

CASE NO.

209

NORTHERN DISTRICT

POTRERO GRANT

JOSE MARIA FUENTES

CLAIMANT

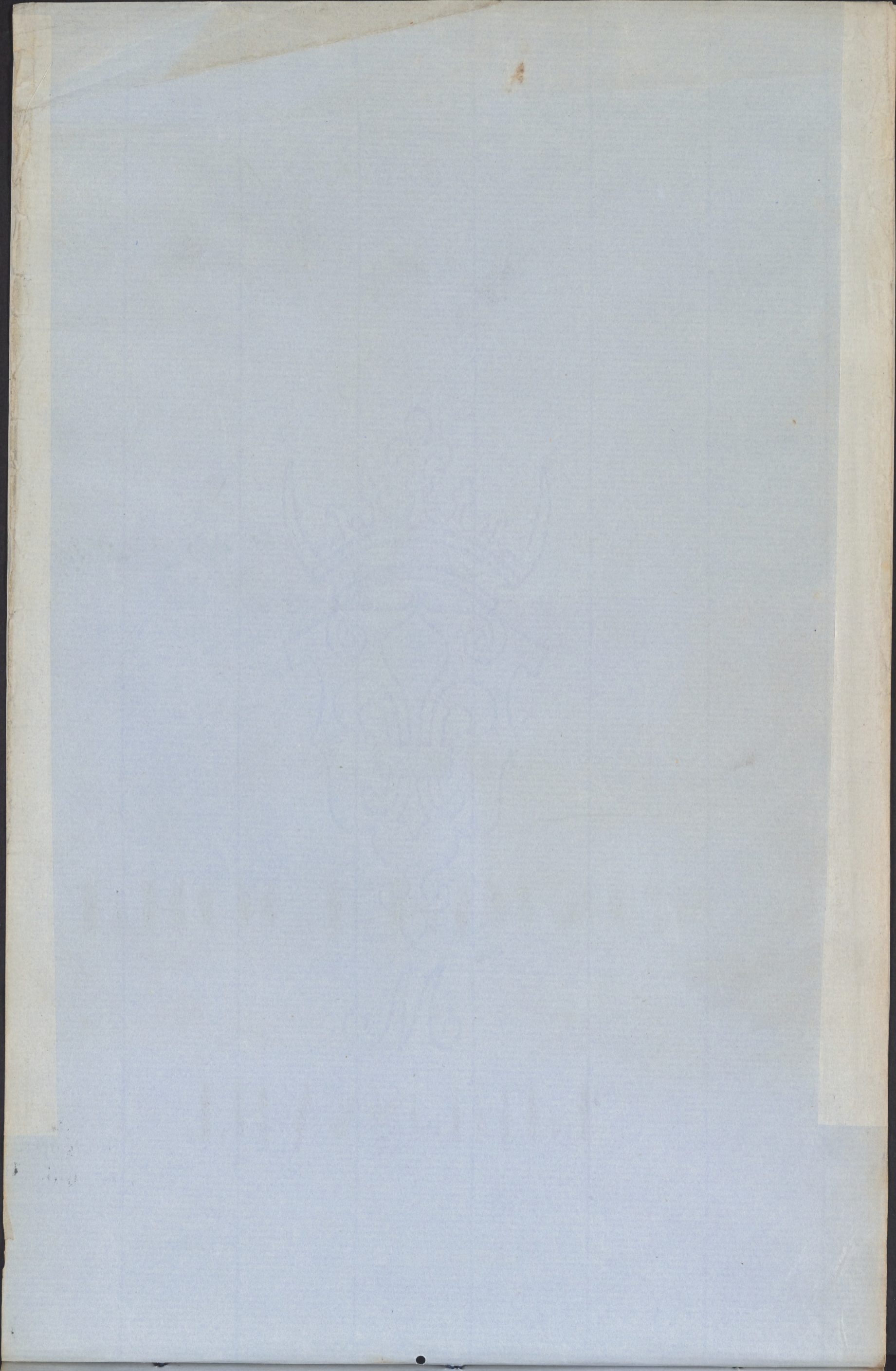
NOV 7 1962

LAND CASE 209 ND. 45 PAGES

Government
POWER BOARD
COTTON FIBER
U.S.A.

496

Waverley



TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 496.

