CASE NO.
186

NORTHERN DISTRICT

CASLAMAYOMI GRANT

WILLIAM FORBES

CLAIMANT

LAND CASE 186 ND pgs. 76

NOV 3 1962

326

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 326.

William Forbes CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Castamayoni"

186 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* Seventh 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 William Forbes, *for the Place named* "Caslamayomi," *was presented, and ordered to be filed and docketed with No.* 326 *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;

Los Angeles, October 8th 1852.

In Case no. 326, William Forbes for the place named "Caslamayomi," the deposition of Santiago Argüello, a witness in behalf of the Claimant, taken before Commissioner James Wilson, with document marked J. W. no. 1, annexed thereto was filed.

(Vide page 5 of this Transcript.)

San Francisco, Sept. 23d 1853.

Case No. 326 was called, on motion of the Counsel for the Claimant, ordered to the foot of the Docket.

San Francisco Sept. 19 1854.

Case No. 326 was submitted without argument.

2

186 ND
PAGE 3

San Francisco Sept. 26 1854.

In the Same Case Commissioner Alpheus Felch delivered the Opinion of the Board rejecting the Claim:

(Vide page 33 of this Transcript.)

and the following order was made, to wit:

(Vide page 34 of this Transcript.)

3

To the Honorable Commissioners to Settle Private Land Claims in California

Petition —

186 ND
PAGE 4

Your petitioner William Forbes respectfully shows: That Enrique Montenegro a Mexican by birth, On the 26th day of January A.D. 1844 applied to the Governor of California for a tract of land containing Eight Square leagues, situate in the then jurisdiction of Sonoma called "La Laguna de los Gentiles" or Los Lumayomi; that on the 5th day of February A.D. 1844 the Governor referred the said petition to the Secretary of State and subordinate authorities for their report; that on the 7th day of March A.D. 1844 the Alcalde of Sonoma reported favorably to the said petition to the Secretary of State on the 20th day of March A.D. 1844. That on the 21st day of March 1844, the Governor of California decreed that the land so petitioned for be granted; that on the Twenty Sixth day of March A.D. 1844 Manuel Micheltorena Governor of California by virtue of authority in him vested did grant by title or patent to the said Eugenio Montenegro, the said tract of land called "Los Lumayomi" situated in the jurisdiction of Sonoma containing Eight Square leagues a little more or less as shown by the Map in the Expediente, and with the boundaries described in the title, all of which is shown by the Original Expediente, a copy of which is submitted herewith marked "A" with a translation marked "B"

That in accordance with the conditions of a contract entered into between the said Montenegro & the said William Forbes On the 23rd day of August A.D. 1847 the said Montenegro Conveyed to the said William Forbes On the 7th day of August 1848 the aforesaid tract of tract of land, a copy of which Agreement, and deed of Conveyance are submitted herewith marked C with translations marked D.

And the petitioner further shows that the said Montenegro and the petitioner, ever since the date of said grant have been and the petitioner now is in quiet and peaceable and uninterrupted possession of the said tract of land.

That the said land has not been surveyed by the Surveyor General of the United States but that

4

186 ND
PAGE 5

its boundaries are fully described in the grant and marked out in the map aforesaid are easily defined, and well known.
That he knows of no conflicting claim
That he relies for confirmation of title upon the original papers, copies of which are submitted herewith, upon the Documents and minutes relating thereto in the Archives now under the charge of the Surveyor General and upon such other and further proof as he may be advised are necessary. Wherefore he prays the Commissioners to confirm to him the said grant.

By his Attys
Halleck Peachy & Billings

Filed in Office Sept 7. 1852

Recorded in Record of Petitions Vol 1 pages 222 & 223

5—

Deposition of S Arguello

186 ND
PAGE 6

Office of the Board of Commissioners
Los Angeles Oct. 8th. 1852

On this day before James Wilson One of the Commissioners for Ascertaining and settling private Land Claims in California came S Arguello a Witness produced in behalf of the Claimant Wm. Forbes whose petition No. 326 On the Docket of the Board and was duly sworn His Evidence being given in Spanish was interpreted by the Secretary—

The Law Agent by R. Greenhow Esq was present and did not Object—

1 Question. What is your name age and place of residence
Ans. My name is Santiago Arguello My age is Sixty years Residence Near the Port of San Diego and have resided in California all my life

2d Quest. Examine the document before you marked Jw No 1. and say whether you are acquainted with the signatures, and if the document is genuine?
Ans. I have Examined the Document, and am acquainted with the signatures Manuel Micheltorena Manuel Jimeno. and Pio. Pico: their signatures to this document are genuine and the document itself to the best of my knowledge and belief are also genuine

S. Arguello

Oct 8 th. 1852
Subscribed & Sworn to
Before me
James Wilson
Commissioner

Filed in Office Oct. 8th 1854
Geo. Fisher
Secy

Recorded in Ev. B. Vol. 2 p 65
Geo. Fisher
Secy

6

7 I. S. D. R.

Espediente promovido por el Ciudadano Eugenio Montenegro en pretencion del Terreno Conocido con el Nombre de

"Caslamayomi"

En la Frontera de Sonoma.

Monterey Enero 26 de 1844

363.

8

186 ND
PAGE 8

2. S. D. R. Sello Cuarto Dos Reales: Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey: en el Departamento de las California para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco
Micheltorena Pablo de la Guerra

(Sellado)

Excmo Sor Gobernador.

Monterey 4 Febo. 5 de 1844. Por f. el S. Secrio del despacho tomando antes los q. al efecto necesitare.
Michelta.

Eugenio Montenegro, mejicano por nacimiento y vecino actual mte. en este Departamto. ante V. E. con el devido respeto hago presente que hallandose valdio un terreno en el punto de Sonoma conocido con el nombre de la La Laguna de los Gentiles ocho leguas al Norte del Rancho del Doctor Bale y habiendo determinado fijar mi residen. en el dho punto, he de merecer de V. E. se sirva mandar se me conceda la Extencion de ocho sitios de ganado mayor en el citado terreno ofreciendo cumplir con lo previnido por las leyes y presentar el Diseño correspondte. á su devido tiempo. P. T. A. V. E. suplico rendidamte. acceda á la presente Solicitud en lo q. recabre gracia.
Monterey Enero 26 de 1844.
Eugenio Montenegro

2. S. D. R. Como dispone el Excmo Sor Gobernador pase la presente instancia al Alcalde de Sonoma p.a que informe sobre su contenido.
Monterey 12 de Febro. de 1844.
Manuel Jimeno

Sonoma Mzo. 7 de 1844.
El terreno q. solicita el interesado se llama Caslamayomi, y colinda con D. Henrique Fitch p.r el sur y D. Lazaro Piña p.r el O. esta Valdio y no pertenece á persona pueblo ni corporacion alg.a
Jacob. P. Leese.

Excmo Sor Gobernador.
Segun el informe del juez de Sonoma y de los demas que he adquirido en lo particular parece que no hay inconviniente alguno para que se le conceda

9

4. S.D.R

al interesado el terreno que pretende conforme demuestra el diseño: pero la determinacion de V. E sera la mejor.

Monterrey Marzo 20 de 1844.

Manl. Dimeno

Monterrey Mzo. 21 de 1844.

Espidase el con las condiciones legales y las q. si hubiere indl. los procurara arrahen con prudencia sin molestarlos en nada.

3267

Michelena

5. S.D.R

Rene Munoz Mah

10

186 ND
PAGE 10

C. S. D. R. El ciudadano Manuel Michelltorena General de Brigada del Ejercito Mejicano, Ayudante General de la plana Mayor del mismo, Gobernador Comandte. General è Inspector del Departamento de las Californias.

Por cuanto Dn. Eugenio Montenegro ha pretendido para su beneficio personal y el de su familia, el terreno conocido con el Nombre de "Las Amayomi" colindante al N. con el Rio del Pescadero al S. con Dn. Enrique Ritch y Dn. Lazaro Piña al O. con el Roblar y al P. con la sierra de los palos Colorados: practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por leyes y reglamentos: usando de las facultades que me son conferidas à nombre de la Nacion Mejicana he venido en conceder le el terreno mencionado declarandole la propiedad de el por las presentes letras sugetandose à la aprobacion de la Excma Asamblea Departamental y bajo las condiciones siguientes.

