CASE NO.
143
NORTHERN DISTRICT

A TRACT OF LAND NEAR
SANTA CLARA GRANT

JAMES ENRIGHT
CLAIMANT

10/26/62
10/27/62

LAND CASE 143 ND

300 pages.

Permanized
PLOVER BOND
25% COTTON FIBER
U.S.A.

5-14

143 ND
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 5-14.

James Enright CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"*A tract of land near Santa Clara.*"

143 ND
PAGE 2

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, that on this Seventeenth 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 James Enright, for the ~~Place named~~ "A tract of land near Santa Clara," was presented, and ordered to be filed and docketed with No. 514. and is as follows, to wit;

(Vide page 5 of this Transcript.)

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

San Francisco January 18th, 1853.

In Case No. 514, James Enright for land near the Mission of Santa Clara, the deposition of Salvio Pacheco, a witness in behalf of the claimant, taken before Commissioner Hiland Hall with argument marked H. H. No. 1 annexed thereto, was filed;

(Vide page 7 of this Transcript.)

San Francisco, Jan. 21, 1853.

In the same case the deposition of James Walsh, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed;

(Vide page 8 of this Transcript.)

In the same case the deposition of D. A. Forbes, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed;

(Vide page 10 of this Transcript.)

143 ND
PAGE 3

San Francisco, February 1st 1854.

In the same case the deposition of Antonio Mª Pico, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, with documents marked "T. C Nos. 1 to 2" annexed thereto was filed;

(Vide page 1 2 of this Transcript.)

San Francisco, March 21st 1854.

Case No. 514 was submitted on briefs and taken under advisement by the Board.

San Francisco, March 24th 1854.

In the same case the deposition of William Campbell a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed;

(Vide page 30 of this Transcript.)

In the same case the deposition of Asa W. Finley, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed;

(Vide page 27 of this Transcript.)

San Francisco, March 27th 1854.

In the same case the depositions of Peter T. Sherebuck William Norris and Darius Martin, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, were filed;

(Vide pages 21, 17, 4 & 15 of this Transcript.)

San Francisco April 28th 1854.

In the same case Commissioner Alpheus Felch delivered the decision of the Board upon the motion of the U. S. Law Agent, made heretofore, to wit, on the 4th April 1854. asking leave to introduce further evidence in this case, submitted on the 21st March last, granting the motion;

Ordered that this Case be reinstated on the Trial Docket, and placed at the foot of the 1st Class Cases, and that further testimony be admitted to be filed.

143 ND
PAGE 4

San Francisco May 12' 1854.

In the same case the deposition of George D. Walker, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed:

(Vide page 25 of this Transcript.)

In the same case the deposition of George W. Bellamy, a witness in behalf of the United States, taken before Commissioner Peter Lott, with a map marked "Exhibit I. P. L" annexed thereto, was filed;

(Vide page 34 of this Transcript.)

San Francisco May 13' 1854.

In the same case the deposition of Manuel Diez Miranda, a witness in behalf of the United States, taken before Commissioner Peter Lott, with Exhibit marked A. annexed thereto, was filed;

(Vide page 38 of this Transcript.)

San Francisco June 5' 1854.

In the same case the deposition of Secundo Robles, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed:

(Vide page 45 of this Transcript.)

San Francisco, June 8' 1854.

In the same case the deposition of José Castro, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed:

(Vide page 56 of this Transcript.)

San Francisco June 21' 1854.

In the same case the depositions of Manuel D. Miranda, Julian Cantua, Manuel Cantua, and José Antonio Alviso with a map marked Exhibit X Y Z. no. 1. P. L' annexed thereto, witnesses in behalf of U. S. taken before Com'r Lott, were filed:

(Vide pages 77. 74. 63. 467 of this Transcript.)

San Francisco July 14' 1854.

In the same case the U. S. Law Agent, filed the Affidavit of Solomon Do ane taken before Commissioner Alpheus Felch on the 4th April last:

(Vide page 1117 of this Transcript.)

143 ND
PAGE 5

San Francisco July 21st 1854.

Case No. 514 was submitted on briefs

San Francisco Aug. 8th 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the Board, confirming the claim;

(vide page 1119 of this Transcript.)

San Francisco Aug. 29th 1854

In the same case the U. S. Law Agent filed the following Stipulation, to wit:

(vide page 1115 of this Transcript.)

In the same case the following order was made, on Motion of the U. S. Law Agent, to wit:

(vide page 1116 of this Transcript.)

1/574

5

Petition

143 ND
PAGE 6

United States of America State of California ss
To the Honorable the Commissioners of the United States
for the adjudication of Private Land Claims in
the State of California

Your Petitioner James Enright
respectfully represents. That on the 26th day of
December 1844, Francisco Garcia then a resident
Citizen of Upper California presented his Petition
of that date to Don Manuel Richardson a the Gover
nor and Superior Political Chief of the Department
of California praying for a grant of a tract of land
2000 varas square to the Mission of Santa
Clara and within the present limits of what is
now the County of Santa Clara upon receiving which
Petition the Said Governor Richardson on the 2nd
January 1845, ordered that the usual inquiries be
made and certified to him, as to the Propriety of said
grant. That afterwards to wit on the 6th day of Janu
ary 1845, Manuel Jimeno, the then Secretary of the Gover
nor reported in writing to said Governor, That the
Rev Father Minister or Priest of Santa Clara
having certified that there was no objection to said
grant it would be proper to accede to the Prayer of
said Petitioner and thereupon on the same day to wit
the 6th day of January 1845, said Governor granted
the same to the said Garcia as asked for and after
wards to wit on the 18th day of February 1846
Dolores Pacheco the Alcalde of the said Jurisdic
tion put the said Garcia into the juridical possession
of said Land, describing the same in the manner
thereof as bounded as follows to wit

Commencing at
the first live oak below the Plaza Known as San
Pedro and San Pablo from which tree was drawn
a line of 2000 varas in a South South East direction

to a stake the said tree being left as the boundary land mark so as to form a guide in running the square of 2000 varas on each side

From the stake last aforesaid in a South South West direction 2000 varas to a stake; thence in a North North West Direction 2000 varas to a stake and thence in a North North East Direction 2000 varas to the place of beginning all of which will more fully appear by reference to Copies of said Petition report grant and Survey (which) (being attached together) are herewith filed marked Exhibit A and Translations thereof Marked Exhibit B

143 ND
PAGE 7

Your Petitioner further states that the said Garcia immediately entered into the possession and exercised acts of ownership over said land until he sold and conveyed the same to your Petitioner as hereinafter stated, since which time your Petitioner has continued and yet is in the Peaceable possession thereof

He states further that some time in the year 1847 the said Garcia sold and conveyed said land to your Petitioner and delivered to him the possession thereof but owing to some slight imperfection in the deed, another conveyance in due form was executed and delivered by said Garcia on the 16th day of November 1848 a copy of which is herewith filed marked Exhibit C and by virtue of said deed and the grant and Survey aforesaid Your Petitioner Claims to be the owner in fee of the said land

He files herewith a plat or diagram of said land, marked Exhibit D and prays that he be confirmed in his title and for such other relief as he may be entitled to.

{Filed in Office Jany 17 1853. Geo Fisher Surg}

Jones Crockett & Baker
attys for Claimant

2314

7

Deposition of Salvio Pacheco

143 ND
PAGE 8

San Francisco January 18th 1853

On this day before Com. Hibond Hall came Salvio Pacheco a witness in behalf of the Claimant James Enright Petition No 314, and was duly sworn his evidence being interpreted by the Secretary

The U.S. Associate Law Agent was present

In answer to inquiries by Counsel for the Claimant the Witness testified as follows

My name is Salvio Pacheco, My age is fifty five years and I reside in Contra Costa County

A paper is now shown me purporting to be a Petition of Francisco Garcia for land with a decree of Governor Micheltorena on it dated January 16th 1845. with other proceedings I am acquainted with the handwriting and signatures of Dolores Pacheco Manuel Micheltorena Manuel Jimeno and Lorenzo Peralta whose signatures as they appear on said Paper I believe to be genuine

My own genuine signature also appears on said paper in three places. Dolores Pacheco was dead and I assisted at the measurements of the land as is shown by said paper. The paper was signed at the time the measurement took place and at the time when the paper is dated

The land is situated about half a league from the Mission house of Santa Clara towards San Francisco. The house lot is on the south side of the Mission Square of Santa Clara

Said Paper is here to annexed and marked A A No 1.

In answer to questions by the Associate Law Agent the Witness says that Garcia never occupied the land

himself After the grant the land was occupied by Americans, I do not know that the whole land is occupied, There are some houses on it. I do not know how the Americans occupy whether it is under Garcia's Claim or not

There is a house on the house Lot granted to Garcia but I do not know whether he put it there or not

Salvio Pacheco

Sworn and Subscribed

Before me

Heland Hall

Comr

143 ND
PAGE 9

Filed in Office January 18th 1853

Geo Fisher

Secretary

Deposition of J. A. Forbs

San Francisco Jany 21st 1853

On this day before Comr Heland Hall came James A Forbes a Witness in behalf of the Claimant James Enright Petition No 514, and was duly sworn, his evidence being given in English

The U S Associate Law Agent was present

In answer to inquiries by Counsel for the Claimant the Witness testified as follows

My name is James Alexander Forbes my age is forty eight years and I reside in Santa Clara

I know a piece of land near the mission of Santa Clara occupied by James Enright

9

I think it was in the commencement of the year 1847 that I served as interpreter in the purchase of the land by him from Francisco Garcia through the Priest of the Mission who was Garcias agent,
The land is in the vicinity of a spring called San Pedro and San Pablo at the entrance of the first grove of Oak timber to the west north west of the Mission of Santa Clara

143 ND
PAGE 10

The land was comprised in a grant made by Micheltorena to said Garcia in which was included also the grant of a tract of one hundred varas square in the Mission of Santa Clara Garcia built a house on the hundred vara tract Enright built a house on the tract purchased by him immediately after his purchase and he has continued to occupy the land ever since
I knew Agustin Desforjez in his lifetime I think he died in 1850 I also knew Lorenzo Pinedo who is also deceased A paper is now shown me which is annexed to the Deposition of Salvio Pacheco taken on the 18th of January 1853 in this Case
I am acquainted with the hand writing and signatures of Manuel Micheltorena Dolores Pacheco Manuel Jimino and Lorenzo Pinedo and believe their signatures on said paper to be genuine
I knew Francisco Garcia I understand and believe that he is now in Mexico It is several years since I saw him

I knew that Garcia was soliciting a grant in the latter part of the year 1844 of this tract of land I heard in 1845, of the existence of the grant In answer to a question by the Associate Law Agent the witness says he does not know whether the land purchased by Enright had been previously occupied by Garcia or not

Jas Alex Forbes

10

Sworn and Subscribed
Before me
Roland Hall
Comm

Filed in Office January 21st 1853
Geo Fisher
Deputy

143 ND
PAGE 11

Deposition
of
James Walsh

San Francisco January 21st 1853

On this day before Comm Roland Hall came James Walsh a witness in behalf of the Claimant James Enright Petition No 314, and was duly sworn his evidence being given in English

The U S Associate Law Agent was present

James Walsh a witness for Claimant being duly sworn deposes as follows to wit

Question by Claimant

What is your Christian name occupation and place of residence

Answer My name is James Walsh my age is about thirty five years, I have at present no particular occupation but for the last two years have been buying and selling Real Estate and trading generally I have formerly resided at the Mission of San José but for the last eight months have resided and chiefly in the City of San Francisco

Question by same How long have you been in California, and do you acquainted with the Claimant James Enright and if so how long have you known him in California

Answer I have been in California since October 1846

4/514

11

143 ND
PAGE 12

and came here across the Plains in that year with the Claimant James Enright and had known him for many years before then and have been well acquainted with him ever since

Question by same Are you acquainted with the tract of land near the Mission of Santa Clara on which the Claimant resides and if so do you know from whom he bought it and when he was put into the possession thereof

Answer I know the tract of land on which the Claimant resides near the Mission of Santa Clara. He bought the land from Francisco Garcia in the year 1847 and was put into the possession of it in my presence by the agent of Garcia in the latter part of that year

The purchase money for the same was paid by the Claimant in my presence to the agent of Garcia

+ Question by same State whether or not the Claimant has been in possession of said land ever since that time

Answer Yes, he has been ever since and now is in the possession thereof claiming it as his own

Question by same Do you know any thing of the boundaries or extent of said Claim; If so state it

Answer When the agent of Garcia delivered the possession to the Claimant he pointed out two trees in the plain north west of the Mission of Santa Clara as near as I can tell the direction which trees he said were known as San Pedro and San Pablo and he pointed out another tree which he called Pala de Yidra standing near the edge of the woods He said that a line drawn from San Pedro and San Pablo (which were two trees growing from one stump) to the Pala de Yidra making a line 2000 varas long would constitute one boundary of the tract and the other lines were to take this as a

143 ND
PAGE 13

a base line each line was to be 2000 varas long so as to make a square of 2000 varas on each side the said Survey lie on the South & South East side of the base line agreed

James Walsh

Sworn and Subscribed
Before me
Wm Hall
Comr

Filed in Office January 21st 1853
Geo Fisher
Secretary

Deposition
of
Antonio Maria
Pico

United States Land Commission
San Francisco Feb 10th 1854

On this day, before Commissioner Thompson Campbell came Antonio Maria Pico a witness in behalf of the Claimant James Enright Case No 514 who after being duly sworn deposed as follows his testimony being interpreted by the Secretary

1 Quest What is your name age and place of residence
Ans My name is Antonio Maria Pico I am forty three years of age and I reside at San Jose
2 Quest Have you acquainted with Francisco Garcia, formerly a resident of Santa Clara
Ans I was acquainted with him
3 Quest Are you acquainted with a tract of land claimed and occupied by the said Garcia situated near the Mission of Santa Clara
Ans I have seen it The land is the same now claimed and occupied by James Enright

5/5 49

13

143 ND
PAGE 14

4 Quest Are you acquainted with the place called San Pedro and San Pablo situated near the Mission of Santa Clara and if yea State whether there was a certain live oak tree standing near the spot called San Pedro and San Pablo in the year 1845.
Ans I Know the said Place it was a grove of oaks and other trees
There is a large oak tree which stands out from the grove, at a place near a ditch
5 Quest Look on the Map now shown you marked D. F. C. and state whether the delineations on said Map from the knowledge which you have of the Country are correctly represented and whether it embraces the same land to which you have referred as having been claimed and occupied by Garcia
Ans I have examined said Map and believe from my knowledge of the Country that the Map contains a correct delineation of the objects there laid down and I believe it embraces the land claimed and occupied by Garcia as I have before stated
6 Quest Do you know whether the said Garcia either before or immediately after he obtained a grant of said land has made improvements upon it and if so state what they are and all you know in regard to his living upon and occupying the said Land
Ans Before the land was granted Garcia had a kind of hut on it in which his servants lived and had cattle on it and some horses and had cultivated a portion of it
He had also corrals and on the sides when the Americans damaged the crops he had persuaded Garcia was living upon a lot in the Mission ~~ground~~ for which he had obtained about the same time The kind of occupation I have been describing

was continued up to the time Garcia sold to Eaught[?]
7 Quest Are you acquainted with the hand writing
of Jose Pena and if so state your means of know-
ledge
Ans I am acquainted with the hand writing of Jose
Pena he was my teacher and I have often seen
him write

143 ND
PAGE 15

8 Quest Look on the paper now shown you marked
T. C. No 1, and state whether the signature of Jose
Pena where it appears on said paper is written in
his genuine hand writing
Ans I have examined said paper marked T
C No 1, and the signature of Jose Pena where it
appears on said paper is in his hand writing
9 Quest Are you acquainted with the hand writing
of W. E. P Hartnell and Florencio Serrano[?] and
and if so state your means of knowledge
Ans I have seen them both write and am acqua-
inted with their hand writing
10 Quest Look on the paper now shown you
and marked T. C. No 2, and state whether the
signatures of the said W E P Hartnell and
Florencio Serrano where they appear on said
paper are their genuine signatures
Ans I have examined said paper marked T
C No 2, and know the signatures of W E P
Hartnell and Florencio Serrano where they
appear on said paper to be in their hand writing

Jose Pena whose signature is attached to docu-
-ment marked T. C. No 1 is now dead

Question by Associate Law Agent

1 Quest What is San Pedro and San Pablo
is it one tree or many

6/5.4

15

Ans It is a grove of oaks and not one tree in particular

2 Quest In what direction or course from these trees does the land occupied by Garcia lie

Ans It lies towards the South

3 Quest Does the road from Santa Clara to San Francisco run through this land?

Ans One of the roads which leads from Santa Clara to San Francisco passes through this land but the other does not

4 Quest On what part of the land did Garcias house lay?

Ans Her house was near the road a little out of the Oak grove distant from the oak grove five hundred varas more or less

143 ND
PAGE 16

Sworn to and Subscribed
before me this 10th day of February
A D 1854

Antonio Maria Pico

Thompson Campbell
Comr

Filed in Office February 10th 1854
Geo Fisher
Secretary

Deposition of Dennis Martin

United States of America }
State of California } ss

San Francisco Mch 27 1854

This day personally came before Peter Lott a Commissioner to take testimony to be used before the Board of U S Land Commissioners in said State, Dennis Martin a witness on behalf

11

of the Claimant in Case No 514 on the Docket of said Board in which James Enright is Petitioner and the said Witness being duly sworn on oath deposed in the English Language as follows to wit

The U S Land Agent is present

143 ND
PAGE 17

Questions by Mr Crockett attorney for Claimant

1 Question What is your name age and present residence?
Answer My name is Dennis Ingoldsby, My age 35 years, My residence San Francisco County California

2 Question Are you acquainted with the Claimant Enright if so how long have you known him
Answer I am well acquainted with him I have known him about 20 years, I think I first saw him in California in 1846

3 Question Do you know the time on which Enright now resides near the Mission of Santa Clara and what time he made the first improvement on it?
Answer Yes I know it very well, he made the first improvement on it in 1847 I think I am pretty certain, he built a wooden dwelling house one story, and a chicken house that year, That house I understood was either burned or destroyed in some other manner, Enright built another house a dwelling house and 2 or 3 other small buildings in the the latter part of 1849 or there about

4 Question State who then there were traces of former cultivation when Enright first came there?
Answer I saw the Land before Enright came there I think in the fall of 1845, there were then some Indians Gardens there to the right of the old Santa Clara

road about a half mile or less from where Enrights' house is towards Santa Clara Those gardens were cultivated nearly every year, they were so in 1846 They planted corn beans melons and other vegetables there, the extent of those gardens was from ten to fifteen acres possibly 20 more than ten at any rate

143 ND
PAGE 18

Cross Examined by U S Law Agent
Question State whether the house built by Enright in 1847 was within the lines of the map now shown you in this Case;
Answer It was a little to the left of the road as you go from Here to Santa Clara, it might be 200 yards from the road possibly more, between two and three hundred yards I cannot say positively whether it was inside or outside of the line of the survey it was somewhere close to the line, I do not know that there had been an accurate survey before that time and cannot tell from looking at the map which side of the line the house stood, I guage by the distance from the road

Dennis Martin

Subscribed and sworn to before me
on this 27th day of March A D 1854
Peter Lott Commissioner
for taking testimony &c &c

Filed in Office March 27th 1854
Geo Fisher
Secretary

Deposition of W H Norris

United States of America }
State of California } ss
San Francisco March 27th 1854
This day personally came before Peter Lott a Comr

for taking testimony to be used before the Board of U S Land Commissioners in said State Wm H Norris a witness on behalf of the Claimant in Case No 514 on the Docket of "the" said Board and in which James Enright is the Petitioner and the said William H Norris being duly sworn on oath deposed in English as follows to wit

143 ND
PAGE 19

The U S Law Agent is present

Questions by Mr Crockett attorney for Claimant
1 Question What is your name age and present residence;
Answer My name is William H Norris my age 22 years next July my residence Contra Costa County San Ramon Valley California
2 Question Did you ever reside in Santa Clara Co if you state where you lived in that County and what year you went there to reside;
Answer I went there about December 1846 I lived at the Mission of Santa Clara part of the time and about 2½ miles from there on the Rancho El Chino or Alviso Ranch
3 Question Are you acquainted with James Enright in this Case the Claimant and if you which did you first know him
Answer I am acquainted with him I became acquainted with him in Missouri I think about the year 1842 or 1843 we came to California together in 1846
4 Question Examine the map now shown you marked D. T. C. and state whether you are acquainted with the land embraced in the map;
Answer I believe I am acquainted with the land I have been over very often used to be on it every day for some months

8/574

19

5 Question State whether or not that is the land on which the Claimant now resides and if so whether he has made any improvements on it and if so when he made the first improvement and what was the nature of the improvement?

143 ND
PAGE 20

Answer It is the land on which he now resides, he first began to improve it in 1847 he built a house that year, a frame house, I saw him living in the house in the winter of 1847 he had a small out building for a pork house I do not know whether he cultivated that next season or not, the house he built was afterwards either torn down or burnt down while Enoch was absent from the place

6 Question State what other improvements he has since made if any what they are and when he made them?

Answer He has since built the dwelling house in which he now lives and fenced a number of acres of land first fenced partly with rails and partly by a ditch fence and he has I think a store house, I think he built the house he now lives in in the Summer of 1854 the store house was built in the Spring before I think he enclosed a small piece of ground for cultivation that same year

7 Question State whether or not when you first saw the ground there was any traces of former cultivation and improvement on it?

Answer When I first came there in 1846 there was an appearance of an old Indian field there I do not know whether it was cultivated or not the next season some Indians and Californians came and made again and planted some melons and other things and cultivated the ground

Cross examined by U S Law agent

1 Question State how far it is from Downes house marked on the map to the nearest line of the tract of land claimed in this Case and described on said map? (Answer)
I think it is within a hundred yards of the line

2 Question How far are the first house built by Enright stand from Downe's house?
answer It was within a few yards of Downes house towards the line I think the Frame house was nearer the line than Enrights dwelling was if not over the line

3 Question Do you state that that house and Frame house was built by Enright?

Answer Yes

4th Question Are you certain of the time when they were built?

Answer Yes, in the fall of 1849 or beginning of winter

5 Question Are you positive as to the time when the present dwelling house of Enright was built
answer Upon reflection I recollect we got out the lumber in the winter of 1849 and the house was built in the Spring of 1850 in which they lived while "while" building the present dwelling which was completed during that Summer 1850 Enright built them

6 Question Do you know of any other person occupying that out house before Enright lived in it?

Answer No

7 Question Point out on the map as near as you can the place where you say there was the appearance of an old field? and mark it with two cyphers 00
Answer I have marked it with two cyphers in

9/514

21

black ink not far from the South East corner of the map between the creek and the road, I think it was about three, I cannot say what extent had the appearance of former cultivation it was in patches, there might have been ten acres I would not be positive it is the same ground the Indians cultivated the next season,

143 ND
PAGE 22

Re examined by Attorney for Claimant
Question Do you know whether or not at the time when Enright built the house in 1847 the line of the tract claimed which is nearest to the house was then definately ascertained and whether Enright built the house supposing it to be on the tract claimed
Answer I think the line was not ascertained then, I have heard Enright say he thought it was on the land claimed when he built the house he supposed it was on the land he bought

W H Norris

Subscribed and sworn to before me on this 27th day of March A D 1854

Peter Lott
Comr of depositions &c &c

Filed in Office March 27th 1854
Geo Fisher
Secretary

Deposition of Peter T Sherrebeck

United States of America
State of California ss

San Francisco March 27, 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U S Land Commissioners

in said state Peter T Shumback a witness on behalf of the Claimant in Case No 514 on the Docket of said Board in which James Enright is the Petitioner and the said Peter T Shumback being duly sworn on oath deposed in the English Language as follows to wit

143 ND
PAGE 23

The U S Law agent J. H. McKune is present
Questions by Mr Crockett attorney for Claimant
1 Question what is your name age and present residence?
Answer My name is Peter T Shumback my age 42 years my residence Santa Clara Co California
2 Question Are you acquainted with the land Claimed by James Enright in this Case on which he lives near Santa Clara Mission, if you how long have you known it
Answer I know the land and have known it since the year 1841.
3 Question When and by whom was that tract or any portion of it first cultivated within your knowledge?
Answer By Garcia who had Indians at work there in 1841. he had brush fences and brush huts for the Indians to live in on the land the principal products they raised were pumpkins, watermelons and corn the quantity then cultivated was some 8 or 10 acres They had some cattle and horses which were used in the cultivation of the place, according to my recollection it was cultivated in this way from 1841 to 1846 after that I did not pass there for some time
4 Question Were you acquainted with Garcia and do you know where he resided at that time?

10/514

23

143 ND
PAGE 24

Answer I was acquainted with him, he lived at the Mission of Santa Clara
5 Question Do you know whether the Claimant Enright made any improvement on this land if yea when was it made, and of what character
Answer I do know that Enright built a house there in the fall of 1847 It was a frame house
6 Question Do you know whether the native Mexicans in making surveys have ever made allowance for the variation of the needle?
Answer They did not
7 Question Do you know who succeeded Garcia in the possession of the tract of land mentioned
Answer Yes Mr Enright succeeded

Cross Examined by U S Law Agent
1 Question Look at the map shown you in this case marked "B.T.C." and say whether the house built by Enright was within the line embraced within the lines of the Survey as marked on said Map
Answer It stood between Doan's house as marked on the map and the line as laid down on this same map which brings it outside of the line
2 Question What house did Garcia occupy in Santa Clara?
Answer An adobe house there were none others but adobe houses at that time, I cannot tell what one, there were two rows of old adobe houses, which had belonged to the Mission in which a number of people were living, I do not know what particular part Garcia occupied He had a son I saw him in the field there where the Indians worked, he went down to look after the Indians, I do not know Garcias christian

name, he always went by the name of Garcia in Santa Clara, He followed no Particular business except that mentioned of working these Indians

Re Examined by attorney for Claimant

Question State whether or not as the lines of the tract of land were supposed to run in 1847 the house built by Enright would have been embraced within them; and whether allowing for the variation of the Compass the line would not now embrace it?

answer The line as then supposed to run did embrace the house and allowing for the variation of the Compass the line in my Opinion would now embrace the house,

Cross Examined by U S Law Agent

Question Are you a Practical Surveyor

answer No

2 Question what is meant by the variation of the Compass;

answer I cannot explain myself in English so as to give the meaning

3 Question How do you know then that by the variation of the Compass the house would be embraced within the line as laid down on the Map;

Answer according to my knowledge it would include it

4 Question Is the variation to the East or the West;

Answer I think the variation is to the East

Subscribed and sworn Pedro T Scherreback to before me on this 27th day of March A D 1854

Peter Lott Commissioner for taking testimony &c

Filed in Office March 27th 1854 Geo Fisher Secy

143 ND
PAGE 25

11/574

25

Deposition
of
Geo T. Walker

143 ND
PAGE 26

United States of America }
State of California ss }

San Francisco May 12 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of Land Commissioners in said State George T Walker a witness on behalf of the United States in Case No 574 on the Docket of said Board who in Jenny Enright is Claimant and said witness being duly sworn on on the oath in the English Language as follows to wit:

The Attorney for Claimant is present

Question by Land Agent

1 Question What is your name age and present residence?

Answer My name is George T. Walker my age 28 years my residence Santa Clara County California

2 Question How long have you lived in Santa Clara County?

Answer I went there first in September 1846 and have lived in that County ever since excepting about a year from March 1848 to March 1849 when I was in Mexico

3 Question Are you acquainted with the land claimed by Enright in this Case as assignee of Garcia if you how long have you known it and were there any marks of cultivation or improvement upon it?