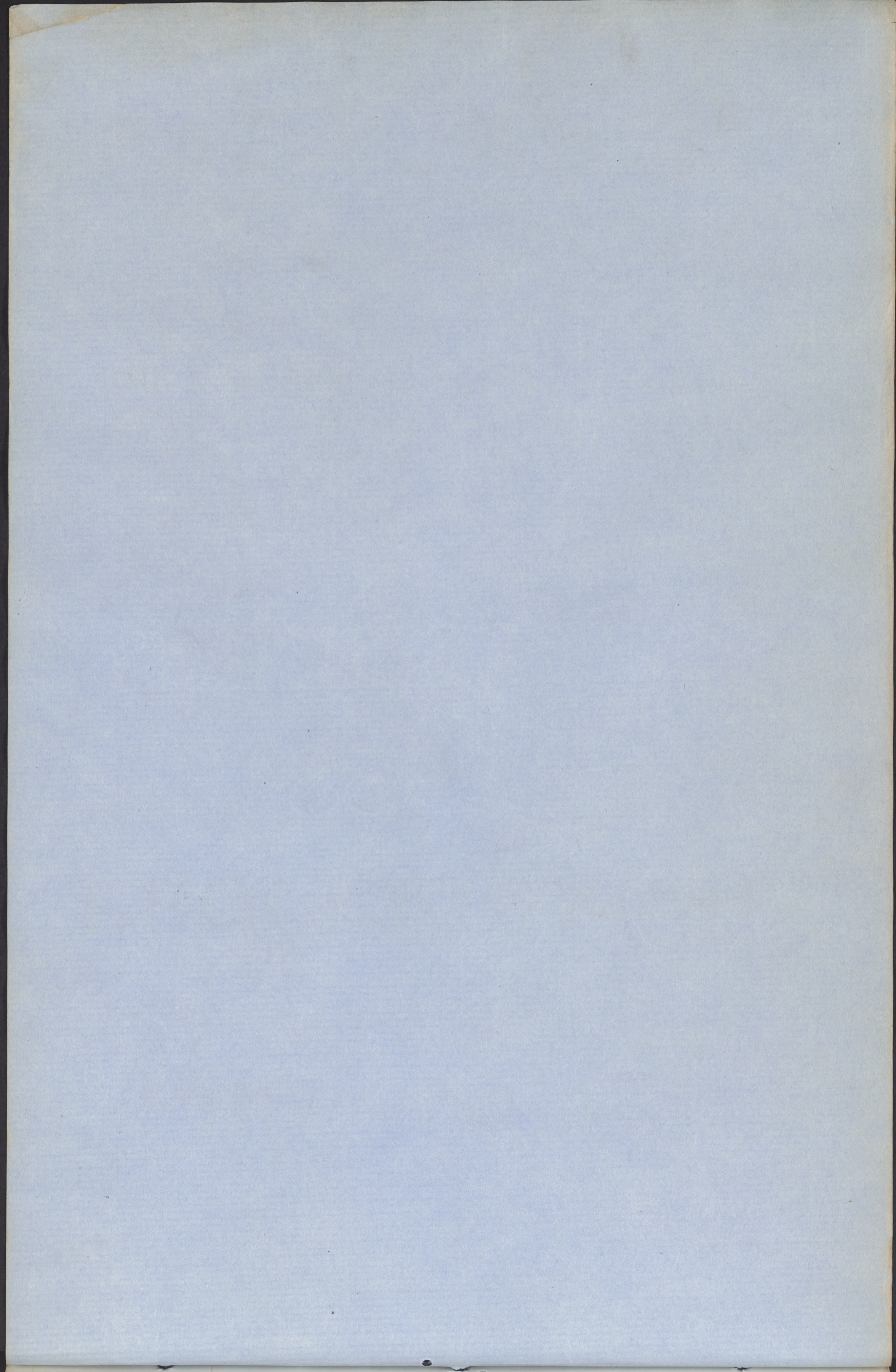
Jose Maria Fuentes CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Petro." "



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

209 ND
PAGE 2

Be it Remembered, that on this eighteenth day of December, Anno Domini One Thousand Eight Hundred and Fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following Proceedings were had, to wit;

The Petition of José Maria Fuentes,
 for the Place named
 "Potrero,"
was presented, and ordered to be filed and docketed with No. 496 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 December 28' 1852.

In case no. 496. José Maria Fuentes, the deposition of Ramon de Zalao, a witness in behalf of the Claimant, taken before Commissioner Harry J. Thornton, was filed:

(Vide page 5 of this Transcript)

In the same case the deposition of José Abrego, a witness in behalf of the Claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T. No. 1, was filed:

(Vide page 7 of this Transcript.)

San Francisco December 29' 1852.

In the same case the deposition of Joseph L. Folson, a witness in behalf of the Claimant, taken before Commissioner Harry J. Thornton, was filed;

(Vide page 8 of this Transcript.)

San Francisco, February 25 1853.

In the same case the deposition of Manuel Costa, a witness in behalf of the claimant, taken before Commissioner Milana Hall, was filed;

(Vide page 11 of this Transcript.)

209 ND

PAGE 3

San Francisco October 10 1854.

Case no. 496, on motion of the Counsel for the claimant, with the consent of the U. S. Saw Agent, was ordered to be placed at the foot of the 2^d Class Cases on the Trial Docket.

San Francisco November 21 1854.

Case no. 496 was submitted on briefs and taken under advisement by the Board.

San Francisco November 21 1854.

In the same case Commissioner S. B. Farnell delivered the opinion of the Board rejecting the claim;

(Vide page 19 of this Transcript.)

and the following order was made, to wit;

(Vide page 20 of this Transcript.)

State of California ss.

To the Honorable the Board of Commissioners of the United States for the adjudication of private land claims in the State of California -

209 ND
PAGE 4

Petition.
www.

The petition of Jose Maria Fuentes respectfully sheweth that on the 12th day of June 1843 Manuel Micheltorrea Brigadier General of the Mexican Army Adjutant General of the Principal Staff of the State Governor and Commanding General of the Department of the Californias & who by law was then and there authorized to grant lands in California, granted to your petitioner in full & in full form of law a certain tract of land situate in the present County of Santa Clara in this State & which is described in the said grant as the tract known by the name of the Potrero & as situate within the limits of the El Mission of San Jose & bounded on the North by the place called the Agua Caliente, on the South by that called "Pala" on the West by the flank of the hill of the Rancho of Don Fulgencio Negron and Don Chrysostomo Galinda & on the East by the adjoining Mountains.

