

CASE NO.

220

NORTHERN DISTRICT

EMBARCADERO DE
SANTA CLARA GRANT

BARCELIA BERNAL

CLAIMANT

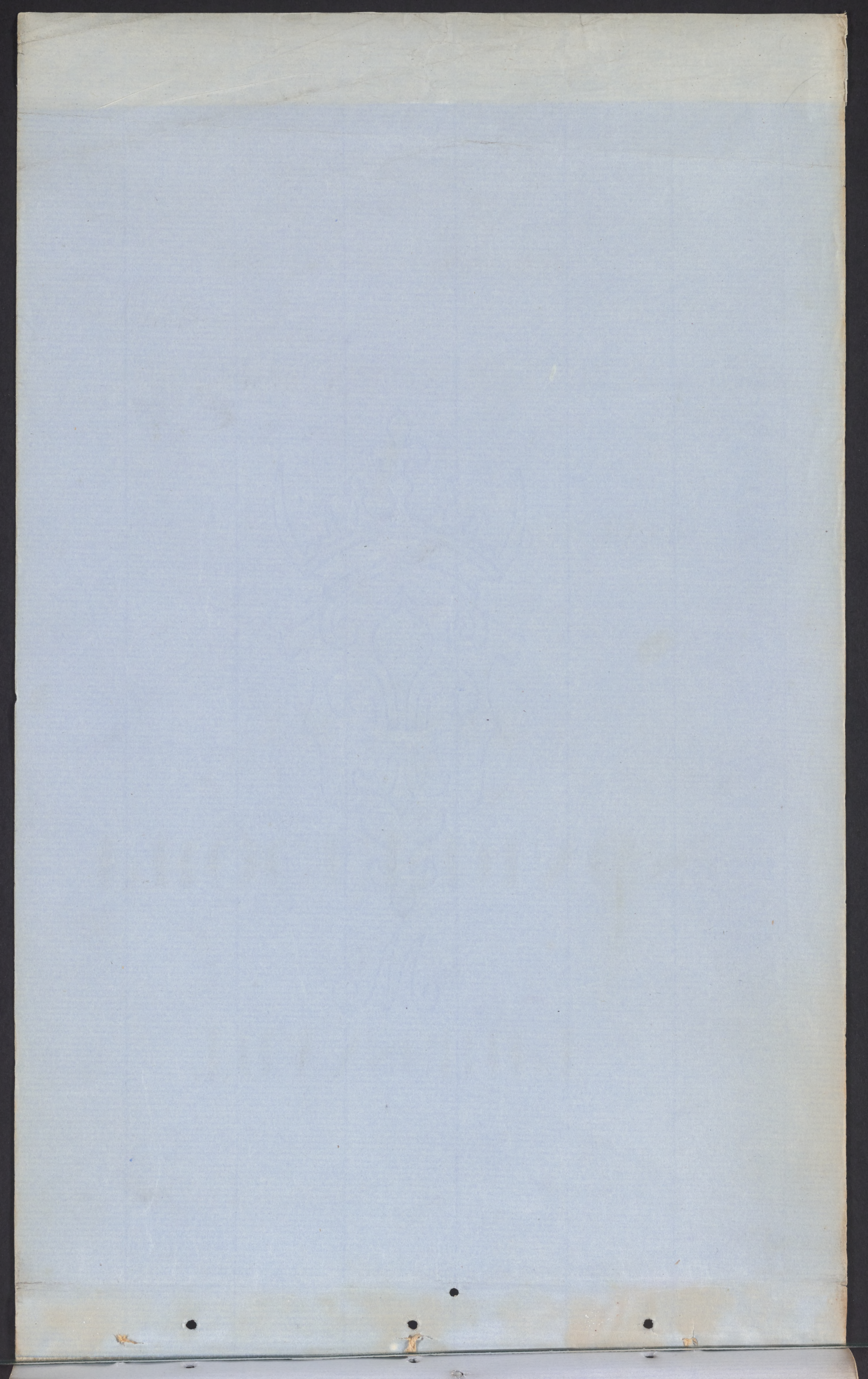
in
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LAND CASE 220 ND. 81 PAGES

NOV 7 1962

ALSO AVAILABLE ON MICROFILM

516



TRANSCRIPT

220 ND
PAGE 1

OF THE

PROCEEDINGS

IN CASE

NO. 576.

Barcelia Bernal

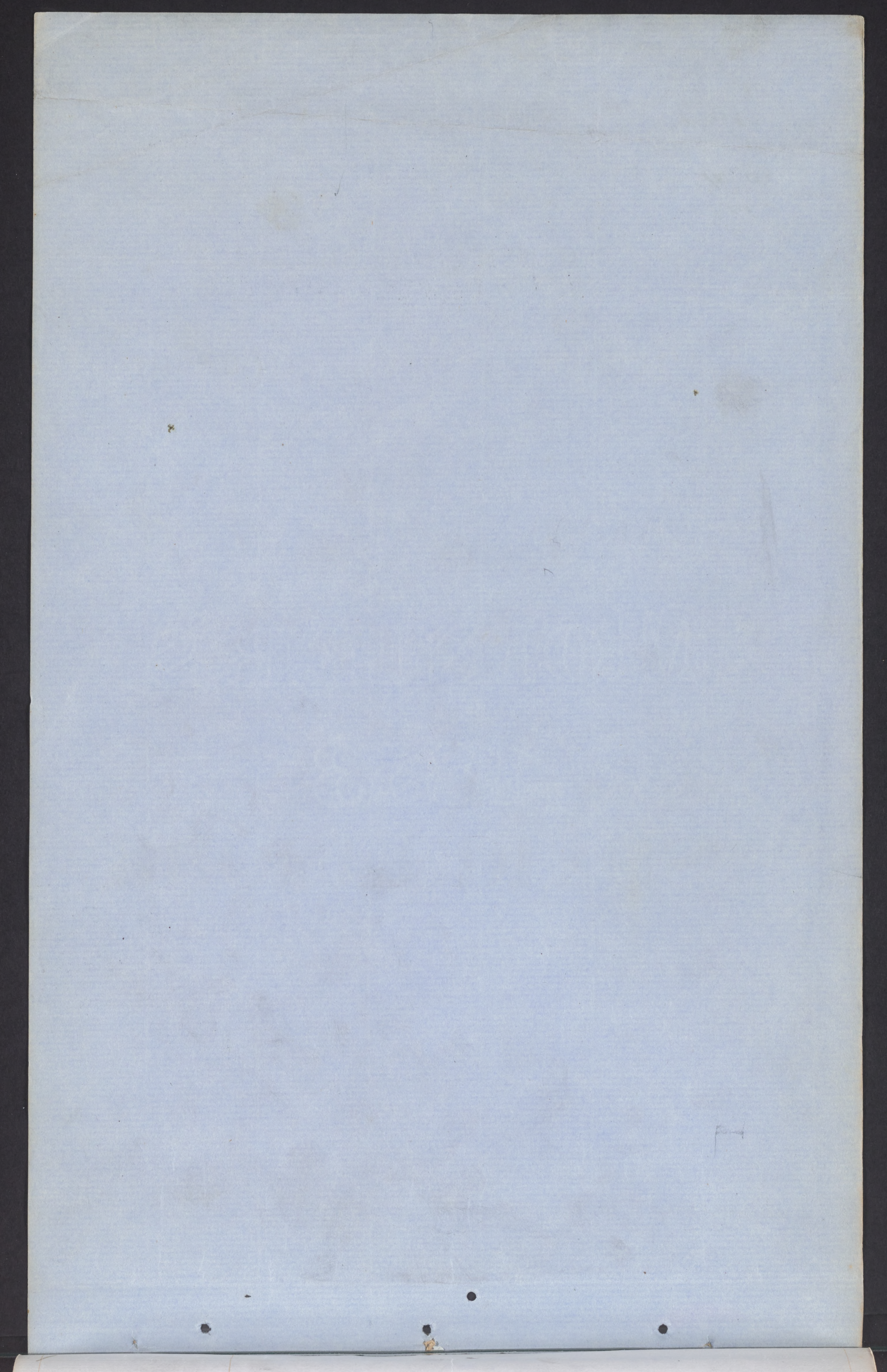
CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Embarcadero de Santa Clara."



