CASE NO.
157

NORTHERN DISTRICT

LAS PULGAS GRANT

GERVASIO ARGUELLO, ET AL.

CLAIMANT

LAND CASE 157 ND

15 pages.

367

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 367.

Gerasi Argiello, et, al CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Las Pulgas"

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* Thirtieth day of September, *Anno Domini One Thousand Eight Hundred and Fifty-*two, *before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;*

The Petition of Gervasio Argüello et al: *for the Place named* "Las Pulgas" *was presented, and ordered to be filed and docketed with No.* 367 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

San Francisco April 11th 1854.

Case no. 367, Gervasio Argüello for the place named "Las Pulgas" was ordered to be placed at the foot of the Calendar of the 1st Class Cases on the Trial Docket.

San Francisco, July 21st 1854.

Case no. 367, was submitted under the rule of March 21st last.

San Francisco Aug. 1st 1854.

In the same Case Commissioner Alpheus Felch delivered the opinion of the Board rejecting the Claim:

(Vide page 15 of this Transcript.)

San Francisco Aug. 15th 1854.

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

(Vide page 15 of this Transcript.)

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Petition

To the Honorable Commissioners to Settle Private Land Claims in California.

The petitioner Gervasio Arguello a resident of the City of Guadalajara in Mexico for himself as heir of Jose Dario Arguello deceased and as Executor of the last will & testament of his father Jose Dario Arguello deceased and of his Mother Maria Ygnacia Moraga de Arguello also deceased and for and in behalf of the children and heirs of his parents respectfully represents

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That in the year 1795 Don Diego Borica Governor of California, by virtue of authority in him vested granted to the said Jose Dario Arguello the tract of land called "Los Berrenetos" or "Las Pulgas" in the present County of San Francisco bounded as follows: On the East by the bay of San Francisco, On the South by the arroyo of San Francisquito, On the West by the top of the Sierra and on the North by the arroyo of San Mateo

That the said Dario Arguello immediately took the possession of said tract of land, built a house on it and stocked it with cattle, horses sheep &c and cultivated portions of the land

That the said Jose Dario Arguello continued in such occupation until about the year 1817 when his duties as a public Officer compelled him to remove to Lower California as Governor and Commander of that province and that upon so removing from upper California he left his son Luis Antonio Arguello in charge of his said Rancho & lands his horses cattle &c as the Agent of him the said Jose Dario Arguello.

That the said Jose Dario Arguello continued in faithful compliance with his duties as an Officer of the Government remained to the City of Guadalajara in Mexico where he died in the year 1829, leaving a will by which his property was devised to be bequeathed to his heirs generally and in which the petitioner Gervasio Arguello his son and the said Maria Ygnacia his widow were made his Executors & there by Manuel Servantes being also named as arbiter to decide any doubt or claim between the heirs

That said Maria Ygnacia Widow of said Jose Dario Arguello died in the month of April 1829 in the said City Guadalajara, leaving by her last will and testament the petitioner Gervasio her sole Executor

That the said Jose Dario Arguello and the said Maria Ygnacia, left as their heirs at the time of their decease as aforesaid 1st their son Luis Antonio Arguello who died

in the year 1830 leaving a widow and several children as his heirs, the names of whom he believes are correctly stated in the petition of the said widow and children in Claim No. 2 filed in the office of the Secretary of this Board. 2d Then son the petitioner Gervasio who is still living. 3d Then daughter Maria Anacleana Asanso who died in the year 1851 leaving children 4th Then daughter Ysabel de Estudio who died in the year 1834 leaving children 5th Santiago Arguello still living 6th Lencesiano Arguello who is still living 7th Salvador Osio only child of Dolores Arguello de Osio, the daughter of said Jose Dario and Maria Ygnacia who (the daughter) died in 1836 and 8th the children of Paula de Diaz daughter of said Jose Dario and Maria Ygnacia who (the said daughter) died in the year 1831 and 9th the children of Josefa de Sosa daughter of said Jose Dario and Ygnacia who (the said daughter) died in 18— all the other children of the said Jose Dario and Maria Ygnacia died previous to their parents unmarried and without children.