Your petitioner further sheweth that the said grant was for eleven leagues for large Cattle (Sitios de Ganado Mayor) & that the boundaries thereof are accurate & well defined & the objects for which it calls are notorious and well known -

A copy of the said original grant in the Spanish Language is herewith filed as an Exhibit marked "Exhibit A" and a translation marked Exhibit "B" both of which are prayed to be taken as parts of

209 ND
PAGE 5

this petition - Your petitioners further sheweth that the said grant was issued and delivered to your petitioners in due form of law and that the said Micheltorena as the Governor of Upper California at the date of said grant had full power and authority under the laws ordinances and usages of the Mexican Government to grant lands in fee in the said Department of Upper California & that the said grant was duly recorded at the time it was issued but your petitioners is informed & believes that the books of Record or archives containing the grants or a large number of them made in the year 1843 by the said Micheltorena were destroyed by fire in the City of San Francisco in the year 1849 at all events they are not to be found amongst the archives in the Office of the Surveyor General for California and your petitioners is informed & believes that the copy of said grant & the Espediente or dispatch of the said land was burnt and destroyed at the same time so that the same cannot now be produced -

Your petitioners further sheweth that the said grant was duly approved by the Territorial Legislature and was in all respects formally complete according to law. but the records of the said Legislature for the year 1843 were in like manner destroyed by fire at the same time with the Record of the grant before referred to so that your petitioners can produce no record evidence of its approval by the said Legislature -

So far as your petitioners knows there is no conflicting claim or title to any part of said land - Wherefore your petitioners

claims that he is entitled to said land

Claims that he is Entitled to said Land
in fee simple and prays that he be confir-
med in his title by a decree of Your Honorable
Board and for such other relief in the
premises as he may be entitled to -

Crockett & Baker
Attys for Petitioner -

Filed in Office Dec 21st 1852.

(signed) Geo Fisher
Secy.

San Francisco Dec 25. 1852

On this day before Comr Henry A
Thomson came Ramon de Galdo a witness
in behalf of the Claimant Jose Maria
Montes petition No 496 and was duly sworn
his Evidence being interpreted by the
Secretary -

The U.S Associate Law Agent was present -

Questions by Claimant -
Question 1st -

What is your Name age &
place of residence and what is your Employ-
ment so far as respects the public Archives
of the former Governments of California?
Answer.

My Name is Raymond de Galdo
age 44. residence San Francisco - I am and
have been for some time Chief Clerk and Interpreter
of the Government to arrange and classify
the Spanish and Mexican Archives in the
Custody of the Surveyor General of California -

Deposition
of
Raymond
de
Galdo

1
Question 2.

What do you know with regard to the record or Book of titles of the Mexican Government for the year 1843 - Have you or not made diligent search among the Public Archives above referred to for said Record or Book of titles and if so state the result of such search.

Ans -

I have learned from a confidential source in this Office that such a Book was once in the possession of J. J. Tolson United States Quarter Master at one time & in the same way that it was destroyed with his other papers by the May fire in San Francisco of 1851 - I know of my own knowledge that there is wanting in the Office the record or book of titles of the said year 1843 tho I know not of my own personal knowledge so that it can be stated.

Ramon de Galdo,
U. S. Law Agent Present.

Sworn to & Subscribed before -
on this 28th of Decr. 1852.

Henry J. Thornton Commr &c

Filed in Office Decr 28. 1852

(Signed)

Geo Fisher
Deputy

San Francisco Decr. 28. 1852.

Deposition
of,
Jose Abrego.

On this day before Com. Henry
Thomson, came Jose Abrego, a witness
on behalf of the Claimant Jose Maria
Fuentes petition No 446 and was duly
sworn his Evidence being interpreted by the
Secretary -

209 ND
PAGE 8

The U S Associate Law Agent was present.

1st Question by Claimant -

What is your name age &
place of residence?

Answer.

My name is Jose Abrego
I am forty years of age & reside at the town
of Monterey in the State of California -

2^d Question by Claimant -

Were you acquainted
with Genl Manuel Micheltorona formerly
Governor of Upper California? If you state
when and where you knew him & whether or
not you ever saw him write or are familiar
with his hand writing -

Answer -

I was acquainted with Genl
Manuel Micheltorona & as well as I can
remember knew him in the years 1842 & 1843
at Monterey then the Capital of Upper
California - I have frequently seen him
the said Micheltorona write & am well
acquainted with his hand writing -

3^d Question by Claimant -

Please examine the
document now shown to you marked
"Exhibit B" which is to be attached
to your deposition & state whether or not

8
you recognize the hand writing of the Sign-
ature to the said document & if so in
whose hand writing is it? -

Answer - I have examined the signature
to said document & know it to be the genuine
signature of Gov Manuel Micheltorena -

Jose' Abrego.
The Law Agent U.S. Marshal -

Sworn to & Subscribed before
me this 25th of Decr. 1852.

(signed)
Henry J. Thornton -
Comm. -

Filed in Office Decr 25. 1852.
(signed)

Geo. Fisher
Secy.

San Francisco Decr 24, 1852.

On this day before Comr Henry J. Thornton
Came Joseph L. Tolson a witness in be-
half of the Plaintiff Jose' Maria Fuentes
petition No 14th and was duly sworn
his Evidence being given in English -

The U.S. Associate Law Agent was present -
St. Justine by Cleward -

What is your name age &
place of residence?

Answer - My name is Joseph L. Tolson
My age 36 & My place of residence the

Deposition
of
Joseph L.
Tolson -

City of San Francisco -
2^d Question by Plaintiff -

Have you any knowledge of the book of records containing the grants of land by the Governors of Upper California for the year 1843? If you state what became of said book.

Answer.

A book of records containing grants of land in Upper California was put into my possession in the Spring of 1851 to be used as evidence in the suit of Leese & Pallye vs Clark then pending in the Superior Court of the City of San Francisco - Said book was in the Spanish language & came from the Archives of the Mexican Government of California then in possession of the Commanding General at Burecia & was delivered to me as an Officer of the Army for safe keeping -

After the book was used in evidence it was returned to me & was deposited in my Office in the City of San Francisco & whilst there the great fire of the 3rd & 4th of May 1851 occurred by which my Office & its contents including the said book were destroyed - I am not positive as to the date of the grants contained in said book but from my best recollection my impression is that they were for the years 1843 & 1844.

