often seen them write, & state that their signatures upon said documents are their genuine signatures. I think that the body of exhibit 2. is in the hand writing of the said José Castro.

N. A. Den.

Sworn & subscribed before me this
22nd of Jany 1853

Harry. I. Thornton. Comr

6

4/238

Service acknowledged
H. Thornton.
Agt to Law Agent.
Filed in Office June 22nd 1853
Geo: Fisher. Secy.

Deposition of
Wm A. Richardson.

129 ND
PAGE 7

San Francisco March 30th 1853.

On this day before Comr Harry L. Thornton, came Wm. A. Richardson, a witness on behalf of the claimant Maria Antonia Mesa, petition No 238. & was duly sworn, his evidence being given in English.

Question by Claimant.

Quest 1st What is your name, age & place of residence
Ans. My name is William A. Richardson, my age is forty eight years, & my residence in Marin County California.
Question 2d. Are you acquainted with the land claimed in this case, & if yea state what you know of its occupation.
Answer. In the year 1836 or 1835 this rancho was occupied by Rafael Soto with his family who lived in a house on it cultivated it & had stock upon it. The place has been so occupied by his family ever since to this time.

Willm A. Richardson.

U. S. Law present.

Sworn & subscribed before me this
30th of March 1853.

Harry L. Thornton.
Comr &c

Filed in Office March 30th 1853.
Geo: Fisher.
Secy.

1ª Copy. Bn

Case. 238.

21 Juicios

7

Espediente

Promovido por la Señora Dª Maria Antonia Mesa en pretencion del paraje conocido con el nombre de Rinconada de San Francisquito.

año 1841. 221.

129 ND
PAGE 8

Espediente B

En Misiones del Sr. Guadalupe. Sor. Gobernador de la alta California. Agosto. 18 de 1838. Rafael Soto, Cabo de artilleria en la Compañia de milicia, hijo de este pais y residente de San francisquito, lugar que pasa de la cuaternia informe ense a la Mision de Sta Clara ante V.S. el S. Ayuntamto del Sr José con la Mejor forma con el mayor respeto y el debido me presento y digo: que no teniendo los requisitos legales para un terreno en propiedad para poder tirar ser atendido en su solicitud un grano, con que poder subvenir a las necesidades mias y de mi numerosa familia es ó no de propiedad pasa solicita por labor, un terreno que inmediato esta en el paso de abajo del arroyo de San francisquito al rumbo del Sur, dicha situa-cion se forma un Rincon, como se detalla por el diseño que a continuacion acompaño Dho. Sitio linda con el rancho de las Pulgas cuya estension poco mas ó menos sera de medio Sitio en cuadro el cual se me concedio en clase de prestamo por el Administrador de Sta Clara hace dos años y viendo á Dho. administrador no le hace falta alguna, y que me es de grandisimo uso debo el que este Gobierno se me conceda en propiedad dho. terreno para labrar en el mi casa y labor que espero de lo que lo solicita. Por tanto. A.V.S. Rendidamte Suplico se digne conceder mi solicitud en lo que recibiré merced y gracia. Juro lo necesario y no ser de malicia

Esperbent B

alvanado.

Pueblo de San José Guadalupe.

Septbre. 30 de 1838.

129 ND
PAGE 9

San Francisquito. Agosto 1º de 1838. L. Rafael Soto. =

Por informacion que corresponde por este espediente debo decir que la parte interesada tiene los derechos prevenidos para la ley de colonizacion hasta labrado que tiene sus cortes bienes de campo para obtener sitio. El terreno que solicita ha concedido por el de la situacion inmediata de Sta Clara y segun demuestra su diseño una parte pertenece a la viuda Soledad Ortega, mas que hasta el sitio hasta donde por accion que en el año pasado hubo sus mayordomos en la misma solicitud el encuentro a cuenta a la titulacion.

Dolores Pacheco.

Sta Clara. 8 de 8bre de 1838.

Segun el diseño que le acompaña en esta instancia el terreno donde halla situada la casa, corresponde a los herederos del finado Capitan Don Luis Argüello. El terreno que le señala por el rumbo de Santa Clara de este lado de S. Francisquito estoy informado. De que pastan en el los ganados de esta Mision tanto bacuno como caballares y algunas veces de lanar, y es en el mismo agoaje que hay en esa parte, es lo que puedo decir sobre el particular.

José Estrada. Monterey. Mbo. 11 de 1839.

Al Prefecto del 1er Distrito para que informe lo conveniente. Alvarado.

Ynmo. Señor.

En la Instancia que antecede, solicita la familia del finado Rafael Soto, se le conceda en propiedad el terreno nombrado S. Francisquito y aunque aparece por los informes del Juez de Paz de S. José, Alvarado que encargado de la Mision de Sta Clara que lo es ad que manifiesta el diseño ult. es terreno a la propiedad de Da Soledad Ortega hay que segun el solicitante haber sobornado esto, y pasado aquella al sitio que pretende el que no pertenece a la mencionada viuda.

Sobre lo que dice Estrada en su informe que pastean en parte del terreno solicitado algunos de los ganados de aquel establecimto. no hay necesidad, por que si hermano

2. 11

238

129 ND
PAGE 10

tiene bastante con las tierras que posée la Mision. En atencion á los servicios prestados por el finado Soto y á la numerosa familia q. queda á su viuda esta Prefectura no tiene inconveniente en que se les agracie, con lo que solicitan, siempre que V.S. (cumpa disposiciones respecto) se sirva opinar del mismo modo.

San Juan de S. Castro. Del. 12 de 1841.

Jose D. Castro.

Monterey. 16 de febrero de 1841.

Vista la peticion con que da principio este Expediente el informe del Juez del Pueblo de San José y del Sor. Prefecto del ese Distrito, con todo lo demas que de todo presente y ver conviene, de conformidad con las leyes de la materia, declara á Dª Maria Antª Mesa dueña en propiedad del terreno del establecimto de Santa Clara, sujetandose á las condiciones que se estipularen.

Devuelvase el despacho correspondte, tomese razon en el libro respectivo y dirijase este Expediente á la Mision de Santa Barbara cuando para su aprobacion. = Sor. Don Juan Alvarado Gobernador Constitucional del Departamento de las Californias. así lo mandó, decretó y firmó de que doy fé.

Alvarado.

Jose Antonio Ruiz or Salvan.

129 ND
PAGE 11

Juan B. Alvarado Gobernador Constitucional del Depart° de las Californias.

Por cuanto Dª Maria Antonia Mesa ha preferido para su beneficio personal y el de su familia el paraje conocido con el nombre del Rincon ado de y Arroyo de San Francisquito Colindante con el terreno de las Bulgas y con el establecimiento de Santa Clara, practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leyes y reglamentos, usando de las facultades que me han conferidas ó nombre de la nacion Mexicana, he venido en concederle el terreno mencionado, declarando le la propiedad de él por las presentes letras, sujetandose á la aprobacion de la Junta Departamental y á las condiciones siguientes.

1ª Deberá cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutara libre y exclusivamente destinando lo al uso ó cultivo que mas le acomode pero deberá de un año poblarlo con y estando habitada.

2ª Solicitará del Juez respectivo que le dé posesion judicial en virtud de este despacho por el cual se deslindaran los linderos en cuyos límites pondrá ó hará poner algunos ordenes jurados ó Silvestres de alguna utilidad.

3º El terreno de que se hace mencion es de medio Sitio de Ganado Mayor; conforme se explica el diseño que corre en el Expediente. El Juez que dirija la posesion lo hará medir conforme á ordenanza quedando el Sobrante que resulte á la Nacion por los usos Convenientes.

4ª Si contraviene á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que tan luego sea puesto en posesion y valerá este titulo de tome razon de él en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterrey á diez y seis de febrero de mil ocho cientos Cuarenta y uno.

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

13

129 ND
PAGE 12

I Samuel D. King, Surveyor General of the united States for the State of California and as such now having in my office and under my charge and Custody a portion of the archives of the former Spanish and Mexican territory or Department of Upper California, do hereby Certify that the ten preceding and hereunto annexed pages of having paper numbering from one to ten inclusive and each of which is revised by my Initials (S.D.K) exhibit true and accurate copies of Certain documents, on file and forming part of the said archives in this office.

In testimony Whereof I have hereunto Signed my name officially and affixed my private seal (not having a Seal of Office) at the City of San francisco Cal. this 23 day of April 1852.

Samuel D. King.
Surveyor Gl Cal.

Filed in office. 25. May. 1852.

Jno. Hitchen.
Secretary.

14

1230

15

Record of Proceedings at the instance of Doña Maria Antonia Meza, soliciting the location known by the name of Rinconada de San Francisquito.

1841.

Translation of Expediente C.

129 ND
PAGE 13

221.

Sir Governor of Upper California.

I, Rafael Sola, corporal of Artillery in the company of Militia, a native of this country & a resident in San Francisquito, a place belonging to the Mission of Santa Clara, present myself before your Honor in the best manner & with due respect say: that in as much as I do not possess a piece of land to raise grain enough to supply my wants & those of my numerous family, I pray for a piece of land adjacent to the lower part of the Arroyo de San Francisquito on the South, the situation of which forms a corner, as will appear by the map hereinafter contained. Said location is bordering on the Pulgas rancho, & its extent is probably half a league square - the permission of occupancy I obtained from the Administrator of Santa Clara about two years ago, & observing that it is not absolutely necessary to said Administrator & that to me it is a very great benefit, I do not doubt that this government will grant me said land, to build my house & to work on it, for which purpose I solicit it.

Therefore I pray Y. Honor must humbly to accede to my solicitation, whereby I shall obtain favor & benefit. I swear not to be moved by malice, & to all which is necessary.

San Francisquito 1st Aug. 1838.

Rafael Sola.

(In the Margin)

Ex Mission of San Fernando Aug. 18th 1838. In conformity with the laws & regulations upon the subject, let the Expediente of San José

129 ND
PAGE 14

report whether the interested party has the legal requisites, to have his request complied with, whether the tract of land mentioned therein is private property or not, what the nature of his occupancy is & whatever might come in mind about the subject. This being done, let the expediente pass to the Administrador of Sta Clara, so that he may report thereon what he thinks fit but remembering always the merits & services of the interested party.

Alvarado.

Town of S. Jose Guadalupe Septbr 3rd 1838.

By way of report corresponding to the reference made to this Ex[cellen]cia, I have to say that the interested party has the necessary requisites required by the law of colonization, & that he ought to obtain a piece of land. The land which is solicited is known to belong to the adjoining Mission of Santa Clara, & as this map shows a part of it belongs to the widow Soledad Ortega; besides that it is certain, that this corporation has had within the past year two petitions for the same place. This is what may serve for information.

Dolores Pacheco.

Santa Clara 8th October 1838.

According to the map which is annexed to this proceeding, it appears that the land where the house is situate belongs to the heirs of Captain Don Luis Arguello deceased. On the land which appears to be the direction of Santa Clara on this side of the San Francisquito, pasturage, as I am informed, the cattle & horses of this Ex[cellen]cia Mission & sometimes sheep & this is the only watering place on said location. That is all I can say on the subject.

José Estrada.

Monterey March 12th 1839.

To the Prefect of the first district Re-

129 ND
PAGE 15

3/238

report on the subject what he thinks necessary.

Alvarado.

Excellent Sir.

By the foregoing petition the family of Rafael Soto deceased, solicits for the grant of a piece of land, called the San Francisquito, & although it appears by the report of the justice of the Peace of San Jose, Alvarado & the Administrator of the Ex Mission of Santa Clara, that the house, which abandoning to said map stands on the land belongs to the widow Soledad, the soliciting party assures me to day that he has abandoned said place & has moved said house from the place which belongs to said widow to that which does not belong to her.

As to what Estrada adds in his report that on a part of the land petitioned for, some of the cattle of that establishment pastured &c, it is not the case now-a-days, because said cattle has enough with the lands which said Ex Mission possesses.

In regard to the services rendered by the deceased Soto & to the numerous family which his widow has, this Prefecture deems it but proper, that you should favor them with what they pray for, if Y.E. may so think it.

Sn Jose de Castro, February 12th 1841.

Jose F. Castro.

Monterey February 16th 1841.

After due inspection of the petition at the commencement of this expediente, the report of the Justice of the Peace, of the Pueblo of San Jose & of the Sr Prefect of the 1st District, together with the rest which were born in mind & thought fit to attend to, in conformity with the laws on the subject, I declare Dna Maria Antonia Mesa, owner in fee of the land known by the name of Rinconada

L 129 ND
PAGE 16

y arroyo de San Francisquito, bordering on the lands of the Pulgas & with the land of the establishment of Sta Clara, subject to the conditions hereafter established. Let the corresponding patent be expedited, entered in the respective book, & let this espediente be decided by the Excl Departmental Assembly for its approval. Senor Don Juan B. Alvarado, Constitutional Governor of the Department of California, thus did order, decree and sign: which I certify.

Alvarado

Juan B. Alvarado, Constitutional Governor of the Department of California.

Whereas Doña Maria Antonia Mesa has pretended for her personal benefit & that of her family the land known by the name of Rincon de Arroyo de San Francisquito, bordering on the land of the Pulgas, belonging to Doña Soledad Ortega, & on the land of the establishment of Santa Clara, the necessary mensurations & judicial inquiries having been previously complied with according to the provisions of the laws & regulations, by virtue of the authority vested in me in the name of the Mexican nation, I have thought proper by a decree dated this day, to grant her the land hereafter mentioned, declaring it by this patent her property, subject to the approbation of the Excl Departmental Assembly & under the following conditions.

1. She may fence it in without obstructing the paths, roads & servitudes, she may enjoy it fully & exclusively, appropriating it to the use or cultivation that may best suit her, but she shall build a house thereon within a year, & the same shall be inhabited.

2. She will solicit of the respective Judge to give her judicial possession by virtue of this patent, by whom the boundaries are to be marked, & on which he terminates boundar

P/238

19

the land marks she will put some fruit trees or wild ones of some utility.

3. The tract of land hereby granted is half a square league (sitio de ganado mayor) as appears from the sketch accompanying the record of proceedings. The Judge who will give the possession, will have it measured according to ordinance, the surplus resulting, remaining at the disposal of the nation for convenient uses.

4. If she should act against these conditions, she shall lose her right to the land & it may be denounced by any other person.

Therefore I order that the present title deed being held as firm & valid, the same be entered in the corresponding book, & be returned to the interested party for her security & other purposes.

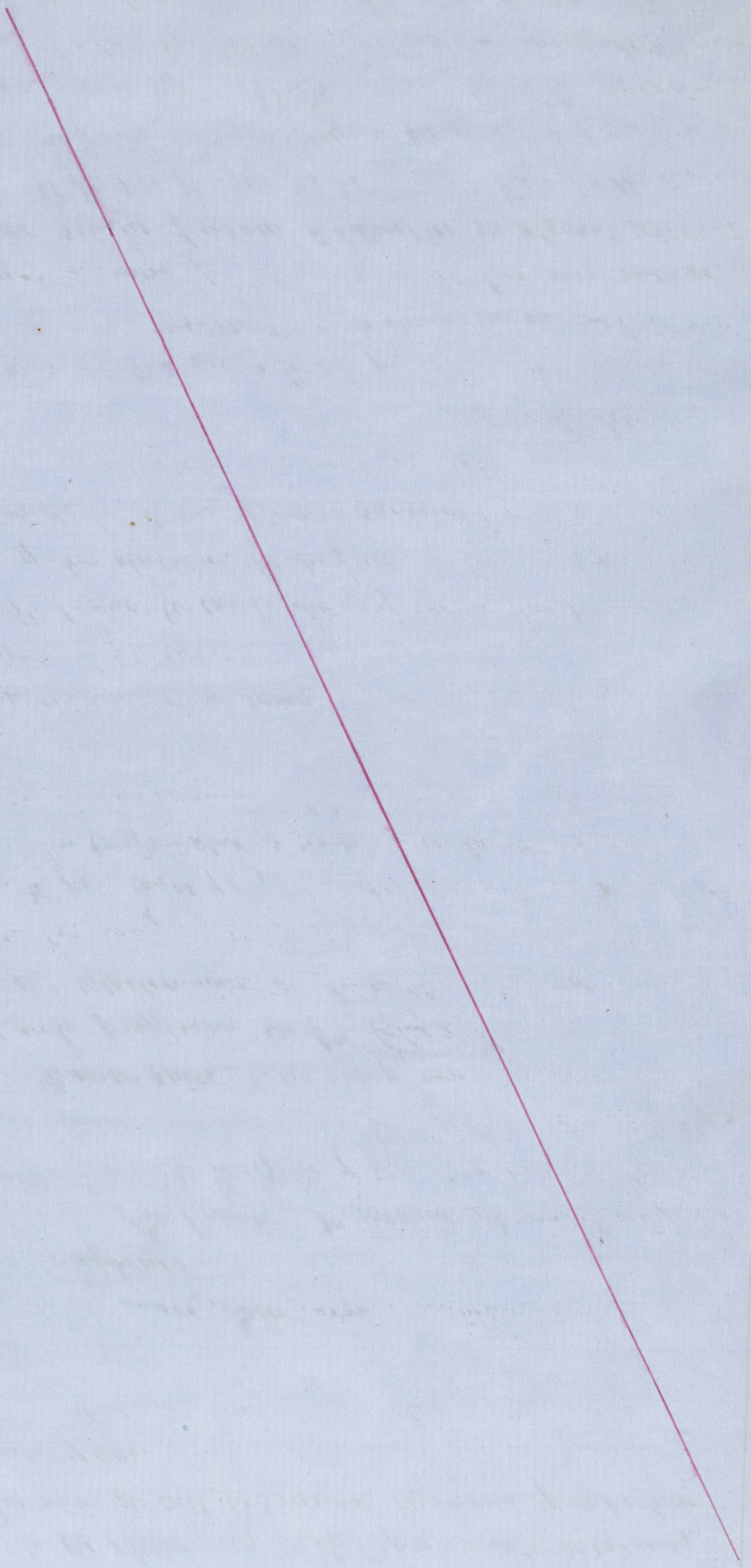
Given at Monterey, 16th February 1841.

Filed in Office May 25th 1852.

Geo: Fisher.

Secy.

129 ND
PAGE 17



24

Sello tercero Dos reales.

Habilitado provisionalmente por la aduana Maritima del Puerto de Monterrey en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Alvarado. Antonio Maria Osio.

129 ND
PAGE 18

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

Por Cuanto Dn. Antonio Maria Mesa, ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Rinconado, Arroyo de San Francisquito; colindante con el terreno de las Pulgas de la propiedad de Da. Soledad Ortega ~~Ortega Soledad~~ y con el terreno del establecimiento de Santa Clara: practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la Nacion Mejicana

x por decreto de este dia

he venido en concederle el terreno mencionado declarandole la propiedad de él por las presentes letras, sujetandose á la aprobacion de la Exma. Junta Departamental y á las condiciones siguientes.

1a. Podrá cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricará casa y estará habitada.

2a. Cuando se le confirme la propiedad solicitará del Juez respectivo que se le dé posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrá ~~ademas~~ de sus mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de medio sitio de Ganado Mayor segun demuestra el diseño que corre en el Expte. El Juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

3a. Si contraveniere á estas condiciones, perderá su derecho al terreno y será denunciable por otro.

En consequencia mandó que teniendolase por firme y valedero este titulo, se tome razon de el en el libro respectivo.

Sello tercero. Dos reales.

Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterrey en el Departamento de las Californias para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Alvarado. Antonio Maria Osio.

que corresponde q. se entregue á la interesada para su resguardo y demas fines. Dado en Monterrey á diez y seis de Febrero de mil ochocientos cuarenta y uno.

Alvarado. Manuel Jimeno. Sro.

Queda tomada razon, de este despacho en el libro de asientos sobre adjudicacion de terrenos baldios a f. 2. 1a.

Jimeno.

Titulo del terreno de Ma. Antonia Mesa del terreno nombrado Rinconado de Sn. Francisquito.

Mandado registrar en el libro correspondiente el dia 2 de Enero de 1850. 2 Vn. Antonio Ma. Osio.

Prefecto del Distrito de Sn. José.

Exhibit no. 1 to the depositions of Mr Den. taken at 255 exhibit no 1.

Filed in office. Jany. 22. de 1852.

Geo. Fisher.

Secretary.

129 ND
PAGE 19

23

Translation

S.S.

Juan B. Alvarado, Constitutional Governor of the Californias.

Whereas Doña Maria Antonia Mesa, has solicited for her personal benefit & that of her family, the portion of land known by the name of the Corner of Alvarado of San Francisquito, contiguous or bounded by, fronting, with the Pulga grant the property of Doña Soledad Ortega, & the land of the Santa Clara establishment, having performed the relative duties & municipations in conformity with the laws & regulations provided; now, the person that am conferred me in the name of the Mexican Nation by decree of this day, I have resolved to grant her the said portion of land, declaring it her property by these presents, subject to the approval of the Most Excellent Departmental Assembly & the following conditions.

1st She shall be able to enclose it without hindrance to the roads limits & rights of way; she shall enjoy it just & exclusively, dedicating it to the use or cultivation that best suit her, but within one year she shall build a house, & it shall be settled.

2nd When the property is conformed her, she shall ask of the respective Judge that he give her legal possession, in virtue of this patent, by which the boundaries shall be traced, in which limits she shall place the land marks, or trees having fruit, or wild ones of some use.

3rd The portion of land which is granted is of half a larger cattle grant (medio sitio de ganado mayor) (vide explan) as is shown by the plan accompanying the patent. The Judge who may give possession shall cause it to be measured according to law, the window that results, remaining to the nation for useful purpose.

4th If she should violate these conditions she shall lose her right to the land & shall be denounceable by another.

In pursuance Wherefore, that this title having

Translation of Doct. No. 1. ans. to the depo of Nicholas A. Den. taken before Comr H. D. Thornton.

129 ND
PAGE 20

24

2/238

force & validity, be taken note of in the proper book, & delivered to the interested party for its information & further purpose. S.S. Given in Monterey this eighteenth day of February of one thousand eight-hundred & forty one.

(Signed) Juan B. Alvarado.

M Jimeno.
Secy.

129 ND
PAGE 21

Recorded, this patent in the book of ayuntos & Judgments of Granted lands. see page 4.

(Signed) Jimeno.

Filed in Office June 22 1853.

Geo: Fisher.
Secy.

25

No 2.

129 ND
PAGE 22

El que Subscribe Certifico que Siendo Respecto de este Distrito ó partido Dn Jose Pena, Solicita este Señor, una question de Denuncio á Doña Maria Antonia Cheda el terreno que actualmente posee; y con autorizacion bastante determine cuanto mas que Dha. Sra. quedase en perfecta posesion del terreno en question y a pedimento de la interesada.

Doy esto en el Pueblo de Dn Jose á 12 de Noviembre de 1852.

Jose Castro.

Filed in office. February 22 de 1853.

Geo. Fisher.

Secretary.

1/238

27

Translation of Doc. N.S.T. No 2. ans to the depo of N.A Den. taken before Comr Thornton.

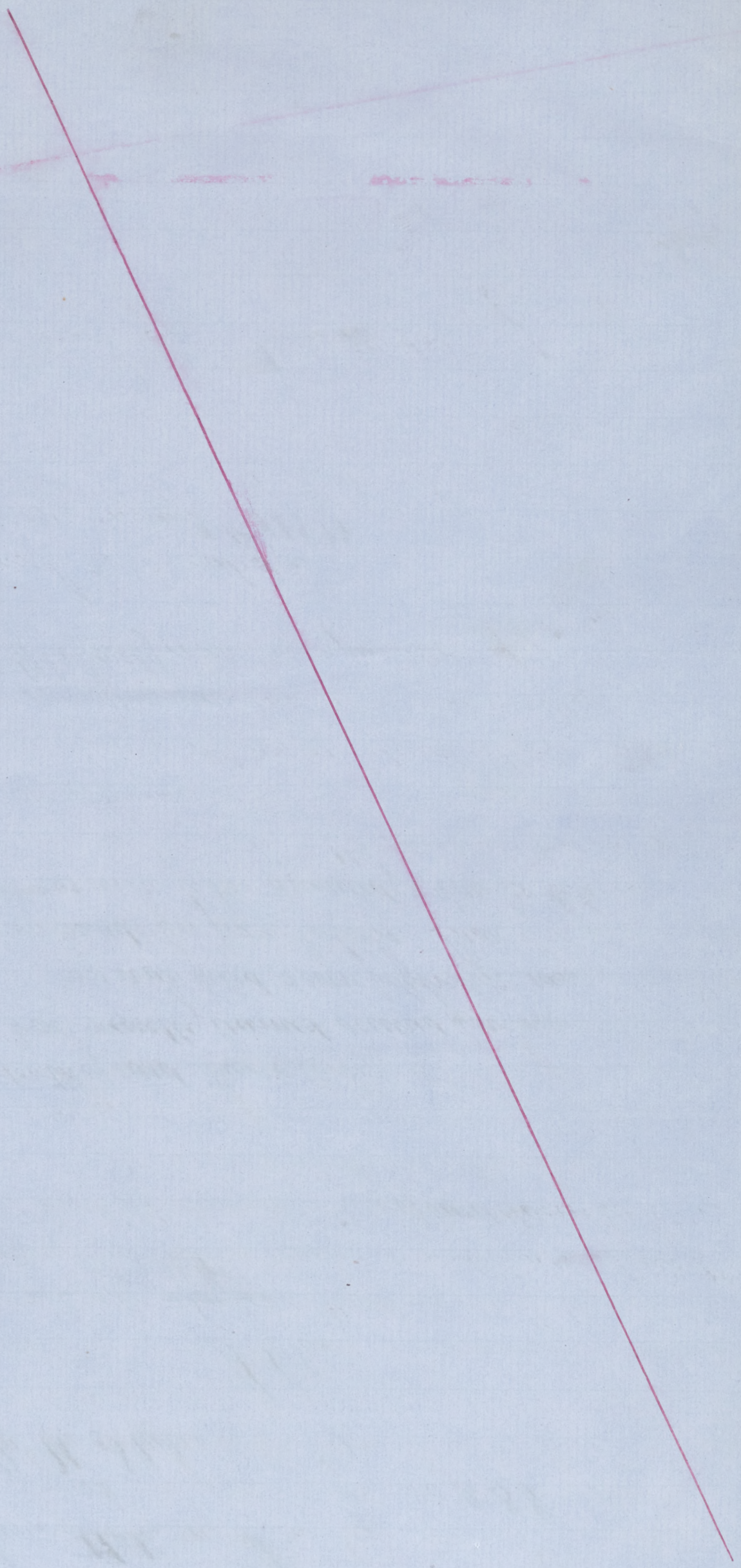
I the undersigned do hereby certify, that while I was Judge of this District & Department Don José Pena commenced an action, reclaiming from Doña Maria Antonia Mesa the tenitory which she actually possess. And with sufficient authority I decided thereupon, that said Senora can remain in the quiet possession of the land in question, & at the request of the interested party I give this certificate in the Pueblo of San José, the 12th Sept 1849.