And the petitioner further represents that the said Don Antonio Arguello from the year 1817 and after that, continued in the occupation of said Rancho of Las Pulgas and in charge of said land buildings stock improvements and property as the agent of his father Jose Dario Arguello from the year 1817 until the death of his said father in the year 1827, and after that as one of the heirs of his said father, as the agent of the Executors of the last will and testament of his said father and of the other co-heirs until the year 1830 when he the said Don Antonio Arguello died in San Francisco California.

That as the said Don Antonio Arguello, at his death left a widow and several children without the means of support and education, the petitioner as the Executor of the last will and testament of his father and mother permitted the said widow Dona Soledad Ortega de Arguello, and her infant children to occupy the said Rancho de las Pulgas, and to use the said stock as the means of their support being moved thereto by feelings of charity and affection thus postponing the division and settlement of said estate until the said minor heirs of his deceased brother should become of sufficient age to support themselves upon the property which should correspond to them on the distribution of the

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estate of their grand father Juan Jose Dario Arguello and under the duties of the petitioner as an officer of the Government in Guadalajara should permit him to visit California and make a final settlement and distribution of said Estate, it being noted that at that time, the Lands of said Rancho of Las Pulgas were considered of but little value the stock upon said Rancho being regarded as constituting the most valuable part of said estate, and the use of which the petitioner was willing to give to said Doña Soledad and her children for the reasons of respect and because their increase on said Rancho would accrue to the benefit of all the heirs of said estate.—

And the petitioner through his counsel further represents that he has been informed and believes to be true that the said Doña Soledad and her heirs have petitioned this Honorable Board of Commissioners to confirm to them the whole of said Rancho of Las Pulgas to the detriment and injury of the just legal and equitable claims of the other heirs of the Estate of the said Jose Dario Arguello alleging in the first place that a grant of the said Rancho of Las Pulgas had in the year 1820 or 1821 had been made by Governor Solo to said Juan Antonio Arguello which allegation is untrue in every fact, no such grant having ever been made, nor any claim having ever been set up by said Juan A Arguello in his lifetime to said land, except as one of the heirs of his said father who was well known to be the legal owner and possessor of said land; and secondly, that a grant of said Rancho or a portion of it had been made by one Jose Castro in the year 1835 to said Doña Soledad and her children, which allegation the said petitioner believes to be untrue, and having never before heard of said grant, or if true said grant was obtained through fraud and misrepresentation and made contrary to law and therefore void and of no effect.

And the petitioner further represents that he has been informed that the heirs of one Juan Coppinger have petitioned this Honorable Board of Commissioners to confirm to them a certain part of said Rancho of "Las Pulgas" called "Canada de Raymundo" alleging that a grant from one Juan B Alvarado to said Coppinger in the year 1840 which allegation the petitioner believes to be untrue, or if true, that said pretended grant was

obtained through fraud and misrepresentation and given contrary to law and in violation of the just Equitable and legal rights of the said heirs of the said Jose Dario Arguello who then were, and with them Father had been for some fifty five years in the quiet and peaceable and undisputed possession and occupation of said Land and therefore utterly void and of no effect
And the petitioner further represents that a portion of the title papers and documentary evidence of the said title of Jose Dario Arguello were left in the year 1817 with his said son and agent Luis Antonio Arguello and since his death have been lost or destroyed or concealed by his said widow Doña Soledad and her children & their agents & that other documentary evidence is in the archives of the former Government of California and Mexico and in the hands of the several heirs of said Jose Dario who reside in different countries and at great distance from each other, and that therefore the petitioner is unable to produce them at the present time and prays for further time to collect evidence and prepare this case for decision of this Honorable Board
And the petitioner further represents that he is unable to give at the present time the names of the heirs of the said Ygnacio Arguello de Estudillo who died in the year 1834 – of the said Joseph Arguello de Rosa who died in 18– said Pablo Arguello de Dragy who died in the year 1821 and the said Maria Anna Arguello de Lugo who died in the year 1851 and therefore prays to be permitted to file hereafter a supplementary petition more particularly setting forth the names of these heirs and the letter under which they claim to be the lawful owners of the said Rancho of Las Pulgas
And the petitioner Severo Arguello being unable at the present time to leave his usual residence in the City of Guadalajara in Mexico to attend to the aforesaid claim of the heirs aforesaid he has duly appointed his brother Santiago Arguello residing near the Port of San Diego in California, and one of the heirs aforesaid as his lawful Attorney, to do and performing everything which he the petitioner could do in the premises were he himself present, as is shown by the annexed copy Marked "A" with a translation Marked B of the duly authenticated Original which the petitioner's Counsel will at any time offer in evidence to this Honorable Board