1ª No podrà venderlo, enagenarlo, imponer censo vinculo, fianza hipoteca ni otro gravamen alguno

2ª Podrà cercarlo sin perjudicar las traveciaes caminos y servidumbres; lo disfrutarà libre y esclusivamente destinandole al uso ò cultivo que mas le acomode pero dentro de un año fabricarà casa y estarà habitada.

3ª Solicitarà del juez respectivo que le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrà à mas de las mohoneras algunos arboles frutales ò silvestres de alguna utilidad.

4ª El terreno de que se hace donacion es de ocho sitios de ganado mayor poco mas ò menos segun esplica el diseño respectivo. El juez que diere la posesion lo harà medir conforme à Ordenanza quedando el sobrante que resulte à la Nacion para los usos convenientes.

5ª Si contravniere à estas condiciones perderà su derecho al Terreno y serà denunciable por otro

Y. S. D. R. En consecuencia mando que ~~sirviendole~~ de titulo el presente, y teniendose por forme y valedero se tome razon de él en el Libro que corresponde.

y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à Veinte y seis de Mayo de mil ocho cientos cuarenta y cuatro.
Manuel Michel Pr. # Manuel Jimeno Sto.

Queda tomada razon de este Despacho en el Libro respectivo à fs. 4. vuelta – Jimeno

Office of the Surveyor General of the United States for California

I, Samuel D. King Surveyor General of the United States for the State of California and as such, now having in my Office and under my Charge and Custody a portion of the Archives of the former Spanish and Mexican Territory or department of Upper California do hereby Certify that the Seven preceeding and hereunto annexed pages of tracing paper numbered from One to Seven inclusive and each of which is verified by my initials (S.D.K.) exhibit true and accurate copies of Certain documents now on file and forming part of the said Archives in my Office

(Seal) In Testimony whereof I have hereunto signed my Name Officially and affixed my private seal (not being a Seal of Office) at the City of San Francisco, this tenth day of February 1852.

Samd. D. King
Survr. Genl. Cal.

Filed in Office Septr. 22nd

Geo: Fisher Secy.

13 Translation of Expediente

186 ND
PAGE 12

Stamp Fourth Two Reales

Provisionally authorized by the Maritime Custom House of the Port of Monterey in the Department of the California for the years One thousand Eight hundred and forty four and One thousand Eight hundred and forty five
(Signed) Michelorena (Signed) Pablo de la Guerra

To his Excellency the Governor
Eugenio Montenegro a Mexican by birth and now a resident in this Department, before your Excellency appears with due respect and representation makes that there is a vacant piece of land in the point of Sonoma known by the name of La Laguna de los Gentiles Eight leagues North of the Rancho of Doña Bale, and being determined to fix his residence in said point, he prays your Excellency to be so good as to order that there be granted to him the Extent of Eight square leagues in the aforesaid land, offering to comply with the requisites of the Law and to present the corresponding map in due time
Whereof he prays your Excellency in Justice to grant this present petition by which he will receive grace
Monterey January 26th 1844
(Signed) Eugenio Montenegro
As directed by his Excellency the Governor this is passed to the Alcalde of Sonoma for his report on the contents
Monterey February 12th. 1844 (Signed) Manuel Jimeno
Sonoma March 7th 1844
"The land which the party interested solicits is called "Caslamayomi" and is bounded by Don Ignacio Vallejo On the South and Don Lazaro Peralta on the North west it is vacant, and belongs to no person pueblo or Corporation (Signed) Lucio P Treese

To his Excellency the Governor
According to the Report of the Magistrate of Sonoma and to other information which I have obtained on this particular, it appears that there is no inconvenience in granting the party interested the land which he asks for as shown in the map but the determination of your Excellency will be best.
Monterey March 20th 1844
(Signed) Manuel Jimeno

Monterey March 21st. 1844
Make out the title with the legal conditions, and also if there are any indians he will cause them to be treated with prudence without molesting them in anything (Signed) Micheltorena

Citizen Manuel Micheltorena General of Brigade Adjutant General of the Mexican Army Adjutant General of the Staff of the Same. Governor Commander and Inspector of the Department of the California —

Whereas Don Eugenio Montenegro has for his own personal benefit and that of his family asked for the Land known by the name of "Cuatamayome", bounded on the North by the "Rio del Descuido" on the the South by Don Henrique Fitch and Don Lazaro Pena On the East by the Oaks and on the West by the Serrado Palos Colorados having previously taken the proper measures and Examinations as required by the laws and regulations using the faculties which are conferred on me in the Name of the Mexican Nation I have granted him the expressed Land declaring to him the Ownership thereof by this presents, Subject to the approbation of the Most Excellent Department Assembly and under the following Conditions

1st: He may not sell it, alienate it, impose pounds tax entail revision Mortgage, or any other incumbrance —

2d He may enclose it without prejudice to the crossings roads and servitudes; he shall enjoy it freely and exclusively, destining it to the use and cultivation which may suit him, but within one he will build a house and it shall be inhabited

3d He will ask the respective Magistrate to give him juridical possession in virtue of this Despatch by whom the boundaries shall be marked out at the limits of which he shall place, besides the Land marks some fruit trees, or wild ones of some utility

4th The Land which is granted, is Eight Squares Leagues (Sitios de ganado Mayor) a little more or less as the respective Map Expresses — The who shall give the possession will have it measured

15

Conformably to Ordinance; leaving the Surplus which results to the Nation for the Convenient uses –

4th If he contravene these Conditions he will lose his right to the Land and it may be denounced by another

In consequence of which I order that this present Serving as a title, and being here as Form and value note be taken of it in the corresponding Book and that it be delivered to the party interested for his Security and Further Ends

Given in Monterey the 26th of March 1844

(Signed) Manuel Michelorena

(Signed) Manuel Jimeno
Secretary

Note is taken of this Dispatch in the respective Book at Folio 7 Ord –
(Signed) Jimeno

Filed in Office Sept. 7th 1852
Geo. Fisher Secy

16

17

Sello Segundo Cuatro Pesos: Habilitado provisoriamente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco.
Michelorena Pablo de la Guerra

Sello

El ciudadano Manuel Michelorena General de Brigada del Ejercito Mejicano, Ayudante General de la plana mayor del mismo Gobernador Comandte. General è Inspector del Departamento de las Californias.

Por cuanto Dn. Eugenio Montenegro ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Caslamayome, colindante al N. con el Rio del pescadero al Sur con Dn. Enrique Fitch y Dn. Lazaro Piña al O. con el Roble y al P. con la Sierra de los palos colorados: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas à nombre de la Nacion Mejicana he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sugetandose à la aprobacion de la Exma Asamblea Departamental y bajo las condiciones siguientes

1ª No podra venderlo enagenarlo, imponer censo vinculo, fianza hipoteca ni otro gravamen alguno

2ª Podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso ò cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

3ª Solicitaran del juez respectivo que le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrà à mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad

4ª El terreno de que se hace donacion es de ocho sitios de ganado mayor poco mas ò menos segun esplica el diseño respectivo. El juez que diere

la posecion lo hara medir conforme à Ordenanza quedando el sobrante que resulte à la Nacion para los usos convinientes.
5ª Si contravinere à estas condiciones perdera su derecho al terreno y sera denunciable por otro

En consecuencia mando que sirviendole de Titulo el presente y teniendose por firme y valedero se tome razon de el en el Libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à veinte y seis de Marzo de mil ocho cientos cuarenta y cuatro
Manl. Michelta. Manuel Jimeno Sno.
Queda tomada razon de este Despacho en el Libro respectivo a fs. 4 y vuelta.
Jimeno

D. Eugenio Montenegro tiene recibidos en Tepic de D. Thamar Whitney la cantidad de $/500.) quinientos pesos con hipoteca especial de estos terrenos y por consiguiente no podran ser vendidos sin satisfacer antes al C. Whitney los $500 y pa constancia estas nota como apoderado de D. Eugenio Montenegro.
Monterrey Mzo. 24. 1848.
Manl. Diaz

Lelis Quinto medio Real: Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el departamento de las California para los años de mil ocho cientos cuarenta y cuatro y mil ocho cientos cuarenta y cinco
Michelta. Pablo de la Guerra.