(Signed) José Castro.

129 ND
PAGE 23

Filed in Office Jany 22nd 1853.

Geo: Fisher.
Secy.



1/238

29

Affidavit of J Clarke.

129 ND
PAGE 24

Board of U. S. Land Commissioners for California

&c

Maria Antonia Mesa. }
vs } No 238.
The U. States. }

J Clarke, a member of the late law firm of Clarke, Taylor & Beckh, by whom the above claim was presented to this Board maketh oath & saith that at the time of the presentation of said claim neither he, nor as he is informed & believes, either of his partners in said law firm had any knowledge or information of the death of said Maria Antonia. That said death as they have recently learned, occured five months before said claim was filed, & even before the same was placed in their hands for presentation. That this fact of said death has come to his knowledge, & as he believes to that of his said partners, since the case was submitted to this Board for their decision, & that the absence of such information, is not, as he believes attributable to any want of professional care, diligence or attention on the part of himself or his said partners.

J. Clarke.

Sworn to & acknowledge
before me Jany 5th 1854.

W. Aug. Thompson.
Comr.

Filed in Office Jany 10 1854.

Geo. Fisher.
Secy.

30

2/238

Board of U. S. Land Commissioners.

Maria Antonia Meza
vs
The United States. } No 238.

Affidavit.

129 ND
PAGE 25

John Greer being duly sworn deposeth & saith, That Maria Antonia Meza the claimant above named, died in the County of Santa Clara on the 22d day of December A. D. 1851, leaving as her children & heirs the following persons viz. Maria Louisa de Soto, Maria Dolores de Soto, Maria Jesus de Soto, Juan Christeline de Soto, Francisco de Soto, Patricio de Soto. Jose de la Cruz de Soto & Guadalupe de Soto. That the last named has since died a minor unmarried. That this affiant is the husband of said Maria Louisa & the Guardian of those of the other said children who are minors.

That the grant in this case was in the hands of affiant as the general agent of all said family of surviving children, that he placed it with the Attorneys in this case for prosecution before the Board. in behalf & for the benefit of said family, & had fully explained unto them the last with that said Attorneys were in possession of all the information in regard to the conditions of said family to enable them to present said claim in proper form before the Board.

John Greer.

Sworn to & subscribed before me
Jany 5th 1854.

R. Aug. Thompson.
Comr.

Filed in Office Jany 10th 1854. Geo. Fisher.
Secy.

1/238

31

Maria Antonia Mesa. vs The United States. } No 238.

Motion to substitute name.

In this case it is moved upon the affidavits of J. Clarke & John Greer, to substitute for the name of Maria Antonia Mesa as claimant, the names of Maria Louisa de Soto.

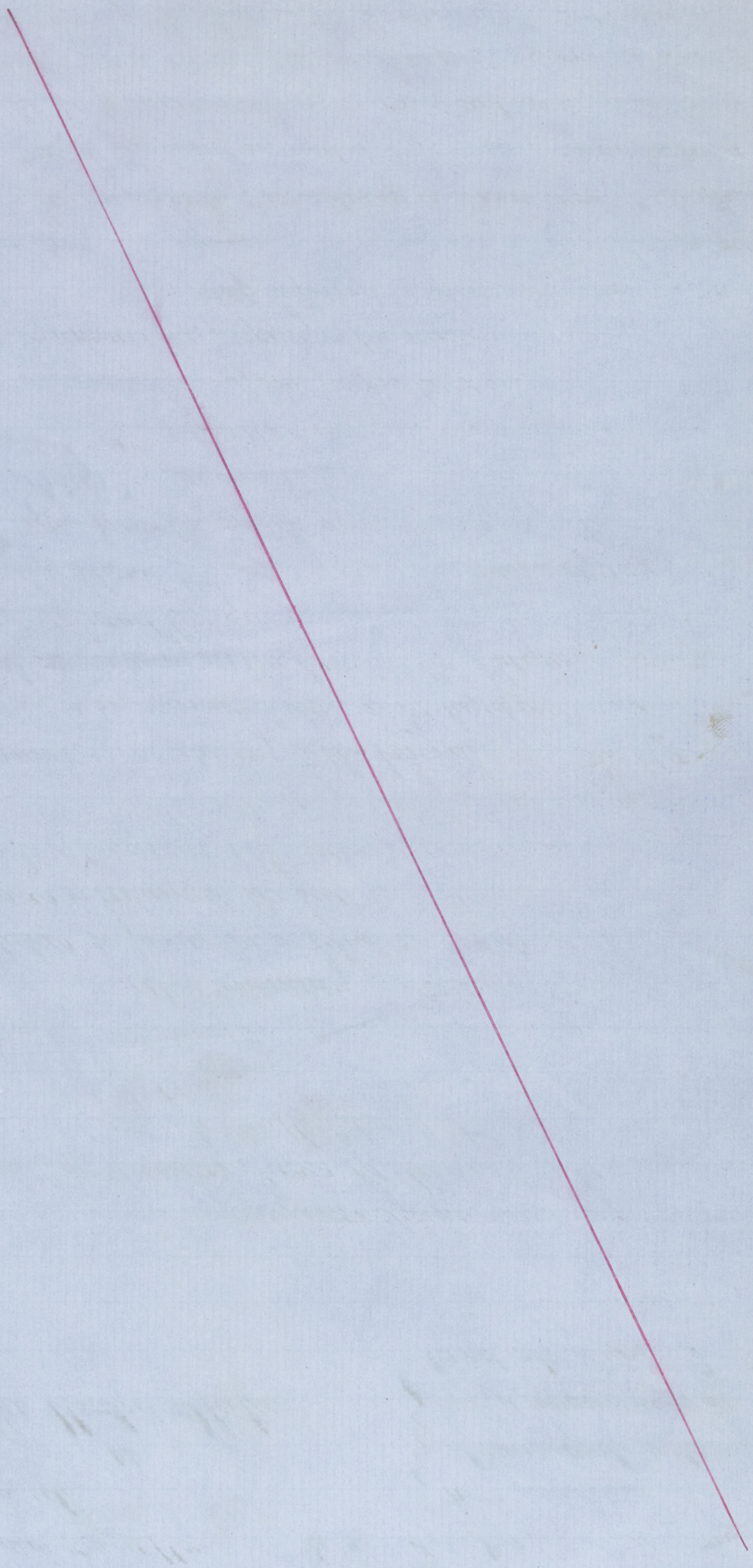
Maria Dolores Soto.
Maria Jesus "
Juan Crisostomo "
Fruncisco "
Patricio " +
José de la Cruz "

J. Clarke.

Filed in Office Jany 10' 1854.

Geo: Fisher. Secy.

129 ND
PAGE 26



33 238. María Louisa de Soto &al. Heirs of María Antonia Mesa deceased.
vs
The United States.

For the place called Rinconada de San Francisquito, containing half a square league of land, situated in Santa Clara County.

Opinion of the Board by Comr Alpheus Felch.

129 ND
PAGE 27

The petitioner claims under a grant made to himself by Governor Juan B. Alvarado, which is given in evidence & bears date the 16th day of February 1841. No approval of the Departmental Assembly is shown & no judicial possession of the land appears to have been given.

The testimony of William A. Richardson establishes, in fact, the occupation & cultivation of the premises is ensured, the full performance of all the requirements of the grant & the rules of colonization.

The only difficulty in the way of confirming this grant, is one relating to the boundaries, & this objection seems to be insurmountable. The land is described in the grant as bordering on the land of the Pulgas, belonging to Doña Soledad Ortega, & on the land of the establishment of Santa Clara. The land granted is half a square league as appears from the sketch accompanying the record of proceedings. The grantee was required to obtain judicial measurement or official demarcation of the boundaries & an establishment of the proper land marks, the overplus land to remain the property of the nation.

The map referred to shows the course of the Arroyo San Francisquito which is the Southern boundary of the Pulgas property & enables us to know that the Northern boundary of the land intended to be granted is on that creek. But the map shows nothing more to aid in the location of the land. There are no lines, or other indications on the map, to show the size, the shape or the location of the half league of land granted. The statement that the land fronts on the

2/238

129 ND
PAGE 28

Pelgar grant is confined by the reference to the map, but as to all the other orders of the province there is no indication what the limits are, nor is there any indication to enable us to ascertain the length of that front or its precise position on the San Francisquito. The expediente, a traced copy of which is filed in the case, shows that the land granted as well as that by which it was surrounded on three sides at least was Mission lands. It is clear that the Mission lands mentioned in the grant were not supposed to be land before that time segregated from the land granted & having their own well settled & fixed division lines which might be & were supposed to be as the limits of the province conceded. The whole Expediente shows that the lands conceded had been previously used by the Mission & were known as a portion of the land occupied by that establishment. The land granted was to be separated from that of the establishment of which it had formed a part, by judicial survey. The line run by the Officer was to be the line to divide the land conceded, from the land of the establishment; & neither the grant nor the map afford any aid in determining the location of that line of demarcation. That was left to the proper Magistrate, & a condition of the grant expressed that the grantee should obtain this demarcation. This confessedly she did not procure, & we have no power to perform the act to grant the land by arbitrary limits. The portion which she claims has never been separated, in any way shown by the proofs from the surrounding lands, & it is too late now to perform the act.

The petitioner seems to have been aware of the defect in the location description of the premises claimed. In the petitions the land is described, not by any description of lines contained in the documentary evidence, but by lines & angles according evidently to a recent survey with compass & chain. The figure drawn according to this survey illustrates most clearly how arbitrary as to location & boundaries must be any adjudication of ours which should confirm that

35

129 ND
PAGE 29

claim. The figure presents five angles & the same number of sides. Four, five, six, ten or any other number of lines and angles might with the same propriety be adopted. Not one of them is given in the original document. Any other number of degrees for the angles, or links & chains for the lines would just as well correspond with the calls in the grant. If there were monuments called for in the grant, either natural or artificial, & the survey was made from one to the other & the line run according to a description in the title papers such a return & description, by the aid of scientific instruments, would give most valuable information. But there is no such thing which has guided the surveyor, for the very reason that no such thing is specified in the documents. His survey is a most arbitrary one, & no other can now be made, unless there are facts existing which do not appear at the present time before the Commission, & any description which we could make in any Decree which could be entered in the case must also be merely an arbitrary one.

The land appears never to have been segregated from the national domain, & there is no description in the grant which fixes & describes its locations & boundaries.

Claim Rejected.

Filed in Office March 21 1854.

Geo: Fisher.
Surv.

Decree

Maria Louisa de Soto Valz
Heir of Maria Antonia Mesa,
deceased.

vs

The United States.

In this case on hearing the

36

4/238

129 ND
PAGE 30

proofs & allegations it is adjudged by the Commission that the said claim of the petitioners is not valid, & their application therefor is therefore denied.

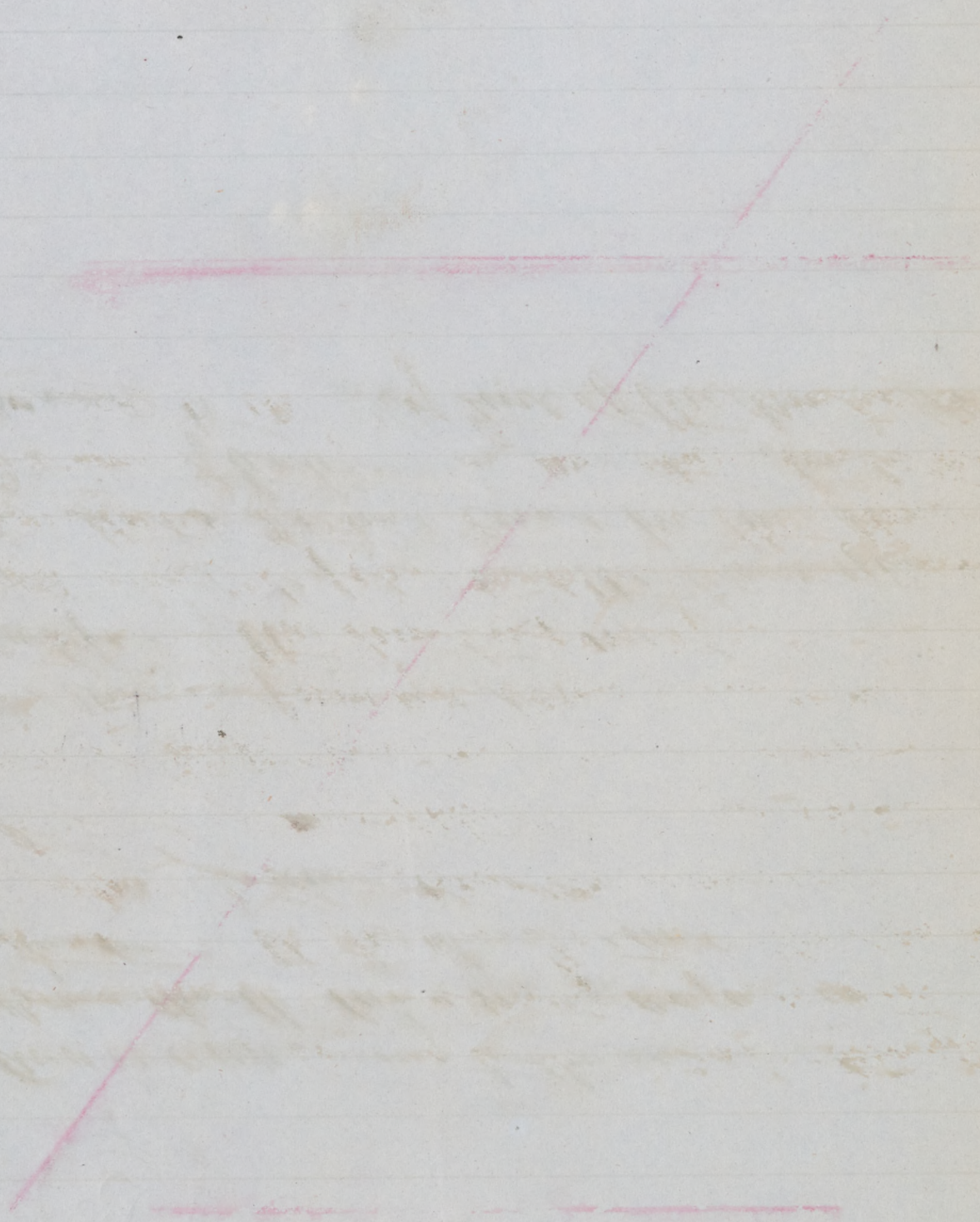
Alpheus Felch.
Thompson Campbell.
R. Aug. Thompson.

Filed in Office March 21 1854.

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 in which is kept & where the Transcripts of the Proceedings and of the decision in this case and of the proofs and evidence upon which the same was founded because not accurately certified by the Surveyor upon which Proceedings should be filed with the Clerk of the United States District Court for the Northern District of California there to be Transmitted to the City Zone of the United States

37



129 ND
PAGE 31

Office of the Board of Commissioners,

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

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 thirty eight pages, numbered from 1 to 38, 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. 238 on the Docket of the said Board, wherein Maria Antonio Mesa is Claimant against the United States, for the place known by the name of "Rinconada del Arroyo de San Francisquito"

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.

129 ND

U. S. DISTRICT COURT,

Northern District of California.

No. — 129 —

THE UNITED STATES,

vs.

Maria Antonia Mesa

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 238

Filed, November 2 — 1854

Wm Minwell

Clk

Case No. 238. On appeal from the Board of U. S. Land Commissioners.

Maria Antonia Meza
appt
vs.
The United States
appee
} claim for;
"Rinconada de San Francisquito"

- 129 ND
PAGE 32

Sir,

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

San Fco
Dec. 8th, 1854.

Yours respectfully
Campbell, Taylor & Beach
atty's for claimant

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

No 129

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

María Antonia Meda
appt.

vs.

The United States
apl.ee

129 ND
PAGE 33

claim for "Rinconada de San Francisquito"

Notice of appeal.

Campbell, Taylor & Beckh
Atty's for claimant

Filed Dec. 11. 1854.

Jno. A. Moore
Clerk

129 ND
PAGE 34

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

Maria Louisa Soto
Maria Dolores Soto
Maria Jesus Soto
Juan Crisostimo Soto
Francisco Soto and
Jose de la Cruz Soto
Appellants
vs
The United States.

No. 129 L.C. Docket
No. 238

Your Petitioners above
named, respectfully show; that heretofore viz.
on the 25th day of May 1852 they filed before
the United States Board of Land Commissioners
for California a petition for the confirmation
of their claim to a tract of land situate in the
Northern District of California viz. in the Coun-
ty of Santa Clara: for a description of which
land and the title of your petitioner ~~of which~~
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 21st day of March

A. D. 1854 rejected said claim as invalid.

That on the 2d day of November 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 petitioners filed in this Court a notice of their intention to prosecute said appeal

Your Petitioners therefore pray that the decision of said Board may be reversed and that this Court may confirm their title to the said land.

Respectfully
J. Clarke Atty
for Claimants

U. S. District Court

No 189

Maria Antonia Alemany
Heirs
Appellants

vs

The United States

Petition
filed June 30, 1855
by Clarke
Atty

J. Clarke Atty
for Claimants

129 ND
PAGE 35

No 129

The United States vs Maria Antonia Mesa } Dist Court of U. S

129 ND
PAGE 36

It is hereby stipulated that the Transcript in this case, may be taken from the files for one day, by the ~~clerk~~, clerk of the Board of Commissioners.

July 11th 1854

A. Hassell
Actg. U.S. Atty

J. Clarke Atty
for Claimant

It is hereby ordered that upon filing the foregoing stipulation the clerk of this court deliver to the Secretary of the Board of United States Land Commissioners ~~the~~ the transcript referred to

July 13th 1855

Ogden Hoffman Jr
U. S. Dist Judge

No 129 3

The United States
vs
M. A. Muse

Stipulation
& order.

Filed July 13, 1855,
by [illegible]
Deputy.

129 ND
PAGE 37

UNITED STATES DISTRICT COURT,
Northern District of California.

Maria Antª Mesa,
— vs —
The United States

San Francisco, October 20th 1858

129 ND
PAGE 38

ON this day, before John. A. Munroe a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Aaron Van Dorn a witness produced on behalf of the Claimant.

in Case No. 129, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 238 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: E. O. Crosby, Atty for Claimant, and the U. S. District Atty. by A. Glassell. Esq.

QUESTION BY Claimant's Atty.

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

Answer

Aaron Van Dorn. 30 years of age. Reside in San Francisco. Cal. and am a Surveyor.

2d "

Do you know the Rancho called "Rincon de San Francisquito" claimed in this case, if yea. where is it situated, and what are your means of knowledge.

Answer.

I know said Rancho. It is situated on the Bay of San Francisco. on the south side of San Francisquito creek. in Santa Clara County. Cal. I am acquainted with

129 ND
PAGE 39

said Rancho. from having, in the capacity of Deputy, U. S. Surveyor, surveyed all of the adjoining ranchos. I have meandered the marsh on the Bay of San Francisco, which is the eastern boundary of the rancho in question, also, I have meandered the creek of San Francisquito, which is its northern boundary, I have surveyed the boundary between this rancho, and that of Buelna, which is its western boundary, and also that between this rancho, and that Secundino Robles, which is the southern boundary.

3d -

Have you seen the original grant from the Governor of California, to ~~Jua~~ Maria Anto Mesa, of the land claimed in this case, and also the original map in the Espediente in the Archives of the former Government now in the custody of the U. S. Surveyor General for California, if you do the calls of that grant, and the objects on the map named, exist of your own Knowledge.

Answer,

I have seen said original grant, it is now among the Archives of the Board of U. S. Land Commissioners for California, I have seen it several times, I have also seen the map in said Espediente, and the calls of that grant, and the objects on said Map exist of my own Knowledge, While I was making survey of the adjoining ranchos, a certified copy of this map, constituted part of my instructions from the Surveyor General,

4th.

From your Knowledge of the location of the land, and the surrounding country, with the calls of

said grant, and said Map. would you have any difficulty in surveying, and locating the land in accordance with the terms of the grant.

Answer.

None whatever. The principal objects mentioned for the boundaries are natural objects, well known, and defined.

Cross examined by U. S. Atty.

Have you any interest, direct or indirect in the event of this suit, or claim.

Answer.

None whatever.

A. Vandorn

Sworn to, and subscribed before me this 20th October, 1855.

Wm Thompson,
U. S. Com'r

No 129.

U. S. Dist. Court.

Maria A. Mesa,

— vs —

The United States.

Deposition of
A. Vandorn.

Filed October 20, 1855.

by Chenes
Deputy.

129 ND
PAGE 41

In the United States District Court for the
No. 129. Northern District of California.

Maria Antonia Meza. (Heirs of)
vs
The United States.

129 ND
PAGE 42

The petition of the claimants and appellants in this cause respectfully ~~represent~~ shows. That on or about the 22d day of January A.D. 1853. Maria Antonia Meza petitioned the Board of U. States Land Commissioners claiming a half league of land called Rinconada del Arroyo de San Francisquito in the County of Santa Clara California. That on the 10th day of January A.D. 1854 the said cause was by the order of said Board revived and ordered to be prosecuted in the names of the heirs of said Maria Antonia Meza upon the suggestion & proof of her death made to said Board. That on or about the 21st day of March A.D. 1854. the said Commissioners rejected the said claim. That on the 2d day of November A.D. 1854 the said Commissioners caused a transcript of their procedings and decision in said cause to be filed in the office of the clerk of this Hon. Court. That on the 11th day of December A.D. 1854. the said appellants caused a notice to be filed in the office of the clerk of this Hon. Court of their intention to prosecute an appeal in this cause from the decision of said commissioners. That the land claimed is in the Northern District of California and within the jurisdiction of this Court and is of the extent of a half league of land as described and set forth in the original papers & maps relating to the said land as found in the archives of the former Govt. of this country, and now in custody of the U States ~~Depositary~~ Surveyor General for California, and in the original grant or title of said lands. all of which said papers & maps were

duly presented & proved befor said Board of Commissioners and an copied into the said Transcript filed with the Clerk of this Court.

Wherefor these petitioners pray that the said decision of the said Commissioners may be reviewed revised and set aside and that this Hon Court will decree the said claim or title to be valid to the extent of a half league of land, and for general relief in the premises by such other or further order judgment & decree as shall be agreable to law & Equity

E. O. Crosby Atty
for appellants.

129 ND
PAGE 43

No. 129. 6

U. S. Dist Court: Northern Dist

Marion A Meza

vs

The United States

Petition of appellants

Filed Oct: 20. 1855.

by Chevers
Deputy.

129 ND
PAGE 44

E. O. Crosby
Atty for appellants

UNITED STATES DISTRICT COURT,
Northern District of California.

Maria Antonio Meza
v
The United States

San Francisco, Oct 29th 1855

129 ND
PAGE 45

ON this day, before Levi A. Hammond a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Charles Brown a witness produced on behalf of the Claimant in Case No. 129, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 238 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: E. O. Crosby for Claimant and the U. S. Dist. Atty by A. Blaskell, Esq.

QUESTION BY Counsel for Claimant - What is your name age & place of residence?

Answer - Charles Brown aged 41 December next, and reside at the Mission Dolores. I know the Rancho called "Rincunada del Arroyo de San Francisquito." It is in Santa Clara County on the South side of San Francisquito Creek on the Bay of San Francisco.

