CASE NO.
206
NORTHERN DISTRICT

LANDS IN SANTA
CLARA COUNTY GRANT

CONCEPCION V. RODRIGUEZ
CLAIMANT

LAND CASE 206 ND; 23~~2~~3 PAGES

C4 2

New York

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 642.

Concepcion V. Rodriguez et. al. CLAIMANTS.

VS.

THE UNITED STATES, DEFENDANT,

FOR ~~THE PLACE NAMED~~

"Lands in Santa Clara County"

Office of the Board of Commissioners,

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

The Petition of Concepcion V. Rodriguez, et al: for ~~the Place named~~ Lands in Santa Clara County, was presented, and ordered to be filed and docketed with No. 642 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 September 7 1853.

In Case No. 642 Concepcion V. Rodriguez et al; for 1600 varas of land in Santa Clara County, the deposition of Jose Venancio Mojica, taken before Commissioner Alpheus Felch, was filed;

(Vide page 4 of this Transcript.)

San Francisco September 8 1853.

In the same Case the deposition of Joseph P. Thompson, a witness in behalf of the Claimants, taken before Commissioner Alpheus Felch, with document marked No. 1. A. F. and translation thereof, was filed;

(Vide page 7 of this Transcript)

San Francisco September 29 1853.

In the same Case the deposition of Manuel de Mirandes, a witness in behalf of the Claimants, taken before Commissioner Alpheus Felch, was filed;

(Vide page 9 of this Transcript.)

San Francisco October 1st 1853.

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

(Vide page 11 of this Transcript)

San Francisco October 2d 1854.

In the same case the depositions of Francisco Casanueno and J. E. Whitcher, witnesses in behalf of the claimant, taken before Commissioner Alpheus Felch the last with a map marked Exhibit No. 1. A. F. annexed thereto, were filed;

(Vide pages 14 & 15 of this Transcript.)

San Francisco, October 3d 1854.

Case No. 642 was submitted without argument and taken under advisement by the Board.

In the same case the Counsel for the claimants presented the following Amendment to the petition, to wit:

(Vide page 29 of this Transcript)

which having been considered was granted, and

Ordered, That the same be filed as an Amendment to the original petition.

San Francisco, November 21 1854.

In the same case the deposition of Joseph P. Thompson, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, was filed:

(Vide page 18 of this Transcript)

San Francisco, November 28 1854.

In the same case Commissioner Alpheus Felch delivered the Opinion of the Board confirming the claim:

(Vide page 31 of this Transcript)

and the following order was made, to wit:

(Vide page 33 of this Transcript)

3 Petition

To the Board of Commissioners for ascertaining and settling Private Land Claims in the State of California

Your Petitioner Concepcion Valencia in the right of Francisco Rodriguez who joins with her in this Petition of Santa Clara County represents to your Honorable Board, that she claims in her own right a certain tract of land known and called, San Francisquito to the extent of eight suertes de tierra of two hundred varas cuadradas each including therein the tract of land, that lies from the upper pass or passage (El Paso de Cumbre) that leads to the Sierra range of Mountains towards the west to the highway leading from Santa Clara to San Francisco known as the middle road along and through the usual of the channel to the creek of San Francisquito towards the East

Your Petitioner Doña Concepcion further represents that she was the wife of Antonio Buelna late of Santa Clara County deceased, That in the life time of the said Antonio Buelna and during her continue with said Antonio he applied for and obtained a grant of the said tract of land and described from Juan B Alvarado then Governor of Upper California which Grant was made on the first day of May AD 1839 that after obtaining said Grant the said Antonio and Your petitioner Doña Concepcion took possession of said land and continued to occupy possess and enjoy the same until the decease of the said Antonio

Your Petitioner Doña Concepcion is still and ever since has been in the possession and enjoyment thereof Your Petitioner avers that she is the widow of the said Antonio Buelna and at his decease his only heir to the said land that her right and claim to said land has never been questioned and she is not aware of any conflicting claim thereto

Your Petitioners present herewith a full translate from the archives of the former Government in Spanish and a translation thereof as the same

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and found him in possession of the Surveyor General claiming the application of the said Antonio Buelna for said land the investigations had in relation thereto and the grant by Governor Alvarado as above set forth and evidence supporting the claim by such other documentary evidence and such further proofs as may be required of him by the Board

Your Petitioner prays your Honorable Board to take into consideration her said claim to said tract of land and to decree the same to be valid and to confirm the same and your Petitioner will ever pray

Encarnacion Valencia Rodriguez
Francisco Rodriguez her husband
By James Wilson their Attorney

Filed in Office February 28th 1853
George Fisher
Secretary

Recorded in Volume 2 of Petitions on page 11
George Fisher
Secretary

Deposition of Jose Vicente Mojica

Office of Commissioners of Land Claims in California

This day before Commissioner Alpheus Felch came Jose Vicente Mojica a witness in behalf of Encarnacion Valencia Rodriguez et al Claimants No 642 who after being duly sworn deposed as follows

Question by George Gorman Esq Atty for Claimants

Question What are your name age and place of residence

Answer My name is Jose Vicente Mojica my age is forty eight years and I live in the Pueblo of Los Angeles

2 Question Did you know Don Antonio Buelna in his life time

Answer I did

3 Question Do you know the Rancho San Francisquito

Answer I do

4 Question Was you present when the Magistrate

5

gave possession of that Rancho to Antonio Buelna

Answer Yes

5 Question Please state what the boundaries are as designated by the magistrate for that Rancho

Answer They commenced at the house where Antonio Buelna lived, and following down the Arroyo San Francisquito to the entire section of the main road, leading from Santa Clara to San Francisco with said, each

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Thence we ran along the said main road in the direction towards Santa Clara to an oak tree (Roble) from that place we went in a southwardly direction along the road leading to the Sierra of Santa Clara to an oak tree and thence

We travelled to the crossing of the said Arroyo San Francisquito near the house by a trail made by dragging logs along this trail was an open road, made by drawing timber and ~~[illegible]~~ for the Missions

6 Question How many years are you live with Antonio Buelna

Answer I lived with him three years and going on the fourth

7 Question During the time you lived with him did he reside on the Rancho of San Francisquito with his family

Answer I believe he did at that time and continued to live there until he died, and his wife lives there now though he died but they are both dead

8 Question To whom is Buelna's widow married

Answer Francisco Rodriguez

9 Question What magistrate was it who gave Buelna the gradual possession of that Rancho

Answer The late Don Pacheco Magistrate of San Jose

10 Question While Buelna was alive him and to what extent did he assist cultivate the Rancho

Answer He cultivated considerable
is many years prior to that contains
water melons and other vegetables he had about
six hundred head of cattle and one band of
working mares about twenty five in number
and about six hundred head of sheep, he had
also corrals for cattle and sheep and pens
about the cultivated grounds he had besides
his family some seven or eight men al
ways employed on the place

He had an adobe
house in which he lived which was covered
with shingles, the house is still standing and in
good repair and it is occupied by the late widow
of Antonio Buelna who is now the wife of Fr
ancisco Rodriguez who lives there with her

Questions by Mr Gunkin assi
stant Law Agent

Question Does the road from San
Francisquito to Santa Maria cross the San Fran
cisquito creek now at the same place where it
was when this measurement was made

Answer It does the bridge is now
at the same place where the ford was then

2nd Question Does this road con
tinue from the San Francisquito to the oak grove
in Robleda the same track as at the time when
the measurement was made

Answer It does so it is the same as it
was then

~~3 Question Is the paper~~ 3 Question Is the road from
the point on the Robleda where you left the main
road to the oak tree mentioned by you in the
Senda de Santa de Madera into the same place
as when the measurement and mentioned was
made

Answer It is not be cause they have
cut down the trees since that time and have
defined it

4 Question Does the road from the
said Oak tree to the San Francisquito crock
near the house follow the same line as at the time
mentioned by you

Answer It does and is now made into a wagon road, it is the
great road leading from the Senda to Santa Maria

Question Does you mean to say the road

7

Question by Genl Wilson

Question Have you any grants to the land and present the same with metes and bounds

Answer I could his

Jose Vencent + Majica

mark

Subscribed and Sworn to before me at San Francisco this Seventh day of September AD 1853

Alpheus Felch

Commissioner

Filed in Office September 7th 1853

George Fisher Secretary

Recorded in Land Book B. Volume 3 Page 159

George Fisher Secretary

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Deposition of Joseph P. Thompson

Office of Commissioners of Land Claims in California

This day before Commissioner Alpheus Felch came Joseph P. Thompson citizen on behalf of Claimants Concepcion Valdez et al No 642 who after being duly sworn deposes as follows

Question by Genl James Wilson attorney for Claimants

Question What are your name age and place of residence

Answer My name is Joseph P. Thompson my age is twenty nine years and I reside in the City of San Francisco I came to California in 1839 and since 1841 have resided here permanently

Question Are you acquainted with the handwriting of Juan B. Alvarado and Manuel Micheltorena Governor and Secretary of the Territory of California

Answer I am

Question Look at the document now presented to you marked Exhibit No 1 with the initials A F annexed to this Deposition purporting to be a grant of land by said Alvarado to Antonio Buelna and state whether the signature purporting to be the signatures of said Alvarado and Micheltorena where they occur in said Document are the true and genuine signatures of said Alvarado and Micheltorena respectively

Answer My mother knew and genuine signatures to the best of my knowledge and belief

Question was you acquainted with Antonio Buelna in his life time

Answer Was I became acquainted with him at his house on his farm in 1842 which farm is known as the farm of Antonio Buelna and is situated on the south side of San Francisquito creek on the road from San Francisco to Santa Maria

Question What kind of a house had on the place when you first knew him

Answer An adobe house Was any good adobe house and he was residing in it at that time with his family

Question Did you attend upon him in his last illness

Answer I was with him a short time in his last illness and was stopping at that house in the house attending

Question Please describe the position of the house in reference to the road and creek

Answer the house is on the right hand side of the road leading from San Francisco to Santa Maria and on the south and east of the creek and about fifty yards from the creek

Question Do you know what extent of cultivation there was on the place during the life time of Buelna and subsequently

Answer I do generally believe a piece of land enclosed and under cultivation planted, raised, cumbers squashes and other vegetables, he also had another field in a different part of the Rancho where he raised wheat, barley and oats in passing by at different times and in different years and cannot tell how much land was then cultivated, In proportion to the size of the farm Mr Buelna had as much cultivation on his place as there was on any farm which I know of in the Valley the occupancy and cultivation of the place has been continued by his widow since the death of Buelna Jos P. Thompson

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Mr Grunhow associate Law agent was present at the taking of this Deposition but declined to interrogate the witness

Subscribed and sworn to before me at San Francisco this eighteenth day of September AD 1853

Alpheus Felch
Commissioner

Filed in Office September 8th 1853
George Fisher
Secretary

Recorded in Record Book Volume 3 Page 161
George Fisher
Secretary

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Deposition of Manuel de Micoltes

Office of the Board of United States Commissioners &c
This day before Commissioner Alpheus Felch came Manuel de Micoltes witness in behalf of Claimants Concepcion Valdez et al who after being duly sworn deposed as follows

Questions by Samuel Gamble Esq Attorney for the Claimants

Question What is your name age and place of residence

Answer My name is Manuel Micoltes my age fifty ten years and I reside in Alviso Santa Clara County California I have lived there ten years

Question Were you acquainted with Antonio Buelna in his lifetime

Answer I had known him six or seven years before his death He died in the eighteenth day of November AD 1842

Question Where was his residence at the time and some years before his decease

Answer It was on his Rancho at San Francisquito Creek in the county of Santa Clara He resided in that same place some six or seven years before his death

Question Do you know the boundaries of that Rancho

Answer I do It lies in the road running from San Francisco to Santa Clara formerly called the middle road, and is on the right hand

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side of that road as you go from San Francisco to Santa Clara Rancho commences where the road crosses said creek and runs along the road through the chaparral until you come to the edge of the oak timber

From that point it follows along the edge of the timber until you come to the diverging road where they drag timber from the Sierra Nevada to the Pueblo of San Jose

From

following along that road to the Laguna towards the mountain from the Laguna it runs in a straight line to the creek before mentioned thence down the creek to the road before mentioned at the point of commencement

Question Do you know the quantity of land within these boundaries

Answer I do not know exactly the quantity but suppose it to contain about one square league

Question Do you know whether Antonio Buelna was put into quietude possession of that tract of land

Answer He was

Question What sort of a house did he live in in that land

Answer An adobe house it was built by him and was from twelve to fifteen yards in length and was a good house it has been occupied ever since it was built until the present time the house was built in the year 1839

Question Please state the extent of cultivation on the Rancho of Antonio Buelna in his life time

Answer He had about one hundred and fifty acres of the land under cultivation in which he raised barley beans potatoes and watermelons He had on the Rancho from three to four hundred head of cows three gangs of breaking mares of fifty or sixty in each gang and three or four thousand sheep

Question Has the Rancho been occupied since the decease of Antonio Buelna and if so by whom

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Answer It has been owned since his death by his widow Maria Concepcion he is now married to Francisco Rodriguez and they occupy the place together

10 Question Are there any children of Antonio Buelna and his wife Maria Concepcion now living

Answer none that I know of

Mr Gunkin Associate Land Agent was present at the taking of this deposition but proposed no questions

his
Manuel X Narvaez
mark

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Subscribed and sworn to before me at San Francisco this 29th day of September A.D. 1853

Alpheus Felch
Commissioner

The Associate Land Agent objects to this testimony entered in consequence of the witness being a person marked not wholly of African Blood

Robert Gunkin
Associate Land Agent

San Francisco September 29th 1853
Filed in Office September 29th 1853

George Fisher
Secretary

Recorded in Docket B. Volume 3 Page 222
George Fisher
Secretary

Deposition of Jose Antonio Alvarez

Office of Board of United States Commissioners &c
This day before Commissioner Alpheus Felch came Jose Antonio Alvarez on behalf of Claimants Concepcion Rodriguez et al No 642 whose testimony being duly sworn deposes as follows

Questions by General James Wilson attorney for Claimants

1 Question What is your name age and place of residence

Answer My name is Jose Antonio Alvarez my age is sixty years and I reside at San Francisco County of Santa Clara California

2 Question Did you know Antonio Buelna in his lifetime

answer I did know him over since my childhood

3 Question Do you know the Rancho San Francisquito where said Berdia lived

answer I do

4 Question Did you know of said Antonio Berdia's obtaining a grant of said Rancho and of his obtaining judicial possession thereof if you please state what you know about it

answer I know of his obtaining a grant and the judicial possession of said Rancho I was present at the time he received judicial possession as one of the witnesses and at the request of Dolores Pacheco I made a plat of the same for him

The judicial possession was given by said Pacheco and I signed the papers as assistant witness we commenced measuring at the house of said Berdia in which he lived and where he died

From that we ran the line along the creek to the old main road leading from San Francisco to Santa Clara thence we followed said road until we came opposite some live oak trees which we went to and from said road which trees we marked

From that place we went with the windings of the channel along the oak grove (Roblar) to a live oak tree marked with an axe standing at the road called Alameda then along the said road called Alameda to where it intersects the Arroyo San Francisquito where the measurement stopped

And from that point we went along the arroyo San Francisquito to the place of beginning at the house

5 Question Please state the extent of cultivation on the Rancho by Berdia in his lifetime

Answer He cultivated a large tract at least four five hundred acres and raised large crops

6 Question Had he any stock on it

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Answer He had about four hundred head of cattle and two brands of his own (drawn as)

Question What sort of a house he occupy

Answer It was an adobe house of large size he having a considerable family principally of grown children He had but one child of his own and that dead

Question Please state the extent of the Rancho of which Bulhuarnshur in his assn as before stated

Answer I cannot tell with certainty but I should think about two square leagues I judge from a superficial view of the boundaries

Question Did Bulhuarnshur or anyone else live there

Answer He left and no one is still living there his nearest to Francisco Rodriguez both of whom live near said Rancho at the present time

Questions by Mr Gunnison counsel for Land Agent

1 Question Does the road as now travelled between San Francisco and Santa Clara cross the San Francisquito creek at the same point where the road did when the original possession of the Rancho was given

Answer It crosses at the same point

2 Question Does this road run on the same track now as it did when the said possession was given

Answer It runs on the same track so far as I know or at least

3 Question Does the road called by you the Indian road run on the same line now as at that time

Answer It runs on the same line and crosses the San Francisquito creek at the same place where it did at that time It is as much plain and well worn now as then

4 Question Does the live oak tree which you say was marked at the time of making the survey still stand

Answer I does
5 Question Are the live oak trees which you marked standing about four hundred varas from the road, still standing
Answer They are standing yet
Jose Antonio his + mark Alvisu

Subscribed and sworn to before me at San Francisco this first day of October AD 1853
Alpheus Felch
Commissioner

Filed in Office October 14 1853
George Fisher
Secretary

Recorded in Entries B. Volume 3 Page 230
George Fisher
Secretary

Deposition of Francisco Casanova

United States Land Commission
San Francisco October 2 1854
On this day before Commissioner Alpheus Felch came Francisco Casanova a witness on behalf of the claimant in Pueblo Rancho case No 642 who after being duly sworn and examined as follows
Question by General James Wilson Attorney for Claimants
Question Please state your name age and place of residence
Answer My name Francisco Casanova my age is thirty years and I reside in San Francisco
Question Are you personally acquainted with Manuel Micheltorena and Jose Antonio Alviso who have testified in this case, was you personally present with these two Gentlemen on the Rancho of San Francisquito and did they point out the boundaries of said Rancho to J. E. Whitney who has this day testified in this case
Answer I know said Micheltorena and Alviso I was present when they pointed out the boundaries of said Rancho to said Whitney They are the same men who have testified in this case

Associate Law Agent was present
Subscribed and sworn
to before me this 2nd of October 1854
Alpheus Felch
Commissioner
Filed in Office October 2nd 1854
George Fisher
Secretary
Recorded in Book B. Volume 5 Page 404
George Fisher
Secretary

Deposition of J. E. Whitehouse

United States Land Commission
San Francisco October 2nd 1854
On this day before Commissioner Alpheus Felch came J. E. Whitehouse witness in behalf of the claimants being duly sworn and examined as follows
Questions by Samuel Gamble Esq
attorney for the claimants
1 Question Please state your name age and place of residence
Answer My name is J. E. Whitehouse my age is thirty seven years and I reside in Oakland California I am by profession a Surveyor and Engineer
2 Question Do you know the Rancho called San Francisquito in Santa Clara County if so state what you know about the boundaries thereof and how you came by your knowledge of the same
Answer I know it as it was pointed out to me by the Gentleman who said they were witnesses at the time judicial possession of said Rancho was given
These Gentlemen are Mr Alviso and Mr Narciso I had copies of their depositions taken in this case They pointed out to me the boundaries of the Rancho and the marks which were made at the time the judicial possession was given. We walked around it on the line as near as was practicable
We commenced at the south western corner of the land where the arroyo crosses the San Francisquito

creek and thence following down the creek to the point where the creek crosses what was called the middle road leading from San Francisco to Santa Clara

Thence we went along said road South eighty six and a half degrees East about a quarter of a mile thence South twenty two degrees East about another quarter of a mile to an oak tree having 4 scars although it had been marked with an axe some years ago

Thence South sixty degrees East about one fifth of a mile to an oak tree marked similarly to that last mentioned thence South fifty five degrees East about twenty four chains where we found a stump and the tree which had been felled had marks like the other above mentioned

Thence South about twenty seven and a half degrees West about one hundred chains to an oak tree similarly marked thence South fifty degrees West about ten and a half chains to the high way called the Quastrado

Thence South seventy five degrees West along said highway about thirty eight chains to an oak tree similarly marked thence South seventy three and a half degrees West along said highway about fifteen chains to another oak tree similarly marked

Thence we followed the old Quastrado to the place of beginning the distance being about seventy five chains Reason persons who were with me Alviso and Fernandez pointed out each of the trees above mentioned and said they were marked as monuments of the boundaries at the time when the Juridical possession of said Rancho was given I took all the courses above mentioned by the compass and estimated the distance by walking near the map or plan which accompanies which is annexed to this Deposition marked Exhibit with the initials W T was made by me prepared not by me when I first saw the land There is from twelve hundred to fifteen hundred acres of the land within the lines above mentioned

There is a dwelling house on the Rancho which is a very good adobe house and is occupied by Mrs Rodriguez and her husband the measurement above mentioned was made about the month of July of the present year the platting close within about eight chains

Questions by Mr Blanding associate Land Agent

1 Question at the time you made the survey did the parties with you have in their possession any Diseño or map

answer I do not recollect that I saw any

2 Question what is the average length and width of the tract described and the form of the tract

answer The average length is about two miles and it will average about one mile wide It is near a trapezoid in form

3 Question What is the condition of the woods you mention and are they the same mentioned in the Grant

answer The wood called the middle wood, is a tolerable carriage road and is in good condition the cross road is also a good carriage road but has been straightened a little in places by the road masters

The great stage road from San Francisco to San Jose passes through the land near the center and has been made recently

There is another new road leading from the cross road to the new stage road across the South eastern corner of the place I did not see any other roads crossing the land than those above mentioned

J E Whitcher

Subscribed and Sworn to before me this 2nd day of October 1854

Aeplius Felch
Commissioner

Filed in Office October 2nd 1854
George Fisher Sec

Recorded in Evidence B. Volume 5 Page 409
George Fisher Secretary

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Deposition
of Joseph P
Hampson

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No 642

United States Land Commission
San Francisco November 21st 1854

On this day before Commissioner Alpheus Felch came Joseph P. Hampson attorney on behalf of the claimants herein in the foregoing case number 642 who after being duly sworn deposed as follows

Joseph P. Hampson of San Francisco aged thirty years deposes and says that I was well acquainted with Antonio Buelna and his family while living on his Rancho San Francisquito in Santa Clara County

The said Antonio Buelna died in the year 1842 according to the best of my recollection

The said Antonio Buelna left a widow and two young children according to the best of my recollection living on said Rancho at the time of his decease the children were young and had neither of them arrived at the age of puberty

About two years after the death of the said Antonio Buelna as near as I can recollect both of said children died.