Answer I know the land Claimed by Jn Enright but do not know the exact boundaries of it I have known the land since I first went to the Mission in 1846 at that time there was a cultivation down near the Point of timber called San Pedro and San Pablo about 1½ miles north of where Jn Enrights house are at now I never knew of any cultivation at the place where the house stands

before the house was built in 1849 then was the first time I saw the house In a direction about South East from where Enrights house is 1/4 mile there was in 1846 and 1847 a cultivation by Indians whom I understood to be Mission Indians that was the nearest cultivation I know of, to the place where Enrights house stands

143 ND
PAGE 27

In 1846 I saw wheat stubble at the place I first mentioned San Pedro and San Pablo there was no house there there are 2 springs at that point

4th Question Look at the map Exhibit 1 to Dep of Geo W Ballamy filed in this Case and state how far and in what direction San Pedro and San Pablo would be from the N. E. corner of said map and if this corner is correctly marked on this map San Pedro and San Pablo will be in a North Easterly direction from the house of Enright I think 1 1/4 or 1 1/2 mile

5 Question Are you acquainted with Francisco Soreia if yea how long have you known him and where has he resided and did he ever live on the land Claimed by Enright in this Case

Answer I am acquainted with him I knew him first at Pedro Reals house in Santa Clara in 1846 I understood he lived at the Salinas River near Monterey I never knew him to reside near Santa Clara he was there frequently visiting and on business with the Priest

6 Question Did you ever know of any cultivation by him or his agents of any part of the land Claimed in this Case,

Answer I never did, G T Walker

Subscribed and sworn to before me on this 12th day of May A D 1854

Peter Lott Commissioner pro tem

Filed in Office May 12th 1854 Geo Fisher Dep

12/514

27

Deposition of Asa W Finley

United States of America }
State of California } ss

143 ND
PAGE 28

San Francisco March 24th 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State Asa W Finley a witness on behalf of the United States in Case No 514 on the Docket of said Board in which James Enright is Claimant. The said Asa W Finley being duly sworn, deposed in English which was written down by said Commissioner of Testimony and is as follows to wit

Questions by the U S Law Agent

Question 1 What is your name age and place of residence?

Answer My name is Asa W Finley my age 32 years I reside in Santa Clara County California I have resided there more than 7 years

Question 2, Look at the map handed you which is filed in this Case marked D. T. C. and State whether you know and are acquainted with the land embraced in it?

Answer I am acquainted with the tract of land embraced in it the particular boundaries I never traced and do not pretend to know them accurately

Question 3, How long have you known it?

Answer Since the Spring of 1847

Question 4, Was there any house or corral on it when you first knew it

Answer None visible

Question 5 Were there any traces of previous Cultivation on it within your observation?

Answer There was none

Question 6, Was your acquaintance with the land

143 ND
PAGE 29

such that you saw the different parts of it in the spring of 1847;
Answer It was
Question 7. Do you know when the present Claimant Enright began to improve the place and what improvements he made;
Answer To the best of my Knowledge it was in the Summer of 1850 he built a house in which he now resides
Question 8 Was or was not the tract mentioned persons to the summer of 1850 and till about that time an open and uncultivated prairie
Answer It was till the fall of 1849 at which time a Mr Packwood built a house near where Enright built his,
Question 9, Is the point on the North west part of the map marked "house" the place corresponding with that where Enright built;
Answer It is
Question 10 Did Packwood occupy the house he built any time;
Answer He did
Question 11. Who occupied it after him
Answer A man named Angels
Question 12, Who occupied it after Angels
Answer I was over in the house after that it stands in Enrights yard
Cross Examined by Mr Crockett Attorney for Claimant
Question 1. Have you any interest in the land Claimed in this Case and will you in any manner directly or indirectly be benefitted if this Claim is rejected;
Answer I have no interest directly or indirectly and I presume I shall not be affected in my interest in any way if it is rejected I live 4 miles from it

13/514

29

Question 2, Are you related to any settler claiming any portion of the land adversely to the Claimant, and are you on friendly terms with Enright
Answer I have no relations living upon the land or claiming any portion of it I am on friendly terms with Enright

143 ND
PAGE 30

Question 3, How far do you reside from the land and have you at any time resided nearer to it than you do now?
Answer I live 4 miles from it, and Santa Clara Mission is the nearest I have ever lived to the land about 2 1/2 miles from it
Question 4 Can you state it as a fact that there was no house and Corral on the land and that no portion of it was cultivated before 1849 and if so specify particularly your means of knowledge
Answer I saw no house or Corral pinions to that year, heard of none and knew of none nor any traces of either, nor of any cultivation I have frequently been over the land hunting stock in 1847 and in travelling the road leading from Santa Clara to the Lower Rew Woods hauling lumber I have been over it frequently for different purposes I went down to Packwoods house at the time he was building it, I went again to see Angelo and various times since that I have been over the ground
Question 5 Did you ever go over the ground for the special purpose of examining for traces of former buildings corrals or cultivation and if so when and at whose instance?
Answer I never did
Question 6, Were you ever acquainted with Francisco Garcia and if so when and where did he then reside?

30

Answer I was never personally acquainted with him have heard of him frequently.

Asa M. Finley

Subscribed and sworn to
before me on this 24th day of
March A D 1854

Peter Lott Commissioner
for taking Testimony &c

143 ND
PAGE 31

Filed in Office March 24. 1854
Geo Fisher
Secretary

Deposition
of
Wm Campbell

United States of America }
State of California } ss

San Francisco March 24. 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U S Land Commissioners in said State William Campbell a witness on behalf of the United States in Case No 514 on the Docket of said Board in which James Enright is Claimant the said William Campbell being duly sworn deposes on oath in the English language as follows to wit

Questions by the U S Law Agent

Question 1. What is your name age and place of residence?

Answer My name is William Campbell my age 60 years. My residence Santa Clara County California

Question 2. Please look at the plat shown you marked Map D. T. C and say whether or not you are acquainted with the land embraced in it?

Answer I am acquainted with the land here represented

14/376

31

143 ND
PAGE 32

Question 3. How long have you resided in the County of Santa Clara?
Answer Since November 1846
Question 4 When did you first know the land mentioned?
Answer Along in the Spring of 1847 from the commencement of that year
Question 5 When you first became acquainted with the land in time any improvements on it
Answer I never saw any at the times of any
Question 6. If there had been any cultivation or improvements in the year 1844 or after that year & the time when you saw it, would it not have been apparent to you when you became acquainted with it?
Answer Yes it would have been apparent for years I never saw any vestiges of improvements there might have been as I never went there for the purpose of looking for them
Question 7 From your frequent observations of that land, do you or not believe, if there had been any cultivation there prior to that time you would have seen them?
Answer I certainly think I would
Question 8. Is or is not there within your knowledge land in the same neighborhood which was cultivated prior to your going to that Country that now exhibit traces of that cultivation?
Answer In that immediate neighborhood I have never seen any but in other places near where I live, I have seen the sign of former cultivation and can now the places I refer to are 4 & 4½ miles from this land
Question 9. State if you know when & ought the Claimant in this case made the first improvement on this land what that improvement was and when & ought settled upon it, if he ever did?

143 ND
PAGE 33

Answer I saw him framing a house there in Feby or March 1850 It was a frame house, I do not know exactly when Enright came there it was about February 1850 he lived in the house after it was built

Question 10 Are you acquainted with the lot in Santa Clara Claimed by Garcia under the same grant under which this land is Claimed in this Case by Enright?

Answer I am acquainted with that lot that is I do not know what lot it is, I understand he claims a lot there

Question 11. Are you acquainted with all the lots in Santa Clara adjoining the small garden of the Mission of Santa Clara

Answer Yes, I am acquainted with them all

Question 12, State whether Garcia the grantee or any one for him within your knowledge built a house on any one of the lots adjoining the small garden of the Mission?

Answer The Priest of the Mission put up a house on one of the lots in the south part of the garden and I was told that a Spaniard named Garcia lived in it, that house was built in the fall of 1847 and occupied by the Spaniard in 1848

Cross Examined by Mr Crockett attorney for Claimant

Question 1. How far do you live from the land Claimed in this Case?

Answer Four Miles

Question 2, Do you know the boundaries of this land claimed in this Case

Answer The north and East line I know, I run them in part with chain and Compass the others I am not familiar with

15/514-

33

Question 3. How did you know the proper location of the lines you run?
Answer I was shown the place by a Mr Doane. I had before me what purported to be a copy of a plat of survey by Mr White. I made the survey at the request of Mr Doane

143 ND
PAGE 34

Question 4. Did Mr Doane claim any portion of the land you surveyed, as a settler?
Answer I think he did then and does now
Question 5 Did you then or at any other time ride over the whole tract of land?
Answer I did not then or at any particular time tho I have ridden to and from the land a great deal and am familiar with the whole neighborhood
Question 6. Do you intend to say if there had been a house or corral on the land or a small portion of it cultivated before you came, that you would necessarily have known it from the appearance of the ground after you became acquainted with it?
Answer As to a house or corral I think it would hardly have escaped my notice, but a house or corral might be there any length of time I think I should certainly have seen and noticed the outlines of it. If there had been cultivation much, it might have escaped my notice, on some parts it might have been there possibly and I not see it
Question 7. From your knowledge of the ground can you state it as a fact that there has not been a house and corral on it or a part of it cultivation before you knew the land?
Answer I dont say I could state it as a fact but my opinion is they have not been there or was there to examine for that purpose, if I had been perhaps I could have told
Question 8. Have you ever personally acquainted with Garcia

34

Mission No

William Campbell

Subscribed and sworn to
before me on this 24th day of March
A. D. 1854

Peter Lott Commissioner
for taking Testimony &c

143 ND
PAGE 35

Filed in Office March 24th 1854
Geo Fisher
Secretary

Deposition of George W Bellaney

United States of America }
State of California ss }

San Francisco May 12th 1854

This day personally came before Peter Lott a Commissioner appointed to take testimony to be used before the Board of U S Land Commissioners in said State George W. Ballaney a witness on behalf of the United States in Case No 514 on the Docket of said Board wherein James Enright is Claimant and the said witness being duly sworn on oath exposed in English as follows to wit:

The Attorney for Claimant is present

Questions by U S Land Agent

1 Question What is your name age and residence
Answer My name is George W Ballaney my age 52 years my residence Santa Clara, Santa Clara Co California

2d Question How long have you lived in California and at what point
Answer I have lived in California since 1843 I was at various places till 1845, when I settled permanently in Santa Clara and have resided there ever since

514-1

35

514-1

143 ND
PAGE 36

3d Question Are you acquainted with the land claimed by James Enright as assignee of Francisco Garcia if you state how long you have known it and your means of knowledge and whether or not said land has been improved or cultivated by said Francisco Garcia

Answer I am acquainted with the land mentioned and have known it since 1845, by passing thro it I live 2 or three miles from it and have known it ever since that time I never saw any marks of cultivation or improvement on said land till after the American war I do not recollect any fences or other improvements being on the land before about the early part of the year 1847 I think it was in that year in passing along the road Mr Doyle invited me to his house he then had a small house on the land and was living there I understood that was on this land it was known to me as being of the tract by Mr Doyle

By Counsel objected to as hearsay

4th Question Are you acquainted with Francisco Garcia if so how long have you known him where has he resided and how have since you first knew him on the land claimed by Enright in this case

Answer I know him The first recollection I have of him was in 1846 in Santa Clara he was stopping with the Priest The first I knew of his residence was in 1846 on the Llanos of Salinas near 15 or 16 miles this side of Monterey after that he lived in Monterey to which I visited his house and family and I have knew of his living on the land claimed by Enright in this case

5th Question How far is the Llanos in question from the Town of Santa Clara and how do you know?

Answer The nearest boundary I think is about

143 ND
PAGE 37

of 2 miles from the boundary of the Pinn Grant
called upon by the Deputy Surveyor last Monday
to go with him and run the boundary of the
land, which I did and in this way I know about
the distance
6 Question Look at the map now shown you
marked Exhibit 15 Deposition of Geo H Bellamy P L
and state whether the land in question is correctly
delineated on this map as you saw them run by
the Deputy Surveyor Mr White?
Answer Yes I think this is a correct diagram of
the Survey which I saw made and a Portion delin
eation of the lands then Surveyed
The oak tree at the N. E. corner was on Hunting
ponds, That tree, Mr Knights house and the other
objects marked on the map are laid down in their
relative locations respectively as they really are
on the ground,
7th Question Where was Mr Days house of which
you have spoken?
Answer It stood about where Downs House is
marked outside of the north line on this map
8th Question Were you in the years 1845 1846
and till the Spring of 1847 any portion of cultiva
tion or improvement, or any house or fences on
the land embraced in this map, and of which
you made the Survey with Mr White
Answer I had no knowledge of any and never
saw any and believe there were none within that
Period
Cross Examined by Claimants Counsel
1 Question Where did you reside in 1844 and 1845
Answer In the Spring of 1844 I lived at the Mis
sion of San Juan from there I moved to the City of
San José in the summer of 1844 I then went to
where Stockton is and returned again to San Jose

17/814

37

143 ND
PAGE 38

remained there through the fall and winter till the Spring of 1845. I then moved to Santa Clara where I have remained ever since

2d Question Where did you first become acquainted with Garcia before spoken of?

Answer In the Spring of 1846 I saw him at the Priests in Santa Clara, and I understood he lived down towards Monterey all that time

3 Question Are you acquainted with the boundaries of the land claimed by Enright If you state your means of knowledge?

Answer In the winter of 1847 the Priest of Santa Clara told me at his house in Santa Clara that a willow pond was a point on the boundary of Garcias land and that is all I know of the boundaries of the land claimed, others told me other things about the land but I had no personal knowledge of the boundaries myself

4th Question Do you know whether the map of which you have just testified is a correct representation of the land claimed by Enright in this case?

Answer I have no means of knowing except that Mr White told me his beginning point was the same which he had before taken in a former survey of my own knowledge I do not know that the map corresponds with what Enright claims,

5th Question was you employed by the Priest at the mission of Santa Clara to build a house for Garcia on a hundred vara lot claimed by him at the mission aforesaid?

Answer In the winter or Spring of 1847 the Priest contracted with me to build a house on a lot at Santa Clara and told me he was acting as agent for Garcia, I went on and built the house, it was on a vacant lot on which was no mark of any improvement at that time

38 a.

Geo W Bellamy

Subscribed and Sworn to
before me on this 12th day
of May A D 1854

Peter Lott Commissioner
for taking Testimony &c

143 ND
PAGE 39

Filed in Office May 12th 1854
Geo Fenton
Secretary

Deposition
of
Manuel Dias
Miranda

United States of America }
State of California }

San Francisco May 13th 1854

This day personally came before Peter Lott a Commissioner for taking Testimony to be used before the Board of U S Land Commissioners in said State, Manuel Dias Miranda a witness on behalf of the United States in Case No 314 wherein James Enright is Claimant on the Docket of said Board when the said witness was sworn on his Canadian touching his competency to testify on the ground of an objection being made by Claimants Counsel to his negro blood after which he was sworn in chief and in both cases testified as follows Connected with in the English language to wit

Questions by Claimants Counsel
1 Question In what County were you born?
Answer In Portugal
2d Question Was your Father a white man?
Answer No he was a Mulatto man
3d Question Was your Mother a white woman?
Answer Yes she was
4th Question Where was your father born?

18/514

39

143 ND
PAGE 40

Answer In Portugal
5 Question Do you know whether your fathers parents were white?
Answer I have understood from my father that his father was Mullatto and his mother white
6th Question Where was your Grand father born?
Answer In Portugal as I have been informed?
7th Question were the Parents of your mother white
Answer They were both white? I never saw them that is my information
8th Question Have you seen your father? and what was his colour?
Answer Yes I have seen him he was lighter than I am
9th Question Did you ever see your Grand father on your Fathers side?
Answer No
10th Question What kind of hair had your father was it straight
Answer It resembles my own not altogether straight
11 Question Where in Portugal was you born?
Answer I was born at Figera, a City
12th Question When did you leave Portugal
Answer First in 1822
Cross Examined by U S Law Agent
1 Question Have you been naturalized as a Citizen of Mexico
Answer I have I was naturalized in 1841
2d Question Is there any record evidence of that fact
Answer There is
The Witness here produced a paper purporting to be a certificate of Naturalization dated May 25th 1841 and signed by Juan B Alvarado as Governor and Manuel Jimeno as Secretary a copy of which is hereto annexed marked A annexed to the Depo of

M. D. Miranda

3 Question Where did you get this paper?

Answer It was handed to me by Jimeno the Secretary at the time the paper bears date, signed and sealed as it now is

The Counsel for Claimant here objects to the witness as being incompetent on account of negro blood

143 ND
PAGE 41

Examination in Chief by the U S Law Agent

1 Question What is your name age and residence

Answer My name is Manuel Dias Miranda my age 43 years, my residence above Santa Clara County California

2 Question How long have you been in California and how long in Santa Clara County

Answer I came to California in 1834 and have been in Santa Clara County ever since 1839

3 Question Are you acquainted with the land claimed by James Enright as assignee of Garcia if yes how long have you known it?

Answer I have known the location of the land since last Monday, I have known that piece of ground ever since 1839 and knew that Enright claimed land about there as bought from Garcia

4 Question Since what time have you known of any cultivation or improvement on said land

Answer I knew of no cultivation or improvement of any kind on it before 1847, there was an improvement made by me in farming at San Pedro and San Pablo, that was in 1845 and 1846 I was the first person who made any improvement at that point That is about 1¼ or 1½ mile from Mr Enrights house in a North Easterly direction and there was no other improvement made at San Pedro and San Pablo except by me and my neighbors

5th Question Who do you mean by your neighbors

19/514-

41

Answer Manuel Ignacio Alviso, Jose Maria Alviso
Julian Cantua, Julian Valencia and some Indians
who worked for us we all worked in the same field
6 Question How far have you resided since 1841
from Enrights Claim?
Answer About two miles more or less
7 Question Have you been frequently over the land
within that period?
Answer I have frequently
8 Question Have you known Francisco Garcia?
if so how long and where has he resided and did he
ever reside in Santa Clara?
Answer I have known him, tho not very much
since 1842 when I first knew him he lived at San
Ysidro, Gilroys Place in Santa Clara County
He moved from there to the Salinas Plain not long
after I first knew him and I never knew him to
move from there that is near Monterey
I never knew him to reside at any in Santa Clara

Objected to by Claimants counsel as leading
P. L.

9th Question Do you mean by your last answer
that you never saw Garcia in Santa Clara?
Answer I have seen him there, but not to live there
10 Question Do you know of any improvements
ever having been made by Garcia or his Agents
on this land claimed by Enright
Answer I know of none
11. Question Have you ever known of any cultiva-
tion by Indians on or near this land of Enrights
Answer yes I do near the Indians and the Priest
from the Mission used to cultivate near the South-
ern part of Enrights land about a mile from
Enrights house or more in a Southerly direction
Cross Examined by Claimants Counsel

143 ND
PAGE 42

42

143 ND
PAGE 43

1 Question Did you live at the Mission of Santa Clara when you first knew Garcia
Answer No I lived about a mile from there near where I now live
2 Question How do you know said Garcia lived at San Ysidro during the time you have stated?
Answer Because I saw him there with his family at that time
3 Question How often did you see him there?
Answer I cannot say positively tho I would think as many as 5 or 6 times
4 Question What family had he then?
Answer A Mexican family wife and several children I do not know how many
5 Question Do you know of his having a son
Answer I know of two that were grown and he may have had others
6th Question How far is San Ysidro from the Mission of Santa Clara?
Answer Some 20 or 30 miles I do not know the distance accurately
7 Question How often did you see Garcia at the Mission of Santa Clara
Answer Some two or three different times
8 Question Did either of Garcias sons reside at Santa Clara at any time within your knowledge?
Answer I knew them to be back and forth at the Priests house but I never knew them to live at the Mission
9th Question Do you know the boundaries of the land claimed by Enright if you how do you know them?
Answer I know by the survey made last Monday I know it because White surveyed it and

20/574

43

143 ND
PAGE 44

showed it to me I know the boundaries in no other way than this
10 Question Did you know of a grant made to Garcia in 1845, of land in that neighborhood and what land was covered by that grant?
Answer I heard he had a grant at San Pedro and San Pablo I do not know what land was covered by that grant
11 Question Was this cultivated by the Indians which you mentioned on a line between the Mission and Enrights house?
Answer, It was, It was better than a mile from the mission
12 Question How many years did the Indians cultivate there?
Answer Ever since I knew the mission and they had three huts such as Indians usually have and small enclosures of fences no Corrals
13. About how many acres did the Indians cultivate?
Answer There may have been from 30 to 40 or 60 acres for what I know cultivated by the Indians Priest and Spaniards
14 Question Were the Indians working on their own account or were they employed by others
Answer They were working mostly on their own account, Some times they worked a little for the Priest

Re Examined by the U S Law Agent

1 Question Was the improvement or cultivation made by the Indians which you speak of within the boundaries of Enrights Survey as shown to you by white?
Answer It was not within that Survey

2 Question How far and what direction was this Indian cultivation from the Southern line of the Survey you saw made

Answer It was in a South Easterly direction about 3/4 of a mile out side of the line

143 ND
PAGE 45

Objected to by Claimants Counsel as leading and originating on Cross examination
P. L.

3 Question Did you ever know that the Indians made any improvement or cultivated for Garcia

Answer I never did

Manuel Dias his + mark Miranda

Subscribed and Sworn to before me May 13. 1854
Peter Lott Commissioner for taking Testimony &c

Filed in Office May 13th 1854
Geo Fisher
Secretary

21/574

45

Deposition
of
Secundino
Robles

143 ND
PAGE 46

United States of America }
State of California } ss }

San Francisco June 5th 1854

This day personally before Peter Lott a Commissioner for taking testimony to be used before the Board of Land Commissioners in said State came Secundino Robles a witness in behalf of the Claimant in Case No 514 on the Docket of said Board wherein James Enright is Claimant and said witness being duly sworn on the Holy Evangelist is examined in Spanish which was interpreted into English by the interpreter of said Board as follows to wit;

The Land Agent is present

Questions by Claimants Counsel

1 Question what is your name age and residence

Answer My name is Secundino Robles my age 39 years my residence in Santa Clara County California

2 Question Where did you reside in 1844 1845 and 1846

Answer In Santa Clara at the Mission

3 Question Are you acquainted with Francisco Garcia if you are how long are you acquainted with him

Answer I was acquainted with him I have known him for about 20 years I have known him to live in 1844 1845 and 1846 on the Rio de Guadalupe in the County of Guadalupe

4 Question Was said Garcia about the Mission of Santa Clara in 1844 1845 and 1846 and do you know of his cultivating any land about that time,

4 Question objected to by the Land Agent as leading

P. L.

143 ND
PAGE 47

Answer He was then during those years and he cultivated some land there

Question Describe the land which Garcia cultivated at that time and its location as near as you can and state who is now in possession of the same land?

Answer The land is situated at the point of the oak grove of land known as San Pablo on the side towards the Mission of Santa Clara and is occupied now by James Enright

Question State how Garcia cultivated said land whether by himself or by employing Indians and how much he cultivated and in what years Answer Garcia cultivated himself and his sons and by the employment of the Indians from the Mission

In 1844 he planted about 200 bushels or less, the same in 1845, and in 1846 he was not there the same season but I did not see Garcia there

4th Question And as long from the Mission of Santa Clara across the land in which was then cultivated by Garcia?

Answer It is about 2½ miles more or less in a westerly direction from the Mission, Old San Francisco Road passes along so that coming from the said Mission to San Francisco the land lies on the right hand side adjoining the road

5 Question What office if any did you hold about said Mission in 1844 1845 and 1846

Answer In 1844 and 1845 I was Majordomo of the Mission and as such it was my duty to take charge of the Mission and superintend the Indians of the Mission and its several farms & generally

47

143 ND
PAGE 48

9 Question Had said Garcia any improvements or stock on said land at the period spoken of
Answer He had a small log house on it in 1844 a Corral and he kept his oxen and horses there, he had about 40 mares there
10 Question Did said Garcia subsequently claim some land under a grant by Michel Torena if yea did it embrace the land which he cultivated of which you have testified?
Answer, I do not know of his claiming under a grant from Michel Torena
11 Question State whether Garcia ever pointed out to you any boundaries, or a beginning point of the boundaries of the land he claimed if yea what boundaries or beginning point?
Answer Garcia never pointed out the boundaries to me he only showed me the point at San Pedro and San Pablo of which I have already spoken

Cross Examined by U S Law Agent
1 Question, In what business was Francisco Garcia engaged in 1844 1845. and 1846?
Answer He was occupied in farming and planting at Santa Clara as I have stated and also at Rio de Monterey
2 Question How often did you visit Monterey in 1844 1845. and 1846?
Answer I was there a number of times about 3 times in 1844 twice in 1845. and in 1846 I was not there
3 Question What time in 1844 did you visit Monterey first?
Answer It was in March the 2d time in August
4 Question What business did you go on to Monterey
Answer I went to take some communications from the Padre of the Mission of Santa Clara the

143 ND
PAGE 49

first time and after wards I went on a visit to my brother and to bring him from hunting to Santa Clara

5 Question How long did you stay in hunting each time that you went there in 1844?

Answer It is a long time since and I do not recollect how long I stand

6 Question Did you see Francisco Garcia when you first went down in March 1844?

Answer I saw him at the City of Monterey but I do not know what business he was engaged in then

7 Question Did you see him the 2d time you went if yea what was he doing

Answer I did not see him the 2d time I went there I do not know where he was at that time I did not see him any where then I never saw him at hunting in those years & only the first time I went down

8 Question How long after you saw him at hunting in March 1844 was it that you next saw him at Santa Clara

Answer About one month or a little less after then I saw him at work with his horses on his land at Santa Clara

9 Question How far was said Garcias place on the Rio de Monterey from the City of Monterey

Answer I have been at his place but I do not know the distance it may be about 3 leagues tho I cannot say

10 Question In 1844 and 1845 how often did you go to Garcias Place on the Rio de Monterey

Answer I was there twice in 1844 but never in 1845

11 Question On these two occasions was Garcia there with his family?

23/514

49

143 ND
PAGE 50

Answer The second time he was there with his family the first time the family was there but Garcia himself was not there
12 Question How long was this 2d occasion when you saw him at Rio de Monterey after you saw him at work on his land in Santa Clara?
Answer I do not recollect It might have been 2 or 3 Months
13 Question How often did you see Garcia at work in 1844 on his place in Santa Clara?
Answer I know I saw him once and I do not recollect whether I saw him at any other time
14 Question What was Garcia doing on his farm in Santa Clara when you saw him there
Answer He was there but what he was particularly engaged in I do not recollect,
15 Question Was that before or after the log house was built
Answer I do not recollect
16 Question Who was with you when you saw Garcia on the place near Santa Clara
Answer I do not recollect
17 Question Who was with Garcia?
Answer I do not recollect whether there was any one present with him
18 Question What was your errand out there when you saw Garcia and how long did you stay there?
Answer I was out collecting Mission Stock I do not recollect how long I staid there
19th Question Did you stop on the premises where Garcia was and what did you do there?
Answer I stopt and passed the Compliments of the day with him nothing more
20 Question How many cattle had the Mission

143 ND
PAGE 51

running about there;
answer about 500 head
21 Question where did they range
answer On the lands of all the adjoining land holders and some times on the mission land
22 Question was the place where you saw Garcia open Prairie or tule land;
answer I saw him on the open Prairie
23 Question were you both on horse back or on foot
Answer I was on horseback but I do not recollect whether Garcia was or not
24 Question About how long after this was it that you saw this Log hut;
Answer I believe it was little more than a month
25 Question was that log hut put up in the interim
Answer I believe that it was
26 Question How far was that house from where you saw Garcia
Answer I do not recollect
27 Question What was you doing when you saw the house, who was with you and who was about the house if any one;
Answer I was collating the mission cattle the Baqueros were with me some Indians I saw no person about the house when I passed there
28 Question Were there any other improvements at that time in the vicinity of the house if yea what were they
Answer I saw nothing but the wheat and barley fields which I before mentioned, I do not recollect the direction or distance of the fields from the house there were some 200 acres more or less in Cultivation

24151

51

143 ND
PAGE 52

29 Question What had you been engaged in for a year previous to the time when you saw that hut
Answer I was occupied in the labors of the mission
30 Question During that time how often did you side over the land?
Answer I was over the land nearly every day in the year
31 Question When did you first see the field of which you have spoken? {Ans to 31 Quest I passed there nearly every day but I do not recollect what precise time I first saw it}
32 Question Was the field in the open plain?
Answer The field was in the plain
33 Question Was the field there when you first went to Santa Clara to act as Mayor Domo?
Answer It was not there before I was Mayor Domo and I do not recollect how long after I became Mayor Domo it was made
34 Question If the field had been there in May 1844. would you not have known it?
Answer The field was there in 1844. I saw it there then but I do not know that I saw it there before that time
35 Question What was the shape of the field?
Answer I do not recollect its shape
36 Question What kind of a fence had the field?
Answer I do not recollect that it was enclosed at all
37 Question How was it protected from the cattle
Answer I do not know
38 Question Were there not large herds of cattle and large pastures there?
Answer There was considerable pasture land and stock round there
39 Question When was that field first planted?
Answer I do not recollect
40 Question Did you ever drive the mission cattle out of the field?