(Seal)

Here follows map

19

(Sello) El que suscribe Secretario del Gobierno del departamento de Californias: Certifica q. el diseño que se demuestra à la buelta es igual al Original que existe agregado en el Espediente respectivo.

Monterey Abril 2 de 1844.

Manl. Jimeno.

326-2

Angeles Marzo 12 de 1845. Se le concede al suplicante la gracia que pretende.

Pico.

E. S. Gobernador

Eugenio Montenegro capitan de las milicias Militares del Departo. ante V. E. respetuosamte. espone q. en el año pasado se le concedio un terreno en la frontera de Sonoma cuyo titulo tiene en su poder y como una de sus condiciones sea la de ocuparlo y poblarlo en el termino de un año el Esponente no ha cumplido con ella à virtud de impedirselo las continuas Ocupaciones de su destino y el periodo de la presente convulsion politica à la q. como es notorio, tubo la honra de asistar se desde el principio. en tal Virtud A. V. E. suplica q. tomando en consideracion lo espuesto se sirva prorogarle seis meses mas para poder cumplir con aquel requisito de la Ley en lo que recibira gracia de q. vivira à V. E reconocido.

Ciudad de los Angeles Marzo 11 de 1845.

Eugenio Montenegro.

(Sello)

Excmo Señor

Angeles Mayo 28 de 1846. Se le concede al suplicante ocho meses de prorroga desde esta fecha para q. en este periodo termino tenga en aprovechamiento el terreno de que se hace referencia.

Pico.

Eugenio Montenegro mejicano por nacimiento y radicado en este puerto de Monterey ante V. E. con el debido respeto y como mas haya lugar en derecho se presenta y digo. Que habiendoseme cumplido el plazo de seis meses el dia 11 de Septiembre p.p.do para la fundacion y demas que previene el titulo respectivo con que se me agracio para poseer y cultivar el terreno conocido

186 ND
PAGE 17

con el nombre de Caslamollomo en la frontera de Sonoma; y siendome imposible cumplir con este precepto en la fha presente por hallarse mi Esposa en forma de Muerte, suplica à la benignidad de V. E. que atenda à esta justa razon se digne prorogarme un año mas contando desde el dia de hoy en que hago mi solicitud. P. V.

A. V. E. pido y suplico se sirva acceder à mi pedido por creer de justicia jurando no ser de malicia Vs. J. sirviendome admitir esta en papel comun por falta del sellado respectivo.

Filed in Office Octbre 8th 1852

Geo: Fisher Secry.

21

Translation of part of title papers

To His Excellency the Governor

Eugenio Montenegro Captain of the Auxiliary Militia of the Department, before your Excellency respectfully presents; that a land was granted to him last year on the frontier of Sonoma, the title of which he has in his possession and as one of its conditions is that of occupancy and stocking it in the term of one year; the person representing has not complied with it on account of being hindered by the occupations of his office and the prevail of the present political convulsion in which it is well known he had the honor of enlisting at the beginning; Whereupon he prays your Excellency that taking into consideration the foregoing you will extend the time six months more in order in order to be able to comply with that requisite of the law, in which he will receive a favor, for which he will be ever grateful to your Excellency

City of Los Angeles March 11th 1845

(Signed) Eugenio Montenegro

186 ND
PAGE 19

Angeles March 12th 1845

(In margin) The favor petitioned for is granted to the petitioner

(Signed) Pico

To His Excellency the Governor

I Eugenio Montenegro a Mexican by birth and settler in this Port of Monterey before your Excellency with due respect, and as I may be's proceed in law represent and say; that the period of six months having elapsed since the 11th of September last, for the foundation and other provisions of the respective title, with which I was favored to possess and cultivate the Land known by the name of Teslamayomi on the frontier of Sonoma; and it being impossible for me to comply with this precept at the present time as my wife is sick—

I pray your Excellency's kindness to attend to this just reason and design to extend to me another year counting from this day On which I make my petition

Whereupon he prays and beseeches your Excellency to have the goodness to accede to my petition believing it to be Justice swearing not from malice &c

And being pleased to admit this on common paper for want of the respective stamped paper

22

And they please to grant the Concession asked for.

Monterey May 13th 1846

Signed Eugenio Montenegro

(In the Margin)

Angeles May 28th 1846.

An Extension of Eight months from this date is granted to the petitioner that in this final term he may hold the Land reference to his improvement—

(Signed) Pico

Filed in Office Oct. 21st. 1852

Geo. Fisher Secy

23

Año de 1868.

Testimonio de Venta del Terreno Vaslamayomi en la Alta California à favor de D. Guillermo "Forbes"

Sello Cuarto Un Real
Años de mil ocho cientos cuarenta y seis
y mil ocho cien tos cuarenta y siete.

Por el presente conste como yo Eugenio Montenegro siendo dueño en propiedad de un terreno sito en Sonoma ò alta California, nombrado "Caslamoya mi cuya estencion es de ocho sitios de Ganado mayor propios para sembrado y abrevadero, el mismo que he propuesto en Venta al Sor D.n Guillermo Forbes de este Comercio por Cantidad de dos mil ps. cuyo comprador atiente en el precio necesita saber la Cantidad y situacion del Terreno indicado para lo cual va à nombrar una persona de su confianza para que le de los informes correspondientes tanto de las espresadas como del Titulo de propiedad con que tengo guarnicada esta; y si de ellos resultare convenirle realisar la Compra propalada desde ahora me comprometo de la manera mas solemne en traspasarle al prenominado Sr. Forbes los ocho sitios de tierra indicados por la misma Cantidad de Los dos mil ps. à condicion de que de pronto y en cantidades parciales me hara un suplemento desde cien à quinientos ps. en cuenta del valor del referido Terreno con calidad de que si la Venta no tuviere efecto devolverse al Sor comprador lo que à virtud de la anterior condicion me facilitase, tan luego como me resuelva en este negocio. Para la seguridad de esta oferta en devolver lo que recibiere el Sor Coronel D. Josè Castro se compromete à verificarlo à mi nombre ò en mi defensa, haciendo en tal caso de deuda agena suya propia, obligando al efecto sus bienes habidos y por haber quien conmigo y el Sor Forbes forma el presente; para constancia de este convenio en Yepie à los Veinte y tres Dias del mes de Agto. de mil ocho cientos cuarenta y Siete.

Eugenio Montenegro.

Josè Castro.

He recibido à cuenta de esta obligacion la cantidad de $500) Quinientos pesos.
Tepic 23. Dettre. 184 7.
Eugenio Montenegro.

He recibido à Cuenta de esta obligacion otros $500) quinientos pesos con los cuales son $1000 un mil ps. Tepic 7. Enero 1848.
Eugenio Montenegro.

He recibido por resto de esta obligacion $1000) mil ps. con los cs. se completan $2000 $ dos mil pesos. Tepic 7 de Agto. 1844
Eugenio Montenegro.

Sello primero Habilitado al decreto de para el Bienio de y nueve.

Sca

Ocho Pesos.

ejecutivamte. con arreglo 30 de Abril de 1842 mil ocho cientos cuarenta

Num: 41. Consta el Cargo à fojas 2 frente del manual respectivo.

José Vallarta Juan Zenteno.