My recollection is that in 1844 I was at the house and the family were broken up by the small pox and I think believe that the two children of the said Antonio and his wife died with that disease

The foregoing testimony is according to my recollection and my impressions in regard to that Buelna family Joseph P. Hampson
Subscribed and sworn to before me this 13th day of November 1854

Alpheus Felch Commissioner
The foregoing affidavit may be received and read as a deposition in the said case now as though submitted with the other papers at the time the case was submitted to the Board for decision Nov 21st 1854 J. H. McKune U.S. Law Agent
Filed in Office November 21st 1854
George Fisher Secretary

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Espediente

Promovido por el Ciud.º Antonio Prueba en pretension de ocho sitios de tierra

259.

Monterrey. 9 de Marzo de 1839.
Informe el Administrador de Sta Clara lo conveniente y dirijase por su mismo conducto al Sr. Prefecto del primer Distrito.
Alvarado.

Excmo Sor Gobernador.
El C. Antonio Buelna natural y vecino de este Departamento ante la recta justificacion de V.E. expone que habiendo obtenido permiso por el Administrador de la Sa Mision de Sta Clara hace el tiempo de dos años para ocupar un parage perteneciente a ella llamado Sn Francisquito distante como cinco leguas: y teniendo de ver (ó un me parece) no hacerle falta. Suplica se le concedan en el enunciado parage ocho suertes de tierra de a doscientas varas quadradas que vienen á ser un mil seiscientas segun el reglamento de colonizacion pues aunque es la costa donde tiene sus bienes se le proporcionan tierras de labor, se le imposibilita el poder las sacar de alli ó poblado alguno por la incomodidad de los caminos. Y por tanto A V.E. rendidamente pide y suplica se digne acceder á la solicitud en lo que recibirá gracia.
Monterrey. Marzo 3 de 1839.
Antonio Buelna.

Se le puede conceder al solicitante el terreno q. pide por no ser de mucha necesidad a este establecimto con la precisa condicion de que lo sienque.
Santa Clara. Abril 18 de 1839.
José R. Estrada.

Pueblo de San Juan de Castro. Abril 26 de 1839.
Visto lo contenido en esta instancia el Prefecto del 1er Distrito informa que el terreno que solesita la parte interesada puede serle concedido.
José Castro.

Monterrey. 1º de Mayo de 1839. Vista la peticion con que da principio este Expediente y el informe del Sr. Prefecto: de conformidad.

Here follows a map or plan

á lo dispuesto por las leyes y reglamentos de la mat-
-eria se declara al ciudadano Antonio Buelna
dueño en propiedad del parage nombrado San
Francisquito situado en las demarcaciones de Sta
Clara con la estension de ocho suertes de tierra
de a doscientos varas cuadradas con inclusion del
terreno que esta dado el paso de arriba que va para
la Sierra acia al Oeste hasta el Camino Real que va
de Sta Clara y San Francisco conocido por camino
de enmedio por la parte de adentro del chamisal
al arroyo del mismo S. Francisquito asi al Este, practi-
-cadas previamente las diligencias y averiguaciones cons-
-cientes segun lo dispuesto por las leyes, estiendase el
correspondiente despacho al interesado y reservese este
Espediente á la E. Junta Departamental y notifiquese le
al interesado para que se instruya de las condiciones
que se estienden en su titulo. El S. D. Juan Bau-
-ista Alvarado, Gobernador Interino del Departamto
de las Californias asi lo mando, decreto y firmó de
que doy fee.

En la Sta. se le notifico á Don
Antonio Buelna el decreto anterior y enterado
de él dijo que lo oye y se conforma firmando con
migo por Constancio.

Antonio Buelna.

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

I Samuel King, Surveyor General of the United States for the State of California and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or Department of Upper California do hereby certify that the six preceding & hereunto attached pages of tracing paper numbered from one to six inclusive and each of which is verified by my initials (S.K.) exhibit a true and accurate copy of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal (not having a seal of office) at the City of San Francisquito Calif^a this 29th day of January

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1853. Samuel D King.
Surveyor Genl California

Filed in Office. Feby. 28th 1853.

Geo. Fisher.
Secry.

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Translation of Grant

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Monterey March 9th 1839

Let the administrator of Santa Clara report what may be convenient, and let it be sent to the same to the humble the Prefect of the first District

Signed
Alvarado

Excellent Governor

The Citizen Antonio Buelna a native and resident of this Department proceeds to declare before your Excellency upright justice

That having obtained permission from the administrator of the Exprimissio of Santa Clara for your Excellency to occupy a place pertaining to it called San Francisquito distant about five leagues

and preceding (so it seems to the Petitioner) a communication that it does not stand in want of it

He entreats that there be granted to him on the site aforementioned, eight sitios or Tierra of five hundred varas quadradas each which amounts the thousand six hundred according to the Regulation of Colonization

Because although among the Consorte number he has his goods say cattle (bienes) there are opportunities available for want of lands for for cultivation he cannot remove from the place and settlement in habited place by reason of the bad state of the roads and

Therefore he asks and begs submissively that your Excellency deign to accede to the requests which your Excellency will confer a grace and favor

Monterey March the 12th 1839

Signed Antonio Buelna

The tract of land which the soliciting party applies for may be granted to the same in as much as it is not much wanted by this establishment with the indispensable condition that the party shall inclose Santa Clara April 18th 139

Signed Jose R. Estrada

The Prefect of the first District hereby requests that the tract of land which the interested party applies for may be granted to the same

Signed Jose Castro

Monterey May the first 1839

After having seen the petition at the head of this record of Proceedings and the report of the Honorable Prefect in conformity with the prescriptions of the Laws and Regulations in the matter the citizen Antonio Buelna is declared proprietary owner of the place named San Francisquito

Situated within the demarcation (demarcacion) of Santa Maria to the extent of eight suertes de Tierra of two hundred varas cuadradas each including within the tract of land that lies from the upper pass or passage (el Paso de arriba) that leads to the serrania or ridge of mountains towards the west to the high way leading from Santa Maria and San Francisco known as the middle road along and through the inside of the Mesa usual to the cerro of the same San Francisquito towards the East

The investigations thereto concerning having been punctually performed according to the prescriptions of the Laws let the corresponding patent to the party interested be committed to notary and let this record of Proceedings be kept for the Excellent Departmental Junta and let it be notified to the interested party to the end that the same be made instructed of the conditions that stand set down in his title

The Honorable Don Juan Bautista Alvarado Governor ad interim of the Department of California thus said order decreed and signed and witnesses thereto, under the same date the turn of the firm decree was notified to Don Antonio Buelna and after it became known to him he said that he hears it and confirms signing with me to witness my act and contains Signed Antonio Buelna

Filed in Office February 28th 1853

George Nestor Secretary

1. 25

Juan B. Alvarado Gobernador Interino del Departamento de las Californias.

Por cuanto Dn Antonio Buelna ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Sn Francisquito situado en la demarcacion de Santa Clara, con la estension de ochos suertes de tierra de á ocho docientos varas cuadradas con eslusion del terreno que está desde el paso de arriba que vá para la Sierra asiá el oeste hasta el camino real que vá de Sta Clara á Sn Francisco conocido por camino de enmedio por la parte de adentro del Chamisal al Arroyo del mismo San Francisquito acia el Este, practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por las leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido en conferirle la propiedad del mencionado terreno sugetandose á la aprobacion de la Excma. Junta Departamental y bajo las condiciones siguientes.

Exhibit no 1. Ad. and to Deps. of J. P. Thompson.

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PAGE 26

1a Podrá cercarlo sin perjudicar las traversias caminos y servidumbres; lo disfrutará libre y esclusivamente destinando lo al uso ó cultivo que mas le acomode: pero dentro de un año fabricará Caso y estará habitada.

2a Solicitará del Juez respectivo que le de posesion Juridica en virtud de este despacho por el cual se demarcaron los lindenos en cuyos límites pondrá á mas de los mojoneros algunos arboles frutales ó silvestres de alguna utilidad.

3a El terreno de que se hace donacion es de la estension de dos terceras partes de una legua poco mas ó menos segun esplica el diseño que corre agregado en el Espediente. El Juez que tiene la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

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

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de él en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterrey de la Alta California

a primero de Mayo de mil ochocientos treinta y nueve.

Juan B. Alvarado. Manl. Jimeno. Srio. del despacho.

Queda tomada razon de este despacho en el libro correspondiente a fojas 5. buelta.

Manuel Jimeno.

El Excmo. Señor Gobernador ha dispuesto se tome razon de este titulo en la Prefectura del 1er Distrito

Jimeno.

Filed in office. September 8th 1853.

Geo. Fisher
Secry.

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Translation of Exhibit No 1 A Francisco to Deposition of J. P. Thompson

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Juan B. Alvarado Governor of the Department of California

{ Government Seal } Inasmuch as Mr Antonio Buchon has solicited for his personal benefit and use of his family a tract of land known by the name of San Francisquito situated in the demarcation of Santa Clara with the extent of eight Lots (suertes) of ten hundred square varas including the land that lies from the upper Pass that leads to the sea towards the west to the main road, leaving from Santa Clara to San Francisco known as the middle road, in the inside part of the channel to the Brook of the said San Francisquito towards the east

All the steps and investigations concerning the same having been previously performed as required by Laws and Regulations using the authority conferred upon me in the name of the Nation I have granted him the ownership of the above mentioned land

Subject to the approval of the Excellent Departmental Assembly and under the following conditions

1st He may enclose the said land without detriment to roads paths and crossings enjoying the same freely and exclusively appropriating it to the use or cultivation but cannot sell it for him but within one year he shall build a house and settle be confined

2nd He shall solicit from the respective judge that he give him judicial possession by virtue of this title by whom the bounds shall be marked out in the limits of which he shall put besides the land marks some fruit or forest trees of some utility

3rd The land that is donated is of the extent of two thousand of a league a little more or less as appears in the plan that is attached to the Expediente

The judge that gives him possession will consist to be measured, he company to demarcate the surplus that results remaining for the Nation for the uses for which it may be required

nº 7

4th Provided he violate these conditions he shall forfeit his right to the land and it will be denounceable by another

Thus I order that holding this title as prima and valid, that it be noted in the corresponding book and be delivered to the interested party for his safe keeping and other purposes

Given in Monterey of Alta California this first day of May 1839

Signed Juan B. Alvarado
" Manuel Jimeno

Secretary of the Office

Noted in this Office in the corresponding book page 4

Signed Manuel Jimeno

His Excellency the Governor based on this title to be noted in the Department of the 1st District

Signed Manuel Jimeno

I George Fetlow Secretary of the Board of the United States Land Commission &c do hereby certify that the preceding is a true and correct translation of a Spanish Document of the purport as above set forth exhibited and filed in Case Number 642 in the Docket of the said Board now in this Office

Office of the Secretary of said Commission San Francisco this 5th day of October AD 1854
George Fetlow
Secretary

Filed in Office September 8th 1853
George Fetlow
Secretary

29
Amended
Petition

Number 642
Petitioners Counsel submits the foregoing motion to amend the Petition by striking out after the word extent in the 8th line to the word yours in the 16th line footing and insert after thus of a league of land be the same more or less and bounded as follows viz

Commencing at the point where the old Logging road called Cunningham leading from the Mia to Santa Maria crosses the San Francisquito creek

Thence northeastwardly following the meandrs of said Francisquito creek to the point where the old high way commonly called the middle road leading from San Francisco to Santa Maria crosses said San Francisquito creek

The distance along said creek being about two miles more or less, thence running southwardly along the meandrs of the said middle road about one mile more or less to the stump of an oak tree which was marked for a corner and which tree has been felled

Thence South wardly from said stump last mentioned by a straight line about one mile and three quarters more or less to an other oak tree marked for the South East corner of said San Francisquito Rancho

Thence westwardly about forty rods to the old cart road aforesaid to an oak tree marked, thence Southwardly following the meanders of said cart road to the point where the same crosses the said San Francisquito creek to the point began at.

Filed in Office October 3rd, 1854
George Fisher
Secretary

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Opinion of the Board

Number 642
Concepcion Valencia
Rodriguez et al
vs
The United States

Forty nine cases
San Francisquito in
Santa Maria County
containing 1600 varas
of Land

The Petitioner Concepcion Valencia widow of Francisco Rodriguez who prays with her in the Petition represents and proves that she was the wife of Antonio Burlea who died in November 1842 possessed of the property in question and claiming under a grant made thereof by Juan Alvarado on the 18 day of May 1839 the grant is produced and duly proved

The proofs show that he built an adobe house on the place the same year in which the grant was made that he continued to live there with his family and to cultivate and improve the premises from that time to his death and that the same kind of occupation has since been continued by his widow since and remained with said Rodriguez to the present time

No testimonial of judicial possession is presented but proof is made by witnesses who are present and testify that such possession was given and the lines clearly designated and landmarks established they describe the measurement with particularity which seems to be in accordance with the terms of the grant

And it is shown by the testimony of a surveyor who recently surveyed the line as pointed out by the witnesses that the quantity of land included is considerably less than that specified in the grant

Antonio Burlea left at his death a widow the present claimant and two young children who inherited his property The two children died about two years subsequently during their minority leaving their Mother sole heir at Law who thus became the owner of the premises in question

in her own right. The claim appears to be meritorious and a decree of confirmation to said concepcion Valencia Rodriguez will be entered confirming

Filed in Office November 28th 1854

George Fisher
Secretary

Decree of Confirmation

Concepcion Valencia Rodriguez and al vs The United States } In this case in hearing the proofs and allegations it is adjudged by the Commission that the claim of the said Petitioners is valid and it is therefore hereby decreed that the same be confirmed to the said Concepcion Valencia Rodriguez to have and to hold the property herein after described in her own right

The land of which confirmation is hereby made is situated in Santa Clara County is known by the name of San Francisquito and is the same premises which the said Petitioners reside and is bounded and described as follows to wit

Beginning at the point where the aqueduct crosses the San Francisquito creek thence running northwardly along said creek to the point where it intersects the Alameda commonly called the middle road leading from San Francisco to Santa Clara

Thence running eastwardly along said middle road to a point opposite three live oak trees which stand near said road which trees are marked as a boundary when Jedediah Rogers sold said land to Antonio Buelna by the Alcalde Dolores Padres

Thence southwardly along the oak bush hollow to an live oak tree marked with an axe standing as the road called aqueduct thence eastwardly along said aqueduct by the old line thereof to the point where the same crosses said San Francisquito creek to the place of beginning

to the Mouth of the Quinimas

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containing two thirds of a square league of land, a little more or less

The land hereby confirmed being the same which was granted to Antonio Burlina by Juan Alvarado May 1st 1839 with the limits and bounds which were assigned to him by the Judicial Measurement made under the grant by the Alcalde Dolores Pacheco

Alpheus Felch

Robert Thompson

S. B. Farwell

Commissioners

Filed in Office November 28th 1854

George Fisher

Secretary

206 ND

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And it appearing to the satisfaction of this Board that the land hereby adjudicated is situated in the Northern District of California it is hereby ordered that two Transcripts of the proceedings and of the decision in this case and of the papers and evidence upon which the same was founded be made out and duly certified by the Secretary one of which Transcripts shall be filed with the Clerk of the United States District Court for the Northern District of California and the other be transmitted to the Attorney General of the United States

Office of the Board of Commissioners,

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

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Thirty three — pages, numbered from 1 to 33, 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. 642 on the Docket of the said Board, wherein Concepcion V. Rodriguez, et al, Claimants against the United States, for the place known by the name of "Lands in Santa Clara County."

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this Twenty fifth — day of May 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. 206 — 206 ND

THE UNITED STATES,

vs.

Francisco V. Rodriguez, et al —

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 642.

Filed, June 2d 1855.

John A. Morrow, Clerk

#142

At a Stated Term of the District Court of the United States of America, for the Northern District of California, held at the Court House in the City of San Francisco, on Monday the 21st day of January in the year of our Lord one thousand eight hundred and fifty-six.

Present: The Honorable OGDEN HOFFMAN, Jr., District Judge.

The United States, v. Concepcion T. Rodriguez et al.	No. 206. On appeal from the Board of Commissioners etc.

In this cause it appearing to the satisfaction of the Court, by reading the deposition of Jose Antonio Aloiso, a witness for the claimant in a certain cause lately pending in this Court wherein Maria Concepcion Talencia de Rodriguez was the claimant and appellant and the United States were the defendants and appellees, which deposition was read as evidence in this cause by consent, that the true name of the claimant in this cause heretofore designated in the proceedings had therein by the name of Concepcion Talencia ~~de~~ Rodriguez, is Maria Concepcion Talencia de Rodriguez, and the District Attorney of the United States now here in open Court admitting that such is the fact, it is, on motion of Mr. Leigh, of counsel for the claimant,

Ordered that in all proceedings in this cause subsequent hereto wherein it may be necessary or proper to designate the said claimant she may and shall be designated by such her true name of Maria Concepcion Valencia de Rodriguez.

Ogden Hoffman Jr
U. S. Dist Judge

JR

No 206

United States District Court, Northern District of California.

The United States
—vs.—
C. V. Rodriguez et al.

Order
altering style of the
cause by correcting
a misnomer of one of
the claimants.

Filed January 21, 1855
John C. Mason
Clerk.
By W. F. Chenery
Deputy.

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Office of the Attorney General of the United States,

Washington, 29 June 1855.

642. "Lands in Santa Clara County"

Concepcion V. Rodriguez et al, Claimants —

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 14th day of June 1855 the appeal in the district court of the United States for the Northern district of California will be prosecuted by the United States.

Cushing

Attorney General.

C. L.

No. 206

U. S. District Court
Northern Dist of California.

United States
vs
Concepcion Rodriguez et al.

Notice of Appeal in
Case No. 642.

Filed Sept 6. 1855.
J. Chevers
Deputy

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

No. 206.

The United States,
Appellants,

v.

Concepcion Valencia
Rodriguez et al.,
Appellees.

Answer.

The above-named appellees, for answer to the petition of the above-named appellants in the above-entitled cause, aver that the claim of them, the said appellees, to the lands in the proceedings in the said cause mentioned is just and valid; and pray that the decision of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, confirming the said claim, may be affirmed, and the said claim decreed to be just and valid.

J. W. Gwin
Attorney for the Appellees

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

No. 206.

The United States Appellts
v.
Concepcion Valencia de Rodriguez et al. Appellees.

Answer.

Filed: Dec. 20, 1855.

by Chever
Deputy

B. W. Leigh,
Atty for the Appellees.

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

The United States
Appellants
vs
Concepcion Valencia Rodriguez et al

No. 206.

The Petition of the United States by their Attorney represents; that this cause is an application for a review of the decision of the Board of Commissioners whereby the claim of the said Appellee was Confirmed as appears by reference to the records in the case; that a transcript of the said Records was filed in this court on the 1st day of May 1855; that a notice of Appeal was filed on the 1st day of 2nd of June 1855 and that the land claimed lies in the said District.

That the said claim is invalid.

Wherefore Appellants pray that the said decision of the Board be reversed and that this court decree the said title to be invalid. Respectfully &c

S. W. Inge
U. S. Dist Atty

No. 206.