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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

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The Petition of Barcelia Bernal,
for the Place named
"Embarcadero de Santa Clara",
was presented, and ordered to be filed and docketed with No. 516 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 November 14' 1853.

In Case no. 516, Barcelia Bernal for the place named "Embarcadero de Santa Clara", the deposition of Antonio Maria Pico, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, with document ^{marked} "A", annexed thereto, was filed;

(Vide page 4 of this Transcript)

San Francisco December 5 1854.

Case no. 516 was submitted on brief and taken under advisement by the Board.

San Francisco December 12' 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the Board concerning the claim;
(Vide page 7 of this Transcript.)

and the following order was made, to wit;

(Vide page 21 of this Transcript.)

1876+

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Petition

To the Board of Commissioners for the
 purpose of ascertaining and setting private
 Land claims in the state of California
 Petitioners of Barcelona Berna & others
 Barcelona Berna respectfully sheweth
 That on the 15th day of June 1845 the
 then existing the power of Governor of
 the Department of Upper California
 and as such only authorized to make
 grants of land within said Depart-
 ment and belonging to the Republic
 of Mexico by virtue of the Decree of the
 15th of August 1824 and the Regulations
 of the 21st November 1828 concided
 and granted to your Petitioners a
 certain tract of land situated in Upper
 California and more being in the county
 of Santa Clara in the state of Califor-
 nia and called the Embarcadero de
 Santa Clara

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Containing all the dimensions
 and square a little more or less than
 the said grant so made by said
 Governor by virtue of the authority of
 said Decree and Regulations to wit

On the
 15th day of September 1845 confirmed
 by the Departmental Assembly of said
 Department and that all the conditions
 in said Grant contained have been
 faithfully fulfilled on the part of
 your Petitioners

And your Petitioners
 further state that there are no dupli-
 cating records remains to said Land
 so far as known to your Petitioners
 and that the Expediente issued to
 your Petitioners has been lost and
 cannot be found after diligent search
 in all places where it was likely to be
 found but that a copy of all the papers
 relating to said Land is on file in
 the Surveyors General's office at San Fran-
 cisco at San Francisco

Your Petitioners

4

Stamp and press your Honorable Board
to compare her title to the said tract of
land and hereby refers to a certified copy
of the expediente humante files & markers
(A) and made apart of this petition
and to such other documents evidence
and testimony of witnesses as he may
be able hereafter to produce
Rico & Burnett
Attorney for Claimant

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PAGE 4

Filed in Office January 17th 1853
Signed

Geo Fisher
Secy

Records in Vol repetition on pages
484, 485 Signed

Geo Fisher
Secy

Depo of
Am. Rico

office of the Board of Commissioners &c &c
This day before the Honorable Board of
Commissioners came Antonio Maria Rico a
witness in behalf of the Claimant
Barcelon Bermeo No 576 who after
being duly sworn deposed as follows
his evidence was given in the Spanish
Language and interpreted by the
Secretary

What is your name age
and place of residence

My name is Antonio Maria
Rico Sampson three years of age and
reside in San Jose

Look at the papers
numbered and marked (A) and
state what are the signatures to the
same are the fac simile signatures
of Maria Bermeo, Manuel Antonio
Maria Bermeo and Augustin Alvarado
and if so state your means of know-
ledge

5- associate Law Agents objects to this
 Question on the Grounds that it is
 not competent to receive signatures
 from clerks

In my opinion these fac-
 similes are the similitude or the same as
 of these persons signatures (my name)
 of knowledge is derived from my
 official correspondence with the parties
 whose names are shown in these
 original signatures all known to me
 in the manner above stated

In what capacity did
 you Sir Pico and Augustus Alvarado
 the year 1845 in the Territory of
 California

Sir Pico was the Mayor
 of the Territory of California Augustus
 was the Secretary of the Territorial Gov-
 ernment and I was the Alcalde of San
 Jose in said year

So you know the Cur-
 rency of Santa Clara and if so
 having have you known it

Known it and have
 known it since the year 1832

So you know of any
 improvements having been made upon
 it and if so by whom and at what
 time

In 1844 the present claim-
 ant Barcia Bernal had a house on
 it at that time and lived in it in the
 family had a corral and fences of
 stock of cattle and horses, and cultivated
 a portion of the land and lived there
 at this time

Do you recollect that judicial
 possession was ever given her and if
 so by whom and when

I have her judicial
 possession of the same as Alcalde in
 1845 and marked out the boundaries
 I have possession of the same with
 a cur in the presence of witnesses con-

6
- running at the north side of the river
at a point where the same enters into
the Bay of San Francisco and running
south. Measurements are taken in
various places and quarters at various
places and quarters at various
times of the San Francisco river as
follows

From that time a square
was measured containing one thousand
various measurements

Reference to the bank of the
river and was in the said square

Acta Ma Ricci
sworn and subscribed
before me this 14th day
of November 1853

Thompson Campbell
Commissioner

Filed in Office November 14th 1853

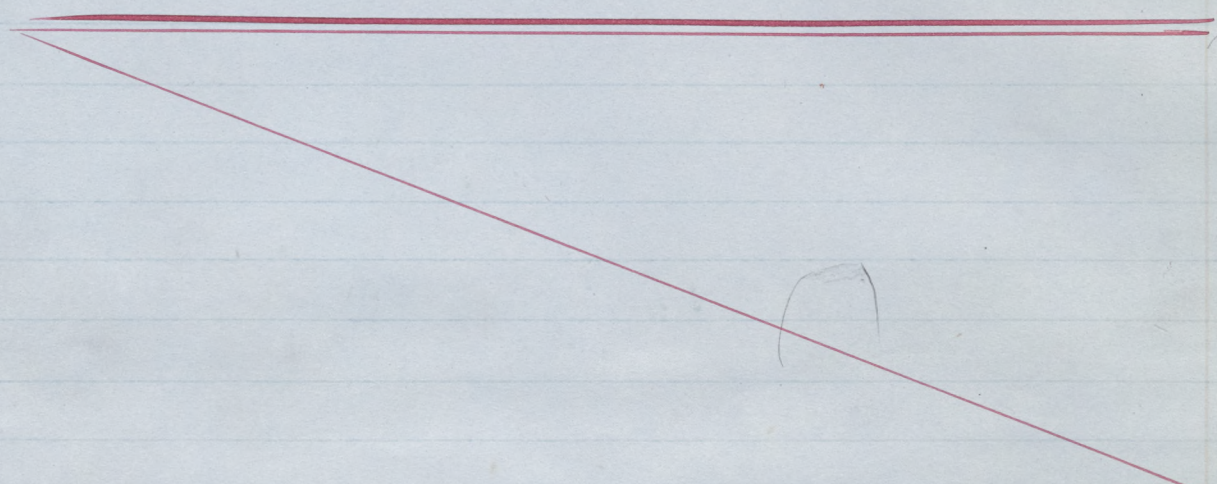
Signed

Geo Fisher
Secy

Recorded in C. B. Volume 3 page 406

Signed

Geo Fisher
Secy



7

1. G. D. R.

516

1845

Expediente

Promovido por D^a Jacilia Benes

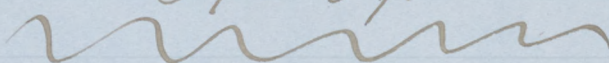
de una cantidad de mil U^o de

Exhibits annex
ed to the Depo
of Antonio M^o
mei taken be
fore Court of
Yuleto.

Tereno. En el Embarcadero

de
San Clara

2154.



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8
2. G. D. R. Sello Quinto medio Real:

Habilitado provincialm^{te} por la Aduana
maritima del puerto de Monterey en el
Departamento de las Californias para
los años de mil Ocho cientos cuarenta
y cuatro y mil ochocientos cuarenta y
cinco.