En la Ciudad de Tepic à siete de Agosto de mil ocho cientos cuarenta y Ocho Ante mi el Escribano y testigos, el Señor Don Eugenio Montenegro, residente en esta y dando fee conozco dijo que en la Alta California es dueño de un Joven nombrado "Caslamayomi; el cual tiene contratado en Venta al Señor Don Guillermo Forbes de esta vecindad segun la Obligacion privada que le Otorgò el veinte y tres de Agosto de mil ocho cientos cuarenta y siete y que por ese contrato ya el Señor Forbes le ha Dado en cuenta mil pesos que en dos partidas recibio y consta el recibo al pie de la misma obligacion y que como al fin se ha resuelto vender, ha recibido nuevamente del mismo Señor Forbes los otros mil pesos como completo de la Venta que Estipulo Por tanto y dandose por recibido como en efecto lo esta de los dos mil pesos del Contrato, renuncia toda decepcion que pudiera oponer y la de no haberse contado la Ley q. til 1o. paz 8a. que de ello trata y los dos años que prefine para la prueva del recibo: En consecuencia y en aquella

via y forma que mas forme sea en derecho; otorga que por si y en nombre de sus herederos y sucesores ó de quien de ellos hubiere titulo voz y causa en manera alguna vende para siempre jamas por juro de heredad en favor del Espresado Señor Dn. Guillermo Forbes el espresado Terreno ó Rancho situado en la Frontera de la Alta California y conocido con el Nombre al — Estlamazome" cuyo terreno se compone de Ocho sitios de Ganado Mayor y embadia y se haya situado al Norte de Sonoma distante de La Bahia de San Francisco catorce Leguas al Suv: son sus linderos el Rancho de Dn. Enrique Fitch, al Suv de Este y al Suv con el Alferez Piña: al Norte Norueste y Norduéste con terrenos despoblados: Que de los titulos de adquisicion con que el que Otorga posè esta satisfecho el Señor Forbes y por tal razon no los presenta. Que el mencionado terreno esta libre de todo grevamen, tacito y espreso por hipoteca, empeño, venta ó de cualquier otro modo y en este estado lo vende con sus entradas, salidas, cinto, Vuelo, usos regalias y servidumbres que ha tenido y tener pueda segun derecho por cantidad de los espresados dos mil pesos. Que esta suma es lo que el terreno vale, y que aunque mas valiere, del ecceso qualquiera que sea, hace gracia y donacion en el comprador y los suyos. con insinuacion y demas forme renuncia la Ley 2 tit. 1º lib. 10. de la Novisima Recopilacion y los cuatro años que prefine para pedir la resicion del contrato ó suplemento à su justo precio: los cuales da por pasados como si lo estuvieran Por tanto se desapodera y à los suyos, desiste quita y aparta de qualquiera accion y derecho que haya tenido y tener pueda al nominado Terreno. pues todo lo cede, renuncia y traspasa en el comprador y los suyos.

Sello Cuarto Place of Eagle. Un Real

Con las acciones reales directas y ejecutivas para que como propio lo posea, cultive, done o Venda a su voluntad. Le da su poder en causa propia para que del terreno prenda y tome la real posesion y tenencia con solo la presentacion de Esta Escritura de la que consiente que al comprador se le den las copias legalizadas que pidiere à fin de que le sirvan de titulo y resguardo à su propiedad. Y a la evicion y saneamiento de esta venta seguridad, y firmeza de este instrumento obliga el otorgante sus bienes presentes y futuros para ser estrechado al cumplimiento por Juez competente como si fuera por sentencia pasada en autoridad de Cosa juzgada.
Renuncia su domicilio, las Leyes y privilegios que puedan favorecerle y la general del derecho en forma. A. si lo otorgo y firmò consintiendo que la obligacion. Que hare referido y por lo que al comprador. pueda importar se agregue Original al testimonio de esta Escritura, pues por la presente la da por otorgada en forma. Fueron testigos Dn. Santos Gallegos Don Nasario Romero y Don Domingo Garcia y Corona presentes; Doy fee;
Eugenio Montenegro # Jesus Ugar.

Sacose de su Registro dia de su Otorgamiento para el uso del Comprador y sin que se haya hecho ningun pago de Alcabala ni otra contribucion por pertenecer este terreno à territorio Estangero en virtud de los tratados de paz celebrados. Pr. este Gobierno Mejicano con el de Norte America y sansionados por el Gobierno General el 30 de Mayo del presente año: y el interesado para hacer uso de esta propiedad debera presentar este Titulo al Gobierno Norte Americano en la Alta California para los fines que mas pueden convenir à la seguridad de su contrato doy fee.

Juan Ugar

28

Filed in Office Jan: 16. 1854.

Geo: Fisher Secy

29

Translation of Conveyance D

186 ND
PAGE 27

Know all men by these presents that I Eugenio Montenegro being the Owner of in fee of a piece of Land situated in Tonma in Alta Verapaz called "Las Lamayome" the Extent of which is Eight Square leagues fit for sowing and vegetation, the same which I have offered in sale to Señor Don Guillermo Forles of this place for the sum of two thousand Dollars which purchaser agrees to the price, but requires to know the quality and situation of the land for which purpose he is to appoint a person of his Confidence to make the corresponding reports as well on the advisable matters as on the title of property with which I have that guarantee and if from these reports it shall result that he agrees to the advisable purchase, then from this time I compromise myself in the most solemn manner to transfer to the aforementioned Señor Forles the Eight Square leagues of Land indicated for the same quantity of two thousand dollars, on condition that very soon and in partial payments he shall make payment from a hundred to five hundred dollars on account of the price of the said Land with the understanding that if the sale does not take place I shall return to the purchaser the amount advanced to me, as soon as this negociation shall be resolved on. And as a security for this return of money as prescribed, Colonel Jose Castro binds himself for me and in my default to make the debt his own, pledging for that purpose his property in possession and in expectation, who with me and Señor Forles signed this present in testimony of this agreement in Tepic this twenty third day of August A.D. 1847 — (Signed) Eugenio Montenegro
(Signed) Jose Castro

I have received on account of this Obligation the sum of ($500) Five hundred Dollars — Tepic 23rd September 1847. Signed Eugenio Montenegro

I have received on account of this Obligation other ($500) Five hundred Dollars making in all ($1000) One thousand Dollars Tepic January 7. 1848
(Signed) Eugenio Montenegro

I have received the remainder of this Obligation ($100) One thousand Dollars completing the whole ($2000) Two thousand dollars. Tepic Aug. 7 1848 (Signed) Eugenio Montenegro

30

186 ND
PAGE 28

Just Stamp Eeghe Dollars
Executively authorized according to the decree of
April 30th 1842 for the years 1848 and 1849
No. 41c
Noted at folio 2 in front in the respective manual
(Signed) Jose Vallejo (Signed) Juan Jentens

In the City of Sepie On this 7th day of August
A D 1848 – before me the Notary and the Witnesses
appeared Don Eugenio Montenegro resident of this place
and whom I certify I know, and saie that in Alta
California, is Owner of a piece of land calle "Cuesta
Mayome" which he has contracted to sell to Don
Guillermo Foles of this place according to a pri
vate Agreement which he entered into the 23d of
August of the year 1847, and that in that Contract
the said Foles has paid him On account one
thousand dollars which he received in two pay
ments and receipted for at the bottom of the
same Obligation, and that at the consumation of
the sale he has received anew from the said
Foles another sum of a Thousand dollars in
Completion of the whole Sale Stipulated: Wherefore
and acknowledging as received as it truly is the
two Thousand dollars of the Contract, he renoun
ces all Excuses which may oppose and that
of not having counted it – Said 9 1 Pesetas 5
which heals of them and the two years prescribed
for the proof of the receipt – In consequence in
the way and in the way and form which may
be stringest in Law, he declares, that for himself
and in the name of his heirs and successors or of
whomsoever that may have title voice or cause in
any manner, he sells forever with the right of enhe
ritance in favor of the said Don Guillermo Forbes
the said land or Rancho situate on the frontier
of Alta California and known by the name of
Cuesta mayomi, which land contains Eighe Sitios for
neat Cattle and sowing and situated at the
North of Sonoma distant from the Bay of San Fran
cisco fourteen leagues to the North; its bounda
ries are the Rancho of Don Enriquez Foley to the
South of East, are de the South Ensign Sina
On the North, North East and North West lands
unoccupied – That Don. Guillermo Foles is
satisfied with the titles of Ownership by which

Sale deed with the titles of ownership by which

31

the Seller possesses the Land and for that reason he does not present them - That said Land is free from all incumbrance, tacit or expressed by Mortgage pledge, Sale or any other mode; and as this Sale he sells it with its Entrances and Exit, its centre and breadth, uses, privileges and servitudes, which it has or may have according to law, for the afore said Sum of Two Thousand Dollars - That this Sum is what the Land is worth and that although it may be worth more all the Excess whatever it may be, he makes a gift and donation to the purchaser and to his, by perfected intervention and other secretes renounces Law 2 tit 1 Lib. 10 of the Novissima Recopilation and the four years prescribed for asking the rescission of the Contract of Supplement to its just price which he consents as passed as if they really were so - Wherefore he and for his quits up desists from leases and divests himself of whatsoever action and right he may have had or could have to the said Land and cedes renounces and transfers them all to the purchaser and his, with the actions real mixed direct and Excepticie, in order that as his own, he may possess, enjoy, sell, give or sell it as his will - He confers power on him in his own cause to take and hold the real possession and tenure of the Land with the simple presentation of this writing of which he consents that to the purchaser there be given legalized Copies which may serve as a title and security to his ownership - And the execution and goverance of this Sale and the security and legality of this instrument, the vendor binds himself his property present and future to be forced to its fulfilment by the competent tribunals if by a sentence in accordance with the authority of a thing decided. He renounces his domicile, the laws and privileges which may favor him and the general of the decree in form -