J. L. Polson -

I acknowledge notice and have no questions to ask -

Robert Grayson

Capt Law Agent of the U. S.

Sworn to & Subscribed before me
this 24th of Decr 1851.

Henry S. Timmon Comm^r -

Filed in Office Dec 26. 1852.

(Sequid)
Geo Fisher Secy.

San Francisco July 25th 1853.

209 ND

PAGE 11

Deposition
of
Manuel
Castro.

On this day before Comm. William Keall
Cause Manuel Castro a witness in behalf of
the claimant Jose Maria Fuentes petition No
496 and was duly sworn his evidence being
interpreted by the Secretary.

The U S Associate Law Agent was present.

In answer to Enquiries by Counsel for the
Claimant the witness testified as follows.

My name is Manuel Castro my
age is thirty one years & I reside in San Tomas
in Lower California I am a Captain in
the Mexican Army with the brevet rank of
Colonel & the second in Command on the frontier
of Lower California.

An instrument in writing
is now shown me purporting to be a grant to
Jose Ma Fuentes dated June 12. 1843 & is
attached to the deposition of Jose Abrego heretofore
taken in this case & marked W. S. T. No 1.

I know the paper - It is in
my hand writing - I was at the time Secretary
in the Prefect's Office in Monterey & being on
terms of friendship with Secretary Amador &
with Arce a Clerk in his Office I frequently
assisted them in their Official duties at their
request & in that manner I wrote the body
of this grant.

11

It was written in June 1843 at the time
of its date -

I know the Signature of Manuel
Pichetto and the Signature on the paper purport-
ing to be his appears like his, & the Signatures
of Jimmie on said paper also appear like
his -

Man^o Castro -

Sworn & Subscribed
Before me
Wiland Head
Comm^r -

Filed in Office Feb. 25, 1853,
(Signed) Geo. Fisher
Secy.

209 ND
PAGE 12

12

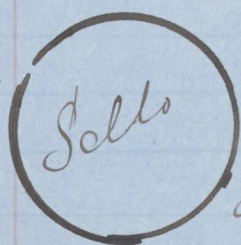
808

Della prima Ocho pesos:

Habilitado provisionalmente por la Aduana
Doe: A. L. J. marina del puerto de Monterey, en el depor
No. 1 annexamento de las Californias, para el año de mil
to the depo of Dochooientos cuarenta y tres.

Abrijo taken Micheltoena Manuel Castañares.

ceperre. Com.
A. L. Thornton



El Cuid^{no} Manuel Micheltoena ^{Grat}
de Brigada del Ejercito Mexicano, Ayu
dante ^{Grat} de la plana Mayor del
mismo Gobernador Comandante ^{Grat}
del Departamp^o de Californias.

Por cuanto Dr. José M^a Fuentes Mexicano
por nacimiento ha pretendido para su bene
ficio personal y el de su familia el terreno
conocido con el nombre de ^{de} Febrero que se halla
en la comprehension de la Ca & Co. Misión de San
José colindante por el Norte con el paraje de la
Agua caliente, por el Sur con el de Pala, por el Oeste
con la cumbre de la Loma de los Ranchos de Dr.
Eulgenio Higuera y Dr. Cristóbal Galindo y
por el Este con la Orna inmediata; practica
daspriamente las diligencias y averigua
ciones concernientes según lo dispuesto por las
leyes y reglamentos; usando de las facultades
con que me hallo investido à nombre de la Na
cion Mexicana he venido en coneeclerle el men
cionado terreno bajo las condiciones siguientes
1^a Pochacercarlo sin perjudicar las tierrecas
caminos y servidumbres; lo disputará libre y
exclusivamente destinandolo al uso ò cultivo
que mas le acomode;

2^a Solicitara del juez respectivo que le de
la posesion juridica en virtud de este despacho
por el cual se demarcaran los linderos en cu
yos limites pondran prohonoras ò algunos arbo
les frutales ò silvestres de alguna utilidad

3^a El terreno de que se ha ee donacion es de
once sitios de ganado mayor poro mas ò menos
segun demue^{stra} el diseño respectivo que que
da unido al Expediente.

El juez que dhere la posesion lo hara medir
conforme à Ordenanza que clendo el sobante
que resulte à la Etalon p^a los usos convnt^{es}

209 ND
PAGE 13

En consecuencia mandó que firme y valide el presente título se tome razón de él en el libro respectivo y se entregue al interesado para su resguardo y demás fines.

Dado en Monterey de la Alta California a doce de Junio de mil ochocientos cuarenta y tres.

209 ND
PAGE 14

Man^l. Michelena

Man^l. Jimeno Sr^o.

Se tomó razón de este título en el libro respectivo q^d obra en el Archivo de esta G^{ra}. Monterey Junio 13 de 1843.

Jimeno

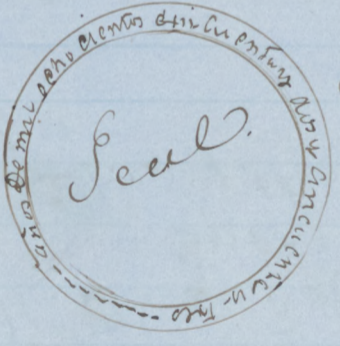
Lleva todos mis amplios poderes y personalidad el Sr^o Jimeno p^a. gestionar lo conveniente y tomar posesión de este título y toda la plenitud de los derechos q^d yo personalmente podría tener y p^a conveniencia lo firmo en Mexico a veinte y dos dias del mes de Diciembre de mil ochocientos cuarenta y Ocho.