5-2

Answer No I never did
41 Question Did you ever see any one in or about the field, if yea who or when?
Answer I do not recollect
42 Question How much of it was sown in Barley and how much in wheat?
Answer I do not know
43 Question How much was the grain advanced in growth when you saw it?
Answer I do not recollect, whether it had come up
44 Question Had it recently been plowed?
Answer I do not recollect
45 Question Did you ride across the field or go upon it at all?
Answer I did not ride across it and do not recollect whether I went into it
46 Question Did you ride up to it?
Answer I do not recollect
47 Question How do you know it was sowed with wheat and Barley?
Answer Garcia told me he had sowed it in wheat and Barley I cannot recollect when it was nor where he told me so
48 Question was it before or after you saw the field?
Answer I do not recollect
49 Question Who harvested the crop thru?
Answer I do not know I saw it being harvested but did not go up to the place. It might have been Garcia or his son
50 Question When you first saw Garcia thru which way and how far from the field was he?
Answer I do not recollect
51 Question What were the boundary lines of Garcias Claim?

143 ND
PAGE 53

53

Answer I know of no other line than the one towards Santa Clara which is designated by an oak tree

52 Question How do you know that tree was on the line?

Answer Padre Jose Maria Reed of Santa Clara told me so; I do not recollect when or where he told me so;

143 ND
PAGE 54

53 Question Is that the only tree in the vicinity of the land?

Answer There are other trees around there

54 Question How do you know the cultivation you have mentioned was embraced in any given tract of land

Answer Every body said it was Garcia's land It was publicly understood so and I always so recognised it

55 Question Near the Mission of Santa Clara how late can you sow Wheat and Barley to have it mature in the same season?

Answer I do not know

55 Question Objected to by Claimants Counsel as irrelevant P. L.

56 Question How late in the season did you know any wheat and Barley to be sown in 1844. 1845?

Answer I do not know

56 Question Objected to by Claimants Counsel as irrelevant P. L.

57 Question What was the usual time of sowing such grains in the Valley of Santa Clara?

Answer They generally sow in the month of Jany

57 Question Objected to by Claimants Counsel as irrelevant P. L.

58 Question From the character of the seasons near Santa Clara, will grain sown as late as the month of May develop itself if may how late can it be sown so as to come to perfection?

Answer I do not believe either wheat or Barley will mature itself if sown as late as the month of May

58 Question Objected to by Claimants Counsel as irrelevant P.L.

59 Question Was the log house of which you have testified situated within the field if nay in what direction and how far from the field was it?

Answer I recollect that it was upon the land recognized as belonging to Garcia but do not know whether it was within the field or not

60 Question How do you know what land belonged to Garcia? and what were its land marks

Answer I recognized that as Garcia's land which was publicly and generally understood to be his and I do not know whether its boundaries were designated by land marks or not

61 Question When was this land first known to be Garcia's?

Answer I do not recollect when it was first so understood it might have been in the year 1844 tho I do not recollect accurately

62 Question Was there any road running thro the field and what was the nearest road to said field?

Answer I do not know whether any passed over the field the nearest road was the old San Francisco road and I do not know how near that road came to the field It might have come within 50 or 100 varas of the road more or less

63 Question, What direction was the field from the road?

Answer Coming from Santa Clara to San Francisco the field lies on the right hand side of the road,

143 ND
PAGE 55

5-5

64 Question Did you ever see any cultivation of that field at any other time than in the year 1844
Answer I do not recollect
65 Question Up to what time was the house of which you have testified still standing?
Answer I do not know I paid no attention to it It may be that I have seen it since but I am not certain
66 Question Did you ever see any persons in or near said house if you when and whom?
Answer I do not recollect to have seen any one at the house
66 Question Objected to by Claimants Counsel as irrelevant P. L.
67 Question What did Francisco Garcia pass most of his time in 1844, and 1845, in Monterey or Santa Clara and what proportion of his time in each place?
Answer I was conversant with my own business and do not know where he was most of the time He came and went without my knowing
68 Question How did you know that Cultivation was carried on for Garcia?
Answer Because the Padre ordered me to send Indians time to work for Garcia
69 Question When was that order given?
Answer He often gave the order and I often sent the Indians time to work but I cannot remember the precise times or years
70 Question How many Indians did you send to work for Garcia?
Answer They are the Indians employed about the Mission and I sent them when ever the Padre ordered me to send them to work for Garcia
71 Question Who took charge of Garcias business in Santa Clara when he was in Monterey
Answer I do not know and could not necessarily

5-1

143 ND
PAGE 57

Deposition
of
Jose Castro

Have Known his
Secundin x Robles
mark

Subscribed and Sworn
before me on this 5th day of June
A D 1854
Peter Lott Commissioner
for taking Testimony &c

Filed in Office June 5th 1854
Geo Fisher
Secretary

United States Land Commission
San Francisco June 8. 1854

On this day before Commissioner Alpheus Felch came Jose Castro a witness in behalf of the claimant James Enright Case No 314 who after being duly sworn deposed as follows his testimony being interpreted by the Secretary

Interrogatories by Mr Crockett attorney for claimant

1 Interrogatory State your name age and place of residence

Answer My name is Jose Castro my age is forty six years and my residence is Monterey in California

2 Interrogatory Did you reside at the Mission Santa Clara in the year 1844. 1845 and 1846 and if you did you hold any office there?

Answer I did not reside there but was at that Mission several months in each of the years mentioned in the interrogatory, and in those years I was Lieutenant Colonel of the Cavalry and had command in 1846 of about two hundred troops who

5-7

143 ND
PAGE 58

was stationed at the said Mission and who continued there during the months of May June and July of that year & most of that time
During part of the years 1845 and 1846 I was in charge of the General Commandancy of the Territory
2 Question Was you acquainted with Francisco Garcia? If you was state Garcia at & about said Mission during the years aforesaid? and in what business was he engaged;
Answer I knew said Garcia. He was at said Mission employed by the Padres to attend to the business of the Mission in 1844 1845 and a part of 1846
4 Question Do you know whether or not during the years aforesaid, Garcia cultivated any land & occupied any near said Mission and if so in what direction and how far from the Mission?
Answer She did occupy and cultivate land during that time which was situated about half a league from said Mission in a direction between the west and south west from said Mission I saw him on the land during the two first years and a part of the last, and saw him cultivating it the place was situated in the direction of the Rancheria the Bajio

The Padre of the Mission wrote me a letter stating that Garcia had been for some time soliciting a grant of the land but had not been able to accomplish it He requested me in the letter to recommend said Garcia to the Governor and try by my influence to get the grant for him, In accordance with the Padres request I wrote to the Governor favorably to the granting of the land to Garcia and the Governor wrote to me that according to my request he have made the grant to Garcia, I began and the construction

5-8

of no importance and did not preserve it
Mr McKune objects to the testimony contained in the last paragraph as secondary evidence
5 Question Did Garcia make any improvements on the land? and if so what and how much of the land did he cultivate?

143 ND
PAGE 59

Answer I saw on the land a small house built of logs and adobe such as they built at that time I saw fences on the place and a small corral, I saw wheat barley corn Beans and a variety of other vegetables growing on the place I saw the crops there in 1845 and also in 1846.

I suppose the land under cultivation was about four hundred varas by five hundred varas more or less, I was in the Spring of 1845 on the place Garcia had invited me to go to his house and take breakfast with him as a matter of gratitude for having helped him obtain his grant I went and when there Garcia took me to show me his crops and said that was the place he had obtained through my influence,
I did not see him use a plough or any other utensil nor do I know whether he did the work himself or his servants,
Questions by Mr McKune Law Agent

Question When did you first become acquainted with said Garcia? Where and under what circumstances?
Answer I first knew him in 1832 at Monterey He was a lobering man, He has lived at Monterey and in Santa Clara and on the Ranches near Monterey In the Spring of 1844 his family was living at Monterey and he himself was at Santa Clara I do not see other in what month in the year 1844. I first saw him at Santa Clara,

28/514

5-9

143 ND
PAGE 60

In the latter part of the year 1843, or the beginning of 1844 he went at the request of the Padre of the Mission of Santa Clara and was employed at the Mission In May or June or July 1844 I saw him for the first time at Santa Clara He was occupied there as the second Mayor Domo in taking care of the Mission property and stock

2 Question Where did you live during the year 1844

Answer The residence of my family was at Monterey as for myself I was a Military Officer and moving about from one place to another

3 Question What part of 1844 did you spend at Santa Clara?

Answer I was there in the months of May June and July of that year, I cannot say whether I was there during the whole of the time of those three months but was there during that time on several occasions amounting in all to ten or twelve days I was frequently there afterwards

4 Question How many times did you see said Garcia during that time? and what was he doing during each of those times?

Answer When I was there Garcia sat at the same table every evening with the Priest and myself During the day he was out attending to his business

5 Question When did you first see him on the lands claimed by him above mentioned? and who was with him and what was he doing? and who was with you

Answer I first saw him on the place in the beginning of 1845. at the time he invited me to go as before mentioned Joaquin de la Torre went with me and we had an escort of five soldiers

6 Question How long did you remain at Santa Clara at the time you first saw him on the place?

Answer I may have been there one or two days

7 Question, Was Garcia at that time Second Mayor Domo

143 ND
PAGE 61

of the Mission?
Answer He was the Second of the Padre and was called Mayor Domo
8 Question When did Gonzales live at that time
Answer At the Mission of Santa Clara He went occasionally to Monterey but was at the Mission a greater portion of the time He eat at the house of the Padre during that time and was engaged in the business of the Mission and in taking care of his own Rancho
9 Question Did you eat at the same table with the Padre and Gonzales when you was there at the time you visited the Rancho to break fast with Gonzales
Answer I cannot recollect
10 Question The first time you saw Gonzales at the Rancho did you go with him to the house on the Rancho?
Answer I did
11 Question How long did you stay there?
Answer A few hours I breakfasted there
12 Question Did Gonzales go with you to the Rancho or was he there when you went there?
Answer I cannot recollect
13 Question Who was at the house when you breakfasted with Gonzales?
Answer Joaquin de la Torre Pacual Gonzales and myself These are all that I recollect being in the house
14 Question How many rooms are there in that house
Answer Two The house may have been eight yards long by four wide
15 Question What time in the day did you get that house?
Answer I cannot recollect the hour
16 Question From what place did you start to go there?
Answer From the house of the Padre at the Mission

61

17 Question Before or after Breakfast
Answer Before I went out time to Breakfast
18 Question Why did you go there to breakfast
Answer Because in the evening previous (I think it was) Garcia insisted me to eat time to breakfast with him

143 ND
PAGE 62

19 Question Did Garcia board at his house on the Rancho during you stay at that time
Answer What I know is that while I was at the house Garcia took his Supper at the Padres where he took his other meals or where he slept I do not know While in the house on the Rancho I observed a bed doubled up with a blanket on it and a pillow and I asked Garcia who slept there and he said that he slept there most of the time
20 Question Was that house in an enclosure? If yea how was that enclosure formed?
Answer I do not recollect whether the house was inside of the enclosure or not but it was at the place where he had his field
21 Question In what direction was the enclosure from the house? How was the enclosure formed and what its shape and extent?
Answer The enclosure was in a direction between North West and South West from the house
The enclosure was made of poles tied with strings of hide I cannot tell whether the enclosed land was in a round or square shape I cannot tell the quantity of land enclosed but from what I saw I should suppose it was about one hundred acres more or less
22 Question Was there any stock running near the house at that time?
Answer I cannot recollect
23 Question Was the field and house in an open Prairie or in a grove of timber?
Answer They were in the plain it was an open plain

62

143 ND
PAGE 63

24 Question Were there any other improvements made on to the Mission than that Rancho?
Answer There may have been but I do not recollect.
25 Question When did you next see Garcia on that place?
Answer In the months of May June and July 1846 I saw Garcia there at work on his Rancho I had my horses there on the place in 1846 and it was necessary for me sometimes to go out to look after them, When I went out I found Garcia there taking care of the horses and his stock and at work on his place and I paid Garcia for grass that my horses eat on his place
26 Question Was the house and field that you saw there in 1845 the same in 1846?
Answer They were It was the same house the same field and the same fence
27 Question Where was Garcias residence in 1846
Answer The residence of his family was at Monterey
28 Question What part of his time did he spend with his family?
Answer After he got the grant of the land we was back and forth,
I cannot tell what portion of his time he was with his family or at his place

Jose Castro

Subscribed and sworn to
before me this eighth day of
June A D 1854

Alpheus Felch
Commissioner

Filed in office June 8. 1854
Geo Fisher Secretary

34/514

63 Deposition of Manuel Cantua

143 ND
PAGE 64

United States of America
State of California } ss
San Francisco June 20th 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U.S. Land Commissioners in said State Manuel Cantua a witness on behalf of the United States in Case No 514 on the Docket of said Board wherein Dames Enright is Claimant and said witness being duly sworn on oath as sworn in Spanish which was interpreted into English by the interpreter of said Board as follows to wit

The Counsel for Claimant is present

Questions by U.S. Law Agent

1 Question What is your name age and residence?
Answer My name is Manuel Cantua my age 37 years my residence Santa Clara County on the Rancho of Guadalupe about 1 league from the Mission of Santa Clara, where I have lived about 14 years

2 Question Are you acquainted with Francisco Garcia if yes, how long have you known him?
Answer Yes, I am acquainted with him and have been ever since I was 16 or 17 years of age I became acquainted with him at the Rancho of San Ysidro, belonging to Quintin Ortega

3 Question Look at the diagram marked No 1 P.L. and annexed to the deposition of Jose Antonio Alviso in this case and state whether you are acquainted with land marked out in said diagram, and who pointed out to you the boundaries on the land and how long you have known the said land?
Answer Yes I am acquainted with the land,

Thomas White showed me the boundaries last Saturday I have known the land about 14 years but not as marked or measured

4 Question Where was you and in what business engaged in the years 1844 1845 and 1846?

Answer In 1844 I think I was engaged in hauling logs from the Rancho of Maximo Martinez to the Wall at the Pueblo of San José and also in farming some and in 1845 and 1846 I was farming at the Rancho of Guadalupe and also in 1846 I planted some at the Pueblo of San José

5 Question During the years 1844 1845 and 1846 was you intimately acquainted with the land marked out by the lines on said map?

Answer I was well acquainted with it and saw it almost every day in those years

6 Question State whether or not Francisco Garcia in 1844. 1845 and 1846 cultivated any portion of the land described within the lines on said Map, or had any improvements thereon.

Answer I have never known of any cultivation or improvements of any kind by Garcia on the land described,

7 Question Could there have been a house or cultivation on said land in the years above mentioned without your knowing it?

Answer There could not have been a house or cultivation without my seeing it, in those years on that land

8 Question Are you acquainted with the place called San Pedro and San Pablo in that neighbourhood if yea how far is it and in what direction from the land marked out on said Map?

Answer I am acquainted with it. it is about 3/4 of a mile I judge in a northerly direction from the oak tree at the N.E. corner of the square laid down on said Map.

143 ND
PAGE 65

31/524

65

143 ND
PAGE 66

9 Question Did you ever cultivate lands in the vicinity of San Pedro and San Pablo if yea in what years
Answer I cultivated with my father just near San Pedro and San Pablo East of it, in the year that the Americans came to the country either 1846 or 1847
10 Question Was there in the year that you cultivated there any house or cultivation or any vestige of either on the land embraced within the lines on said Map
Answer There was no sign of any house or cultivation nor vestige of either on said land at that time
This 10 Question objected to by Claimants Counsel on the ground of leading P. L.

Cross Examined by Claimants Counsel
1 Question How do you know what head this map represents and how do you know what tree that is which is marked Oak tree on the N E Corner of the Square marked out there?
Answer I was with the Surveyor when he Surveyed it I know there is a tree there near the Arroyo Seco from which the Surveyor commenced the measurement
2 Question Did you ever see this map before to day, if yea who showed it to you?
Answer I never saw it before to day
3 Question How do you know that this map represents correctly the land which you saw Surveyed?
Answer Because I know the land well I know it as well as I know my own house.
4 Question How did you happen to be present when the land was surveyed?
Answer That day I went to the Bajio and saw them measuring and I went along with them
5 Question Who requested you to go there on that occasion?
Answer I came there as a witness at the request

143 ND
PAGE 67

of Mr Wilson and after I got there the Surveyor requested me to go along with him

6 Question Was you paid for going if yes who paid you and how much?

Answer I was not paid any thing nor did I ask any thing

7 Question Who did Garcia cultivate land in 1845 and 1846?

Answer He cultivated about 1000 varas South from what is represented on the said map as the South west corner of the land claimed in this case

8 Question Was there any house on the land which was cultivated by Garcia? and was the said land enclosed?

Answer No there was no house on it nor was it enclosed

9 Question Do you know what land it was that was granted to Garcia by Micheltorena?

Answer I do not know of my own knowledge what land was granted to him I know what was said by others to have been granted to him.

10 Question When did you actually move in 1844. 1845 and 1846 and where did you board or make your home when you were cultivating the land at San Pedro and San Pablo?

Answer My residence was at the Rancho of Guadalupe of the Alvisos and I stated there when I cultivated the land at San Pedro and San Pablo

11 Question Then did you first know of any improvement on this land now occupied by Enright?

Answer I knew of no improvement on the land by the Americans came to the Country. The first house that Enright built on the place was in 1847 or 1848 but I did not pay particular attention they

514-2
32/514

67

were building small houses all about in the neighborhood time I do not know the particular time day or year when they built any particular house do not know when Enright built his last house.

143 ND
PAGE 68

514-2

12 Justin was Secundino Robles Mayor Domo of the Mission of Santa Clara in 1844. 1845. and 1846 and was Jose Castro there with troops in 1846?
Answer Said Robles was Mayor Domo of said Mission from 1843 till the Americans came and Jose Castro was there with troops in 1846.

Manuel + his mark Cantua

Subscribed and sworn to
before me on this 21st day of June
A D 1854

Peter Lott Commissioner
for Taking Testimony &c

Filed in Office June 21. 1854
Geo Fisher
Secretary

Deposition of Jose Antonio Alviso

United States of America }
State of California } ss }

San Francisco June 20. 1854

On this day personally came before Peter Lott a Commissioner for taking Testimony to be used before the Board of U S Land Commissioners in said State, Jose Antonio Alviso a witness on behalf of the United States in case No 514 on the Docket of said Board, who in James Enright is Claimant, and said witness being duly sworn on oath deposes in the Spanish which was interpreted into English by the Interpreter to said

68

143 ND
PAGE 69

Board as follows,

The Counsel for Claimant is present

Questions by the U S Law Agent

1 Question What is your name age and residence
Answer My name is Jose Antonio Alviso my age
52 years My residence Santa Clara County Cali
fornia

2 Question How for do you reside from the Mission
of Santa Clara and how long have you been
in that part of the Country?
Answer I reside about one league from the Mission
and have been in that vicinity about 44 years

3 Question Are you acquainted with Francisco
Garcia, if yea how long have you known him
and what was he employed in about the Mission
of Santa Clara?
Answer I am acquainted with him I have known
him I think it is about 12 years, He was not occa
pied in any thing about the Mission of Santa Clara
he never lived there,

4 Question Are you acquainted with James En
- right and with the Land Claimed by him in this
Case, If yea how long have you known each,
Answer I am acquainted with Enright and I also
know the Land he Claims there I have known En
- right here since about 1847 and I have known the
Land since about 1846 I have known the Land
in a measure ever since I was a child I was born
at the Mission of Santa Clara and have known
that Part of the Country all my life

5 Question During all this time, what means
have you possessed of knowing whether or not
the tract of Land in question was ever improved
or cultivated?

69

answer with my eyes I have seen that no person ever cultivated the land neither the Mission nor any one else, till after the Americans came into the Country, I have been over the land a great deal every day.

6 Question Where were you and how employed in the years 1844 and 1845?

Answer I was on my Rancho in Santa Clara County farming and raising Stock

7 Question During those two years was you well acquainted with the land now Claimed by Enright

Answer I was well acquainted with said land in those years and long before that time,

8 Question Was there in either of those years 1844 and 1845 any occupation or cultivation of said land by any one?

Answer There was no occupation or cultivation of said land either in 1843. 1844. or 1845 by any person

9 Question What was the character of the season in 1844 were any crops raised that year in Santa Clara Valley, or was there a great drought which prevented it?

Answer It was a very dry season and for the want of rain there were no crops raised in that part of the Country of any consequence except in a few spots which were irrigated

10 Question Look at the Diagram now shown you marked H Y Z No 1 P.L. annexed to this deposition and State whether you are acquainted with the localities of the land as marked on said Diagram?

Answer Yes I am acquainted with the localities of the objects as laid down on this map I have known the natural objects all my life and Enrights house where it now is. I have known about

143 ND
PAGE 71

I year and Wilsons house some 9 or 10 months
11 Question Were you acquainted with two trees
in that part of the Country called San Pedro and
San Pablo, If you State as near as you can
what would be their Locality on the Map before
you marked as aforesaid?
Answer I know a tree with two trunks growing
from 1 stump, called San Pedro and San Pablo
it would be about 3/4 of a mile in a North Easterly
direction from the Oak tree marked on the N E corner
of the square plat laid down in the Diagram
12 Question Can you point out on said Map
where the old road from Santa Clara to San
Francisco ran?
Answer The lines drawn diagonally across the
square plat in said Diagram running from N W
to S E represent correctly the course of the old San
Francisco road across said land
13 Question Was this the only road running from
that neighborhood to San Francisco if not where
did another run?
Answer That was not the only road, there was
another road which ran from the mission
out past San Pedro and San Pablo to San Francisco
14 Question If there had been any cultivation or
improvement on the land in question between the years
1843 and 1846, would you have been certain to know
it?
Answer As a matter of course I would have known
it as I was upon the land nearly every day
15 Question Did Sanchez have any cultivation in the
neighborhood of this land
Answer He had not but his sons cultivated some
in the neighborhood

Cross Examined by Claimants Counsel

34/514

71

143 ND
PAGE 72

1 Question Where did you first see and become acquainted with Francisco Garcia?
Answer I first saw and knew him at the Mission of San Francisco
2 Question When did you next see him?
Answer The next Time I saw him was at the Mission Dolores
3 Question When did you first see him in Santa Clara?
Answer I think it was about 1844
4 Question What was he doing Time then?
Answer I did not see him occupied in any thing he was just going about there
5 Question Where did you live when you first saw Garcia at Santa Clara?
Answer I lived on my Rancho of Guadalupe about one league in a Northerly direction from the Mission of Santa Clara
6 Question How long did Garcia remain about the Mission after you first saw him there?
Answer I can not say how long, It might have been a few days, he was in the habit of coming and going, I did not live at the Mission but when I went to there I some times saw Garcia there but I did not know how long he stayed or how often he came.
7 Question While did Garcia stay when he was visiting the Mission, Did he live with the Priest?
Answer He stops at the house of Padre Real
8 Question, Was he not employed by the Priest about the Mission looking after the property?
Answer He was not
9 Question How do you know he was not?
Answer Because I saw him myself, he was not there permanently enough for any employment
10 Question Do you know Secundino Robles and

143 ND
PAGE 73

was he Major Dom of the Mission in 1845 + 1846
Answer I know him and he was Major Dom
in those years
11 Question Do you know Jose Castro and was he at the
Mission in 1845. and 1846 stationed there with troops?
Answer I know him and he was stationed there with
troops at that time,
12 Question How do you know what land it is
which Enright claims in this case?
Answer I know it because I have heard that Garcia
acted on the land of San Pedro and San Pablo and
that afterwards Enright bought of Garcia
13 Question Do you know the boundaries of the land
said to have been granted to Garcia or that claimed
by Enright if you know do you know them?
Answer I do not know them
14 Question Where was the land situated which was
cultivated by the sons of Garcia How far and in what
direction from the Mission?
Answer It was South from the Mission about 3 or
4 thousand vares more or less
15 Question Was it East or West of the road from
the Mission to San Jose
Answer South from the Mission to San Jose it was
on the right hand side of the road
16 Question How far was this land, which the sons
of Garcia cultivated from San Pedro and San Pablo
and in what direction from the same?
Answer It was perhaps about 1 league South from
San Pedro and San Pablo
17 Question How do you know that the sons of Garcia
cultivated lands there, when was it in what years
and how much did they cultivate?
Answer I know it because I saw them cultivating
in 1846 they cultivated about 5 or 6 acres
18 Question Did the Mission cultivate any land

35/574

73

143 ND
PAGE 74

near them in the same neighborhood and was there any house upon the land which the Sons of Garcia cultivated?
Answer The Mission planted on one side of the seeing ground, and the Sons of Garcia on the other side and there was no house on the land which the Garcias cultivated
19 Question Were there any Indians employed in cultivating with the Garcias?
Answer There were some Indians of the Mission employed by and working for the Garcias
20 Question Who requested you to attend here as a Witness
Answer Mr Wilson asked me to come
21 Question Where does Mr Wilson live does he live on the land Claimed by Enright?
Answer Yes he lives on the land Claimed by Enright
22 Question Did Mr Wilson or any one else and if so, who, show you this Map of which you have testified, before you began to testify in the Case?
Answer It was not shown to me by any one before my examination
22 Question Objected to by the Law Agent as incoalent P. L.
Re Examined by the U S Law Agent
1 Question Why do you not know the boundaries of Mr Enrights Rancho, as you state in your Answer to 13 Question of Cross examination herein?
Answer How can I know the boundaries when I have never seen them measured
2 Question Do you know the land represented on this map as the land belonging to Mr Enright
Answer No I can not recognize this as the land belonging to Mr Enright
This 2 Question Objected to by Claimants Counsel as leading P. L.

3 Question Have the land marks represented on said Map been recently pointed out to you by any one?

Answer Yes they were recently pointed out to me by the Surveyor, his name I do not recollect

This 3 Question and answer objected to by Claimants Counsel as incompetent

P. L.

Jose Anto his + mark Aloisa

143 ND
PAGE 75

Subscribed and sworn to before me on this 20th day of June 1854

Peter Lott Commissioner for taking Testimony &c

Filed in Office June 21st 1854

Geo Fisher
Secretary

Deposition of Julian Cantua

United States of America
State of California ss }

San Francisco June 21st 1854

This day personally came before Peter Lott a Commissioner for taking Testimony to be used before the Board of U S Land Commissioners in said State Julian Cantua a witness on behalf of the United States in Case No 514 on the Docket of said Board wherein James Enright is Claimant and said witness being duly sworn, on oath deposed in Spanish which was interpreted into English by the Interpreter of said Board as follows to wit

The Counsel for the Claimant is present

Questions by the U S Land Agent

1 Question What is your name age and residence?

75-

143 ND
PAGE 76

Answer My Name is Julian Cantua my age about 60 years. My residence at the Rancho Guadalupe of the Alisos about one league from the Mission of Santa Clara in Santa Clara County California where I have lived about 14 years

2 Question Are you acquainted with Francisco Garcia and James Enright, if yea has any one ever pointed out to you the land claimed in this case if so who and do?

Answer I know said Garcia, I do not know Enright I have heard of him. The neighbors have told me that the land there was claimed by Enright, I was with the Surveyor lately when he measured the land

3 Question Were you acquainted with this land in 1844. 1845 and 1846. if yea was there any occupation or cultivation of it by Francisci Garcia or any other Person?

Answer Yes I know the land in those years I know it when it was all a vacant, but I cannot say as to the year. I know nothing about the years I know we planted at San Pedro and San Pablo in one season

4 Question Do you know when the Bear Flag was raised, and the Americans came to the country If yea was this land in question either occupied or cultivated by Francisco Garcia or any other Person before that time

Answer Yes I know the time of the Bear Flag and there was no occupation or cultivation of this land by Garcia nor any one else before that time

Cross Examined by Claimants Counsel

1 Question Who was the land situated which was granted to Garcia by Micheltorena?

Answer I do not know what land was granted to him it might have been that at San Pedro and San Pablo.