U.S. Dist. Court

The U. States

v

Conception Valencia

Rodriguez. et al

Petition

Filed: Dec 20, A.D. 1855.

G. Chevers

Deputy.

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A.W. Inge.

U.S. Atty

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

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v
Maria C. V. de Rodriguez

D. C. 206: L. C. 142

The Attorney General of the United States having given notice ~~that~~ to dismiss the appeal in this case, and a stipulation to that effect having been entered into ~~a stip~~ by the U. S. attorney:

On motion of the District Attorney it is hereby Ordered adjudged and decreed that claimant have leave to proceed under the decree of this Court heretofore rendered in her favor, as under Final Decree.

Ogden Hoffman
U. S. Dist Judge

206

United States District Court, Northern District of California.

The United States

vs.

C. V. Rodrigues

ORDER.

~~Vacating appeal~~
~~Final Decree~~

Filed April 2d 1857

John A Monroe

Clerk.

By D. D. Chevers

Deputy.

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

The United States
v
C. P. Rodregnez

} S.C. 206 : L.C. 642

In pursuance of a notice from the U. S. Attorney General, hereunto annexed, it is hereby stipulated and agreed that no further appeal be taken in this case on the part of the U. S. and that claimant have leave to proceed under the decree of this Court heretofore rendered in his favor, as under Final Decree.

San Francisco April 2nd. 1857

Wm Blanding
Dist Atty

P. W. Tyler
Atty for claimant

Attorney General's Office
14th February 1857

Sir:

You are hereby instructed to dismiss the appeal in the Case of Concepcion V Rodriguez vs The United States numbered 642 on the docket of the Land Commissioners.

I am,
Respectfully
C Cushing

Wm Blanding Esq
U. S. Attorney
San Francisco
Cal

206
642

U. S. District Court

The United States
v
C. V. Rodriguez

Stipulation

Filed April 2d 1857
W. H. Chevers
Deputy.

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

The U. States
vs
M. C. Vich Rodriguez } No. 268

And now comes the United States by P. Della Torre, Dist. Attorney and objects to the survey made by the Surveyor General and returned in this case, pursuant to the order of the Court herein made, and shows to the the Court as the grounds ~~[illegible]~~ of said objection

That whereas the decree of confirmation in this case as well as the petition of claimant and the map filed therewith all specify the "Cruzhacto" road as the Southern boundary of the tract, yet the Surveyor ~~yet the Surveyor~~ has disregarded said boundary altogether, ~~adopting~~

in lieu thereof an arbitrary straight line, commencing five eighths of a mile higher up the creek, thence the crossing thereof by said road, fixed by said court as a boundary corner, and ~~bros~~ thus including about six hundred acres of land not included in said chain of confirmation.

Tully R. Moore,
Acting U. S. Atty.

206.

U. S. Dist. Court

North. Dist. of Cal.

206

The U. States

v

M. C. V. de Rodriguez

Filed Aug: 26, 1859.

W. H. Chevers,

Clerk.

Objections to

Survey

206 ND

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Certified copy of within on

B. W. Leigh Atty for Deft

Aug 26, 1859 J.R.C.

The Us. States
vs
M. G. V. de Rodrigues
} D.C. 206. L.C. 642

In compliance with an order of the Us S Dist Court for the Northern Dist of California the plat of the Rancho San Francisquito is now returned to that Court—

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

Very Respt
Your obt servt
J. W. Mandeville
Us Surveyor

Hon Ogden Hoffman
Us S Dist Judge

No. 206.

Return of Survey of the Rancho San Francisquito

Statement of Surveyor General —

Filed Sept: 1. 1859.

W. A. Cheever,
Clerk.

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

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

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 206, to C. V. Rodriguez et al known as "San Francisquito," and situated in the County of Santa Clara in said District.

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

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

W. H. Chevers

CLERK.

The within Monition was received by me on Monday the 20th day of August 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for Four consecutive Wednesdays, in the San Francisco Herald, commencing on the 22nd day of August 1860; and for Four consecutive Saturdays, in the 2 in the former 1 in the latter 3 San Jose Reporter & Telegraph a paper published nearest the land, commencing on the 25 day of August 1860.

Dated San Francisco, Aug. 22nd 1860

P L Solomon U. S. Marshal.

No. 206

UNITED STATES DISTRICT COURT,

Northern District of California.

IN LAND CASES.

THE UNITED STATES.

v.

C. V. Rodriguez et al.

MONITION.

Returnable Sept. 26 1860.

Issued Aug. 20 1860.

Filed Sept. 26 1860.

W. H. Chever

Clerk.

206 ND

PAGE 54

District Court of the United States Northern District of California

The United States
vs
Maria C de V Rodriguez
et al

Jeremiah Clarke in person inter„
„venes for his interest in the pro„
„ceedings pending herein to set aside
the survey heretofore returned to this
Court by the Surveyor General and
states and alleges as follows viz:

That said intervenor is the
principal owner of the tract of land
granted Mch. 27. 1841 by John B. Al„
„varado to Jose Peña and finally con„
„firmed by the U.S. Supreme Court
to J & S Robles under mesne convey„
„ances from said Peña and said
J & S Robles to himself and that he
is sole owner of a large portion of said
tract affected by said survey
~~tract so granted~~ That said
tract so granted to Peña and so confirmed
by said Court, is by the terms thereof and
of said final decree of confirmation bound„
„ed on the north by the land of Antonio

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U. S. Dist. Court
Northern Dist. of Cal

The United States
— vs —
M. G. de V. Rodriguez et al
No 206

Intervention & Statement

Filed Sept. 29, 1860.
W. H. Chevers,
Clerk

Intervention and
Statement of
J. Clark

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PAGE 56

Sworn to, and subscribed
this 29. Sept. 1860. before me,
W. H. Chevers,
N. P. Com

Further, affiant says that the same part claimed in this case, that the boundaries of this part claimed by petitioners herein, and that the said Serena Rodriguez, and that the said claim is duly entitled in the twenty years last to claimed by said Rodriguez

J. Clark

Serena Rodriguez
Sworn to before me this 29 Sept 1860
Thos. Hoffman Commr

Intervention
Filed Sept 29 1860
Thos. Hoffman Commr
Filed Oct 1st 1860
J. H. Wallace
Clk

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

The United States
vs.
C. V. Rodriguez

The petition of Henry W. Seale by his attorneys Merritt McDougall & Sharp, respectfully shows.

That the Survey in this cause which has been approved by the Surveyor General; and, also, the Survey in the case of The United States vs. ~~Mesa~~ The Heirs of Mariano Antonio Mesa, have as petitioner is informed and verily believes, on proper petition, for that purpose made, been ordered to be returned into this Court for examination and adjudication: That the Eastern boundary line of the land in question in this cause forms the Western boundary line of the said Mesa Grant, which latter grant is known as the "Rinconada del Arroyo de San Francisquito" certain XXI who as Petitioner is informed proposes to enter that the parties in this cause

are endeavoring to change said line

Your petitioner further says that he is the assignee of the heirs of the late Antonio Maria Mesa and as such is in possession, the owner of and interested in a portion of said last named Rancho which is bounded on one side by the said boundary line which is sought to be changed as aforesaid

Wherefore your petitioner prays that he may be allowed to intervene in this cause, and be allowed leave to be heard and protect his interests in the premises. And your petitioner is duty bound will ever pray &c.

McDougall & Shark
Attys for Petitioner

State of California }
County of ~~San Mateo~~ } ss.
Campbell Lima Henry
N. Seale of lawful age

being duly sworn deposes and says on oath: that he is the above named petitioner; that the foregoing petition is true of his own knowledge except as to the matters which are therein stated on his information & belief and as to those matters he believes it to be true.

Subscribed & sworn to before me this 29th day of September 1860

Joseph S. Burris
Justice of the Peace
Fremont Township

County of Santa Clara
State of California

W. W. Seals

U.S. Dist Court

No. 206.

The United States

v.

C. V. Rodriguez

Petition of

Henry W. Seale

Received a copy of the within Petition of intervention this 1st October 1860.

Wade & Brown for

Attys for Defts.

Filed October 1. 1860.

W. H. Chevers

Clerk

McDougall & Lapsley

Attys for Petitioner

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

C. V. Rodrigues
vs
The United States

No: 206
In the matter of the Survey of "San Francisquito"

To the Hon: Ogden Hoffman, Judge of said Court.

The petition of H: I. Neville respectfully represents that he is an owner of a part of the Rancho called the Robles Ranch which adjoins the Rancho "San Francisquito" above named.

That your petitioner claims under and from the original grantee in the Robles Ranch: and that the survey of the said "San Francisquito", includes land belonging to the Robles Ranch.

Your petitioner prays to be allowed to intervene for the protection of his interest

Edw Stanly
Atty for Petitioner

State of California
City & County of San Francisco } ss

On this 29th day of September A. D. 1860, personally appeared Thomas J. Neville, before me James Rice a Notary public in said City and County, who being duly sworn deposed & said that the facts stated in the foregoing petition are true

Thomas J. Neville

Sworn to & subscribed before me this 29th day of Sept. 1860.

Jas Rice
Notary Public

No: 206

United States

vs

C. V. Rodriguez

Pet: to intervene

&c. T. J. Neille.

Filed Oct 1. 1860.

W. A. Cherrett,

Clerk

Ed. Stanly,

for Petr

No. 206

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

"San Francisquita"

The United States vs M. C. D. C. Rodriguez

Exceptions to the survey on the part of Thos. O'Neille —

And the said Neille by his attorney Edward Stanly appears, after having made his allegations according to the rules of the Court and files the following exceptions to the survey made in this case

The said Neille is owner of part of the Rancho called the "Robles Ranch" which adjoins their Ranch — "San Francisquita"; and the survey in this case includes land belonging to the "Robles Ranch"

That the survey made in this case disregards the little paper map, and is not a correct survey of the land granted to the claimants.

That the decree of confirmation in this case, as well as the petition of claimant and the map filed therewith all specify the "Arrastrada" road as the Southern

boundary of the tract; but the Deputy Surveyor has disregarded said boundary altogether, adopting in lieu thereof, an arbitrary straight line, commencing five eighths of a mile higher up the creek, than the crossing thereof by said road, fixed by said Court as a boundary &c — and thus including about six hundred acres of land, not belonging to said Ranch, nor included in the decree of confirmation —

Edw. Mulry Atty
for W. C. Pacheco

No. 208 —

The United States
vs
A. C. & Rodriguez
Decree in favor
as the part of J. C. Pacheco

Filed Oct. 4 1860
W. H. Chenery
Clerk.

206 ND
PAGE 65

Edw. Mulry Atty

District Court of the United States
Southern District of California

The United States
vs
M. C. de V Rodriguez

Jeremiah Clarke who intervenes in this case for his interest as part owner of the Ranch called "Robles Ranch" or "Rincon de San Francisquito" excepts to the survey heretofore made and approved by the U. S. Surveyor General, and returned to this Court by order thereof, on the following grounds.

That whereas the tract of land, the claim to which was confirmed by the Court, was, by the description of the original grant and deseno bounded on the North by the San Francisquito Creek on the South West by the Mountain Road ~~and~~ or upper Road leading from Santa Clara to the mountains, and on the South East by the Southern border of a growth of Chamisal extending from said Mountain Roads to the crossing of said Creek by the road known as the middle road. And whereas the diseno of confirmation, in this case substituted, for said

line of Chimisal a line testified to
in said cause as having been located
and marked in the giving juridical
possession (which substitution this inter-
venor insists is incongruous and incon-
sistent with that portion of the decree
which refers to the grant and diseño,
and should therefore yield to the latter)
yet that said Surveyor in making said
survey, did not follow or attempt to follow,
either the calls of said grant or of said
decree of confirmation, nor the indica-
tions of said diseño except in the
single particular of the said creek;
that instead of adopting, for the South-
eastern boundary, either the said line
of Chimisal or the corresponding lines
of said juridical measurement the plot
and survey of which had been filed
in the case by the claimant, said
Surveyor arbitrarily and wantonly run
two straight lines one North and South
the other East and west -

That instead
of following said upper or mountain
road in any part, as the Southwest bound-
ary, said Surveyor adopted a purely arbi-
trary straight line commencing at said
creek more than three fourths of a mile
above where said road has always actu-

„ally crossed said creek, and having
a length of more than two miles, instead
of one mile and a quarter, which was
the direct length of said boundary, accor-
„ding to said plat, or instead of about one
third of a mile which was the actual
length of said line according to said grant
and diseño; thus, without warrant or
excuse adopting arbitrary straight lines
for the corresponding meandering lines
called for by said grant and diseño,
thus entirely overstepping two of the original
boundaries and stretching the third by
nearly one half, apparently in the vain
attempt to swell the "eight sueltes" or fifty
six acres which had originally been
granted and which claimant first
claimed in this case, not only to
the 1200 Acres, which was claimed
in the amended petition as the result
of said orally proved Juridical meas-
„urement, but actually to two thirds of
a league of area (the said grant having
indicated two thirds of a linear league as
the perimeter or length of outside bound-
„ary of the tract granted) failing in
which attempt the Surveyor seems not
to have had the firmness to stick to the
boundaries nor the boldness to overlap them
so far as would be necessary to obtain the

District Court U.S.
Northern District of Cal.

206.

The United States

vs

M. C. de V. Rodriguez

Exceptions to the survey

Filed Oct. 6. 1860.
W. H. Chevers,
Clerk

J. Clarke.

dedukated to area, but Q have made an allowance, by fixing the area at exactly 22,185-64 acres

J. Clarke
Atty in fact

U. S. District Court

The United States
vs
C. V. Rodriguez, et al } No. 206

Be it remembered, that on this 28th day of November, A.D. 1860, before me, Lutter McAllister the within named Commissioner, it was stipulated and agreed by the Attorneys who attended the within examination of Eusebio Galindo in case No. 129 that a copy of his deposition be filed and read in evidence in the above entitled cause in behalf of Claimants with the same effect as if regularly taken therein.

Lutter McAllister
U.S. Comr

McDougall & Sharp
Attys for Intervenor Sealo.

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Maria Antonia Mesa

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 258

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

PRESENT: Calhoun Benham U. S. Atty by L. Clarke.
Sharp and McDougall for Claimt

QUESTIONS IN BEHALF OF THE Claimant

Question 1st,

Your name, age and place of residence?

Ans.

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

2d

Do you know the land granted to and claimed by Mr. Antonia Mesa, and that of Buelna, and that granted to Jose' Pena, - if so how long?

(Objected to as incompetent.)

Ans.

Yes Sir, Long time, - many years.

3d

Where is the land of Mesa situated

Ans

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

4d

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

Ans

Half a league towards the Roads.

5d

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

Ans

On the Santa Clara side.

6d

Was any portion of it North of the Creek?

Ans

There is not an inch on this side of

the Creek

the Creek.

7th

State if you know the boundaries of Buelna's Grant?

Ans.

The Buelna Ranch was contiguous on one side to the Mesa Ranch, - on the other side to Máximo Martinez and on an other to Juana Briones, and also by José Peña.

8th

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

Ans.

I do.

9th

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

Ans.

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

10th

Was the crossing of the old Road East or West of the West line of Mesa's track?

(Objected to because the diseño points it out)

Ans

Going from here the crossing of the roads was on the right hand side.

11.th

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

Ans.

There was a strip of land there.

12.th

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

Ans.

I do.

13.th

Did any portion of the Rodriguez or Buelna Grant laid South of the road referred to?

Ans.

The Arrastradero passeds through the Buelna ranch.

14.th

State if you Know whether the line of Buelna on the old road crossed the Arrastradero; or was any portion of the Buelna track South or South West of

the Arrastradero or mountain road?

Ans

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

15c

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

Ans.

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

16c

What relations did exist between Candelario Valencia and Antonino Buelna?

Ans

Brothers in Law.

17c

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

Ans

No. He simply cultivated the sobrante

between the tract of Mesa and Buelna.

18.c

How much of the sobrante laid on the East side of the road: state if you know?

Ans

I cannot say how much.

19.c

Did you ever have any conversation with Antonino Buelna or José Peña, before the Americans came to the country with reference to the lands of Mn. Antonio Mesas, and its boundaries? if so state what was said in such conversation?

(Objected to as incompetent)

Ans.

Nothing, except that they were contiguous owners.

20.c

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

Ans.

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

21.c

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

Ans

Yes sir.

22.d

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

Ans.

Yes. The deceased Soto told me many a time that his Ranch was one league Southerly, and a half league from the Bay towards the main road. Peña had not established himself there until some years afterwards. Buelna told me that his ranch adjoined that of Soto. Yes Buelna often spoke to me of his ranch, but never in reference to the length and width of Mesa's Ranch.

23.d

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

Ans.

Four miles or little more.

24.d

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

Ans

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

25c.

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

Ans

Many years previous and before the Grant.

Cross Examination.

Question 1st by J. Clarke Esq. for United States —

Where was Soto's House when he lived with his family before the grant?

Ans.

He lived on the Creek. On the South side.

2c.

Did he ever live on the Northerly side of the Creek?

Ans

He lived on the North side, along time before he established himself on the South-ern side which was many years before 1838. He established himself on the

Southern side

Southern side many years before 1838.

3.c

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

Ans

Charles Brown.

4th

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

Ans.

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

5.c

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

Ans

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

6.c

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

Ans.

From the deaced Soto and from the Surveyor.

7c

What Surveyor.

Ans.

Dont Know his name. The predecessor of the present Surveyor, and by the present Surveyor likewise. I mean the County Surveyor of Santa Clara Co.

8c

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

Ans.

Yes sir.

9c

How did you learn that Buelnas tract extended two miles or so Southerly of the Mountain road?

Ans

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

10c

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

Ans

No. Only that his land was to adjoin the Mesa ranch and that of Máximo Martinez.

11.c

State at what point the Mountain road passed the Creek. – How far from Buelnas' House?

Ans

Very near. – about two hundred varas.

12.c

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

Ans.

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

13.c

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

Ans.

There were some places where Cattle crossed, but no place where Carriages could cross. – Except at a point below

the old road leaving a thicket of willows immediately on the West and the Estero on the East. The distance between the Sausal and the Marsh was so narrow at the crossing, that some times when the tide was up, the Carriages to avoid the water would have to brush against the Willows.

Chief Examination Resumed.

14.c

How far was the crossings at the Sausal last referred to from the Bay?

Ans.

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

15.c

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

Ans.

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

16.c

What was the width of the Marsh on the East of the low crossing?

Ans.

Dont Know.

17.c

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

(Objected to as irrelevant and incompetent.)

Ans

Never.

18.c

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

Ans.

Certainly I would have known it.

Cross Examination resumed

19.c

Did you ever see José Peña's petition, diseño, or grant?

Ans.

I have not.

20.c

What do you mean then by saying that if any body had claimed that the Mesa tract extended less than a

league from North to South you must have known it?

Ans.

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

Examination in Chief resumed.

2d

State if you know whether the Peñas Rancho was not a cobranta?

Ans.

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

Eusebio Galindo

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

Lentler McAllister
U. S. Com.r

Seal.

206.

U. S. District Court

The United States
v.
C. V. Rodriguez, et al

Deposition of
Eusebio Galindo
for Claimant.

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

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

C. V. Rodriguez et al.

IN LAND CASES.

Dist. Court No. 206

Land Com. No. 142

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

PRESENT: C. Benham Esq, U. S. atty.
Mr. Dargall & Sharp for H. W. Seale.
Jeremiah Clarke Esq for himself.
Edward Stanly Esq for J. J. Neville.
W. J. Bowman for claimants.

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

Question 1st,

State your name, age, residence and occupation.

Ans.

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

2d

Do you know the land granted to Maria Antonio Mesa; and if so, how long?

Ans.

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

3d

Where is it situated?

Ans.

On the Santa Clara side of the Arroyo de San Francisquito.

4th

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

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

Ans.

About half a league.

5th

How far towards San Jose'?

Ans.

One league.

6th

Did you ever occupy and cultivate any land on the creek between the

any land on the Creek between the

land claimed by Mesa and that claimed by Buelna?

Ans.

I cultivated land there for three years successively.

7th

Was the land you cultivated ever claimed by the Mesa's or Buelna prior to the conquest?

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

Ans.

It was not — never.

8th

Why did you go there and cultivate?

Ans.

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

9th

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

(Objected to as before)

Ans.

They invited me to come and cultivate

there and nothing more. The deceased Antonino told me there was a sobrante there either on his side or on Mesa's side.

10th

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

Ans.

Before the conquest. I don't know the date. We paid no attention to dates here.

11th

About how much land did you cultivate in that location?

Ans.

About 70 or 80 acres – more or less.

Cross Examination.
Questions by Mr Clarke.

12th

Who have you been talking with latterly about this matter?