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Micheltreña

Pablo de la Guerra

Sello

Como Sr. Gobernador

Basilio Bernal natural
de Este Departamento.

Monterey Nov^{ra} 18. } y vecino de la jurisdic
de 1844. Inf^{te} del } cion del pueblo de San
D. D^o del despacho } José Guadalupe ante
tomando prevent^{as} } U. E. con el mas sumiso
los que crea conv^{en} } Respeto y como me halla
n^{tes} } lugar en derecho digo: Que

Micheltreña

hallandose baldio un
terreno como de mil Varas

mas o menos en el Embarcadero de
Sta Clara, emp^{re} terreno ocupa antiguam^{te}
el Sr. D^o Diego Horbeo Consul de O.
M. B. quien existiendo de su derecho
por favor que este señor me hace he tenido
a bien solicitar de la acreditada genero-
sidad de U. E. se sirva concederme en pro-
piedad el expresado terreno para ubicar
en el, mi casa, huerta, Laveros &c. para
de Este modo abitarle de alguna mane-
ra la preciosa subsistencia de mi crecida
familia.

Por. O. A. U. E. pido y su

3. G. D. R.

pliego provea en justicia como llevo pedido de
lo que espero recibir gracia y merced cuando
no ser de malicia. Y lo necesario &c.

pueblo de San José Octubre 20 de 1844

Basilio Bernal

Como dispone el C. D. Gobernador pase
esta solicitud al juez del pueblo de
San José para que informe sobre su
contenido.

Monterey 20 de Octubre de 1844
mand^o D^o J^o J^o

9

Como dispone U. A. informe sobre el contenido, de la precedente instruido, digo que el terreno de que se hace mencion no se halla pretendido por otro interesado y lo que lo solicita lo esta poseyendo ase

2. G. D. R algunos años; y al mismo (Dello Quinto Medio Real) Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil Och. ciento cuarenta y cinco

Micheltrena Pablo de la Buena

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tiempo, tiene finca en el referido terreno, Excesiv, Casa, Corral tierras, Cultivadas, de la labor y Bienes de Campo criadas en el mismo terreno y por culto de derecho es q. la Representante debiera ser apoyada en q. se le concede si el Excmo. Gov. lo estimase conveniente.

Hecho de O.ª José Guadalupe 15 de Mayo de 1845.

Antonio m.º Pico
J. G. D. R Angeles Junio 18. de 1845.
Se le concede a D.ª Basilia Bernal la propiedad del Terreno que pretende; en consecuencia libesele el titulo respectivo.

Pico
Angeles Junio 23 de 1845.
pase a lo Excmo Asamblea del Departamento para su aprobacion.

Pico.
Angeles junio 27 de 1845
Dado cuenta a la Excmo Asamblea Departamental en sesion de hoy con este Expediente se mando pasa a la comision de terrenos Valdios.

Pico Pico. Presdt.
Agustin Olvera Dto.
6. G. D. R Excmo Gov.
La comision de terrenos Valdios habiendose hecho cargo con detenimiento del Expedite

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PAGE 10

promovido Sr. D^o Basilia Bernal en me-
tencion de mil varas de terreno poco mas
o menos en el Embarcadero de Santa
Clara ha En contacto of. las diligencias
practicadas en dicho Expediente fueron
bastantes p^o of. el Gobierno Departament.
le hubiese coneedido legalmente el em-
eado terreno y p^o lo mismo pone la Comi-
sion a la delivacion de U. C. la sig^{ta}
proposicion.

Se aprueba la conoeccion de mil varas
poco mas o menos de terreno, hecha p^o el
superior Gobierno Departamental en titu-
lo librado con fha 18 de Junio del cor^o
cño en favor de D^o Basilia Bernal de
conformidad con la ley de 18 de Ayl^o
de 1824. y el articulo 5^o del Replam^{to}
de 21. de Abril de 1828.

Sala de Comisiones en la Ciudad de
los Angeles Ayl^o 2^o de 1845.

Don E. de la Guerra

Narciso Botello

Angelos Octubre 3. de 1845.

En sesion de este dia. se aprobo por la
Excm^a Asamblea Departamental la
proposicion del dictamen antecedente
mandando se devuelva el Expediente
al Excmo Sr Gobernador p^o los fines
que sean consiguientes.

En la fha de la probacion se cito la copia
a la parte por el Gobro

Pio pieo.

Agustin Olvera

J. L. D. R.

Quella tomada Razon de Este titulo en
el libro correspond^{te}.

Office of the Surveyor
General of the United States for California

I Samuel D. King Sur-
veyor General of the United States for
the State of California and as such now
having in my Office and under my charge

11
and Custody a portion of the Archives
of the former Spanish and Mexican Ter-
ritory or Department of Upper California
do hereby certify that the seven prece-
ding and herewith attached pages of tracing
papers numbered from One to Seven inclu-
sive and each of which is verified by my
initials (L.D.H.) exhibit true and accu-
rate copies of certain documents on file
and forming part of the said Archives
in this Office.

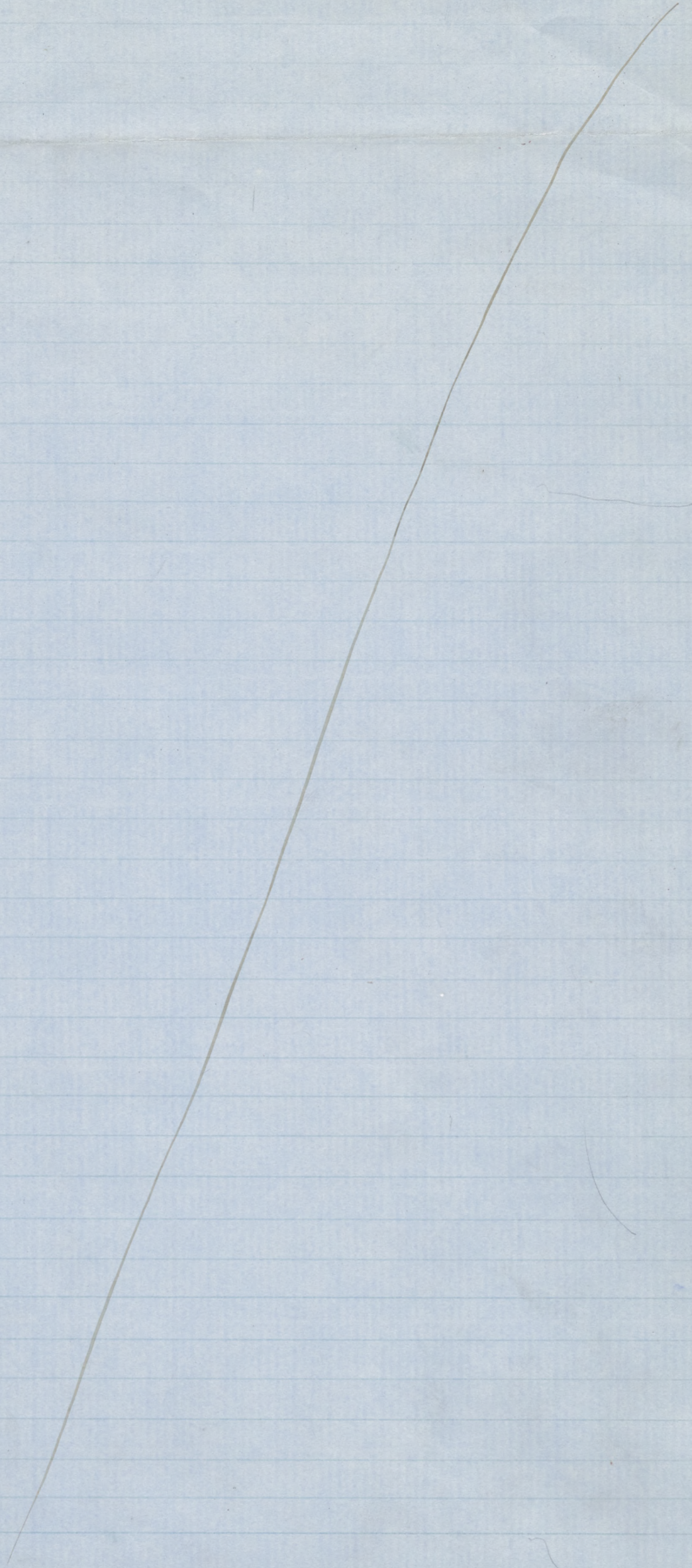
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PAGE 11

Seal In testimony whereof I
have herewith signed my name Offi-
cially and affixed my private seal
(not having a seal of Office) at the City
of San Francisco Cal. this tenth day of
March A. D. 1852.