143 ND
PAGE 77

2 Question Where was the land which was cultivated by Garcia or his sons?
Answer It was South of the road nearer to the Mission than the land occupied by Enright
3 Question Do you know what land Enright claims by the boundaries thereof?
Answer I know the land and the boundaries
4 Question How did you learn the boundaries?
Answer I was with the measurer when he measured the land I do not know his name.
5 Question What sort of a house was on the land cultivated by Garcia or his sons was it an adobe or a wooden house?
Answer. I am sure there was no house on that land
6 Question Who asked you to be present when they measured the land?
Answer A man there asked me to come along with them, I do not know who it was
7 Question How much was you paid for going there or for coming here as a Witness, and by whom?
Answer I was paid nothing in either case the man who came with me promised me I should be paid for coming
8 Question Did you tell any one before you came here what you would swear to when you came?
Answer No I have told no person
9 Question How much land did Garcia or his sons cultivate
Answer I do not know I cannot tell whether it was 1000 varas square or more or less than that I was there once when they were planting but know nothing of the quantity they cultivated
10 Question Was that before the Americans came into the Country?
Answer Yes it was
11 Question Did you see Francisco Garcia there where

37/514

77

they were planting
Answer No I did not I saw his son there
Julian his + mark Cantua

Subscribed and Sworn to
before me on this 21st day
of June A D 1854
Peter Lott Commissioner
for taking Testimony &c &c

143 ND
PAGE 78

Filed in Office June 21st 1854
Geo Fisher
Secretary

Deposition of Manuel D. Mirantes

United States of America }
State of California ss }
San Francisco June 21. 1854

This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U S Land Commissioners in said State, Manuel D. Mirantes a witness on behalf of the United States in Case No 514. on the Docket of said Board, wherein James Enright is Claimant, and said Witness being duly Sworn, on oath deposed in English as follows to wit
The Counsel for Claimant is present
Questions by U S Law Agent
1 Question What is your name age and residence?
Answer My name is Manuel D Mirantes, My age 43 years my residence Santa Clara County California
2 Question Look at the Map now shown you marked X Y Z No 1 P.L. annexed to the Deposition of Jose Antonio Alviso in this Case and state whether you have recently examined the land Claimed by Enright in this Case with reference to its boundaries Cultivation &c whether this Map is a correct representation of the localities of the objects there on noted and whether there was ever any house cultivation or

143 ND
PAGE 79

improvement on said land claimed by Enright made by Garcia or any one else before the Americans took possession of the Country?

Answer About the Middle of last June the Went with the Surveyor and he showed me the boundaries of Enrights land as laid down on this Map This is a correct delineation of the land and the objects noted as they exist time. I was well acquainted with the land and from 1843 to 1848 when Enright first built there there was no cultivation house or improvement of any kind on said land by Garcia nor by any other person.

3 Question Are you acquainted with Jose Castro if you do you know of his being in the neighborhood of Santa Clara in the Summer of 1846 and was you frequently over the land in question during that Summer and did you see anything of said Castro in that vicinity that Season

Answer I am acquainted with Sd Castro and I saw him about Santa Clara with the troops in the Summer of 1846, I was often over the land in question that Summer I saw Genl Castro at the Mission and he passed over this land with his troops but I never saw him about the land at any other time

4 Question During the Summer of 1846 and a house had ever existed on said land without your knowing it?

Answer No there could not. I was every day both on and from and across the land

5 Question Do you know who the Jose Castro took care of his own horses when he was at Santa Clara in Command of the troops and hunt them up when he wanted to use them, or did he employ some other persons for this purpose,

Answer He never took Care of his own horses, he would ride up to the Mission and get off his horse

38/574

79

143 ND
PAGE 80

and never saw it again till it was brought to him ready to be mounted

Cross Examined by Claimants Counsel

1 Question Do you know that said map which you have examined describes the land which Enright claims?

Answer I know it by the Surveyor.

2 Question How do you know that the Survey was correctly made, were you present

Answer I was present but I cannot say as to the correctness of the Survey.

3 Question Who requested you to be present at the Survey and examine the land?

Answer Mr Wilson requested me

4 Question Has you Paid or Promised Pay for being present time at the Survey or coming here as a Witness if yea by whom?

Answer I was neither Paid nor Promised any Pay for Either.

5 Question Have you attended heretofore as a Witness and attended those Surveys and gone to all the trouble you have had in this Case without the expectation of being paid for it?

Answer If they choose to pay me they can do so but they cannot be forced to do it I have never received any money for it.

6 Question Why have you taken so much trouble in this Case without Pay or the hope of it?

Answer They asked me fairly and fairly I came

7 Question Do you undertake to say Enright cultivated any land in the neighborhood of the Mission in 1844. 1845. and 1846?

Answer He cultivated land in 1846. I know of no cultivation by Enright in 1844 or 1845. He cultivated in 1846 about 100 yards South from the land marked out on this Map

80

8 Question Had he any house on the land which he did cultivate

Answer He had none They dug a well there for water but had not a sign of a house.

Manuel D his x mark Morantes

143 ND
PAGE 81

Subscribed and Sworn to before me on this 21 day of June A.D. 1854

Peter Lott Commissioner for taking Testimony &c

Filed in Office June 21st 1854

Geo Fisher
Secretary

381

143 ND
PAGE 82

Exmo Sor.

Monterey Enero 2º de 1844.
Informe el Srio del Despacho.
Micheltorena.

El pedido de tierras de labor es de ocho mil varas

Pacheco

Francisco Garcia de origen Mexicano casado con numerosa familia Vecº de la Mision de Sn Antº ya para 3 años ante V. Exia como mas haya lugar en dho. y con el respeto debido se presenta y dice que deseando ubicar una casa en la Mision de Sta Clara y asi mismo 2000 varas de terreno para labor en parage en donde no se perjudique la Mision siendo el solar á continuacion de la huerta pequeña de dho. establecimiento de 500 varas de frente y las mismas de fondo Por tanto ocurre á V. Exia para que se digne atender á mi solicitud en lo que hara la felicitad de mi familia y yo recibiré merced y gracia jurando lo necesario &.

Mision de Sta Clara. 26 de Dbre. de 1844.

Francisco Garcia.

No va en papel sellado por no encontrarse en el inmediato Pueblo.

Exmo Sor. Gobernador.

Segun el certificado que el interesado de la precedente instancia acompaña del R. P. Mtro. de Sta Clara para que no hay inconveniente alguno para que V. E. acceda á mi pretension, si asi lo juzgue por conveniente.

Dha. la Misma.

Manl Jimeno.

Monterey. Enº 6 de 1845. = Concedido como Judice informe el M. R. P. Ministro. Micheltª.

Por presentado esta peticion con documento, que espresa hagarse informacion de identidad y vista de ojos y reconocimiento de dhas. tierras: El C. Dolores Pacheco, Alcalde constitul del Pueblo

de San José, actuando por receptoria con dos testigos de asistencia á falta de escribano publico, asi lo proveyó mandó y firmó con los de su asistencia

Dolores Pacheco. de assa. Lorenzo Pinole = Salvio Pacheco.

143 ND
PAGE 83

Estando en el campo, terreno conocido para de la Micion de Santa Clara, á los diez y ocho dias del mes Febro de mil ochocientos cuarenta y seis. Yo el Juez Constitl de 1a nominacion del Pueblo de San José Guadal-upe, se presente el Sr. Agustin Desponjes, apoderado del R. Francisco Garcia, en vista de los autos de solicitud y con arreglo á la ley de colonizacion presentes los C.C. Salvio Pacheco y Lorenzo Pinedo medidores y testigos de asistencia mando dho. Señor procedieren á las medidas de los mil varas de tierra para labores como lo pide la parte, inmediato á la espresada Micion en el bajo y puesto en punto S. Nor. Noreste habiendo reconocido los rumbos y medido un cordel de sin cuenta varas cas-tellanas que medieron los medidores testigos aciendo el Juramento de estilo de ser legales en su ofecio y cumplir fielmte & con su empleo, se dio principio á medir tir-ando una linea de veinte cadeles desde la encina pri-mera antes del parage conocido Sn Pedro y S. Pablo para el Sur Sureste. Cuyo arbol quedo de lindero abs-ario para formar el marco de su estension de tierra resultando quedar medidas ocho mil varas de tierra lineado pr la primera medida hasta los limites de Mariano Castro y abiendo puesto las mohoneras de estilo á satisfacion del apoderado se dio la posecion al interesado lo que pidio por testimonio y el Juez primero del espresado Pueblo lo da de haber pasado como dho es y que las medidas hecho con la mayor legalidad pr los medidores para que conste en todo tiempo y lugar firmaron con el presente Alcalde.

Dolores Pacheco. assa. Salvio Pacheco.

De assa. Lorenzo Pineda.

143 ND
PAGE 84

En seguida en el mismo, dia mes y año y en la espres-
-ada Micion de presente el espresado Agustin
Desporjez referido apoderado del susodho. Francisco
Garcia y presentes los CC. Salvio Pacheco y Lorenzo
Pinedo medidores que hantes fueron de las tierras y
visto que en la misma solecitud anterior se contrae
la de un solar para linea de casa de sien varas en
el cuadro de casas de recitada mision pa lo que
con arreglo á la ley de treinta y cuatro se procedio
á la medida primera y guardando el rumbo al
Este nordeste pa frente y lineado con el frente de la Yg-
-lesia y casa de dho. Pinedo tomando el frente de sin-
-cuenta y seis varas, y el fondo de siendo cuarenta
y cuatro hasta alinear con la pared de la puerta chica
y cuadro de carras de Dha. Micion y aviendo puesto
las mohoneras de estilo sin contradicion alguna y a
satisfacion del apoderado se dio la posecion al interes-
-ado lo que pedio pr. testimonio y el Juez primero
del espresado Pueblo, lo da de haber pasado como dho.
es y que las medidas han hecho con la mayor legali-
-dad, por los medidores y pa que conste en todo tiempo
y lugar firmaron con el presente Juez.

Dolores Pacheco. assa. Salvio Pacheco. Lorenzo Pinedo.

Queda tomada razon de este solar y tierras de
labor en el Libro respectivo de este Juzgado a fojas
dos y siente.

Pacheco.

Filed in office. Jany. 18th 1853.

Geo. Fisher.

Secry.

45/514

85

Translation of Doc H H No 1 annexed to the Dep of Salvio Pacheco

143 ND
PAGE 85

Most Excellent Sir

Francisco Garcia of Mexican origin married and having a large family a resident for about three years of the Mission of San Antonio presents himself before your Excellency as the law may favor him best and with due respect represents that being desirous of having a peace for a house in the Mission of Santa Clara and like wise 2000 varas of farming land in a location that there may be no trespass against the Mission lands the house lot (under application) being next to the small garden of said establishment of 100 varas front by the same in depth, He therefore appears to your Excellency in order that your Excellency may be pleased to consider his Petition by doing which you will promote the happiness of my family and I will receive a favor and bounty Taking the necessary Oaths &c

Mission of Santa Clara 26 December 1844
Francisco Garcia

Monterey January 28 1844
Let Mr Secretary of the Department report on the subject
Micheltorena

The Petition (el pecado) for the farming lands is for 8000 varas
Pacheco

This is not written on sealed paper as it is not to be found in the adjacent Pueblo

To the Most Excellent Governor Sir
According to the Certificate which the party interested in the preceding Petition furnishes from the River and Father Minister of Santa Clara it appears that there is no objection whatever to your Excellency's acceding to his prayer if you think proper to do so
Same date

86

Manuel Jimeno

Monterey Jany 6th 1845

Granted as asked for and Reported by the Most Reverend Father Minister

Michel Torena

On the presentation of this Petition with the document therein mentioned let an information be taken of the Identity ocular inspection and recognition of said lands The Citizen Dolores Pacheco Constitutional Alcalde of the Pueblo of San Jose Guadalupe acting by Commission with two assisting witnesses for the want of a Notary Public thus ordered and decreed and subscribed it as well as the witnesses assisting

Dolores Pacheco

Assisting Witness Salvio Pacheco

Assisting Witness Lorenzo Pinedo

Being in the ground land known as belonging to the Mission of Santa Clara on the 18th day of the month of February of the year 1846 I the Constitutional Judge of First Instance of the Pueblo of San Jose Guadalupe and being present Señor Agustin Desjorjes Attorney in fact of Señor Francisco Garcia and in view of the proceedings of the Petition and in accordance (with) with the Colonization law and also being present the Citizens Salvio Pacheco and Lorenzo Pinedo Measures and assisting witnesses the said Judge ordered that they should proceed to the measurement of the two thousand varas of farming land, as asked for by the party adjoining the said Mission in the low ground (bajio) and located at a point to the North North East and having been established the bearings and measured a Cord of fifty Spanish varas by the measures witnesses who having first been sworn according to law to perform these duties with fidelity commenced to measure

143 ND
PAGE 86

87

143 ND
PAGE 87

by running a line of 20 Cords from the first live Oak (Encina) before the place known as San Pedro and San Pablo to the south South East which tree remained as a dividing boundary in order to guard in running the square of his tract of land and after wards there were measured 800 varas of land the line of the first measure being up to the limits of Mariano Castro and the usual land marks having been placed to the satisfaction of said Attorney possession was given to the party interested and he having asked these presents as a Record of the above measurement and possession the first Judge of said Pueblo grants the same and states that the said measurement was made with the greatest legality by the said measurers in proof whereof and in all time and place the said measurers subscribed there along with said Alcalde

Salvio Pacheco

Assisting witness
Salvio Pacheco

Assisting witness
Lorenzo Pineda

In continuation in the same day month and year and at the said Mission being present the said Agustin Desjajes the said Attorney in fact of the above named Francisco Garcia and also being present the Citizens Salvio Pacheco and Lorenzo Pineda measurers who are before the measurers of the lands and it being seen that the same foregoing Petition embraces another for a building lot for a house of 100 varas in the block of houses of the said Mission

Wherefore in accordance with the law of 1834 they proceeded to measure the first line running in the direction of East North East in the front and in a line with the front of the church and house

of said Pinedo the lot having a frontage of 56 varas and a depth of 144 until it coincides with the line of the wall of the small garden and block of houses of said Mission and having placed the usual land marks without any opposition whatever and to the satisfaction of the Attorney possession was given to the party interested and he having asked this document as a Record of Measurement and possession the Judge of the first Instance of the said Pueblo grants the same and certifies that the measurement was made with the strictest legality by the Surveyors and in proof whereof in all time and place, they subscribed the same together with the Judge present

143 ND
PAGE 88

Dolores Pacheco

Subscribing witnesses
Salvio Pacheco Lorenzo Pinedo

Record is made of this house lot (solar) and farming lands, in the proper book of this Tribunal on leaves 2nd and its reverse

Pacheco

I Certify the above to be a true and faithful translation

Office of the Board of Commissioners &c
San Francisco April 5th 1854
Geo Fisher
Secretary

Filed in Office January 17th 1853
Geo Fisher
Secretary

Case 514.

89

143 ND
PAGE 89

En la Mision de Sta Clara á los veinte dias del mes de Octubre de mil ochocientos cuarenta y siete ante mi Ygnacio Albizu, Juez de Paz auxilar de la Jurisdicion del Pueblo de San José Guadalupe y por anté los testigos de asistencia con quienes actuo en forma de derecho, á mas de los instrumentales de que al fin se hara mencion pur-ecio de presente el Ciudadano Franco Garcia de la vecindad de Monterrey (a quien doy fée conosco) y dijo que por si y á nombre de sus hijos, herederos, sucesores y de quien de ellos hubiere titulo, voz, y causa en qualquiera manera vendi y da en benta publica y en ajenacion perpetua por juro de heredad, para siempré jamas el Señor Santiago Enright (que tambien le doy fée conosco) todo el terreno de labar comprendido en titulo de concecion con que fué agraciado por el Gobierno Dep-artamental que son dos mil varas en cuadro en seis de Enero de mil ochocientos cuarenta y cinco y la posecion juridica que se le dio en diez y ocho del mes de Febo de mil ochocientos cuarenta y seis por el Alcalde primero del pueblo de San José Gua-dalupe Ciudadano Dolores Pacheco como consta por los documentos archibados en el pueblo de San José Guadalupe y declara que dicha tierra de labor no esta bendida, empenada ni enajenada y que esta libre de todo gravamen publico, perpetuo, temporal especial general tacito y espreso y como tal lo bende en precio cuantia la cantidad de seis sientos pesos fuertes que a su satisfacion a recibido el otorgante y sobre me parecer de presente la entrega, renuncia las leyes de ella, las de su prueva y paga del recibo como en ella se contiene y asi mismo declaro que el justo precio y verdadero valor de las mencionadas tierras son los nominados seisientos pesos que mas no vale ni ayo quien tanta le aya dado por ella, y si mas vale ó valen puede del eceso en mucha ó poca suma hace a favor del comprador, gracia y

143 ND
PAGE 90

y donacion pura perfecta i irrevocable que en derecho se llama interviros, con insinuacion y demas firmesas legales, y renuncia las leyes que tratan de los contratos de benta, trisegue y de otros en que hay leccion en mas ó menos de la mitad del justo precio y los cuatro años prefirma para pedir su revision y suplemente á su justo valor los que da por pasados como si efectivaste lo estubiera: y desde hoy en adelante para siempre se desapoderá, desiste, quita y aparta á sus herederos sucecion titulos, voz, recurso y otro cualquiero derecho que le competa á la enunciada tierra; la cede renuncia y traspasa con las acciones reales y efectivas en el comprador y en quien la suya represente para que la posee, goze, cambie, enajene use y disponga de ella á su elecion como cosa suya adquirida con legitimo y justo titulo: y le confiere poder irrevocable con libre franca y general adminis-tracion y constituye pocurador, actor en su propia causa para que de su autoridad o judicamente entre y se apodere de la dominada tierra y de ella tome y aprenda la real tenencia y pocecion que por derecho le competa y para que no necesite tomarla, esta escritura le sera sufi-ciente, con la cual sin otro acto de aprencion a de ser visto haberla tomado aprendido y transferido, y en el interim se constituye su inquilino, tenedor y precario pos-edor en legal forma y se obliga, á que dichas dos mil varas de tierra seran siempre segura y efectiva al comprador y nadie les inquietará ni mobera plito sobre su propiedad, pocecion goze y defraude, ni contra ella aparesera gravamen alguno, y si se le inquietare moviere o aparecere, huego que el otorgante, sus hered-ores y sucesores sean requiridos conforme á derecho saldrán á su defensa, hasta efectuarlo y dejar al comprador y á los suyos en su libre uso, quieta y pacifica pocesion, siendo responsables de las costas gastos intereses y memoria caro que se le siguieren ó irrogare; por todo lo cual se a de poder efectuar solo

91

143 ND
PAGE 91

en virtud de esta escritura y juramento del que posea las tierras ó de quien le represente en quien difiere su importe y le releva de otra prueva. Y á la observancia de lo referido, obliga el otorgante su persona, bienes havidos y por haver y con ellos se somete al fuero y jurisdicion de los señores Jueces y justicias que de sus causas puedan y deben conocer conforme á las leyes vigentes para que á ello le compelan y apremien por todo rigor de derecho y via efectiva como se fuera por sentencia definitiva consentida y pasada en cosa juzgada que por tal la recibe, renuncia las leyes, fueros y privilegios que puede y debe renunciar y la general en forma = En cuyo testimonio que los derechos de escritura deben pagarse por el comprador, así lo otorgo y firmo. conmigo y los testigos de asistencia en la forma arriba espres-ada, siendo los instrumentales los ciudadanos Lorenzo Piñedo. Fesdº Robles. y Gavillº Char.

Y por no saver firmar firmo arruego de Ygº Alviso. Arruego de Franco Garcia.

José Perez.

arruego de Teodoro Robles. Eusebio Galindo

De assº Eusebio. Galindo.

"Archivado me libro se llama Registro de terrenos pagina 131. por Carlos White Alcalde 1º Pueblo de San José de Guadª T. C. nº 1.

Filed in Office. Feby. 10. 1854.

Geo. Fisher.

Leary.

39514 —

93 Translation of Exhibit S C No 1

143 ND
PAGE 92

At the Mission of Santa Clara on the 20th day of the Month of October 1847 Before me Ygnacio Alviso assistant Justice of the Peace of the Jurisdiction of the Pueblo of San Jose Guadalupe and before the accompanying witnesses with whom I act in legal form, besides the subscribing witnesses of whom mention will be made at the foot hereof Personally appeared Citizen Francisco Garcia a resident of Monterey (whom I attest I know) and stated that for himself and in the name of his children his successors and of whomsoever of them who may acquire right power and cause in any way whatsoever, he doth hereby sell and grant in sale to be known beyond annual and in perpetual alienation perpetually and for ever unto Mr Santiago Enright (whom I attest I know also) all that piece or parcel of farming land as contained in the title of concession which was granted to him by the Departmental Government being two thousand varas square on the 6th of January 1845, and the judicial possession thereof was given to him on the 18th of the Month of February 1846 by the 1st Alcalde of the Pueblo of San Jose Guadalupe Citizen Dolores Pacheco as it appears from the documents filed in the Archives of the said Pueblo and the said F Garcia hereby declares that the said tract of farming land is not sold conveyed or Mortgaged and that the same is free from all incumbrances public perpetual temporal special general tacit and express and as such he hereby sells it in consideration of the sum of Six hundred dollars which he the Vendor has received to his satisfaction and also not appearing of the delivery (of the money) to have been effected in the present time he the said F Garcia hereby relinquishes the laws relating thereto the laws relating to the proof and payment of the Receipt as therein contained and

183

likewise he declares that the said six hundred dollars is a fair price and the real value of the above mentioned premises that the same is not worth more, nor did he find any other person who would have offered "him" so much and that if it is or may be worth more "of the" surplus thereof whether great or small he makes unto the Vendee a grant and donation to be pure perpetual and invocable as called in law intervivos with the production of these presents to a competent Judge for the interposition of his judicial approval and other legal securities and further he relinquishes the laws relating to contracts of sale barter &c where there is a fraud more or less of the moiety of a fair price and he grants to have expired as if it actually was the term of 4 years provided to demand a rescission or adjustment of a fair price and from henceforth forever he the said F. Garcia dispossesses himself desists quits and separates from himself and his hires and successors the domain or ownership succession, title power and "and" recourses and any other right whatsoever of him "to" the said price or parcel of land all of which he grants relinquishes and conveys with real personal useful mixt direct and executive actions unto the Vendee and his hires and administrators in order that he and they may possess enjoy barter convey and use the same and dispose thereof at his or there choice as his or their own property acquired by a legal and right title and he the said G. Francia hereby confers upon the said S. Enright invocable power with free and general administration and constitutes him attorney and Plaintiff in his own cause that he may of his own authority, or judicially enter upon and occupy the said price or parcel of land, and have and hold the actual possession and occupation thereof as in law it appertains to him and in order that it may be unnecessary for

40/374

95

143 ND
PAGE 94

him to take such a possession, the present deed suffices when with without any other act of holding such a possession shall be deemed to have been had and held by and transferred to him the said Enright and in the mean time he the said F Garcia constitutes himself a tenant, holder and precarious possessor in legal form of him the said S Enright and the said F Garcia hereby promises and agrees that the said promises shall always be secured unto the Vendee and no body shall disturb him, nor move any action in respect to the ownership possession and enjoyment thereof, nor shall there be any other disturbance whatsoever and if the said S Enright shall be disturbed, or any action brought against him as soon as he the vendor his heirs or successors shall be required according to law, he or they shall come forward in defence against the same until a judgment shall have been obtained in favor of the said S. Enright and he and his heirs executors or administrators and assigns be left in full enjoyment and quiet and undisturbed possession: the said Vendor his heirs or successors to be responsable for such costs charges interest or damages as may be occasioned thereby,

For all of which the said S Enright may issue execution but by virtue of these presents and an oath by the possessor of the premises or his attorney who is to share in the power and hereby released from other proofs

And for the due performance of the same the said F Garcia hereby binds himself and his present and future Estate and there with he submits to the jurisdiction of such courts or Justices as may take cognizance of the same according to the existing laws that they may compel him to the fulfilment thereof by all signs of law and in a summary way

as if by a definitive judgment agreed to and rendered on a third Case and as such he doth hereby admit relinquishing all laws charters and privileges and the general Laws

In Witness whereof that the fees of Office are to be paid by the Vender thus he myself and the accompanying witnesses signed these presents the Subscribing Witnesses being Citizens Lorenzo Pineda Fernando Robles and Guillo Char

143 ND
PAGE 95

Signed by request of Ygno Alviso

At the request of Franco Garcia
Jose Pena

Accompy Witness At the request of F Robles
Eusebio Galindo Eusebio Galindo

(Written on the back of it)
Recorded in a Book called Register of Lands Page 131 by
Charles White
1st Alcalde of the Pueblo
of San Jose De Guadalupe

I Certify the above to be a true and Correct translation of the Exhibit T L No 1 in Case No 514 on the Docket of this Board

Office of the Secretary of the U S Land Commission &c

San Francisco the 8th day of April A D 1854

Geo Fisher Secretary

Filed in Office February 13th 1854
Geo Fisher Secretary

41/574-

97

Exhibit No 2

143 ND
PAGE 96

Know all men by these Presents That I Francisco Garcia of the Town of Monterey Territory of California United States of America found in consideration of the sum of six hundred (600 $) Dollars good and lawful money to me in hand paid by James Enright of San Francisco of the said Territory of California the receipt of which I hereby acknowledge have this sixth day of November in the year of our Lord One thousand eight hundred and forty eight granted bargained sold and conveyed and by these Presents do grant bargain sell and convey unto the said James Enright all and singular the following piece tract lot or parcel of land in the vicinity of the Mission of Santa Clara in the before mentioned Territory of California with all its privileges and appurtenances by me and being situated as follows to wit

Beginning at a place named San Pedro y San Pablo at the distance of about three miles from the said Mission of Santa Clara on the high road to San Francisco and running in a South West[erly] direction the distance of two thousand varas from said high road thence in a North West[erly] direction two thousand varas thence to and as the North East two thousand varas and last by the same distance of two thousand varas to the spot called San Pedro y San Pablo at which the measurement commenced thus forming a square of two thousand varas on each side, or eight thousand varas in circumference which tract of land was granted to the said Francisco Garcia by Don Manuel Micheltorena former Governor of this Territory under the Mexican Government on the 5th day of January one thousand eight hundred and forty five as will appear by the annexed certified copy of the original deed which said original deed

143 ND
PAGE 97

is not transferred along with this tract of land in Compassing at the same time another grant of a house lot ceded to said Francisco Garcia which he still holds in his own name, and the certificate of judicial possession given by Juan Dolores Pacheco Alcalde of the Pueblo of San Jose de Guadalupe on the eighteenth of February eighteen hundred and forty six as appears by the records of the Juzgado of said Pueblo a copy of which deed of possession likewise accompanies the Bill of Sale

Now I Francisco Garcia for myself my heirs and assigns do hereby covenant and agree with the said James Enright to warrant and defend all and singular the aforesaid tract of two thousand varas square of land with all its privileges and appurtenances thereto belonging unto the said James Enright his heirs and assigns against the claims and demands of all persons whatsoever,

In testimony whereof not knowing how to write I have hereunto set my mark in Monterey Upper California this day and year before written

Francisco + Garcia
his mark

Signed and delivered
in the presence of
W E P Hartnell
Gregorio de Ayala

I Maria Josefa Gonzales de Garcia the wife of Francisco Garcia of Monterey do hereby confirm the foregoing deed or instrument of writing signed by my husband Francisco Garcia and of my own free will and consent assign all right and title for myself heirs and assigns to the piece parcel tract or lot of land referred to in said Deed in favor of James Enright his heirs and assigns forever,

42/514

99

Dated Monterey this sixteenth day of November in the year of Our Lord one thousand eight hundred and forty eight

Maria Josepa + Gonzales de Garcia
her mark

143 ND
PAGE 98

Signed and delivered in the presence of
W. E. P Hartnell
Gregorio de Ajuria

Personally appeared before me Florencio Serrano Alcalde of the Town and jurisdiction of Monterey Upper California Francisco Garcia and Maria Josepa Gonzales de Garcia his wife and acknowledged the foregoing instruments of writing to which these signatures are affixed to be their free act and deed

In testimony whereof I certify the same in this Juzgado of Monterey this sixteenth day of November A D one thousand eight hundred and forty eight