Ans.

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

13th

How does it happen that you recollect that the Mesa's got their

little 18 or 19 years ago, while you don't recollect the time when you occupied the land - and when you say you made no account of dates in those times?

Ans.

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

14th

Was Antonino Buelna living all the time you were cultivating?

Ans.

He was. He died after that, but I don't know how long after.

15th

Where was it that Antonino Buelna told you there was a sobrante - where did he make that declaration.

Ans.

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

16th.

You have stated that Antonino Buelna told you he thought there was some vacant land either on his side or on Mesa's side – on the side of what?

Ans.

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

17th

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

Ans

It was.

Questions by Mr Shurtz.

18th

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

Ans.

At the Mission Dolores.

19th.

What sort of cultivation did you

have upon that land?

Ans

Had melons, maize, corn, wheat, onions.

20th

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

Ans.

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

21st

What assistance had you to cultivate that land?

Ans

My son — one son.

22nd

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

Ans.

Here at the Mission.

23rd

When did you see this land last?

Ans.

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

24th

Who has that land now in possession?

Ans.

I have heard that a Chileno named Ramirez has some land thereabouts.

25th.

I repeat question 24th.

Ans.

I am told that Ramirez is there.

26th

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

Ans.

I had a lot here at the Mission — a house lot. I also owned the Acalanes Ranch. As the Indians drove us away from the Acalanes, I ~~came~~ went to the Mission and staid there until I went to the land in question.

27th

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

Ans.

No Sir.

No sir.

28th

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

Ans.

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

(By Mr Clarke) 29th

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

Ans.

José ~~Antonio~~ Peña.

(Answer objected to as incompetent and irrelevant.

30th

Did Antonio Buelna at ~~after~~ the time he pointed out the piece of land he thought was vacant tell you or show you that Peña was colindante on the south

(objected to as incompetent and new matter.)

Ans.

No, he did not.

31st

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

Ans.

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

32nd

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

Ans.

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

33rd

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

Ans.

There was another road above Buelna's house that led to the hills - it was about 100 varas above his house.

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

Ans.

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

Examination closed.

Carlos Valencia

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

Jno B Williams
U. S. Com.

206

U. S. District Court

The United States
v.
C. V. Rodriguez et al

Deposition of
Candelario Valencia
for H. W. Seale.

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

U. S. District Court.

The United States
v.
C. V. Rodriguez, et al.

No. 206.

Be it Remembered, that on this 16th day of November, A. D. 1840, before me John B. Williams, the within named Commissioner, it was stipulated and agreed by the attorneys who attended the within examination of José Antonio Alviso, in case No. 129, that a copy of his deposition be filed and read in evidence in the above entitled cause, in behalf of H. W. Seale, Intervenor, with the same effect as if regularly taken therein.

Jno B Williams
U. S. Com.

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Maria Antonia Mesap

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 258

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

PRESENT: C. Benham Esq: U S. Attorney
McDougall and Sharp for Claimant
Jeremiah Clarke Esq. for himself
W. J. Bronson Esq. for P. McGovern, et al

QUESTIONS IN BEHALF OF THE Claimant

Question 1st,

State your name, age, residence, and occupation?

Ans

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

2d.

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

Ans.

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

3d

State if you know how far the lands of Mesas extended on the Creek from the Bay?

(Objected to, as irrelevant &c.)

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

4e

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

Ans

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

5e

On which side of the San Francisquito

Creek was the lands of Mesas?

On which side of the San Francisquito Creek was the lands of Mesas?

Ans

On the Southerly side.

6.c

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

Ans

There is none.

7.c

Do you know the road from San Francisco to San Josi called the old roads?

Ans

I do.

8.c

How far did it cross the Creek from the Bay?

Ans

I can't say.

9.c

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

Ans

I do - the old road.

10.c

State if you know, whether or not, that was one of the boundaries of

Buelna's or Rodriguez' claim? if so, which boundary?

Ans

The land of Buelna was bounded with that of Antonio Marias Mesa. Mesa's Grant was made first.

11.c

Did you ever cultivate any lands on the San Francisquito Creek?

Ans

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

12.c

Do you know the location of the houses and barns of Henry H. Seale?

Ans

I do not.

13.c

How much lands was cultivated by Rodriguez before the conquest?

Ans.

Nearly all, - except the lands covered with chemical - more or less, about

400 varas long by 300 wide.

400 varas long by 300 wide.

14.

Do you know the boundaries of the Buelnas or Rodriguez claim – if so, state them?

Ans.

I do – It bounds with Mc. Anc. Mesa, with Máximo Martinez & Secundino Robles.

15.

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

Ans

I cant say – I know the boundaries.

16.

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

Ans

I do; it passes the lands of Buelnas.

Cross Examination

Questions by Mr. Clarke.

17.

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

which crosses the San Francisquito Road, is – the stage road?

Ans

I do.

18.th

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

Ans.

On the lower side – towards the Bay.

19.th

How far from that Road was it?

Ans.

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

20.th

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

Ans.

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

21st.

How long was that after her husbands death?

Ans

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

22d.

Did that petition state the land was to be one league in length from North to South?

(Objected to as new matter, and incompetent)

Ans.

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

23d.

From what sources was your knowledge of the location of that track derived?

Ans.

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

24th.

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

(Ans)

That was the way it was measured by the Co. Surveyor – One league in length and half a league in width –

that is what I meant to say.

Direct Resumed.

25c

When did you first see it measured?

Ans.

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

26c

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

Ans

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

Cross Exam resumed.

27c

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

Ans

The same as I said before

Jose Anto X Alvies.

Sworn to and mark made
before me this 27th day of
November, A.D. 1860.

Jno B Williams
U. S. Comr

A true copy,

Jno B Williams
U. S. Comr

206

U. S. District Court

The United States

v.

C. V. Rodriguez et al

Deposition of
José Anto Alviso
for H. W. Seale

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

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

C. V. Rodriguez, et al

IN LAND CASES.

Dist. Court No. 206.

Land Com. No. 142.

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

PRESENT: Calhoun Benham Eq, U. S. atty.
McDougall and Sharp for H. W. Seale.
Jeremiah Clarke Eq for himself.

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

Question 1st,

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

Ans.

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

2d

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

Ans

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

3d

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

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

Ans.

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

4th

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

claimed as a part of the western line of the Buelna tract where it crosses the creek?.

Ans.

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

5th

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

Ans.

There was. It was planted and occupied by cultivation for three years by Candelario Valencia - it was prior to 1844. Valencia went there under the direction of Antonino Buelna, who told him to go there and occupy that land, which he did. That land was not at that time claimed by either Mesa or Buelna.

Exam closed.

Charles Brooks

Sworn to and subscribed before me this 16th day of November A.D. 1866.

Wm B Williams
U.S. Comr.

206

U. S. District Court

The United States

v.

C. V. Rodriguez et al

Deposition of
Charles Brown
for W. W. Seale

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

U. S. District Court

The United States
vs.
C. V. Rodriguez et al

No. 206.

Be it remembered that on this 28th day of November AD 1860. before me, Butler McAllister, the within named Commissioner, it was stipulated and agreed by the Attorneys who attended the within examination of G. S. Banks, J. O. Rountree and David Mahoney in Case No. 129 that copies of their depositions be filed and read in evidence in the above entitled cause in behalf of Claimant with the same effect as if regularly taken therein.

Butler McAllister
U.S. Com

McDougall & Shaw
attys for Intervenor Scale

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Maria Antonio Mesa

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 258

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

PRESENT: Calhoun Benham U.S. Atty by J. Clarke. Sharp and McDougall for Claimants. Bronson for intervenor —

~~QUESTIONS IN BEHALF OF THE~~

Question 1st,

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

Ans

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

2c

Do you know the Mesa Ranch?

Ans

I do.

3c

Look at the Survey and State if the improvements of H. H. Seale are correctly laid down with reference to the Creek, Bay &c.?

Ans

I should judge they were.

4c

State if you know the value of the improvements on the place?

Ans.

I should think that they are worth about $10.000. They are substantial good House and substantial barns.

And they are at present in tip top order. I had some carpenter work done there for Mr Seale.

Cross Examination

5c

Do you understand Surveying?

Ans

No sir.

6c

Do you know who erected the buildings spoken of?

Ans

Only from hear-say. I heard Seale

Only from hear-say. I heard Sealer

say that he his brother and Adams had put them up.

Qc

Did you ever make any measurements from those buildings to any fixed point?

Ans.

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

G. S. Banks

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

Seal.

Lentler McAllister
U S Com.r

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States, v. Ma Antonia Mesa	IN LAND CASES. Dist. Court No. 129 Land Com. No. 238

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

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

QUESTIONS IN BEHALF OF THE

~~Question 1st,~~

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

Quest:
Do you know the Mesa Rancho?

Ans.

I do. I have been to Seale house once. I am acquainted with the improvements (Barns &c.) of Seale with reference to the Creek and the Bay.

The location on the map seems to be correct with reference to the position from the Bay. The improvements are worth from 6 to 8 thousands dollars. There are two substantial Barns and a good Ranch House. The fences are goods and occupieds by Mr Seals. — I dont know who put those improvements there.

J. O. Rountree

(Seal) Subscribed and sworn to before me this 28th day of November A D 1860.

Lenter M.c Allister
U S Comr.

In the District Court of the United States

FOR THE Northern DISTRICT OF CALIFORNIA.

The United States,

v.

Mc. Ao Mesa

IN LAND CASES.

Dist. Court No. 129

Land Com. No. 258

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

PRESENT: Leakon Benham U.S. Atty by J Clarke —
Mc Dougall & Sharp for Claimants
Brannan for Intervenor

QUESTIONS IN BEHALF OF THE Claimant

Question 1st,

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

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

David Mahoney

(Seal) Subscribed and sworn to before me this 28th day of November A.D. 1860.

Lentler McAllister
U S. Com.

206.

U. S. District Court

The United States

C. V. Rodriguez et al

Depositions of
G. S. Banks
J. O. Rountree and
David Mahoney

Filed Dec: 8. 1860.
M. A. Chevers,
Clerk.

U. States District Court – Northern District of California

The U. States
vs
C. V. de Rodriguez
} No 206

Take notice that on Wednesday May 22d 1861, at 10 o'clock A.M. at the office of the Clerk of said Court, I shall take the deposition of R. C. Matthewson, to be read in evidence in the above entitled cause

Respectfully
J. Tilden
Intervening for self and as Attorney for T. & S. Robles

To Messrs Wade, Brownson
Attorneys for Claimants
McDougal, Shafter
and Edward Stanly
for Intervenors

U. S. Dist. Court
Northern Dist. of Cal.

No 206

The U. States
v
M. E. V. de Rodriguez

Notice to take
depositions

A copy of the within received this 15 May 1850
Mark Pringle
for Claimants
~~[illegible]~~
Rob't Cryder v Mark

In the District Court of the United States

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

206 ND
PAGE 124

The United States,

v.

C. V. de Rodriguez et al

IN LAND CASES.

Dist. Court No. 206

Land Com. No. 642

BE IT REMEMBERED, that on this 24 day of May A. D., 1861, at the City of San Francisco, in the District aforesaid, before me, WM. H. CHEVERS, a Commissioner duly appointed by the Circuit Court of the United States for the Districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress in that behalf, personally appeared R. C. Matthewson a witness produced in behalf of J. Clarke et al, Intervenors in the above entitled cause, now pending in said Court under the Acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: ~~his evidence being interpreted by a sworn interpreter~~.

PRESENT: Jeremiah Clarke for self and others - Intervenors -
U.S. atty for U.S.

QUESTIONS IN BEHALF OF THE Intervenors Clarke, zal

Question 1st,

What is your name, age, residence and occupation?

Ans. R. C. Matthewson - lawful age - San Francisco - Surveyor and

Civil Engineer -

2

Have you ever surveyed the line of Chemisal or chaparral extending from the Eastern boundary of the Survey returned in this case to the Southern boundary? If so, state when you made said survey, and whether you made the same through the body of said Chemisal or along either margin, and which - and give the courses and distances of the line so surveyed -

Ans - I have - I made said survey the 7: of May 1861 - I made it along the Southern margin of the Chemisal - I commenced at a post marked S. F. No 4, being the South East corner of the ~~Rancho~~ Survey of the Rancho San Francisquito - and run North 24.70 chains along the Eastern boundary of said Survey to the Southern edge of the Chemisal - thence running along the Southern edge of the Chemisal, as follows - S. 57° W. 15.40 chains - S 21¼° W.

4.00 chains - S. 50° W. 9.00 chains

4.00 chains - S. 50° W. 9.00 chains S. 54° W. - 7.70 chains - S 89¾° W. 11.80 Chains - S. 85°. W. 5.50 Chains - S. 84° W. 6.70 chains S. 63° W. 7.90 chains - S 85¼° W. 17.60 chains - S ¾° E. 6.40 chains S. 23¾° W. 3.00 chains S 47¼° W. 5.60 chains, S 50½° W. 3.60. chains - S. 50¾° W. 4.90 chains - S 23½° W. 6.00 chains - S. 27½ W. 9.70 chains - Thence, leaving the chemisal to the North, S 18°. E. 8.30 chains, ascending side of hill to an oak tree 12 inches diameter to a point which is situated a little South of the Southern line of the Rancho of San Francisquito - The chemisal at this point being nearest the Southern boundary of said Survey returned in this case than any point further West -

3 Describe the growth of the Chemisal or Chaparral.

Ans. The growth of the Chemisal is continuous, with the exception

a ~~course~~ the point at which the foregoing traverse turns towards the South, namely course ~~S.~~ South 3/4° East, 6.40 chains - At which there is a break in the chaparral, and a space of open ground to the North -

It appears to be an old growth of Chemisal -

The ground to the South is open with the exception of clumps of oaks and other trees -

Description closed

R. C. Matthewson

Sworn to and subscribed May 24th, 1861, before me.

W. T. Chenery

N. C. Carr

No. 206

UNITED STATES DISTRICT COURT

Northern District of California.

IN LAND CASES.

THE UNITED STATES,

V.

C. V. de Roanques

DEPOSITION OF

R. C. Matthewson

on part of Intervenors Clarke

Et al

Filed January 2. 1862,

W. H. Chevers

Clerk.

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

The United States
vs
M. C. V. de Rodriguez
} No 206

Please take notice that on Monday next (March 16th 1863) at the opening of the Court on that day, or as soon thereafter as counsel can be heard, I shall move the Court for an order closing the proofs in the above entitled cause and setting the same down for hearing on some day to be fixed by the Court.

Respectfully
J. Coats
Intervenor in
said cause

To Messrs Brownson (Atty for Claimants)
" McDougal & Sharpe (for Intervenor Seale)
Edmund Stanly (for Intervenor Newell)
W. H. Sharpe U.S. Attorney

Rec'd a copy of the within March 19, 1863
W. H. Norris
U. S. Atty.

J. Clarke maketh oath that on the 12th of March 1863 between the hours of Eleven A.M. and One P.M. he served a copy of the foregoing Notice upon W. I. Brownson the Attorney of Record for the claimant, and upon Edward Stanly, Attorney for Intervenor Neville and upon Mr Dougal, Chief Attorney for Intervenor Seale, by leaving the same in the offices of said Attorneys, respectively with persons in charge thereof

J. Clarke

Sworn to, and subscribed March 16. 1863. before me.
W. A. Rivers
U. S. Com.

U.S. Dist. Court
No 206

The United States
vs
M. G. V. de Rodriguez

Notice of Motion

Filed March 16, 1863,
W. H. Chevers,
Clerk,

206 ND
PAGE 131

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

The United States

vs. No. 206

Maria Concepcion
Valencia de Rodriguez et al.

Please take notice that a motion will be made on behalf of the above named Claimants on Friday next the 25th day of September instant at 11 O'Clock A.M. or as soon thereafter as Counsel can be heard, at the Court Room of said Court above named for an order and decree confirming the survey made and filed in this cause by the United States Surveyor General (for the State of California)
San Francisco, September 22d 1863 -

Alexander Campbell
Atty for Claimants

Edward Stanly Esq
Atty for Neville
McDougall & Sharp
Attys. for Peale

No. 206.

U. S. Dist. Court.

United States

vs.

Wm. Chn. Jno. L. Rodriguez

Motion.

Filed Sept. 23. 1863,
W. A. Cheves,
clk

206 ND
PAGE 133

Mr. Justice Daniel
Charleston S.C.

On reading the attached motion, it is ordered that the defendant be admitted to bail in the sum of $2000 to be secured by a bond with two sureties.

Wm. H. Grier
Justice

Mr. Hunt atty.
for Deft.
Mr. Walsh, Hunt
atty for Deft.

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

The United States No 206.
v
Maria Concepcion Valencia et al

Alexander Campbell is
hereby substituted as Attorney
for Claimants in our
stead

~~Attorney for Claimants~~

22 September
1863

~~Atty for Claimants~~
Wade & Brownson
Attys for Claimants

No. 206.

U. S. District Court

United States

vs.

Mc. Cn. Fa. de Rodriguez

Substitution of Attorney

Filed Sept. 23. 1863.

W. Dr. Cheever

Clerk

Recd. in Clerk's Office within
the 20th Jan. 1863

W. D. Cheever
U. S. Dist. Atty.

Substituting
Atty for
Deft.

by Marshall & Hands
Atty for Deft.

United States District Court
Northern District of California.

The United States
vs.
C. V. de Rodriguez } No. 206

Henry W. Seale who intervened herein as past owner of the Ranche known as the "Rincronada del Arroyo de San Francisquito" excepts to the survey heretofore made and approved by the U. S. Surveyor General and returned to this Court by order thereof on the following grounds.

First: That the survey is not in accordance with the original grant and diseño.

Second: That the survey is not in accordance with the Decree of Confirmation

Third: That the survey is not in accordance with the final decree and judgment of the Court in case "No. 129 "The United States vs. Maria Antonia Mesa," whereby and wherein the dividing line

between the said Rancho Rinconado del Arroyo de San Francisquito and the lands confirmed to the said Rodriguez was finally adjudicated and determined between the same parties now before the Court.

Fourth: Because said survey overlaps upon and includes a large portion of the lands of the said Rinconada del Arroyo de San Francisquito as contained in the official survey thereof approved by final decree of this Court.

Wherefore Intervenor prays that said survey be rejected and made to conform to the common boundary line. So settled & for costs &c –

Sol A Sharp
for Intervenor.

Leave is given to file the above exceptions –
Ogden Hoffman
Dist Judge

Sept: 26th 1863.

206.

U. S. Dist. Court.

The United States.

vs.

M. C. V. de Rodriguez et al.

Exceptions of H. W. Seale to Summons & order to file Same.

Filed Sept. 26. 1863.
W. H. Severs,
Clerk

206

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF CALIFORNIA.

No. 206.

THE UNITED STATES

vs.

M. C. V. DE RODRIGUEZ ET AL.

OPINION

By Hon. OGDEN HOFFMAN, District Judge.

Francis, Valentine & Co., Printers, 517 Clay street, San Francisco.

Filed November 26. 1864.
W. H. Chevers,
Clerk

UNITED STATES DISTRICT COURT,

NORTHERN DISTRICT OF CALIFORNIA.

No. 206.

THE UNITED STATES

v.

M. C. V. DE RODRIGUEZ ET AL.

OPINION OF THE COURT.

HOFFMAN, J.—

This case comes up on exceptions to the official survey filed on the part of the United States and of the neighboring rancheros. To understand correctly the question raised, a brief review of the proceedings to obtain the grant, and those which resulted in the confirmation, is necessary.

The original petition of Buelna asked for the place called San Francisquito, "to the extent of eight suertes of two hun-"dred varas square each, making sixteen hundred, according "to the reglamento of colonization." The language of the decree of concession, and of the grant, is somewhat involved; but the land is clearly enough described as eight suertes of two hundred varas, including the land lying between the Chemisal and the San Francisquito Creek, and extending from the upper crossing of the road leading to the sierra to the road leading from Santa Clara to San Francisco, known as the middle road.

The third condition describes the land granted as of the extent of two thirds of a league, a little more or less. On the diseño attached to the expediente, the boundaries mentioned in the grant are clearly exhibited. On the north is the brook; running parallel with it, and at a short distance to the south, is the Chemisal. On the west is the road to the sierra, which crosses the brook, and on the east is the middle road. It would seem, however, that the grant was not intended to extend as far as this road, for a little to the west of it a line is drawn from the Chemisal to the brook marked "raya," indicating that it is the eastern boundary of the tract. On the corner of the diseño is a note, stating that the land is of the extent of eight suertes.