Saml. D. King
Surv. Gen. Cal.

Filed in Office Jan'y 14th 1853

Geo. Fisher Secy



13

3/5/64

Translation

Fifth seal half a real
amounted & procured by the Maritime
Customs House of the Port of Monterey
in the Department of the Californias
in the year 1844 and 1843

B
Translation
of
E. Expediente

Montaltema Pablo de la Barra
Vice Excellency the Governor
Monterey Nov
18th 1844

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Yorfe born of the Department
the said Montaltema and resident of the
of the office
permits taking of San Jose Guadalupe
the steps thought
necessary

Montaltema

Pacifico Berna Canales
born of the Department
of the said Montaltema
and resident of the
of the office
permits taking of San Jose Guadalupe
the steps thought
necessary
to the most profound
respect as my rights
entitled me to do so

That
this being an appropriate
and a tract of land con-
taining a thousand
maneyas of the same
or less at the lumber co-
ars of Santa Clara which have been
occupied formerly by William Forbes
Esq English Consul and to whom
I desire to give me has given up his
right I desire to take it for my use
I desire your Excellency
that you will be pleased to con-
vict me the property in this of the afo-
said land to establish tomorrow my
house garden cultivated fields &c
in order to give in some way the ne-
cessary subsistence for my own and
family. My favor of your Excellency
I ask and petition intend to make public
which I have solicited as I have for
Grace and Mercy requesting that I have
no other means designs and the means
as in your merits &c

Pablo de San Jose October 25th 1844
Squire P. Berna

14

It is Excellency, the Governor thus disposes
importance of this petition to the favor
of the Public of San Jose that he may
inform himself concerning its contents
Montreal October 20th 1844

Respect

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PAGE 13

Maguel Jimenez
As required by your Excellency I have
informed myself regarding the con-
tents of the annexed Instrument
and report the land of which men-
tion is made is not claimed by any
other party or interest

and the person
now soliciting has been in possession
of the same for some years past and
at the same time he has (apparently)
improvements and the surplus to Land

That
is to say a considerable cultivated
land and fields for raising animals and
stock born on the said land and by
every right I believe that the instrumen-
tation should be admitted and the
same can void if convenient to His
Excellency the Governor

Public of San Jose Guadalupe
15th May 1845

Respect

Antonio Mabeo

Angels June 18th 1845

To

Don Basilio
Bernal is granted the proprietorship
of the land petitioned for in consequence
in which suspicion little be extended

P. C. i

Angels June 23rd 1845

Presented to the
assembly of the Department for its
approval

P. C. i

Angels June 27th 1845

Presented to the
General Assembly in session and thus

4/5-16+

15

Expediente pasado alto conmutado
en un canst Landas,

Signis

Pio Pico

Signis

Agustino Alvarez

Secretary

Excellent Sir

The committee unan-
- canst Landas, having carefully considered
- and the Expediente applied for by
- Don Basilio Bermea petitioning
for one thousand varas of land, a
little more or less at the same value
of Santa Clara have found that the
- exigencies insisted to in said Expedi-
- ente were sufficient grounds upon
which the Departmental Government
may legally have granted said land
- from which the committee submit
the allocation of open land
the following propositions

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That
- the committee approve the conces-
- sion of one thousand varas of land
- a little more or less made by the
- Supreme Departmental Government
- in the instrument with the date 18th
- of June of the present year in favor
- of Don Basilio Bermea in conform-
- ity with the Law of the 18th of August
- 1824 and article 9th of the Regulations
- of the 21st November 1828
- Committee Room City of Los Angeles
- August 27th 1845

Signis

F de la Guerra

Signis

Manuel Puello

Angels September 3rd 1845

In witness where-
- of the Excellent Departmental assembly
- approves the aforesaid proposition
- in the preceding terms commanding

16

that the Expediente be returned to
His Excellency the Governor for the
objects annexed thereto
Signed

Augustin Alvar

On the date of the approbation a
copy of this shall be entered in the
(proper) book for the Government
Signed

Pi Pico

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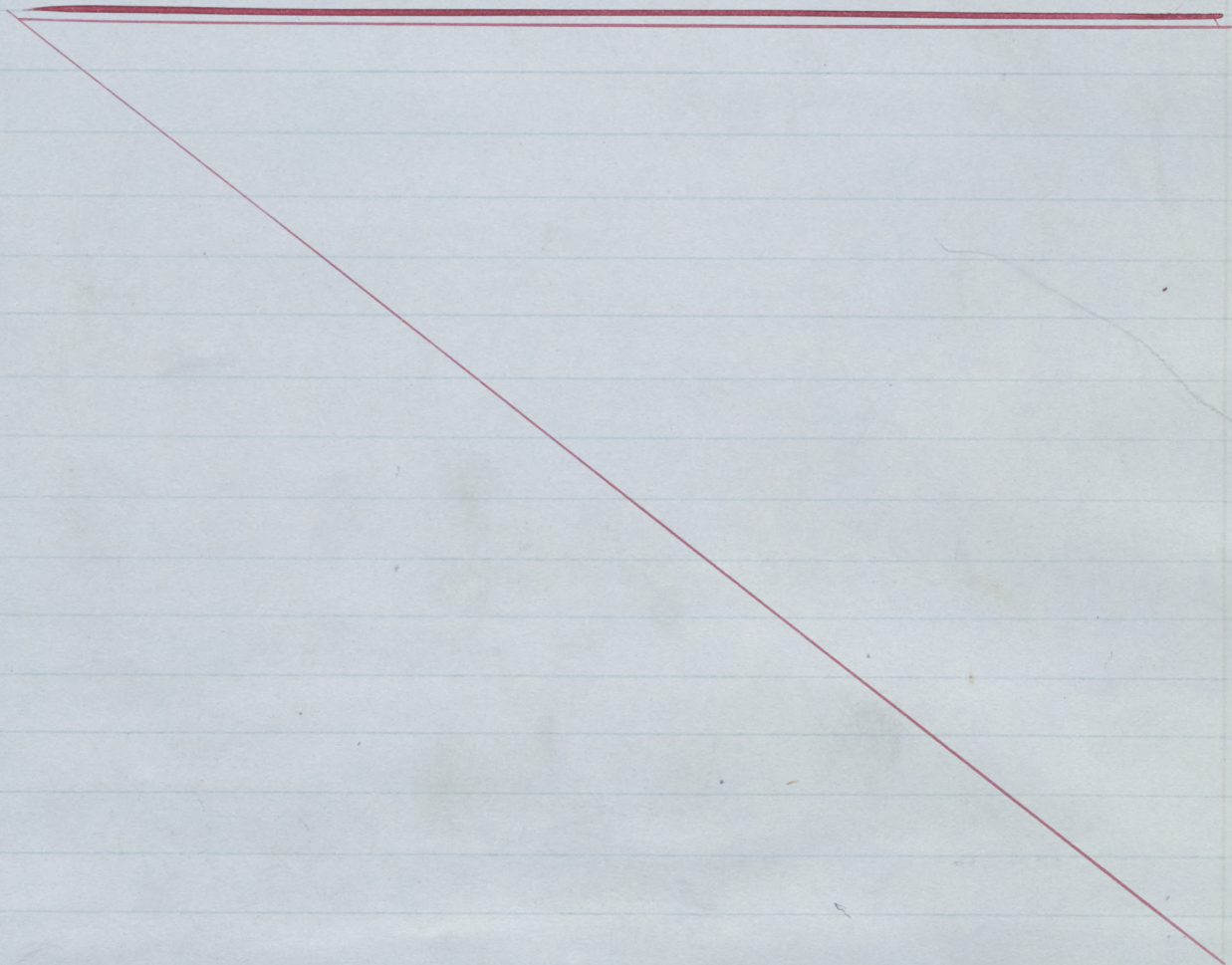
Recorded in the corresponding Book