Jose M^a Fuentes

Los infrascriptos Escribanos.

Certificamos y damos fe; que la forma que autoriza el título de los terrenos concedidos a Don José Maria Fuentes es del Señor General Don Manuel Michelena que en la

Sello Cuanto



un Real

epoca a que se refiere el título es preocho, era Gobernador y Comandante gral de California y cuanto con ella autorizo se le ha dado y da enterapfe y credito judicial y extra judicialmente. Y para que conste firmamos la presente oclada con el de nuestro nacional Colegio en el Ayuntamiento de Mexico a diez de Mayo de mil ochocientos cincuenta y dos:

J^o Villa # Casim^o Lanogrove
Manuel de Madariaga

Sello

El infrascripto oficial Mayor 1.º del
Ministerio de relaciones interiores
y exteriores.

Certifica: ser auténticas las firmas
que anteceden de los Escribanos Balla, Macla,
Magari y Samd grewe, à las q. se da entera fe y
credito.

Derechos 2/3.º Mexico 12 de 1852.

Jose Maria Ortiz
Monasterios)

Legation of the U. States of America at Mexico
J. Robert P. Letcher Envoy - Ex^{ce} and Minister
Plen. of the U. States of America near the
Government of Mexico do hereby Certify: that
the signature of Jose Maria Ortiz Monasterios
attached to the preceding document as in his
own proper handwriting, to me well known; that
he was at the time of signing the same and is
now Chief Clerk of the Department of State
for foreign affairs of the Mexican Government
and by law authorized and required to certify
to public documents, and all act. signed by
him as such are deserving of full faith and
credit.

Seal In testimony whereof I hereunto
subscribe my name, and affix
the seal of this Legation at Mexico this
12th day of May A. D. 1852.

attest
Wm Rich Esq Legation # R. P. Letcher

Sello

El infrascripto, Ministro de Relaciones
interiores y exteriores de la Republica
Mexicana.

Certifico: que cuando en el año de 1842
se nombró al Sr. Gral D. Jose Manuel Michel
torrens Gobernador y Comandante gral Inspector
del Departamento de California, además
de las atribuciones que como tal le demarcaban
la Ordenanza y las leyes entonces vigentes se
le confirió todas las facultades que podían

209 ND
PAGE 16

76
delegarle el Gob^{no} Supremo investido en aquella
en aquella epoca con las omnimodas de las
Bases de Tabasco para que las ejerciera dicho
Gral en el referido Departamento en cuantos
ramos pudieran contribuir a su dicha, y entre
ellos en el de colonizacion, en cuya virtud
el precitado Sr. Michel trenca hizo concesiones
de tierras a diversos particulares.

Y para que conste firmo el presente en Mexico
a 31 de Mayo de 1852.

Por ocupacion del C. J. Ministro
Jose Maria Ortiz
Monasterio

Legation of the United States,
at Mexico.

I, Robert P. Letcher, Envoy Extra^o and Minis-
ter Plen^o of the United States of America, near
the Government of Mexico do hereby certify,
that the signature of Jose Maria Ortiz Monas-
terios attached to the preceding document is
in his own hand writing, to me well known
that he was at the time of signing the same
and is now Chief Clerk of the Department of
State for foreign Affairs of the Mexican
Government and by law authorized and requi-
red to certify to public documents and all
acts signed by him, as such are deserving
of full faith and credit.

(Seal) In testimony whereof I have here-
unto subscribed my name and affixed
the seal of this Legation at the city of Mexico
this 10th day of May, A. D. 1852

Attest
Wm. Rich^{ms} Secy. Legation. R. P. Letcher

Filed in Office Dec^r 28th 1852

Geo. Fisher Secy

First Seal - Eight dollars.

Used provisionally by the Marine Custom House of the Port of Monterey in the Department of the Californias for the year one thousand eight hundred and forty three -
Muehettorua - Manuel Castanares -

209 ND
PAGE 17
"B"
uu

Translation
of
Grant

Manuel Castanares
de Monterey
Aludna

The Citizen Manuel Muehettorua Brigadier General of the Mexican Army adjutant General of the Principal Staff of the same; former Commanding General of the Department of the Californias -
As much as Don Jose Maria Truente a Mexican by birth has solicited for his own personal benefit and that of his family the tract of land known by the name of the Potrero which is situated within the limits of the Ex Mission of San Jose bounded on the North by the locality called the Warm Springs, (Agua Caliente) on the South by that called "Pala" on the West by the peak of the hill of the Ranchos of Don Fulgencio Requena and Don Chrysostom Galindo and on the East by the adjoining Mountain (Sierra) having first taken the necessary steps and the precautionary proofs required by the laws and regulations exercising the powers with which I find myself clothed in the name of the Mexican Nation I have now granted him the aforesaid tract of land upon the following conditions -

1st - He shall Enclose it without prejudice to the cross ways roads & uss - he shall have the free & Exclusive Enjoyment of it and apply it to such use and Culture as may best suit his views -

2nd - Hee shall apply to the proper Judge that he may give him Judicial possession of the same by virtue of this act by whom the boundaries shall be marked out on the limits of which land marks shall be placed and fruit trees or forest trees of some utility shall be planted -

3rd - The tract of land hereby donated contains eleven leagues for large Cattle more or less as designated by the corresponding map which is attached to the Expediente - The Judge who shall give possession of it shall have it surveyed according to the ordinance the surplus remaining belonging to the Nation for its proper use.