I have known the Rancho since 1838 - It has been

129 ND
PAGE 46

occupied since that time Rafael Soto and his widow and children. The widow since the death of her husband which occured about 39 or 40 hrs gone by her Maiden name which was Mesa- her name was Maria Antonia Mesa- The had cattle and cultivated a portion of it,- had a house on it when I first knew it- They had a Canal there also and fences & buildings- They cultivated a good deal of the Ranchs- raised wheat corn potatoes &c They have always lived there and live there now- The old lady is dead- I lived in that neighborhood about fourteen yrs-

I went there in 1839 and lived there for over fourteen yrs-

Charles Brown

Cross Examined-

I have no interest direct or indirect in the event of this suit.

Charles Brown

Sworn to before me
Oct 29th 1855
Jno A Moore
U.S. Commr

No. 129

U. S. Dist. Court.

Maria. Ant.a Pena,

—vs—

The United States.

Deposition of
Chas. Brown.

Filed Oct 29. 1855.
J. Owens.
Deputy

129 ND
PAGE 47

129 ND
PAGE 48

No. 129

District Court United States
for the Northern District
of California.

Antonia Maria Meza (Heirs of)
appellants
vs
The United States.
appellee.

This cause coming on to be heard on an appeal from the final decision of the Commissioners to ascertain and settle private land claims in California under an act of Congress approved March 3d 1851. upon the transcript of the proceedings papers and evidence on which said decision was founded, and upon the pleadings and further evidence taken in this court by order of this court and counsel for the respective parties having been heard, In Consideration whereof the Court is of opinion that there is Error in the decision of the said Board of Commissioners rejecting this claim, and the same is therefor reversed and annulled. And it is further ordered adjudged and decreed that the claim of the appellants is a genuine and valid claim and the same is hereby confirmed to the extent of half a league of land and no more said lands being known by the name of the Rancho del Arroyo de San Francisquito and being the same lands described in the grant and Expedients and map referred to therein.

Ogden Hoffman Jr
U. S. Dist Judge

X 9

No 129

U. S. Dist Court for the
Northern Dist of California

The United States
vs
Antonio Maria Meza (Heirs of
Apts
Decree.

Filed Nov: 26. 1855.
W. H. Chivers
Deputy Clerk.

(1)

129 ND
PAGE 49

129 ND
PAGE 50

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the City of SAN FRANCISCO, on Thursday the 13th day of January in the year of our Lord one thousand eight hundred and fifty-Seven,

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States.
—vs—
Mariano Antonio Mesa.

No 129.

In this case, on the application of the U. S. District Attorney made in open Court, it is ordered by the Court that an appeal in behalf of the United States from the final decision of this Court rendered in said cause at the June Term 1855 be, and the same is hereby granted, and that a certified transcript of the Pleadings, evidence, depositions, and proceedings in the said Cause be sent to the Supreme Court of the United States without delay.

No 129.

United States District Court, Northern District of California.

The United States.

vs.

Manuel Mesa,

Order granting appeal.

Filed January 13, 1857.

John A. Munroe, Clerk.

By W. H. Chevers Deputy.

10

129 ND

PAGE 51

NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES DISTRICT COURT.

129 ND
PAGE 52

The United States,
vs.
M. a. Ant. a. Meza.

CLERK'S FEES. in case 129.

1857

Nov.	22	Filing Transcript &c.	$	" 20
Dec.	11	" Notice of Appeal,		" 20
1855				
June	30	" Petition.		" 15
		" Stip & Filing & entering order &c.		1 25
		" Answer & Deposition,		" 30
		" Petition & Deposition,		" 30
		" & entering Decree &c,		1 10
		" & " orders granting Appeal &c		1 10
		Entering Judgment Record 116 fol at 22½ p		26 10
		Making Record on appeal 116 fol at 15 cts		17 40
		Making Map in Cause.		5 00
		Certificate & Seal,		" 50
		Filing Costs.		" 15
		Dockets &c.		4 50
			$	58 28

TAXED AT Fifty eight 58/100 DOLLARS.

John A. Munn, CLERK.

by W. H. Chinn, Deputy.

United States District Court

Northern District of California.

No. 129.

The United States

vs.

Mariano Castro et al.

Clerk's Fees, $58.98

Filed Jany 13. 1857.

129 ND
PAGE 53

129 ND
PAGE 54

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of SAN FRANCISCO, on Thursday the 16th day of April in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
ad
Maria Antonia Meza
} D.C. 129: L.C. 238.

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the District Attorney:

On motion of the District Attorney it is Ordered adjudged and decreed that the order granting an appeal in behalf of the United States from the decision of this Court be vacated, and 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

129

United States District Court, Northern District of California.

The United States

ads.

Maria Antonio Mesa

ORDER.

Vacating appeal

Filed April 16, 1857

Wm. A. Monroe,

CLERK.

By W. H. Chevers

DEPUTY.

12

129 ND
PAGE 55

In the District Court of the U. S.
for the Northern Dist of Cala

The United States

129 ND
PAGE 56

ads } D.C. 129; L.C. 238

Maria Antonia Mesa

In pursuance of a notice from the U. S. Attorney General hereunto annexed it is hereby stipulated and agreed that the order granting an appeal in behalf of the U. S. from the decision of this Court be vacated, and that claimant have leave to proceed under the decree of this Court heretofore rendered in her favor as under Final Decree

San Francisco April 16th 1859

Wm Blanding
Dist Atty.

E. D. Crosby Atty for
Claimants

129 ND
PAGE 57

California Land Claims
Attorney General's Office
23 Feb. 1857

Sir:

In the case of the claim of Maria Antonia Mesa, rejected by the Commissioners, but confirmed on appeal by the District Court, Case no. two hundred and thirty-eight, (238), appeal will not be prosecuted by the United States.

I am,
Respectfully,
Chas. Bonin

Wm. Blanding Esq
U. S. Attorney
San Francisco.

129

238

U. S. District Court

The United States

ads

Maria Antonia Mesa ~~Abos~~

Stipulation

Filed April 16, 1857.

W. H. Chevers,

Deputy

11

129 ND
PAGE 58

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

v. 129 ND
PAGE 59

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States.
vs.
Mc Arthur Mesa.

On motion of Mr Clarke Counsel for Claimant, it is ordered by the Court that the Surveyor General of the United States for the State of California return to this Court the survey by him made, and approved in this case, and that a copy of this order be served on the said Surveyor General, and on the U. S. Attorney for this District without delay.

No 129.

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States

vs.

H. M. Mesa et al.

Order To return Survey.

Filed July 5 1859.

W. H. Chevers Clerk.

By ..... Deputy.

129 ND

13 PAGE 60

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

Clerk's Office,

I hereby Certify the foregoing to be a true copy from the Minutes of the said Court.

..... Clerk.

By .....

..... Deputy.

129 ND
PAGE 61

District Court of the U. States
Northern District of California

The U. States
v
Maria A. Musante et al.

No. 129

And now comes the U. States by Peter Dilla Dore, District Attorney, and objects to the survey herein filed by the Surveyor General pursuant to the order of the court heretofore made in this cause on the ground that said survey does not conform to the decree of confirmation heretofore made herein, and specifies the following particulars in which said survey varies from said decree.

That, whereas said confirmation was for a definite and precisely located piece of land in form of a rectangular parallelogram extending in length from the bay Westward one league, to a point West of the crossing of the creek by the

129 ND
PAGE 62

San Francisco road, and in breadth one half league, said creek passing through said rectangle, from its Northwestern to near its Northeastern corner, all of which appears by the diseño, made a part of said decree yet that said Surveyor has located said land— 1st Wholly South of said creek, instead of on both sides thereof.

2d Instead of extending the Survey one league West from the Bay, he has extended it less than two thirds that distance

3d Instead of extending the survey to a point West of the San Francisco road, he has stopped short of said road and to the East thereof, by a distance of more than half a mile

4th Instead of extending said survey but half a league from North to South, he has extended it four fifths of a league

5th Instead of running the Southern line of the tract in a North East direction, by which it

129 ND
PAGE 63

would cut the shore at right angles according to said diseño he has run said Southern line arbitrarily, due East & by which course said line does not reach the Eastern boundary, viz the Estero or marsh, at all; but, at an arbitrary point, terminates in another arbitrary line, running North and South, nowhere indicated in the decree or diseño, but wholly at variance from both.

6th The whole form, direction and position of the tract surveyed, are different from those prescribed by the decree and specified in the diseño and have been adopted without warrant or reason.

Tully R. Rice
Acting U. S. Atty.

U.S. Dist. Court

North Dist. of Cal.

No 129

The U. States

v

M.A. Musa

Objections to

Survey

Filed Aug: 26. 1859.

W. H. Chas

Clerk.

129 ND (2)

PAGE 64

129 ND
PAGE 65

The United States
vs
N A Mesa et al

D.C. 129
L.C. 238

In compliance with an order of the U S Dist Court for the Northern Dist of California the plat of the Rancho Rincon ada del Arroyo de San Francisquito is now returned to that Court -

I would state that the survey has been examined and approved by me, and the same was forwarded to the Genl Land Office Washington D.C. on the 4th June 1858 for a patent

Very Respt
Your obt Servt
J. W. Mandeville
U.S. Surveyor

Hon Ogden Hoffman
U S Dist Judge

No 129.

Return of Survey of
Rancho Rincoñada
del Arroyo de San
Francisquito —

Statement of Surveyor
General ——

Filed Sept: 1. 1859.
W. A. Chevers.
Clerk.

16

129 ND
PAGE 66

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

Maria Antonia Mesa
vs
The U. States
} No.

129 ND
PAGE 67

Aaron Vandon being duly sworn deposeth and saith that the annexed Exhibit marked "Ex. 1" an tracing paper is a correct copy of the Diseño on file in this cause that the annexed exhibit marked "Ex. 2" is, 1st, a plat (in red ink) of half a square league of land, located as exactly as possible in conformity with said Diseño the actual meandings of the San Francisquito creek, taken from actual surveys being given in lieu of the proximate courses thereof represented upon said Diseño and 2d. a plat (in blue ink) of the survey returned by order of the Court in this cause, reduced to the same scale as that of

Saint Diseño

Subscribed and Sworn
to before me this Sixth day
of September. A.D. 1859.
F. J. Thibault
Notary Public

Aaron Vandorn
Surveyor

129 ND
PAGE 68

No 129. ND
(2-38-84)
U. S. Dist. Court
District of North Dakota

Filed ——

M. A. Mesa
vs
The U. States

affidavit of
Vandorn.

Filed Oct: 22. 1889.
W. A. Akers
Clerk

No 129 ND
PAGE 69

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 second day of December in the year of our Lord one thousand eight hundred and fifty-nine.

129 ND
PAGE 70

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Maria Antonia Mesa

No. 129: L. C. 238.

"Rinconada del Arroyo de San Francisquito."

This cause came on to be heard upon exceptions to the survey, and was argued by counsel for the respective parties, and due deliberation had in the premises; whereupon it is now ordered, adjudged and decreed that the survey of the land claimed in this case, made by the U. S. Surveyor General for California under the final decree heretofore entered herein, the field notes of which survey were approved by said Surveyor General on the 8th day of May, 1858, and a certified copy of the plat of the same was filed in this Court, pursuant to its order, on the 1st day of September 1859, be and the same hereby is declared erroneous and not in conformity with the said decree, and that the same be and hereby is annulled and set aside.

And it is further Ordered, adjudged and decreed that the said U. S. Surveyor General for California cause a resurvey of the said land, to be made in conformity with the true intent and meaning of the said final decree, to wit:- the first or northern boundary line of said survey to be the channel of the San Francisquito Creek; the second or eastern boundary line to be the shore of the Bay of San Francisco, from the mouth of said creek southerly; the third or western boundary line to be a straight line so drawn from said creek in the direction South, thirty degrees east, as will make the distance from the mouth of said creek to the nearest point of said line one Spanish league; the fourth line of said survey to be run

from said third or western line, at right angles thereto, to said shore of the Bay, and at such a distance from the said creek as to include within the lines of the survey the quantity of one half of one spanish square league of land and no more.

And it is further ordered, that a certified copy of this order be served upon the said U. S. Surveyor General for Cala for his information and guidance.

Ogden Hoffman
U. S. Dist. Judge

No. 129.

UNITED STATES DISTRICT COURT,
Northern District of California.

The United States
vs.
Ma. Anta. Mesa.

Order rejecting survey, and directing re-survey,

Filed 2nd December 1859,
W. H. Chevers
Clerk.

By Deputy.

129 ND
PAGE 71

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

18

U.S. Marshal's Office
San Francisco Dec: 8 1859
I have this day made personal service of this order by copy on James W. Mandeville U.S. Surveyor General for California
P. L. Solomon
U S Marshal

129 ND
PAGE 72

At a Stated Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the Court House, in the City of SAN FRANCISCO, on Saturday the Third day of December in the year of our Lord one thousand eight hundred and fifty-nine,

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
vs.
Maria Antonia Musa

No. 129.

On motion of Claimants Counsel the U.S. District Attorney being present & waiving notice ~~consenting thereto~~ it is ordered that the motion of claimant to vacate & set aside the decree entered herein on the 2nd day of December 1859 and for a rehearing be docketed and that claimants counsel have thirty days from this date to serve and file affidavits statement and grounds of said motion and that said motion stand continued until the next session of this Court ~~to~~ which shall be held by the District Judge after said affidavits shall be filed.

No. 129.

District Court of the United States

IN AND FOR THE

Northern District of California.

The United States,

vs.

Ma Ant[o] Mesa.

Order Docket Motion of Att[y] to Vacate decree of 2[d] inst.

Filed December 3, 1859.

W. H. Reed Clerk.

By

Deputy.

1872

129 ND

PAGE 73

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

Clerk's Office,

I hereby Certify the foregoing to be a true copy from the Minutes of the said Court.

Clerk.

By

Deputy.

129 ND
PAGE 74

United States District Court.

The United States
vs
The Heirs of Maria Antonia Mesa.

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

Henry W. Seale being duly sworn says that he is one of the claimants under the Heirs of Maria Antonio Mesa, and that the brother of affiant Thomas Seale is also a claimant as also agent and attorney for the heirs of the said Maria Antonio Mesa, and as such claimants and attorney, affiant and his brother have had the principal charge of the prosecution of this cause.

That the buildings and improvements designated on the map accompanying the affidavit of Charles J. Healey, Esq. filed herewith as Seale's were commenced in 1852 by one Joseph W. Adams under a lease of one hundred acres made by Juan Chrisostomo Soto one of the Mesa heirs for the rent of $500 per annum; said Adams constructed the residence designated as such on said premises and run and constructed the present south fence constituting part of the enclosure now occupied by affiant which nearly corresponds with the south line of the Wallace survey

129 ND
PAGE 75

as designated by said Map - a part of said fence running South of said Wallace survey - That afterwards in 1853 this affiant and his brother Thomas Seale acquired a part of the interest of said Adams in said premises also a further interest from said heirs in said premises, and in 1854 affiant and his said brother bought out all the interest of said Adams and the said Thomas Seale became the attorney in fact of the said heirs and undertook to superintend the prosecution of this claim. That thereafter affiant and his brother proceeded to make further and extensive improvements upon the said premises, within what so far as adjacent claimants were concerned, was the undisputed right and possession of the said heirs of Mesa and expended thereon in buildings, fences and other improvements not less than $25,000.

That up to and after the final confirmation of the claim of the said heirs in this case and up to and after the survey under finial decree by the said Wallace as aforesaid this affiant never heard of any pretence of claim from any quarter of any of the Robles heirs or any person or persons on behalf of or representing the heirs of Robles of any part of the premises so occupied and improved by this affiant and his said brother. That after the said survey by the said Wallace, Jeremiah Clark, Esq. claiming to be the attorney of the said Robles

expressed himself altogether satisfied with the said survey of the said Wallace and stated to divers persons that the Robles had no objection thereto. That afterwards and some time on or about one year since affiant was informed that the said Clark had filed a protest against the said Wallace Survey and shortly afterwards meeting said Clark affiant inquired his object in making such protest, who replied "because you have land I think I ought to have" - Affiant then inquired why he had approved the Wallace Survey before and objected now - His reply was "because I was not interested then." This protest and these remarks of the said Clark were the first intimation affiant received that there was any conflict between his possession and the claim of the said Robles. Previous to this time the entire improvements made by affiant and his said brother had been completed and without question on the part of any neighboring claimant under grant. The only questions being raised by persons claiming as settlers upon government land and these claim-ants being all outside of the said improvements of affiant as aforesaid.

129 ND
PAGE 76

Affiant further says that upon the making of the survey by the said Wallace the said Wallace gave notice to all the neighboring claimants to show their respective lines and possessions and

129 ND
PAGE 77

and spent some two days in making inquiries of the neighborhood before he made any survey, and thus became acquainted with the old possessory claims of the of the Mesa's and upon such inform=ation made the survey aforesaid. This affiant believes he made such survey with strict reference to and in strict accordance with such possessions and claims.

Affiant further says that when the said exceptions were filed by the said Clark, he was not advised that it was necessary for him to prove the facts of possession and claim, but that he was advised by his counsel and believed that there was no good cause for objection to the said survey of the said Wallace - otherwise this affiant could and would have produced before this court proof to show in the first place that the western line of the Mesa's claim or possession never did extend out of the western line of the Wallace Survey and very nearly conformed to the said western line of said Wallace survey. That the claim of Rodriguez to the Rancho San Francisquito on the west conformed to said western boundary of the Mesa's - also that the Mesa's possession and claim under the grant of the del Arroya de San Francisquito extended to and south of the improvements of af=fiant and his said brother and that no adverse claim was ever set up by the said Robles, but that on the other hand by the said Robles the right

and claim of the said Mesas was conceded.
All of which this affiant says he can and will prove upon being permitted to do so should this cause be reopened by this honorable Court. This affiant says that he was surprised at the de-termination of this court in its last decretal order for the reason that he understood and supposed the only point of objection to be raised was as to whether or not he should be forced north of the San Francisquito creek and on to the Pulgas Rancho according to the strict lines of the original and being advised that this would not be done he rested confident of not being disturbed in his possessions - but affiant says that if the said last decretal order be strictly enforced, he will be compelled to suffer great loss and de-prived of a great part of his most valuable lands and the improvements thereon.

129 ND
PAGE 78

Affiant further says that he can prove important facts as to the proper location of the claim in this case by the said Wallace. That said Wallace now resides in Columbia Tuolumne County, and affiant has used every means in his power to procure the affadavit of the said Wallace to be used on this motion but he was on yesterday informed by Telegraph from Columbia that said Wallace was in the mountains and the time of his return was uncertain. That-

129 ND
PAGE 79

affiant is informed and believes that the same facts in substance as stated in the affadavit of Charles Brown hereunto filed he can prove by Jesus Soto and Candellario Valencia who for some years resided on adjoining Ranchos one on the Salyas, the other on the San Francisquito or Rodriguez Rancho. that affiant made arrangements to secure their attendance for the purpose of making their affadavits herein at 9 A.M. of this morning, but for reasons of which affiant is ignorant they were not in attendance & he has been unable to procure their affadavits in time for this motion. Affiant says he only believes that he can prove the conceded & established possession in Soto & the heirs of Mesa to be altogether different from said last decretal order & that such possession covered the buildings &c and all the improvements of affiant & his said brother as aforesaid except the west line of fence and that such possession extended to and south of the line of the southerly line of the said Wallace survey.

H. W. Seal

Sworn to before me this
14th day of August 1860

O. P. Force
Notary Public

No. 1291

District Court

~~Henry H. Sibley~~
United States

v

The Henry Mesa

Affidavit of Seals

Filed Aug: 14. 1860.
W. A. Aherest.
Clerk.

20

1291 ND
PAGE 80

129 ND
PAGE 81

United States District Court.

The United States
vs
The heirs of Maria Antonia Mesa.

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

Charles Brown being duly sworn says that he has been a resident of the present City and County of San Francisco about twenty five years - that he has been well acquainted with the several ranches between this City and San Jose during that period. That he knew Maria Antonia Mesa in her life time, who was the mother of the claimants in the present case and possessed of the Rancho known as the Rancho Rincon de la Arroya de San Francisquito - that affiant was was well acquainted with that Rancho and the ranchos adjacent. That he understood the extent to which it was claimed for many years before the late war with Mexico and the cession of California to the United States. That the rancho as the same was possessed and claimed was bounded on the west by the old road from San Francisco to San Jose.

Affiant says that he with Charles D. Healey the county Surveyor of the County of Santa

129 ND
PAGE 82

Clara examined the northwesterly corner of the survey of Mr. Wallace of the said Rancho as said corner was represented to him by said Healey, and that said road crossed the San Francisquito creek a short distance easterly of the said corner and run thence southerly so as to include the buildings and improvements of the Seales, and somewhat easterly of the present western fence of the said Seales - That the said Rancho extended longitudinally along the bay and was of greater extent on the north and south line than east or west - That the claim or possession of the Robles on the south of said Rancho never did extend as far north as the improvements of which the Seales are possessed. Affiant was frequently on the said Rancho also on that of the Robles and was well acquainted with all of the several families and affiant knows that the Rancho now claimed by the heirs of Mesa extended some distance southerly of the line of Seales improvements according to the understanding of the entire neighborhood, down until a very recent period.

Subscribed & sworn to this 13th day of August 1860.

Charles Brooks

W. H. Cleveland
U. S. Comm'r.

No. 129

U. S. Distr. Court

The United States
vs.
The Heirs of Mesa

Affidavit of Chas.
Brown,

Filed Aug: 14, 1860.
W. A. Clevenger,
Clerk.

1

129 ND
PAGE 83

129 ND
PAGE 84

United States District Court
Northern District of California

The United States
vs.
The Heirs of Maria Antonia Mesa.

And now comes the claimants in said cause by their counsel and move said court to vacate and set aside the decision or decree of this court heretofore made rejecting the Survey of the premises claimed in this cause made by J. W. Mandeville Surveyor General of the United States for California, and to allow a retrial of the questions arising upon said Survey with leave to said Claimants to produce further testimony - upon the following Grounds

158

II There was no established laws rules or practice governing said trial or proceedings in said decision or decree at the time the same were had, in consequence of which the facts and merits of said cause

129 ND
PAGE 85

were not fully or fairly presented to said court.

III. The lines and boundaries of the lands claimed in this cause as fixed in said decree are arbitrary & are not in accordance with the original location of said lands.

IIII. That the court erred in locating the land with reference to the diseño accompanying the Petition the said diseño having been rejected by the Mexican authorities and the said lands were granted without reference to the diseño.

IV. The limits fixed by said decree do not include extensive and valuable improvements of said Claimants on said premises.

And upon said motion Claimants will rely upon & refer to the accompanying cause affidavits the papers on file in said ca.

also the papers on file in the cause of the united States vs. Robles and the united States vs. Rodriguez and a contract between I Clark & Mc Koag.

M Donald & Sharp

129 ND
PAGE 86

(No. 1291)

U. S. District Court

United States

vs

Heirs of Mesa

Grounds of Motion
to reopen the Cause

Filed Aug: 14. 1860.
W. A. Chevers
Clerk

19

129 ND
PAGE 87

A 129 ND
PAGE 88

United States District Court.
Northern District of California.

The United States.
vs.
The Heirs of Maria Antonia Mesa.

City & County of San Francisco } ss:

John Wallace having been first duly sworn deposes and says on oath that he is now and has been for more than two years last a deputy Surveyor of the Surveyor General of the United States for California and as such deputy made the survey now being contested before the Court in said cause. That before making said survey this affiant spent two days in riding around and giving by this intention to make said survey & the time & place of the same to all such persons whom this affiant could by any means ascertain to claim either claimed or owned any interest in the lands about to be surveyed or in the lands adjoining the same. That among others this affiant notified the the Heirs of Robles and the

claimants so far as affiant was informed of the Rancho known as the Robles Rancho and also the Heirs of Rodrigues and the claimants so far as affiant was informed of the Rancho known as the Rodrigues Rancho.

That during the time affiant was making said survey, a portion of the said Heirs of Robles & claimants to the Robles Rancho and some of those of the Rodrigues Rancho were present on the ground and witnessed the survey progressing and made no objection thereto or to any of the lines thereof.

That this affiant made said survey in accordance with the decree in said cause and the instructions from the Surveyor General to survey the same in a compact form taking the San Francisquito Creek as one line and the Bay as another, and with reference to the sectional lines as well as those of the adjoining ranches.

That the west line of said survey is a sectional line and also during

129 ND
PAGE 90

a portion of it lieth the line of the Rodrigues Rancho.

That the east line of said Survey as it leaving the Bay is a Meridional line - That in making said Survey ~~Affiant~~ as it is, affiant was also to some extent governed by information derived from old inhabitants as to the original location of said land which they professed to know and also as to how the same had been originally claimed & occupied by the parties from the Mexican Government & their agents. - That according to the said Survey and that of the Rodrigues Rancho and affiant believes both of the same are correct. there is on the north west of said Mesa Survey & between it & the Rodrigues on the north west a piece of public land belonging to the United States -

That according to the order in said cause made by said Court on the Day of 1857 The said land of the mesa would if so surveyed include the said public land

and also a part of the land now included in the survey of the Rodrigues Rancho and that if surveyed according to said order the land cut off from said present survey would be as affiant is informed & believes taken into the Robles Rancho -

That ~~the~~ it is customary and in accordance with the general instructions ~~ato~~ survey all the lands specifically granted before surveying the sobrantes in the same neighborhood -

No 129
U S District Court
129
United States
vs.
Heirs of Mesa
Aff of John Wallace
Filed Aug: 15. 1860.
W. H. Chevers,
Clerk

129 ND
PAGE 91

John Wallace

Sworn to and subscribed before me August 15. 1860,

W. H. Chevers,
U. S. Com.

129 ND
PAGE 92

United States District Court.