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And the petitioner Santiago Arguello one of the children and heirs of the said Jose Dolores Arguello and the said Maria Ygnacia Moraga de Arguello joins with his brother Gervasio in the foregoing representation which he believes to be correct and true in every respect and the said Manuel bequeates as the there testamentary Executor and arbiter of the will of said Jose Dolores Arguello also joins in this representation and petition

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And the petitioners pray that this Honorable Board of Commissioners on the final hearing of this their petition and on the evidence which they shall produce, will ascertain and recognize the title of the Rancho of Las Pulgas as represented in this petition and confirm the same to the heirs of said Jose Dolores Arguello, and Maria Ygnacia Moraga de Arguello

By their Attorneys
Hallock Peachy & Billings

Filed in Office Sept 30th 1852.
Geo: Fisher
Secy.

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Special Power of Attorney Executed by Senor Don Gervasio Arguello in favor of his brother Senor Don Santiago Arguello resident in Upper California
Public act of the Notary Juan Bautista in the 1st Street of Pulacio On the South Guadalajara year 1849

Stamp Revenue	Years of 1848 and 1849	Four Dollars

Power of Attorney

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In the City of Guadalajara On the tenth of July one thousand eight hundred and forty nine. Before me the Notary and witnesses Senor Don Gervasio Arguello resident of this Capital whose person I certify that I know said; that it is necessary for him to arrange and conclude the Execution of the testaments of his father and mother Don Jose Dario Arguello and Doña Maria Ygnacia Moraga and for that purpose he ought to collect the property which belonged to them, with which he can do nothing while it is not at his disposition; that to this end and because various reasons prevent him from leaving this Capital, he has resolved to confer power on his brother Don Santiago Arguello resident in the Port of San Diego of Upper California; that he presents the wills which authenticate his character of Executor and in that relating to the present instrument they are literally as follows

Heading of the will of Don Jose Dario Arguello

In the name of Almighty God and of the ever virgin Mary our Lady, conceived in grace from the first instant of her most holy life Amen. Be it known to those who may see this present that I citizen Jose Dario Arguello retired lieutenant, native of the City of Queretaro and resident of this Capital, legitimate son of those of the same condition Jose Arguello and Doña Dolores Lamacho deceased, being sick and by God's infinite mercy in my entire judgment, memory and natural understanding proceed to ordain my testament in the following form —

Clause 7th

I declare that I appoint for the Executors of my will in the first place, my afflicted wife Madame Maria Ygnacia Moraga, in the second my son citizen Gervasio Arguello and in the third Manuel Servantes of the same condition, to whom I give such power and authority as may be be legally required, that my decease being one piece they may fulfil that pertaining to my will within the year which the law directs or in such further time as they may need and find

necessary, which I extend to them without limitation appointing also the third Executor Citizen Manuel Cervantes for arbiter to decide any doubt or claim which there may be between my heirs who must conform with his just decision.

End of the testament.

And by this present I revoke annul consider as of no value or effect, whatsoever other testaments codicils powers of Attorney bequests memoranda and legacies which I may have made previous to this in writing by word or in any other form, that they may be worth nothing, and not be referred in court or out of it, saving this present I wish may be kept, complied with and Executed as my last will and testament and wish it as the instrument which may be more firm and legal.