I have been unable to understand the meaning of the clause in the third condition, stating the land to be of the extent of two thirds of a league. If the eight suertes asked for were to be each two hundred varas square, the total area of the tract would be three hundred and twenty thousand square varas. A square league is five thousand varas square, and its area is twenty-five millions of varas.

Parol testimony was taken before the Board of Land Commissioners to show that a juridical possession was given of the land by metes and bounds. No record of the act of possession was produced, but the Board confirmed the claim according to the juridical possession, as sworn to by the witnesses. Their decree sets forth particularly the boundaries of the tract, and states the extent of land confirmed to be "two thirds of a league a little more or less." This decree was affirmed on appeal to this Court, the United States offering no opposition. The tract thus described extends to a considerable distance to the south of the Chemisal between which and the San Francisquito creek both the decree of concession and the grant describe the land as situated. It also extends to the eastward beyond the line marked "raya," which the diseño designates as a boundary in that direction. In the official survey, the calls of the decree seem to have been wholly disregarded, as also the indications of the map, which the claimants themselves presented to the Board as a correct survey of the tract of which judicial possession was given. The most that the claimants can ask for,

is that the boundaries called for in the decree be followed. I cannot perceive, therefore, how the official survey can be sustained.

It is objected, however, on the part of the owners of the adjoining rancho, confirmed to the heirs of Mesa, that the dividing line between the ranchos has already been fixed in a proceeding to which the present claimant was a party, and that that line must be adopted in fixing the boundaries of the claimants' land, notwithstanding that it is a different line from that described in his decree of confirmation. It appears that when the Mesa rancho was surveyed, objections to the survey were filed, and the proceedings required by the Act of 1860 were taken. The owners of the Rodriguez rancho intervened, and were heard; and the Court, after due deliberation, located the Mesa rancho as appeared to be just under the decree of confirmation and the evidence in the case.

On the part of the owners of the Mesa rancho, it is contended that the location of the common boundary between the ranchos has thus become *res adjudicata*, not only as against the United States, but as against the owners of the Rodriguez rancho, who were parties to the proceeding, and who might have appealed if dissatisfied with the decree; that the object and effect of the proceedings under the law of 1860 were to settle disputes of this nature between contiguous proprietors; and that, inasmuch as the Mesa rancho has been finally located, the Rodriguez rancho cannot be made to include a part of the same land, unless overlapping patents be issued, which is never done by the United States.

On the part of the present claimants, it is urged that the final decree obtained by them gives a definite location to their land; that it describes the boundaries clearly and specifically; that it in terms adopts the judicial measurement testified to in the cause; that their rights are thus fixed and determined by the decree; and that the power of the Court, under the Act of 1860, is limited to an inquiry whether the survey is in accordance with the terms of the decree.

It is also urged that the intervention in the case of Mesa had for its object to prevent the boundaries of that rancho being so fixed as to include any portion of the land already con-

firmed to the claimants, and thus to avoid future dispute and litigation; that although this object was not attained, yet that their own rights under their decree were not waived by them; that the adjudication in that suit only fixed the boundaries of the Mesa rancho—it did not, and could not, affect the boundaries of the Rodriguez rancho, already established by the decree of confirmation, and which was not then before the Court; and that they are now entitled to have their land surveyed as described in their final decree of confirmation, notwithstanding that they include lands already embraced in the Mesa survey.

It will be perceived that the question thus presented is difficult and important.

Since the argument of this cause, the opinion of the Supreme Court, in the case of Fossat *v.* the United States, has been received. Before proceeding to inquire how far the decision in that case disposes of the questions raised in the case at bar, I deem it due to myself to correct some misapprehensions, as to matters of fact, into which both the counsel who argued the cause and the Supreme Court appear to have fallen.

The opinion, after detailing the previous history of the cause up to the time when the survey was ordered into this Court, under the provisions of the Act of 1860, states that the District Court entered an order reforming the survey as to the eastern line.

"This direction," the Court observes, "not only reformed "the survey of the tract as made by the Surveyor General, "but reformed the decree itself of the Court, entered on the "18th of October, 1858, in pursuance of which the survey had "been made. The Court assumed that the survey and location "of the tract were not to be governed by the decree, but on "the contrary, that it was open to the Court to revise, alter and "change it at discretion, and to require the Surveyor General "to conform his survey and location to any new or amended "decree—for certainly if it was competent to change the east-"ern line from that settled in the decree, it was equally com-"petent for it to change every other line or boundary as there "described and fixed.

"Now it must be remembered that this decree of the Dis-"trict Court, designating with great exactness this eastern line

"—with such exactness that the Surveyor General had no dif-
"ficulty in its location—was entered in pursuance of and in
"accordance with the mandate of this Court, and by *which that*
"*Court was instructed, at the time of the dismissal of the appeal,*
"*that the three external lines declared in it were in conformity with*
"*the opinion of this Court*, and that the other line—the north
"line—only remained to be completed by a survey to be made,
"and that this line was to be governed by quantity, which
"quantity had been previously determined.

"This radical change, therefore, of the eastern line of the
"*tract, involves something more than a change by the Court of its*
"*own decree*; *it is the change of a decree, entered in conformity*
"*with the mandate of this Court.*"

If it be true, as here stated, that a subordinate judge has not only radically changed his own decree, without color of authority, but that the decree so changed was one "in conformity with the opinion" of the superior tribunal, his action would deserve stronger language of censure than the Supreme Court has used.

I shall show, however:

First. That no decision as to the eastern line of the Fossat claim was ever made by this Court until its last decree in the proceedings had under the Act of 1860; that the questions in regard to the location of that line were never until then argued or submitted to the decision of the Court; and further, that under the rulings of the Supreme Court, this Court had, prior to the Act of 1860, no jurisdiction to locate and establish that line.

Second. That this Court had no reason to suspect that any supposed decision with regard to that line had ever been affirmed, or in any way passed upon by the Supreme Court; that when the location of the eastern line was, in a proceeding taken under the Act of 1860, for the first time submitted to this Court, it was not suggested by any of the counsel that the Supreme Court had affirmed, or expressed any opinion whatever upon, the correctness of the location of even the southern line, which had been argued and decided by this Court, still less upon the location of the eastern line, which had not been argued, and which, it was universally conceded, could not be determined in a proceeding to which the adjoining owner was not a party.

Third. That even if the location of the eastern line had been determined by this Court, and if that determination had been affirmed by the Supreme Court, there were good reasons for believing that, under the Act of 1860, it was the duty of the Court, on the intervention of Berreyesa, then for the first time heard in the cause, to determine the line according to justice and right, and irrespective of any decree obtained by either party in a proceeding between himself and the United States.

1. By the Act of March 3d, 1851, the Board of Commissioners and the Courts on Appeal were empowered to decide only upon "*the validity*" of land claims. This act differed from the laws of 1824 and 1828, in withholding the power, conferred by those acts on the Courts, of deciding "all matters "relative to the extent, locality, and boundaries" of the claims. The controversy was strictly limited to the United States and the claimants, and third persons were not permitted to intervene. But the law provided that their rights should not be affected by the decrees or patents under them. The duty of locating finally confirmed land claims was confided to the Surveyor General; and with respect to interfering or conflicting claims, he was authorized to decide in the first instance, leaving to the parties interested the right of recourse to the ordinary tribunals.

That such was the true construction and effect of the law, was explicitly decided by the Supreme Court. In United States *v.* Fossat, certain adversary claimants had been permitted to appear, and adduce evidence in the name of the United States.

The Supreme Court says:

"It is the opinion of the Court that the intervention of ad-"versary claimants, in the suit of a petitioner under the Act of "1851, for the confirmation of his claim to land in California, "is a practice not to be encouraged. The board of commis-"sioners was instituted by Congress to obtain a prompt decis-"ion on the validity of private land claims, to enable the govern-"ment to distinguish the public land from that which had "been severed from the public domain by Mexico. And that

"it might fulfil the obligation assumed at the time of the ces-
"sion of California, to secure and protect the property of its
"inhabitants.

"The jurisdiction of the Board of Commissioners in the first
"instance, and the appellate jurisdiction of the Courts of the
"United States, *is limited* to the making of *decisions on the valid-*
"*ity* of the claim, *preliminary to its location and survey by the*
"*Surveyor General of California*, acting under the laws of the
"United States. This officer is required to survey and furnish
"plats of the claim that may be confirmed.

"*In reference to interfering or conflicting claims, he is authorized*
"*to decide* by adopting the lines agreed to by the claimants, and
"in the absence of an agreement to follow the rules of justice.

"The acts of Congress provide that neither the decisions
"of the Commissioners, nor of the District or Supreme
"Courts, nor of the Surveyor General, shall preclude a legal in-
"vestigation and decision by the proper judicial tribunal be-
"tween parties having such interfering claims, * * * and
"a patent under the act is only conclusive between the United
"States and the claimant, and does not affect third parties.—
"(9 Stat. 631—4 Stat. 492.) The language and policy of these
"enactments *limit a controversy like the present to the United*
"*States and the claimants.*"—(20 How. R. 425.)

This decision, though made subsequently to the first decree of this Court, in the Fossat case, merely affirmed the correctness of the construction previously given by the board, the Court and the bar to the provisions of the statute.

When, therefore, the case of Fossat was presented, it was contended by the District Attorney that the Court had no authority whatever to fix any of the boundaries of the tract, not even those between it and the public land, but that *all* questions of boundary and location must be determined by the Surveyor General. It was considered, however, by the Court that an inquiry into the validity of a claim necessarily involved, to a certain extent, inquiries into its location and extent, and that when a question arose between the United States and the claimant, as to the identity of a natural object called for in the grant, and which formed the boundary between the land granted and the public land, it was the duty of the Court

to hear and determine the dispute. The correctness of this view was explicitly affirmed at a subsequent stage of the cause by the Supreme Court.—(United States *v.* Fossat; 21 How. 449.)

But, with regard to the dividing lines between the claimant and a neighbor, when the controversy related to lands admitted to belong to one or the other, and therefore private, it was universally conceded that the Court had no jurisdiction to determine it, especially as the adjoining owner had no right to intervene in the suit, and no decision of the disputed boundary could affect his rights. The evidence and arguments in the cause were, therefore exclusively directed to the question raised with regard to the southern boundary.

The location of the eastern line was not disputed or discussed, nor was any question respecting it submitted to the Court. So far as the record disclosed, there was nothing to show that the location of that line was in controversy.

The Court was aware, however, that with regard to that line a dispute in fact existed. This dispute was understood to arise from a supposed repugnancy between the description of the line contained in the grants and the delineation of it on the diseño of Berreyesa.

The decree of the Court, therefore, after determining the southern boundary, describes the eastern line in the language of the grants, but it specially refers to and adopts the dotted line marked on the diseño of Berreyesa as indicating the boundary between the ranchos. And it was supposed that by these means all questions between the claimants, under Larios and Berreyesa, would be left open and undecided. Such, even yet, appears to me to be the fair construction of the decree.

The case having been appealed, the decree of this Court was reversed on points hereafter to be referred to, and the cause was remanded to this Court with instructions "to declare the "three external boundaries designated in the grant, from the "evidence on file and additional evidence to be taken." It is in the opinion then delivered by the Supreme Court, that the declarations above cited, with regard to the jurisdiction of the Court and the determination by the Surveyor General of lines between conflicting and interfering claims are found. Any

doubt which this Court might have entertained as to its authority to determine, in the absence of Berreyesa, the disputed line between the ranchos, was dissipated by the very explicit language of the Supreme Court.

On the return of the cause, further evidence was taken, and counsel were heard. The location of the eastern line was, as before, not debated, and the arguments related solely to the location of the southern line. The Court, in its decree, reaffirmed its previous decision with regard to that line. The eastern line was described as before, in the language of the grants, and the dotted line on the diseño was again carefully referred to and adopted, as indicating the boundary between the ranchos. An appeal having been taken from this decree, it was held by the Supreme Court that the decree was *interlocutory*, and not *final*, that northern line, which was merely described as a line to be run for quantity, should have been fixed upon the ground by a survey. The appeal was therefore dismissed.

The cause having been remanded to this Court, no further proceedings in it were had until after the passage of the Act of 1860, when the counsel for the claimant moved for and obtained an order directing the Surveyor to survey the tract, and to give notice according to the provisions of that act of the approval of the plat and survey. This was done, and the survey was ordered into Court on the application of the Berreyesa's, who thus for the first time became parties to the cause. Their own rancho had also been surveyed, and the same dividing line adopted by the Surveyor as in the Fossat survey. This survey was also on their application ordered into Court, and the Quicksilver Mining Company, claiming under Larios, and the New Almaden Company, intervened and became parties to the proceeding. All parties being thus before the Court, evidence was taken and argument heard relative to the location of the eastern line. The location of that line was then for the first time decided by the Court.

It was not suggested by any of the counsel that this question had ever before been submitted to or passed upon by the Court. They knew the fact to be otherwise. Nor was it contended that the language of any previous decree in the suit of Fossat *v.* The United States imported a decision of the ques-

tion. It was not, to my recollection, hinted by any one, nor did the idea occur to the Court that any decision of this Court supposed to determine that line had in any way been affirmed, or even considered, by the Supreme Court. The question was on all sides treated as still open and undecided, and this Court proceeded to determine it, without the remotest suspicion that its action was irregular or unauthorized. Its determination, though then for the first time judicially declared, was in accordance with the opinion it had entertained from the time when, in an ejectment suit brought long before in the Circuit Court, the counsel for the New Almaden Company had contended for the location of the eastern line as claimed by the representatives of Larios.

That opinion has been adjudged by the Supreme Court to be erroneous; but as this Court has been supposed to have not only departed from its decrees but to have changed its opinions, I shall be pardoned, I trust, for stating, with all deference to the superior judgment of the appellate tribunal, that notwithstanding all that has been said, I am still unable to discover the error of the final decision of this Court by which the line between the ranchos was determined. I believe that the history and nature of the dispute between the grantees—their evident and necessary object in fixing upon the line, and above all the plain and palpable delineation of it upon the diseño unmistakeably show the intention and understanding of the parties. That to this evidence the words of the grants which are very obscure and which were intended to describe a line already agreed upon by the parties, and delineated on the desiño as a substitute for an actual marking on the ground, ought to yield; that to carry out the principal and controlling intention of the parties either the call in the grants for the "falda," or that for "a straight line" must be sacrificed—which of them, was practically immaterial, for they were both of equal dignity, but both were, in my judgment, subordinate to the mute but visible call of the diseño, which showed how the line was to be drawn, where it was to strike the sierra, and how the valley was to be divided between the disputants.

On these grounds I believed that Castillero, who denounced the mine, Pico the Alcalde, Berreyesa himself, and, so far as we

know the neighbors and contemporaneous inhabitants of the country were not all mistaken, when without doubt or dispute they asserted the recently discovered quicksilver mine to be "on the lands of the retired sergeant José Reyes Berreyesa."

But whatever may be thought of the correctness of these views, it is certain that the location of the eastern line was never adjudicated by this Court until its last decree was made —and that in that adjudication, whether erroneous or not, it did not revise or change, or alter, as has been supposed by the Supreme Court, any previous decision of its own, with respect to the location of that line.

II. I shall now show that this Court had no reason to suspect that any decree supposed to determine that line had ever been affirmed by or declared to be in conformity with "the opinion of the Supreme Court."

The first decree of this Court confirmed the title of the claimant to the westerly portion of the valley described in his petition as the Cañada de los Capitancillos.

This valley is on the north and south bounded by parallel ranges of hills, and the tract confirmed was limited on the west by the Arroyo Seco, and on the east by the line agreed on between Larios and Berreyesa, the latter of whom had obtained a grant for the easterly portion of the valley.

The third condition of the grant declared the land to be of the "extent of one square league a little more or less (poco "mas ó menos), as explained by the map accompanying the "expediente."

In the grant only three boundaries were mentioned, viz: the southern, the western and the eastern. But the diseño to which the grant referred plainly represented the range of hills which formed the northern limit of the valley, while the designation in the petition of the land solicited as the valley of the Capitancillos and the situation of the petitioner's house, seemed to indicate unmistakeably that the tract asked for and granted was the Cañada or valley extending from the Arroyo Seco on the westto the land of Berreyesa on the east.

On the argument the only disputed boundary was the southern. It was claimed by the United States and the counsel for the New

Almaden Co., that the "sierra" called for in the grant was the base of a range of foot hills or "Lomas Bajas;" while the claimant contended that by that term the chain of high mountains behind and parallel to the "Lomas" was evidently referred to.

The Court adopted the latter view.

There was therefore confirmed to the claimant the valley lying between the sierra on the south and the pueblo hills on the north—and extending from the Arroyo Seco to the agreed line of division between the ranchos. Its extent was, as the grant declared, a little more than one square league; but how much more could not be ascertained until the dispute with Berreyesa, in regard to the dividing line, should be finally settled.

This decree was reversed by the Supreme Court on appeal. It was held by that Court that as only three boundaries were mentioned in the grant there "was no other criterion for deter-"mining the fourth or northern boundary than the limitation "of the quantity as expressed in the third condition." The words "*poco mas ó menos*" were rejected as "having no mean-"ing in a system of survey and location like that of the Uni-"ted States," and the Court observed "*if the limitation of the* "*quantity had not been so explicitly declared* it might have been "proper to refer to the petition and diseño or to have inquired "if the name 'Capitancillos' had any significance as connected "with the limits of the tract."

The grant to Larios was therefore declared to be "for one "league of land, to be taken within the southern, western, and "eastern boundaries designated therein, and to be located at "the election of the grantee or his assigns, under the restric-"tions established for the location and survey of private land "claims in California by the executive department of this Gov-"ernment."

The District Court was directed "to declare the external "boundaries *designated in the grant*, from the evidence on file "*and such other evidence as may be produced before it.*"—(20 How. 427.)

It will not, I presume, be contended that this opinion, or the mandate in pursuance of it, in any respect constituted an affirmance of the decision of this Court with regard to boundaries.

The location of the southern boundary, which was the principal question discussed in the Court below, is not alluded to; no intimation is given whether in the opinion of the Supreme Court the "Sierra" mentioned in the grant was the range of low hills or the mountain chain behind them, and the cause is remanded, with directions to this Court to declare the three boundaries mentioned in the grant from the evidence on file *and such other evidence as may be produced*, clearly showing that the Supreme Court intended to keep the question as to the location of those boundaries open and undecided, and that they supposed it might be elucidated by further testimony.

On the return of the cause further testimony was taken and the location of the southern boundary re-argued. This Court reaffirmed its previous judgment with respect to that line, and after describing, as has been stated, the eastern line in the language of the grants, with a reference to and adoption of the dotted line on the Berreyesa diseño, directed in the very language of the Supreme Court, the northern line to be run for quantity "at the election of the grantee or his assigns, under "the restrictions established for the location and survey of "private land claims in California by the executive department "of this Government."

It is evident that no more precise decree could have been made without an actual survey, which it had not, up to that time been supposed this Court had power to order, nor could a final survey have been made at that stage of the cause, for the northern line being required to be run for quantity, it obviously could not be run until all the other lines were established, and no establishment of the eastern line or disputed boundary between Larios and Berreyesa could be made in a proceeding wherein, by the express decision of the Supreme Court, the latter was not permitted to intervene, and the decree which could have no effect upon his rights.

It will also be observed that the refusal of the Supreme Court to recognise the natural boundary of the valley on the north, as the northern limit of the tract, and the direction to this Court to locate the league "within" the three other boundaries, and to run the northern line for quantity at the election

of the grantee, necessarily compelled this Court to locate the grant, in great part, among the hills toward the south.

If, then, there be in the final survey the anomaly of locating a grant for a valley among the mountains, excluding the valley solicited, it has been the direct and inevitable result of the instructions given to this Court by its superior.

From the second decree of this Court an appeal was again taken and a decision as to the disputed southern line was on all hands confidently expected.

That expectation was not fulfilled when the cause came up, a doubt was suggested by the Chief Justice "whether there "had been a final decision by the District Court under the man- "date, and whether the appeal ought not to be dismissed on "that ground."

On this suggestion a motion to dismiss was made and argued.

The merits of the case do not appear to have been alluded to in the argument of counsel. They certainly are not referred to in the opinion of the Court.

It was decided that the decree, appealed from, was not a final decree, and the appeal was dismissed.

In the opinion, the Court, after reciting its previous direction to this Court to declare the external boundaries designated in the grant, from the evidence on file, and such further evidence as might be produced, says; "The District Court, in "conformity with the directions of the decree, declared the "external lines on the sides of the tract, leaving the other "line to be completed by a survey to be made. From the de- "cree in this form the United States have appealed.

"A motion has been submitted to the Court for the dismissal "of the appeal because the decree was interlocutory and not "final."—(21 How. 447.)