The United States

vs

The Heirs of Maria Antonia Mesa.

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

Charles T. Healey having been first duly sworn on his oath says that he is the County Surveyor of the County of Santa Clara State of California as has also been acting as a deputy for the Surveyor General of the United States for California. That the accompanying and hereunto annexed map, being a certified copy of the map of a survey made by John Wallace, deputy U.S. Surveyor, has been carefully examined by this affiant. That at the request of Henry W. Seale one of the claimants of the above Rancho he has made a careful reconnoissance of the said Rancho, and that he has extended upon the said map the lines of said Rancho as they must be run in pursuance of the last decretal order of this court dated day of 1859 ~~1860~~, and that said lines are marked on the said map with dotted black lines. That the residence, barn and outhouses possessed and occupied by said Seale and his brother Thomas Seale, according to said lines, ~

129 ND
PAGE 93

would be thrown about one eighth of a mile southerly of the south line of said Rancho so surveyed, as also a great part of the fences and other improvements of said Seale. That the improvements including houses, buildings and fences of the said Seale's which would be thrown out of said Rancho by said survey are worth not less than $8000 00/100.

That affiant has been well acquainted with said premises and the possessions and occupancy of the adjoining rancheros since sometime in 1853. That he has been County Surveyor of said County since 1857. That the said Seales or one of them have been in the occupancy of the said premises to a greater or less extent since the year 1854. That the improvements about his residence have been occupied by them or one of them since about the year 1854. That the said Thomas Seale claimed to hold the same as well in his own right as also the said Thomas Seale as the agent and attorney in fact of the heirs of Antonia Mesa and that this affiant was ignorant of any claim adverse to the claim of the heirs of said Mesa and persons holding under them, except Squatter claims in and to the tract of land included in the survey made by said Wallace, until within about one year last past when he was advised that an attempt was being made to change the Wallace Survey. The Robles family or any person under them, never did previous to the said last

mentioned time so far as affiant ever knew or was

mentioned time so far as affiant ever knew or was informed, claim any part of the said premises covered by the improvements of the said Seales which improvements by fence very nearly conform to the Survey of the said Wallace of the premises.

129 ND
PAGE 94

And this affiant believes that had the said Robles or parties under them claimed any part of the same from the nature of his business as Sur=veyor and his knowledge of the premises and parties he would have been informed of the fact.

And this affiant further says that in making the said examination as aforesaid he ascertained the Northwest corner of the Survey made by the said Wallace on the San Francisquito Creek as the same is designated on said map & that he pointed out the said corner to Charles Brown who was then in company with affiant.

Sworn to before me Charles T. Healy
this 14th day of August 1866.

[illegible]

[illegible]

(Cert. 129 ND
U. S. District Court
238 Bd

United States

v.

Heirs of Mesa

Affdt of Charles T. Healey

Exhibit Healey No. 1
to depos. C. T. Healey
taken Dec 5. 1860 before
Jno B. Williams, U.S. Com.

Filed Aug: 15. 1860.
W. H. Chevers.
Clerk

92

129 ND
PAGE 95

129 ND
PAGE 96

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

The United States
vs.
The Heirs of
Maria Antonia Mesa
} No. 129.

The motion of claimants to vacate and set aside the decree of this Court made and entered on the third day of December A.D. 1859, rejecting the survey of the lands claimed in the cause as to be heard on this 15th day of August A.D. 1860, and it appearing to the Court that this is a proceeding pending within the meaning and intent of the act of Congress ~~entitled "An act to ascertain and settle land claims in~~

California" passed on the 14th
day of June A.D. 1860, and that
there are other parties interested
in locating the lines of said sur-
veys who are not before the Court
in said proceeding. It is there-
fore ordered that la monition
issue in this cause, returnable
on the Wednesday the 26th day of September
A.D. 1860 and that publication
thereof be made on each Satur-
day before said day in the
San Jose Reporter a newspaper
published at San José in Santa
Clara County, and on each
Wednesday before said re-
turn day in the San Francisco
Herald a newspaper published
at San Francisco.

And that in
the mean time the further hear-
ing of said motions of claimants
in this cause be continued until said return day
with leave to claimants to
make any further showing
they can in support of their
said motions. And also leave to
the United States to make any further

129 ND
PAGE 97

showing in opposition thereto.

Elder Hoffman
Judge

129 ND
PAGE 98

No. 129. 24

U. S. District Court.

The United States.

vs.

Mc A. Mesa.

Order to issue Monition.

Filed Aug: 21, 1860.
W. A. Cheers.
Clerk.

129 ND
PAGE 99

We have examined the within & think it is sufficient to
[illegible]

129 ND
PAGE 100

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

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

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 129, to Ma Antª Mesa known as Rinconada del Arroyo de San Francisquito, and situated in the County of Santa Clara in said District.

NOW THEREFORE YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the District Court of the United States for said District, sitting in Land Cases, on or before Wednesday, the 26th day of September A. D. 1860, at 11 o'clock, A. M. (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

WITNESS, the Hon. OGDEN HOFFMAN, Judge of said Court, at San Francisco, in said District, this 20th day of August A. D., 1860.

W. A. Chevers.

CLERK.

The within Monition was received by me on Monday the 20th day of August 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for Four consecutive Wednesdays, in the San Francisco Herald, commencing on the 22nd day of August 1860; and for Four consecutive Saturdays, in the Weekly Reporter a paper published nearest the land, commencing on the 25th day of August 1860

Dated San Francisco, Aug. 22 1860.

P. L. Solomon U. S. Marshal.

No. 129

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

THE UNITED STATES.

V.

Ma. A. Mesa.

MONITION.

Returnable Sept. 26. 1860.

Issued Aug. 20. 1860.

Filed Sept. 26. 1860.

W. A. Shepard
Clerk.

25 — 129 ND
PAGE 101

129 ND
PAGE 102

District Court of the United States Northern District of California

The United States
vs
Maria Antonia Mesa et al

Jeremiah Clarke in person inter-veners for his interest in the proceed-ings pending herein to set aside the survey heretofore returned to this Court by the Surveyor General and states and alleges as follows viz:

That said intervenor is the principal owner of the tract of land granted Mch. 27. 1841 by John B. Alvarado to Jose Pena and finally confirmed by the U.S. Su-preme Court to T. S. Robles under mesne conveyances from said Pena and said T. S. Robles to himself *

That said survey is erroneous and does not conform to the decree of confirmation heretofore made herein and varies therefrom and is erroneous in the following partic-ulars:-

First = That whereas said confirmation was for a definite and precisely located piece of land in form of a rectangular

* That the land so granted to said Pena and so now owned by this intervenor is bounded on the North by the said tract of the said Mesa and others and that to the extent that said survey is carried too far South it interferes with and overlaps the land so covered by said Pena grant

parallelogram extending in length from the bay Westward one league & a point West of the crossing of the creek by the San Francisco road, and in breadth one half league, said creek passing through said rectangle, from its Northeastern & near to Northeastern corner, all of which appears by the diseño, made a part of said decree yet that said Surveyor has located said land - 1st Wholly South of said creek; instead of on both sides thereof -

2d - Instead of extending the survey one league West from the bay, he has extended it less than two thirds that distance - 3d - Instead of extending the survey to a point west of the San Francisco Road, he has stopped short of said Road and to the East thereof, by a distance of more than half a mile -

4th - Instead of extending said survey but half a league from North & South, he has extended it four fifths of a league

5th - Instead of running the Southern line of the tract in a North East direction, by which it would cut the shore at right angles according

129 ND
PAGE 104

of said deano, he has run said Southern line arbitrarily due East by which course said line does not reach the Eastern boundary orig. the Esteros or marsh at all, but at an arbitrary point terminates in another arbitrary line running North and South nowhere indicated in the deeds or deano, but wholly at variance from both

6th The whole form duriction and position of the tract surveyed are different from those prescribed by the deeds and specified in the deano, and have been adopted without warrant or reason.

" That the land by granted & said deeds and so run around by this interior is bounded on the South by the said tract of the said Mesa and others and that to the extent that said survey is incorrect so far South it intrudes into and overlaps the lands so covered by said Land Grants

" The said Clarke therefore accepts said survey and adopts as his own the exceptions thereto heretofore filed by the US District attorney, and insists that for reasons appearing upon the face of the Record and proceedings herein.

the order of this Court heretofore made rejecting said survey should not be set aside, nor disturbed but that a re-survey should be made, in conformity with the decretal order directing the same hereinbefore made

J. Clarke Atty in person

J. Clarke being duly sworn deposeth and saith that the matters set forth in the foregoing statement touching his interests in the survey therein mentioned and in the land bordering thereon and affected thereby are true

J. Clarke

Sworn to and subscribed before me, Sept. 29, 1860.
W. H. Chevers, U.S. Com.

129
Dist. Court of U.S.
Northern District of Cal.
The U.S. vs Maria Antonia Mesa et al
No 129
Filed Sept. 29, 1860.
W. H. Chevers, Clerk
Intervention, Statement and exceptions of J. Clarke
(3)

129 ND
PAGE - 105

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

129 ND
PAGE 106

The United States (

~~The Heirs of Ygnacia Antonio Buena~~
~~H. C. Rodriguez~~)

The Petition of Philip McGorem, Thomas Ward, Mary Ann Cook John Pitman Joseph Howell Wm. M. Burns, Thomas G. Wilson by their Attornies Messrs Wade & Brannan respectfully shews to this Court and States, That the Survey in this Case was approved by the Surveyor General on the Third day of August A.D. 1858

That the Surveyor General first published notice of such approval in the San Mateo Gazette on the fifteenth day of September A.D. 1860 in pursuance of the act of Congress of June 14, 1860

The Grant in this Case was made to Antonio Buena in 1842. he died about the day of thereafter leaving his wife Maria Concepcion Valencia de Buena, his widow sole heir to the ~~portion~~ premises ~~in~~ which Your

Petitioners are interested; She afterwards intermarried with Francisco C. V. Rodriguez & they Rodriguez and Maria Encarnacion his wife sold & conveyed the said Rancho to Francisco Casanova, and said Casanova mortgaged the same to Francisco de Leon which said mortgage was afterwards foreclosed & your Petitioners purchased at the sale under such foreclosure & also from Casanova & now hold under such purchasers

129 ND
PAGE 107

That the land covered by the grant ~~in this case~~ under which your Petitioners claim is joined by the Rancho known as the Rincon de y arroyo de San Francis quito; which latter Rancho is claimed by the heirs of Antonio Maria Pico & the survey of said Rancho has been confirmed by the Surveyor General. & is now before this Court, in pursuance with the order thereof to be examined and corrected according to the petition of certain parties claiming an interest in the location of said Survey

That the said parties last mentioned are endeavoring to

have the next line of the Survey of the said Mesa Grant so Changed as to include a portion of the land of your petitioners, which change would be unjust and incorrect as your Petitioners aver, and not in Conformity with the directions or grant in said case

Wherefore your Petitioners pray of the land claimed by your Petitioners that the Survey ~~in this Case~~ may be approved & confirmed by the Court and that your Petitioners may be allowed to contest any change in the survey in the case of the United States vs. the Heirs of Maria Antonio Mesa

Wade & Brosnan
Attys for Petitioners

San Francisco
Sept 27 1860

Thomas Ward.

State of California
City & County of Santa Clara } ss
one of the above Petitioners being duly sworn doth depose & say that he has read the foregoing Petition & knows the contents thereof & that the same is true of his own knowledge except as to the matters therein stated on information or belief & as to those matters he believes it to be true.

Subscribed & sworn to this 27th day of Sept. A.D. 1860 before me
Joseph S. Wallis
Justice of the Peace, Santa Clara County

Thomas Ward

U. S. Dist. Court

No. 129.

Petition.

129 ND

PAGE 109 (5)

~~28~~

United States

vs

The heirs of Nesa ~~Rodriguez~~

Filed Oct. 1. 1860.

W. A. Cheever

Clerk.

Due service of
a copy of the
within Petition
is hereby admitted
this 1st. day of
Oct. A.D. 1860
M. C. Duggan & Shark
Sols for Claimant

Wade & Brown
Attys for Petitioners

129 ND
PAGE 110

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

The United States
vs
Maria Antonia Mesa

No: 129
In the matter of the Survey of the Rancho Rincon de del Arroyo de San Francisquita

To the Hon: Ogden Hoffman, Judge of said Court

The petition of Thos: J. Neville and Thos: J. Haynes, by their Attorney Edward Pierce respectfully represents, that they are claimants of part of the Rancho called the Robles Ranch which adjoins the Rancho named in this case: that they claim under deed from the original grantee of said Robles Ranch, and that the survey made in this case (No. 129) is unjust, and improperly includes in it land belonging to said Robles Ranch

Wherefore petitioners pray to be permitted to intervene

for the protection of their interests &c &

Edw Bewley
Atty for Petitioners.

129 ND
PAGE 111

City & County of San Francisco ss:

On this first day of ~~September~~ October A. D. 1860, before me Ja Rice a Notary Public in & for said County personally appeared Thos. J. Neville & Thos. J. Haynes the petitioners within named who being duly sworn deposed & said that the facts stated in the foregoing petition are true

Thomas J Neville
Thos J Haynes

Sworn to & subscribed
before me this 1st day of October
of ~~September~~ A. D. 1860.

Ja Rice
Notary Public

No. 129

United States

vs

Maria Antonia Mesa

Petition to intervene

T. J. Neville &

T. J. Haynes. —

L- 129 ND

PAGE 112

Filed Oct 1. 1860.

W. H. Chevis,

Clerk

(4) ~~27~~

Ed. Stanly.

for Pet.

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

129 ND
PAGE 113

The United States
v
Maria Antonia Mesa

No. 129
In the matter of
the Survey of "Rincon-
ada del Largo de San
Francisquita" —

Exceptions filed by Thos. J. Neville and
Thos. J. Haynes, to the Survey in this case —
Said Neville & Haynes by their Atty: Edward
Stanly except because

1. — That said Survey is erroneous and does
not conform to the decree of this Court,
and to the original title papers and map.
2. That the confirmation in this case was for
a definite and precisely located piece of land
in form of a rectangular parallelogram,
extending in length from the bay West-
ward one league to a point West of
the crossing of the creek, by the San
Francisco road, and in breadth one
half league, said creek passing through
said rectangle, from its North-
Western, to near its North-Eastern corner,
all of which appear by the diseno,
made a part of said decree, yet

that said Surveyor, has located said land, wholly South of said Creek, instead of on both Sides thereof, and instead of extending the Survey one league West from the bay he has extended it less than two thirds of that distance.

129 ND
PAGE 113A
(113-A)

2. Instead of extending the Survey to a point West of the San Francisco road, he has stopped short of said road, and to the East thereof, by a distance of more than half a mile.

3. Instead of extending said Survey but half a league from North to South, he has extended it four fifths of a league.

4. Instead of running the Southern line of the tract in a North East direction, by which it would strike the shore at right angles according to the decree, he has run said Southern line arbitrarily, due East, by which by which course said line does not reach the Eastern boundary viz: the Estero a Marsh, at all, but at an arbitrary point, terminates in and the arbitrary line running North and South, nowhere indicated in the decree or decree, but at variance with both. —

5. The whole form direction and position of the tract surveyed are different from those prescribed by the decree and specified in the decree, and have been adopted without any sufficient reason.—

Edw Stanly Atty
for Neville & Hooper—

129 ND
PAGE 113-B
(113-B)

No. 129

The United States

vs

Maria Antonia Mesa

Exceptions to survey
on the part of Neville
& Haynes. —

Filed Oct. 4. 1860
W. H. Chevers,
Clerk.

29 (69)

129 ND
PAGE 114

Edw. Stanly for Defendants.

129 ND
PAGE 115

District Court of the U. States
Northern District of California

The U. States
vs
Maria Antonia Nieto

No 129

Please take notice that the motion made in this cause on the 2d day of Dec. 1859, to vacate the order of the Court therein made Dec. 2d 1859 setting aside the survey thereto for confirmed therein, and the exceptions to said survey, on file in said cause have been set for hearing by said Court on Wednesday next (Nov. 21st 1859) at 10 o'clock A. M.

Respectfully
J. Clarke

To Calhoun Benham
U. S. Dist Atty

Edmund Stanley
Atty for Intervenor

McDougal & Thorpe
Attys for Claimants

Wade & Bronson
Attys for Intervenors

Due service of a copy of the within
is admitted this 16th day of
November 1860.

Calhoun Dunkin
U. S. Atty.

Wade & Brunson
Attys for Intervenors

McDougall & Thane
for Claimants

Edw Hanly atty for
Smith & others -

No. 1 Dist. Court
No 1121
The U. S.
vs
Marie Catherine Auzys

Notice of Hearing
Filed Nov 21, 1860.
W. D. Clement
Clerk.

129 ND
PAGE 116

United States District Court.
Northern District of California

The United States
vs.
Maria Antonio Mesa.

129 ND
PAGE 117

All parties being present and it appearing to the court that a motion for a rehearing or new trial of this cause is pending - That since the making of said motion & pending the same a mention has been had and and been entered herein and that other parties have intervened herein - That there has been a misapprehension on the part of some of the parties as to their right to take testimony pending said motion. and that the proofs are not taken and it is that no order has been regularly entered herein limiting a period for closing the proofs & setting the cause for a hearing - It is ordered that the proofs herein be closed on or before Thursday the 29th day of November A.D. 1860 - and that all parties shall attend & take testimony herein on a notice of one day instead of five days of the time & place of taking the same and that this cause be and the same is hereby set for a final hearing on said Thursday

the 29th day of November A.D. 1860
at ~~ten~~ eleven o'clock A.M. of that day
and that the same shall be
heard on that day unless the
parties show by affidavit sufficient
cause for a postponement
thereof. Such affidavit to set
forth the names of the witnesses
and the facts to be proven
and also the dilligence used
by the parties to obtain such
witnesses
Nov 22nd 1860.

Ogden Hoffman
Dist Judge

129.

U.S. Dist. Court.

The United States
-vs-
Ma Ant. Mesa.

Order to close proofs by 29th inst. and setting cause for that day.

Filed Nov. 22, 1860.
W. H. Chevers,
Clerk.

30

129 ND
PAGE 118

No. 129 ND
PAGE 119

U. S. District Court.

The United States
v.
Maria Antonia Mesa.

No. 129

Be it Remembered that on this 20th. day of November, A. D. 1860, before me John B. Williams, the within named Commissioner, it was stipulated and agreed by the attorneys who attended the within examination of Candelario Valencia in case No. 204, that a copy of his deposition be filed and read in evidence in the above entitled cause, in behalf of claimant, with the same effect as if regularly taken therein.

Jno. B. Williams
U. S. Comr.

129 ND
PAGE 120

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

C. V. Rodriguez et al

IN LAND CASES.

Dist. Court No. 206

Land Com. No. 642

BE IT REMEMBERED, that on this 20th day of November A. D. 1860, at San Francisco in the District aforesaid, before me, JOHN B. WILLIAMS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Candelario Valencia — a witness produced in behalf of H. W. Seale, Intervenor — in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by R. Tobin, duly sworn, and notice waived by parties present.

PRESENT: C. Bonham Esq. U. S. Atty
Mc Dougall & Sharp for H. W. Seale
Jeremiah Clarke Esq for himself
Edward Stanly Esq. for J. J. Neville
W. J. Brunson for claimants

QUESTIONS IN BEHALF OF THE Intervenor. H. W. Seale.

Question 1st,

State your name, age, residence and occupation

Ans.

Leandelario Valencia, age 50, residence Mission Dolores, occupation Ranchero.

129 ND
PAGE 121

2c.

Do you know the land granted to Mariaq Antonio Mesaq: and if so, how long?

Ans.

I do: I have known it for some 18 or 19 years

3c.

Where is it situated?

Ans

On the Santa Clara side of the Rincon de San Francisquito

4c.

About how far was it considered that the claim for the Ranch extended on the Creek prior to the American possession?

(Objected to by Mr Clarke as trying to prove boundaries by parol evidence)

Ans

About half a league.

5c.

How far towards San Jose?

Ans

One league

6c.

Did you ever occupy and cultivate any lands on the Creek between the

any lands on the Creek between the

land claimed by Mesa and that claimed by Buelna?

Ans

I cultivated land there for three yeare successively.

4th

Was the land you cultivated ever claimed by the Mesas or Buelna prior to the conquest?

(Objected to, as trying to contradict written documents of title by parol evidence)

Ans.

It was not — never

5th

Why did you go there and cultivate?

Ans

Because I was invited to go there by the deceased Buelna and by Maria Antonio Mesa, about 18 or 19 yeare ago.

6th

What was stated to you by Buelna & Mesa at that time respecting that lands?

(Objected to as before)

Ans.

They invited me to come and cultivate

there and nothing more. The dec.d and Antonio told me there was a sobrante there either on his side or on Mesa's side.

10.c

What years did you cultivate in; was it prior to the conquest?

Ans

Before the conquest. I don't know the date. The paids no attention to dates here.

129 ND
PAGE 123

11.c

About how much landy did you cultivate in that location?

Ans

About 70 or 80 acres - more or less.

Cross Examination
Questions by Mr Clarke

12.c

Who have you been tatking with lat-terly about this matter?

Ans.

Those who are now here - with no one before this examination.

13.c

How does it happen that you recol-lect that the Mesas got their title

18 or 19 years ago. while you dont recollect the time when you occupied the lands — and when you say you made no account of dates in those times?

Ans.

What I meant to say was, that they invited me to go there and cultivate that land, and I went — about 18 or 19 years ago — and did cultivate three years consecutively. I don't know when they got their titles.

14c.

Was Antonio Buelna living all the time you were cultivating?

Ans

He was. He died after that, but I dont know how long after.

15c.

Where was it that Antonio Buelna told you there was a sobrante — where did he make that declaration?

Ans.

It was as we came down on foot to the place he wanted me to cultivate — I was unwilling to go there, it was so far away. He told me in time that it would be mine.

129 ND
PAGE 125

16th

You have stated that Antonio Buelna told you he thought there was some vacant lands either on his side or on Mesa's side— On the side of what?

Ans.

He said there was a sobrante on Mesa's side below the road. He told me there was a sobrante on one side or the other, but that I would be more secure in taking up the piece below the road— there would be more certainty about it.

17th

Was this the road that goes to Santa Clara from San Francisco.

Ans.

It was.

Question by Mr Stanly.

18th

Where did you live before you went to cultivate this land?

Ans

At the Mission Dolores

19th

What sort of cultivation did you

have upon that land

Ans.

Had melons, maize, corn, wheat, onions.

20c

Did you put any house upon it while you were there?

Ans

No Sir. There was a little house under a tree made of boards on the place, but when it rained we went up to Antonio's house.

21c

What assistance had you to cultivate that land?

Ans

My son — one son.

22c

Where was your family during the time you cultivated that land?

Ans.

Here at the Mission.

23c

When did you see this land last?

Ans

I don't remember. I have seen it when I passed along the high road, but don't remember when last.

L. 129 ND
PAGE 126

129 ND
PAGE 127

24.c

Who has that land now in possession?

Ans.

I have heardy that a Chileno namedy Ramirez has some landy there abouts.

25.c

I repeat question 24.c

Ans

I am toldy that Ramirez is there.

26.c

Did you own any other landy before you went to cultivate the piece spoken of?

Ans.

I had a lot here at the Mission — a house lot — I also ownedy the Acalanes Ranch. As the Indians drove me away from the Acalanes, I went to the Mission and staidy there until I went to the landy in question

27.c

Did you, or any other person to your knowledge, apply to the Mexican government for the land you say you cultivatedy?

Ans

129 ND
PAGE 128

No Sir.

28th.

If this land was valuable to you for cultivation why did you not apply for it?

Ans

Because no measurements had been made there yet and I did not know what there would be left

By Mr Clarke

29th.

Who owned and occupied the lands adjoining the piece cultivated by you, and on your south side?

Ans

José Peña.

(Answer objected to as incompetent and irrelevant.)

30th.

Did Antonio Bueno at the time he pointed out the piece of land he thought was vacant tell you or show you that Peña was co-lindante on the South?

(Objected to as incompetent and new matter)

Ans

No, he did not.

31st

Was this road of which Antonio Buelna spoke, on the other side of which he supposed there was a sobrante, called the Camino medio?

Ans.

It was the only road there was at the time leading from San Francisco to Santa Clara, the old road. Afterwards it was known as the Camino Medio when other roads were made.

32d

What road did you and Buelna go along at the time you went from his house to the piece of land?

Ans.

We came along the bank of the Arroyo from Buelnas house to the Camino del Medio.

33d

Was there another road which crossed the Creek just above or at Buelna's house?

Ans.

There was another road above Buelnas house that led to the hills it was about 100 varas above his house.

In going from San Francisco to Santa Clara, what direction did the road take after crossing the Creek?

Ans

There was one road that went along the edge of the marsh, and another which turned to the right called the dry road. The one which went by the Marsh was called the Camino del Medio. There was a road still below this one which went along the edge of the water in dry weather. The Camino del Medio was the old road.

129 ND
PAGE 130

Examination closed.

Sandalio Valencia

Sworn to and Subscribed before me this 20th day of November A. D. 1860.