In testimony of which the person Executing whom I the Notary certify that I know, and that he is in his entire judgment memory and natural understanding, this Executed and signed in this registry which is dated in the City of Guadalajara on the twenty sixth day of January of the year One thousand Eight hundred and twenty seven, the witnesses being Citizens Antonio Alvarez, Ramon Torres and Manuel Garcia present and residents. Jose Darío Arguello = Jose Maria Cruz Aedo = It was copied from its record on the third day of its Execution on free written leaves

(4 Stamps commencing stating of the Will of Doña Maria Ygnacia Moraga

In the name of Almighty God and of the blessed ever Virgin Mary Conceived in grace from the first instant of her most holy life. Be it known that I Doña Maria Ygnacia Moraga a native of Sonora and resident in this capital legitimate daughter of Don Ygnacio Moraga and Doña Barbara Alviso now deceased being sick of disease which God our Lord has been pleased to send me, but by his infinite mercy in my entire judgment memory and natural understanding, proceed to ordain my testament in the following form

Clause 4th

I declare that I have Executed of my aforesaid husband (Don Jose Darío Arguello) the administration of whose will is not yet concluded

Clause 5th

And in order to fulfil and to pay that which is contained in this my will I appoint for my Executor my aforesaid Son Don Gervasio Arguello and I give

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him all the power and authority necessary in law that my decease being verified, he may enter upon and take possession of them, sell and dispose of them at public & private auction or without it, and of their proceeds fulfill and execute it (the will) although the legal term be passed, for I continue it him for all the time which he may find necessary without any limitation; with power to proceed extra judicially to the making of inventories and other necessary acts in use of those granted to testators by the best laws (pragmaticas) on the matter.

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Conclusion

And I revoke annul and consider as of no value or effect whatsoever other wills or testamentary dispositions previous to this I may have executed by writing, by word, or in any other manner, that no one of them may be worth anything or be admitted in court or out of it, except this present the whole of which I wish and command to be kept and complied with in all its parts as my as my testament, last final disposition and will or as it may best be received in law. In testimony of which, the person executing, whom I the Notary certify that I know, and who although sick evidently seems to be in her entire judgment memory and natural understanding, thus executed and did not sign because she did not know how it was done in her name by one of the witnesses — Who were Don Francisco Arrebullaga Don Moraga Bunal and Don Ricardo Mesquiu, present and residentes of this City of Guadalajara where it is dated on the twelfth of April One thousand Eight hundred and thirty nine = Moraga Bunal = Panfilo Soles = It was copied from its record the day opts Execution = A notorial mark and signature = Panfilo Soles

certificate to the quotations and continuation of the Power

I the Notary certify that these extracts agree with the original testimonies which I have before me And that Señor Don Gervasio Arguello continued saying; that as such Executor of his father and mother he grants and confers on his brother Señor Don Santiago Arguello all his power ample complete sufficient in law, as much as by law may be required and necessary especially and particularly for the agencies and measures which are indicated in the following articles

"Just. To recover the Rancho or hacienda called Sus Pulgas which belonged to his father & Mother in upper California and comprised within these boundaries: On the East the Sea, On the West the Coast range On the South the arroyo of "Francesquito near the Mipim of Santa Clara On the North the place called "Los Canales" is bounded by the arroyo of San Mateo belonging to the Mission of San "Francisco: in the understanding that the possessor ought to deliver up that property with all the improvements it may have Excepting the crops and personal property which there may be pending, which property he will enjoy as his own, for if he claims any thing as constructed or rebuilt by himself or by his father Don Jesus Arguello brother of the person Executing he has no right to be paid for it, because they have enjoyed the use of such hacienda or Rancho as if it had fallen to them only by inheritance, in place of demanding the division between all the children and grand children of Don Jose Dario Arguello and Dona Maria Ygnacia Moraga which is the operation to which the person Executing is about to proceed as Executor of the Owners

Second. If resistance is made to the delivery of the aforesaid property, then he will demand it judicially by all the forms Suits Laws & Sentences which he may consider necessary and are designated by the laws in force in that Country without omitting any act of those which the person Executing would perform if he should personally claim that possession in which he will enter so soon as it may be given to him by the possessor or the Authority to which he may apply.