"Thus he constituted and signed consenting that the obligation required to and for what it may impart to the purchaser, be annexed to the testimony of this writing which by these presents he authorizes in due form - The witnesses being Don Santiago Gallegos, Don Nazario Romero y Don Dionisio Garcia y Corona, present - certify

(Signed) Eugenio Montenegro (Signed) Jesus Vejar

186 ND
PAGE 29

32

Copied from the Register on the day of its Execution for the use of the purchaser, and without charging any tax or other fee, as this land belongs to foreign Territory in virtue of the treaty of peace entered into by this Mexican Government with that of North America and ratified by the General Government on the 30th of May of the present year and the party interested to make use of this property must present this title to the North American Government in Alta California, for the same as which concerns to the security of this Conveyance I certify

(Signed) Jesus Vejar
Notario Secretario

Filed in Office Sept. 7. 1852

Geo. Fisher
Secy

33.

Opinion

326 William Forbes vs The United States } For the place called Cuslama Yomi in Napa County contain ing Eight Square Leagues of land

The petitioner claims title to the premises described in the petition by virtue of a Conveyance of the same made to him by Eugenio Montenegro on the 7th day of August 1848

In proof of title in said Montenegro a grant is given in evidence made to him by Governor Micheltorena bearing date March 26. 1844

No approval of the Departmental Assembly is shown and no Judicial Measurement appears to have been had – The Grant Contains the usual Conditions concerning the requirement of building a house and having it inhabited within a year There are two objections to the title of the claimant under the proofs presented in this Case – The first is that there is no proof of the performance of any of the Conditions of the grant – It appears from the documents in the case that the grantee obtained an Extension of time for the performance of the Conditions of Settlement or Cultivation but he never performed any of those Conditions On the Contrary against the Express Condition of his grant he Conveyed the land to a third person, who asks a decree of Confirmation

Secondly Judicial Measurement which was required for the segregation of the Same grantee was never obtained and no proof is given to bring the case within any rule which dispenses with this Official act

The claim is rejected –

186 ND
PAGE 31

Filed in Office Sept. 27th. 1854

Geo. Fisher
Secy

34

326— William Foles
vs
The United States

186 ND
PAGE 32

In this case on hearing the proofs and allegations it is ordered by the Commission that the claim of the petitioner is not valid and it is therefore decreed that the application for a confirmation thereof be denied

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

Filed in Office Sept. 27. 1854

Geo. Fisher
Secy

And it appearing to the Sates Tuesday of this Board that the Land hereby adjudicated is in the Northern District of California it is hereby Ordered that two Transcripts of the proceedings and the decision in this Case and of the papers and Evidence upon which the Same and foundered be made out and duly Certified by the Secretary, One of which Transcripts shall be filed with the Clerk of 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 —

186 ND
PAGE 33

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 Thirty four — pages, numbered from 1 to 34, 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. 326 on the Docket of the said Board, wherein William Forbes is — the Claimant, against the United States, for the place known by the name of "Cuslamayomi —"

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 March A. D. 1855, and of the Independence of the United States of America the seventy-ninth.

Geo: Fisher
Sec.

U. S. DISTRICT COURT,

Northern District of California.

No. 186 — 186

THE UNITED STATES,

vs. ND

William Forbes

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 326

Filed, April 5 1855,

John A. Monroe,

Clerk

United States District Court for the
Northern District of California.

William Forbes Appellant vs The United States Appellees	Notice of intention to prosecute the appeal from the decision of the Board of United States Land Commissioners.

William Forbes, Claimant of the Rancho called "La Laguna de los Gentiles" or "Caslamayomé", situate in the County of Sonoma, in the Northern District of California, hereby gives notice of his intention to prosecute an appeal from the decision of the Board of Commissioners in his claim for the said land, which was presented to the said Board of Commissioners, and by them rejected. His claim being that which is numbered on the Docket of said Board of Commissioners No. 326, the transcript whereof as filed in this office is numbered, No.

Halleck Peachy & Billings
Attorneys for appellant.

No 186

U. S. District Court
Northern District California

William Forbes
Appellant

vs

The United States
Appellees

Notice of intention to
prosecute appeal,

Halleck Peachy & Billings
attys for applt.

Filed April 20, 1855,
by W. H. Chevers,
Deputy,

2

To the Honorable the United States District Court for the northern District of California.

William Forbes Appellant vs The United States. Appellees.	No. Petition on appeal from U. S. Land Commission.

The petition of William Forbes respectfully shows to this Honorable Court:-

That Eugenio Montenegro on the 25th day of January 1844, applied to the Governor of California for a tract of land containing eight square leagues situate in the then jurisdiction of Sonoma called "La Laguna de los Gentiles" or "Caslamayomé"; that on the 5th day of February A.D. 1844, the Governor referred the said petition to the Secretary of State, and subordinate authorities for their report; that on the 7th day of March A.D. 1844, the alcalde of Sonoma reported favorably to the said petition, as also did the Secretary of State on the 20th day of March A.D. 1844; that on the 21st day of March 1844, the Governor of California, decreed that the land so petitioned for be granted; that on the 25th day of March A.D. 1844, Manuel Micheltorena, Governor of California, by virtue of authority in him vested, did grant by title or patent to the said Eugenio Montenegro, the said tract of land called "Caslamayomé", situate in the then jurisdiction of Sonoma, containing eight square leagues a little more or less, as shown by the map in the Expediente, and with the boundaries described in the title.

That in accordance with the conditions of a contract entered into between the said Montenegro and the said William Forbes on the 23d day of August

A.D. 1847, the said Montenegro conveyed to the said William Forbes on the 7th day of August A.D. 1848, the aforesaid tract of land.

And the petitioner further shows, that the said Montenegro and the petitioner ever since the date of said grant have been, and the petitioner now is in quiet, peaceful and undisputed possession of the said tract of land, and have duly performed all the conditions of the grant.

Your Petitioner further shows that the said tract of land is situated in the northern District of California.

Your Petitioner further shows, that on the 7th day of Septr A.D. 1852, he presented his claim for the said tract of land before the United States Land Commissioners, appointed under the act of Congress passed on the 3d March 1851, entitled "An act to ascertain and settle the private land claims in California" when sitting as a Board, and prayed the said Board to confirm it; and that the said Board on the 27th day of Septr. A.D. 1854, decided on the validity of the said claim, and rejected it.

Your Petitioner prays that the transcript of the report of the Board of Commissioners, on the claim presented to them as aforesaid, and the documentary evidence, and testimony of the witnesses on which it was founded, which was filed with the Clerk of this Court on the 5th of April 1855 as directed by the 12th Section of the act of Congress passed on the 31st August 1852, entitled "An act making appropriations for the civil and diplomatic expenses of the government, for the year ending the thirtieth June 1853, and for other purposes", may be held and considered as part of this petition.

Notice of appeal filed April 20th 1855

Wherefore your Petitioner appealing from said decision of the Board of Commissioners, presents this Petition to the Honorable the District Court for the Northern District of California, being the District

Court of the District in which the land claimed is situated, and he prays this Honorable Court to review the said decision of the said Board of Commissioners, and to decide upon the validity of his claim, and to make a decree confirming [illegible]

186 ND
PAGE 38

Halleck Peachy & Billings
Attys for Applt.

20. April 1855

No 186

U. S. District Court

Northern District of California

William Forbes
appellant

vs

The United States
appellees

Petition on appeal

Halleck Peachy & Billings
attys for a/pltf.

Filed April 20. 1855
by W. H. Chevers
Deputy.

3

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

The United States
Appellees
vs
Wm Forbes
Appellant.

186.