Jno B. Williams
U. S. Comr.

A true copy.

Jno B Williams
U.S. Comr.

129

U. S. District Court

The United States

v

Maria Antonia Mesa

Deposition of
Candelario Valencia
for claimant

Filed Dec: 8. 1860.
W. A. Keeney.
Clerk

35

129 ND
PAGE 131

129 ND
PAGE 132

U. S. District Court.

The United States

v. } No. 129.

Maria Antonia Mesa.

Be it remembered, that on this 16th day of November, A. D. 1860, before me, John B. Williams, the within named Commissioner, it was stipulated and agreed by the attorneys who attended the within examination of Charles Brown in case No. 206, that a copy of his deposition be filed and read in evidence in the above entitled cause, in behalf of defendant, with the same effect as if regularly taken therein.

Jno B Williams

U. S. Comr.

129 ND
PAGE 133

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

C. V. Rodriguez, et al

IN LAND CASES.

Dist. Court No. 206

Land Com. No. 642.

BE IT REMEMBERED, that on this 16th day of Nov.r A. D. 1860, at San Francisco in the District aforesaid, before me, JOHN B. WILLIAMS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Charles Brown — a witness produced in behalf of H. H. Seale, Intervenor in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: notice waived by consent of parties present.

PRESENT: Leathom Benham Esq. U. S. Attys
Mc Dougall and Sharp for H. H. Seale
Jeremiah Clarke Esq. for himself.

QUESTIONS IN BEHALF OF THE Intervenor H. H. Seale

Question 1st,

State your name, age, place of residence and occupation?

Ans.

Charles Brown, age 45 - residence Mission Dolores, and occupation land holder.

2d.

State how long you have known the land granted to Antonia Buelna and the tract of land granted to Antonio Maria Mesa

Ans.

Twenty years or thereabouts. They are both situated on San Francisquito Creek.

129 ND
PAGE 134

3d.

State as near as you can what was considered and claimed by the respective grantees up to the time of the conquest and from the time you first knew those tracts as the location of the easterly line of the Buelna tract and the westerly line of the Mesa tract: state all you know on the subject?

(Objected to by Mr. Clarke on the ground that it is substituting parol for documentary evidence)

Ans

I have seen the official survey of the Mesa tract and consider the line between the two tracts, shown thereon, as laid down, as my answer to the question.

4th.

Do you know the location of the old road known as the middle road,

and claimed as a part of the Western line of the Buelna tract where it crosses the Creek?

Ans

Ldo. What was considered & claimed as the Mesa line on the Creek was at least half a mile west from where the road crossed the creek

129 ND
PAGE 135

5th

State if you know whether there was between the two tracts of land, a piece of land not included in either; and if so, what was the quantity embraced in it?

Ans.

There was. It was planted & occupied by cultivation for three years by Candelario Valencia, - it was prior to 1846. Valencia went there under the direction of Antonino Buelna, who told him to go there and occupy that land, which he did. That land was not at that time claimed by either Mesa or Buelna.

Exam closed.

Sworn to and subscribed before me this 16th day of November A.D. 1860.

Charles Brown.

Jno B. Williams
U. S. Com'r.

A true copy: Jno B. Williams, U. S. Com'r

129

U. S. District Court

The United States

v.

Maria Antonia Mesa

Deposition of
Charles Brown
for claimant.

Filed Dec. 8. 1860.
W. A. Meredith,
Clerk.

36

129 ND
PAGE 136

DISTRICT COURT OF THE UNITED STATES,

Northern District of California.

The United States }
vs. }
María Antonio Meza. } San Francisco, Nov 28 1860

129 ND
PAGE 137

On this day, before me, ~~WILLIAM H. CHEVERS~~ Cutler McAllister, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Eusebio Galindo a witness produced on behalf of the Claimant in Case No. 129, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 238 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows— his evidence being interpreted by a sworn interpreter, to wit.: By Watson.

PRESENT: Calhoun Benham U. S. Atty by J. Clarke
Sharp & McDougall for Claim

QUESTION 1st, By Counsel for the Claimants

Quest— Your name age & place of residence?

Ans.

Eusebio Galindo, 58 years of age, place of residence Santa Clara County.

2nd.

Do you know the land granted to and claimed by Mª Antonia Mesa, and that of Buelna, and that granted to José Peña? if so how long?

Ans.

(Objected to as incompetent.)

Ans

Yes Sir. Long time, many years

3rd

Where is the land of Mesa situated?

Ans.

It commences from the Bay, following up the Creek, to a point near the old road. Thence Southerly three miles, From the Bay to the boundaries of Buelna's Ranch.

4th

What was the extent of the land of Mesa on the Creek?

Ans.

Half a league towards the Road.

5th

On which side of the Creek of San Francisquito was the land of Mesa?

Ans.

On the Santa Clara side.

6th

Was any portion of it North of the Creek?

Ans

There is not an inch on this side of the Creek.

7th

State if you know the boundaries

of Buelnas Grant &c

Ans

The Buelna Ranch was contiguous on one side to the Mesa Ranch, on the other side to Maximo Martinez and on an other to Juana Briones, and also by Jose Pena.

8th.

Did you know the location of the old road from San Francisco to San Jose'?

Ans.

I do.

9th

About how far did the old road referred to, crossed the Creek from the Bay? State if you know?

Ans

I cant tell exactly the distance between the road where it crossed the Creek and the extent of the half league from the bay.

10th

Was the crossing of the old road East or West of the West line of the Mesa track?

(Objected to because the diseño points it out)

129 ND
PAGE 139

Ans

Going from here ~~xxx~~ the crossing of the road was, on the right hand side.

11th

Was there any space or distance between the West line of Mesa, on the bereek and the crossing of the old road?

Ans

There was a strip of land there.

12th

Do you Know the location of the road which leads from Santa Clara to the Mountains?

Ans

I do.

13th.

Did any portion of the Rodriguez or Buena Grant lay South of the road referred to?

Ans.

The arrastradero passed through the Buena ranch.

14th

State if you Know whether the line

of Buelna on the old road crossed the Arrastradero? or was any portion of the Buelna track ~~East~~ South or South West of the Arrastradero or mountain road?

Ans

Yes. Two miles more or less, rather less than two miles. I am not positive how much.

15th

Was there any vacant land on the Creek between the line of Buelna and Mesa?

Ans

There was a strip of unoccupied land on the Creek between the Mesa and Buelna ranchos. The old road passed through this track leaving the largest portion on the Buelna side and a very small portion on the side of Mesa; which lands were cultivated by Candelario Valencia.

16th.

What relations did exist between Candelario Valencia and Antonino Buelna?

Ans

Brothers in Law.

129 ND
PAGE 141

17th

Did Candelario Talencia at the same time cultivate a portion of Buelna's land, and if so how much?

Ans

No. He simply cultivated the sobrante between the tract of Mesa and Buelna.

129 ND
PAGE 142

18th

How much of the Sobrante laid on the East side of the road; state if you know.?

Ans

Cannot say how much.

19th

Did you ever have any conversation with Antonia Buelna or Jose Pena Ritter, before the Americans came to the country with reference to the land of Ma Antonia Mesa, and its boundaries? if so state what was said in such conversation?

(Objected to as incompetent)

Ans

Nothing, except that they were contiguous owners.

20th.

Do you mean to say that the Rancho of Buelna and the rancho of Mesa joined along the whole West line of Mesa and East line of Buelna?

Ans

All with the exception of the small piece on the Creek.

21st.

Were you well acquainted with the Ranchos of Buelna, Mesa and Peña, before the year 1846?

Ans

Yes sir.

22d.

Before that time did you ever hear any of those parties speak of the length and width of the Mesa Grant, if so, state what was said?

Ans

Yes, The deceased Soto told me many a time that his Rancho was one league Southerly, and a half league from the Bay towards the main road. Peña had not established himself there until some years afterwards. Buelna told

129 ND
PAGE 143

me that his ranch adjoined that of Soto. Yes ~~xxxx~~ Buelna often spoke to me ~~xx~~ of his ranch, ~~xxxxxxxxxxxxxxxx~~ but never in reference to the length and width of Mesa's Ranch. ~~xxxxx~~

23

About how far South from San Francisquito Creek was the ~~xxxx~~ House of José Peña?

Ans

Four miles or little more.

24.

Were you familiar with Soto, Buelna, and Mª Aª Mesa before the year 1846?

Ans

Yes, many ~~xx~~ years before. I was quite young when I first knew them.

25.

Did Soto reside with his family on the Mesa Ranch before the year 1838?

Ans

Many years previous and before the Grant.

Cross Examination

Question 1st by J Clarke Esq.
for United States

Where was Solais House when he lived with his family, before the grant?

Ans

He Lived on the Creek - On the South side.

129 ND
PAGE 145

2nd

Did he ever lived on the Northerly side of the Creek.

Ans

He lived on the North side along time before he established himself on the Southern side which was many years before 1838. He established himself on the Southern side many years before 1838

3rd.

Who requested you to come here to testify in this case?

Ans

Charles Brown.

4th

How much money did he give you, and how much did he say would be given you?

Ans

My expenses certainly must be paid. He has given me nothing. He promised to pay my expenses and certainly they must be paid.

5th

129 ND
PAGE 146

Did you talk over the subject matter on which you were to testify?

Ans.

No. He said he had an affair here in which he wanted me to testify, and he would pay my expenses. But did not speak about the Mesa Ranch.

6th.

In what way did you ever learn ~~that~~ that this tract was three miles in length from North to ~~South~~ South?

Ans

From the deceased Sato and from the Surveyor

7th.

What Surveyor

Ans

Dont know his name. The preced-

-cessor of the present Surveyor, and by the present Surveyor likewise. I mean the County Surveyor of Santa Clara Co.

8th

And was it from the same source that you learned that the tract ~~x~~ extended half a league from the Bay towards the main road?

Ans

Yes sir.

9th

How did you learn that Buelna's tract extended two miles or so Southerly ~~of the~~ Mountain road?

Ans

From Buelna. But he was not positive about the extension being two miles exactly. Said land had not been measured at that time.

10th

Did Buelna tell you ~~x~~ what quantity of land he was to have after it ~~should~~ be measured.

Ans

No. Only that his land was to

adjoin the Mesa ranch ~~and~~ and that, of Máximo Martinez.

11th

State at what point ~~said~~ the mountain road passed the Creek? How far from Buelna's House?

Ans.

Very near, about two hundred varas.

12th

State the point of that crossing with reference to the range of hills?

Ans

From the crossing of the Creek by this road until reaching the Bay is one continuous plain. From this crossing, Westerly, about two miles ~~is~~ is a small range of hills and table lands.

~~Examination~~

13th

State if ~~you know~~ there were any other crossings of the Creek below that made by the Mountain road, except that of the Main road which you have spoken of?

129 ND
PAGE 148

Ans.

There were some places where Cattle crossed, but no place where Carriages could cross, Except at a point below the old road leaving a thicket of willows immediately on the West and the Estero on the East. The distance between the causeal and the marsh was so narrow at the crossing, that sometimes when the tide was up, the carriages to avoid the water would have to brush against the willows.

Chief Examination Resumed

14th.

How far was the crossing at the Causeal last referred to from the Bay?

Ans

I have already said, that when the tide was up, Carriages had to crowd up into the willows.

15th.

What was the distance from the Crossing of the Arrastradero, to the point where the Westerly line of Buelna came to the Creek?

Ans.

I think about two miles, I can't say positively.

16th.

What was the width of the Marsh on the East ~~off the~~ low Crossing?

129 ND
PAGE 150

Ans.

Dont Know.

17th

Before the year 1846 was it ever questioned as far as you Know, as to whether the Mesa Ranch extended half a league on the Creek ~~from~~ to the Bay by one league from the Creek South?

(Objected to as irrelevant and incompetent.)

Ans

Never.

18th

From your familiarity with the owners of the adjoining ranchos, if any such questions had been made would you have Known it?

Ans

129 ND
PAGE 151

certainly I would have known it.

Cross Examination resumed

19

Did ayou ever seea Jose Peña's petition, ~~xxxx~~ diseño, or grant?

Ans

I have not

20th

What do you mean then by saying that if any body had claimed that the Mesa tract extended less than a league from North to South you must have known it?

Ans.

Because I was informed by the County Surveyor of the boundaries of the Mesa ranch and because the deceased Soto told me long before, that his ranch extended North and South one league, and East to West half a league.

Examination in chief resumed

21.

State if you knew whether the Peñas Rancho was not a sobrante?

Ans.

It was a sobrante of Mesa's ranch many years ~~long~~ before Peña established himself there.

Eusebio Galindo

129 ND
PAGE 152

Sworn to and subscribed before me this 28th day of November AD 1860.

Butler McAllister

U S Comr

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

No 129

The United States

v.

Maria Antonia Ibieca

Deposition of Eusebio
Galindo Witness for Claim

Filed Dec: 8. 1860.
W. H. Chevers,
Clerk.

37

129 ND
PAGE 153

129 ND
PAGE 154

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Ma Antonia Mesa

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 238

BE IT REMEMBERED, that on this 28th day of November A. D. 1860, at San Francisco, in the District aforesaid, before me, ~~JOHN B. WILLIAMS~~ Lester M. Allister, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared J. O. Rountree — Claimants — a witness produced in behalf of — in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

PRESENT: Calhoun Benham U. S. Atty by J. Clarke —

McDougall & Sharp for Claimants

QUESTIONS IN BEHALF OF THE

~~Question 1st,~~

My name is J. O. Rountree, 35 years of age, residence San Francisco occupation Merchant.

Quest

Do you know the Mesa Rancho?

129 ND
PAGE 155

I do. I have Ans been to Seale house once. I am acquainted with the improvements, (Barns &c) of Seale, with reference to the Creek and the Bay. The location on the Map seems to be correct with reference to its position from the Bay. The improvements are worth from 6 to 8 thousand dollars. There are two substantial Barns and a good Ranch House. The fences are good and occupied by Mr Seale I dont Know who put those improvements there.

J. O. Rowell

Subscribed & Sworn to before me this 29th Day of November A.D. 1860

Cutler McAllister

Dist Atty

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Mc. a. Mesa

IN LAND CASES.

Dist. Court No. 129.

Land Com. No. 238.

129 ND
PAGE 156

BE IT REMEMBERED, that on this 28th day of November A. D. 186 0, at San Francisco in the District aforesaid, before me, ~~JOHN B. WILLIAMS~~, butler Mc allister a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared David Mahoney a witness produced in behalf of Claimants in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

PRESENT:

Calhoun Benham U. S. Atty by J. Clarke—

Mc Dougall & Sharp for Claimants

Brownson for Intervenor—

QUESTIONS IN BEHALF OF THE Claimant

~~Question 1st,~~

My name is David Mahoney, over 21 years of age, residence San Francisco, my occupation is butcher &c. &c. &c, In the Spring of 1852 I crossed the San Joaquin ~~Stanislaus~~ Piquito Creek with

some Cattle. I Know of three crossings over the Creek One where the Bridge now is on the County road, one up the Creek towards the Red Woods and one below or East of the Bridge, and I think about one Mile or one and one half mile from the Bridge — East, as we travelled at that time, but in a straight line it may be less, I do not think however it is less than a mile.

David Mahoney

Subscribed & Sworn to before me this 28th day of November A.D. 1860

Cutler McAllister

U. S. Commr

- 129 ND
PAGE 157

129 ND
PAGE 158

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

María Antonia Mesa

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 238,

BE IT REMEMBERED, that on this 28 day of November A. D. 1860, at San Francisco in the District aforesaid, before me, ~~JOHN B. WILLIAMS~~ Calder McAllister, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared G. S. Banks — a witness produced in behalf of the Claimants — in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

PRESENT: Calhoun Benham U.S. Atty by J. Clarke
Sharp and McDougall for Claimants. Brownson for intervenors

~~QUESTIONS IN BEHALF OF THE~~

Question 1st,

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

Ans

G. S. Banks. 35 years of age. San Francisco. Stable Keeper.

2nd

Do you Know the Mesa Ranch?

Ans

I do.

3rd

Look at the survey and state if the improvements of W. W Seals are correctly laid down with reference to the Creek, Bay &c.

Ans.

I should judge they were

4th.

State if you Know the value of the ~~S~~ improvements on the place?

Ans

I should think that they are worth about $10.000. They are substantial good Houses and substantial barns. And they are at present in tip top order. I had some Carpenter work done there for Mr Seals

Cross Examination

5.

Do you understands surveying?

Ans

No Sir.

6th

Do you Know who erected the buildings spoken of.

Ans

Only from hearsay. I heard
Seale say that he ~~is and~~ his brother
Adams and ↑ had put them up there

4th

129 ND
PAGE 160

Did you ever make any measure-
ments from ~~of~~ those buildings to any
~~fixed~~ point.

Ans

No. I dont mean to say so with
accuracy. But I feel very certain
the location is correct.

S. S. Banks

Subscribed & Sworn to before me this
28th day of November A.D. 1865

Cutler McAllister

U. S. Comm~~issioner~~

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

No 129.

The United States

v.

Wm Antonio Mesa

Depositions of L. S. Boulk David Mahoney, & L. O. Rountree Clerks Witnesses

Filed Dec: 8, 1860.

W. Do. Ackerson, Clerk

129 N.D
PAGE 161

129 ND
PAGE 162

United States District Court
Northern District of California }

The United States

vs,

Maria Antonia Moss

You are hereby notified that Jose de Jesus Noe, Galindo & Jose Antonio Alviso will be examined before L B Williams a Commissioner of the United States in the City of San Francisco at his office, on the 27 day of November A D 1860 at eleven o'clock A M of that day. on behalf of claimant and the assignees of claimant

Respectfully &c

McDougall & Clark
attys for Claimant & Assignees
of Claimant.

To

Wm. J Clark
atty for Deft

Calhoun Benham
U. S. Dist Atty.

Edward Stanly
atty for Intervenor

Benson Wade
attys for Intervenors.

~~Examination adjourned until Nov 2~~

Received a copy of
the within notice
this 26th day of November
1860 — J. Clarke
Petitioner in person
E. W. Smith
atty for Petitioner

129 ND
PAGE 163

129 ND
PAGE 164

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

María Antonio Mesa

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 258

BE IT REMEMBERED, that on this 27th day of November A. D. 1860, at San Francisco in the District aforesaid, before me, JOHN B. WILLIAMS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared José Antonio Alviso — a witness produced in behalf of the claimant — in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his testimony being interpreted by Thomas Sewett, duly sworn.

PRESENT:

C. Benham Esq, U. S. Attorney.
Mc Dougall and Sharp for claimant
Jeremiah Clarke Esq for himself
W. J. Brannan Esq for P. McGovern, et al

QUESTIONS IN BEHALF OF THE Claimant.

Question 1st,

State your name, age, residence, and occupation.

Ans.

José Antonio Alviso - age 64 - residence Santa Clara County - occupation ranchero,

129 ND
PAGE 165

2d

Do you know the land granted to and claimed by Maria Antonia Mesa, and the land granted to and claimed by Antonino Buelna; if so, how long have you known them?

Ans.

I know the land of Mesa - since she solicited the land I have known it. I know the land of Buelna also, I can't exactly say how many years.

3d.

State if you know how far the land of Mesa extended on the creek from the Bay?

(Objected to, as irrelevant &c.)

One league long Southerly from the Creek and ~~about~~ a half league in width on the Creek.

4th

How far did Jose Peña lived from the Creek, and in what direction? I mean the San Francisquito Creek?

Ans

About a league and a half or two leagues from the San Francisquito Creek. Southerly direction.

5th

On which side of the San Francisquito Creek was the land of Mesa?

129 ND
PAGE 166

Ans

On the Southerly side.

6th

Was any portion on the Northerly side of San Francisquito Creek?

Ans

There is none.

7th

Do you know the road from San Francisco to San José, called the old road?

Ans

I do.

8th

How far ~~from~~ to did it cross the Creek from the Bay?

Ans

I can't say.

9th

Do you know what was called the Camino de enmedio before the year 1846?

Ans

I do. the old road.

10th

State if you know, whether or not that was one of the boundaries of Buelna's or Rodriguez' claim? - if so which boundary?

Ans

The land of Bueba gray bounded with that of Antonia Maria Mesa's. - Mesa's grant was made first.

11th

Did you ever cultivate any land on the San Francisquito Creek? ~~the line of Mesa and Bueba line?~~

129 ND
PAGE 167

Ans

I cultivated about two years a piece of land which at that time it was thought it belonged to Ma. Antonia ~~Mesa~~ Mesa; but since it has been surveyed by the County Surveyor that has been left out as public lands. - It is a small piece of land covered with woods.

12th

Do you know the location of the houses and barns of Henry A. Veale; ~~on the Mesa land~~?

Ans.

I do not.

13th

How much land was cultivated by Rodriguez before the conquest?

Ans.

Nearly all, - except the land covered with chemisal - more or less, about

400 varas long by 200 wide.

14th

Do you know the boundaries of the Buelna or Rodrigues claim – if so, state them?

Ans.

I do – It bounds with Mª Anª Mesa, with ~~Antonio Buelna~~ Maximo Martinez & Secundino Robles.

129 ND
PAGE 168

15th.

About how much land was claimed and considered in the Buelna grant before ~~th~~ 1846?

Ans.

I cant say – I know the boundaries.

16th.

Do you know the road from Santa Clara to the mountain; if so, state whether it was one of the boundaries of the Buelna tract?

Ans

I do; it passes the land of Buelna.

Cross Examination.
Questions by Mr Clarke.

17th

Do you know where the present travelled road from San Francisco,

which crosses the San Francisquita Road, is - the stage road?

Ans.

I do.

18th

Which side of this road was the small piece of land which you cultivated?

129 ND
PAGE 169

Ans.

On the lower side - towards the Bay.

19th

How far from that road was it?

Ans.

From the present stage road to the old road about 1000 varas. The piece I cultivated was on the side of Antonia's land.

20th

When did you see the petition of Maria Antonia Mesa for this land?

Ans.

I saw it when it was written, and it was addressed to the Prefect of the 1st District, José Castro.

21st

How long was that after her husbands death?

Ans.

129 ND
PAGE 170

The petition was headed with the name of her husband, Rafael Soto.

22d

Did that petition state the land was to be one league in length from north to south?

(Objected to as new matter, and incompetent)

Ans.

I don't know. I know that her grant is one league in length and half a league in width.

23d.

From what source was your knowledge of the location of that tract derived?

Ans.

From two - because I saw it ~~the~~ when it was solicited and when it was measured by the County Surveyor.

24th

When you stated that it was a league long from the creek towards the south, did you mean that was the way the County Surveyor measured it?

Ans.

That was the way it was measured by the Co. Surveyor - one league in length and half a league in width - that is what I meant to say.

129 ND
PAGE 171

Direct Resumed

25c

When did you first see it measured?

Ans.

Not very long ago - about two months. On Sunday I called upon the Surveyor to show me the boundaries, because I had forgotten where they were, for I did not wish to come and tell any lie.

21c

Did you know the land before the year 1846? - if so, how long and how wide was the tract?

Ans.

Yes - the same as it is now - it hasn't grown any.

Cross Exam resumed.

29c

What do you mean to say
is the same now as in 1846?

Ans.

The same as I said before.

Jose Anto X Alviso

129 ND
PAGE 172

~~Subscribed~~

Sworn to and mark made
before me this 27th day of
November, A.D. 1862.

Jno B Williams
U.S. Com

No: 129

U. S. District Court

The United States

v.

Maria Antonia Mesa.

Deposition of
José Antonio Alvis
for claimant.

Filed Dec: 8. 1860.
W. A. Reeves,
Clerk

33

129 ND
PAGE 173

129 ND
PAGE 174

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

María Antonia Meza

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 238

BE IT REMEMBERED, that on this 5th day of November A. D. 1860, at San Francisco in the District aforesaid, before me, JOHN B. WILLIAMS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared Charles T. Healey —— a witness produced in behalf of the claimant —— in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

PRESENT: W. Sharp atty for claimant.
W. Clarke, atty for himself.
W. Benham U. S. atty.

QUESTIONS IN BEHALF OF THE claimant

Question 1st,

State your name, age, residence and profession.

Ans.

Charles T. Healey - lawful age - residence Santa Clara Co. - profession, surveyor -

129 ND
PAGE 175

2d.

Examine the documents now shown you, purporting to be an affidavit made by Charles T. Healy on the 14th day of August 1860, with Plat of the Rinconada del Arroyo de San Francisquita annexed thereto, all marked "Exhibit Healey No. 1" - and state if you are the person whose name is subscribed to the said affidavit.

Ans.

I am. The statements therein contained are true. The location of Seales house on said plat is correct.

Cross Examination.
Questions by Mr Clarke.

3d.

Have you ever learned from any of the owners of the Robles tract what they claim to be the boundary line between that tract and the Mesa tract?

Ans.

Nothing - except from parties contesting this survey and since the contest arose.

4th

In measuring a league from the mouth of the creek, for the purpose

129 ND
PAGE 176

of locating the western line in pursuance of the decretal order referred to by you, did you measure from the point designated on this plat, forming part of "Exhibit Healey No. 1, as the mouth of the San Francisquito creek, or from the point shown on the plat of the official survey of the Pulgas Rancho as the mouth of that creek."

Ans.

From the mouth as represented on the plat forming part of Exhibit ~~Hale~~ Healey No. 1.