Florencio Serrano

Filed 2 55/60 Oclk P M 24 February A D 1852
John T Richardson
Recorder

Recorded in Book of Deeds D Pages 406. 407. & 408. at 2 55/60 Oclk P M 24 February A D 1852
Records Office Santa Clara Co Cal
J T Richardson
Recorder

Filed in Office Feb 10th 1854
Geo Fisher
Secretary

107

43/574

101

Deed

143 ND
PAGE 99

Know all men by these presents that I Francisco Garcia of the Town of Monterey Territory of California United States of America for and in consideration of six hundred (600 $) good and lawful money to me in hand paid by James Enright of San Francisco of the said Territory of California the receipt of which I hereby acknowledge have this sixteenth day of November in the year of our Lord one thousand eight hundred and forty eight granted bargained sold and conveyed and by these presents do grant bargain sell and convey unto the said James Enright all and singular the following described tract or parcel of land in the County of the Mission of Santa Clara in the before mentioned Territory of California with all its privileges and appurtenances lying and being situated as follows to wit

Beginning at a place named San Pedro y San Pablo at the distance of about three miles from the said Mission of Santa Clara near the high road to San Francisco and running in a Southwesterly direction the distance of two thousand varas towards said high road, thence in a Northwesterly direction two thousand varas thence towards the North East two thousand varas and lastly the same distance of two thousand varas to the spot called San Pedro y San Pablo at which the measurement commenced thus forming a square of two thousand varas on each side or eight thousand varas in circumference which tract of land was granted to the said Francisco Garcia by Don Manuel Micheltorena former Governor of this Territory under the Mexican Government on the 26th day of January One thousand eight hundred and forty five as will appear by the annexed certified copy of the original Deed (which said original

Deed is not transfered along with this tract of land it comprising at the same time another parcel of above lot ceded to Francisco Garcia which he still holds in his own name / and the Certificate of Judicial Possession given by Don Dolores Pacheco Alcalde of the Pueblo of San Jose de Guadalupe on the eighteenth of February Eighteen hundred and forty six as appears by the records of the Juzgado of said Pueblo a Copy of which said possession likewise accompanies this Bill of Sale

Now I Francisco Garcia for my self my heirs and assigns do hereby covenant and agree with the said James Enright to warrant and defend all and singular the aforesaid tract of two thousand varas / parcel of land with all its privileges and appurtenances thereto in any wise belonging unto the said James Enright his heirs and assigns against the demands and claims of all persons whatsoever

In testimony whereof not knowing how to write I have hereunto set my mark in Monterey Upper California this day and year before mentioned

Francisco + his mark Garcia

Signed and delivered in the presence of
W. E. P. Hartnell
Eugenio de Ojeda

I Maria Josefa Gonzales de Garcia the wife of Francisco Garcia of Monterey do hereby confirm the foregoing deed or instrument of writing signed by my husband Francisco Garcia and of my free will and consent resign all right and title for my self heirs and assigns to the piece of land tract or lot of land referred to in said Deed in favor of James Enright his heirs and assigns forever

143 ND
PAGE 100

44/514-

103

Dated Monterey this sixteenth day of November in the year of our Lord one thousand eight hundred and forty eight

her
Maria Josefa + Gonzalez de Garcia
mark

Signed and acknowledged
In the presence of
W. E. P Hartnell
Gregorio de Ojinaga

143 ND
PAGE 101

Personally appeared before me Florencio Serrano Alcalde of the town and jurisdiction of Monterey California Francisco Garcia and Maria Josefa Gonzales de Garcia his wife and acknowledged the foregoing instrument of writing to which their Signatures are affixed to be their true act and deed

In testimony whereof I certify the same in this Jurisdiction of Monterey this Sixteenth day of November A D one thousand eight hundred and forty Eight

Florencio Serrano

Filed in Office January 17th 1853
Geo Fisher
Secretary

1114

1115—

Stipulation

143 ND
PAGE 102

No 514

James Enright
vs
The United States

The Land Claim in this Case is situate in the State of California and North of parallel 37° of North Latitude

S. H. McKune
Law Agent
D. B. Crockett
Atty for Claimant

Filed in Office Aug 29th 1854
Lee Fisher
Secretary

104

47/514

107

Affidavit of Solomon Doane

In the matter of the application of James Enright before the United States Land Commissioners for the Confirmation of his Claim as the ML G No 514

143 ND
PAGE 103

Solomon Doane of Santa Clara County being duly sworn says that he is one of the parties interested in opposing the Claim of James Enright No 514 before this Commission in that said Claim has been before this Honorable Board within the past few weeks, that on the last day allowed for the taking of Testimony in said Cause by the order of this Court said Claimants introduced testimony which made it necessary for the rights of those adversely interested to take rebutting testimony, that said Claimants testimony was taken at such a late hour as to render it impossible to introduce such rebutting testimony at that time And this deponent further says that he is informed and believes that a Mr Innis who resides in Santa Clara County will depose that he has been acquainted with the land in controversy from 1841 to 1846 and knows that there was no house or improvements or cultivation on it, knows Garcia and knows that he never lived on the land

And this deponent further says that he is informed and believes that Mr Ballomy of the same place will testify that he knows Garcia personally and knows that since A D 1845. Garcia never lived in Santa Clara County nor cultivated any land in the County

Rhodes Justice of same place will testify to the same matters as Ballomy,

Armand of same place a Portuguese will testify that he knows every foot of the land he once

applied for it himself - was refused Garcia through the influence of the Priest obtained the grant in 1845 witness cultivated land adjoining or in sight and knows Garcia did not cultivate or have any Indians on the land and that he (Garcia) never lived in the County but that he knows perfectly well that Garcia lived at Monterey with his family

143 ND
PAGE 104

And this deponent further says that said testimony is not cumulative that he has used all possible dilligence in obtaining testimony in this Cause that this affidavit is not made for the purpose of delay that said defendants cannot safely submit said Cause to this Honorable Board without the testimony of said witnesses and further this deponent says not

And this deponent further says that the cultivation or traces of Cultivation on said Ranch as pointed out by "said" witnesses for the Claimant Norris and Martin and Shearkank were made by the Indians and are from half a mile to one mile out side of the limits of said Ranch and were never made for the grantee of said Ranch or for any one interested therein

Sworn and Subscribed before me
this 4th day of April A D 1854
Solomon Doane

Subscribed and sworn to
before me this 4th day of April 1854
Alpheus Felch
Commissioner

Filed in Office July 14th 1854
Geo Fisher
Secretary

514-3

48/514-

109

Opinion of the Board

James Enright
vs
The United States

For a parcel of land in Santa Clara County being two thousand varas square

This Claim is founded on an alleged grant of the land by Governor Micheltorena to Francisco Garcia and a subsequent conveyance by the latter to the present Claimant

514-3-

143 ND
PAGE 105

The evidence in proof of the grant to Garcia consists of the original Petition of Garcia for the grant an order for information the Report of Jimino to the Governor and the following decree written on the same sheet of paper to wit

Monterey January 6th 1845 Granted as asked for and according to the information of the very Reverend Father Minister

Micheltorena

The testimony of Juridical Survey is commenced on the same sheet of paper with the grant and all the signatures to said documents are proved to be genuine The Juridical possession was given Feby 18th 1846 and it is evident that these original papers were at that time in the hands of the grantee and relied upon by him and regarded by the Alcalde who gave the judicial possession as evidence of title to the land,

If these papers had been found in the Archives of the Government and not proved to have been at any time in the hands of the grantee they would not substantiate his Claim to a grant of the land, In form they do not constitute the best or the most perfect evidence of even an inceptive grant But the law does not prescribe any particular form of words to be used to constitute the inception of a title, Without the approval of the

143 ND
PAGE 106

Assembly or Deputation, no words of grant used by the Governor or Political Chief could make a perfect legal title to land But a document thus issued by him might be regarded as an inceptive and incomplete title and we have uniformly held that such document might lay the foundation for equities which the Commission might recognize and carry into effect by confirming the title

In regard to the document made by the Governor in order to sustain the character of an inceptive grant it may be affirmed first That while no particular words or form are prescribed or indispensible it must be couched in language clearly indicating the intention of the Governor to concede the land and to constitute the grantee after the provisions of the Colonization laws in other respects are complied with the owner by formal title of the soil. Secondly The document thus executed must be delivered to the grantee with the intention of having it serve him as evidence of his rights in the premises described therein and Thirdly it must be of such a character as to afford the basis of action for the approval of the Deputation or Assembly whose confirmation was needed to perfect the title.

Tested by these principles the document filed in this Case signed by Nicolas Lorenzo is sufficient to establish an inceptive grant which the grantee acquired rights of an equitable character, The words which constitute the document although brief are clearly words of grant and the production here by the party of the original with the proof that it was in his hands very shortly after its date and was the subject of Judicial action affords evidence of its delivery to the party as a document securing his right to the premises

49/514

111

The next inquiry is whether the grantee performed the condition of inhabitancy or cultivation imposed by the Regulations of 1828 The record of the proceedings in obtaining the grant shows that the grantee applied for a house lot in the Mission of Santa Clara at the same time that he applied for the land now in question for the purpose of cultivation and that the Father having charge of the Mission joined in recommending the concession.

* 143 ND
PAGE 107

It was evidently not the intention that he should reside on the house lot now in question but it was the intention that he should use it for cultivation It is proved by the Deposition of P. T. Schonbach that said Garcia had Indians at work on the place claimed in 1841 that he had bush houses and brush huts for them to live in on the land that they cultivated some eight or ten acres of the premises and had some cattle and horses which were used in the cultivation of the place and that it was cultivated in this manner according to the recollection of the witness from 1841 to 1846 after which the witness was not on the place for some time.

The witness Antonio Maria Pico states that before the land was granted Garcia had a kind of hut on it in which his servants lived He had Cows cattle and some horses on the place and cultivated some portion of it which was fenced on the sides by poles to keep in Cattle and this kind of occupation was continued up to the time when he sold to Enright the present Claimant

The witness Martin states that he saw the land before Enright came there he thinks in the fall of 1845 that there were then some Indian Gardens on it that those Gardens were cultivated nearly every year when crops planted on them and that they covered some ten or fifteen and possibly twenty

143 ND
PAGE 108

acres of the land Secundino Robles testifies that Garcia cultivated the land in 1844 and 1845, that the cultivation was continued in 1846 although Garcia was not there that year that he had a log house on the place in 1844, that he had horses and cattle and a corral upon it; that he had some two hundred acres of the land in wheat barley that the cultivation was made by Garcia with his sons and by the employment of the Indians from the Mission The witness passed by or over the place nearly every day

Jose Castro swears that in 1844, 1845 and a part of 1846 Garcia was at the Mission of Santa Clara and occupied and cultivated the land that he visited his place and breakfasted with him in 1845, that he had a small house of logs and adobe upon it, had wheat barley corn and other vegetables growing on it with fences and a corral erected and a field about five hundred varas in length by four hundred in width under cultivation This witness was frequently at the place during the years above mentioned;

On the part of the Government the witness Micantes Julian Cantua Manl Cantua and Jose Antonio Alviso swear that they were acquainted with the land during the time spoken of by the other witness and had the means of knowing if such cultivation had taken place and if there had been a house on the premises but they saw no such habitation or cultivation

The witnesses Campbell and Finley did not see the premises until 1847 the witness Ballany has known it only since 1845, and Walker since 1846 There is a difficulty in reconciling all the testimony which is presented in the case but the rule of law which gave the preponderance to the positive & direct

50/574

113

143 ND
PAGE 109

testimony of unimpeached witnesses swearing to the existence of a fact over those who gave a more negative statement as to their knowledge of the same fact applies to much of this testimony

From a careful examination of all the proofs in the case we think the preponderance of the evidence is in favor of the Claimant and must be regarded as establishing the fact of the cultivation of the place by Garcia from a period anterior to the grant to the time of the sale of the place to Enright and to show his right to convey his equitable interest in the premises to the latter Claimant.

A Deed from said Garcia and wife which is given in evidence proves the conveyance of such interest to said Enright on the 16th day of November 1848 although the purchase seems to have been made and possession given in 1847

The only remaining question relates to the description and location of the land, The land is described in the Petition for the grant as being 2000 varas of farming land in a location that will not prejudice the Mission A note is added in the margin of the Expediente by Pacheco the Alcalde, stating that the Petition for the farming land is for 8.000 varas

Under this description juridical possession was given of a price of land lying in a square form each side of which was two thousand varas in length the total being as described by the Alcalde in this record the measurement of 8000 varas of land lineal

The description in the Petition of Garcia might admit of "a" doubt whether the land prayed for contained two thousand square varas or two thousand varas square. The Magistrate who gave the juridical possession interpreted it as

measuring the latter and in this I think he was right The expression used is undoubtedly an inaccurate one or rather should have been accompanied by some expression defining its measuring more clearly

It is however the same unqualified expression now used by us when we speak of a vara lot meaning a lot one hundred varas square The same meaning I am satisfied from the whole evidence presented should be attached to the expression contained in this Expediente and the measurement made of that quantity of land by the Alcalde was therefore in accordance with the grant,

In making the judicial survey the Alcalde describes the starting point with great definiteness and running in the direction of South South west establishes one of the lines of the land upon which as a base the square is to be formed

The testimony establishes the location of the land as it was evidently intended to be on the South west side of the line thus run embracing the land occupied at the time of the judicial survey by the grantee and located so as to adjoin the Mission lands and also the lands of Mariano Castro

The Map which is given in evidence and the testimony of witness on the subject in my opinion establish both the location and the boundaries of the premises claimed with sufficient clearness to segregate the land,

The merits of the Case are with the Claimant and a Decree of Confirmation will be entered

Confirmed

Filed in Office August 8th 1854

Geo Fisher Secretary

143 ND
PAGE 110

115—

57/514

Decree of Confirmation

James Enright
vs
The United States

143 ND
PAGE 111

In this case on hearing the proofs and allegations it is adjudged by the Commission that the said Claim of the Petitioner is valid and it is therefore Decreed that the same be confirmed

The land of which confirmation is hereby made is situated in the County of Santa Clara and was occupied by said Enright the said land being in a square of two thousand varas on each side and lying adjoining lands known as the Mission Lands of the Mission of Santa Clara and having for the side of said premises next to said Mission a line drawn from the post Live Oak begone the place known as San Pedro y San Pablo and running thence to the South South east two thousand varas unless the same should sooner strike the limits of the land known in 1846 as Francisco Castros land and terminating the same at said Castros limits if the said line should strike said limits with less than two thousand varas The land hereby confirmed being the square having the line aforementioned for the side of the same on the part towards said Mission

Reference for further description thereof to be had to the grant of the said Francisco Garcia and the testimonial of juridical possession given under said grant both of which are on file

116

in this Case

Alpheus Felch

R. Aug Thompson

E. B. Farwell

Commissioners

143 ND
PAGE 112

Filed in Office Aug 8th 1854
Geo Fisher
Secretary

11

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

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

143 ND
PAGE 113

Office of the Board of Commissioners,

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

I, George Fisher Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing One hundred & Sixteen pages, numbered from 1 to 116, 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. 5-14 on the Docket of the said Board, wherein James Enright is

the Claimant against the United States, for the place known by the name of "A tract of land near Santa Clara

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

Geo. Fisher

Sec.

143
ND

Office of the Attorney General of the United States,

Washington, 7th March 1855.

143 ND
PAGE 114

James Enright

vs.

The United States. } 514

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of December 1854, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Caleb Cushing

Attorney General.

No. 143

U. S. D. Court N. D.

United States

vs.

James Enright.

Appeal Notice.

Filed April 14, 1885,

by W. D. Cheever,

Deputy.

143 / ND

PAGE 115

Office of the Attorney General of the United States,

Washington, 7th March 1855.

143 ND
PAGE 116

James Enright
vs.
The United States. } 514.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of December 1854, the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Caleb Cushing

Attorney General.

c.n.

No 143

U.S.D. Court N. Dist.

The United States
vs.
James Enright.

Appeal notice.

Filed May 5. 1855.
G. Chevers
Deputy.

143 ND
PAGE 117

143 ND
PAGE 118

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

The United States.
Appellants
vs
James Enright
No. 143.

The Petition of the United States by their Attorney represents: That this Cause is an application for a review of the decision of the Board of Commissioners whereby the Claim of the said Appellee was confirmed as appears by reference to the records in the Case: That a transcript of the said Records was filed in this Court on the 1st day of May 1853 that a notice of appeal was filed on the 1st day of Aug. 1853 and that the land claimed lies in the said District.

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

S. W. Inge
U. S. Dist Atty

No 143.

U.S. Dist. Court

The United States

v

James Enwright

Petition

Filed Febry 14. 1856.

by Chevers

Deputy.

2

143 ND

PAGE 119

A. Glassell

143 ND
PAGE 120

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

United States
vs
James Enright
} No 143.

The claimant James Enright by his attorney comes & says there is no error in the record & proceedings of the Board of United States Land commissioners in the above entitled cause, & that the said claimant is justly & lawfully entitled to a confirmation of his said claim. Wherefore he prays that the judgment & decree of the said commissioners be affirmed & that his said claim be confirmed by this Honble court. and he admits that the said land is situate in the county of Santa Clara, within the Northern District of California & that this court has jurisdiction thereof.

J. B. Crockett
atty for claimant

No 143.

United States
vs
James Enright

Answer to petition
J. B. Crockett
atty for
claimant

Filed Feby 14. 1856
by Chevers
Deputy.

3

143 ND
PAGE 121

24

James Enright
ads
The United States

Cubery.

143 ND

No 143

143 ND
PAGE 122

The documentary evidence of title exhibited by the claimant in this case is as follows — a petition to the Governor dated Dec. 20th 1844 a marginal decree ~~of~~ or order for information by the Governor and a favorable report ~~or~~ by the secretary Manuel Jimeno — On receiving this report the Governor makes the following decree — "Jany 6th 1845 Granted as asked for and reported by the most Reverend Father Ministro" "Michel Torrena" — ~~By~~ The ~~[illegible]~~ claimant has also produced a record of judicial possession which seems to have been formally given him by the Constitutional Judge of first instance of the Pueblo of San José Guadalupe on the 18th day of February 1846 —

It is objected that these documents ~~do not constitute any~~ are insufficient to vest any title either legal

143 ND
PAGE 123

or equitable in the claimant.
It must be admitted that
the concession in this case is
not the final documents or title
which by the 8th article of the
regulations the Governor was
authorised to issue when the
definitive concession was made
In Arguello et al vs The U. S.
18 How. p 543 the Supreme Court
after alluding to the "informes"
usually required by the Governor
says — "By the fourth section
the Governor being thus informed
may 'accede or not' to the petition
This was done in two ways
sometimes he expressed his
consent by merely writing the
word 'Concedo' at the bottom
of the expediente — at other times
it was expressed with more
formality as in the present
case ++ It is intended merely
to show that the Governor
has "acceded" to the petitioners
request of the applicant and
as an order for a patent or
definitive title, in due form to be

"drawn out for by exception - It
" is not itself such a document
" as is required by the 8th section
" which directs that the definitive
" grant asked for being made
" a document signed by the
" Governor shall be given to
" these as a title to the par
" ties interested" —

143 ND
PAGE 124

But this conception altho' not
the finial title which issued under
the 8th article is nonetheless a
grant — The words of grant are
positive and plain — and tho'
shorter and more informal
than the usual deeds of con
cession commencing with the
words "Vista la petition" it is
in all respects as effectual
to constitute an inchoate or
imperfect title —

It has always been held by
this Court that according to
the provisions of the Regulations
the formal & definitive title
contemplated by the 8th article
could not issue until after
the conception of the Govern or

4a

had been approved by the Departmental Assembly — and that the the practice of citing that document in advance of such approval and in terms "subject to it" obtained to a considerable extent yet that such a document where no approval had been obtained constituted merely an inceptive or equitable title — Whether this latter view be correct or not, no doubt can be entertained that the first draft of conception whether made in the more formal document usually observed or, as in the present case by the short declaration that the land was "granted as asked for", afforded the basis for the action of the Departmental Assembly whose approbation was necessary to perfect or give "definitive validity" to the title —

143 ND
PAGE 125

When therefore it appears that this inceptive title has been delivered to the party shortly after its date, and has been regarded as because the

by the Judicial officers as furnishing the requisite authority to enable him to put the grantee in possession, it should be treated as vesting in the grantee an inchoate or equitable title which when followed by occupation and cultivation ought to be respected.

143 ND
PAGE 126

There is no reason to suppose that the Governor after having obtained the requisite information had acceded to the petition, made a diem of concession, and ordered the patent to issue, he would have declined to sign the title in form. So far as his action was concerned he was functus officio, except the purely formal act of signing the final "documento". And it may be doubted whether if this concession had been approved by the Assembly he would have been at liberty to withhold from the party the formal evidence of title

which the 8th article directs him to issue in such cases.
It is not explained why the Governor did not in this case pursue the more usual practice of issuing the final title "subject to the approval of the Assembly"
143 ND
PAGE 127
Perhaps He may perhaps have in strict conformity with the regulations, have withheld it until the approval was obtained — or he may according to the loose and informal practice of the Country have considered that for so small a piece of land the grant endorsed upon the petition was sufficient to secure the rights of the applicant — The conveyance was at all events delivered to the grantee for we find it in his hands very soon after its date — and by virtue of it the possession was formally delivered to him —

The next inquiry is did the grantee fulfill the conditions usually annexed to the formal title & in consideration of which it

6

issued —

On this point there is some conflict of evidence — After referring to the testimony the Board in their "opinion" say — From "a careful examination of all the "proofs in the case we think "the preponderance of proof is in "favor of the claimant and must "be regarded as establishing the "fact of the cultivation of the "place by Garcia from a period "anterior to the grant to the "time of the sale to Enright" (the "present claimant) —

We see no reason to dissent from this conclusion —

The remaining question relates to the location and extent of the land — The Petition describes it as "2000" varas of farming land a note in the margin of the Petition by Pacheco states that the petition for the farming land is for 8000 varas —

Under this description judicial possession was given of a piece of land 2000 varas square

143 ND
PAGE 128

7

There might perhaps ~~have~~ be some room to doubt whether the land described in the petition was 2000 varas square or 2000 square varas — But the note by Pacheco the ~~interpretation~~ construction given to the Concession by the Alcalde as well as the natural interpretation of the words when popularly used ~~leads to the~~ satisfy us that the intention was to grant a piece of land 2000 varas square — or bounded by a line 8000 varas long taking the four sides together as stated by Pacheco —

143 ND
PAGE 129

On the whole we are of opinion that the grantee acquired by the Concession an inceptive or inchoate title — which when followed by cultivation and judicial possession ~~the~~ constitute an equity the U. S are bound to respect —

The decree of the Board must be affirmed —

63 No 143

James Enright

alls

The U. S.

Opinion

Oct. 13. 1857.

Filed Oct. 16 1857

J. W. Spurgeon

Deputy

143 ND

PAGE 130

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 Monday the thirtieth day of November in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable **OGDEN HOFFMAN**, *District Judge.*

143 ND
PAGE 131

The United States

v.

James Enwright.

} D.C. 143 : L.C. 574.

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

143 ND

143

United States District Court, Northern District of California.

The United States

vs.

James Enwright

ORDER.

granting appeal

Filed Nov 30th 1857

Jno A. Munroe

CLERK.

By

DEPUTY.

143 ND
PAGE 132

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 sixteenth day of October —— in the year of our Lord one thousand eight hundred and fifty-seven.

Present:

The Honorable **OGDEN HOFFMAN**, *District Judge.*

143 ND
PAGE 133

The United States

v.

James Enwright

No. 143. L. C. 574

This cause came on to be heard on appeal from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California under the Act of Congress approved on the 3d. of March, A.D. 1851, upon the transcript of the proceedings and decision of the said Board of Commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the Court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the Court hereby ordered, adjudged and decreed that the said decision be and the same is hereby in all things affirmed; and it is hereby likewise ordered adjudged and decreed that the claim of the appellee is a good and valid claim and the same is hereby confirmed.

The land of which confirmation is hereby made is situated in the County of Santa Clara and is now occupied by said Enright; the said land being in a square of two thousand varas on each side and lying adjoining the lands known as the Mission lands of the Mission of Santa Clara, and having for the side of said premises next to said Mission, a line drawn from the first live oak before the place known as San Pedro y

San Pablo, and running thence to the South South East two thousand varas, unless the same shall sooner strike the limits of the land known in 1846 as Mariano Castro's land, and terminating the same at said Castro's limits if said line should strike said limits with less than two thousand varas: The land hereby confirmed being the square having the line above mentioned for the side of the same on the part towards said mission. — Reference for further description thereof to be had to the grant of the same to Francisco Garcia, and the testimonial of juridical possession given under said grant, both of which are on file in this case.

Ogden Hoffman
U. S. Dist Judge

143

United States District Court, Northern District of California.

The United States
vs.
James Enright

~~ORDER.~~

Decree of Confirmation

Filed April 26, 1858,
W. H. Chever
Clerk.

By
Deputy.

4

143 ND
PAGE 134

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

Present:

The Honorable **OGDEN HOFFMAN**, *District Judge.*

143 ND
PAGE 135

The United States
v.
James Enright.

D.C. 143 : L.C. 574.

In this case, on application of P. Della Torre Esq. U. S. attorney, it is Ordered that an appeal in behalf of the United States from the final decision of this court rendered at the June, 1857, term in said cause, be and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and the appellants are ordered to serve the usual citation according to law.

Ogden Hoffman
U. S. dest Judge

143

United States District Court, Northern District of California.

The United States

vs.

James Enright

ORDER.

granting appeal.

Filed June 30th 1858,

W. H. Chevers

CLERK.

By

DEPUTY.

143 ND

PAGE 136

143 ND
PAGE 137

United States of America,

To James Enright,

Greeting:

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

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

Ogden Hoffman
U. S. Dist Judge

143 ND

143

U. S. District Court

The United States

v.

James Enright

Citation.

Filed July 2. 1858.
W. Dr. Ahern,
Clerk

Due service of copy of
within admitted this 2d
day of July 1858
J. B. Crockett
atty for Defft

143 ND
PAGE 138

UNITED STATES OF AMERICA, SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

143 ND
PAGE 139

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

greeting:

Whereas, lately, in the District Court of the United States, for the Northern District of California before you, _____ in a cause between The United States, appellants, and James Enright, appellee - /No. 143/ wherein the decree was rendered in favor of the said appellee -

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 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. Stanton, Attorney General of the United States, and of Counsel for the appellants it is now here ordered, adjudged and decreed by this Court that this appeal be and the same is hereby dismissed.— Mar: 6th

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.

COSTS OF

Clerk..... $

Attorney.... $

$

~~Taxed by~~

Wm. Thos. Carroll

Clerk of the Supreme Court of the United States.

143.

No. 197, December Term, 1860.

MANDATE

SUPREME COURT UNITED STATES.

U. States vs Enright

Filed July 1. 1861.

W. H. Cheeves,

Clerk

143 ND

PAGE 142

143 ND
PAGE 143

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 Monday the first day of July in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty one

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States
v.
James Enright.
} No. 143.

And now at this day come Messrs Crockett & Catlender, attorneys for the above named claimant, and present the mandate of the Supreme Court of the United States in the above entitled cause, whereby it appears that the appeal heretofore taken herein by the United States is dismissed: whereupon it is Ordered that the said mandate be filed, and that the abovenamed claimant have leave to proceed under the decree of this Court heretofore rendered in his favor as under Final Decree.

143

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs.

James Enright

Order to file Mandate & proceed as under Final Decree.

Filed July 1st 1861.

W. A. Chenery,

CLERK.

By

DEPUTY.

143 ND
PAGE 144

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

143 ND
PAGE 145

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 Monday the Second day of December in the year of our Lord one thousand eight hundred and sixty one,

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

V.

James Enright.

IN LAND CASES.

District Court No. 143,

Land Com. No. 514.

AND now at this day on application of W. T. Sharp, Attorney for the United States IT IS ORDERED, that the Surveyor General of the United States for California return into this Court, on or before Wednesday, the 18th day of December A. D. 1861, his Official Survey and Plat of the land finally confirmed in the above entitled cause, known as "Tract of land near Santa Clara." and situated in the County of Santa Clara. in said District; AND IT IS FURTHER ORDERED, that the United States Marshal for this District serve upon the said Surveyor General, without delay, a certified copy of this order, and make due return hereon.

{U. S. Marshal's Office,
Nor. Dist. of California.