Filed in Office January 17th 1853
Signed

Gu Fisher
Secy

Recorded in Libreria B. No 17 page 78
Signed

Gu Fisher
Secy



Opinion
of the
Board

Barcelon Bernal
of
The United States

} For the place
} called Embance
} also de Santa Clara
} in Santa Clara Co
} being 1000 varas
} square

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The petitioner claims under a grant
alleged to have been made to his
father by Sumner Pico on the 18th day
of June 1845. The grant is not pro-
duced but the documentary evidence
in the archives bears copies of which
are produced, the petition for the land
the usual proceedings to obtain in-
formation the decree of the Sumner
making the concession and the app-
roval thereof by the departmental
assembly under date of September
3rd 1845 are established.

The claim-
ant has also produced and proved
the original certificate of Sumner
Pico of said approval which docu-
ment was evidently intended as the
evidence upon the

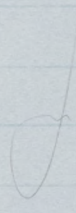
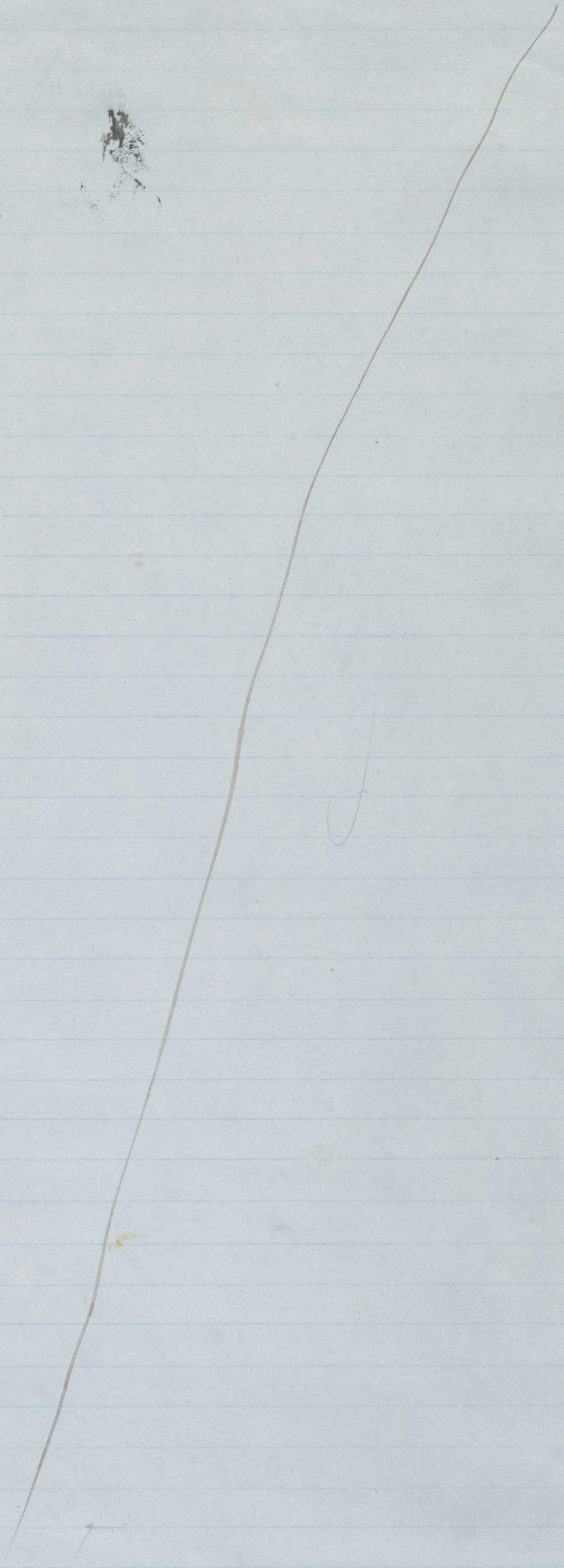
The proof shows
that the land upon and cultiva-
ted the 20th before the obtaining of
grant and has since continued in
occupancy of the same and that
judicial possession was given to
him and the claimant only making
out by an Alcalde in 1845.

The claim
seems to be well founded and will
be confirmed.

Confirmed
Filed in Office December 22th 1854
Geo Fisher

Secy

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Decree Barcilia Bernab
Confirmation of the United States

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

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The land of which confirmation is hereby made is situated in Santa Clara County and is the same occupied by said Claimant and known by the name of Embarradero de Santa Clara and is bounded and described as follows to wit

Commencing at the north side of the River Guadalupe at a point where the same enters into the Bay of San Francisco and running thence south one thousand varas at which point a stake was placed by Antonio Maria Ricci, who as Alcalde Regente judicial possessor of said premises to said Claimant in 1845 the bearing also marked about on the bank of said Guadalupe River as a land mark

Thence west one thousand varas thence north one thousand varas and thence east one thousand varas to the place of beginning

Alphons Felch

Henry Thompson

Commissioner's

Filed in Office of the Secretary 24th 1854

for the Secy

signed
Geo Fisher
Secy

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And if appearing to the satisfaction of
the Board that the Land hereby ad for
acated is situated in the Northern
District of California it is hereby ordered
that two manuscript of the Proceedings
and of the decision in this case and
of the Papers and evidence upon which
the same are founded be made out
and duly certified by the Secretary
one of which manuscripts shall be filed
with the Clerk of the U.S. District
Court for the Northern District of
California and the other be transmitted
to the Attorney General of the U.S.

Office of the Board of Commissioners,

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

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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 *Twenty* pages, numbered from
1 to *20*, both inclusive, to contain a true, correct and full Tran-
script 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. *576* on the Docket of the said Board,
wherein *Burelia Bernal* is —

the Claimant, against the United States, for the place known by
the name of "Embarcadero de Santa Clara"



In Testimony Whereof, I hereunto set my hand
and affix my private Seal (not having a Seal
of Office) at San Francisco, California, this
Twentieth day of *June*
A. D. 1855, and of the Independence of the
United States of America the seventy-ninth.

G. Fisher
G. Fisher

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

No. ~~220~~ **220**

THE UNITED STATES,

MD

vs.

Barrett's Bond.

TRANSCRIPT OF THE RECORD
FROM THE
BOARD OF U. S. LAND COMMISSIONERS,
In Case No. *576*.

Filed, *June 20* 185*9*

Wm. A. Murray,
clerk

Office of the Attorney General of the United States,

Washington, 24. June 1855.

516. J^N Embarcadero de Santa
Cruz
Basilia Bernal, Claimant.

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.

Archiving

Attorney General.

No. 220

W. S. District Court,
Northern Dist. of Cal.

United States

"

Parceia Bernal

Notice of Appeal in
Case No. 516.

Filed Sept 6, 1855,
by Charles
Deputy.

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

The United States
Appellants
vs
Barcilia Bernal
Appellee
Case No 220

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 20th day of
June A.D 1855; that a notice of appeal
was filed on the 6th day of September 1855
& 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
J. W. Ingr
U.S. Dist Atty.

Case No 220

The United States
by

Barcilia Bernal

Petition

Filed Sept 14, 1855.
by Cheever
Deputy.