The United States by their Attorney deny the validity of the title set out in the petition of the said appellants: And pray that the decision of the Board of Commissioners be affirmed, and that the said title be decreed to be invalid.

Wm Blanding
Dist Atty.

186

U. S. Dist Court

The U. States
appellees
v
William Forbes.
appellant

Answer

Filed Dec: 16. 1806,
N. H. Cheever
Deputy

4

186 ND
PAGE 41

Wm R Landing
U. S. D. Atty

William Forbes
vs
The United States

"Laguna de los Gentiles" or "Caslamayomi."
No. 186 ND
June 24. 1863.

The claimants produces in support of his claim an expediente from the archives which contains the following documents

1. A petition of Eugenio Montenegro to Gov. Micheltorena dated January 26. 1844 asking for the place called "Laguna de los Gentiles" to the extent of 8 leagues –

2 This petition, the Governor by a marginal order referred to the Secretary for the corresponding reports –

3 On the 12th March the Alcalde makes a favorable report

4 On the 20th ~~March~~ of the same month the Secretary transmits the Alcalde's informe to the Governor ~~with~~ and reports that there is no obstacle to ~~making~~ granting the land as shown by the diseño –

5 On the 21st the Governor orders ~~the~~ title to be issued

5 To these documents is added the usual borrador or draft of the title delivered to the interested party — It is signed by both the Governor and Secretary and dated March 26. 1844 —
At the end of the borrador is a memo: stating that a note of the title has been taken in the corresponding book
The authenticity of these documents is undisputed
The Expediente is found in the archives duly numbered, and the genuineness of the signatures appearing upon it is admitted — It is entered
Therefore, On the Index of Expedientes prepared by Simeno Comeron this day the entry corresponds with the Expediente in the archives in number, date the name of the land granted and that of the grantee —
It is also duly noted in the Book known as the Loma del Razon —

The claimants also produces now his own custody the original titulo issued to the grantee,-
The genuineness of this document is admitted -
There can therefore be no doubt that a grant was made by the Governor to Monte Negro of the lands in question - for the fact is proved by all the evidence which under the usages of the ~~government~~ former Government it is possible to produce -
It is not pretended that the grant was approved by the Departmental Assembly or that Judicial possession of the lands was given -
Nor is it urged that the grantee settled upon or occupied the land -
In explanation of his neglect in this respect the claimant produces two petitions addressed to Don Michel Lorena by Monte Negro -
The first dated March 11. 1845

sets forth that there had been conceded on the preceding year, to the petitioner a tract of land on the frontiers of Sonora the title to which contains a condition that it shall be occupied and inhabited within a year: That he has been unable to comply with this condition owing to the constant occupations of his office (Captain of the Auxiliary Militia of the Department) and the political convulsions of the country, in which as is notorious the petitioner had the honor of taking part from their inception — He therefore asks an extension of 6 months within which to comply with the requirements of the law.

On the 12th March 1845 the Governor by a marginal order concedes the favor solicited —

On the 13th May 1845 Montenegro addresses a 2d petition to the Governor praying a further extension —

He sets forth that the period of 6 months already allowed him

5 had expired on the 11th September preceding but that it was impossible for him to fulfill the conditions of his grant owing to the illness of his wife. He therefore prays his Excellency to grant him a further extension of one year from the date of his petition.

On the margin of this petition the Governor makes the following order —

"An extension of eight months from this date is granted to the petitioner that, within this ~~final~~ peremptory period he may ~~have~~ to profit the lands referred to."

The claim was rejected by the Board for non fulfillment of the conditions of the grant. This decision was rendered before the case of U. S. vs Fremont was determined by the Supreme Court.

In that case it was ~~decided~~ held that the Governor's grant vested in the grantee a present and immediate interest — and that

6 this interest remained and
was protected by the treaty unless
something done, or omitted to
be done by him ~~forfeited~~ during
the existence of the ~~former~~
Mexican Government forfeited the
interest he had acquired and
vested it, in the Government.
Such a forfeiture would, it
was held, accrue, where it appeared
that there had been "such un
4 reasonable delay or want of ef
4 fort on the part of the grantee
4 to fulfil the conditions as would
4 authorise the presumption that
4 the ~~grantee~~ party had abandoned
4 his claim before the Mexican
4 power ceased to exist."

That a right and title passed
by the Governor's grant though
unapproved by the Assembly
has been decided by the Supreme
in numerous subsequent cases

U. S. vs Reading 18 How. p. 7
I U. S. vs Cruz Cubarrubias 18 How. 555
U. S. vs Larkin 18 How. 503

~~and by those decisions have been followed by the Court in numerous cases~~

7 That the Supreme Court did not regard the mere failure to perform the conditions within the period allowed as of itself operating a forfeiture is evident ~~not only~~ from the ~~language of the case of Fremont but~~ language of the opinion in Fremonts case and in numerous later decisions –

"It is sufficient to say that negli
" gence in respect to these condi
" tions does not of itself always
" forfeit the right – It subjects the
" land to be denounced by another
" but the conditions do not declare
" the land forfeited to the state
" upon the failure of the grantee
" to perform them"

Fremonts case 17. How. 560-1

"His title to the land would
" not have been lost because the
" conditions of the grant ~~would~~ had
" not been fulfilled: unless it
" could be shown that there
" had been on his part such
" unreasonable delay or want of
" effort to fulfil those conditions
" as would amount to an intention
" to "abandon his claim" before

8 "the mexican power ceased to exist."

U. S. vs Reading 18 How. p. 8

In the case of U. S. vs Larkin the previous decisions on this point were again affirmed - and it was observed that "this court has after the fullest "consideration held that even "in cases where the condition (viz of occupation & settlement within a limited time) "is contained in the grant the non compliance with its terms will not necessarily have the effect to avoid the title". Circumstances may excuse the ~~18 How.~~ omission

18 How. 563

The ~~language~~ case of Fremont is again cited with approbation in ~~the~~ U. S. vs Noe 23 How. 317 and ~~in~~ that case as well as that of Castro 24 How. 351, in both of which the claims were defective, ~~are distinguished~~ are distinguished from U. S. vs Fremont without in any degree impairing the authority of the latter.

9 It remains therefore a controlling authority to this Court.

It follows that the claim must be confirmed unless it appears that there has been such unreasonable delay in fulfilling the conditions as justifies the inference that the grantee ~~had~~ ~~abar~~ intended to abandon his claim before the change of flags—

But the documentary proofs produced by the claimant ~~seem~~ ~~to~~ conclusively rebut any such presumption—

Before the expiration of the year allowed for the purpose the grantee obtained an extension of 6 months from the Governor, and subsequently, a further extension of eight months which had not expired when the Americans acquired the country.

That nothing done or omitted to be done by him subsequently to that event, can affect his rights is expressly ~~decided~~ held in Fremont's case and implied by in several later decisions—

10 It appears then not only that the grantee did not abandon his claim but that he submitted to the Governor ~~his~~ the reasons and excuses for his delay ~~which~~ and that these were allowed by the latter to him a further time accorded ~~for the purpose~~.

We have thus the positive decision of the Governor who possessed the ~~power~~ granting power, that the ~~delay~~ neglect of the grantee was excusable and that he should be allowed a further term during which his right should be secure, and the land not denounceable by another. The case of Castro is distinguished by the learned Chief Justice from that of Tiernan on the ground that in the latter "the title papers from the petition down to the grant were found in regular form in the Mexican archives — their authenticity was therefore attested by the record and the reasons for the delay in making the survey

" and taking possession were
" made known to the Governor
" and approved and allowed
" by him"

In the case at bar ~~the~~ se
cond evidence is equally con
clusive and indisputable —
and we have not merely an
implied sanction of an indef
inite prospective delay — but
a delay which has already
occurred is ~~expressly~~ formally
excused and an additional
period for performance allowed
which at the acquisition of
the Country had not expired

both respect to the objection
that the grantee alienated his
land in breach of the first con
dition of the grant it is enough
to say that the alienation was
made in 1848 after the acquisition
of California by the U. S. and
that the same objection was
overruled in the case of Belmont.
On the whole my opinion is
that under the decisions of
the Supreme Court the claimant

12 is entitled to a decree of
Confirmation

No 186.

U. S. District Court.

The United States.

vs.

William Forbes.

Opinion

confirming claim.