This statement of the action of this Court is in all respects accurate. I am to this day unable to perceive what else, or what more this Court could have done under the mandate and and under the law as it had been up to that time expounded by the Supreme Court.

But I must be permitted to express my profound astonishment at discovering that this simple sentence, which states the action of this Court under the previous mandate, has been con-

sidered as amounting to an affirmance by the Supreme Court of the correctness of the location, not only of the southern line, which had been discussed and decided, but, also, of that of the eastern line, which had never been argued, which was an interfering claim, declared by the Supreme Court, to be left by law to the decision of the Surveyor General, and which it seemed repugnant to reason and justice to decide finally, in any controversy to which Berreyesa was not and could not be a party.

But, even with respect to the southern line, it was not for a moment suspected by this Court, nor was it even suggested by counsel, that the Supreme Court, on a preliminary motion to dismiss an appeal, without hearing argument on the merits, without alluding to the grave and difficult questions involved, meant, at the moment it was deciding the decree appealed from to be interlocutory and not final, and thus, in effect, declaring itself without jurisdiction, to finally pass upon and determine every question involved in the case.

That such was its intention I am bound to conclude from its recent opinion. On that supposition alone can the observation above cited, that "the change of the eastern line by this Court "involves something more than a change by that Court of its "own decree—*it is the change of a decree entered in conformity "with the mandate of this Court*" be accounted for.

I have thus, I believe, established beyond all doubt or controversy, that if this Court has changed a decree, the correctness of which had been affirmed by the superior tribunal, it has done so unintentionally and unconsciously—and under circumstances which did not suggest nor could they reasonably have suggested in either Court or counsel the construction which has since been given to the opinion and mandate of the Supreme Court.

III. I shall now show that if the eastern line had been fixed by this Court and even if that decision had been affirmed by the Supreme Court in a suit between Fossat and the U. S., there were good grounds for believing that when, under the provisions of the act of 1860, Berreyesa, for the first time, became a party to the cause, and when under the same act his

own rancho was before the Court for location, in which proceeding the claimants under Justo Larios intervened, it was the right and duty of the Court to determine in both suits the true location of the dividing line between the ranchos, irrespective of any decree obtained by either claimant in a suit to which his neighbor was not a party.

To fully understand the question here presented, a precise notion must be obtained of the circumstances which led to the passage of the law of 1860.

It has already been stated that the Supreme Court dismissed the appeal from the second decree of this Court on the ground that it was interlocutory and not final. It was held that all the boundaries of the tract should have been ascertained and established by a survey, and a decree of confirmation entered for the tract surveyed.

In answer to the objection that the District Court had no means of ascertaining the boundaries by a survey, or compelling the surveyor to execute its decree, that Court declared that the District Court *had* power to enforce the fulfillment by the surveyor of its decree, and added that "the power of the "District Court over the cause does not terminate until the "issue of a patent conformably to its decree."—(21 How., p. 451.)

The decision was received here with surprise, but with great satisfaction. The authority thus attributed to this Court was immediately invoked, and application was made in many cases for orders to the Surveyor General to return into this Court, for reform and correction, surveys alleged to be erroneous.

Before exercising this jurisdiction the Court heard an argument, in which most of the members of the bar concerned in land cases participated, as to the true construction and effect of the decision of the Supreme Court and the practice to be adopted under it. The views of the bar were various and conflicting. It was held, however, by the Court that the decision in question in effect overruled the previous decisions of the Supreme Court, which had declared the jurisdiction of the Court to be "*limited* to making decisions upon the validity of "land claims preliminary to their location and survey by the "Surveyor General," and that henceforth the Court must as-

sume the duty of correcting and reforming all surveys made under its decrees, when alleged to be erroneous.

This construction of its decision was recognized by the Supreme Court as correct in subsequent cases.

"In the case of the United States *vs.* Fossat, (21 How., "445) this Court had occasion to refer to the limits of the au- "thority of the Courts of the United States under the act of "3d March, 1851, above cited. We stated in that case that if "questions of a judicial nature arose in the settlement of the "location and boundary of grants confirmed to individuals, the "District Court was empowered to settle those questions upon "a proper case being submitted to it before the issue of a pat- "ent, and in such case the judgment may properly be extended "to the confirmation of the survey and an order for the patent "to issue."—(Castro *vs.* Hendricks, 23d How., 442.)

In the case of the United States *vs.* Heirs of Berreyesa, (23 How. 500) the Supreme Court says:

"The appellees have requested the Court to give instructions "relative to the location and survey of this grant, similar to "those found in the case of the United States *vs.* Fossat, (20 "Howard.) But no question was decided in the Court below "upon the location of the lines of the tract, and it would be "irregular for this Court to assume that the action of that "Court will not conform to the established rules on the subject. "The decree of the District Court has not been called in ques- "tion by the appellees; and should any difficulty arise in the "location of the grant, it will be competent for the appellees "to invoke the aid of that Court."

The Court having announced that it would exercise the new jurisdiction attributed to it, numerous surveys were ordered before it for revision and correction. The means thus offered of obtaining a judicial determination of the many difficult and important questions relative to the location of grants which had arisen were eagerly seized on by both the representatives of the United States and of the claimants, for it substituted an inquiry in Court, where witnesses could be summoned, examined and cross-examined, where counsel could be heard and a decision rendered, the grounds of which were exposed in an opinion, and from which an appeal could be taken to the Su-

preme Court, for the quasi-trial before the Surveyor General, and for the still more unsatisfactory examination by an officer in Washington on *ex parte* affidavits, the contents of which, and even the fact that they had been forwarded, might be unknown to the party against whom they were taken.

But in the discharge of the duty thus imposed upon the Court great embarassment was experienced. The Supreme Court had declared that the contest was limited to the United States and the claimants, and that third parties had no right to intervene. But it was obvious that the parties immediately affected by an erroneous location would often be colindantes or adjoining owners, between whom and the claimant a common boundary line was to be run ; or purchasers from the original grantee of lands within the exterior boundaries, which might have been erroneously excluded from the survey or grantees of the sobrante or excess within the exterior boundaries, who had a clear right to be heard as to the location of the first grant.

The United States, also, had an evident interest in requiring the dividing lines between the ranchos to be determined before the establishment of the lines to be run for quantity. For how could the latter be fixed while the former remained uncertain ?

Although the Court had power to hear and determine objections to surveys, no time was limited within which objections were to be made, except that it must be before the issue of a patent, nor were any means prescribed for giving notice to parties interested that a survey had been completed and approved by the Surveyor General. A survey, therefore, might be made, approved, transmitted to Washington and a patent issued before, as was alleged to have happened in some cases, persons affected by it, and who would have objected to it, were apprised of the fact. Further legislation thus seemed to be indispensable. The law of 1860 was, therefore, recommended and passed, not to confer a new jurisdiction on the District Courts, but, as its title imports, to define and regulate the jurisdiction the Supreme Court had already decided them to possess.

It provided in substance for a notice, by publication, of the approval of surveys by the Surveyor General. It limited the time within which objections were to be taken. It permitted

all parties interested to intervene and be heard, and it assigned a limited period (six months) for taking an appeal from the decisions of the District Courts. These or similar provisions I believe to have been indispensably necessary for the proper discharge by the District Courts of the duties imposed upon them by the decision in United States *v* Fossat.

I believe, also, that the law has been found in practice, salutary and beneficial, and has been so regarded, almost universally, by the parties affected by it or acquainted with its operation. And that the difficult and most important questions raised, with respect to the location of land claims, have been settled under it, more justly and satisfactorily to all parties than, making due allowance for the errors of a court not claiming to be infallible, was practicable under any other system.

It has recently been said, on very high authority, that the questions submitted by this law to the Courts "involve the "consideration of various matters not properly the subject of "judicial inquiry," and that "it creates a new and anomalous "jurisdiction in the Court which cannot be assumed independ-"ent of the act, and under it should be exercised only the "cases coming clearly within its language."

I have already shown that the jurisdiction was declared by the Supreme Court substantially to exist, independently of and prior to the passage of the law of 1860, and that the Act was passed to enable the District Courts to carry out and give effect to the decision of the Supreme Court. That the jurisdiction conferred was not new or anomalous I shall now proceed to show:

By the provisions of the Act of May 26th, 1824, relative to land claims in territory acquired under the Louisiana purchase, which provisions were, by the Act of May 23d, 1828, made applicable to land claims in Florida, the Courts were charged with a double duty. 1st. That of determining all questions arising in the cause relative to the title of the claimant, and secondly, all questions relative to the "*extent, locality and bound-*"*aries of the claim.*"

In defining the duties of the Court, under these acts, Mr. Justice Catron says: "First, the paper title to such private "property it is our duty to investigate and ascertain, and by

"our decision to establish; and, secondly, it is our duty to ascer-
"tain and *cause to be surveyed and marked by definite boundaries*
"the lands granted."—(United States *v.* Forbes; 15 Peters, 182.)

In the case of United States *v.* Lawton, (5 How. 28,) the same Justice holds substantially the same language.

Under the Act of May 26th, 1824, the proceedings were conducted according to the rules of a court of equity. All parties interested, or claiming to be interested, were brought before the Court; process was served as in other cases, and the Court had power to decide finally all questions and matters arising in the cause.—(United States *v.* Moore; 12 How. Rep. 223.)

Under the Act of March 3d, 1851, the jurisdiction of the Courts is limited to the making of decisions on the validity of the title; process is not issued, nor are all parties in interest brought in, or permitted to intervene.

The survey and location of claims, which have been confirmed, are committed to the surveyor, who is even invested with a quasi judicial authority to decide upon conflicting or interfering claims.

But the decrees of the Courts and surveys of the Surveyor General, under the Act of 1851, unlike the decrees and locations under the Act of 1824, are conclusive only upon the United States and the claimants, and do not bind third parties. (United States *v.* Fossat; 20 Howard, 425.)

When, therefore, the Supreme Court, overruling its previous decision, attributed to this Court jurisdiction, and made it its duty to fix the boundaries of the claim confirmed by an actual survey made under its direction, and declared that without such a survey the decree was not final, and that the jurisdiction of this Court over the cause continued until the issue of a patent (21 How. 450.); and, when Congress, by the law of 1860, regulated and provided for the exercise of this jurisdiction by authorizing the Courts to review and correct the surveys of the Surveyor General, after admitting all persons interested to become parties to the proceeding, the law, instead of being anomalous and exceptional, merely supplied a defect in the Act of 1851, and brought the legislation, with regard to

California land claims, into harmony with the previous legislation of Congress in similar cases.

The defect of the law of 1851 consisted in giving to the Courts jurisdiction to decide only upon the validity of claims, while questions of boundary and location were left to the decision of the Surveyor General. It thus attempted to separate, and subject to different modes of determination, inquiries in their nature almost inseparable.

The inquiry the Courts were authorised to make, was only whether the claim was valid, as against the United States, and all inconvenience or injustice which might arise from the exclusion of third parties was supposed to be obviated by providing that the decrees and patents should not affect their rights.

The Supreme Court in its first decision in the Fossat case, distinctly traced, as we have seen, the line of discrimination between the duties of the Courts and those of the Surveyor General. But, even then, it was apparent, and when the case came up again it was expressly recognised, that the inquiry into "*validity*" necessarily involved "questions of extent, "quantity, location and boundary, essential to be determined "before even the 'validity' of the claim could be decided." The distribution of powers, contemplated by the statute, was thus found to be impracticable, and the line of discrimination betweeen the duties of the Surveyor General and those of the Courts became obscure and undefined. Had the grants in California been for tracts bounded by natural limits, it might have been sufficient to determine the validity of the claim and establish its boundaries where it adjoined public land, leaving the boundary lines between the claimant and his neighbors, to be settled by a litigation *inter partes*.

But when the grants are for quantity, and the lines between the claimant's and the public land have to be drawn so as to include a certain area, it is obvious that no final or at least no just settlement of any of the boundaries can be made until the lines between the claimant and his neighbors are fixed. When, therefore, in its second opinion in the Fossat case, the Supreme Court directed this Court to cause the northern line, which was to be run for quantity, to be surveyed upon the ground, it is apparent that this direction could not have been

complied with until the eastern line was located either finally or provisionally.

But that line was in dispute, and certainly no final determination of it could be made in a suit between the United States and Fossat, to which Berreyesa was a stranger.

But if it were merely fixed provisionally, and its final location still remained subject to future determination, to what end run other lines upon the ground, which depended upon and should be varied according to the future location of the eastern line?

I have referred more especially to the case of Fossat, because its circumstances are well known; but similar difficulties were presented in every case where the Court was asked to inquire into surveys which pretended to fix external lines required to be run for quantity, while the dividing lines be tween the claimant and his neighbors remain unsettled. The law of 1860 removed these difficulties, by enabling the neighbors to be heard and become parties. It supplied the omissions of the law of 1851, and gave to the Courts the jurisdiction, which they should have possessed from the beginning, to enquire into and decide, as under the laws of 1824 and 1828, all questions of location and boundary, after first admitting as parties all persons interested. Why the questions thus submitted to the Courts are less fit subjects for judicial inquiry than similar questions of disputed boundary, daily litigated in ejectment suits, I have been unable to perceive.

If all questions of location and boundary, are to be left to the decision of executive officers, as well might we declare that the duty of the ordinary tribunals, in appropriate cases, is merely to pass upon the issues raised by pleas of *non est factum*, or *devisavit vel non*, but that all questions as to the construction and operation of the deed, or will, are to be decided by the marshal or the sheriff. The case of Fossat, alone, would seem sufficient to apprise us, that a question of boundary involving such immense interests, to elucidate which volumes of depositions have been taken, and in which the briefs of counsel occupy hundreds of printed pages, is not in its own nature proper to be passed upon by merely executive officers, without hearing the testimony of witnesses, the argu-

ments of counsel, or using the other means of arriving at truth available in courts of justice.

The law of 1860 has been repealed. This Court is thus relieved of what has hitherto been the most difficult, and the least grateful part of its duties. But as I was personally instrumental in procuring its passage, and as its wisdom and policy have been in high quarters doubted or assailed, I have thought it not improper to avail myself of this occasion to explain the grounds upon which it was recommended and believed to be necessary and beneficial.

The dismissal of theappeal from the second decree of this Court in the case of Fossat, occasioned some embarrassment to the Court and the counsel for the claimant. The Supreme Court had in effect decided that the decree was not final, because no survey of the land had been made—(see last opinion of the Supreme Court in United Stares *v.* Fossat., p. 6). The law of 1851 authorized the Surveyor General to survey those lands only the claims to which had been *finally confirmed.* It thus seemed that there could be no final decree without a survey, and no survey without a final decree. The law of 1860 relieved the counsel for the claimant from this dilemma. He accordingly moved for and obtained an order, directing the Surveyor General to survey the tract confirmed to Fossat, and on the approval by him of the plat and survey thereof *to give notice* of such approval, as required by the act of Congress approved June 14, 1860.

No opposition was made to the granting of this motion. The order appears to have been entered on the day the motion was made. The original is on file, signed by the Judge, but drawn by and in the handwriting of the counsel for the claimant. Under this order a survey was made, and having been returned into this Court at the instance of the New Almaden Company, the heirs of Berreyesa intervened, objected to the survey, and for the first time became parties to the controversy. The New Almaden Company also intervened and objected to the survey, and the parties proceeded to take testimony for, and against it.

The Berreyesas having obtained a final confirmation, their

rancho had been surveyed; and this survey, which adopted the same boundary line between the ranchos as that assumed in the Fossat survey, was also ordered into Court on the application of the Berreyesas, in whose behalf exceptions are filed.

In this proceeding the New Almaden Co., claiming under Caslero, and the Quicksilver Mining Co. claiming under Fossat, intervened and became parties. All parties being thus before the Court, in each of the two suits, it proceeded to hear evidence and argument, and to decide upon the disputed line between the ranchos. It was not pretended by the counsel who before this Court represented Fossat, that the controversy had ever been decided by this Court on its merits. It was not by any one suggested, or suspected by the Court, that the Supreme Court had on a motion to dismiss an appeal on the ground it was taken from a decree not final but interlocutory, meant to affirm, or any way to pass upon the correctness of the decree appealed from.

This Court, thereupon, after full argument and deliberation, determined, by a decision applicable to both cases, the common line of division between the ranchos. But even if the original decree, entered when Fossat and the United States alone were parties, *had* assumed to determine the boundary line between the ranchos, and if that decree had been affirmed, I should not have hesitated, when the surveys of both ranches came up for approval, to determine their common line of division as might under the evidence then adduced have appeared to be just, and irrespective of any decree obtained by either disputant in the absence of his adversary. And this for the following reasons:

1. The first decree of this Court had been reversed, and the cause remanded with directions to declare the boundaries mentioned in the grant within which the league of Larios was to be taken. This the Court had done, and expressed its decision in a decree. That decree the Supreme Court had declared to be interlocutory, and not final. For that reason alone the appeal had been dismissed, and this Court had been directed to cause a survey to be made, which when approved and embodied in its decree, would impart to it finality. The survey

in the Fossat case had thus been made under a decree, which by the positive declaration of the Supreme Court was not a final, but merely an interlocutory decree. As such it was open to revision, until the Court by approving and adopting a survey, had made what the Supreme Court had declared would alone constitute a final decree in the cause.

2. It could not be pretended that the location of the dividing line was in any respect determined by the decree in the Berreyesa case; for that decree merely described his land as "adjoining that of Justo Larios, with the boundaries mentioned in the grant and delineated on the diseño." Berreyesa, therefore, had in his own case a clear right to have his land surveyed as might appear to be just. *He* could not be bound by decrees entered in another suit between Fossat and the United States, in which he had not been heard, and to which he was not and could not have been a party. If, then, the survey of the Fossat rancho was to be controlled by decrees previously entered in that suit, from which the Court was not at liberty to depart, while the survey in the Berreyesa case remained open to further inquiry and subject to the decision of the Court on the merits, the result must have been that two inconsistent surveys would have been approved, and overlapping patents issued.

To make inconsistent decrees, and approve conflicting surveys, I considered wholly inadmissible. It would only have produced futute litigation unnecessary and vexatious; when all the parties were before the Court, and were anxious for a determination by this Court, and the Supreme Court on appeal, of the controversy which had so long been pending.

3. The decision of the Supreme Court, and the provisions of the Act of 1860, had imposed upon this Court the duty of establishing by a survey all the boundaries of the Fossat rancho. As the northern line was to be run for quantity, it could only be fixed after all the other lines were determined. The dividing line between the ranchos had, therefore, first to be ascertained before the Court or a surveyor could know where the northern line should be drawn, so as to make up the precise quantity of one league and no more.

If, then, Berreyesa, intervening for the first time in the

cause, had practically no right to be heard, and if the location of the dividing line was to be considered as fixed by a decree made before he became a party to the suit, such a course could be consistent with the commonest rule of justice only on the hypothesis that the location did not and could not affect his rights, but that the final location of the line would remain open to contestation in the ordinary tribunals.

But if this were so, the attempt to determine the northern boundary was idle and vain; for if Fossat was to obtain exactly one league, and no more, the line run for quantity ought to be varied with every subsequent location of the disputed boundary. Justice and the interests of the United States demanded, therefore, that in this and similar cases the lines between the claimant and his neighbors should be established before those run for quantity should be fixed; and it is obvious that this could be done only in a proceeding where the adjoining proprietors could appear, take evidence, and be heard, and in which they could not be bound by a decree entered in the suit before they were admitted as parties.

I have already observed that if, in a proceeding under the Act of 1860 to correct a survey, the colindantes intervening in the suit are to be bound by the previous decree, it can only be on the theory that they are not affected by the survey, decree, or patent under it, but retain their rights unimpaired and capable of assertion in the ordinary tribunals.

But this the-ory would in practice be found deceptive, and the right of recourse to the ordinary tribunals illusory.

The California land claims are for the most part founded on mere equities—the legal title remaining in the United States, to divest which a patent is necessary.

If, then, a grantee to whom a patent for a specified tract of land had been issued, were to attempt before the ordinary tribunals to assert a right under his original grant to land not covered by his patent; and if, in addition, the land thus claimed were included within the patent of a neighbor, to whom it had been surveyed and patented under another, and perhaps older, grant; it may well be doubted whether the bare statement of the case would not insure its dismissal by the ordinary tribunal. The "legal investigation and decision, by

"the proper judicial tribunal, of disputes between parties "having interfering claims," which the Act of 1851 contemplates, would, therefore, be found, after patents have been issued to both, a wholly unavailable remedy for the party injured by the erroneous determination of the dispute by the Surveyor General, or an *ex parte* decision of it by the United States Courts.