Wherefore I decree that the present title shall be held as firm and valid shall be recorded in the proper book and delivered to the party interested for his security and utterior call -

Given at Monterey in Alta California
this 12th day of June 1843
Manuel Micheltonna -
Manuel Jimeno. Secretary -

This title was recorded in the proper book which is used in the archives of the Office of the Secretary of this Department -
Monterey June 13. 1843.

all my full.

Jimeno.

Filed in Office Dec. 21. 1852

(signed)
Geo Fisher Secy.

Jose Maria Fuentes

vs.
The United States} Claim for a place
} called Potrero
} Situated in the County
} of Santa Clara and
} Containing Eleven square
} leagues -209 ND
PAGE 19Opinion.
by
Comr.
Farwell.

This claim is based upon a grant sup-
porting to have been issued by Governor
Micheltorna on the 12th day of June 1843
to the present claimant -

The claimant has
offered no proof of survey or measurement
of the land so as to define its boundaries
Nor has he offered any
proof whatever of the performance of any of the
conditions of the grant -

We are of the opinion
that the claim is not a valid one and a
decree will be entered accordingly -

Rejected -

Filed in Office Nov 21, 1852.

(Signed)

Geo Fisher

Secy. }

Jose Maria Quintis
vs -
The United States

209 ND
PAGE 20

Acree,

On hearing the proofs and
allegations in this case - It is adjudged
by the Board that the claim is invalid and
it is hereby ordered that the same be rejected -

Alpheus Felch

R. H. Thompson

S. J. Farnell

Transcript

Filed in Office Nov 21. 1852.
(Signed)
Geo. Fisher
Secy.

And in appearing to the satisfaction of this
Board that the land in question is
situated in the Northern District of Cal
it is hereby ordered that two transcripts
of the proceedings and of the decision
in this case and of the papers in this
- case upon which the same are founded
be made out and duly certified by the
Secretary and deposited in the
files of the Clerk of the U.S. Dist
Court for the Northern District of Cal and
two other transcripts to the aty
Genl of the U.S.

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
going *Twenty* pages, numbered from
20, both inclusive, to contain a true, correct and full Tran-
script of the Record of the Proceedings and of the Decision of the
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. 496 on the Docket of the said Board,
and herein

Jose Maria Fuentes is

Claimant against the United States, for the place known by
name of *Petersen*

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. 1854, and of the Independence of the
United States of America the seventy=*ninth*.

G. Fisher
Geo. Fisher.



U. S. DISTRICT COURT,
North District of California.

No. *209* 209

THE UNITED STATES *N D*

vs.

Aze Maria Fuentes

TRANSCRIPT OF THE RECORD
FROM THE
BOARD OF U. S. LAND COMMISSIONERS,
In Case No. *496*.

Filed, *June 22* — 185*5*

John A. Mason
Clerk

No 496

Clerks Office of The District Court of The United States for the Northern District of California.

Whereas The Commission constituted for the purpose of ascertaining and settling private Land claims in the State of California by the Act of Congress of the United States of America approved on the 3rd of March 1851 entitled "An Act to ascertain and settle the private Land claims in the State of California" did on the 21st day of November 1852 — by their decision of that date, decide against the claim, presented by the undersigned to the said Commissioners — Which claim is No: 496 on the docket of claims before said Board and is for Land lying in the said Northern District: and the said Claimant being desirous that the said District Court should review the said decision. Now hereby files this Notice in the said Clerks Office, of his intention to prosecute an appeal, as is provided by the 12th Section of "An Act making appropriations for the civil and diplomatic expenses of the Government for the year ending the 30th of June 1853 and for other purposes" which said Act was approved on the 31st of August 1852. — July 12th 1855

To
J. A. Monroe
Clerk of said Court

José M. Fuentes
by Thornton Williams Thornton
of Counsel for Claimant

U. S. Dist. Court
Northern District

No: 209 one

José M. Fuentes

vs

The U. States

Notice of Appeal

Filed August 3d. 1855.

by Cherred
Deputy.

209 ND
PAGE 23

UNITED STATES DISTRICT COURT,
Northern District of California.

209 ND
PAGE 24

The United States,

Jose Maria Luentes,

San Francisco, *October 15, 1855*

ON this day, before *John A. Murre* a
Commissioner of the United States for the Northern District of California, duly
authorized to administer oaths, &c., &c., came *Jose Abrego,*

_____ a witness produced on behalf of the
Claimant

in Case No. *209*, being an appeal from the Board of Commissioners to ascer-
tain and settle the Private Land Claims in the State of California, in Case
No. *496* on the Docket of the said Board of Commissioners, and was duly
sworn and testified as follows — ~~his~~ evidence being interpreted by

Isaac D. Marks a sworn interpreter

PRESENT: *J. J. Williams* of counsel for Clts. &
The U. S. Dist. Atty. by *A. Russell, Esq*
1st

QUESTION BY

What is your name, age & place of residence?
Answer.

Jose Abrego, am 43 years of age, and reside
in Monterey, Cal,

Question 2^d

Are you acquainted with Jose Maria Luentes
the claimant in this case. If yes state
whether ~~was~~ he was a minor, or of full
age at the change of governments, that is to
say, on the 7th day of July, 1846.

Answer.

I am acquainted with Jose Maria Luentes
the claimant, and his family, and on the
7th of July, 1846, I know he was not of age
but a minor.

Cross Examined by U.S. Atty.

Have you any interest in the event of this
suit.

Answer,
None whatever.

José Abrego

Sworn to & subscribed before me this
15th day of October, 1855.