Filed June 24. 1863.

W. W. Chevers,

Clerk

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 26th day of June in the year of our Lord one thousand eight hundred and sixty-three

Present:

The Honorable OGDEN HOFFMAN, District Judge.

William Forbes. Appt

v.

The United States Respt

LC. 326. NC 186

Decree

This case came on to be heard upon the transcript on appeal from the Board of Commissioners to ascertain and settle private land claims in the State of California and after hearing counsel for the appellant and respondent was taken under advisement

and now at this day the court having fully considered the case upon motion of Hallock Pendry & Billings attorneys for the claimant It is ordered adjudged and decreed that the decree of the said Board of Land Commissioners be and the same hereby is reversed and it is further ordered adjudged and decreed that the claim of the said appellant to the Rancho Castaymayomi is a good and valid title and ought to be and the same hereby is confirmed

The land where confirmation is made is that tract of land situate in the

county of Sonoma in the Northern District of California called "La Laguna de los Gentiles" or "Castamayomi which was granted by Manuel Micheltorena former Governor of California to Eugenio Montenegro on the 26 Twenty sixth day of March ao 1844 containing eight square leagues of land a little more or less as shown by the map or descriptive in the Expediente and with the boundaries describing in the titulo ~~titles~~ submitted with the Petition of the Claimant to which ~~descriptive~~ expediente and titulo reference is made for greater certainty. Provided that if eight leagues is to be found within said boundaries and if not then such lesser quantity; but if more than eight leagues shall be found therein, then the specific quantity of eight leagues and no more is hereby confirmed.

Ogden Hoffman Jr
Lex H Boyd

Amended May 8th: A.D. 1871 by striking out the figure "6" before the words "day of March" and inserting in place thereof the words "twenty sixth". By order of Court this day made and entered. Attest Edward Carr Clerk
By H. Lynnwood Deputy Clerk.

No. 181

UNITED STATES DISTRICT COURT

Northern District of California.

Millanie Indet. Appt

v.

The United States Deft.

Final Decree of Confirmation

Filed June 26th 1863.

J. H. Cheever Clerk.

186 ND
PAGE 56

186 ND
PAGE 57

At a stated term of the District Court of the United States of America, for the District of California, held at the Court Room, in the City of San Francisco, on Monday the 8th day of May in the year of our Lord, one thousand eight hundred and seventy one

Present:

The Honorable OGDEN HOFFMAN, Judge.

The United States vs. William Forbes	Land Case No. 186. N. D. Rancho "Caslamayomi"

On motion of W. W. Cope Esq. the Attorney for the petitioner, and it appearing to the Court that a clerical error was com=mitted in entering the decree in this cause by stating therein that the land confirmed to the petitioner was granted on the 6th day of March A.D. 1844, whereas said land was granted on the 26th day of March A.D. 1844 as shown by the grant on file: It is ordered that said decree be amended by striking therefrom the figure "6" before the words "day of March" and inserting in place thereof the words "twenty sixth" and that said amendment be made by the Clerk nunc pro tunc as of the date of said decree.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the above entitled action.

Attest my hand and seal of said District Court,
this 8th *day of* May *A. D. 1871*

Edwd B Cotter *Clerk.*

By N D Grimwood *Deputy Clerk.*

No. 186 N.D.

United States District Court,
DISTRICT OF CALIFORNIA.

The United States
vs.
William Forbes.

Order amending decree.

Filed, May 8th 1871
Edw B Cotter *Clerk.*
By N D Grimwood *Deputy.*

186 ND
PAGE 58

William Forbes
vs
The United States

On motion of W. W. Cooper Esqre attorney for the petitioner, and it appearing to the Court that a clerical error was committed in entering the decree in this cause by stating therein that the land confirmed to the petitioner was granted on the 6th days of March, A.D. 1844, whereas said land was granted on the 26th day of March, A.D. 1844, as shown by the grant on file:

It is ordered that said decree be amended by striking therefrom the figures "6" before the words "day of March", and inserting in place thereof the words "twenty sixth", and that said amendment be made by the Clerk nunc pro tunc as of the date of said decree.

L.C. 186. N.D.

U.S. District Court
District of California

The United States

vs

William Forbes

Order Amending decree of Confirmation

Entered May 8th. 1871

See Minute Book No 7. page 383.

U. S.
vs
Wm Forbes

186.

Della Torre

There is no doubt as to genuineness of Expediente — on Innocio's Index. Tomas de Razon Comandor March 28th 1844
Letter same date —
Copy of diseño authed by Pico Jimeno
March 12. 1845 Pico extends time
March 28. 1846 a further extension of 8 months is granted by Pico as "a final time" for improvement —
No evidence that he took poss efforts improved or occupied

On the 23d Aug. 1847 he contracts to sell for 2000 to W. Forbes at Lepic —
On the 4th Aug. 1848 he sells —
No ~~subscale~~ of approval by Dep. Assembly — No judicial possession — No archives evidence

2

of extension of time but the genuineness of these orders is not disputed

Nor claim that the land was abandoned —

The grant passing only an inchoate title and none having been acted on has no equity

U. S. Les Chemakes 22 How 392

U. S vs Noe 23 How 315-6

12 § of Regulations of 1828

Cause submitted. 2 months allowed to claimants to file briefs

186.

The United States.

vs

Wm Forbes.

Notes Argument.

1

In the Supreme Court of the United States

United States Appellant

"

William Forbes. Claimant and Appellee.

Appeal from a Confirmation of Title to land in Sonoma County, California, made by the U S District Court of that State, in Claim No 180, on the docket of that Court.

By the documentary evidence on file in this case, it appears that on the 21st July 1844, one Eugenio Montenegro from whom Appellee derives title, petitioned Manuel Micheltorena, Mexican Governor of California for a rancho of Eight square leagues in the District of Sonoma, Northern California, called "Castamayomi or La Laguna de los Gentiles" and "offering to comply with the requisites of the law" of Colonization

Decree 18 August 1824.

Regulations 21 November 1828.

On the 24th March 1844, a grant was issued to Montenegro containing the usual "legal conditions", viz.

"1st He may not sell it, alienate it" etc

"3rd He will ask the respective Magistrate to give him juridical possession in virtue of this despatch, by whom the boundaries shall be marked out" etc

"5th If he contravene these conditions, he will lose his right" etc. including also the requirement to build a house and inhabit within a year.

The land granted is described as, "The land known by the "name of Castamayomi, bounded on the North by the Rio "Pescadero, on the South by Don Henrique Fitch and Don "Lazaro Piña, on the East by the Oaks, on the West, by the Palos "Colorados" (Red Woods)

On the 11th March 1845, about one year after the date of the grant, Montenegro petitioned Governor Pio Pico for an extension of six months to enter into possession of his grant, which was allowed.

On the 13th May 1846, eight months after the extended period had expired, Montenegro, petitioned Governor Pico for a further extension of one year to take possession, and on the 26th May, a "final" extension of eight months was granted

Montenegro without entering into possession, or performing a single condition of his grant, quitted California, to reside at Tepic in Mexico, and on the 23rd August 1847, he entered into a contract with one William Forbes, a Merchant of that city to sell the claim for Two thousand dollars

In the following year, 7 August 1848, Montenegro, conveyed his inchoate claim to Forbes for $2000 and is named in the deed as "Eugenio Montenegro, a resident of Tepic."

William Forbes by his Agents in California petitioned the Board of U. S. Land Commissioners for Confirmation of the claim, but on the 27 September 1854, the Board rejected the claim on the grounds

" First: No proof of performance of any of the conditions of the grant. On the contrary, against the express conditions of

3

"his grant he conveyed the land to a third person, who asks a decree of confirmation"

"Second. Juridical measurement which was required for the segregation of the land granted was never obtained, and no proof is given to bring the case within any rule which dispenses with that official act"

The case was appealed by the Claimant to the United States District Court (No. 86) on 20 April 1855, but no testimony was introduced to show that from the date of the grant, to the date of the Appeal, a period of over Eleven years. that an entry have ever been attempted on the land claimed, either by the grantee or the Claimant, and the U S District Attorney claimed the land for the United States on the ground of abandonment.

The Court confirmed the claim on the ground that the grant was valid.