5th

What is the width of the isthmus represented on same plat at the narrowest point, at or near "Post A, M. 4."

Ans.

About one chain - which agrees with my knowledge of the ground, as the distance from the creek to the edge of the marsh, or limit of high water, at that point. I have passed over it frequently.

6th

Who occupied and claimed to own the improvements where Seales house

house is, when you first knew it.'

Ans.

When I first knew it, in 1883, that place was called Adam's and Welch's place - but I knew none of the parties personally.

129 ND
PAGE 177

Direct Resumed.

7th

State the distance between the western line of the official survey of the Mesa tract, and the projected line, shown on the plat forming part of Exhibit Healey No. 1, ~~along~~ on the San Francisquita Creek,

Ans.

In a straight line, nearly seven eighths of a mile: ~~and from the same~~

Cross Exam resumed.

8th

What is the distance from the western line of the Mesa survey at the creek to the point of the ford and old road as represented ~~at~~ the northernmost point of the plat of the official survey in the U. S. v. C. V. Rodriguez et al.'

Ans.

About three fourths of a mile.

Examination closed.

Sworn to and subscribed
before me this 5 day of
December A.D. 1882.

Chas. T. Healy

Jno B. Williams
U. S. Comr.

129 ND
PAGE 178

129

U. S. District Court

The United States

v.

Maria Antonia Mesa.

Deposition of
Charles T. Healey
for claimant.

Filed Dec: 8. 1860.
W. H. Reeves.
Clerk

34

129 ND
PAGE 179

UNITED STATES DISTRICT COURT,
Northern District of California,

The United States

vs.

129 ND
PAGE 180

Maria Antonio Mesa

San Francisco, Dec 6 1860

On this day, before Butler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came D. O. Shattuck a witness produced on behalf of the claimants in Case No. 129, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 258, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: The U. S. Dist Atty for United States — Sol A. Sharp for Clmts & Clarke & W. D. Brunson for Intervenor

QUESTION BY Counsel for Clmts

My name is D. O. Shattuck. Am of lawful age, I reside in San Francisco =

I am acquainted with some of the purchasers under the grant in the case of the United States v L. V. de Rodriguez —

I Know D. Hoag he was one of the purchasers under that grant

Quer Did you ever see before the paper a copy of which is attached to your deposition marked "Exhibit A" &

Ans I

This paper or one like it was drawn by me & a copy of it made in our office, ~~one~~ it was executed in duplicate one was signed by Mr Clarke & the other by Mr Hoag—

129 ND
PAGE 181

Quer 2

About the time of the execution of that paper, did you hear any conversation between Mr Clarke & Mr Hoag in reference to the line between the Robles & Rodrigues Ranchos, & the boundary lines of the Rodrigues Rancho on the East & if so state what the conversation was—

Ans 2—

There was a conversation generally about the lines of the two Ranchos but I don't believe I could state outside of the paper any of the particulars of it—

My impression is that the paper contains the substance of what they said & all that they agreed to—

I have seen the official

UNITED STATES DISTRICT COURT

survey of the Rodriguez Rancho —

As I understood it at the time of the conversation it was that Mr Claude was acting for himself as interested in the Robles Rancho & as Attorney for Hoag in the San Francisquito & was Atty for the others beside himself represented in the Robles Rancho I mean by contract constituted Clerky Hoags Atty /

Cross Examination

I am a practising Atty & Counsellor at law, & was at the time the Contract was drawn up —

For a year & half before that time I had been Mr Hoags Adviser & Attorney in regard to some things connected with that Rancho

Had nothing to do with regard to directing, counselling about this survey of the Rodriguez — May have conversed with the Surveyor Henrick about how the lines ought to be run —

Q. 181.

Qu /

Did you consider that said official survey had been made in conformity with the final decree of

the Court, & that the straight South ~~Southern~~ line of it conformed to or corresponded with the meandering line of the Whicher survey marked as "Amended" & referred to & incorporated in said decree to (Sues objected to as asking matter of opinion -

Ans I considered it as good a survey for the Grantees as they were likely to get & advised them to accept of it -

Ques 2

Was not the dispute referred to in "Exhibit A" attached to your deposition in regard to the location of said Southern straight line & did not Whicher insist that it included in the Rodriguez survey, land which belonged to the Robles tract?

Ans 2

Mr Clarke had just prior to that time filed objections against the official Rodriguez survey & taken steps to carry it into this Court - Mr Hoag came to

me to resist the action of Mr

me to resist the action of Mr Clarke & complained of Mr Clarke as having interfered in the survey, I told him the best way was to go to Mr Clarke & employ him to get a confirmation of that survey that he would do better for him than I could, they then came together to my office, stated what they had agreed upon & wrote it in the agreement —

It is my impression that Haag told me that he had no interest in the Ranch East of the Stage road to San Jose — I advised him he could not make the alteration suggested by Mr Clarke, about the land lying East of the road, in justice to the other owners of the Ranch —

The alteration referred to was an addition that the Contract should not extend to the land lying East of the San Jose Stage Road —

Mr Haag some short time ago, within the last month Mr Haag told me that some time previous Clarke had given him notice that he could not act

under said agreement —

Direct Examination resumed
The alteration which Mr Clarke desired to make was suggested by him several months after the Contract was signed & delivered —

As I understood it the Execution of this Contract was a settlement of the whole difficulty and was so treated —
"Exhibit B" is in Mr Clarke's hand writing & is the alteration suggested by Mr Clarke — on the Land
Persons claiming the land East of the San Jose Road were Grantees from Haag — He took a Conveyance of the whole land & afterwards reconveyed to them their portions —

Cross Examination resumed
Jury
Do you not know the Division of the Rodriguez tract was made upon the supposition that said tract did not extend South-erly of the Redwood Road, & that

129 ND
PAGE 186

several hundred acres of land
were afterwards added to said
tract from the South by means
of said official survey, which
addition was not included in
said partition & would all have
fallen to me Hoag personally
had said survey been confirmed?
(Objected to as immaterial &
incompetent)

Ans—

No I do not — My recollection
of it is that all of those interested claimed as much as the
official survey contains but
there was a doubt as to where
the Southern line would be
located & Hoag took the benefit
of that doubt in his partition—

There were persons who contended
that there were no ~~Estraderos~~ rejectados, &
if the line was fixed at one those
who took on the South got more
than there should — if fixed at the
other he lost nearly all —

Mr Clarke appeared to understand the whole subject matter & the object of the proposition when the contract was

executed -

D. O. Shattuck

Subscribed & Sworn to before me this
6th day of December A.D. 1869

Cutler McAllister
U.S. Comr.

129 ND
PAGE 187

"Exhibit A"

- 129 ND
PAGE 188

"Exhibit B"

Whereas difficulties have arisen between Jeremiah Clark Attorney for and representative of the Robles Ranch, and D. Hoag representative of the San Francisquito Ranch in Santa Clara County, in reference to the location and final survey of those Ranches, respectively, Now therefore in consideration of the premises, and in a spirit of compromise the said parties have made, and do hereby make the following agreement.

1. Said Clarke as Attorney of said Hoag will proceed to procure a final decree of the United States District Court in the case of M. G. Valencia de Radrigues (the San Francisquito Rancho) in which the approved survey by the United States Surveyor General of the land confirmed in said case, shall be accepted and unopposed. He said also procure a patent of said land as surveyed to be issued from the General Land Office, for which services on the issuance of said patent, the said Hoag will pay the said Clarke Five Hundred

129 ND
PAGE 189

Dollars.

2. Said Clarke will also use his endeavors to have the Rubles Ranch so located and surveyed as not to interfere with the location, and survey of the said San Francisquito Ranch, and he in consideration as aforesaid, hereby guarantees to said Haag, to the amount of five hundred Dollars, that there shall be no conflict with the last named Ranch according to the present survey by the location and patent of the former.

3. The said Haag will offer no resistance to the location of the Rubles Claim, now pending in the United States Supreme Court, so as to embrace all the lands South of the Southern boundary of the said San Francisquito Ranch as at present located.

4. Should the said Rubles Ranch in its final location join the San Francisquito Ranch on the South, then the said parties agree further as follows.

There is a fence South of the

129 ND
PAGE 190

San Francisquito ranch, running South and South bounding the land occupied by the said Hoag, from land formerly occupied by Davidson which is to be extended South until it intersects the Northern line of the Ramon Martinez Patent, And South until it strikes the said Road known as the Redwood road.

And the said Parker is to survey to the said Hoag all the land enclosed in the Robles survey East of said fence, when first extended.

And the said Hoag is to survey to said Clarke, all the land in the San Francisquito survey East of said fence when extended and South of said Red Wood road as that road may be straightened, and continued in the same direction to the Easterly boundary of said ranch.

San Francisco Sept. 15th 1859.

(signed) S. Clarke.

Exhibit "A" at p. 129

U. S. Dist: Court.

United States
vs.
The Heirs of Mesa

Copy of agreement between J. Clarke and D. Haag.

Filed Aug: 14. 1860.
W. A. Ohnert
Clerk.

129 ND
PAGE 191

Ethel

129 ND
PAGE 192

This contract is to be understood as applying only to that land which lies West of the San Francisco and San Jose Stage road.

Present

"Exhibit B"

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

No 129

The United States

v.

Maria Antonia Mesa

Deposition of D. O. Shattuck Witness for Claimant

Filed Dec: 8. 1860.
W. H. Chevers,
Clerk

31 129 ND
PAGE 193

UNITED STATES DISTRICT COURT,
Northern District of California,

The United States

vs.

... 129 ND
PAGE 194

María Antonia Mesa.

San Francisco, Dec 5 1860

On this day, before Butler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came James Alexander Forbes a witness produced on behalf of the claimants in Case No. 129, being an appeal ~~from~~ the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 238, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: U. S. Atty for United States
Soc a Shaw for Claimants
J. Clarke & W. H. Brown for Intervenor

QUESTIONS BY Counsel for Claim

Quest
Your name age & place of Residence

Ans
James Alexander Forbes — 33 years of Age — I reside in San Jose — I have been a permanent resident

129 ND
PAGE 195

of California for 11 years Have lived in the County of Santa Clara 10 years & a half

I Know Secundino Robles

Did know the deceased Maria Antonia Mesa - I became acquainted with Mesa about July 1850 - and with Robles in August 1850 -

I was Attorney in fact of Mesa from ~~July 1850 to Dec~~ about the time indicated until about the time of her death, which took place in the month of Dec 1851 -

I became acquainted with Robles about August or Sept 1850 While a survey was being made of the Rancho ~~de la~~ Rincon de San Francisquito by Wm H. Lewis County Surveyor of Santa Clara Co. by an order of the Dist Ct of 3d Dist held for the Co of Santa Clara, made in a suit pending at that time in said Court between Maria Mesa & Robles -

I Know the premises in dispute at that time between Maria Mesa & Robles -

Whilst I was acting as her Attorney in fact & on the ground for Mrs Mesa & in company with Wm H. Lewis the Co Surveyor who made the Survey, Robles rode up

129 ND
PAGE 196

he was made aware of what we were doing, either he or Lewis had a copy of his grant to Pena, that is the Mexican title to his Rancho, I expect it was the original, I had the papers of Guadalupe for this Rancho, her grant in my possession on the ground at the time, & during the conversation with Robles I called Robles attention to the fact he seeming to be very much excited about the survey, that his boundary was to be determined by her boundary on the side towards her, his being the youngest title—

He replied that he had good lawyers employed in this case whatever they did would be all right, or words to that effect—

We then went on with the Survey, running the four superficial lines giving her half a square league of land according to her title papers or grants—

The survey I think occupied about two days—

Capt Minlow was present with us during the survey I think as chainbearer—

129 ND
PAGE 197

The Surveyor commenced running the lines as near as I can recollect at a point near the mouth of the San Francisquito Creek outside of & East of the fence inclosing the old Woman's summer garden or Milpas, which was along the Banks of the San Francisquito & ran from there in a straight line towards the hills which I suppose & he in a Southerly direction for such distance as would by running another line parallel to it at proper distance from it inclose an area of half a square league —

I presume it must have been at least 1500 yards, the distance run on that line, I did not see the line run parallel to that one, this was the Eastern boundary & at the angle of it taken to run Westwards towards San Francisco, we placed a large pile of stones which served a two fold purpose of defining the boundaries between her & Robles & also fixing her South East Corner to the best of my recollection —

This included the land in dis-
pute between Ker & Robles
~~The Houses built by R~~

I have a pretty general idea
of the location of Seals improve-
ments on the Ranch —

My impression is that
this disputed land referred to
includes the houses & barns
now occupied by Seal —

In 1850 there was a cross
ing or road below the bridge
which is now on the County Road
to San Jose, between the bridge &
the mouth of the Creek —

I don't refer to the old road
from San Jose to San Francisco, there
was another crossing between
the old road & the mouth of
the Creek — up near the hillspass —

Cross Examination
Ques by D. Clarke for Intervenor

In making the survey referred to
by me, or made by Lewis we had on
the ground nothing but the
two grants, to show the location

129 ND
PAGE 198

129 ND
PAGE 199

of land -

He had also a pen & ink sketch of a map there - which was a copy of a design in the Archives, on which ~~the~~ house, an Ortegalito & a road was laid down -

The survey included the house as laid down in the design -

Direct Examination resumed

Robles neither assented nor objected to the making of the survey he was excited about the suit

J Alexander Forbes

Subscribed & Sworn to before me this 3rd day of December A.D. 1860

Cutler McAllister
U.S. Comm

UNITED STATES DISTRICT COURT.)

UNITED STATES DISTRICT COURT,
Northern District of California,

The United States
vs.
Maria Antonia Pesa

129 ND
PAGE 200

San Francisco, Dec 6 1860

On this day, before Butler McAllister a Commissioner of the United States for the Nor— District of California, duly authorized to administer oaths, &c., &c., came Wm. D. Lewis a witness produced on behalf of the Intervenor in Case No. 129, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 238 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT:

Sol. A Sharp for Clerk
U. S. Dist Atty for the United States
& J. Clarke & W. I Brownson for Intervenor

QUESTIONS BY J. Clarke for Intervenor

— Ques
Your name, age, place of residence & occupation &c.
Ans —
William D. Lewis — 28 years of age — I reside in San Francisco, am a Surveyor & Civil Engineer by profession

Ques 2.

Have you read the deposition of J. Alexander Yoell taken in this case yesterday — If so state if you are the person referred to by him as having made a survey of the Mesa Ranch in 1850.

Ans 2.

I have heard the deposition referred to read & am the person referred to therein — I in 1850 made a survey of the Rincon a Dias de San Francisquito, Mr Yoell was present during part of the time while making said survey —

Ques 3

What documents of the title of the Mesa tract have been before you at the time to show its location

Ans 3.

I had what purported to be a grant from a Mexican Governor to Don ~~Antonio Maria~~ Maria Antonio Mesa of half a league of land described as the Rincon ada del Arroyo de San Francisquito —

It was a document of which a copy appears upon page 12 of the record in this case —

Ques 4

Have you ever seen the Expediente to said grant or the Diseño constituting part of the same, or any

UNITED STATES DISTRICT COURT

129 ND
PAGE 202

copy thereof —

Ans 4

I have seen no part of the Expedi-
ente except the Grant already
referred to, & had seen no map or
copy of a map — I enquired for
a map & was informed by Mr
Goell that he had none —

Ques 5

What guided you then in making
the survey as to the form & loca-
tion of the tract ?

Ans 5.

~~It is~~ The tract is described as bound-
ed by the land of the Pulgas of
which the Arroyo de San Francis-
quito forms a boundary, the tract
is also described as known by the
name of Rincon de la (Angle) of the
Arroyo de San Franciquito, I
therefore laid out the described
quantity of one half league in a
compact form in the Angle made
by the San Franciquito Creek with
the Bay of San Francisco

Ques 6

If you had had before you the
desino in this case or a copy of
it, & had been attempting to survey

the precise tract there delineated, would you have made the survey as you did?
(Question objected to).

Ans 6.

129 ND
PAGE 203

The representation on the design shows a tract one league in length by half a league in breadth or nearly in those proportions, & represents a different tract of land from that surveyed by me, it includes a considerable tract on the Northern side of the Arroyo de San Francisquito, & consequently within the limits of the Pulgas Grant - If there is so far conflicts with the Grant - I cannot explain the reason of this conflict having given the case no examination -

There is no indication of a compass on the design & nothing to indicate at all explicitly the direction in which the boundaries should run -

If I had surveyed it according to the design disregarding the grant, I should have made it one league in length in a

Westerly & Easterly direction, & one

129 ND
PAGE 204

Westerly & Easterly direction, & one half league in width in a Northerly & Southerly direction, making on the Eastern side adjoining the Bay, the South East Corner about one eighth of a league South of the Arroyo de San Francisquito — & the South West Corner nearly one half league South of the Creek — in that case the termination of the West line on the Creek would fall some distance West of the old road from San Francisco to Santa Clara

Cross Examination

Ques 1

If you had surveyed it according to the desino, would it not have been more than a league in length by half a league in width, according to the appearance of the desino?

Ans 1.

No —

Ques 2

If surveyed according to the description in the petition, about what would be the shape of the

Tract?

Ans 2.

It would be very nearly in a square form.

~~Tract 3~~

Wm. J. Lewis.

Subscribed & sworn to before me this 6th day of December AD 1860

Cutler McAllister

U.S. Com.

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

No 129

The United States v. Maria Antonio Mesa

Depositions of S. A. Yoell witness for Claimant & of W. J. Lewis witness for Intervenor

Filed Dec: 10. 1860.
W. H. Chevers Clerk

129 ND
PAGE 205

~~34~~/14

UNITED STATES DISTRICT COURT,
Northern District of California,

The United States
vs.
Maria Antonio Inez

San Francisco, Dec 4 1860

129 ND
PAGE 206

On this day, before Butler McAllister a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Leander Ransom a witness produced on behalf of the Intervenor,

in Case No. 129, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 238, on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT:
Sol A Sharp for Govt —
U. S. Dist Atty for the United States
& J. Clarke for Intervenor,
No Bronson for Intervenor,

QUESTION BY Counsel for Intervenor

Qu 1
Your name age, place of residence & occupation?

Ans 1
Leander Ransom — Of lawful age — I reside in San Francisco — I am a Civil Engineer by profession —

Quer 7.

State what connection you have had with the office of Surveyor Genl of the U.S. for California?

Ans 2,

I was Chief Clerk in the office from June 1851 to Sept. 1857 –

129 ND
PAGE 207

Quer 3

What Surveys have you made officially, or otherwise, of lands adjacent to the San Francisquito Creek?

Ans 3.

I have made several private surveys of Ranchos near that Creek –

I have officially superintended the surveys of the ~~Land~~ Roble's Ranch, of the Ranch of Maximo Martinez & of the Pulgas Ranch all bordering on that Creek –

Quer 4

Describe the San Francisquito Creek & the topography of the Country adjacent?

Ans 4 –

It rises in the Range of Mountains bordering the Ocean & after running a Northerly course for several miles through a hilly & rolling Country it enters the elevated plain on which are located the Pulgas & other Ranches, thence passing in a deep channel North Easterly &

finally Easterly until it enters the Bay of San Francisco —

Ques 5

State the breadth of this elevated plain from the Bay at the Creek, in a direct line Westerly to the first range of hills &

Ans 5.

From 4 to 5 Miles in a straight line — it is a Spanish league from the Bay to the present travelled Stage Road to San Jose —

1 1/4

129 ND
PAGE 208

Ques 6.

Look on the desiño constituting a part of the Record in this case & state whether the Creek is correctly laid down, or in what respect it varies from the actual survey of the same & what objects upon it you recognise &.

Ans 6.

The Creek as laid down on this desiño, & in its general direction is very correct —

The scale on this desiño makes it Miles — & it has not so many small bends as the actual survey —

I recognise upon it the old road on the Western part, & ob-

pears to me to be the old Road to San Jose as travelled 8 or 9 yrs ago—

Also a Sunal or swampy place near the mouth of the Creek in the South East Corner of the Desiño—

Willow

129 ND
PAGE 209

Ques 7

Assuming that the length of the track represented on the Desiño is one league, What is the relative distance of the point where the road, ~~referred to by you~~ represented on the Desiño strikes the Creek from the Western line of the track represented upon the desiño, and what is the actual distance of the Road referred to by you, from a line drawn at the same distance from the Bay &c to correspond with the Western line of the desiño &c.

Ans 7.

The road on the desiño as near as I can estimate it according to the Scale crosses the Creek about 35 chains from the Western end of the desiño—

I cant tell with reference to the bay—

129 ND
PAGE 210

Ques 8.

Look on the Map & Copy of Desiño attached to the deposition of A Van Dorn on file in this Case & state what the different lines upon the Map represent &.

Ans 8.

This Map is one that I made the red lines on which were intended to correspond in position with the original desiño, & the red lines in their longest distance were intended to be a league & in their shortest a half league. The road, on this Map marked "Old Road" will be about thirty chains from the West end of the Ranch—

The blue lines marked San Francisquito Creek are drawn in scale from what I obtained from what purported to be an actual survey in the Surveyor Genl's Office & the single blue lines represent that survey that I obtained in the Surveyor Genl's office of the tract surveyed in this Case—

Ques 9.

State if you have observed anything upon the ground, to correspond to ~~the~~ what is marked as "Koblai" on the design in this case, & if so, State how far the present natural features of the County, correspond with the representations on the design in that regard &c.

129 ND
PAGE 211

Ans 9,

I recollect that there is a grove of oak timber upon the right hand side of the old road to San Jose some distance after passing the Creek, bearing some resemblance to what is represented on the design as "Koblai" —

Ques 10

State what kind of crossing there has been & is, where said old road crosses the Creek, with reference to the depth & steepness of the Bank of the Creek, & the necessity of artificial excavations to enable a carriage to cross the Creek at that point?

Ans 10—

From my recollection of the crossings

of the old road on the Creek, the bed of the Creek is some 12 or 15 feet below the top of the banks, & that the road in descending & ascending passed diagonally on the side of the bank to the bed of the Creek, & then up - The ~~Road~~ banks of the Creek are so steep that the Road passed diagonally along ~~the~~ each side of the Creek to descend or ascend -

I think that on one side if not both the banks had been cut - I think on both sides when I saw it - They had been cut to make a road -

~~Ques 10~~ I never saw any place within a mile of where the old road crosses the Creek, that a carriage could cross the Creek except at the New Road where there is a bridge, Which is about 55 chains above the old crossing -

Ques 11

Look upon the Exhibit upon Tracing Cloth now attached to your deposition marked "Exhibit A", & state when & by whom it was made & for what purpose?

129 ND
PAGE 213

Ans 11

The outlines & main body of the mark & the lines representing the Ranch lines also the lines of the lots marked & the figures in red, were made by me as a tracing from a, preliminary survey made by Mr Van Dorn - which were preliminary surveys returned to the Surveyor Generals Office -

The Green lines near the centre of the mark & the figures & writing in black ink about the Green lines have been put on by some other person since the mark was made -

Ques 12

State if the San Francisquito Creek appears upon this Exhibit as officially surveyed &.

Ans 12

I think the general features of the Creek are correctly laid down -

Ques 13.

At what point upon that Exhibit is the crossing of the Old road about which you have testified &.

Ans 13.

At a point which I have marked "A" with black ink -

129 ND
PAGE 214

Ques 14
What does the Yellow line represent Co.

Ans 14
The writing in the margin of the Map explains all the lines —

Ques 15
When was made the survey of the small subdivisions numbered from 1 to 87 Co.

Ans 15,
I think it was made in the Spring of 1855,

Ques 16
State where the Seals the assignee of claimants in this case, resided at the time those surveys were made?

Ans 16
I can the place that I have marked on the Map in black Ink "B" —

Ques 17
Do you Know who made the first improvements at that place?

Ans 17
I don't Know positively anything about it —

Ques 18,
State what degree of publicity

the survey of the small lots indicated by red lines had, & in behalf of whom as proprietor they were made?

Aus 18.

The lots were surveyed as a part of & for the Robles Ranch — Publication of the sale of these lots at Auction, were made at two different periods, for several weeks each period, in several newspapers in this City —

— Aus 19 —

What is represented on the Exhibit by the blocks shading adjacent to & on the North West side of the Red line extending from the house marked "Welsh & Adams" to the lines marked "San Jose Stage Road"?

Aus 19.

It is intended to represent the Chaparral, or thick close brushes —

Aus 20

In running this red line from the Creek to the Stage Road, what lines or objects were followed &.

Aus 20.

By the Map it appears they fol-

lowed the line of an old road until it crossed the Chaparral & thence along the Southern border to the Stage Road—

Ques 21.

Look on the Plan Constituting a part of the original record in the case of The United States v C. V. D. Rodriguez, & state if you recognise any objects upon it if so what?

129 ND
PAGE 216

Ans 21.

I recognise a line marked Arroyo de San Francisquito, another line at right angles marked, Camino ~~de~~ Pá Santa Clara, & also marked Paso Pá la Sierra, & another line near the lower end of the Creek as represented on the Plan marked Rayo & another straight line running nearly at right angles to the Creek at the extreme lower end— also inside of these lines some marks supposed to represent Chamisal adjoining which the word "Chamisal" is written—

Ques 22

State if any of those lines or marks & which, correspond with any of the

lines or marks x which upon the said "Exhibit A"?