J. A. Monroe
U.S. Commissioner

No 209

finder

U.S. Dist. Court,

San Maria Tuxtla,

- vs -

The United States,

Deposition of

José Abrego,

Sworn Oct. 15, 1855.

J. A. Monroe,

Deputy.

209 ND

PAGE 25

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

The United States }
Appellee }
vs }
Jose Maria Fuentes }
Appellant }

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

W. Russell
Asst. U.S. Atty

No 209 *three*
U.S. Genl. Ct. Worthen
Genl. of California

José María Fuentes

vs
The United States

Answer

Filed Feb 7 1856.
J. Cheves,
Deputy.

209 ND
PAGE 27

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

209 ND
PAGE 28

José Maria Fuentes Appellant

vs
The United States Appellee

The Petition of the said
José Maria Fuentes respectfully ~~represents~~
represents, that this is an application
for a review of the decision of the Board
of Land Commissioners to ascertain &
settle private land claims in California,
whereby the claim of the said Appellant
was rejected, as appears by the transcript
of the record, filed in the Clerk's office
of this Court — Said Transcript was
so filed on the 2nd day of June 1855; Notice
of intention to prosecute appeal was
duly filed according to law, on the
3rd day of August 1855. The Land described
in said Transcript, and of which confir-
mation to the said appellant is here sought,
lies in the Northern Judicial District
of California and within the Ju-
risdiction of this Court — The said
appellant avers that his title to

The said land is valid, and prays
this Hon. Court, to review and reverse
the decision of the said Board, and
decree the validity of his said claim
title to the said land

José María Fuentes
By his counsel

209 ND
PAGE 29

No. 209 Two

U. S. Dist. Ct. Northern
Dist of California

Josi Maria Fuentes

vs

The United States

Petitioner

Filed Feb 7 1856.
J. Cheever,
Deputy.

At a Stated Term of the District Court of the
UNITED STATES OF AMERICA, for the Northern District of
California, held at the Court Room, in the City of SAN FRANCISCO,
on *Monday* the *twenty fourth* day of
August in the year of our Lord one thousand

209 ND
PAGE 31

eight hundred and fifty-seven.

Present:

The Hon^{ble} W. Hall McAllister, Circuit Judge -
The Honorable OGDEN HOFFMAN, District Judge.

The United States

vs

José Maria Fuentes

D.C. 209: L.C. 494

This cause came on to be heard on appeal from the final decision of the Board of Commissioners to ascertain and settle the private land claims in the State of California, under the Act of Congress approved March 3^d A.D. 1851, upon the transcript of the proceedings and decision of the said Board of Commissioners and the papers and evidence on which the said decision was founded, and it appearing to the Court that the said transcript has been duly filed according to law, and the cause having regularly come to a hearing, 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 ordered, adjudged and decreed that the claim of the appellant is invalid, and that the same be, and is hereby rejected.

W. Hall McAllister
Jurat

209

United States District Court, Northern District of
California.

The United States

vs.

Jose Maria Fuentes

~~ORDER~~

*Decree
Rejecting claim.*

Filed *August 24, 1857*

John A. Monroe,

CLERK.

By *M. H. Cheney*

DEPUTY.

209 ND
PAGE 32

At a *Special* Term of the District Court of the UNITED STATES OF AMERICA, for the Northern District of California, held at the *Court room* in the City of SAN FRANCISCO, on *Friday* the *18th* day of *September* in the year of our Lord one thousand eight hundred and fifty-*seven*.

209 ND
PAGE 33

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States

vs.

Jose Maria Fuentes

No 209. D.C. 496. S.C.

In this case on the application of the attorneys for Claimant made in open Court. It is ordered by the Court that an appeal in behalf of the claimant from the final decision of this Court, rendered in said cause at the present term, be and the same is hereby granted, and that a certified transcript of the pleadings evidence and depositions and proceedings in the said cause be sent to the Supreme Court of the United States without delay. And that the claimants give security in the sum of two hundred dollars for costs in the district & Supreme Courts in case the judgment of the said district shall be affirmed.

Ogden Hoffman,
Dist Judge

United States District Court, Northern
- District of California.

The United States
vs.
Jose M^a. Zuentel

Order granting appeal

Filed *September 18th* 1857

John A. Monroe CLERK.

B. G. Gargymer DEPUTY.

209 ND
PAGE 34

Jose Maria Fuentes
vs
The United States No-209-

209 ND
PAGE 35

Page

Index

3
17
13

Petition to Board
Translation of Grant
Original of Grant

5
7
8
10
19
20

Deposition of Raymond de Zaldes
" " Jose Abrego
" " Joseph L. Folsom
" " Manuel Castro
Opinion of Board
Decree " "
Deposition of Jose Abrego taken
in this Court
Hearings filed

No 209

José María Fuentes

27

The United States

✓

Index

209 ND
PAGE 36

Gubery.

Jose Maria Fuentes

209 ND The United States

PAGE 37 The claim in this case was rejected upon the ground that there was no proof of any survey or measurement of the land, or of or of any performance in all or any of the conditions of the grant. In the language of one of the claimant's attorneys, "There is no proof in the case that the claimant ever took possession of the land or performed the conditions. The grant on which the claim is rested bears date 12 June 1843. No testimony has been adduced to show that claimant ever went ^{on} or ^{into} the land or had ~~never~~ seen it. There is no evidence of any kind of any attempt to take possession of the land or fulfill any one of the conditions annexed to the grant, nor to offer any explanation why such possession was not taken, or such effort made. No case from the absence of all such testimony, has presented itself to our consideration which proves more clearly than the present, that the party had abandoned his claims before the Mexican power had ceased to exist, & was now endeavoring to resume it, from the enhanced value made the Government U. S."