I have served the within Order, this 2d day of December, 1861, by delivering a certified Copy to Edw. Conway, Esq. Chief Clerk in the U. S. Surveyor Generals Office.—

San Francisco, Decr 2d, 1861 }

Wm Kabé
U. S. Marshal.
by David R. McKee
Deputy.

No. 143.

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

THE UNITED STATES,
v.
James Enright.

ORDER TO RETURN SURVEY.

Returnable Dec. 1st 1861.

Issued Dec. 2nd, 1861.

Filed Dec. 2nd, 1861.

Clerk.

143 ND
PAGE 146

United States District Court
Northern District of California

143 ND
PAGE 147

United States
vs } L. C. 514 D. C. 143
James Enright

The Petition of Wm H. Sharp
U. S. attorney respectfully shows to your
Honor, that a survey of the land
finally confirmed herein was approved
by the U. S. Surveyor General for Ca=
=lifornia on the 4th day of November
A. D. 1861; that the date of the first
publication by the said Surveyor General,
under the provisions of the 1st Section of
the act of Congress of June 14th 1860 was
on the 5th of Novr 1861; that the United
States have an interest in the survey &
location of the said land and that the
said survey is erroneous as appears
from the affidavits of James Lynn,
and Thomas Thompson.

Wherefore your Petitioner prays
that an order may issue in due form
directing the said Surveyor General to
return

return into this Court the plat of his said Official Survey on or before the Eleventh 18th day of December 1861 and that the monition of this Court, issue in due form to the U. S. Marshl, commanding him to give due notice to all parties in interest, that objection has been made to the survey and location of the land finally confirmed herein, and that the said monition be made returnable on the Eighteenth day of December A. D. 1861

And Your Petitioner will ever pray

Wm H. Sharp
U. S. Atty

143.

U. S. Dist. Court.

The United States.

v.

James Enright.

Petition U. S. Atty for return of Surety.

Filed Dec: 2, 1861.
W. A. Cheevers.
Clerk

143 ND
PAGE 149

143 ND
PAGE 150

Solomon Doane of the County of Santa Clara, being sworn deposes that in said County ~~a tract~~ there is a tract of land which has been lately surveyed by the U. S. Surveyor General for California by direction of one James Enright, who claims by virtue of a decree of confirmation of an alleged Grant from the Mexican Government.

That ~~affiant~~ the said survey is erroneous in this, that it embraces land which is not within the limits of the said Grant; that upon a portion of the land so erroneously included, affiant is located claiming the same to have been taken up by him as public lands of the United States by virtue of the laws of the United States. And he prays a legal examination ~~of the~~ to the correctness of said survey.

Solomon Doane

Sworn to and Subscribed
Dec: 3rd. 1861. before me.
W. H. Chevers.
U. S. Com

143 ND
PAGE 151

State of California }
County of Santa Clara } ss

Dames Lee first being duly sworn deposes and says that a certain alleged confirmed Spanish grant of lands situate near the old mission of Santa Clara in the County of Santa Clara State of California confirmed to one Dames Enright has been surveyed and set apart by the government to the said Enright and this deponent further says that said survey improperly includes certain lands which were not within said grant and upon a portion of which lands deponent has settled (and made valuable improvements) as public lands of the United States by virtue of law, and he knows on examination of said survey

143 ND
PAGE 152

by the District Court
of the United States

Subscribed and
Sworn to before
me this the 29th of
November A.D. 1861

James Lyon

Jno B. Hanson
Notary Public

State of California

State of California }
County of Santa Clara } ss

143 ND
PAGE 153

Thomas Thompson first
herein duly sworn upon
his oath deposes and
says that one James
Enright has had a survey
made of a certain
alleged Spanish grant
of lands situate near
the old mission of Santa
Clara in the county of
Santa Clara State of
California which survey
improperly includes
certain lands which were
not within said grant
and a portion upon which lands
so improperly included
in said survey, to wit,
about one hundred
~~and twenty~~ acres
this deponent on or
about the 12th of October
A.D. 1852 located under
the laws of this State
land warrant number

143 ND
PAGE 154

one hundred and thirty three (133) issued June the 7th 1852 (under an act to provide for the disposal of 500.000 Acres of land granted to this State by act of Congress approved May 3rd 1852) and deponent further says that the location of said warrant was as deponent is informed and believes prior to the filing of the petition for the land so improperly surveyed before the Board of Commissioners (to ascertain and settle private land Claims in the State of California) Wherefore this deponent prays on examination of said survey by the District Court of the United States.

Thomas Thompson

Subscribed and sworn to before me this

to before me this

the 29th day of
November A.D. 1861

Jno. B. Newson
Notary Public

143 ND
PAGE 155

143.

U. S. Dist: Court.

The United States.

v.

James Enright.

Affidavits of Lynn & Thompson for return of survey.

Filed Dec: 2. 1861.

W. H. Chevers.
Clerk

143 ND
PAGE 156

143 ND
PAGE 157

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. 143, to James Enright known as "Tract of land near Santa Clara.", 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 18th day of December A. D. 1861, 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 2nd day of December A. D., 1861.

W. H. Chevers

CLERK.

The within Moxition was received by me on Monday the 2d day of Decr, 1861, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for 3 consecutive Wednesdays, in the ~~San Francisco Herald~~ "Daily Mirror", commencing on the 4th day of December, 1861; and for 2 consecutive Saturdays, in the "San Jose' Tribune" a paper published nearest the land, commencing on the 7th day of Decr 1861.

Dated San Francisco, Decr 18th, 1861.

Wm Rabe, U. S. Marshal.

by David R. McKee Deputy U. S. Marshal.

UNITED STATES OF AMERICA, } ss.
Northern District of California.

WHEREAS, Objection has been made to the official survey and location of the land finally confirmed, in case No. 143, to James Enright, known as Tract of Land near Santa Clara, and situated in the county of Santa Clara, in said District:

NOW, THEREFORE, In pursuance of the monition of the District Court of the United States for said District, to me directed and delivered, I do hereby give public notice to all parties having, or claiming to have, an interest in such survey and location, to be and appear before the said Court, sitting in Land Cases, on or before Wednesday, the 18th day of December, A. D. 1861, 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,) and then and there to intervene for the protection of such interest, or their defaults will be taken.

Dated at San Francisco, in the District aforesaid, Dec. 2, 1861.

WM. RABE,
U. S Marshal.

de4-law-td

No. 143.

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

THE UNITED STATES.

V.

James Enright.

MONITION.

Returnable Dec: 18th 1861.

Issued Dec: 2nd. 1861.

Filed December 18. 1861.

W. H. Chevers.
Clerk.

143 ND
PAGE 158

143 ND
PAGE 159

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 18th day of December in the year of our Lord one thousand eight hundred and sixty one.

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States,

V.

James Enright.

IN LAND CASES.

District Court No. 143.

Land Com. No.

AND now at this day the United States Marshal having made return upon the Monition heretofore issued in this cause, that he had given due notice as therein commanded; on motion of W. T. Sharp Attorney for the United States. proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land finally confirmed in the above entitled cause, appear and intervene for the protection of such interest; The U. S. Attorney, and P. Della Torre Esq. appeared in behalf of the United States. and Mr Crockett for the Claimant.

No other party appearing.

whereupon IT IS ORDERED, that the default of all parties not appearing as aforesaid be and the same is hereby entered.

No. 143.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

v.

James Enright.

ORDER ON RETURN OF MONITION.

Filed December 18. 1861.

W. H. Chevers.

Clerk.

143 ND
PAGE 160

143 ND
PAGE 161

U. S. District Court

U. S.
vs } No 143
James Enright

And now comes the United States by their Attorney W. H. Sharp and object to the survey of the land confirmed in this cause, a certified copy of the plat in which, was filed in this Court on the 6th day of December A. D. 1861.

And for cause of objection the U. S. show

That upon an application of the terms of the grant and the decree of the Court to the land and other objects as they exist in nature, the claim in this case is void for uncertainty and cannot be reasonably located or surveyed.

That the initial point of said survey is not the one intended

intended by the decree of confirmation.

That the said survey does not locate the land as it is described in the decree of confirmation

143 ND
PAGE 162

Wherefore the U. S. pray that the said survey and the plat thereof be declared null and void for the uncertainty in the Grant and decree: or if this Honorable Court should decide that the said claim is capable of location, then that the said survey should be located so as to conform with the decree hereinbefore made.

Wm H. Sharp
U. S. Atty.

143.

U. S. Dist. Court.

The United States.

vs.

James Enright.

Exceptions to Survey by the U. S.

Filed Dec: 28. 1861.

W. A. Chevers.

Clerk.

143 ND
PAGE 163

143 ND
PAGE 164

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

James Enright

IN LAND CASES.

Dist. Court No. 143

Land Com. No. 514

BE IT REMEMBERED, that on this 27 day of April A. D., 1852, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, 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 S. ~~Thelan~~ Worsley Smith a witness produced in behalf of the United States 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 a sworn interpreter.~~

PRESENT: H. H. Sharp Esq U. S. Atty for the U. S. and J. B. Crockett Esq. for claimant

QUESTIONS IN BEHALF OF THE United States.

Question 1st,

What is your name, residence and occupation?

Ans.

My name is S. Worsley Smith, I reside in San Jose, my

occupation is that of Surveyor, which profession I have practised for the last four years in Santa Clara County.

2.

Have you at the request of some of the parties in this case opposed to the official survey, made a topographical sketch of the neighborhood of the land claimed by James Enright, if you have please produce it and state if it be accurate?

Ans.

I have made such a sketch, I now produce it to be annexed to this deposition to be marked "Exhibit S. W. Smith No. 1". It is a perfectly accurate sketch.

3.

Do you find any live oaks in that part of the land delineated on this plan, which lies between the Ulistac and Castro ranchos?

Ans.

Ans.

I did, and located them as found.

143 ND
PAGE 166

Cross Examination

Questions by Counsel for Claimant.

Ques. 4.

When was your survey as shown by the map made?

Ans.

In the early part of January last.

5.

Upon what data did you lay down the survey of the Ulistac ranch, and the other surveys as shown on said map, including the official survey in this case?

Ans.

My data for the Ulistac ranch was a traced copy of the said official survey, sent me by Leander Ransom Stake

Locating Agent, and the others were copies of the field notes of official surveys, handed me by Mr. Thos. H. Laine.

143 ND
PAGE 167

6.

Did you run out either of the said ranchos upon the ground?

Ans.

I did not.

7.

Did you make any measurements upon the ground, or courses and distances?

Ans.

I did. I run the line from the Northeast corner of the Enright tract to the Southwest corner of the Ulistac tract, and also from the said corner of the Enright tract to a point marked "Two oaks," and used the former line as a base line of triangulation, to de-

termine the other points on the map I have made.

8.

What is the distance from the Church of the Mission of Santa Clara, to the Northeast corner of the official survey in this case?

Ans.

Two miles and five eighths. (2 5/8)

143 ND
PAGE 168

9.

What is the distance from the said Northeast corner to the "Two oaks" marked on your map?

Ans.

A little less than a quarter of a mile.

10

What is the distance from the said Northeast corner to the "Three live oaks" shown on your map?

Ans.

One mile and very near a

quarter.

11.

What is the distance from the same point to the "one line oak"?

143 ND
PAGE 169

Ans.

One mile and an eighth — very near.

12.

What is the character of the "two oaks" near the said Northeast corner. Are they two distinct trees or two bodies from one root?

Ans.

They are small white oaks, two distinct trees, and standing about three rods apart.

13.

Do they appear to be trees of recent growth, or old trees?

Ans.

I should judge they were about eight or ten years old, — young trees.

14.

What is their diameter about?

Ans.

As near as I can recollect about eighteen inches, between that and two feet.

143 ND
PAGE 170

15

What is the character of the tree at the Northeast corner of the official survey?

Ans.

It is a large white oak tree about three feet in diameter.

16

Are there any other trees in that immediate vicinity?

Ans.

There are none, that I recollect of.

17.

What is the character of the three line oaks, do they all spring from one root, or are they separate trees and what is their diameter?

Ans.

I did not examine them particularly, I only took their bearing and distance as to locate them on the map, without any reference to the characters of the trees.

18.

Are there any trees between the "Two oaks" and the Guadalupe river, in an Easterly direction?

Ans.

I don't recollect of any until you get to the bank of the Guadalupe river.

19.

Is the road to San Francisco as laid down on your map the present road, or the old road?

Ans.

I think it is the present travelled road. I did not lay it down from actual

143 ND
PAGE 171

survey.

20.

Do you know where the old road from Santa Clara to San Francisco was, and if so did it run through the Enright tract as defined by the official survey?

Ans.

I know where the old road is on the ground, and think it passes through the Enright tract, but am not positive as I never noticed that part of it running through that section of country.

21.

If a line be drawn from the Church of the Mission of Santa Clara, in a North Northeasterly direction, at what distance would it strike the Guadalupe river?

Ans.

I never noticed a line in that direction, but think it

moved & strike it in about a mile.

22.

How long have you been familiar with the natural objects in the vicinity of the lands embraced in the official survey?

Ans.

About a year or a year and a half.

143 ND
PAGE 173

23.

Have you ever heard any particular name by which the two oaks laid down on your map, are called?

Ans.

I have within the last three or four months, I have heard them called St. Peter and St. Paul.

24.

You have said that the tree at the Northeast corner of the official survey is a

White oak, what distinctive
difference is there between
a live oak and a white oak?

Ans.

On a white oak the bark
is nearly white, in a live
oak the bark is very dark,
and also the live oak leaves
are differently shaped, and
green the year round, which
is not the case ~~the~~ ~~of a~~ with
the white oak.

143 ND
PAGE 174

Deposition closed.

S. Worley Smith

Subscribed and sworn to this 3rd day
of April A. D. 1863, before me

W. A. Clevenger,
U. S. Com.—

No 143.

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

James Enright.

DEPOSITION OF

S. Wardley Smith

on part of United States.

Filed April 3, 1862,

W. H. Reed,

Clerk.

143 ND

PAGE 175

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

143 ND
PAGE 176

The United States,

James Enright

IN LAND CASES.

Dist. Court No. 143
Land Com. No. 574

Be it Remembered, that on this 4 day of April A. D. 1862, at San Franc.o in the District aforesaid, before me, BLAIR LAURIE, a Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take depositions of witnesses in behalf of the United States in land cases pending in said Court, personally appeared Jose Antonio Alviso a witness produced in behalf of the UNITED STATES, 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 C. Palmer - sworn for that purpose -

Present: U.S. Atty Hol. Della Torre for U.S.
J. B. Crockett Esq for claim.

QUESTIONS IN BEHALF OF THE UNITED STATES:

Question 1st,

What is your name, age, residence and occupation?

Ans.

Jose Antonio Alviso - 66 years - Santa Clara - Ranchero -

2

How long have You lived
in the County of Santa Clara?

Ans

All my life time -

143 ND
PAGE 177

3-

Are You acquainted with
the County in the locality of
the lands Claimed by James
Enright?

Ans

Yes.

4

Do You Know a place in
that vicinity known by the
name of St Peter and St.
Paul?

Ans.

I do —

5

What is Called St Peter
and St Paul?

Ans

Some lands covered with
Oaks —

143 ND
PAGE 178

6

In what direction is St Peter & St Paul from the Mission church of Santa Clara?

Ans

To the North.

7

How far is it from the said Church

Ans

I dont know - have not measured it -

8

Did Jm ever point out, on the ground, to any one, St Peter & St Paul?

Ans.

I have, but did not point out what ground it occupied, but now that I am called to testify in this case - I state that it occupies all of the oak grove -

9

What oak grove do Jm mean?

Ans

The Grove that occupies San Pedro and San Pablo - is the Grove where they cut the wood

143 ND
PAGE 179

10

Is there no particular object that gave the name to St Peter & St Paul?

Ans -

It was a place where the Soldiers used to stop long before I was born, and occupies the whole land there and has the name ~~of~~ a Ranch -

11

How many Acre, does St, Peter & St Paul Cover?

Ans

I dont know -

12

Are there any live oaks in that vicinity?

Ans.

Very few -

13

Are there any live oaks standing out from the Grove, between St -

143 ND
PAGE 180

And the Mission of Santa Clara?

Ans

2 or 3 outside of the grove oaks, but not live oaks.

his
José Antonio × Alviso
mark

Subscribed & Sworn
to before me this
4 Apl. 1862

Blair Lawrie
U.S. Spl. Comm'r.

No 145

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

v.

James Enright

DEPOSITION OF

J. A. Alviso

on part of U States

Filed April 4 1862

W. H. Chevers

Clerk.

143 ND

PAGE 181

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

143 ND
PAGE 182

The United States,

v.

James Enright

IN LAND CASES.

Dist. Court No. 143

Land Com. No. 574

BE IT REMEMBERED, that on this 22nd day of April A. D. 1862, at San Francisco in the District aforesaid, before me, BLAIR LAURIE, a Commissioner, duly appointed by the District Court of the United States for the Northern District of California, to take depositions of witnesses in behalf of the United States in land cases pending in said Court, personally appeared Charles Senter a witness produced in behalf of the UNITED STATES, 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: U.S. atty: for the U.S.
Col. Crockett for Claimants

QUESTIONS IN BEHALF OF THE UNITED STATES:

Question 1st,

What is your name, age, residence and occupation?

Ans

Charles Senter - 27 years,

Santa Clara - Law Student

2

Are Yu acquainted with the face of the County in Santa Clara County in the vicinity of the Eight tracts

Ans

Yes.

143 ND
PAGE 183

3.

How long have Yu been acquainted with that Part of the County?

Ans

About 11 Years

4.

Look at Paper now Shown Yu, marked "Exhibit - D. W Smith No 1" - filed in this case - and state if it is a correct delineation of that Part of the Country -

Ans

I Should say it was -

5.

Have Yu been upon the land, as marked on that Exhibit - "Eight tracts" and examined the corners of said tracts -

143 ND
PAGE 184

Ans

I have been on the track, and have examined three Corners -

6

What object if any, did Jm find at the North East corner of said track?

Ans.

One tree - a White Oak tree - large; think it has two heavy Strong forks - I should think it was nearly 3 feet in diameter - never noticed it particularly -

7

Did Jm observe any other trees in the vicinity of that corner tree - if so, what is their Character and what the distance from said Corner tree?

Ans

There are 2 trees in about a North, North Easterly direction - White Oak trees - I should think they were 400 or 500 yards from the Corner tree - probably more - These trees are about correctly marked on Said Exhibit -

8

About how far from each other are the two trees last mentioned & what their size?

Ans.

They are about 25 or 30 steps apart, I think - as near as I can judge - they are about a foot and a half in diameter - probably a little larger - they are about the same size - they grow up tolerably straight -

9

Are there any live oaks in that immediate vicinity?

Ans

There are live oaks in the vicinity & places marked on said Exhibit correctly - & ~~called~~ marked thereon "live oaks" -

10

Are there any live oaks on the tract ~~as surveyed~~ included in the official Survey?

Ans.

I dont think there are - I am not positive about it though -

11

Have you been through the

grove of trees, marked on said Exhibit "Roblar No 2" and if so did you find any live oaks in that grove if yea, at what points did you find them?

Ans

I have been through the grove and found live oaks - at the place as laid down on said Exhibit -

12

About how far is it from the North Eastern Corner of the official Survey to the most northern point of the grove of timber marked "Roblar" on said Exhibit?

Ans

I should think something over two miles, probably 2½ -

13 -

How far is it from the North Eastern Corner of the official Survey to the nearest point of said "Roblar"?

Ans

I should say it was a little over a mile -

143 ND
PAGE 186

Are there any live oaks in the immediate vicinity of the official Survey, outside of said "Kubla" or have there been any since Gen knew the County?

Ans

None outside of the "Kubla" now - that I know of - but I think there was a live oak tree in the neighborhood about a North Westerly direction from the South Eastern Corner of the official Survey - I should think about 1/2 mile from that corner - probably a little over 1/2 mile —

My recollection of there being a live oak there is very indistinct - but it seems to me there was one —

15

About what year was it that Gen first became acquainted with that portion of the County -

Ans

I travelled over it and had been over it at the end of the year 1851. —

143 ND
PAGE 187

143 ND
PAGE 188

16

At that time was the country in the immediate vicinity of the official Survey much fenced up?

Ans

not a great deal - very little —

17

Look at Plat of official Survey filed in this Case Dec. 6. 1861 — and state over what portion, if any, of the official, did the road or roads leading from the Mission of Santa Clara to San Francisco, pass -

Ans

There was a road running across this tract of land, coming out of the tract of land near the N. W. Corner, of Enright's tract in the neighborhood of his house - and entered upon the East side of the said tract, about 1/3 of the way from the S. E corner of said tract, I think -

There was a road running from Santa Clara Mission to San Francisco, altogether South of this tract -

There was another road South of this tract, running about where the main road to San Francisco is now. –

There was another road to the South of this last mentioned road – .

18

Which of these roads was the most travelled when you first came to that country –

Ans

The one passing immediately by Enrights house –

Charles Senter

Subscribed & Sworn
to before me this
22 day of April
A D 1862

Blair Laurie
Spt. U.S. Comr.

No 143

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

James Enright

DEPOSITION OF

Charles Senter

on part of U. States

Filed April 23 1862

W. H. Reves

Clerk.

143 ND
PAGE 190

143 ND
PAGE 191

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

The United States,

v.

James Enright

IN LAND CASES.

Dist. Court No. 143

Land Com. No. 514

BE IT REMEMBERED, that on this 22d day of April A. D., 1862, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, 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 Salvio Pacheco 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: his evidence being interpreted by Clinton Palmer a sworn interpreter.

PRESENT: Col. Crockett for claimts
U. S. atty for U.S.

QUESTIONS IN BEHALF OF THE Claimants

Question 1st,

What is your name, age, residence and occupation -

Ans

Salvio Pacheco - 70 years
Contra Costa County Rancheo

Where did Jm reside in the month of February 1846?

Ans

Pueblo ~~City~~ of San José

143 ND
PAGE 192

3-

Were Jm acquainted with Francisco Garcia at that time?

Ans

I was.

4

Who was the Alcalde of the Pueblo of San Jose at that time?

Ans

Dolores Pacheco

5

State whether or not you were, in any manner, acting as a subscribing witness, or otherwise, in making the judicial measurement of any lands of Francisco Garcia in the month of February 1846?

Ans

I was an assisting witness. As I was the Amanuensis of Garcia in this business -

6

Who, besides yourself, acted in making the said juridical measurements?

Ans.

143 ND
PAGE 193

A man by the name of Deb for jes, a foreigner - I believe a Frenchman - Dolores Pacheco was the Judge - was present & Lorenzo Pineda was present -

7

In making the said measurement, at what place did you begin?

Ans

At a single oak lying towards Santa Clara and near a place called San Pedro y San Pablo —

8

Was the said tree marked in any way at that time, to indicate that it was one of the boundaries of the tract? If so, how?

Ans.

We marked it with an axe —

9

State whether or not the said tree stood near to an Arroyo or San Jose

Ans
It was near a Sawlog -

10
State whether or not You were lately upon the Ground, and saw the said tree?

Ans -
I was there in the month of March last - I think - and saw the tree and shewed it to the Surveyor -

11
Do You know Mr. Beale the Surveyor General of the States & California?

Ans.
I dont know him by name, but know the person who testified this morning. & he it was I pointed out the tree to -

12.
State whether or not the said Surveyor General was with You on the Ground? and whether or not You pointed out the tree at which You commenced the Surveyor Measurement?

Ans.

Ans

He was and pointed out the tree to him.

13

State whether or not, when on the ground with him Gm pointed out to him the boundaries of Garcia's Rancho, as established by the juridical measurements —

Ans.

I did —

##

Cross Examination.

14

How long have Gm lived in Contra Costa County, where Gm now reside —

Ans.

Since 1848 —

15

Did Gm live in the Pueblo of San Jose from the time Gm acted in giving possession to Garcia of the land spoken of in Gm direct

143 ND
PAGE 195

examination up to the time you went to Contra Costa County in 1848?

Ans.

Said -

15

How many times have you been on the land that you say you assisted in measuring for Garcia since that measurement was made?

Ans.

But once - and that was when I was there with the Surveyor General -

143 ND
PAGE 196

17

Did you write the Act of Possession that you have spoken of in your direct examination, and Signed as an assisting witness?

Ans.

Said.

18

Was the land that possession was given of to Garcia in 1846, and the lands immediately surrounding it fenced or cultivated by any person?

Ans.
The only Cultivation was by the Indians - There was no fencing

19
At what point did Jm commence the measurements of Garcias land?

Ans.
At the marked Oak (Roble) — In Spanish it ~~is~~ is called "encina" - In the writing we put it down "encina", I think - but it is called a "roble".

20
What is the difference between a roble and an "encina"?

Ans
The difference is that the "encina" never loses its leaf, but the "roble" does - and the "encina" has a black smooth bark - and the "roble" has a white uneven bark -

21
What is the place known as St Peter and St Paul.

Ans
It is the point of the oak grove this side of the oak

143 ND
PAGE 197

that we marked.

22

How far was it from the marked oak, you have mentioned, to the place known as St. Peter and St. Paul?

Ans.

I cant state how many varas - but must have been a half mile or a mile more or less - I never had the curiosity to measure it -

143 ND
PAGE 198

23

Which line, in measuring the land for Garcia, did you measure first?

Ans.

From the Roble towards Santa Clara.

24.

What was the direction of that line?

Ans

More or less South ~~of~~ or South west - we called it Southerly -

25

In what direction did you run the next line?

Ans.
North East or North west - we knew nothing about the points of the Compass - except as to North, South, East and West - ~~and all~~

26
In what direction was the third line run?

Ans.
The same direction as the first - (parallel with it)

27
In what direction was the fourth line run? -

Ans
So as to make a square ——

28
In what direction from the oak at which you began the Survey - was the land known in 1846 as the lands of Mariano Castro?

Ans.
About North west.

29
How far was it from the oak at which you commenced the measurement - to the said lands of Mariano Castro -

Ans.

From that oak to Mariano Castros house, where the willows were, was about one and half or two leagues - I did not know where the other line of Mariano Castros land was -

30

In making the measurements of Garcias land, did you run the first line towards Mariano Castros land, or in an opposite direction?

Ans.

At the time the Survey of Garcias land was made it was not known where Mariano Castros land was - That ~~after Estrada's~~ juridical possession was never given to Castro - The title was given to Estrada, and after Estradas death it was kaped over to Castro -

31

Is the first grove of oaks to the ~~north~~ west of the Mission of Santa Clara the grove where point is known as St Peter and St Paul?

Ans.

Yes-

32.

Look upon map marked Exhibit S.W. Smith No. 1- filed in this case- and point out the points known as St. Peter and St Paul.

Ans.

At the end of the Roblar- where there is a Cross marked with red lead pencil-

The old road from Santa Clara to San Francisco passed by this point-

33

Are there any other oaks standing on the bank of the arroyo, or San Jon, that you have before spoken of, to the North of the oak at which you commenced juridical measurement?

Ans.

There was one on this arroyo to the North of said oak, which I think was further north than the one laid down on said Exhibit-

It was nearly opposite San Pedro and St Paul, to the left of the

road in going from San Pedro and San Pablo to the Guadalupe River - It was further north than the tree marked on said Exhibit - at the South west Corner of the Ulistac Rancho -

143 ND
PAGE 202

34

Were there any other oaks near the oak at which you commenced the measurement of Garcias land?

Ans.

The oak at the N. E corner of Garcias land was by itself - then there was another oak further in towards the Mission of Santa Clara - then the oak Grove where was St. Peter and St Paul - and there was another oak further to the north than the one laid down at the N. W. Corner of the Ulistac Rancho - Perhaps that oak may be set down on plot but I think not - I mean the oak at the Corner of the Ulistac Rancho -

35

On which side of the tree, at which you commenced the

143 ND
PAGE 203

measurement of the Garcia land was marked -

Ans -

We marked it on the side where the Sun rises (East) - It was full of notches -

36

Were there any other trees, marked as Corners of the Garcia land, but the one spoken of as at the N.E. corner thereof?

Ans -

We marked one over in the grove - but when I went there the last time it was burned -

37

Did Garcia ever enclose or cultivate this land?

Ans.

I did not see it enclosed or cultivated - I left there soon afterwards -

Re direct -

38

Did you know any place in that vicinity from which the Indians were in the habit

of getting white clay, used for whitening walls?

Ans.