But if, to avoid this result, and to give to both parties an equal standing in the ordinary Courts, conflicting decrees should be made and overlapping patents issued, it is evident not only that interminable litigation would ensue, but that one of the claimants would be wronged by the United States; for the unsuccessful party would lose a part of the land covered by his patent, and would fall short to the extent of the land in dispute of the quantity to which he was entitled by his grant.

On these grounds I was of opinion that where two or more surveys of coterminous ranchos are before the Court, on proceedings under the Act of 1860—where the controversy relates to their common boundary lines, and all the claimants have intervened in and become parties to the suit with respect to each survey, it was the duty of the Court to determine the dividing lines, irrespective of any decree obtained by either as against the United States; and that to make conflicting decrees and issue overlapping patents, or to fix the lines according to decrees entered before the colindantes were heard in the cause, would, in the one case, involve the parties in vexatious litigation, and, in the other, practically deprive the colindante of his rights without a hearing.

The language of the Act of 1860 appeared to this Court not merely to justify, but to demand this construction of its provisions. By the third section, all persons having an interest in, or whose rights are affected by any survey or location are permitted to intervene. By the fourth section, the parties so intervening are allowed to take testimony "*as to any matters necessary to show the true and proper location* of the claim;" and the Court, on hearing the allegations and proofs, is empowered to *render judgment thereon;* and if, in its opinion, *the location and survey are erroneous*, it is authorized to *set aside and annul the same, or to correct and modify.* (12 Stat. at large, p. 34.)

It will be perceived that the intervening parties are permitted to take testimony, not merely as to whether the survey conforms to a previous decree of the Court, by which their rights may have been prejudged in their absence, but "*as to any matters necessary to show the true and proper location of the claim;*" and the Court, after hearing the new allegations and proofs, is required to render judgment thereon, and to set aside the survey, not when it fails to conform to the previous decree, but whenever, after hearing the proofs, the location and survey are "in its opinion *erroneous.*" If Congress had intended to give to the Courts the same powers as were conferred upon them by the acts of 1824 and 1828—viz: to decide finally, after bringing before them all parties in interest, all questions relating to the extent, boundaries, and locality of the claims—I know not what other language could have been used to express the intention.

But to construe the Act as limiting the powers of the Court, on the intervention of parties previously strangers to the cause, to the inquiry whether the survey conformed to the decree already made, would defeat in great part the purpose of the law; for the determination of the Court would settle nothing. It could not settle the dividing lines, for they would be fixed according to a decree made before the colindantes were heard; and even the exterior lines where the claim is bounded by public land, could not rationally be considered as established, so long as the dividing lines by which in a grant for quantity they must necessarily be governed, remained uncertain.

I have thought it right thus to explain fully the grounds on which the opinion of this Court was based, in order that its action which has been so much criticised may be thoroughly understoood, and the nature of its errors (if errors it has committed) may be exactly appreciated. I have felt at liberty to do so, from the fact that in the recent opinion of the Supreme Court the question last considered is not discussed, but the construction given by the counsel for the claimant to the Act of 1860 seems to have been adopted as necessarily and of course correct. I have explained the reasons for my opinions, not in any spirit of rebellion or protest against the authority

which it is my duty and my desire to obey, but because I thought it just to present to the Supreme Court, it may be for the first time, the reasons which led me to arrive at a conclusion which it has pronounced to be incorrect, and to show that the action of this Court, though perhaps erroneous, was not, as has been supposed, inconsistent, hasty, or inconsiderate.

With respect to the supposed change of the decrees of this Court, I believe I have shown beyond controversy:

1. That no decision was ever made, or intended to be made, of the dispute regarding the eastern line until the last decree under the provisions of the Act of 1860, and that this Court had good grounds for believing that it had no authority to make any such decision.

2. That it was not aware, and had no reason to suspect, that any decree supposed to determine that line had been affirmed by the Supreme Court.

3. That even if the fact had been otherwise, there were strong reasons for believing that a decree so entered in a suit between the United States and the claimants, did not and ought not to bind other parties subsequently intervening for their interests under the provisions of the Act of 1860.

I trust, therefore, that the injustice of the implied censure contained in the recent opinion of the Supreme Court will be recognized by that high tribunal.

It remains to determine how far the decision of the Supreme Court in the case of United States *v.* Fossat is decisive of the question raised in the case at bar. It will be observed, that though in the opinion of the Supreme Court it is distinctly declared that, in a proceeding under the Act of 1830, the duties of this Court are limited to an inquiry whether the survey conforms to the decree previously entered in the cause, yet that the location of the dividing line is discussed on its merits, and the location adopted by this Court adjudged to be erroneous. That at least a majority of the Court assented to its judgment is certain. But it may very possibly be that the assent was given by some of its members on the ground that they agreed on the question raised as to the true location of the eastern line,

without concurring in the general principle announced, viz: that colindantes and other intervenors in a proceeding under the Act of 1860, who then for the first time are heard in it, are bound by the terms of a decree entered when the only parties to the suit were the United States and the claimant. The volume containing the last decisions of the Supreme Court has not been received in this State. Whether or not a majority of the Court adopted *all* the views expressed in the published opinion, I am uninformed. I only know that they assented to the judgment.

But on the hypothesis that they did, the case at bar is distinguishable from that of Fossat. Here the claimant has intervened, and become a party to a proceeding which necessarily involved the determination of the common boundary line between the ranchos. From the decision in that proceeding he might have appealed, and in case the location of the Mesa rancho as established by this Court had been altered, there would still have been assigned to the claimant of that rancho the full quantity of land to which he was entitled. As the case now stands, the owners of the Mesa rancho can only obtain the land as surveyed and located under the decision of this Court; and if the claim of the owners of the Rodriguez rancho be allowed, their land will in part be located on the tract surveyed to Mesa, and overlapping patents must be issued, creating certain litigation, and a possible loss by Mesa of a part of his land. The position of Rodriguez is thus closely analagous to what would be the position of Berreyesa if he should seek to have the line between him and Fossat adjudicated anew, according to the calls of his own decree.

It may well be doubted whether the Supreme Court would re-open the whole controversy, and on finding that the Berreyesa decree called for a line different from that called for in the Fossat decree, would make a new location of it, and direct overlapping patents to issue.

In the case at bar, the injustice of now depriving Mesa of a considerable portion of the land which, contrary to his own wishes, has been surveyed to him, is so manifest that I do not feel called upon, on the authority of a single case, where the

effect and practical operation of the doctrines announced may not have been fully presented to the Supreme Court, to take from Mesa land surveyed, and perhaps patented, and for which there are now no means of giving him an equivalent by extending his lines in other directions.

I think, therefore, that the survey of the land confirmed to Rodriquez should be corrected by conforming the lines strictly to those called for in the decree, except that on the east it must follow the lines established by the final survey of the Mesa rancho, as the lines of division between the ranchos.

November 26, 1864.

These Pamphlets are duplicates of the one Case and Page Numbered 139 to 170 inclusive.

McL.

12/13-1940.

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF CALIFORNIA.

No. 206.

THE UNITED STATES

vs.

M. C. V. DE RODRIGUEZ ET AL.

OPINION

By Hon. OGDEN HOFFMAN, District Judge.

Francis, Valentine & Co., Printers, 517 Clay street, San Francisco.

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The Hon
C. S. Burnett Esq
with compts of
Ogden Hoffman

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Francis, Valentine & Co., Printers, 517 Clay street, San Francisco.

In the District Court of the United States
for the northern district of California.

The United States
v.
M. C. V. de Rodriguez et al.

No. 206.

To the Hon. Ogden Hoffman, Judge
of said Court:

The petition of M. C. V. de Rodriguez
et al, claimants herein, respectfully shows:

That on the 4th February, 1856, this
Court rendered a decision and entered its
decree confirming the claim of your
petitioners "to the extent of two thirds of
"a square league of land, a little more or
"less, and bounded and described as
"follows - to wit: Beginning at the point
"where the arastrado crosses the San Fran-
"cisquito creek, thence running northwardly
"along the line of the said creek as it
"meanders to the point where it intersects
"the old highway commonly called the
"middle road leading from San Francisco
"to Santa Clara; thence running eastwardly
"along the said middle road to a point opposite
"some live oak trees which stand near the said
"road, which trees were marked as a boundary

"when juridical possession was given
"of the said land to Antonio Buelna by
"the alcalde Dolores Pacheco; thence southwardly
"along the oak grove to a live oak marked
"with an axe, standing at the road called
"Arastrado; thence eastwardly along the
"said Arastrado by the old line thereof to
"the point where the same crosses the said
"San Francisquito creek to the place of be-
"-ginning; the land hereby confirmed being
"the same which was granted to Antonio
"Buelna by Governor Alvarado on the 1st day
"of May, 1839, with the limits and boundaries
"which were assigned to him by the juridical
"measurement made under the grant by
"alcalde Dolores Pacheco: Provided that
"the said quantity of two thirds of a square
"league so confirmed be contained within
"the said boundaries, but if there be less
"than the said quantity of land contained
"within the said boundaries, then the said
"claim is confirmed to the extent of such
"less quantity and no more."

That said decree, on the 2d April, 1857, became final by stipulation.

That a survey of the confirmed land was made by the Surveyor General of the U. S. for Cal.a, the field notes whereof

were approved by that officer on the 3d August, 1858. — containing 2250 $\frac{98}{100}$ acres.

That on the 5th July, 1859, an order to return said survey to this court was entered at the instance of the U. S., and exceptions filed August 26th.

That on the 1st September, 1859, a certified copy plat of survey was filed by said Surveyor General in this court.

That in pursuance of the act of June 14th. 1860, a monition was issued, proclamation duly made, and the interventions of parties claiming portions of the adjoining ranchos confirmed to Robles and Mesa duly entered, and their exceptions to the survey filed.

That on the 28th November, 1864, the opinion of the court was filed, rejecting the official survey, but that no order for a new survey in accordance with that opinion has been entered.

That in said opinion this court held: "That the case at bar is distinguish-
"able from that of Fossat. Here the claimant
"has intervened and become a party to a
"proceeding which necessarily involved the
"determination of the common boundary
"between the ranchos. From the decision ~~he~~
"in that proceeding he might have appealed,

"and in case the location of the Mesa
"rancho as established by this court had
"been altered, there would still have been
"assigned to the claimant of that rancho
"the full quantity of land to which he
"was entitled. As the case now stands
"the owners of the Mesa rancho can only
"obtain the land as surveyed and located
"under the decision of this court; and if
"the claim of the owners of the Rodriguez
"rancho be allowed, their land will in
"part be located on the tract surveyed
"to Mesa, and overlapping patents must
"be issued, creating certain litigation, and
"a possible loss by Mesa of a part of his
"land."

But your petitioners aver that they are prepared to show from the record that they never intervened in the Mesa case, and consequently never had the right of appeal from the decision in that case; that certain parties claiming under them did intervene, and that these parties have appealed to the Circuit Court under the act of July 1. 1864; that parties claiming under Mesa did appeal from the decision in that case to the Supreme Court of the United States, but neglecting to perfect it their appeal was dismissed,

but that they still have ~~still~~ a right of appeal under the Act of July 1. 1864; that an appeal has been taken in the Robles case under said Act, and consequently the Mesa tract, and the Robles tract can both be located by the appellate court on appeal in accordance with the decrees in each case and without interfering with a location in accordance with the decree in the case of your petitioners. That your petitioners are entitled to a survey of the land confirmed to them by this court in accordance with the decree of confirmation, and should not be deprived of such a survey because it may overlap an adjoining survey in ~~to~~ the adjustment of which they were not parties. And that even if the surveys finally overlap, the difficulty is one for the ordinary tribunals to adjust, and not for this court to determine.

Wherefore your petitioners pray for leave to move for a rehearing, and for leave to show from the record that they are entitled to a survey in accordance with the decree of confirmation in their own case, unaffected by the survey of the Mesa tract.

Patterson Wallace & Slow
Attys for Petitioners

206

U. S. Dist. Court.

The United States

v

M. C. V. Dellodriguez et al

Petition for leave to move for rehearing

Leave is given to make within motion on service of no: motion ~~to a copy of the within~~ on the attorneys for all parties interested

Ogden Hoffman
Dist Judge

Filed May 2d 1865 Geo. C. Gorham Clk
Per Daniel Billiard Dep Clk

Patterson Wallace & Stow
for claimants

U. S. Dist Court.
Nor Dist Cala

The United States
v
M. C. V. De Rodriguez et al

No. 206.

San Francisco, May 4. 1865.

To Delos Lake Esq, U. S. Atty.
McDougall & Sharp Esqs
Jeremiah Clarke Esq
Edward Stanly Esq.

Gentlemen,

You are hereby notified that in the above entitled cause leave has been given by the Hon Ogden Hoffman, Judge of said Court, to the above named claimants to move for a rehearing; and that we will move the court on Monday the 29th day of May instant, at 11 O'Clock, A.M. or as soon thereafter as counsel can be heard, for a rehearing in said cause, based upon the petition certified by the said Judge and on file in the case.

Yours &c

Patterson Wallace & Stow
Attys for Claimants

204

U. S. District Court

The United States

v

M. C. V. de Rodriguez et al

Notice

Due service of the within notice is hereby admitted May 5th 1865

J. C. Cusche

Sol A. Sharp

Delos Lake

U. S. Atty

Filed May 5th 1865

Geo. Cochran Clk

Per Deputy Sullivan Deputy

Patterson Wallace & Stow

attys for claimants

206 ND

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206 ND
PAGE 179

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~~ Thursday the Septeenth day of September in the year of our Lord one thousand eight hundred and sixty-five

Present;

The Honorable OGDEN HOFFMAN, District Judge.

The United States

v.

Concepcion V. de Rodriguez, et als —

No: 206

This cause coming on again, this day, to be heard on petition for a rehearing, was argued by counsel, and thereupon and in consideration thereof, it is ordered, adjudged and decreed, and the Court doth hereby order adjudge and decree that the prayer of said petition be ~~expunged~~ denied, and that said rehearing be and the same is hereby refused —

Ogden Hoffman
District Judge

No. 206

United States District Court,

Northern District of California.

The United States

v.

C. N. Rodriguez et al

Order denying a rehearing herein &c

206 ND

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Filed Sept 15th 1865

Geo. C. Gorham

By Daniel Sullivan

Clerk.

Deputy

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

The United States
vs
C. V. Rodriguez & als
Lands in Santa Clara County

No 206

The United States District Attorney Delos Lake being present and not objecting to reading the stipulation allowed herein It is hereby ordered decreed and adjudged that the survey of the land confirmed to the claimants in this case be and it is hereby approved except that in the east it must follow the lines established by the final survey of the Rancho Rinconada de Arroyo de San Francisquito confirmed to Maria Antonia Mesa

August 20th 1866

Ogden Hoffman
Dist Judge

No 206

The United States
vs
M. C. V. Rodriguez & als

Decree approving survey with the exceptions

Are hereby entered to the entering of the within decree

Patterson Wallace & Stow
Attys for Claimants

J. Clarke
Intervenor

Edw Stanly atty for Intervenor Neville

Sol A Shark atty for Intervenor Peal

Filed August 10 1866
Geo. Gorham Clk
By Dan'l Sullivan
Deputy

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

The United States
vs
C. V. Rodriguez
et als

No 206
Lands in Santa Clara County

In the matter of the survey and location of the Rancho "San Francisquito" Lands in Santa Clara County

This cause came on to be heard again this day and was argued by Counsel and it appearing to the satisfaction of the Court that the modified survey of said Rancho made by the Surveyor General of the United States for the State of California is in accordance with the decree of this Court heretofore rendered in this cause on the 20th day of August 1860 and directing said modifications it is now therefore ordered adjudged and decreed that said modified survey be and the same is hereby approved and confirmed as a true correct and final survey of said Rancho -

The survey hereby approved contains

fourteen hundred and seventy one acres of land a plat of which was returned and filed in the Clerks Office of this Court on the 8th day of October 1866 and which said plat is hereunto annexed as a part of this decree marked "approved Oct. 8th 1866"
"Ogden Hoffman Dist Judge"

Ogden Hoffman
Dist Judge

No 206 ND
642B4

U. S. Dist. Cat.
Dist Court

The United States
vs
C. V. Rodriguez
et als

Final Decree
+ Official Survey

Filed & Ent.d Oct 8th 1866
E. O. C. Ord Clerk
By Paul K. Fullerton
deputy

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San Francisco October 5th 1866

Hon Ogden Hoffman
Dear Sir
The Plat of the Rancho San Francisquito finally confirmed to Maria Encarnacion Valencia de Rodriguez as located by S. Ashton U. S. Surveyor for California August 28th 1866 is in accordance with the decree of your Honor rendered in the case on the 20th of August 1866. and we therefore request that it be approved by you
Respectfully
Henry Wilkins for claimants

J. Clarke Intervenor
Edwards for Neville
Joel A Clark for some interveners

U.S. v. Concepcion Valencia de Rodriguez
No 642 US Dist Court S Dis Cal.

Mary Anne Cook being duly sworn says that she is a resident on the South Eastern part of the Rancho San Francisquito & claims to have an interest therein. — That she never intervened when knowledge in the Case of the U.S. v. Antonia Maria Mesa said to be Case No 129 in the US District Court above named & never at any time authorized any persons to appear for her — that she never employed any attorney in the Business & does not know what intervening means — Had always been informed that the suit of the U.S. v. the owners of the San Francisquito Ranch had been ~~dis~~ dismissed & the land confirmed but that Seale was trying to get some of it away from them. Does not know Wade & Bronson & never heard of them before. Never paid them any fees.

+
Mary A Cook
her mark

Witness to the above mark J L Chandler

Sworn & Subscribed to ~~this~~ before me this 24 Day of June 1875.
J L Chandler
Justice of Peace

Affidavit of
Mary Ann Cook

U.S.
v.
M. & V. Rodriguez

Thomas Ward being duly sworn deposes and says that in or about September 1860. Henry W. Seale came to him and stated that his Seales Case of the Mesa Grant against Jerry Clarke (Rohlts Grant) was coming on & he was fighting the whole thing and he wanted our Ranch (the Rodriguez) to come in and help him. I said I did not know what to do on which he told me to come up to town and get a petition in before the Court to postpone proceedings for fifteen days (or some days) to give us time to come in — He went to my neighbors McGovern & told him the same thing — I then went to consult Andrew J Pitman and Thomas J. Wilson and asked them to join. they said that our title that is mine & McGoverns was good for nothing and they would not join us or join in any proceedings I saw Joseph Atwell who said he thought perhaps he had not a good title & he would not join in any proceedings. Then McGovern & I went to San Francisco and met Henry W. Seale and we went to his Lawyers MacDougall Sharp & Lloyd one of them drew up a petition I think it was Mr Lloyd the substance of which was as I understood it — that we were asking the Court to postpone proceedings in Seales & Clarks Case to give us time to come in — this is what I understood it to be. We took the paper & went out to find a lawyer to present it to the Court and after some searching found Mr Bronson who agreed to do it for Twenty five Dollars which we paid him (each $12\frac{50}{00}$) and that was the last

I have heard of the business — My Ranch was on the North westerly half of the Rodriguez Survey. So was nearly all of Mr Greens and Joseph Howells. I do not now occupy any part, having sold out any claim I had to Mr Geo Gordon, who held the deed of Mrs Rodriguez for the North westerly half, against me. — There was no person of the name of W. A. Burns on the Ranch either as claimant or occupant —

Sworn & subscribed to before me this 24th Day of June 1865 — } Thomas Ward

J. H. Chandler
Justice of the Peace

W. S.
Rodriguez
Mark Coffee

U. S.
v.
Concepcion Valencia de Rodriguez

Case No. 642

Andrew J. Pitman being duly sworn says:

Having been informed that Messrs. Wade and Brown on the 1 Oct, 1860, filed in the case of the U. S. v. Maria Antonio Mesa, No. 129, in the U. S. District Court, a paper purporting to be an intervention in the said case of Phillip McGovern, Thomas Ward, W. A. Burns, Joseph Stowell, Mary Ann Cook, & John Pitman, Thos. J. Wilson who claimed to be owners of the Rancho of San Francisquito Confirmed to Concepcion Valencia de Rodriguez. I state no person of the name of John Pitman claimed any interest in the said Rancho; that the only person of the name of Pitman who so claimed

was myself and that I did not authorize the said attorneys or any other person to intervene for me; but on the contrary when applied to by Mr. Thos. Ward to join in some proceedings positively refused so to do. I further state that I knew the parties who at that date claimed portions of said Rancho of San Francisquito and that there was no person of the name of W. A. Brown amongst them. And further that the portions of said Rancho claimed and occupied by Joseph Worrell, Thomas Ward, & Philip McGovern respectively, were on the North western half of the Ranch, except perhaps a very small part of the Ph. McGovern's farm.