And it may be the fact, although it may be admitted that until the denouement

next

-mencement of the land, the right of
 the party named not have been
 forfeited, still when he comes
 into a Court acting upon the prin-
 ciples of Equity, and after pro-
 viding its interposition in his behalf good
 faith on his part is ^{essential} ~~essential~~
 to authorize such interposition
 Such seems to be the view of the Su-
 preme Court in the Freeman case.
 The conveyance claimed has
 vested this claim on another
 ground, and with a view to evade
 the objection of a total failure on
 the part of the claimant to attempt
 to comply with either one of the
 conditions of the grant, or even to
 take possession of the land, con-
 tending that claimant was a minor
 in July 1846 when the period of change
 of Government took place -
 A witness was examined upon the
 appeal made taken on the following
 question proposed to him viz
 "Are you acquainted with Jose Maria
 Freeman, the claimant in this
 case? If yes, state whether he was
 a minor or of free age at the change
 of government, that is to say on the
 7 July 1846? To this, the witness
 replied "I know he was not ~~of~~
 of age but a minor." -
 It is contended therefore, that being
 a minor, no abandonment will
 be presumed against him, or it
 proved

209 ND
PAGE 40

similar in every respect to other grants,
and has annexed all the usual
conditions. If the Government were
imposed upon, a Court of Equity
will subscribe to the suggestion
that the grantee who thus deceived
the Government, may be paid by
the ~~the~~ money he was a receiver
and therefore not to be bound by
the conditions of the grant.

+

In the 7th ~~sub~~ subdivision of 2^d section
in (Smith's) civil law it is said down,
"If a man has given out that he is
a Major, and by producing a false cer-
tificate of the Regency of his Christian-
ity by some other way, has made
people believe that he is a Major,
he cannot be relieved against
third persons into which he shall have
engaged anyone by this surprise."

+

If therefore, the grant with condi-
tions, ~~was~~ ^{by him} ~~was~~ ^{with the} delivered to the grantee
and accepted ~~by~~ ^{with the} belief on the part
of the Government that it was dealing
with one upon whom a compliance
with the conditions of the grant would
be enforced, and such belief was in-
duced by the conduct of the grantee
the grant was fraudulent and the
Court of Equity should enforce it.
But independently of this consideration
there is another view of this case
which in our opinion is conclusive
in the claimant's favor.

It is true as contended for by the

209 ND
PAGE 41

the counsel for claimant, that Minors
are carefully protected under both
the civil and common law, - That
they neither will nor can be against
a Minor, that contracts made
by them, and conveyed as usual
shall create in many instances, but
and in others, voidable - But in
neither case has the protection of -
granted to infants, been converted
from what it is intended to be
a shield against others, into a
weapon to be wielded by them
infringement of others - Neither will
permit a Minor to hold an es-
tate without paying the ^{consideration}
ration which was ^{to be paid} ~~conveyed for~~,
nor have we been able to find a
case where a Minor ^{who has} accepted an
estate upon conditions, has been
permitted to hold that estate
free from stipulated conditions
and the performance of them
during minority.

The colonization grant, under the
Mexican law was made upon a
consideration and conditions
in which the public was interested,
and the payment of that consi-
deration by the fulfillment of the
conditions was essential to the
interest of the grantor.

In Gaffin v Gaffin 1 Sol. & Lf. 352
the principle is affirmed that "an

An infant cannot avail himself of his infancy to excuse the non-assertion of his right under an executory agreement made with his ancestor, where the immediate performance of his part of the contract is essential to the interest of the other contracting party. Where for instance, there is an executory agreement to grant a lease on one part, and a covenant to pay money on the other, and the tenant dies, leaving an infant heir, if this contract is to continue & existing during the whole term only, it will not be given to the landlord the benefit of that in consideration of which he stipulated to grant the lease.

Qui 353

Coke states the doctrine thus, (1 Inst. 240 b)
"Regencies, and laches shall be accounted to infants, for non entry, or claim, to avoid descent, yet laches shall be accounted to them for non performance of a condition annexed to the State of the land, for the laches of an infant, for non performance of a condition annexed to a state, either made to an ancestor or him."

... shall bar him of the right of the
land forever."

In *Case of Peter & Henry* 543 the
L^d Chan celler said it is true infants
are always flumens. But the Court
never pretended to change the na-
ture of infants, estate. ~~When an~~
~~estate is given to an infant upon~~
a to make that absolute, which was
dysable. When an estate is given
to an infant upon condition, such as
as an infant can perform, must be
done by him; and infancy in such
case is no excuse.

An infant is bound by conditions
annexed to the estate at common
law, because hancum cum and
therefore if the infant will have the
estate he must observe the condi-
tion upon which it was granted.
Bac. Ab. Vol 5, p. 112. Lastly an infant
is bound by all conditions, & in an
original conveyance whether he
comes to the estate by grant or de-
scent. Nil

foregoing authorities establish
that infancy is no protection in
this case from the consequences of
condemnation when the conduct of

granted, and that such claim has
evidenced not only abandonment
- must but not even an intention
to waste or squander, right under
the grant until a period ^{of time} which
by its effect manifestly the in-
tention to claim in consequence
of the enhanced value of the
land, the decree of the Board
respecting this claim must be
affirmed. A decree must
be entered accordingly.

61209.

MS

7
Gentry

See case

61209 ND

PAGE 44

No: 209

Jose' Maria Fuentes

vs

The United States

Appeal Notice -

Petition and Answer -

Deposition of Jose' Abrego -

Index -

209 ND

PAGE 45