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Glassell

In the District Court of the United States
for the Northern District of Cal-
ifornia

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Barcilia Bernal
Appellee } Case No 220
vs
The United States
Appellants }

Barcilia Bernal the Appellee in the
above cause by ~~her~~ Attorneys
denies the allegations in the petition
of the Appellants. She alleges that
her claim, set out in the petition filed
before the Board of W.S. Land Com-
missioners and by said Board of Com-
missioners confirmed, is a valid
claim, and that her title is a valid
and equitable title to the land claimed.
Wherefore the Appellee prays that
the said decision of the said
Board of Commissioners be
affirmed and that her
title be decreed by the Court to be
valid

Wallace & Ryland
Attorneys for Appellee

Case No 220

Barcilia Bernal

ads

The United States

Answer

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Lid Sept 14. 1855,
by Chevers
Deputy.

Wallace & Ryland
Attos for Appellee

FILED
AUG 23 1936 3 25 PM
WALTER D. MALING
CLERK

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

-o-

UNITED STATES OF AMERICA,

Appellant,

vs.

Case No. 220.

BARCILIA BERNAL,

Appellee.

PETITION FOR ENTRY OF DECREE OF
CONFIRMATION NUNC PRO TUNC.

The petition of GALLAGHER FRUIT CO., a corporation
incorporated in the State of California, respectfully shows:

I.

Petitioner GALLAGHER FRUIT CO. is a family corporation
incorporated in the State of California, and doing business as
such at Alviso in the County of Santa Clara, State of California.
Its stock is owned by the members of the Gallagher family,
descendants and heirs of BARCILIA BERNAL, the above-named appellee.
RICHARD M. GALLAGHER, President of petitioner, and who verifies

1 this petition in its behalf, is a grandson of the said BARCILIA
2 BERNAL, and is now 72 years old or thereabouts, and was born on
3 the property known as the Rancho Embarcadero de Santa Clara,
4 final confirmation of which is asked by this petition. That from
5 the time he was old enough to remember, he has been acquainted
6 with the possession and ownership of said property, and all facts
7 occurring subsequent to that date herein are made of his own
8 personal knowledge.

9 II.

10 A SHORT HISTORY OF THE GRANT.

11 October 20, 1844, BARCILIA BERNAL, the above-named appellee,
12 who had, for many years prior to said date, been in possession
13 of the Rancho Embarcadero de Santa Clara, the lands herein
14 sought to be confirmed to her, having acquired possession thereof
15 from William Fisher, Esq., British consul, many years before,
16 petitioned Governor Micheltorena of the Department of California,
17 Republic of Mexico, for a grant of an unappropriated tract of
18 land containing 1000 varas, more or less, at the Embarcadero of
19 Santa Clara, and thereafter on

20 October 20, 1844, the Secretary of State, Manl. Jimino,
21 referred the petition to the Judge of the Pueblo of San Jose,
22 and an espediente went forth and was duly returned by Antonio Ma.
23 Pico, certifying that the petitioner had been in possession of
24 the same for some years, and recommending the grant.

25 June 18, 1845, Pio Pico, then Governor of said Department,
26 granted said land to said appellee, and

27 June 23, 1845, referred said grant to the Departmental
28 Assembly for its approval, and

29 September 3, 1845, the said Departmental Assembly approved
30 said grant. Thereafter,

1 January 17, 1853, BARCILIA BERNAL duly petitioned the
2 United States Land Commission, created by the Act of March 3,
3 1851, for a confirmation of said grant, and thereafter such pro-
4 ceedings were had in the matter of said petition of BARCILIA
5 BERNAL that

6 December 12, 1854, the said Land Commission confirmed the
7 said grant.

8 III.

9 PROCEEDINGS IN THE DISTRICT COURT.

10 Thereafter
11 September 14, 1855, pursuant to said Act, the United
12 States Attorney for the Northern District of California filed his
13 appeal from, or application for review of, the decision of said
14 Board of Commissioners, and thereafter

15 September 14, 1855, the said appellee filed her answer to
16 said application for review, and thereafter such proceedings were
17 had in the matter of said appeal and application for review that

18 February 23, 1857, the District Court of the United States
19 for the Northern District of California made its order denying
20 said appeal and affirming said confirmation of said Board of Land
21 Commissioners. Said order was entered in the Minute Book of the
22 United States District Court for the Northern District of
23 California, under date of February 23, 1857, and is as follows:

24 THE MINUTE ORDER OF CONFIRMATION.

25 "February 23, 1857.

26 "The United States,
27 vs.
28 Barcilia Bernal.

No. 220.

29 "In each of these cases a decree confirming the claim
30 was entered by consent of the U. S. Dist. Attorney.

1 No formal decree of confirmation by the said District Court
2 was ever entered, and the failure to enter such formal decree was
3 due to mistake, inadvertence, and excusable neglect, and a conca-
4 tenation of circumstances of which appellee and her successors
5 were victims, no blame for which attaches to anyone.

6 IV.

7 SUCCESSIVE DISQUALIFICATIONS OF COUNSEL.

8 In the proceedings before the Land Commission, BARCILIA
9 BERNAL was represented by Hon. Peter H. Burnett. Pending the
10 proceedings for confirmation, Peter H. Burnett became, first,
11 Governor of the States, and then Judge of the Supreme Court of
12 California, and could act no farther in the matter. In the pro-
13 ceedings on appeal in the District Court of the United States
14 for the Northern District of California, BARCILIA BERNAL was
15 represented by Hon. William T. Wallace of the firm of Ryland &
16 Wallace, but before completing the confirmation, he became Judge
17 of the Supreme Court of California, and could no longer act in
18 the matter, and in the memory and lifetime of the said Richard W.
19 Gallagher, President of petitioner, who verifies this petition,
20 the matter of completing this confirmation was taken up with
21 the Hon. William G. Lorigan, but before he could act in the
22 matter, he became, first, Superior Judge of Santa Clara County,
23 and later Judge of the Supreme Court of California, and could no
24 longer act in the matter.

25 V.

26 Petitioner is now owner of all of the property granted to
27 and occupied by BARCILIA BERNAL.

28 May 26, 1925, petitioner applied to the California Pacific
29 Title Co., a corporation incorporated in the State of California,
30 and engaged in the business of examining and insuring land titles

1 in Santa Clara County, and discovered for the first time that the
2 said proceedings for confirmation had never been completed or
3 eventuated in a patent.

4 THE CONTINUOUS POSSESSION OF APPELLEE
5 AND HER SUCCESSORS AND PETITIONER.

6 At all times since said grant of Pio Pico to appellee
7 herein, appellee, during her lifetime and up to her death,
8 remained continuously in the open, notorious, quiet, peaceable,
9 adverse, and exclusive possession and occupancy of the land
10 granted to her in said grant, and so confirmed to her by said
11 Land Commission, and so ordered to be confirmed to her by said
12 District Court, and ever since her death, her descendants and
13 successors, the Gallagher family, remained continuously in like
14 open, notorious, quiet, peaceable and exclusive possession and
15 occupancy thereof, and ever since their transfer of said land to
16 petitioner, petitioner has been and now is in like open, notorious,
17 quiet, peaceable and exclusive possession and occupancy thereof.

18 VI.

19 THE LAND INTENDED TO BE CONFIRMED.

20 That the land granted to BARCILIA BERNAL was described
21 in said grant and in said decree of confirmation of the said Land
22 Commission as follows:

23 Commencing at the North side of the River
24 Guadalupe at a point where the same enters into
25 the Bay of San Francisco, and running thence
26 south one thousand varas at which point a stake
27 was placed by Anto. Maria Pico when as Alcalde he
28 gave judicial possession to said claimant in 1845,
29 he having also marked a tree on the bank of the
30 said Guadalupe as a land mark.

Thence west one thousand varas, thence
north one thousand varas, and thence east one
thousand varas to the place of beginning.