Sworn & Subscribed to before me
J. L. Chandler
Justice of Peace

Sign here
A. J. Fitman

this 24 day of June
AD 1865

affidavit of
Andrew J Pitman

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

Concepcion Valencia Rodriguez
and Francisco Rodriguez
Appellees

v.

The United States,
Appellants.

No. 206 — On appeal from the Board of Commissioners to ascertain and settle private land claims in the State of California.

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

Concepcion V. Rodriguez et al., Appellees,

v.

The United States, Appellants.

Index to Transcript.

United States District: Northern District of California -

The United States
vs.
Mc C.N. de Rodriguez

Brief of Rodriguez claimant in reply to the Brief of the U.S. Dist. Atty.

Since filing our Brief in this case we have been favored with the Brief of the U.S. Dist. Atty. -

So far as regards the U.S. it is very difficult to see what, by reason, interest they have in the controversy. -

There is no pretence that any of the land in that neighborhood is or can possibly be public land - The U.S. is and must be perfectly indifferent whether Mesa or Rodriguez becomes the final lawful owner - The U.S. has decided that the land in contest, by specific boundaries, belongs to Rodriguez - It has also decided by survey that it is

included in the undefined Mesa grant. Why this Brief was therefore offered it is not easy to see. We do not question the legal right to offer it, or the right of parties to avail themselves of it.

It is not our intention to follow the District Attorney minutely through the argument presented.

First, as to the quantity:

This question has already been disposed of by the Court, and the attempt now to reduce the land granted and intended to be granted to eight sueltos merely shows that the U. S. is driven to extremities for an argument by the very weakness of its own cause.

The grant to Rodriguez says "the land that is described is of the extent of two thirds of a league a little more or less, as explained in the plan that is attached to the expediente". It is true it also

says "with the extent of eight lots (suertes) of 200 square varas including the lands that lie from the upper pass that leads to the Sierra towards the West to the main road leading from Santa Clara to San Francisco, known as the middle road &c. &c."

The same grant which speaks of those eight suertes makes their contents two thirds of a league.

Now which quantity did the Mexican Government intend when they made the grant – they speak of the two boundy and they contain about two thirds of a league – which Government says it intends to grant –

The Land Commissioners confirm two thirds of a league and this Court reaffirms the correctness of that decision, giving all within certain and the same boundaries to the extent of two thirds of a league provided that quantity be contained within the boundy, and yet the Court is now asked to go behind this decision and confirm to the extent

of eight Quarter - 55½ acres - within large exterior limits!

And yet the U. S. now falls back on this fallacy - a fallacy on its face, and by the tribunals of the U. S. decreed to be so -

The decree of the Board of Land Commissioners after describing the boundaries, says - two thirds of a league of land a little more or less - The land hereby confirmed being the same which was granted to Antonio Buelna by Governor Alvarado May 1st 1839, with the limits and boundaries which were assigned to him by the juridical measurement made under the grant by the Alcalde -

The decree of the Court, now final, is by boundary and for two thirds of a league if it is within those boundaries - otherwise to be confined to the quantity within the boundaries -

Suppose the grant had been for the six fifty vara lots

in the Block bounded by Clay, Montgomery, Washington and Sansome Streets, and the Decree had confirmed the grant for that quantity and with those Streets as boundaries, can it be pretended that the Court Could on the Survey, limit the quantity to one fifty vara lot, or Could direct the Surveyor to commence at the corner of Montgomery and Clay, thence along Montgomery, and stopping short halfway to Washington Street, to turn down Merchant Street &c. &c.?

And yet that is precisely what the parties wish to have done in this Case —

It is therefore respectfully submitted that the attempt at this late day, to limit a grant confirmed, of two thirds of a league by boundaries and quantity, to 55½ acres, must fall to the ground.

Second — The U. S. attacks the juridical possession and uses

this language:

"The Commission however in their innocence confirmed the claim according to this mystical juridical possession &c."

"This Court approved the claim with the same description of the boundaries, not, it is believed after any investigation of the question of boundaries, but ~~with~~ upon the consent to that effect of the then acting District Attorney Mr Glassell."

The question of boundary and of juridical possession was prominently and pointedly before the Court, they were the questions in the case, and the Court reaffirmed views which the Commissioners in their "innocence" had formerly held -

The cause in ~~th~~ which the District Attorney of the U. S. to sustain a point, gravely accuses the Board of Land Commissioners

of being galled in their innocence and simplicity — accuse this Court of deciding on the question of boundaries clearly and distinctly set out in the decree, and its main point "not it is believed after any investigation of the question of boundaries", and accuses the then District Attorney of remissness of duty, must be weak indeed —

Third; It is contended that the survey predicated on the Decree is arbitrary —

It will be fair, it is contended, to present the same boundaries as the decree, and to follow the judicial decree, so far as the land in contest is concerned —

Fourth — Must the Decree of Confirmation be followed, altho' found to be erroneous, should the exterior boundaries be adopted — or should the eight quarter be located within those?

The U. S. cannot question the accuracy of the decree — It has not only become final but was made, if this Brief be correct, by the consent of its own authorized agent —

Should the exterior boundaries be adopted? The decree final has settled that the exterior boundaries have been adopted and all the land within those to the extent of two thirds of a league confirmed —

Or, should the eight quarter be located within them? To this we have already replied —

Fifth: It is contended that the brief of these Claimants on the point of the power of the Court to decree a tract by known meets and bounds and then order a survey of another and different tract, has not been answered — The brief of the U. S. relies on the Mesa survey, but almost ignores the

adjudication of title of the same premises by metes and bounds to Buelna — That is a decree against the U. S. and is final and binding upon the U. S. to its decreed bounds —

Sixth: There is a careful ignoring of the final confirmation by metes and bounds of this Grant in the brief of the U. S. — it speaks of making the survey conform to the original title papers in all cases — This is not the main position of claimants — We ask that it be made to conform to the final confirmation of the Court and to enforce that view we have shown that confirmation to be in exact accordance with the petition, grant, juridical possession, occupation, decree of Board of Land Commissioners, and therefore argue that such confirmation way is itself correct —

It is only in one view that we claim that the Court has no power to now decree otherwise than

in accordance with the original papers, that is, in case the Court should hold this to be a valid grant

It is contended that this Court in its first decree has habitually confined itself to the consideration of the question of the validity of the title and to the question (if presented) whether boundaries or quantity should govern, but that it never, when boundary is adopted, has ~~minutely~~ undertaken to minutely specify the details of that boundary

A careful examination of the final decree in this case will show that in this case the Court has not confined itself to the consideration of title, but has specifically described the very land, by meters and bounds, of which the title is confirmed — raising the very question presented by us — whether, having decided a specific piece of land to belong to us in conformity with the recognized juridical possession, it can now change that decree after it has become final —

It is not contended that if the Court finds on examination that the survey is not at any point in conformity with the decree, that it cannot order it to be conform — It is contended that where the survey does at any point conform to the decree, that that part of the survey cannot be changed —

The whole brief goes on the assumption that there was no juridical possession given of the Buelna claim, and the position of the U. S. compels it to ignore that juridical possession; but the decrees both of the Board of Land Commissioners and of this Court find that juridical possession as a fact — The U. S. by its Courts recognize it, and it is now too late for the U. S. to contend by its officers, in the face of their decree, that it did not exist — If it were given as proved and admitted and allowed by the Decrees, then it is an answer to the whole argument based on the assumption that the

Mesa claim was specific and the Buelna undefined — The Decree, the Petitions, the Grants, the possession juridical and the occupation proved, all which have been passed upon, prove the very reverse and that the Buelna was specific and the Mesa undefined, and the accidental circumstance of the Mesa being the first confirmed survey, it is contended, overrides all the admitted rights of Buelna.

If this survey had been first offered for confirmation can there be a question whether the Court would have confirmed it to the decreed boundaries —

The case is submitted to the Court with these views —

J. Campbell

of Counsel for Claimants

U. S. District Court

The United States

— vs. —

C. V. de Rodriguez

Brief of Rodriguez Claimants in reply to brief of the United States

The United States
vs
M. G. V. de Rodriguez et al

United States
District Court of the
Northern District
California.

State of California
City and County of San Francisco. ss:

George Gordon of said City & County being duly sworn deposes and says: That his connection with the Rancho claimed herein commenced in the year A.D. 1861: that he has never, as a part-owner under the claimants herein, intervened in the matter of the survey of the Mesa Rancho nor authorized any person to intervene therein in his behalf: that at the time affiant became interested in the Rodriguez Rancho, there was no dispute or controversy between the owners of said Rodriguez Rancho and the Rancho adjoining called the Mesa Rancho; that prior to affiant becoming interested in the Rodriguez property he made diligent inquiry as to the true location of the line dividing said Ranchos; and was informed by those owning and claiming to own under each severally, that there was no dispute about the boundary; that the

line as run by Deputy Surveyor Wallace was the correct dividing boundary and that it was so recognized and agreed upon by the Colindantes at the time the same was run by the said Wallace.

Affiant further states, that R. W. Seale who had the active management of the matter of the Survey of the Mesa Grant, was both surprised and dissatisfied with the order of this Court modifying the Survey of the Surveyor Genl of the Mesa Ranchos, and after a Survey had been returned to this Court conforming to the order of the Court and a Decree entered finally approving the modified Survey, said Seale took an appeal to the U. S. Supreme Court, which affiant is informed was dismissed for want of proper prosecution.

Affiant further states that the line adopted as the common boundary of the two Ranchos, is now and seems always to have been recognized to have been the road called the Middle Road; and that within the knowledge information or belief of affiant, the Mesa claimants never made any pretensions of ownership of the lands lying to the West and South West of the said

Middle Road
Subscribed & sworn to
before me July 24th
1865.
D. McC. Sullivan
U.S. Comm.

Geo. Gordon

W. S. District Court

"

United States

vs.

C. N. Rodriguez

Aff'dt of Geo Gordon.

In the District Court of the United States: Northern District of California -

The United States
vs.
C. V. Rodriguez

In this case there was a Petition by Buelna for a specific tract with boundaries, a grant by Alvarado by same boundaries, juridical possession by same, a confirmation by the Board of Land Commissioners, again affirming the same boundaries and recognizing the same juridical possession and adjudicating that it had been given, and a confirmation by the District Court by the same metes and bounds, and again adjudging in the judgment itself that juridical possession by such metes and bounds had been given - and a survey by the U. S. in conformity, as far as regards the land

in dispute with all those meles and bounds; and the owners of the Ranch now ask to have that survey affirmed -

This is opposed by the owners of the adjoining or Mesa Ranch -

The Board of Land Commissioners and the Court in their respective judgments give the boundaries as commencing at the point where the aroastradero crosses the Jarbo arroyo Creek, thence following the Creek Northerly to the point where the old highway or middle road crosses the Creek, thence following the middle road Easterly to a point opposite same live oak trees which were marked as a boundary when juridical possession was given &c. &c.

This confirmation has become final and the survey is in accordance with these bounds -

The survey of the Mesa Ranch includes all the land South of the Middle road, and Westerly to a point on the Creek and up stream to the point of intersection with the middle road, thus overlapping the land of the Rodriguez Ranch, and they oppose the confirmation of the survey on that account -

Now an examination of the plat of survey of the Rodriguez Grant will show it to be at this place in exact accordance with the metes and bounds of the original grant, and of the double confirmation, and of the juridical possession -

The first question which presents itself is this:

Where there is a specific grant with juridical possession finally confirmed by metes and bounds, and those metes and bounds well defined, known and undisputed, can any survey

by the U. S. be made other than by those metes and bounds?

Can the Court direct the surveyor to exclude any portion of that which has been solemnly adjudged to belong to the Ranch, or include any lands not within the bounds adjudicated?

It is respectfully contended that such alteration would be nothing less than a review of the decree of this Court confirming by metes and bounds, and an alteration of that decree –

The point is presented as one of power and jurisdiction and I would submit that the authority of the Court only extends to order a survey of the lands adjudged to that party, and to make such survey conform to the decree – and that this case stands on a different footing from the large class of cases where the land confirmed is an unsaggregated part of a large tract, or where the metes

and bounds are not defined or there is a doubt of their exact locality, where the Court judicially settles these points and gives a guide to the surveyor -

But that where meets and bounds are known to exist on the ground, and the final decree of confirmation is in accordance therewith, there is no power in the Court to direct a survey other than by these meets and bounds -

Bring the point to a practical test:

The confirmation calls for the Creek as a Western boundary up to the middle road, thence for the middle road running Easterly as the Northern boundary, thence, for an Easterly line, running South &c. Could the Court in its order to the surveyor direct him not to run to that middle road, but to leave the Creek at a point before he reached that road and run South

on the Western line of the Mesa tract?

Would such order be a survey of the land confirmed when it excluded in express terms not only a large portion of the land itself but wholly ignored the very boundaries laid down in the decree and by which the land is confirmed –

If it were necessary to go behind the decree itself the evidence of Joseph P. Thompson, Manuel Miramontes, José Antonio Alviso, Juan Ferrareis Mojica, all show full actual possession in accordance with the present survey and the original juridical possession – in fact that they are identical –

It is respectfully then contended that if the survey made be in accordance with the final decree of confirmation and by the metes and bounds therein defined, it should be confirmed –

But the case on this point may take a wide range and

present a question of even more importance -

The papers on file show a grant by metes and bounds by Mexico - The decree of confirmation, now final, shows a juridical possession to have been given and a seggregation of the specific land granted from the mass of public land by Mexico -

Rodriguez has presented his claim and by such compliance with the laws cannot be placed in a worse position as to his legal rights than if he had neglected such compliance, and he has received a confirmation <u>according to his juridical possession</u> -

Can then the U. S. by any act deprive him of any portion of this land to which he has a legal title?

It may be said that he had no confirmation by the Departmental assembly - <u>that</u> is the act of the Government to be by them performed, and the want

of it does not deprive the party of title; and such approval is presupposed by the very act of juridical possession, which the decree of the U. S. admits to have been given -

Can the successors of Buelna not stand on their legal title and claim the land admitted to be theirs under the treaty?

The treaty says their rights should be respected - The Court says he had a grant with juridical possession - the land of which he had such juridical possession is not disputed - Can then the U. S. now through its officers deprive him of any part of it?

It is claimed: that he had legal title even against the U. S. and that changing the survey from the land of which he had such title would be an attempt on the part of the U. S. to deprive him of his own — and this, the Government will not either directly or by indirection do -

8 Peters 444 - U. S. v. Clarke:
But neither the law of nations nor the faith of the U. S. will justify the Legislature in authorizing these Boards to annul pre-existing titles which might consequently be asserted in the ordinary Courts of the Country against any grantee of the American Government -

7 Peters 86 - U. S. vs. Perchman -

9 Peters 225 - Mayor &c. vs. De Arnaz -
A junior grant cannot affect a senior grant -

12 Wheat. 535 - Henderson v. Poindexter -

4 Cranch 415 - Higginson v. Mein -
construction of treaty and rights under it

4 Peters 511 Soulard vs. U. S.
9 " 117 & 133 Delassus vs. U. S.

Against these views the Mesa claimants contend that because some of the Rodriguez claimants

were parties to the contest about the Mesa survey which has been affirmed, they cannot now ask the confirmation of their own — which the other intrudes upon!

There was a peculiarity about that supposed contest — There was no contest between the Rodriguez ranch and the Mesa ranch — They acted in perfect accord — Beale who represented the Mesa ranch offered a large mass of evidence now in that case, to prove that the lines between these two ranches were as claimed by Rodriguez (in other words in accordance with the Rodriguez survey as now sought to be confirmed) and Beale himself in his sworn petition states almost all that is necessary, now to be believed in order to show the correctness of the Rodriguez survey —

Attention is respectfully called to the testimony of Beale and his witnesses on this point, on file in the Mesa case, when questioning the survey —

Rodriguez of course contended then, as he does now, for the correctness of his claim to his juridical possession and survey –

The Court decided to approve a survey of the Mesa ranch differing from the lines as claimed by Mesa and Rodriguez – and it is gravely contended that the decision in another cause annuls the decree of confirmation to Rodriguez and compels the Court *proprio vigore* to alter the boundaries already become final and direct the surveyor to omit lands which are decreed to belong to the party, and deprives the Court of power to confirm a survey of lands absolutely decreed to this party!

If this is to be considered *stare decisis*, what is the solemn decree twice confirmed?

It is not, it is contended, *stare decisis*: it does not enlarge the power of the Court to depart from the decree of final confirmation

nor to annul one of its bound-aries - nor does it change the power of the Court as to the survey of this Ranch by its decreed bounds -

If it should happen that there should be two surveys or confirmations of the same land, that would be unfortunate, but not irremediable - The parties can then settle their differences by the ordinary tribunals -

It cannot be contended that the Mesa grant was of the same character as the Rodriguez -

The petition of De Soto is vague the grant of Alvarado is equally so - no juridical possession and no boundaries named - The Petition of Antonio Mesa himself to the Board of Land Commissioners makes the Western boundary a line crossing the Middle Road (Beale by his affidavit claimed the same) - and the final confirmation of the land to Mesa

does not give specific boundaries

A confirmation of the survey as made is therefore respectfully prayed –

[illegible]
of [illegible] County

U. S. District Court

The United States

— vs. —

C. N. Rodriguez

Brief
of Rodriguez Claimant,
on application for
Confirmation of Survey

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

Stated Term, ~~Jany.~~ Febry 4th, 1856.

The United States
Appellants,

vs.

~~Felipe Pacheco~~,
Maria P. V. de Rodriguez et al Appellees.

No. 206. On Appeal from the final decision of the Board of Commissioners to ascertain and settle Private Land Claims in the State of California.

Decree.

This cause came on to be heard at a Stated Term of the Court on appeal from the final decision of the Board of Commissioners to ascertain and settle private land claims in the State of California under an Act of Congress approved on the 3rd day of March 1851, upon the transcript of the proceedings and decision of the said Commissioners and the papers and evidence on which the said decision was founded; and it appearing to the Court that the said Transcript has been duly filed according to law, and counsel for the respective parties having been heard,

it is by the Court hereby ordered, adjudged and decreed that the said decision be and the same is hereby in all things affirmed; and it is likewise further ordered, adjudged, and decreed that the claim of the appellee is a good and valid claim and that the said claim be and the same is hereby confirmed to the said ~~appellant~~ appellee Maria Concepcion Talpacia de Rodriguez in her own right to the extent of two thirds of a square league of land a little more or less being the same land situated in the County of Santa Clara whereon the said ~~appellant~~ appellee have resided known by the name of the Rancho de San Francisquito and bounded and described as follows; to wit: Beginning at the point where the Anastrado crosses the San Francisquito Creek; thence running Northwardly along the line of the said Creek as it meanders to the point where it intersects the old highway commonly called the Middle Road leading from San Francisco to Santa Clara; thence running Eastwardly along the said Middle Road to a point opposite some live oak trees which stand near the said road which trees were marked as a boundary when juridical possession was given of the said land to Antonio Buelna by the Alcalde Dolores Pacheco; thence Southwardly along the Oak Grove (Roblar) to a live oak tree marked with an axe standing at the road called Anastrado; thence Eastwardly along

the said Anastrado by the old line thereof to the point where the same crosses the said Francisquito Creek to the place of beginning; the land hereby confirmed being the same which was granted to Antonio Buelna by Governor Alvarado on the 1st day of May 1839, with the limits and boundaries which were assigned to him by the Juridical measurement made under the grant by the Alcalde Dolores Pacheco:— Provided that the said quantity of two thirds of a square league so confirmed be contained within the said boundaries; but if there be less than the said quantity of land contained within the said boundaries then the said claim is confirmed to the extent of such less quantity and no more.

Ogden Hoffman Jr
Dist Judge

U. S. Dist. Ct.

United States
v.
M. C. T. de Rodriguez et al.
No. 206

Draft
of
Decree.

206 ND
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B. W. Leigh,
Atty for Appellees.

U.S.
v.
M. & V. Rodriguez } No 642 U.S. Dist Court - N. Dist Calif

Thomas J Wilson being duly sworn deposes and says that he was in the year 1860 a claimant of a portion of the Rancho of San Francisquito — that he did not in October 1860 or at any other time intervene in the suit of the U.S. vs Antonia Maria Mesa Case 129 in the U.S. District Court above named nor did he authorize any person or persons to appear for him to intervene — that he does not know & did not authorize Messrs Wade & Brunson to appear or act for him

Sworn & subscribed to before me this 24 Day of June 1865 —
J. H. Chandler
Justice of the Peace

Thomas J Wilson

Affidavit of
Thomas I Wilson