Ans 22 –

The dotted line on the Exhibit crossing the creek near Welsh & Adams house & the Chaparral inside of the Red lines, have a corresponding appearance with those marked on the design as the Pa la Sena & Chemisal, so far as position is concerned

Ques 23

What appears to be represented by the extreme Eastern straight line on the design extending from the Creek Southwardly?

Ans 23.

I don't know what they intended it for as there is no mark to indicate it, according to the scale it has about the position of the Old road, that is at the crossing of the Creek –

Ques 24

Assuming that, that line where it touches the Creek represents the crossing of the old or middle road, where would be the position of the line marked upon the

desino, Rayo, at the point where it touches the Creek if represented upon "Exhibit K." ?

Ans 24

As far as I can ascertain from the comparison of the two, it would be about 10 or 15 chains East of the new San Jose stage road, this point & base marked in black ink with the letter C —

129 ND
PAGE 218

Examination adjourned until Dec 6. A.D. 1860. at 11. A.M.

San Francisco. Dec 6. 1860

Examination of Leander Ransom this day continued

Present

U. S. Atty for United States
Sol. A. Sharp for Claimants
J. Clarke & W. L. Brown Esq for Intervenor —

Ques 25.

Do you know the road represented on the design in the Case of the United States v C. V. Rodriguez as "Camino p'a Sta Clara" & "Paso p'a Sierra" & if so state if the plat of the official survey returned

in that case by the Surveyor Gen
eral represents that Road at its
crossing of the San Francisquito Creek
if so, where it appears on said
Plat?

129 ND
PAGE 219

Ans 25,

I am acquainted with that road
having passed over it a number
of times, the official Survey as
returned, by the Surveyor commen
ces at a point on the Creek near
a mile west of this old road —

The place on said plat marked
"Ford & Road from Redwoods" is I presume
intended to represent the old Road
that I speak of —

Ques 26

State if the Road represented upon
this map as "Old Ford & Road" could
have possibly been mistaken for
a road leading to Santa Clara?

Ans 26

So far as I am concerned I don't
think I could mistake it, others
might — I don't know that I was
ever at that point I may have
been —

From examination of the maps

now shown me I am satisfied that I have been at the point where that line joins the Creek & I don't consider it a very favorable place for a road to run over —

Cross Examination

129 ND
PAGE 220

Quest.

In your last answer you say you are satisfied from an Examination of the maps referred to, do you mean anything more than that it is a matter of Judgment with you that you have been there, rather than a matter of personal Knowledge &.

Ans.

I recollect distinctly of being at a point on the Creek, from which the Rancho of Joaquin Martinez or his South line leaves the Creek & passes over hills, & I recollect the formation of the Country for several chains each way, up & down the Creek, & in the neighborhood of where the West line of the Rodriguez Ranch leaves the Creek, as now surveyed — The time I refer to when I was there was about 7 years since —

Ques 2.

Had the official surveys of the Robles, Rodriguez & Mexico Guadalupe Ranchos been made at that time -

Ans 2

They had not been

129 ND
PAGE 221

Ques 3.

In your preceding 25th Answer & in Chief you say that you know a certain road marked on the design is that not a matter more of opinion than of knowledge ?.

Ans 3.

My judgment is formed from the peculiar features of the country as indicated by the design, ~~x from~~ compared with my knowledge of the Country over which the Road passes -

Ques 4

May there not have been another road existing at the time of the making of the design x intended to be represented as the road here referred to

Ans 4.

According to my judgment I should think not -

Ques 5,

Do you know all of the roads & crossings of the Creek, from the place where the Creek leaves the Hills until it enters into the Bay, I mean that have existed since you first knew the Country?

Ans 5

I am acquainted with only three roads of any importance, the first one passing from the East- there may be others- The one on the East is the Old Road to San Jose, the next is what is called the New Road that crosses the Creek by a bridge, the other is the road from the Red Woods to San Jose which is the one according to my opinion that is on the Diseño.- There may have been other roads- I mean by roads of any importance the ~~roads~~ principal Roads that were the principal Roads when I first knew them & are the principal roads now-

129 ND
PAGE 222

Ques 6,

Is there not a road crossing the Creek about half way between the Old Road & the mouth of the Creek

represented on "Exhibit A" attached to your deposition which you do not remember to have seen &.

Ans 6.

There may be a road there but I don't recollect of ever passing over it—

Ques 7.

Did you ever make a personal survey of the course of the San Francisquito Creek, if so was it a private survey or an official survey &.

Ans 7

I never made a survey of the Creek—

Ques 8.

Did you ever make a survey of the Ranch or Rodriguez Ranchos &.

Ans 8.

Not myself—

Ques 9.

In testifying with reference to the County & to the objects upon the land in the vicinity of the Creek, have you not derived your knowledge of the same ~~mainly~~ more from the representations of the same

from maps & surveys made by others, than from any careful inspection thereof made by yourself?

Ans 9

I derive my knowledge & opinion of many of the locations from personal inspection in company with those who made the surveys the details in many instances I derive from official maps returned to the Surveyor Generals Office, General of the localities I derive from private surveys made by myself—

129 ND
PAGE 224

Quer 10

Would it not be difficult to distinguish what you acquired from each of the several sources mentioned?

Ans 10

In several instances it would.

Quer 11

When you refer to official surveys do you mean preliminary surveys made before any final decree in the cases, or will all those now returned to Court?

129 ND
PAGE 225

Ans 11.

From my present recollection of what are called final surveys are made of all the Ranchos bordering on the San Francisquito Creek, & returned to the Surveyor Genls office while I was Chief Clerk in the office — I never made a survey of the Pulgas —

Ques 12

In your Examination in chief you referred to the scale on the diseño, what did you mean by the scale &,

Ans 12

Presuming from the Expediente that the lines on the diseño were intended to represent a tract of land a league in length & 1/2 a league in width, the creek is represented as too wide — It is extraordinarily accurate in my opinion for a Mexican diseño, this opinion is obtained by comparison —

Ques 13

In your 5th Answer in Chief you say that in a straight line it is a Spanish league from the road to the Bay, state how many leagues on the road &.

Ans 13

129 ND
PAGE 226

Ans 13

From the point where the present road crosses the Creek— I don't know the distance by the meanderings of the Creek— I never calculated it— I meant in my 5th Answer by the "Bay", the nearest point of the high water mark of the Bay—

Ques 14

What is the ~~char~~ nature of the land if you know, on the Creek between the old Road & the present Stage Road on the Southern Side of the Creek &.

Ans 14

It is diversified, there is a portion of it covered with Chaparral, some oaks, & a portion of it bears of timber—

Ques 15

Immediately on the old road on the Westerly side of the old road near the Creek have you ever observed any signs of cultivation &

Ans 15—

I don't recollect at this time whether there is any there or not— It is some 8 years since I was

at that particular point & my recollection is not distinct as to whether there was any there or not —

Ques 16

State if you know when the new travelled road was established, or about the time —

129 ND
PAGE 227

Ans 16.

I don't recollect the precise year I think it was in 1852 or 1853.

Ques 17

State if you know the actual distance from the high water mark on the Bay, in a direct line, to where the Old Road crosses the Creek?

Ans 17.

It is a little over two miles —

Ques 18

Did you ever make a survey of the Robles Ranch?

Ans 18

I never did — I have made private surveys of portions within the boundaries of the Ranch —

Ques 19

Do you know of any crossing of the Creek above the present travelled road, except the one you

suppose to be the "Paso de la Sierra"
if so state where it is &.

Ans 19.

I know of a road among the hills
Shortly in the general course
passing from Antonio Martinez
house, made by Reynolds & pass
ing by his house & on to the Pulga
Ranch, that crosses the creek —

129 ND
PAGE 228

Quer 20

In your 21st Answer in Chief, you
say you recognise certain objects
upon the design in the Case of the
United States vs Rodriguez, What
do you mean by recognising those
objects &.

Ans 20.

I mean I discover them from what
appears on the design, & they have
some resemblance to my knowledge
of the Country —

Quer 21.

State whether you ever had any in-
terest in the Robles, Rodriguez, or Nuevo
Ranchos & if so state when you held
said interest & how long you continued
to have it & whether you have it
now?

Ans 21,

At the sale of lots at Auction

of a portion of the Rubles Ranch in, I think, 1853, I purchased some 8 or 9 lots, in all amounting to a little over 200 acres, which I sold in 1857 I think, have never had any interest in either of those Ranchos since & have none now — I have no interest in the event of this Controversy —

129 ND
PAGE 229

Leander Ransom

Subscribed & Sworn to before me this 6th day of Decr AD 1860

Butler McAllister
U.S. Comr

In the District Court
of the United States
For the Northern District
of California
-No 129-

The United States

v.

Maria Antonio Inesa

Deposition of Leander
Ransom Witness for
Intervenor

Leave a blank sheet
at the end to paste
a map on -

Filed Dec: 10. 1860.
W. H. Chevers
Clerk

129 ND
PAGE 230

The United States District Court
Northern District of California.

The United States
vs.
Maria Antonia Mesa } No. 129

129 ND
PAGE 231

The United States
vs.
C. V. Rodriguez } No. 201

The United States
vs.
J & S Robles } No. 81.

December 11th 1860 It is stipulated and agreed that all testimony documents depositions and other evidence now on file in all or either of the said three above entitled causes may be read and used in each of said causes on the hearing thereof so far as the same may be relevant and material as evidence, and considered in the case in which they are filed

McDougall & Sharp
attys for Intervenor Teale

Wade & Brannan
attys for

J. Clarke for
Jo. S. Robles, & self

Edw Stanly atty for
petitioner —

129

United States District Ct.
North'n Dis't of Calif'a

The United States

vs.

Maria Antonia Moon

Stipulation

Filed Dec: 11. 1860,
W. H. Chevers,
Clerk

129 ND
PAGE 232

40½

(7)

1.

State of California } District Court for said County
Santa Clara County } Sct. August term AD1850

Maria Antonia Mesa a resident of said County (plaintiff) complains of Secundino Robles also resident of said County (defendant) of a plea. For that whereas the said plaintiff was on the first day of August AD1850, and for six years prior thereto and yet continues to be seized and possessed in her own right of a certain tract of land known as her Rancho situate in said County and bounded as follows - to wit - Beginning at a stake, thence running North Eleven degrees and thirty six minutes East two hundred and fifty rods to Francisquito Creek, also running from said beginning point & stake South sixty eight degrees and twenty four minutes East two hundred and six and two third rods to a stake, thence running North Eleven degrees and 36 minutes East two hundred and sixty rods to said Creek, thence with the meanders of said Creek & up the same to the said point where said first described line intersects said Creek, and that the said Defendant on the first day of August AD1849 entered upon said tract of land unlawfully and without the authority or

129 ND
PAGE 233

2.

license of said plaintiff, and then unlawfully expelled her the said plaintiff from said tract of land, and has unlawfully from thence hitherto continued to keep her the said plaintiff out therefrom, whereby she the said plaintiff has been deprived of the rents and profits of said land during all the time aforesaid, & has sustained damage thereby of One thousand dollars—

129 ND
PAGE 234

2— And the said plaintiff further complains that she was on the first day of August A D 1850 & for six years prior thereto had been & yet continues to be seized and possessed of one other tract of land situate in said County and bounded as follows—

Beginning at a point one quarter of a mile due South of a certain house on the Rancho of said plaintiff situate in said County, and which house is situated on the South side of the San Francisco & Santa Clara road & adjoining thereto, thence running from said Beginning point due South three hundred and twenty rods, thence running due East One hundred & Sixty rods, thence running due North three hundred and twenty rods, thence One hundred and sixty rods to the place of beginning having situate thereon two houses, and

3. that the said Defendant on the first day of August 1849 unlawfully entered upon said tract of land above described, and expelled unlawfully her the said plaintiff therefrom, and has from thence hitherto unlawfully kept her out of the same, whereby the said plaintiff has been deprived of the rents & profits of said land during all the time aforesaid & has sustained damage thereby of One thousand dollars.

129 ND
PAGE 235

3. And the said plaintiff further complains that the said Defendant on the first day of August in the year 1850 — and on divers days and times between that said day and the day of the commencement of this suit entered upon a Rancho of her the said plaintiff situate in said County and known by the name of the Rancho of Rincanada, and with force and arms cut down and destroyed fifty oak trees and fifty other trees of her the said plaintiff there then being on said land each tree of the value of ten dollars, and also destroyed the herbage and grass of her the said plaintiff there then being of the value of two hundred dollars, and also on the day and year first aforesaid expelled & put out her the said plaintiff from the

possession and use of her said Rancho, and kept her out of the same from thence hitherto, whereby she was deprived of the rents & profits thereof — which the plaintiff alleges are of the value of two hundred dollars. all of which said several trespasses and wrongs have occasioned damages to the said plaintiff of Five thousand dollars —

129 ND
PAGE 236

Wherefore the said plaintiff prays that she be restored to her said tracts of land & Rancho by a proper judgment and writ, and that she have judgment in damages for and on account of said trespasses and wrongs of Five thousand dollars and of her costs in said suit,

Voorhies & Hester, p.q.

Filed Aug 15, 1850
H. C. Melone Clerk

District Court of the third Judicial District
State of California
County of Santa Clara

The People of the State of California. To Secundino Robles. Greeting

You are hereby summoned to appear and answer unto the Complaint of

5. Maria Antonia Mesa filed in this Court within ten days after service of this writ

Witness. Hon Jno B. Watson Judge of the third Judicial District with the — private Seal of the Court there being no Seal yet provided at office this 17th day of August A.D. 1850. Test

H.C. Melms Clerk

Came into my hands this 17th day of Augt 1850.

John Goetz Sheriff

Served by leaving a copy of this Summons also a copy of the Complaint with Robles personally

Aug 19, 1850.

John Goetz Sheriff
by Jas C McClellan his deputy

Maria Anto Mesa
vs
Secundino Robles

Petition in Ejectment

In the Santa Clara Dist Court, August term A.D. 1850

The answer of Secundino Robles to the petition of Maria Anto Mesa on file in this Court &c —

This Defendant for answer to all the matters and things in said petition set forth and charged says, that it is

6. not true that said plaintiff is now or ever was the owner in fee of the lands and tenements in said petition described or any part or portion thereof, nor was said plaintiff ever in the possession of the same or any part thereof and this Deft is ready to verify &pve &c.

129 ND
PAGE 238

And for further answer to said petition and the matters and allegations therein set forth and charged said Deft says that he is now and from about the 10th day of Septr 1847 the owner in fee of all the lands and tenements described in said Complaint in and by virtue of a deed or written instrument of sale from one José Peña the owner thereof by grant from the Mexican Govmt. by date about the 29th day of March 1841 which is now here to the Court exhibited & shown & made a part of this Answer as also a plan, plot or diceño of said land attested by H. E. P. Hartnell Govmt Translator which is herewith exhibited & made a part of this Answer - That the deed or written conveyance forms a part of the record evidence of titles in the Books of the Recorders Office of said County of Santa Clara. to which said deft begs leave to refer as

7

evidence of his title to said lands and tenements, and so being the lawful owner thereof and in the full possession of the same, said plaintiff without color or shadow of title is now and for one year past been trespassing on said lands with cattle horses &c, & by cutting & destroying timber thereon and erecting huts thereon to the great injury & damage of the said Defendant in the premises, to wit, the Damage of ten thousand dollars —

129 ND
PAGE 239

Wherefor the prayer of your Deft is that said Pffs petition be dismissed & that judgment herein be rendered against plaintiff in favor of Deft for said damages sum of 10,000 $ for his damages aforesaid sustained and that pltf be perpetually enjoined from asserting any right title or claim to said Lands and that Deft go hence & recover his said Damages & costs &c

Tingly & Ryland
Attys for Deft

Filed Sept 7, 1850
H. C. Nelson Clerk

8.

Maria Anto Nieto
vs
Secundino Robles
} Petition in Ejectment

Now comes said Defendant and moves the Court for an order of survey of the conflicting boundaries of the Ranchos of said parties in said County to be made by the Surveyor of Santa Clara County or Surveyor Genl of the State, to be made on the papers & plots of the lands of said litigant parties & report his survey thereon at an early day

Singly & Ryland
Attys

Filed Sept 7. 1850
H. C. Thelan clk

129 ND
PAGE 240

Maria Antonia Nieto
vs
Secundino Robles
}

The parties in this cause agree that the Survey made by the County Surveyor of the land of the plaintiff and reported to this Court shall upon the trial of this cause be evidence as to the boundaries of the plaintiffs land

The Defendant admits that the

9

plaintiff has good title and had such right at the time of the committing of the supposed trespasses in the plaintiffs complaint mentioned to said land, and that the Defendant when said supposed trespasses were committed had not, nor has he yet any claim to said land, and consents that a recovery may be had as to said land in favor of said plaintiff — against the Defendant —

129 ND
PAGE 241

The parties agree that the above admission may be evidence in this cause and that the only matters to be contested in this suit upon the trial thereof shall be, whether the Defendants trespassed upon said land, the extent thereof, and the amount of the damages to be recovered.

Sept 10. 1850

Voorhies & Hester
for plff
Quigley & Ryland
Attys for Defts

Filed Aug 30th 1850
H. L. Melone Clerk

10

Maria A Mesa
vs
Secundino Robles
} Ejectment

129 ND
PAGE 242

Satisfied Oct 1st 1850
H. L. Mullins Clerk

And now comes the parties by their Attorneys and by consent by agreement in open Court, and with the assent of the Court a Jury is waived in this cause and the same is submitted to the Court for trial, and the Court after hearing the evidence and argument of Counsel do find the Defendant guilty of the trespass in the declaration mentioned, and of forcibly entering and keeping possession of the following tract of land of said plaintiff, being part of the land in the plaintiffs declaration mentioned, to wit, Commencing at a stake placed for the South East corner of Antonio Mesas land, thence following said Antonio Mesas Eastern line North 11° degrees 36' minutes East 1500 fifteen hundred yards English, thence North 78° degrees 24 minutes West five hundred (500) English yards - thence South Eleven degrees thirty six minutes West fifteen hundred English yards, thence South Seventy eight degrees ~~twenty~~ four minutes East five hundred English yards to the place of beginning, and not guilty of the residue of said land and assess the Plaintiffs damages at One thousand dollars - It is therefore considered by

11

the Court that the plaintiff recover of the said Defendant the said land above described and that a writ of possession issue requiring the Sheriff to put the said plaintiff in possession of said land, and also that the Plaintiff recover of said Defendant the said sum of One thousand dollars the damages assessed as aforesaid together with her costs and charges by her about this suit laid out and expended, and that she have execution therefor—

129 ND
PAGE 243

Which said judgment was rendered by the Hon Judge of the third Judicial District at the City of San Jose on the 16th day of September A.D. 1853

Jno H. Watson
Judge

State of California }
County of Santa Clara } S.S.

I Jno S Henson County Clerk of said County and Ex officio Clerk of the District Court of the 3d Judicial Dist of said State in and for said County, do hereby certify that the foregoing pages from One to Eleven inclusive, contain a true, full and correct copy of the original Complaint Summons, Answer, Notice for a Survey, agreement, and judgment in the aforesaid entitled cause as now of Record and on file in my office,

129 ND
PAGE 244

Witness my hand with the Seal of said Court affixed this 7th day of December AD 1860

Jno S Henson Clerk
By Levi P. Peck Deputy

Maria A. Mesa

vs

Secundino Robles

Transcript

Fees $ 5.70

No. 129.

U. S. Dist: Court.

The United States,

v

Ma Anta Mesa.

Transcript from District Court of Santa Clara County.

Filed Dec: 11. 1860.
W. H. Chevers,
Clerk

129 ND
PAGE 245

40 5

Search [illegible] 5 pages
at [illegible]

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

129 ND
PAGE 246

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Maria Antonia Mesa

No. 129
L.C. No. 238
"Rincnada del Arroyo de San Francisquita"

This cause came on to be heard upon Exceptions to the Survey, and was argued by Counsel for the respective parties, and due deliberation had in the premises; Whereupon it is now ordered, adjudged and decreed that the location and Survey of the land claimed in this case, made by the U.S. Surveyor General for California, under the final decree heretofore entered herein, the field notes of which Survey were approved by said Surveyor General on the 8th day of May, 1858, and a certified copy of the plat of the same was filed in this Court, pursuant to its order, on the 1st day of September 1859, be and the same hereby is declared erroneous, and not in conformity with the said decree, and that the same shall be corrected and modified as follows- The first or Northern boundary line of said location and Survey to be the channel of the San Francisquito Creek; the second or Eastern boundary line to be the Shore of the Bay of San Francisco, from the mouth of said Creek Southerly; the third or Western boundary line to be a straight line, com

mencing at said Creek, at the same distance Westerly from the crossing thereof, by the middle road, relatively to its distance from the mouth of said Creek, as said line is represented on said diseno, and the fourth line of said location and Survey to be run from said third, or Western, line, at right angles thereto, to said Shore of the Bay, and at such a distance from the said Creek as to include within the lines of the Survey, the quantity of one half of one Spanish Square league of land, and no more.

And the said Surveyor General is hereby directed to correct and reform the said location and Survey so as to conform to this decree, and to return the same to this Court.

And it is further ordered that a certified copy of this order be served upon the said U.S. Surveyor General for Cala. for his information and guidance

Ogden Hoffman
U. S. Dist Judge

UNITED STATES DISTRICT COURT
Northern District of California.

The United States
v.
Maria Antonia Boca

Order correcting and reforming Survey

Filed January 22 1861.
W. H. Chesebrough Clerk.
Deputy Clerk.

129 ND
PAGE 247

129

The U. S
vs
Maria Antonio Mesa

No. 129. ND

January 22. 1861.

129 ND
PAGE 248

The claim in the above case having been finally confirmed a survey was made by the Surveyor General which being objected to as erroneous was remanded into this Court
On hearing the proofs and arguments of Counsel the Court was of opinion that the location & survey were erroneous — On or the setting it aside was accordingly made and directions were given as to the new survey ~~by~~ to be made —
A Motion for a rehearing ~~was~~ ~~overruled~~ and for leave to take further proofs was interposed before the order of the Court was executed — And this Motion having been granted and ~~the~~ ~~the~~ further proofs taken the case now comes up for a

final hearing ~~on the petition~~

By ~~the~~ final decree of confirmation there was confirmed to the claimant the "tract of land known as the Rancho de Francisquito of the extent of half a square league as described in the grant and shown by the diseño" —

The claim had been rejected by the Board for want of definite boundaries —

The grant described the land as known by the name of the Rancho del arroyo de Francisquito and bordering on the land of the Palgas belonging to Doña Soledad Ortega and on the land of the Establishment of Santa Clara"

The ~~fourth~~ 3d condition specifies its extent "as ~~on~~ half a square "league as appears from the "sketch &c"

129 ND
PAGE 249

B

In the opinion of the Board it is said — "The map referred to shows the course of the Arroyo de San Francisquito which is the Southern boundary of the Palgas property and enables us to know that the Northern boundary of the land intended to be granted is on the creek — But the map shows nothing more to aid in the location of the tract There are no lines or other indications on the map to show the size the shape or the location of the half league granted"

129 ND
PAGE 250

On this opinion this Court did not concur

On the contrary it seemed to me that the diseño indicated with unusual clearness a tract of land a league long and ½ a league broad and that the delineation of the creeks and the road — the

representation of the Estero
or bay of San Francisco, of
the Sausals and of the Ro-
blar — ~~natural objects readily~~
were abundantly sufficient
to enable a surveyor to lo-
cate the land.

129 ND
PAGE 251

The decision of the Board
was accordingly reversed
and the appeal from the
decree of this court was
dismissed by the Attorney Genl.

But altho' the situation and
limits of the granted land are
indicated with sufficient clearness
in the grant and diseño to justify
a decree of confirmation there is
yet some difficulty in determining
its precise location —

The original petition of Soto for
was "for a piece of land adja
" cent to the lower part of the
" Arroyo de San Francisquito on the
" South the situation of which forms
" a corner as will appear by the

annexed map. Said location is bordering on the Rulgas Rancho and its extent is probably half a square league."

The map or diseño annexed represents a rectangular piece of land crossed by the Salsipuedes creek nearly diagonally. In the triangle formed by the two sides of the square and the creek, on the N.E. corner the house of the petitioner is marked. Two of the officers to whom the petition was referred for information reported that the land belonged in part to the Mission of Santa Clara while the part where the house was situated belonged to the widow Ortega the owner of the Rulgas Rancho. These reports were made in 1838. In 841 the petition was having it would seem, been renewed by the heirs of Soto who had died in the mean time was referred to the Prefect of the first district

129 ND
PAGE 252

6 That officer reported that
"altho' the house according to
"the map stood on the lands
"of the widow Soledad de Ortega
"yet he had been assured by
"the soliciting party that he
"had abandoned that place
"and removed his house from
"the place belonging to said
"widow to the place which did
"not belong to her"

129 ND
PAGE 253

As to the lands he belonging to the Mission he reported that they were as large as necessary for the cattle of the Establishment.

On this report the Governor made the grant describing the land as bordering on the land of the Pulgas and on that of the Establishment of Santa Clara and of the extent of half a square league as shown by the map.