"Third. So soon as he may Obtain the possession of the property, he will sell it to the highest bidder for the price he may determine, endeavoring that this may be equal to the value of the property itself in order to avoid reclamations, and he will place it at the disposal of the person Executing this the same which they may give for it, that he may divide it amongst all the heirs, the inventory of partition being made out "The act of sale he will Execute with due formalities "Fourth. Both the power to substitute this power, to revoke substitutes and appoint Others - "In all which and things incident and annexed and depending upon

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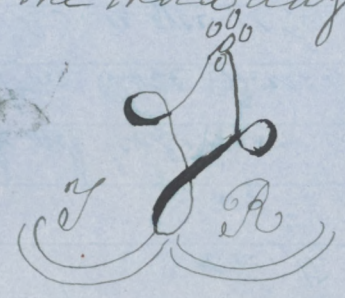
it, let his brother Don Santiago Arguello perform whatever steps and acts of agency may be needed whether judicially or extra judicially; and if necessary let him present petitions and other documents and proofs which may be required, let him dispute those presented against him, take Exceptions, to make Oath, prove or withdraw if it should be advisable, agree to that favorable to him, and appeal whatever may be against him and interpose all other legal means, follow their steps or give up; and finally he will not omit any measure in order that the object of this power be fulfilled—

And for the greater security of which I the Attorney in fact may do, the person Executing binds the property of the Estate in his charge and submits it to the jurisdiction of the Judges who of his causes ought to take cognizance that they may compel him to comply with it as with a definitive Sentence, consented to, passed in authority of res judicata — So thus Executed and Signed in this Record the Witnesses being Don José Maria Quintero, Don Francisco Flores and Don Esmeterio Cornejo, present and residents — I certify

Signed Gervasio Arguello (Signed) Juan Riestra

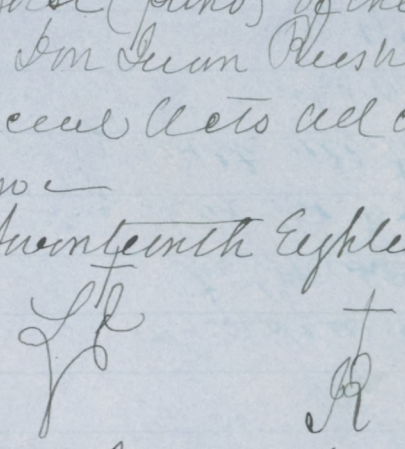
Copied from its record the third day of its Execution



(Signed) Juan Riestra

"The undersigned Public Notary certify and give forth that the National Mark and Signature which precede are of the hand and first (pano) of the Notary in the Exercise of his Office Don Juan Riestra and that the legatary of his offices acts all credit is given to same authentication —

Guadalajara July twentieth Eighteen hundred and forty nine



(Signed) Jesus Gonzaga Arreola (Signed) José Maria (Signe) Jesus Romero Rodriguez Blanco

"Filed in Office Sept. 30th 1852

Geo. Fisher Secy

15.

Gervasio Arguello Val
vs
The United States

For a part of the place called Las Pulgas situated in San Francisco County

Opinion

The petitioners have presented no proofs in this case their claim must in consequence be rejected

Rejected

Filed in Office Aug. 1. 1854
Geo. Fisher Secy

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367 Gervasio Arguello Val
vs
The United States

Decree

In this case on hearing the proofs and allegations it is adjudged by the Commissioners that the claim of the said petitioner is not valid and their application for a confirmation is therefore denied

Alpheus Felch
R. Aug. Thompson
S. B. Farwell
Commissioners

Filed in Office Aug 1. 1854
Geo. Fisher
Secy

And it appearing to the satisfaction of this Board that the Lands hereby unexecuted is situated in the Northern District of California it is hereby Ordered that two Duplicates 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 Duplicates 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.

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Office of the Board of Commissioners,

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

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Fifteen — pages, numbered from 1 to 15, 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. 367 on the Docket of the said Board, wherein Gervasio Argüello, et al, are the Claimants against the United States, for the place known by the name of "Las Pulgas"

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.

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. Morse 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. 357 on the Docket of the said Board, wherein Gervasio Argüello, et, al, are —— the Claimants against the United States, for the place known by the name of "Rancho de las Pulgas"

and request your receipt for the same.

I am, Respectfully,
Your Ob't Servant,

Geo. Fisher.

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