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Acting under the expediente in said case, Antonio Maria Pico, then Judge or Alcalde of the Pueblo of San Jose, placed BARCILIA BERNAL in juridical possession of the Rancho Embarcadero de Santa Clara, and she remained in possession of said land up to and subsequent to the proceedings in said Land Commission and the decree of confirmation of said Land Commission, and it was the intention and design of said Land Commission to confirm said grant as to the very lands of which the said Antonio Maria Pico, Judge of the Pueblo of San Jose, gave the said BARCILIA BERNAL juridical possession, and of which she was in possession at the time of the decree of confirmation of said Land Commission and the order for judgment of confirmation of said District Court.

VII.

GRANTS AND CONFIRMATIONS OF ADJOINING LANDS.

Prior to the grant to BARCILIA BERNAL, there had been made to Ignacio Alviso, the predecessor of Francisco Berryessa, February 10, 1838, and to Ignacio Alviso, the predecessor of Raphael Alviso, February 10, 1838, grants of land to the east of the Guadalupe under the name of Rancho Rincon de Los Esteros.

The grant to Francisco Berryessa was duly confirmed by the Land Commission, and its confirmation affirmed by the said United States District Court for the Northern District of California, in a proceeding entitled "United States vs. Francisco Berryessa," and numbered 239 in the records and files of said Court.

The grant to Raphael Alviso was confirmed in a similar proceeding before the Land Commission, and said confirmation affirmed in a proceeding in the said District Court, entitled "United States v. Alviso," and numbered 204 in the records and files of said Court, and both said grants were surveyed and patents issued

1 therefor carrying all the land east of the Guadalupe. The effect
2 of the Berryessa and Alviso confirmations was to carve out of
3 Barcilia Bernal's grant all the lands therein east of the
4 Guadalupe, and restrict her to that portion of the Rancho
5 Embarcadero de Santa Clara lying west of the Guadalupe.

6 May 19, 1845, subsequent to said grant to Barcilia Bernal,
7 and the beginning of her adverse and exclusive possession of the
8 Embarcadero de Santa Clara Rancho, a grant was made to Marcelo,
9 Pio and Cristoval, the predecessors of Jacob D. Hoppe, covering
10 lands west of the Guadalupe, known as the Ulistac Rancho. Said
11 grant to Jacob D. Hoppe was confirmed by said Land Commission and
12 its confirmation affirmed, March 2, 1857, in proceedings in said
13 District Court, entitled "United States v. J. D. Hoppe," and
14 numbered 323 in the records and files of said District Court, but
15 the said grant to Hoppe was inferior in point of time to the said
16 grant to Barcilia Bernal, and therefore when the survey of the
17 said Hoppe grant, overlapping the Bernal grant, was made, it was
18 disproved by said Court and a new survey ordered and made, and
19 finally approved ~~in~~ 1866, which excluded the land occupied by
20 the said BARCILIA BERNAL, the appellee herein, and herein sought
21 to be confirmed, as the records in said case show.

22 SHORT HISTORY OF HOPPE SURVEYS AFTER
23 CONFIRMATION.

24 March 3, 1857, the decree of final confirmation in said
25 Hoppe case was made.

26 August, 1857, a survey was made by the United States
27 Surveyor General for California, pursuant to said decree.
28 Objections were filed to said survey, and

29 May 21, 1861, Judge Hoffman filed an opinion rejecting said
30 survey because it included Barcilia Bernal's said Rancho

1 Embarcadero de Santa Clara, and that said "sobrante", as he
2 termed it, must first be set off to her, and

3 January 29, 1863, said Court made its formal order
4 rejecting and setting aside said survey.

5 August 29, 1866, a second survey was made by said
6 Surveyor General, pursuant to said decree, and

7 October 15, 1866, said second survey was filed with
8 said Court, and

9 November 24, 1866, said Court made its final decree
10 approving said second survey, and thereafter on

11 October 12, 1868, patent duly issued from the United
12 States to the heirs of said Hoppe to the lands described in
13 said confirmed second survey.

14 That until said conflict between the survey of said
15 Hoppe grant to said Ulistac Rancho and the said Embarcadero de
16 Santa Clara granted to the appellee herein was settled and
17 resolved, it was futile and pointless to enter final decree of
18 confirmation herein, and that in all probability was the reason
19 said Wallace deferred asking for entry of final decree herein.
20 Had he done so after the settlement of said conflict, he must
21 even then have asked for a decree nunc pro tunc, and required
22 the Court to go back ten years with its nunc pro tunc order,
23 and nothing has transpired since that date to change the
24 equities in favor of said appellee and her successors, except the
25 lapse of additional time.

26 PETITIONER OWNS ALL HOPPE LAND ADJOINING
27 BERNAL RANCHO.

28 Petitioner GALLAGHER FRUIT CO. is now the owner of all
29 the lands of the said Hoppe grant, the Ulistac Rancho, immedi-
30 with the exception of 7/16 of a mile at the S.W. corner thereof,
ately adjoining said Embarcadero Rancho, and no conflict of

1 title between the present owners of the Hoppe Ulistac Grant and
2 the Embarcadero de Santa Clara Grant can possibly result from
3 the final confirmation of the latter grant.

4 Appended hereto is a photostat of the survey November 24,
5 1866, of the Hoppe Grant, called the Ulistac Rancho, finally
6 approved, showing the lands occupied by BERCILIA BERNAL, lettered
7 "Embarcadero Rancho", and of which she was given juridical
8 possession, and which the Land Commission intended to confirm
9 in its said decree of confirmation. Petitioner's adjoining holdings
10 are lined thereon in pencil.

VIII.

EQUITABLE REASONS FOR GRANTING THE
DECREE.

11
12
13 There are many equitable reasons why the final decree
14 of confirmation should be made and entered as of the date of
15 the order for judgment herein.

16 Barcilia Bernal was a Mexican citizen up to the time of
17 the annexation of California, and totally ignorant of American
18 laws. She first employed Peter H. Burnett, first Governor of
19 California, to obtain her confirmation. Before the proceedings
20 were over, Peter H. Burnett became a Judge of the Supreme Court
21 of California, and unable to act further for her. In the pro-
22 ceedings on the appeal in the District Court, Barcilia Bernal
23 was represented by William T. Wallace of the firm of Ryland &
24 Wallace, who filed her answer to the government's appeal.

25 Thereafter the Court dismissed the appeal and ordered the appeal
26 dismissed and the judgment affirmed. At the time of the affirm-
27 ance of said judgment, it was the understanding of the bar of
28 California that the appeal from the decision of the Land
29 Commission was simply an equitable review of the decision of the
30 Land Commission, and that an order for its affirmance was tanta-

1 mount to a judgment of dismissal, and it operated to affirm that
2 decision without more; that if the proceedings were proceedings
3 in equity, the order of the Court affirming the decree of the
4 Land Commission was, under the Chancery practice, a decision
5 from the time it emanated from the breast of the Court, and
6 that no written or signed decision was necessary to make it
7 effective. (2 Daniel Ch. Pr. 671; Barbour Ch. Pr. 341.) But
8 in the year 1864, the Supreme Court of the United States held
9 that a final judgment of confirmation in the United States
10 District Court on an appeal from a decision of the Land
11 Commission must be written, signed by the judge and entered, and
12 that there was no judgment until this had been done. (U. S. v.
13 Gomez, 1 Wall. 690.) The District Court so held in 1870 in
14 U. S. v. Garcia, 1 Sawy. 383, and the Circuit Court of California
15 so held in 1887 in Bouldin v. Phelps, 30 Fed. 547, 578.

16 As a result of these holdings, the confirmees of Spanish
17 grants who had relied on the Chancery rule were compelled to pro-
18 cure entry of decrees, and many decrees ~~xxxxxxxxxxx~~
19 ~~xxxxxxx~~ were entered nunc pro tunc as of the date of
20 the order for judgment.

21 Before William T. Wallace could act in the matter, he
22 became a member of the Supreme Court of California and could no
23 longer act in this matter. Until the conflict between the
24 survey of the Ulistac Rancho and the Rancho Embarcadero de Santa
25 Clara was removed in 1870, the entry of the final decree herein
26 would have been futile.