From the foregoing it is I think clear that the land intended

7

to be granted was to be bounded on the North by the San Francisquito Creek which was assumed to be the boundary of the Pulgas Rancho- ~~It has been~~ The title to that rancho being confirmed by the Supreme Court it has been surveyed & a patent issued in which the creek is fixed as a Southern boundary —

It is suggested that this location is erroneous and that the land in the present case should be located so as to include the triangle already embraced within the Pulgas patent —

Whether the location of the Pulgas be correct or not it is now immaterial to inquire for I think it clear that in making the grant in the case at bar the Governor meant the lands on the north side of the creek as belonging to

the Pulgas, and fixed the Southern boundary of that tract as he understood it to be situated, as the northern boundary of the land granted to the widow of Soto —

129 ND
PAGE 255

It was only after two years and after being informed that all claim to that place had been abandoned and the house of the petitioner removed to the other side of the creek that the Governor was induced to ~~grant~~ make the grant —

It is clear therefore that whether or not the triangle referred really belonged to the Pulgas Rancho, the Governor so considered it, and the grant was made so as not to include that land —

But the real difficulty of the case consists in the fact that the land delineated on the diseño is wrongly of the length of ~~but~~ one league

and the width of half a league - and the rectangular figure representing it includes the triangle above referred to which was excepted from the grant -

129 ND
PAGE 256

But the grant is for half a league - and that quantity has been finally confirmed to the claimant

If then the boundaries as indicated by the decree be scrupulously observed the full quantity cannot be obtained ~~because~~ for it will fall short of 1/2 league by the extent of land contained in the triangle excluded from the grant -

~~But~~ If on the other hand we seek to make up the full quantity granted it can only be done by going beyond what would seem to be indicated by the decree as a bound ~~ary~~ -

129 ND
PAGE 257

It has seemed to me on the whole that the intention of the Governor was to grant half a league and that that intention ought to govern— The Southern line of the tract was evidently drawn on the diseño at such a distance from the Northern line as would include a tract of 1/2 a league supposing the triangle on the N.E. was embraced in it— When the claim to that part of the land was abandoned the parties do not appear to have thought of altering the delineation on the diseño so as to make up for the land thus excluded; and the Governor pursuing the usual form grants "the land" as shown by the diseño"— But he describes it as bordering on the

lands of the Mission —
As all the land had
previously belonged to the
Mission this description
established no fixed line
whatever — But inasmuch
as the quantity mentioned
was 1/2 a square league it
may I think be conceded
as intended to be fixed
at such a distance to
the Southward as would
of the base, the triangle on
the N.E. corner shd leave
to the petitioners the quantity
specified —
Such was the decree originally taken by this Court
And on further reflection
it has seemed to me as
just a location and as likely
to effectuate the intention
of the grantors as any that
can be adopted —
If then the survey be made
on this theory it should

129 ND
PAGE 258

129 ND
PAGE 259

in all respects conform to the diseno except that the southern boundary should be located a sufficient distance to the south to include with the other boundaries a tract 1/2 a square league in extent—

The length of the tract from East to west viz one league should be preserved—its eastern and western boundaries as shown by the map followed and the general shape of it made to conform as nearly as may be to the figure delineated on the diseno—

On the survey returned into Court the diseno seems almost entirely to have been ignored Instead of a tract a league in length from East to west and half a league in width from North to South those

129 ND
PAGE 260

proportions are exactly re
versed —
A considerable portion of
the San Joaquin grant is
delineated on the diseño
and intended as the grant
as the Northern boundary
is excluded while ~~the land~~
a large portion along the
bay and wholly without
the limits of the diseño is
included —
The only ~~warrant~~ proofs of
the propriety of such a loca
tion which have been ad
duced is the testimony of
several of the old inhabi
tants of the country who
declare that they always
understood that the grant
was a league from North
to South and 1/2 a league
from East to West" and
that there was a piece of
vacant land between the

129 ND
PAGE 261

western line of the tract and that of the nearest neighbor in that direction But such statements as these are of no force to contradict the conclusions of the descriptions which alone together with the grant we can alone refer to the absence of any juridical measurement to ascertain what land was in fact granted —

On the whole I am of opinion that the order for a measurement heretofore made ~~ought not to be set aside~~ substantially correct — and that the directions therein contained are as near an approximation to the true location of the land intended to be granted as can be arrived at ~~A new survey must therefor be made in the manner thereto.~~ An amended order will be

15

made by pressing more distinctly the views contained in this opinion.

129 ND
PAGE 262

No. 129.

U. S. District Court.

129 ND
PAGE 263

The United States.
—As—
Maria Antonio Mesa.

Opinion Reforming and
Correcting Survey.

Filed January 22. 1861.
N. A. Cheves.
Clerk.

(8) 7

Description of the boundaries of the Rancho Rinconada del Arroyo de San Francisquito, finally confirmed to the heirs of Maria Antonia Mesa.

129 ND
PAGE 264

Beginning in center of San Francisquito Creek at a point, from which the Corner of Sections $\frac{34}{3}/\frac{35}{2}$ on line between Townships 5 & 6 South in Range 3 West of Mount Diablo Meridian bears S 4½° E distant 2 Chains & 7 links, and a live Oak 24 inches in diameter, standing on right bank of Creek and marked R. S. F. 1 bears S 20° E, distant 59 links. Thence according to the true Meridian, the Variation of the magnetic needle being 15° 45' East, along Southern boundary of the Pulgas Rancho following the meanders of the center of San Francisquito Creek down stream, to Post marked on the official Map M. A. 8, from which a witness mound with pits and trench bears N. 5° W distant 50 links. At this Point the Creek enters the Salt Marsh. Thence leaving the boundary of the Pulgas Rancho, N. 81½° E 1 Ch & 80 links to the Right bank of the Creek. Thence following said bank down stream to a Post marked A. M. 1. at the junction of the Creek with a Slough or Estero coming from the South West. Thence following the northern bank of said Estero to a Post marked A. M. 2,

Thence leaving the Estero and along edge of Salt Marsh to the left of line:

N. 60 3/4° W. 7 Chs. 75 lks to Post marked A.M. 3, thence
S. 75° W. 14 " 40 " " " " A.M. 4, "
S. 50 3/4° W. 9 " 12 " " " " A.M. 5, "
S. 9 1/2° W. 18 " 40 " " " " A.M. 6 near Willows
thence S. 15 1/2° E 21 " 62 " " " " A.M. 7, thence
S. 28° E 18 " 10 " " " " R.S.F. 83 at S.E.
(from which the gable end of Iges Warehouse bears N. 12 3/4° E and the gable end of Seals barn bears S. 35 3/4° W.)
Corner of this Rancho, Thence leaving edge of Salt Marsh -

S. 70° W. 192 Chs. 96 lks. to Post marked R.S.F. 84, from which a double Oak 47 inches in diameter marked B.T. bears N. 20° W. distant 2 Chs x 41 links and a double Oak 80 inches in diameter marked B.T. bears N. 2 1/2° E distant 2 Chs x 26 Links, and Thence
N. 20° W. 107 Chains to Point of Beginning.

129 ND
PAGE 265

The above is the description of the Exterior boundaries of the Rancho Rinconada del Arroyo de San Francisquito, as surveyed by R. C. Matthewson Deputy Surveyor and approved by me the 22nd of March 1861.

J. W. Mandeville
U. S. Surv. Gen. Cal.

No: 129

The U. States

vs

Maria A. Musa

Field notes and description of Survey returned by Surveyor General

Filed March 29. 1861.

W. A. Clerk

129 ND
PAGE 266

45

9

129 ND
PAGE 267

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

The United States
vs
Maria Antonia Meza

No 129
L. C. 238.

Take notice that on Thursday April 4th 1861 at the opening of the Court on that day I shall move said Court for a final decree in said cause confirming the survey returned therein March 22d 1861 by the United States Surveyor General, pursuant to the order of said Court therefore made therein

Respectfully
J. Clarke
Intervenor and Atty for adjoining Claimants
Jno S. Hobbs

To Messrs
The U. S. Dist. Atty
Mc Dougal & Sharpe
Edmund Stanly
Wade, Brown

A copy of the petition received March 30th 1861

Edwd Pinckney
Atty for
Petitioner

Calhoun Benham
U. S. Atty.

Wallace Brannan atty
W. Hollis

129 ND
PAGE 268

No 127
L. C. 258
U. States Dist. Court
North. Dist. of Cal.

The U. States
vs
Manuel A. Arrieta

Petition

Jeremiah Clarke maketh oath and saith, that on the 30th day of March 1861. at or about 10 o'clock A. M. he served the foregoing notice upon McDougall and Shafer, Attorneys for claimant by leaving a copy of the same, during their absence from their office, in said office, with a person in charge thereof.

J. Clarke

Sworn to, and subscribed this 4th April. 1861. before me,

W. A. Cheves,
N. S. Com.

129 ND
PAGE 269

No: 129
L. C. 288

The United States
v
Manuel A. Mesa

Notice of motion and Proof of Service

Filed April 13. 1861.
W. A. Cheves.
Clerk.

129 ND
PAGE 270

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

The United States D.C. 129. L.C. 238.

vs

Maria Antonia Mesa

Stated Term.
April 13th 1861.

129 ND
PAGE 271

The United States Surveyor General having returned to this Court the plat- field notes and description of the Survey of the tract called "Rincon de del Arroyo de San Francisquito" made by said Surveyor General and by him approved March 22d A.D. 1861 pursuant to the order of this Court herein made on the 22d day of January 1861 rejecting the Survey of said Tract therefore made and returned; And said plat filed and marked by him "approved" March 13th 1861 Ogden Hoffman Dist. Judge herein March 22 1861 and field notes and said description filed March 29th 1861 having been examined and approved by this Court: It is now finally ordered adjudged and decreed by this Court that said Survey of the land finally confirmed herein to the Claimant in this cause, of which the description is as follows, Viz:

"Beginning in center of San Francisquito Creek at a point from which the corner of Sections Thirty Four (34) Thirty Five (35)

129 ND
PAGE 272

three (3) Two (2) $\frac{34}{3}\left|\frac{35}{2}\right.$ on a line between Townships 5 & 6 South in Range 3 West of Mount Diablo Meridian bears South 4½° E distant 2 Chains and 7 links and a live oak 24 inches in diameter, standing on right bank of Creek and marked R. S. T. 1. bears S 20° E distant 59 links Thence according to the true Meridian the variation of the Magnetic Needle being 15°. 45' East, along Southern boundary of Pulgas Rancho following the meanders of the center of San Francquito Creek down Stream to Post marked on the aforesaid Map M. T. 8 from which a wimop mound with pits and trenches bears N. 5° W distant 50 links, at this point the Creek enters the Salt-Marsh. Thence leaving the boundary of the Pulgas Rancho N 81½° E 1 Chain and 80 links to the right-bank of the Creek Thence following said bank down Stream to a Post Marked M. M. 1. at the junction of the Creek with a Slough or Estero coming from the South West Thence following the Northern bank of said Estero to a Post Marked M. M. 2. thence leaving the Estero and along edge of said Marsh to the left of line

N. 60 3/4° W 7 Chains 75 Links to Post Numbered A. M. 3. thence South 75° W 14 Chains and 40 Links to a Post Numbered A. M. 4 thence South 50 3/4° W 9 Chains and 12 Links to a Post Numbered A. M. 5. thence South 9 1/2° W 18 Chains and 40 Links to a Post Numbered A. M. 6 near Willows – thence South 15 1/2° E 21 Chains and 62 Links to a Post Numbered A. M. 7. thence South 28° East 18 Chains and 10 Links to a Post Marked R. B. T. 83 at South East corner of this Ranches from which the gable end of Does Warehouse bears N 12 3/8° E and the gable end of Scalsbarn bears S 35 3/8° W – Thence leaving edge of Salt Marsh S. 70° W 192 Chains 96 Links to Post Marked R. B. T. 84. from which a doubble Oak 47 inches in diameter Marked B. T. bears N 20° W distant 2 Chains and 41 Links and a doubble Oak 80 inches in diameter Marked B. T. bears N 2 1/2° E. distant 2 Chains and 26 Links, and thence North 20° W. 107 Chains to Point of beginning"; be and the same is hereby approved and confirmed

Ogden Hoffman
U. S. Dist Judge

129 ND
PAGE 273

No 129 ND
L. C. 258. 131

The United States

v

Maria A. Mesa

Decree Approving
Survey &c

Filed April 13. 1861.
W. H. Chevers.
Clerk.

(9)

129 ND
PAGE 274

129 ND
PAGE 275

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

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
v.
Maria Antonia Meson

D. C. 129.
L. C. 238.

This cause having come on to be heard on objections filed to the Survey, and location by the Surveyor General of the U. S. for California, of the lands heretofore confirmed to the claimant, pursuant to the provisions of the Act of Congress approved June 14. 1860. and the said Survey, and location having been disapproved by the Court, and a new Survey ordered, which has accordingly been made, and by the final decree of this Court, made, and entered on the 13th day of April. A. D. 1861. approved, and adopted. Now on motion of Mc Dougal & Sharp, Attorneys for the Claimant, made in open Court, it is ordered by the Court that an appeal in behalf of the Claimant from said final decision be, and the same is hereby granted, and that a certified transcript of the pleadings, depositions, evidence, and proceedings in the

No. 129.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Mg. A. Mesa.

Order granting appeal in behalf of Claimant to U. S. Sup. Court.

Filed June 8th 1861.

W. H. Chevers.

Clerk.

12 48

129 ND

PAGE 276

Said cause be sent to the Supreme Court of the United States pursuant to law.

129 ND
PAGE 277

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Wednesday the 12th day of June in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States.
V.
Maria Antonia Mesa.

D. le. 129.
L. le. 238.

This cause having come on to be heard on objections filed to the survey, and location, by the Surveyor General of the U. S. for California, of the lands heretofore confirmed to the claimant, pursuant to the provisions of the act of Congress approved June 14. 1860, and the said survey, and location having been disapproved by the Court, and a new survey ordered, which has accordingly been made, and by the final decree of this Court made, and entered on the 13th day of April, A.D. 1861. approved, and adopted, now on motion of Jeremiah Clarke, Esq, the intervenor in propria persona, made in open Court, it is ordered by the Court that an appeal in behalf of the said intervenor Jeremiah Clarke, from said final decision be, and the same is hereby granted, and that a certified transcript of the pleadings, depositions, evidence, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

No. 129.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Mc A. Mesa.

Order granting appeal in behalf of intervenor Jeremiah Clarke.

Filed June 12th 1861.

W. A. Chevers.

Clerk.

13

129 ND

PAGE 278

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the City of San Francisco, on Thursday the 30th day of June in the year of our Lord one thousand eight hundred and sixty three.

129 ND
PAGE 279

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

V.

Maria Antonia Meza

No. 129

And now at this day comes Jeremiah Clarke Esq. Intervenor herein, and presents the Mandate of the Supreme Court of the United States in the above entitled cause, Whereupon It is Ordered, adjudged and decreed that the said Mandate be filed; and that the decree of this Court entered April 13. 1861 be and the same hereby is declared a final decree.

Ogden Hoffman

Dist Judge

No 129.

UNITED STATES DISTRICT COURT

Northern District of California.

The United States.

V.

Maria A. Mesa.

Order to file Mandate Supreme Court of the U. S.

Filed June 30th 1863.

W. H. Chevers,

Clerk.

129 ND

PAGE 280

129 ND
PAGE 281

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

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

Greeting:

Whereas, lately, in the Lestriet Court of the United States, for the Northern District of Caliponia before you, _____ in a cause between Maria Antonia Mesa claimant and Jeremiah Clarke, Intervenor, Appellants and the United States, appellees, /No. 129, for the place named "Rinconada del Arroyo de San Francisquito"/ wherein the decree was rendered in favor of the said appellees—

as by the inspection of the transcript of the record _____

_____ of the said District

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

agreeably to the act of Congress, _____

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

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and Sixty two the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and ~~was argued by counsel:~~ **On consideration whereof,** on the motion of Mr. Gillet of counsel for the Intervenor to dismiss this appeal because the said transcipt was not filed during the term next succeeding the appeal, and the same was argued by Counsel - On Consideration whereof, it is the opinion of this Court, that the motion should be granted on the ground that the appeal had not been prosecuted in the manner directed and within the time limited by the act of Congress by filing the transcipt in this court during the next succeeding term as aforesaid - It is therefore now here ordered and decreed by this Court that this appeal be and the same is hereby dismissed. —

Feb. 23.

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

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

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

COSTS OF ~~~

Clerk ..... $ ~~~

Attorney ... $ ~~~

$ ~~~

~~Taxed by~~ Wm. Thos. Carroll

Clerk of the Supreme Court of the United States.

No. 244, December Term, 1862.

No. 129.

MANDATE

SUPREME COURT UNITED STATES.

Miss. D. U. States

Filed June 30, 1863.

Wm. Thos. Carroll,

Clerk.

129 ND
PAGE 284

129 ND
PAGE 285

U. S. District Court
Nor. Dist. Calas

The United States
v
Maria Antonia Mesa
No. 129

San Francisco, Feby 24, 1865

To Delos Lake Esq, U. S. Atty.
McDougall & Sharp Esqs,
Jeremiah Clarke, Esq
Edward Stanly, Esq.
Gentlemen,

Please take notice that on Thursday next, the second day of March A. D. 1865, at 11 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, we will move the court for an order granting an appeal to the Circuit Court of the United States in the above entitled cause in behalf of Intervenors A. J. Pitman and others.

Yours &c.
Patterson Wallace & Stow

Attys for Intervenors Pitman et al

State of California }

I hereby certify that I served on the
twenty fourth day of February A.D. 1865 a copy of
the within notice on the within named attorneys by
leaving copy at their offices

129 ND
PAGE 286

129 ND
PAGE 287

At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room in the CITY OF SAN FRANCISCO, on Saturday the eleventh day of March in the year of our Lord one thousand eight hundred and sixty-five.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

V.

Maria Antonia Mesa

No. 129.

And now at this day, on application of A. J. Pitman and others, intervenors in the above entitled cause, and upon notice duly given as required by the rules, It is ordered, that an appeal in behalf of said intervenors from the decree of this court entered April 13. 1861 approving the survey of the land confirmed herein, to the Circuit Court of the United States for the Tenth Circuit in and for the northern district of California be and the same hereby is granted, and that a transcript of the record on appeal, as provided by the rules, shall be sent to said Circuit Court without delay, and a citation issued as required by said rules

Ogden Hoffman
Dist Judge

No. 129

UNITED STATES DISTRICT COURT

Northern District of California.

The United States

V.

Maria Antonia Mesa

ORDER granting appeal in behalf of Intervenors A. J. Pitman and others.

Filed March 11, 1865.

W. H. Chevers

Clerk.

(10)

129 ND

PAGE 288

129 ND
PAGE 289

The United States of America,

To the United States of America, by
Delos Lake, Esq. District attorney,
Maria Antonia Mesa, claimant,
Jeremiah Clarke, Intervenor,
T. D. Neville et al, Intervenors.

You are hereby cited and admonished to be and appear at a Circuit Court of the United States in and for the northern district of California to be holden in San Francisco on the second Monday of June next, pursuant to an order of appeal granted on this 11th day of March, 1865, in open court, by the district court of the United States for the northern district of California, in a certain suit wherein A. J. Pitman and others are plaintiffs and the above named parties are defendants on appeal, to show cause, if any there be, why the decision in said appeal mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness my hand and seal at San Francisco this eleventh day of March, 1865.

Ogden Hoffman (Seal)
Dist Judge

Copy to
Delos Lake
McDougall & Sharp
Jeremiah Clarke
Edward Stanly.

129

U. S. District Court

The United States

v

Maria Antonia Mesa

Citation

Filed March 14. 1865.
W. H. Chevers
Clerk

129 ND
PAGE 290

San Francisco March 14th 1865.

I hereby certify that copies of the within citation have been served on me by the attorney for the respondent appellee in strict accordance with the rule.

Thos. H. Williams

129 ND
PAGE 291

U. S. District Court.
Northern District Cala.

The United States
v
Maria Antonia Mesa

No 129.

San Francisco, March 13, 1865.

Notice is hereby given to all whom it may concern that the appeal to the Circuit Court of the United States in and for the northern district of California, from the decree of April 13, 1861 approving the survey of the land confirmed herein, granted in behalf of Intervenors A. J. Pitman and others, will be prosecuted.

Patterson Wallace & Stow
Attys for Appellants.

To Wm H. Chevers Esq.
Clerk U. S. Dist Court.

129

U. S. Dist Court

The United States

v

Maria Antonia Meza

Notice
of intention to prosecute appeal.

Filed March 14. 1865.
W. H. Chevers
Clerk

129 ND
PAGE 292

The U. States
vs
Maria Ant. Mesa
} No 129.

129 ND
PAGE 293

J. Wade maketh oath that from the time when affiant first became the Attorney of the heirs Robles (viz in 1851 or 1852), the owners of the tract next south of that of claimant in this case, said Robles have always claimed that the locations on which the improvements of Hamilton & Leal are situated (which have been claimed by said Robles to be) included in their grant, that from the time when they were erected by one Adams, said Robles have been urging this affiant to take proceedings to recover said possession, and affiant never heard until to-day that said improvements were not placed on the land now claimed by any other than a superior right.

J. Wade

Sworn to and subscribed
Aug: 14. 1860. before me,
W. C. Chevess,
U. S. Com:

No 129.

U. S. Distt: Court.

The United States.

-vs-

Ma. A. Mesa.

Affidavit of
Clarke.

129 ND
PAGE 294

U. S
vs
M. A. Mesa

Exceptions to survey.

Clark-

129 ND
PAGE 295

As to office and effect of diseño
U. S. vs Sutter. 21 Howard -
Cambuston's case 20 Howard
U. S. vs Pacheco 22 Howard

Sharp.

We claim that the diseño was abandoned in making the grant.
José Francisco Rodrigues Mojica deposition in Transcript of Rodrigues vs United States
States boundaries of tract judicially measured to Buelna - grantee of Rodrigues Rancho.
Deposition of Charles Brown - in U. S v. Rodriguez -
Dep.tn of Candelario Valencia.

129.

M. A. Mesa.

Notes argument
on Carney.

129 ND
PAGE 296

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

The United States
vs
Maria Antonia Vieza

No 129

129 ND
PAGE 297

Please take notice, that on the ~~hearing of~~ motion made in this cause, on the 3d of December 1859 to vacate the order of the court therein made Dec. 2d 1859, setting aside the survey therein ~~to you~~ returned and ~~the hearing of~~ the exceptions to said survey, ~~filed~~ in said cause have been set for hearing by said Court on Wednesday next (Nov 21st 1860) at 10 o'clock A. M.

Respectfully

J. Calvin
~~Attorney~~
as Coluindente

Land Case 1029.

Antonio Maria

Musa

129 ND
PAGE 298

United States District Court for the
No. 129. Southern District of California

129 ND
PAGE 299

Maria Antonia Moza. (Heirs of.)

vs

The United States.

Page 3. Petition to the Board of Commissioners
5. Deposition of A. A. Den. Proves papers.
6. Deposition of W. A. Richardson Proves occupation
7. (Spanish) Espedients from Archives of former Govt.
9. Maps or disino attached to Espedients.
+ 15. Translation of Espedients 16 Report of Padres Pachecos & Sen Onofre – 17½ part of same
21. (Spanish) Original grant. 17 & 18 Grant by Governor
23. Translation of Original grant. / Doc. No. 1. See Deposition of Den.
(Date of Grant. February 16. 1841.)
29. Affi. of J. Clark Suggesting death of original grantee.
30. Affi of John Greer proving the heirs of original grantee &c
31. Motion to substitute heirs. and their names.
33. Opinion of the Board rejecting the Claim.
35. Decree of rejection

Deposition of Aaron Van Dorn. taken in this court. Oct. 20th 1855. and filed same day. Proves boundaries location &c. Also. Deposition of Charles Brown taken in this court oct. 29th 1855. & filed same day. Proves occupation & cultivation by claimants & their ancestors since 1838. up to the present time

No. 129.

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

Maria A Moza (Heir of)

vs

The United States.

Index to Transcript

129 ND
PAGE 300

E. D. Crosby
Atty for appellants.

129 ND
PAGE 301

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

The U. States
vs
Maria Antonia Mesa
} No 129

Take notice that on Thursday
April 4th 1861 at the opening of
the Court on that day, I shall move
said Court for a final decree in
the above entitled cause confirming
and confirming the survey returned
therein March 12th 1861 by the
United States Surveyor General
pursuant to the order of said
Court therefor made therein

Respectfully

J. Clarke
as Intervenor and
Atty for J. L. Peebles

To Calhoun Benham
District Attorney
for the U. States

129 N.D.

U. States Dist. Court
Northern Dist. of
California

No 129

The U. States
vs
Maria Cant. Nunez

Notice

129 ND
PAGE 302

United States } U. S. District Court
vs } for Northern District.
The heirs of Doña Maria Antonia Mesa. }

129 ND
PAGE 303

Take notice that when the question of approval of the survey made in the above case comes up in the said District Court. I will, as the Attorney of A. J. Pitman and others the owners of the Rancho granted to Antonia Buelna, ask the Court to allow me to appear and object to said survey, which takes off the Eastern and South-Eastern end of the Buelna tract about 900 acres, to which we shall except.

John Wilson
for Pitman and others.

To Calhoun Benham. Esq. Dist. Attorney.

139

U. S. District Court.
for Northern District

United States.

vs

The heirs of Doña Maria
Antonia Mesa.

Copy

129 ND
PAGE 304