I did - and I got some from the same place to use on my house - It was a place known as "Las Sagaonitas de las calabazas."

39

State whether or not that place was near to the ~~place~~ the house of Enright?

Ans

It is -

40.

Did you see that place when you were there with the Surveyor General?

Ans.

I did not - I did not go there -

41

Are Dolores Pacheco, Desforges, and Peñeda living or dead?

Ans.

Pacheco and Peñeada are dead - I dont know which Desforges is dead or gone away - I have not seen him since I left there

42

Are you a brother of Dolores Pacheco, the Alcalde?

Ans.

I am.

Salvio Pacheco.

143 ND
PAGE 205

Subscribed & Sworn to before me this 22. day of April 1862

W. H. Rhodes.
U. S. Commissioner

No 143

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

James Enright

DEPOSITION OF

Salvio Pacheco

on part of Claimants

Filed April 23d 1862

W. H. Chevers

Clerk.

143 ND
PAGE 206

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

143 ND
PAGE 207

The United States,

v.

James Enright

IN LAND CASES.

Dist. Court No. 143

Land Com. No. 514

BE IT REMEMBERED, that on this 22d day of April A. D., 186 2 at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, 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 Edward F. Beale 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: his evidence being interpreted by _____ a sworn interpreter.

PRESENT: Col. Crockett - for Claimts
W. S. Atty for U.S.

QUESTIONS IN BEHALF OF THE Claimants

Question 1st,

What is your name, age, residence and occupation?

Ans

Edward F. Beale - lawful age - San Francisco - Surveyor General

143 ND
PAGE 208

of the United States for California

2.

Examine paper now shown you, being the official survey in this case, and state whether or not you were Surveyor General of U.S. for California, at the time said survey was made?

Ans

Was.

3

State whether or not you were on the ground, in person, and gave directions to the deputy Surveyor, by whom the said survey was made, in respect to the location of the said tract: and whether or not the said survey was made in conformity with your instructions?

Ans

I went upon the ground and heard the testimony of both the parties contesting the location - was satisfied, fully, that the location as displayed by this map was correct, and on my return to my office in San Francisco

143 ND
PAGE 209

I gave instructions to my deputy to make this Survey -

4

State whether or not Salvio Pacheco was present with Jm on the ground? whether Jm took his testimony And. in respect to the location of the said Claim?

Ans

He was - I did take his testimony in reference to said location -

5 -

State why Jm Commenced the Survey at the oak tree indicated, at the South East corner of the official Survey, as the beginning point?

Ans.

I had known Salvio Pacheco by reputation, as a very honest and worthy man for a long time - I believe no native Californian in the County has a higher reputation for integrity - He told me that he was present, officially I think, when the juridical possession was given and that that was the tree from which the

starting points was made, and he pointed out from that spot the direction in which the quadrangular lines, enclosing the tract were run — I asked him "if there were any marks by which he could identify the tree?" He replied there were — I think three notches, with an axe — I examined the tree and found three such marks as he professed to have made — What struck me with great force, was, that he said, in approaching the spot, at a considerable distance, he recognized this as the identical tree, and told a gentleman who was riding with him, "if that is the tree there is a small arroyo running at the foot of it" — The fact that the arroyo was there — and the tree bore the marks that he said he had cut himself, or caused to be cut — seemed to me conclusive that his memory was good — and his testimony entitled to full weight.

The tree is an oak tree about 2½ feet in diameter — I think — It

might be from 75 to 100 Years old —

6.

State whether or not You have notified other persons on the Ranch, claiming adversely to Enright, of your intention to make the Survey? Ans

I Did —

7.

Were any of those persons present at the time You were examining the ground — and State whether or not they offered any proof on the subject of the proper location of the claim? —

Ans

There were — quite a number of Gentlemen present claiming adversely to Enright — there was a good deal of discussion and a very free interchange of opinion among the Gentlemen themselves, but I particularly noticed that what they said was, in some measure, contradictory — One of them proposing to prove by a Mr Alvis

143 ND
PAGE 211

that St Peter and St Paul was a locality which was defined by certain law; and others, that the name St Peter and St Paul was applied to an indefinite position - and inasmuch as it was an important position in their own case - and there existed a discrepancy in relation to it - that discrepancy had its natural influence on my mind -

143 ND
PAGE 212

8

State whether or not, when upon the ground, you had with you, for your information and guidance a copy of the final decree of Confirmation in this Cause - and of the act of Judicial Reservation?

Ans -

I had all the papers that related to the Case that I could get -

51

9

State whether or not the official Survey is, in your opinion, Correct - from all the information obtained by you from the papers in the Cause and from oral evidence

taken on the Ground

Ans

I have not doubt of it - otherwise I should not have ordered the Survey as it was subsequently made -

143 ND
PAGE 213

Cross Examination.

10

Were the Statements made by Salvio Pacheco as detailed in your examination in Chief, made under oath?

Ans

No - I had no right to take testimony under oath - I was merely there to give my judgment as Surveyor General - as to where the tract should be located -

11

Upon what side of the oak tree, marked on the official Survey "Oak tree S. 61 South of trees called San Pedro y San Pablo" did you find the marks spoken of by Pacheco?

Ans

I dont recollect - ~~but am inclined to think they were on the North side~~ -

12

How many notches were on the tree?

Ans

Three that Salvio Pacheco testified having made, or caused to be made -

143 ND
PAGE 214

13

Did you examine into the age of those marks?

Ans

I did particularly - and called the attention of the Gentlemen present to the fact - that as they said Indians were in the habit in California of cutting & marking oak trees in getting bark off to tan their skins, that just as likely as not these marks had been occasioned in that way - to which I replied - that the last 15 years of my life had made me acquainted with the peculiar manner in which Indians take off bark when they seek it for that purpose -

and which was very distinct from the well defined notches occasioned by the blows of an axe in making a mark -

Indians scalp off the bark in large pieces - always leaving a large blotch on the tree —

14

What kind of a tree is the one at the N. E. Corner of the Official Survey?

Ans.

I think it is an evergreen oak - Spaniards here call all ~~oaks~~ evergreen oaks live oaks - because they are always alive - I mean by an evergreen oak an oak that never sheds its foliage -

15

Did you find any other oaks in the immediate vicinity of the one just mentioned, at the N.E. Corner of the Official Survey

Ans

I think not in the immediate vicinity - There was some on the other side of the road to the North west of the corner tree - About ½ mile

143 ND
PAGE 216

from it -

16

Did Gm trace the arroyo, marked upon the Official Survey "dry Arroyo" any distance down, and to the north of the beginning Point of the Official Survey?

Ans.

Only to where it crossed the road.

17

Did Gm observe any oak tree on the bank of the arroyo to the north of the tree at the beginning Point of the Official Survey?

Ans

I did not.

18

Did Gm examine or endeavor to find out whether there was such a tree to the north of said beginning Point, on the arroyo?

Ans

No - Only traced it to where it crosses the road - Some one suggested that there might be

another oak tree in a similar
position relatively with the
arroyo. Whereupon I asked
Salvio Pacheco if he was
positive that this was the tree -
and he said he was. -

143 ND
PAGE 217

19

Was the place known as St.
Peter and St Paul pointed out to
Gm at that time, by any person -
and if so, by whom was it
pointed out? What was it?
and where was it situated
in reference to the official
survey?

Ans

My impression is that Salvio
Pacheco pointed out as spot as
St Peter and St Paul - but I
do not now remember the di=
rection?

20 ~~Ans~~.

Did Gm find any evergreen
oaks in the vicinity of the of=
ficial Survey?

Ans

None that my attention was called -
Unless ones attention was particularly

called to them he would scarcely observe them.

21

Did Jm observe a grove of oaks to the West of the official Survey?

Ans

Yes.

22

Look at paper marked Exhibit D.W. Smith No1. filed in this case - and state whether it is a correct delineation of the Country in the immediate vicinity of the official Survey - from Your knowledge of the Country?

Ans.

I remember a grove on the West of the Exhibit. ~~as~~ the position of it (the Roblar) is Correct -

23

How far is it from the North East corner of the official Survey to the nearest ~~Point~~ of the Grove?

Ans -

The nearest about ½ miles - the farthest to the Northern point about

143 ND
PAGE 218

3 miles -

24

About how far is it from the Mission Church of Santa Clara to the North East corner of the Official Survey?

143 ND
PAGE 219

Ans

About 3 miles -

25

Do you know the direction of the Mariano Castro lands from the N.E. Corner of the Official Survey?

Ans

At this time I do not remember, I recollect when on the ground that I asked where the Mariano Castro land was, and it was pointed out to me, but I cant now recollect where they are -

26

Which is the side of the land next to the Mission of Santa Clara -

Ans.

Beginning at the point marked on the Official Survey as "Oak tree J E" 1 Z C - and ending at the Corner marked post "J E 2" - which

is the South East corner of the official Survey.

E. F. Beale,

Sworn to and subscribed April 22. 1862. before me.

W. H. Chevers,
U. S. Com

143 ND
PAGE 220

No. 143

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES

V.

James Enright

DEPOSITION OF

Edward F. Beale

on part of Claimants

Filed April 23 1862

W. H. Reed

Clerk.

143 ND

PAGE 221

137.

The United States
vs
James Enwright } No. 143. ND

~~The~~
The ~~Su~~ official survey in this case has been returned into Court under the provisions of the Act of 1860 –
The Objections are filed on the part of the United States –
~~By~~ the final decree of confirmation the land is described as follows " The land of which confirmation is made is situated in the County of Santa Clara and now occupied by said James Enwright the said land being in a square of two thousand varas on each side and lying adjoining lands known as the mission lands of the mission of Santa Clara and having for the side of said premises next to said mission a line drawn from the first live oak before the place known as San Pedro y San Pablo and running thence to the South-South-East 2000 varas unless the same shall sooner strike the limits of the land known in 1846 as Maria no Castro's land and terminating

Objections to survey – Survey approved Sep 23, 1862 – Tract of land 2000 varas square in Santa Clara Co.

2

the same at ~~Est~~ said Castro's limits if the said line should strike said limits with less than 2000 varas - The land hereby confirmed being the square having the line above mentioned for the side of the same on the part towards said Mission".

This description is founded on the Record of Judicial possession produced in the cause and to which the Decree of the Board refers for greater certainty -

~~Be that Records the measurements described as follows Having measured a cordel~~

That record after stating that a Cordel of 50 Castilian varas in length was measured proceeds as follows

The measurement was commenced by drawing a line of 20 Cordels from the first mesquite (live oak) in front of the place known as San Pedro y San Pablo towards the South South East - which tree remained as a dividing boundary to form the square of the extension of the land and afterwards there were measured 2000 varas drawing the first measured line ~~drawing~~ extending the line of the first being drawn as far as the limits

3 of Mariano Castro's land."—
The official survey has been made by drawing a line in a direction nearly ~~E~~ South S. East from a tree adopted as that referred to, in the Record of possession, to the distance of 2000 varas— and on this line as a base erecting the square ~~of~~ ~~[illegible]~~ confined to the claimant—

It is objected on the part of the U. S.

1. That ~~the terms~~ on applying the description of the grant & decree to the land and natural objects found upon it, it is so uncertain and incapable of definite application as to ~~make prevents its being~~ make it impracticable to survey any lands whatever—

2 That the tree adopted in the official survey as the point of beginning is not the one intended by the decree—

3 That the survey does not locate the land as described in the decree—

It is unnecessary to consider the first points separately— The examination of the other objections will necessarily involve the questions

4

whether or not the description in the act of Possession and in the decree of the lands granted and confirmed to Garcia is so ~~hopelessly so~~ uncertain and incapable of application to any ascertainable tract as to compel us to deprive the claimant of any land whatever.

2

It appears that the tree ~~selected~~ adopted as the initial point of the survey is a "roble" and not an "encino" as mentioned in the act of possession —
The difference between the "roble" or white oak, and the "encino" or live oak is undoubtedly marked and unmistakeable — But ~~there is nothing in the habits and~~ any one acquainted with the loose ness and inaccuracy with which the former inhabitants of this country conducted ~~all~~ almost all their business, even official, will have little difficulty in supposing that ~~one tree might have been~~ the act of possession might have mentioned one tree for when the other was in fact meant. The Record was not drawn up

143 ND
PAGE 226

on the ground and possibly not until some days after the possession was given. The clerk or Secretary might easily have forgotten whether the tree from which the measurement was made was a white oak or a live oak — nor would in those days great accuracy on such a points be required for the measurement was made in the presence of witnesses and the tree marked as a visible monument

There are in the neighborhood several "encinos" which would satisfy the call of the Record — But the most of those appear to be in the and to form a part of the grove known as San Pedro y San Pablo whereas the tree mentioned in the record is described as the first tree in front of ("antes") the place called San Pedro y San Pablo — The Encino of the survey is a lone tree of large size & considerable antiquity standing out in the plain at the distance of about a mile from the grove referred to —

143 ND
PAGE 227

But the question is utterly set at rest by the testimony of Salvio Pacheco if his evidence can be relied on

He positively identifies the "Roble" at which the survey begins as the tree mentioned in the Record. It is testified by Mr Beale U. S. Surveyor General that Pacheco accompanied him when viewing the land to point out the boundaries — That when at some distance Pacheco pointed to the oak in question stating his belief that it was the tree at which the survey was begun and that if so there was a small arroyo or ravine at its foot and that its trunk had marks upon it — On arriving at the tree it was found to be on the banks of a small "canjon" and marks evidently made by an axe and of considerable antiquity were found upon it as described by Pacheco — Mr Beale adds that he has long known Pacheco by reputation as a very honest and worthy man and that he believes no native Californian has a higher reputation for integrity

7

143 ND
PAGE 228

Pacheco himself testifies that the tree pointed out by him on this occasion and then was the identical tree adopted and marked by his brother Dolores Pacheco when giving possession — The latter and the other assisting witnesses are dead — Silvio Pacheco himself is 70 years of age —
No witness identifies any other tree as that claimed by Garcia or recognized as his boundary nor is any other found bearing ancient marks which might have been made at the time of the survey - Judicial possession
The objection to rests entirely on the fact that the tree in question is a white and not a live oak —
I think it clear that this slight discrepancy is not sufficient to counterbalance the other proofs which identify this tree of the survey with that referred to in the act of possession —
It may be added that the claimant submitted to the board several diagrams of the lands including more or less of the adjacent country — In all of these

143 ND
PAGE 229

the tract was laid down pre
cisely as it has since been sur
veyed and in all, the oak
tree of the survey as represented
as the point of Beginning—
when therefor the Board described
the lands confirmed in its decision
of the land confirmed mentioned
an oak tree as the starting point
of the first line, none other than
the tree represented on all the
maps filed in the case
Case could have been intended
for no other had up to that
time been by any one referred
to— So far then as the location
adopted by the Board can be
considered as final, and as adju
dicata, it is evident that the
tree in question must be taken
to have been by the final decree
in the case adopted as the
initial point of the survey of the
Eastern boundary of the lands
confirmed

3 The next objection is that the
lands are not located in accord
ance with the decree of confirma
tion —

143 ND
PAGE 230

9 In the Record of Judicial measurement states as we have seen that a line 20 cordels or 1000 varas in length was run from the oak tree in a S. S. E. direction ~~It then states in so~~ in order to form the square to be assigned to Garcia — It then states in substance that 8000 varas of land were measured drawing for the first measured line to the limits of Castro's land —

~~The decree of the~~

But the land of Castro lies to the west of the point of beginning — a line drawn S. E. from that point would never reach it — The Board seems not to have been informed as to the situation of Castro's land for the decree directs the first line to be run in a S. S. E. direction 2000 varas unless the boundary of Castro be soon reached —

This discrepancy or obscurity in the language of the Act of possession has not been explained —

It would seem most probable that the line between the tract to be measured and the mission lands of Santa Clara was first

established. In that case the record correctly describes it as running S. S. E.

143 ND
PAGE 231

It is possible that having established this line which was measured as the Record states to the distance of only 1000 varas, the officer proceeded to measure a line at right angles to it ~~which would~~ running towards Castros' land. And in his record of proceedings he has called this latter this first measured line regarding the 1000 vara line as ~~one~~ merely for the purpose of establishing a base —

But whatever be the explanation there is undoubtedly a discrepancy in the ~~field~~ description — Either the first line did not run S. S. E. or it did not run in the direction of Castros' land —

As before intended no question as to the location of the tract seems to have been raised before the Board — All the maps and there are 3 ~~appended~~ produced in evidence represent a ~~square~~ tract 2000 long by 2000 wide located as it has since been surveyed —

11

143 ND
PAGE 232

To this Track all the evidence of occupation and cultivation referred — And the Board being of opinion that from the proofs established a sufficient cultivation and improvement confined it to the claim and ~~[illegible]~~ to There can be no doubt as to what land the Board intended to confirm — The proofs before them the language of the opinion and the terms of the decree are conclusive —

The decree declares that the line drawn from the oak tree S.S.E. is to be "the side of "said premises next to the "mission" — "the land hereby "confirmed being the square ha "ving the line above mentioned "for the side of the same on "the part towards said Mission"

In their opinion after stating that the testimony Act of possession established the starting point and the direction of the line first run with great distinctness the Board say — "This testimony "establishes the location of the land

12

"as it was evidently intended to be on the South west side of the line thus run, embracing the land occupied at the time of the Judicial survey by the grantee and located so as to adjoin the mission lands and also the lands of Mariano Castro"

~~Here trace in thus~~ clearly ~~described~~

~~north~~

we have, thus, unmistakeably indicated, the direction and length of ~~the~~ a ~~first~~ line, which is to form the base of a square to be erected upon it — & this line is to ~~j~~ be on the side of the tract next the mission & the square is to formed ~~the~~ to the South West of it —

The survey is in precise accordance with this description. The only call in the decree which it fails to satisfy is that which contemplates that the line ~~running~~ drawn to the S. S. E. shall run in the direction of the lands of Castro — But this as we have seen is impossible — ~~Her call~~ The Board were evidently under the impression that ~~the~~ the line ~~of same~~

143 ND
PAGE 233

143 ND
PAGE 234

~~as directed would~~ described in the decree would run towards Castro's land — and such would be the natural inference from the obscure language of the Act of Possession — But this error cannot control the clear and definite ~~directions~~ call given ~~as to the course of the line~~ — Call for a line of a given course & distance and the distinct location of the square on the South-west of this line as a base —

It is to be observed in addition that the decree does not direct the line to be run ~~in the~~ ~~due~~ to the ~~line~~ land of castro — ~~that~~. Its terms are "running thence" (ie from the oak) "to the
" S. S. E. 2000 varas unless the same
" shall sooner strike the limits of
" the land known in 1845 as Mari
" ano's Castros land and terminating
" the same at said Castro's limits
" if the said ~~land~~ line should
" strike said limits with less than
" 2000 varas"

The line of the survey is in literal accordance with this description — It runs from the points named in the prescribed

143 N.D
PAGE 235

direction and does not strike two thousand to the distance mentioned — and it does not strike the limits of the land known in 1840 as that of Mariano Castro — The fact that it could not do so, no matter how far produced proves that the Board was under an erroneous impression in that particular — But it cannot on that account be said that the calls of the decree have not been obtained —

There is therefore no foundation for the objection that "the survey does not locate the "land as it is described in the de "cree of confirmation" —

But inasmuch as the decree was evidently founded on the act of possession, and refers to that document for further description it might still be open to inquire whether the land described in the decree of confirmation is in fact that whereof possession was given —

In coming to the act of possession we find as before observed that its language is obscure —

15a a possible explanation of the seeming discrepancy has been suggested —

It would seem that whatever however inaccurate may have been the notions of the Alcalde and his assistants as to the courses by compass of ~~his lines~~ the lines run by him, they could not have failed to know that the mission lands lay to the East and Castro's land to the West of the tract they were to measure — when therefore the Record describes the first line as drawn to S.S.E. for the boundary it is almost impossible that they should have intended it to run to Castro's land which lay to the West & N.W. So gross a blunder can hardly be ~~attributed~~ ~~so far to be~~ supposed —

The testimony of Pacheco the only surviving ~~witness~~ assisting witness confirms — He points identifies positively the line first run. Some stress ~~has~~ is seen laid in the Brief filed on the part of the U.S. on the fact that Pacheco in his deposition says ~~he saw~~ the first line was run "more or less South or South west — we called

143 ND
PAGE 237

15 b. is Southerly — The next line he says was run "N E or N W "we knew nothing about the "points of the compass except "North South East and West"

The witness here exhibits the confusion of ideas as to courses by compass so commonly found among his countrymen —

But though unable to describe them ~~lines~~ no doubt can be entertained as to what lines he ~~in~~ ~~tended~~ referred to — He has pointed ~~out~~ them out to the surveyor on the ground as those actually run by the Judicial Officer — And his deposition, ~~tho~~ ~~he states~~ tho' confused and erroneous as to points of compass he states one fact about which he could not have been mistaken, and which ~~for establishe~~ shows that the line from the oak tree must have been run as described in the Act of possession ~~& must~~ He states that it was run "from the "Noble towards Santa Clara" i e ~~He also says that the lands~~ about S. E. He also says that the lands of Mariano Castro lay to the North West of the Noble

15c

17

They are in fact situated to the North & West of that tree- It is plain therefore that it could not have been intended by the alcalde that the first line should run towards the lands of Castro.—

The lines pointed out by Pacheco to the Surveyor General are those of the official survey— They in all respects conform to those delineated on the maps presented by the Claimants to the Board— and they correspond with the description of the land confirmed & ordered in the decree

143 ND
PAGE 239

~~All~~ The evidence of occupation and cultivation on which the Board confirmed the inchoate title presented by the claimant referred to the lands embraced within these lines — They are situated in the Bajio or low ground as mentioned in the act of possession — whereas if located as ~~contended for~~ suggested on the part of the U. S. ~~i.e.~~ they would include but a small portion of the Bajio and would to a considerable extent be located in the grove called San Pedro y San Pablo —

~~I am unable~~

The only circumstance which tends in any degree to throw doubts on the question of location is the description in the 2d deed from Garcia to the claimant

In this deed the lines are described as commencing at "San Pedro & San Pablo" and not as a tree in front of that place, & mining
" thence SW 2000 varas thence
" NW. 2000 varas thence NE 2000
" varas thence to the point of be
" ginning"

Assuming that by the words "San Pedro y San Pablo" the tree in

143 ND
PAGE 240

front of that place was intended it is evident that the tract described is to the Northwest of the tract surveyed - ~~and~~ I am unable to account for this description except by supposing a clerical error in stating the course of one of the lines -
The tract ~~described~~ called for in the deed in no respect conforms to that described in the act of possession except that the first line is run towards Mariano Castro's ~~line~~ limits - And the square is formed by running lines perpendicular to it towards the Northwest - ~~so as to include a portion of the grove - whereas while all the testimony as to occupation & cultivation refers to a tract to the South East of it. It would also embrace a con~~
At least a third of the land included within these lines ~~of the deed~~ is embraced within the official survey of Mariano Castro's land ~~and~~ contrary to the express provision of the Act of possession & of the decree And contrary to the ~~plain~~ evident understanding of every witness who has spoken

143 ND
PAGE 241

of the location and limits of the tract claimed by Garcia.
Not only the ~~la~~ terms of the Act of Possession but the positive testimony of the only surviving witness to that proceeding show that the tract was not located as described in the deed — and we are without the slightest evidence to justify us in assigning to the claimant ~~if~~ even if he desired it the tract ~~described in~~ embraced within the arbitrary lines ~~set~~ mentioned in his Conveyance
~~The~~ All the right & title of ~~the~~ Garcia to the land ~~to~~ had previously seen acquired by Enwright under a deed which described it in general terms as the piece of farming land 2000 varas square granted on the 6th January 1845 whereof Judicial possession was given on the 18th February 1846 — 1st ~~It~~ a subsequent Conveyance made ~~in the~~ one year after the first contains the erroneous description which has been noticed. It is plain that no claim for the land described in the 2d deed was presented to the Board The petition describes the land

as it has since been surveyed and the plat annexed to it and the other maps produced in evidence delineate the same track.

143 ND
PAGE 242

It would seem therefore that the misdescription must be the result of a clerical error— But whether it be so or not the fact is the fact that Garcia has either intentionally or by mistake conveyed a track different from that granted to him and which he received judicial possession affords no reason why the Court should change its location as established by the act of possession more especially when that location has been fixed by the final decree of the Board which has become final by the Courts of the U. S.—

For these reasons I think that the official survey should be approved.

C. No. 143.

U. S. Dist. Court

The United States

vs.

James Enright

Filed Sept. 13th 1862

W. A. Cheever,

Clerk.

143 ND

PAGE 243

143 ND
PAGE 244

At a stated Term of the District Court of the United States for the Northern District of California held at the court room in the city of San Francisco on Tuesday the 23rd day of September A. D. 1862.

Present Hon Ogden Hoffman District Judge

The United States
vs
James Enright } No 143.

It appearing to the court that on December 2nd 1861 an order was entered directing the return of the official survey of the land confirmed in this case; that on the 6th day of December 1861 — in pursuance of said order the Surveyor General of the United States for California returned to this court a certified copy plat of the said survey; that on the 28th day of December 1861 — the United States by the District Attorney filed exceptions to said survey; that testimony in support of said exceptions & against them was duly taken & that upon said exceptions & testimony the cause came regularly to a hearing, all parties heard by their attorneys & due deliberation had in the premises,

Now therefore in consideration whereof it is ordered, adjudged & decreed that the said exceptions be & the same are overruled & that the said survey be & the same is hereby approved & confirmed.

143 ND
PAGE 245

And it is further ordered, adjudged & decreed that the claim of the claimant is a good & valid claim for the land granted by the Mexican Government, described in the claimants petition and lying in the county of Santa Clara, Northern District of California & that the same be & is hereby finally confirmed to the claimant James Enright to the extent of Seven ~~hundred & ten~~ 14/100 acres as called & surveyed by the Surveyor General of the United States for California as shown by said plat filed the 6th day of December 1861 the field notes of which survey were approved by said Surveyor General ~~& to~~ the 4th day of November 1861 and to which said plat, certified by said Surveyor General the 3rd day of December 1861 and marked approved Sept 23 1862 By Wm A Hoffman Dist Judge and annexed to & made a part of this decree, reference is had for a more particular description of the

land hereby confirmed to the said claimant

land hereby confirmed to the said claimant.

Ogden Hoffman
Dist Judge

143 ND
PAGE 246

No 143. ND
514 Bx

U. S. Dist: Court.

United States

vs

James Enright

Decree approving
Survey

Filed Sept: 23. 1862.

W. H. Cleaves.
Clerk

143 ND
PAGE 247

U. S. District Court
Northern Dist of California

143 ND
PAGE 248

United States
vs
Jones Enright
} No 143 L.P. 514

Brief on Exceptions to the official Survey on the Point of the United States

The United States
vs
James Enright
} No 143 L.C. 514

143 ND
PAGE 248A
for 248 see next to last page of this dossier

These Cause Comes before the Court on objections by the government to the official Survey.

— "Objections" —

1st "That upon an application of the terms of the grant and the decree of the Court to the lands and other objects as they exist in Nature the Claim in this case is said for uncertainty and cannot be reasonably located or surveyed"

2nd "That the initial point of said Survey is not the one intended by the decree of Confirmation"

3rd "That the said Survey does not locate the Lands

as they are described in the decree of confirmation."

The papers upon which this claim is founded afford some data for its proper location, which taken in connection with the natural and artificial objects clearly show that the official survey has been improperly made and that it does not cover the land granted to Garcia and which he was put in possession of by the Mexican authorities and afterwards conveyed to Enright the present Claimant.—

143 ND
PAGE 249

It will be observed that Garcia's petition for the land in this case was not accompanied (as is usual in such cases) by a. diseño or map showing the land asked for; and in fact there is nothing in the

petition to enable us to know where the land was situated that the petioner desired — The petion says that he Garcia desired "Two thousand Varas of land for cultivation in a place where it may not prejudice the Mission" There is however a morginal note to the petition signed "Pacheco" Stating that "The petition is for eight thousand Varas of Cultivation land" So far as the petion informs us the land Sought is a Square of 2000 Varas on a Side "in a place where it will not prejudice the Mission" The Governor upon the reception of this petition referred it to the Secretary of State for him to report on; as appears also by a morginal note to the petition —.