This Appeal is taken on the part of the United States from the confirmation of the District Court, and the land is claimed for the Government, and the final rejection of the claim is asked for, on the following grounds:

First. Because Montenegro after obtaining the grant, never took possession of his claim during the Mexican rule, but quitted the Department to reside abroad, and abandoned the claim

Second. By non-compliance with the conditions of the grant, after a lapse of now twenty three years, a mere naked grant is inoperative and void.

4

186 ND
PAGE 67

Third. No Juridical possession was ever given, or testimony produced by the claimant or his grantee to show, that they ever saw the land, much less enjoyed its use.

First

Where a grant of land was made in California in 1841, under the Colonization laws, which looked to the settlement and improvement of the Country, and eleven years had elapsed, during which time the applicant took no steps toward the completion of his title, or the fulfilment of the obligations it imposed, nor is there any expedients in the Archives to show the segregation of the land from the public domain, nor was there any juridical possession, nor any other assertion of right, the claimant must be considered guilty of an unreasonable delay in fulfilling his part of the engagement, and has slept for a lengthened period on his rights, coming forward at last when circumstances have changed in his favor to enforce a stale demand.

The claim must be treated as one abandoned prior to the date of the Treaty of Guadalupe Hidalgo and is not entitled to Confirmation. Decree of District Court reversed Cause remanded. Petition to be dismissed

United States v Noe 23 How 215-16
United States v Leschmaker 22 " 392
United States v Kingsbury 12 Peters 476
United States v Berrnitz 23 How 253
De Willemont v United States 13 How 261

5

In The United States v Fuentes 22 How 443. The Court says, that even if the grant is genuine, yet abandonment will be presumed, unless proof is shown of a Survey or measurement of the land granted, or any performance of its conditions from which it may be inferred that the grantee had not abandoned his claim.

186 ND
PAGE 68

"When a grantee allows years to pass after the date of his grant without any attempt to perform them, and without any explanation for not having done so, And when for the first time claims the land after it had passed by Treaty, from the National jurisdiction which granted it to the United States, such a delay is unreasonable, and amounts to evidence that the claim to the land has been abandoned, and that a party under such circumstances seeking to resume its ownership is actuated by some consideration or expectation of advantage unconnected with the conditions of the grant which he had not in view when he petitioned for the land, and when it was granted. The language just used was suggested in the Frémont case. The occasion has arisen in this case when it becomes necessary to offer it as a rule to guide us in all other cases hereafter which may be circumstanced as this."

"Where there has been no possession as raises an equity in behalf of the claimant, the claim must be rejected."

White v United States	1 Wallace S.C.R	660	
Romero v United States	Ib.	page	721
Ximenes v The State	1 Texas	"	602

The XV Section of the Colonization law of August 18, 1824 recites. "No one, who by virtue of this law shall acquire the ownership of lands, shall retain them if he reside out of the Territory. Heirs of Hollimann v Peebles 1 Texas 673. Id 602. Yates vs Sams 10 Texas 168. Horton v Brown 2 Tex 78.

Second

A grant of land in Florida by Governor Coppinger on consideration that the grantee should build a Mill within a reasonable period fixed within the grant, declared to be void the grantee not having perfected the condition, or shown sufficient cause for its non-performance. U States v Kingsley 12 Peters 476

A naked grant is invalid. U. States v Religh 1 Black S.C.R. 298

Third

Claimant must show that he entered into possession of the premises and exercised authority within a reasonable time after the date of the grant. The possession is an essential part of the secondary evidence of title.

United States v Galbraith 22 How 89
United States v Bennitz 23 " 253
United States v Osio 23 " 273
United States v Castro 24 " 346
United States v Kingsley 12 Peters 476
De Vallemont v United States 13 How 261

To constitute a valid grant established by the preceding decisions of this Court there must be a severance of the property claimed from the public domain by some ascertained mode recognised by competent authority.

Blanc v Lafayette 11 How 104

7

Sanchez v Gonzales 11 Martin 207
Le Blanc v Victor 3 La 47
Landry v Martin 15 La 1
State v Delesdernier 7 Tex 70. N. 288. 304, 310. 322.
Estrada v Murphy 19 Cal. 248
U States v Fossatt 20 How 420, where it is held, that "delivery of juridical possession was an essential ceremony to perfect titles"

"Until possession, which was accompained by a Survey, the title of the parties attached to no definite portion of a tract"
Stanford v Tracy 18 How 412-13
Johnson v Vandyke 20 Cal 228.

The Mexican law as well as the Common law made a formal delivery of possession, or livery of seizin of the property, essential, after the execution of a grant for the investiture of the title. Malarin v United States 1 Wallace 289.

It may be added to show the complete abandonment of the claim by the grantee, while California continued under the Government of Mexico, the grant in Claim No 584, U S District Court of California for the lands known as "Rincon de Musulacon" to Francesco Berryessa on the 7th March 1846, for two square leagues of land, may be cited.

This claim of two leagues is wholly included within the boundaries of the grant to Montenegro, issued to him two years

Interior, and is described by the Alcalde of the district, in the expediente as "it being vacant and belonging to no person", and there is nothing to show any resistance on the part of Montenegro, to the issuing of the grant, and subsequent juridical possession of the claimant either in the Archives, or by testimony, filed in either case.

Again, in the survey of the ranchos of the Piña ranchos, called "Tabaco" No 298 in Statutory Court, of the heirs of J G Piña, the original designs being a long valley of four leagues from east to West, and one league from North to South, in Mendocino County, as confirmed by the undisputed testimony in the case. But the United States Surveyor transformed the Survey into an irregular plat, containing only half the valley and wholly in Sonoma County, that included another two leagues of Montenegro's grant. But no opposition appears to have been made by Montenegro's grantee, and the Survey has been adopted apparently without dispute.

From the above State of facts, if the claim of the Appellee is adjudicated by the rule adopted heretofore by the Supreme Court, by a long series of unvarying decisions it must be rejected as having less equities than any claim ever presented to the Court for final adjudication.

By reference to page 2 it appears that on the 13th of May 1846, eight months after the extended period for taking possession had expired, the grantee applied for another extention for one year; and on the 26th of May, 1846, the petition was granted for the period of 8 months.

On the very day of the application, the act of Congress was passed for the prosecution of the War with Mexico, declaring in the preamble, that a state of War existed by the act of that Republic.

9 St. L. 9

The 13th of May, 1846, is the date fixed by the Mexican commissioners, when the treaty of peace was under negotiation, by their assurances, and as agreed to by the 10th Article of the treaty, beyond which no grant was made by the Mexican government to private parties, under their laws, and force is given to this declaration by the Supreme Court of the United States, in Castillero's case, as evidence that no grant was made after that date.

2 Black 318

If the grant to Mariteneyo was imperfect without the extended time for settlement and improvement, as both the Governor and the claimant considered

9

it to be, then it was too late to give the extention, on the day when it was applied for, but which was not given till the 20th of May, 1846.

But up to the 7th of July, 1846, when the authority of the Mexican nation ceased in California, no act was done by the grantee to comply with the condition of settlement; and only 41 days of the 8 months ~~was~~ were left, within which the grantee could act. He made no effort to act within that time; nor within any part of the 8 months, after the American supremacy, nor had he attempted to do any thing from the date of the grant on the 24th of Mch. 1844, a period of over 12 years. On the 23d of August, 1847, during the war, we find him a resident of Tepic, under Mexican authority, and a vendor of the title to Forbes, who of course took the title with full knowledge of its invalidity, and totally devoid of all equities, even if the authorities had the power to make the different extensions of time for complying with the conditions.

1 Wal. 582-3

The citation to the case of White v. U. States, on page 5, on the point of abandonment, is directly in point. See the opinion of the court on these page, upon this point.

186

In the Supreme
Court of the
United States

United States
appellant
vs
William Forbes
appellee and
Claimant

Appeal from Confirmation
of U S District Court in
California in Claim No
186.

(186)

Office of the Board of Commissioners,

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

San Francisco, March 30th 1855

John A. Monroe Esq.

Clerk of the U. S. District Court for the

Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded, in Case No. 326 on the Docket of the said Board, wherein William Forbes is the Claimant against the United States, for the place known by the name of Castamayomi

and request your receipt for the same.

I am, Respectfully,

Your Ob't Servant,

Geo. Fisher

Sec.