See page 5 of the Transcript

143 ND
PAGE 250

The Secretary reported back to the governor that the Father Minister of the Mission of Santa Clara by his certificate which the interested party accompanies with his Petition that there is no objection to the granting of the petition" "Signed Manuel Jimeno"

143 ND
PAGE 251

I will here remark that this certificate of Rev Father Minister referred to by the Secretary does not appear among the papers in this case nor is its absence accounted for; and we cannot tell where the Rev Father-minister understood this land to be "that was not to prejudice the Mision"

The next paper is what purports to be a grant as follows—

"Monterey January 6th 1845

Granted as petitioned

for and in accordance with the report of the Per Gov-ther minister"
Signed "Michael Ty"

So far as these papers are concerned we are able to learn two things only in regard to the grant — viz

143 ND
PAGE 252

First — That the land granted is a square of 2000 varas on a side —

Second — That it is to be located "in a place where it will not prejudice the mission"

The next and last paper making up the title of the original grantee Garcier purports to be an act of judicial possession — This paper after reciting the usual formula says that the measurement was made with a cord of 50 Spanish varas in length and that "the measurement was commenced by running

Page 93 of Transcript

a line of twenty varas from the first live oak (encina) before the place known as Don Pedro y San Pablo towards the South South East which tree remained as a dividing point (lindero depresado) in order to form the square of its extension of land bounding by the first measurements as far as the boundaries of Moriano Castro"

143 N.D
PAGE 253

This paper purports to be signed by Dolores Pacheco as judge and Silvio Pacheco and Lorenzo Pinedo as witnesses of assistance.

Now taking all the papers presented in this case, as the original title papers, they afford us certain data from which we are to locate the land granted to Bonnier by the Mexican government

First As to quantity, the

grant is for a quadrangle of 2000 varas on a side.

Second " It is to be located in a place where it will not prejudice the mission

Third " It is to be in the vicinity of a place known as San Pedro y San Pablo

143 ND
PAGE 254

Fourth " It is to begin at a live oak tree near San Pedro y San Pablo

Fifth " It is to touch upon the lands of Moriano Castro —

The present Claimant Wm Enright connects himself to this title or claim of Garcias by means of two deeds The first deed is dated on the 20th day of October — Thus one year and eight months after Garcia obtained judicial possession of the land he sold and conveyed it to

Mr Enright the present Claimant, in that deed the land is described by name, no location is given to it (it was a deed however good and sufficient to convey the title—

page of Transcript

On the 16th day of November 1848 about one year after the execution of the first deed Enright obtained a second deed for this same grant from Garcier in which last deed the land is described as follows to wit,

143 ND
PAGE 255

"Beginning at a place named "San Pedro y San Pablo" at the distance of about three miles from the said mission of Santa Clara near the high road to San Francisco and running in a South westerly direction the distance of two thousand varas towards said high road, thence in a North westerly direction

Page 101 of Transcript

two thousand varas, thence towards the North East two thousand varas and lastly the same distance of two thousand varas to the Spot called "San Pedro y San Pablo" at which the measurement commences"

143 ND
PAGE 256

It will be noted that the description of the land as given in this deed differs somewhat from that given in the act of possession; both of the instruments mention "San Pedro y San Pablo" they both describe the land as being of square of 2000 varas on a side - They disagree in this, the act of possession says the square began at the first Live Oak in front of "San Pedro y San Pablo" the deed says it began at "San Pedro y San Pablo" itself; the act of possession motions only one line and says it runs S. S. E. the deed says the first or base line runs S. W. and fixes

the west north of said
first line — the act of possession
calls for the lands of Castro
this deed is silent on that
point — the deed calls for
the high road to San Francisco
the act of possession says
nothing about such high
road —

143 ND
PAGE 257

Let us examine these
two papers by the light of the
testimony and with reference
to the natural and artificial
objects called for by the papers
in that vicinity (which objects
must control in the location
of the grant) and see if we
can reconcile them with the
official survey and the objects
called for. Before we do
this however — we will call
the attention of the Court
to the petition of the claim-
ant and the decree of the
Court in this case that
we may have all the papers
before us in this investiga-
tion ———

page 5 of Transcript

The petition of Mr Enright the present Claimant to the Board of Land Commission does not differ in any material point of view from the title papers in its description of the land — See petition —

143 ND
PAGE 258

The decree of the Court confirming the grant in this case describes the land as follows —

" The land of which confirmation is hereby made is situated in the County of Santa Clara and is now occupied by said Enright: the said land being in a square of two thousand varas on each side and lying adjoining the lands known as the Mission lands of the Mission of Santa Clara and having for the side of said premises next to said Mission a line drawn from the first Live Oak before the place known as " San Pedro "

See decree

San Pablo, and running thence to the South South-east two thousand varas unless the same shall sooner strike the limits of the land known in 1846 as Moriano Castros land and terminating the same at said Castros limits if said line should strike said limits with less than two thousand varas"

It is contended first, that the official survey does not begin at the proper point; as it begins at a white oak instead of a live oak — see testimony of Smith — Center and Pacheco —

all the papers with the single exception of the last deed call for the first live oak in front of the place known as "San Pedro y San Pablo" as the starting or initial point — See the papers —

There is perhaps some conflict of testimony as to what and where this place called "San Pedro y San Pablo" is located yet we must arrive at the conclusion that one of two places marked on the map marked "Exhibit S W No. 1 attached to deposition of S-W Smith, is the place it, either the Northern point of the oak grove west of the mission of Santa Clara marked by Salvio Pacheco with a red cross mark or the tree marked as a white oak at the S W. corner of the Ulistac Rancho; Take either one or the other as the place and the official survey must be wrong — See the testimony in general and that Salvio Pacheco and Real in particular —

143 ND
PAGE 260

By examination of this map it will be seen that there are five oaks in this grove

much nearer the Northern point of it (which as we have seen is San Pedro y San Pablo by the preponderance of testimony) than the white oak marked as the beginning point of the official Survey — See depositions of " Smith - Center and Beal —

143 ND
PAGE 261

The difference between a live oak and a white oak is greate as shown by the testimony of — Smith - Beal - and Pacheco -

Mr Beals testimony shows that his examinations on the land were meager and cursory - S. Pacheco upon whome he so much relied in fixing the location of the land made his statements not under oath and this Pacheco swores as appears in his deposition that he was on the land but once before and that some 16 years

past while the land was unimproved.

It is hard to conceive how it was possible for the surveyor general to have ordered the survey of this grant to be made as it is made: Standing as he says he did upon the ground and holding in his hand the decree of this court and the act of possession both of which called for the first live oak in front of the place known as "San Pedro y San Pablo," with the grove of oaks marked on the map stretching away in front of him, the Northern point of which grove was pointed out to him at the time by Isidro Packer as the place known as "San Pedro y San Pablo," with here and there a live oak plainly visible

143 ND
PAGE 262

143 ND
PAGE 263

in this grove and near the point known as San Pedro y San Pablo, get with these objects before him and these papers in his hand, he marches out into the plain and establishes his initial or beginning corner at a "white oak" at a distance of 3 miles by his own statement (though not more than two in fact) from San Pedro y San Pablo, and atleast (a mile from the nearest live oak; this is paping strong and yet it was done.

His reason for doing this is that Salvio Pacheco stated that this white oak was the correct starting point; and he had great confidence in his memory and veracity — had he but opened the act of possession he then held in his hand he

(11)

would have found that this
same Salvio Pacheco of
doubtful memory and
truthful tongue had under
oath both written and
signed that instrument
, and that it called for
a live oak and not a
white oak; then if he
relied upon this mans
statements so confidently
when not under oath what
would he do when they were
made under oath? The surveyor
or general I suppose, thought that
Pacheco would be more apt
to tell the truth when not
under oath than when he
was. The Supreme Court
of the United States well
knowing the treachery a
Spanish memory de-
cided in the case of Duco
et al. vs. The United States
23 Howard Pr. 543 that "the
testimony of the late officials
of the Spanish government
was not to be taken to

make or vary a record,,

Again he runs the first line (as will appear by the survey itself) S.E. and there is no paper or witness that calls for such a course

Now granting for the sake of argument that the true monked at the N.E. Corner of the official survey is the correct starting point (which we do not admit it is not) it will appear by an examination of the official survey in connection with the map marked Exhibit S.W. No 1 attached to deposition of S.W. Smith which is proven by Smith - Lester - Beal and Pacheco to be a correct delineation of that part of the country and the grant and its surroundings, that the official survey is incorrectly and improperly made, and that the second deed made by Garcia and

accepted by Enright proves by locates the land in question and locates it altogether to the South of the official survey.—

143 ND
PAGE 266

By looking upon this map (and the official survey is correctly laid down on it) it will be observed that the first line run the line next to the mission of Santa Clara runs S.E. and also that the lands of Castro lay to the west of the Stanley point and of the grant as surveyed; now it is true that the act of possession as it appears in the translation in the transcript page 93 and also the decree of confirmation calls for this line to run S.S.E. yet both of these papers say this line is to run towards the lands of Castro and by looking on the map we see this line as surveyed

143 ND
PAGE 267

runs from, instead of towards said lands of Castro.

And it is the plain intent and meaning both of the act of possession and deed of confirmation (as will appear by an examination of them) that this first or last line is to run towards Castros land, but this is impossible unless we reverse the course and run S.W. instead of S.S.E or S.E.; but if we adopt the description given in the deed of 1848 we see that it can be reconciled with the natural and artificial objects, for if we run S.W. instead of S.S.E. or S.E. we will run towards the lands of Castro.

It is a rule of law that course and distance must yield to natural and ascertained objects — see Houston's heirs vs Thornton 6 Wheaton 580 or 5 Curtis

143 ND
PAGE 268

174 also 4 Kent old pages 466 & 4 and 6 Cowen 705 and we here make the rule—

It may be argued that the decree of confirmation says that Enright now lives on the land and if the first course is run S. W. and the lands located north of that as a base it will exclude Enright as he lives on the N. W. Corner as it is now surveyed in reply to this we say that the deed made by Gorcies in 1848 and accepted by Enright makes no mention of Enrights living on the land, but describes a different tract from that surveyed or described in the decree and the testimony shows that Enright had built his house and was living where he now lives prior to the making this deed

and if he was living on the grant it is to be presumed that it would have been so stated in this deed — See testimony generally —

143 ND
PAGE 269

Again Salvio Pacheco the most relied on by Claimant to fix his location and sustain the official survey, the man who swores that the tree marked at the N.E. corner of the official survey is the identical tree at which the measurement was begun when the judicial possession was given to Forcier in 1846 swores that the first or base line was run S.W. instead of S.S.E. and he makes this judicial survey include the same tract mentioned in this deed of 1848 and a different one from that included in the official survey and altogether to the South of it — See deposition of Salvio Pacheco —

143 ND
PAGE 270

Again it is a rule of law that where no actual possession of the land in controversy is proven the claimant will be bound by the interpritation put upon the grant by the original grantee— See Annal reports of Louisiana Vol 4 P 301-2 Robinson— We hold that no such proof of actual possession being made in this case that the claimant is bound by the deed of 1848— See testimony Sparrow—

Now adopting the rule heretofore referred to that course and distance must yield to natural and ascertained objects; and taking into consideration in addition the evidence in this case it is clear that the first line (the one next to the mission of Santa Clara) which is made the base in the act of possession must be

run S. W. instead of S.S.E or S.E. as run in the official survey—

The translation of this paper before the court says this line is to run S.S.E. yet it at the same time calls as we have seen for the lands of Castro, now it will be seen by looking on the map before referred to that if we run the line S.S.E or S.E. we will run from the lands of Castro instead of towards them—

Again it is very likely taking all things together that the word in the act of possession translated S.S.E. was intended for S.W as the words in the Spanish tongue are so nearly alike Sur-Sueste being S.S.E. and Sur-oeste being S.W. This view is strengthened by the fact that the deed given by Governor in 1848 so soon after the possession of the land was

143 ND
PAGE 272

given to him that he must have clearly recalected (at least if he had cultivated as Claimant insiste he did) where the land was located, which deed was accepted by Enright while he already had the title and was living in the vacinity, thus it amounts to a declaration by each of the parties of their understanding of the location; which deed as we have already seen says the first lin run S.W. the second North West S.C. thus locating the land to the N. of the official Survey. It seemes that the only object that the Claimant Enright had in obtaining this second deed from Garcier was for the express purpose of getting the proper meets and bounds of the grant (and these Garcier must have known if he cultivated the land) and that this was the very

thing in the minds of the parties when this deed was drawn and that it was drawn in reference to that fact.

This deed it is true makes no mention of Castro's land yet the first line is to run S. W. which would be as shown by the map towards the Castro land; which is called for by the act of possession.

Again Salvio Pacheco the witness most relied on by the Surveyor general in locating the grant and also by the claimant to sustain the survey, re-verses this course and says that the line runs (see his deposition) S. W. then N. W. S. C. thus changing the location to a different tract of land from that imbraced in the official survey; but sustaining in toto this deed of

1848— He also states that the Spaniards were not in the habit of paying much attention to the intermediate points of the compass and as S.W. is less technical so to speak than S.S.E. and would be more likely to have been used by this Pacheco who wrote the instrument as secretary and signed it as a witness—

Again the petition of Garcia was for this land "in a place where it would not prejudice the mission" and the papers state that the presiding priest of the mission reported favorable to the grant; and the governor in making the grant calls especial attention to that part (see grant) for he says that "the grant was made in accordance with the report of the Rev Father Minister" in other words

143 ND
PAGE 275

he means to grant the lands described in the Rev. Fonthers report and none other that report took the place of a map or "Desenio"

Now this report is refered to and made one of the papers constituting the muniments of title in this case and from the fact that it is not produced by the Claimant in this case nor its absence accounted for, and from the additional fact that all these papers come from private sources and are not to be found in the public archieves; we are to take it that this report of the Priest contradicts the Claimant's present theory of location.

Again if we examine this official Survey in connection with the surrounding Country as shown on the map already refered to

we shall see that the land is so located as to prejudice the mission land much by leaving the said lands cut into small and irregular tracts; it is so surveyed as not to touch any of the surrounding ranchos; it does not touch the lands of Castro although called for by the papers nor does it touch the rancho of "Alistac" nor that of "Quito" although these ranchos are near by — I state it that it is not to be presumed that this Southern Minister the curator of the lands of the Mission of Santa Clara would have consented for a grant of land to be made much less surveyed so as to cut up and destroy the symetry and compactness of the Mission lands when he had it in his power to prevent it, and the petition was for land so located as

not to prejudice the Mission.

These several papers and deeds of the Claimant were recorded in Santa Clara County where this Claim is situated long years before were settled or improved by the people as will appear by the indorsements upon said originals, which papers as we have seen locate the land to the North of the official Survey, and it would work great wrong and injury for the land to be located in a different place from that indicated by these papers—

There is no evidence however that goes to sustain the official Survey in this case: the papers and deeds show that the land should be located to the North of where it is as does also the oral testimony of the witnesses.

If we are to be confined

143 ND
PAGE 277

143 ND
PAGE 278

strictly to the letter of the act of possession then we must change the starting point of the survey and hunt for a live oak in the vicinity of "San Pedro & San Pablo" which place is shown by the testimony to be atleast 1½ miles South of the official survey and most of the witnesses make it more than two miles South of it; near and to the South of which point we find three live oaks and that these live oaks continue at intervals all along down this grove to the South.

But if we are to take the testimony of Salvio Pacheco and discard the live oak) that the tree at the N.E. Corner of the official Survey is the correct starting point then we must just turn the Survey over on its North-

east boundary line and locate the bond to South of where the official survey locates it, for he swores that the first line run S. W. the secon N. W. third parallel to the first the fourth back to the place of beginning: take either horn of the dilemma and the official survey does not properly locate the land and cannot be sustained.

W. H. Laine
of Counsel for
the government

The United States
vs
James Enright
} No 143 L.C. 514

143 ND
PAGE 280

(1) "Where the description of boundaries in a deed are indefinite or uncertain the construction given by the parties, and manifested by their acts on the land, is deemed the true one unless the contrary be clearly shown" Red. Vs. The proprietors of locks and canals 8 & 6 274 Curtis 17-585

(2) It is a universal rule that courses and distances yield to natural and ascertained objects" Preston's heirs. Vs. Bowmar 6 Wheaton 580 or 5 Curtis 174 also 4 Kent old paging 466 & 4 6 Cowen 705 Jackson. vs. Moore

(3) The principle is well settled, that in the location of a grant that which is most certain and material in the description shall control that which is less. so. 5 Wendell 147

(4) "The testimony of the late officers of the Mexican government is not to be taken either to make or vary (a) record
23 Howard U.S. S.C. 543

143 ND
PAGE 281

(5) No actual possession of the land in controversy being proven by the plaintiff held that the plaintiff was bound by the interpretation put upon the grant by the original grantee and those claiming under him. Annual R. of Louisa vol 4 p 301-2 — Robinson

P. of I. Testimony of claimant as to cultivation and possession —

Salvio Pacheco

7 & 8 "Garcier never occupied the land himself, the land was occupied by the Americans dont know whether under Garcier or not dont know that it is all occupied."

143 ND
PAGE 282

9 J. A. Forbes.
"Enright built a house on the land purchased by him from Garcier — dont know that Garcier ever occupied it"

11 James Walch
"Enright bought the land of Garcier in 1847 and was put into possession of it by Garciers agent in my presence and has been in possession ever since claiming it as his own"

12 Antonio M. Pico
"The land is the same now

13 occupied by Enright—
Gorcier had a hut and corals
on the land—he lived on
his mission lot))

14 Enright built on the land
in 1847 and in 1849 the
Indians cultivated a part
of the land))

1819 W. B. Norris
)) Enright built a house
in 1849 and has fenced
& cultivated a portion of
the land shown on the
map, when I first came
there in 1846 there was
the appearance of cultiva-
tion on the land. the Indi-
ans raised melons on it.

20 821 I have marked on this ex-
hibit (J W. N.) the indians
cultivation with black ink
I think the line was
not ascertained in 1847
I heard Enright say
he thought he was
building on the land he
bought from Gorcier))

Witnesses for the U. S. ~~for~~ some point.

27 A. W. Findly
"There were no traces of cultivation on the land in 1847
28 this land was an open uncultivated prairie until 1849
143 ND
PAGE 284
when a Mr Packwood built a house near where Enright built his. Packwood occupied the house he built—
29 I have been frequently upon the land after stock and never saw any signs of cultivation"

Wm Campbell
31 "I knew the land in 1847 saw no cultivation nor the traces of any"

35 G. W. Belamy
I have know the land since 1845 never knew of any cultivation on it until the American war

in 1847

36 I believe there were no improvements nor the vestiges of any during the years ~~in or during the~~ 1845, 1846 & 1847"

143 ND
PAGE 285

40 Manuel Miranda
"Never knew of any cultivation on the land until 1847 - I made the first improvements near there at Saint Peter and Paul which is about 1 1/4 ~~or~~ 1 1/2 miles N.E. of Enright's house

41 I never knew of Garcier or his agents making any improvements on this land

43 The place cultivated by the Indians was outside of the White Survey -"

46 J Robles -
"The land cultivated by Garcier was at the point of the oak grove of S.P. & S.P. towards

Garcier [illegible] at the

of S.P. & S.P. towards the mission and is now occupied by Enright the land so cultivated is to the right of the S.F. road coming to S.F."

143 ND
PAGE 286

57 Jose Castro –
"I know Garcier did cultivate lands about a league west of the Mission
58 saw a log house and coral there in 1845 & 46

63-4 Manuel Cantua
"I have known the land but not as surveyed or marked on exhibit X.Z.Z. I never knew Garcier to have any improvements on the land marked on this exhibit – I have been over it often"

69 Antonio Alviso
"I have know the land from childhood there was no cultivation on it"

78 M. L. Mirantes
"The was no Cultivation on the land by any one"

143 ND
PAGE 287

22 P. T. Sherrebeck
"Garcier had Indians there in 1841 and until 1846"

Testimony as to the Location
P. of T. of San Pedro y San Pablo

9 J. A. Forbes
The land is in the vicinity of a Spring Called S. P. & S. P. at the entrance of the first oak grove to the N. N. W. of the Mission of Santa Clara

11 James Walch
"When Garceers agent gave Enright possession of the land he pointed out two trees in the plain which he said were know as

pointed out another

the land were known as

S.P. & S.P. and he pointed out another tree standing near the edge of the woods which he called Palo Zinde he said that (a) line drawn from the two trees (which were two trees growing from one stump) to this Palo Zinda making (a line of 2 rods would constitute one boundary of the land and the other lines one to take this as a base"

12 A m Pico
"S.P.R.R. & S.P. was a forest
15 of oaks and other trees
— and not one tree in
particular"

40 Manuel de Miranda
"S.P.R.R. & S.P. is about
1¼ or 1½ miles N.E. of
Enright's house"

46 A Robles
S.P.R.R. & S.P. is the point

of the oak grove

63-4
143 ND
PAGE 289

Manuel Cantua
"S.P. & S.P. is about 3/4 of a mile N. of the oak at the N.E. corner of this map"

67

Antonio Alviso
S.P. & S.P. would be about 3/4 of a mile N.E. from the oak marked on the N.E. corner of this map (it is two trees growing from one trunk)

Salvio Pacheco
"Saint Peter B.C. is the N.E. point of this oak grove I have marked with a red Cross mark"

See dep of S.P.

No 143.

United States

v

James Enright

Brief for U.S.

143 ND
PAGE 290

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

143 ND
PAGE 291

The United States } No 143.
v } Index to Transcript
James Enright }

1	Petition of James Enright	page	5.
2	Deposition of Salvio Pachico	page	7.
3	Deposition of J. A. Forbes	"	8.
4	Deposition of James Walsh	"	10
5	Deposition of Antonio Maria Pico	"	12
6	Deposition of Dennis Martin	"	15
7	Deposition of W. H. Norris	"	17.
8	Deposition of Peter J. Sherreback	"	21
9	Deposition of Geo. J. Walker	"	25
10	Deposition of Asa W. Finley	"	27
11	Deposition of Wm Campbell	"	30
Map attached 12	Deposition of George H. Bellamy	"	34
13	Deposition of Manuel D. Miranda	"	38
14	Deposition of Secundino Robles	"	45
15	Deposition of Jose Castro	"	56
~~Map attached~~ 16	Deposition of Manuel Cantua	"	63
Map attached 17	Deposition of Jose Antonio Alviso	"	67
18	Deposition of Julian Cantua	"	74
19	Deposition of Manuel D. Miranda	"	77
20	Translation of Doc HH No 1. annexed to the Deposition of Salvio Pachico	"	85

(over)

21 Translation of Exhibit J.C No. 1. page 93 ✓
22 Exhibit No 2. " 97 ✓
23 Deed, (Francisco Garcia to claimant) " 101 ✓
24 Stipulation, " 105 ✓
Map attached 25 Affidavit of Solomon Doane " 107 ✓
26 Opinion of the Board " 109 ✓
27 Decree of Confirmation " 115 ✓
28 Certificate of Secretary, " 117 ✓

U.S. District Court
No 143.

The United States
v
James Enright

Index to Transcript

J.B. Crockett
Atty for claimant

143 ND
PAGE 292

United States } U. S. Dist Court.
vs } No 143.
James Enright }

143 ND
PAGE 293

Brief for claimant in reply to brief of Mr Laine for the Govt.

I deem it unnecessary to follow the counsel in detail, through his elaborate brief; but shall confine his argument to the few propositions which it embodies. His objections to the survey rest upon the following grounds.

1st That the grant & decree define the initial point to be a "live oak" in front of the plaza known as "San Pedro y San Pablo", whereas the official Survey begins at a white oak in front of the plaza designated.

2nd That the act of juridical possession & the decree require the first line, to run towards the lands of Mariano Castro, whereas the first line of the official survey does not run towards Castro's lands as surveyed.

143 ND
PAGE 294

3rd That the deed from Garcia to the claimants, describes the land as beginning not at the live oak, but at San Pedro y San Pablo & running by courses variant from those in the official survey -

4th That there are live oaks in that vicinity in front of San Pedro y San Pablo, which would answer the call of the deed & the survey ought to have begun at one of them, instead of the white oak -

On the first point I remark, that though the beginning point is said to be a live oak, yet Salvio Pacheco, who wrote the act of juridical possession, testifies that it was in fact a white oak - He identifies the tree on the ground & gives the most convincing reasons why it is the proper tree - In approaching, when far from it, he tells the Surveyor General, that if it be the proper tree, there will be found on it three ancient marks with an axe, & a "sanjon" near by. When they reach the tree, the marks are there & the "sanjon" as represented - It is a large tree, 2 feet in diameter & perhaps

100 years old - The marks are examined & found to be ancient marks - The true stump is a conspicuous object, standing out in the open plain, in front of the grove known as "San Pedro y San Pablo" & is not likely to have been mistaken by Pacheco - The fact that it is termed a line oak is of no consequence provided the true stump is sufficiently identified - Suppose there had been no other tree within 5 miles, & that a dozen credible witnesses had identified this as the tree at which the Survey was begun by the Alcalde, would any sane man claim that such proof would go for nothing, because it was called in the paper, a line oak instead of a white oak? I might cite a dozen examples to prove the injustice & absurdity of such a theory; but deem it useless to pursue this point further - The only material inquiry is, whether it is sufficiently proved that this is the same tree, at which the Alcalde began his survey - On this point there is no contrariety of proof & the testimony of Pacheco & Beale puts the matter at rest -

2nd It is said the first line does not run towards the lands of Castro - But there is no proof in this case, where the

exterior lines of Castros ranch rest-
The topographical map put in evidence,
only shows Castros lines as surveyed under
his confirmation - (See Smiths testimony)
& there is no proof in the cause to show
where his exterior lines rest - For ought
that appears, the first line may run directly
towards Castros lands as understood in
1846 - Pacheco says it was not then known
with any certainty where Castros lines
rest - & he points out to the Surveyor on
the ground, the exact land which was
included in the act of juridical measure-
ment & the official survey conforms to
it - I venture to say that no other survey of
a mexican grant has been made in this
state, where the proof of boundaries is so
definite & satisfactory as in this case -
The object of these surveys is to set apart
to claimants, the exact lands if possible
granted & surveyed to them by the mexican
govt & when a reliable witness points out
the land on the ground, this is the highest
& best evidence -

3d. It is insisted however that the
deed from Garcia to Enright is to cut
some figure because it does not describe
the land precisely according to the official

Survey - It calls to begin at "San Pedro y San Pablo" & not at the live oak, & calls to run thence S. W. thence N. W. thence N. E. & thence to the beginning. By starting at the oak tree, & reversing the lines of the official survey; that it is traversing the lines in the opposite directions, adopting the east line of the official survey, as the first line under Enrights deed, the courses will be precisely accurate, except the second course which ought to be S. E. instead of N. W. But it is sufficiently apparent from the two deeds to Enright, that the land intended to be conveyed, was the same land granted to Garcia & any trivial errors of description in the deed, can have no effect upon the question of location. The question now, is not whether the survey conforms to Enrights deed, but whether it conforms to the act of juridical possession & the decree of confirmation. On this point, the proof is conclusive.

4th The last point is that there are live oaks in that vicinity & the Survey ought to have begun at one of them. This point is already sufficiently answered. If the official survey in fact begins where the act of

143 ND
PAGE 298

juridical possession began & includes the same land, there is an end of the argument. The proof on this point, is conclusive. The whole object of the survey, is to set apart to the claimant, the identical land which the Mexicans govt assigned to him in the act of juridical possession; In this case, the land has been ascertained & its limits fixed by satisfactory proof & with unusual accuracy. It embraces the land which the grantee ~~without~~ within a year or two after the grant, delivered to Enright & pointed out as the proper location & Enright has resided upon it ever since & has erected valuable improvements upon it. The decree confirms the land on which Enright resides. But the counsel insists, that the survey ought to be made on another theory entirely, & which would exclude Enrights dwelling & possessions.
It is manifest that the survey is correct & ought to be confirmed.

J. B. Crockett
for Claimant

No 143.

United States

vs

James Enright

Brief for Claimant

143 ND
PAGE 299

J. B. Leverett

143 ND
PAGE 300

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

San Francisco, Dec 30th 1854

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

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 514 on the Docket of the said Board, wherein

James Enright is —

the Claimant against the United States, for the place known by the name of A tract of land near Santa Clara,

and request your receipt for the same.

I am, Respectfully,
Your Obt. Servant,

Geo. Fisher.
Sec.