27 Many years thereafter, the Gallagher family, learning
28 there was some question about their title to the Embarcadero de
29 Santa Clara, employed the late William G. Lorigan to perfect
30 their title, and his correspondence indicates that he planned a

1 proceeding similar to this present petition, but before he could
2 act in the matter, he became a Superior Judge and could no longer
3 act in the matter.

4 Barcilia Bernal and her descendants, at all times sub-
5 sequent to the order of the District Court for confirmation,
6 relied upon said order, and believed that the proceedings had
7 been completed, until finally on May 26, 1925, or thereabouts,
8 their attorney was advised by the California Pacific Title Co.
9 that no patent had ever been issued for the land confirmed.
10 Thereafter the Gallagher family and the Gallagher Fruit Co.,
11 their successor, caused inquiries to be made of the Land Office,
12 the District Court, and the Surveyor General's Office, and found
13 that the above-entitled confirmation proceedings had never been
14 completed. In 1930 tentative arrangements were made with E. B.
15 Carrier, an attorney at law, learned in the law of public lands
16 of the United States, and in the practice in the United States
17 Land Office, then associated with the United States Attorney's
18 Office in the capacity of a special assistant, to undertake this
19 proceeding, but before he could move in the matter, the said E.B.
20 Carrier became disabled, and later died.

21 That by reason of the existence of said Spanish grant
22 to Barcilia Bernal, and the proceedings in confirmation and
23 decree of confirmation, the said lands were withdrawn from the
24 public domain, and it is not now possible to obtain a homestead
25 entry thereon, for the reason that the Land Commission Act only
26 authorizes entry under the homestead laws of lands claimed under
27 Spanish Land Grants, where the validity of the grants thereto
28 was finally held to be invalid by the said Land Commission or
29 United States District or Supreme Court. (9 Stats. 631, section
30 13.)

1 Said Bernal grant has been duly and regularly confirmed by
2 the Land Commission, and ordered confirmed by the United States
3 District Court, and petitioner is entitled as a matter of right
4 and justice to have a final decree of confirmation made and
5 entered, a survey made, and patent issued. Petitioner has for
6 many years been and is now embarrassed by its lack of patent
7 title to the above-entitled property, and cannot sell or mortgage
8 the same by reason thereof.

9 THIS COURT THE SUCCESSOR OF THE COURT
10 ORDERING THE CONFIRMATION ORIGINALLY AND
11 AUTHORIZED TO ACT.

12 That this Court, the United States District Court for the
13 Northern District of California, is the successor of the District
14 Court of the United States for the Northern District of California,
15 which duly made its said order directing confirmation of said
16 grant, and has full power to make a judgment of confirmation nunc
17 pro tunc as of the date of the original order of said Court for
18 confirmation. But an entry of a judgment of confirmation as of
19 this date will not suffice, for the reason that the rules of terms
20 of the United States Court prevent rendition or entry of a judg-
21 ment after the term in which the decision was made, and without
22 an order of this Court entering the decree nunc pro tunc the
23 Clerk has no authority to enter judgment after the term.

24 THE STATUTES OF THE UNITED STATES CONTEMPLATED
25 THIS VERY PROCEEDING.

26 July 23, 1866, long after active litigation of the Spanish
27 Grant cases, Congress passed an act making it the duty of the
28 Surveyor General of the United States for California to cause the
29 lines of the public surveys to be extended over land included in
30 Spanish Grants, "In all cases where a like claim (to land by
virtue of a title derived from the Spanish or Mexican authorities)

1 shall hereafter be finally confirmed" within 10 months after
2 "such final confirmation hereafter made." (14 Stats. 218,
3 section 8.) So far as we can learn, this act is unrepealed and
4 still the law of the United States.

5 ORIGINAL APPELLEE DEAD.

6 Furthermore, BARCILIA BERNAL, appellee, is dead and a
7 judgment as of this date in her favor will be ineffective, and
8 further the Land Commission Act expired by its own terms within
9 two years from the date of its passage, and proceedings for con-
10 firmation thereunder not now completed cannot now be begun again.

11 Because appellee's prior possession intervened, the grant
12 under which said Hoppe claimed could not affect the land occupied
13 by appellee, and said land, being occupied by appellee, was with-
14 drawn from the power of the Mexican Governor to grant, except to
15 appellee, and therefore said Court ordered a new survey of the
16 Ulistac Rancho excluding it, and none of the successors of said
17 Hoppe now have or make any claim to any part of the lands ordered
18 to be confirmed to appellee by said Court.

19 No rights of any third parties have intervened since the
20 date of said order for confirmation, but all subsequent rights in
21 said property have been subject and subsequent to, and under, by
22 and through the rights of BARCILIA BERNAL, and not in any respect
23 adverse thereto. The United States of America now claims no
24 right, title or interest in or to said premises.

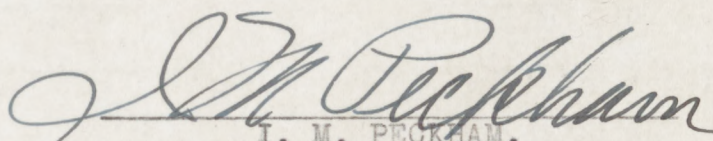
25 That equity and justice require that the decree of confir-
26 mation be entered nunc pro tunc as of the date of the order
27 therefor, February 23, 1857.

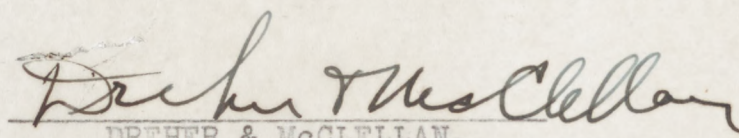
IX.

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2 Appended hereto are a copy of the Transcript of the Pro-
3 ceedings before said Land Commission, and the papers on file in
4 said Court, and said copy is hereby referred to and incorporated.

5 Appended hereto also is a copy of the proposed decree of
6 confirmation, containing an order for its entry nunc pro tunc
7 as of February 23, 1857, which petition^{er} prays the Court to sign
8 and order entry of nunc pro tunc.

9
10 WHEREFORE, petitioner prays that a formal written judgment
11 of confirmation be made by this Court formally confirming the
12 said grant of BARCILIA BERNAL, and that the Court make its
13 further order directing such judgment to be entered nunc pro tunc
14 as of February 23, 1857.

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17 
18 I. M. PECKHAM.
Attorney for Petitioner.

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20 
21 DREHER & McCLELLAN.
Of Counsel.

1 State of California,)
County of Santa Clara.) ss.

2
3 RICHARD M. GALLAGHER, being first duly sworn, deposes
4 and says:

5 That he is an officer, to-wit, President, of GALLAGHER
6 FRUIT CO., the petitioner in the above-entitled matter, and as
7 such officer makes this verification on its behalf; that affiant
8 has read the foregoing PETITION and knows the contents thereof;
9 that the same is true of his own knowledge, except as to those
10 matters which are therein stated on his information and belief,
11 and as to those matters that he believes it to be true.

12
13 *Richard M. Gallagher*
14

15 Subscribed and sworn to before me
16 this 23rd day of August, 1935.

17 *J. B. Peckham*

18 Notary Public in and for the County
of Santa Clara, State of California.

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ULISTAC RANCHO

finally confirmed to
H B I R S

Jacob D. Hoppe
surveyed under instructions
from the
U. S. Surveyor General

J. B. Freeman, Dep. Sur. August 1857
and by
John Reed, Dep. Sur. April 1866
containing **227 1/2 Acres**
Scale 20 chs to 1 inch



Boundaries				Public			
Course	Distance	Course	Distance	Course	Distance	Course	Distance
S 33° E	3.00	N 77° W	2.50	S 27° E	4.00	S 33° E	4.00
S 11° E	4.00	N 77° W	2.50	S 36° E	3.00	S 36° E	3.00
N 44° W	2.00	N 77° W	1.50	S 70° E	1.50	S 70° E	1.50
S 23° E	3.00	N 77° W	2.00	S 70° W	1.50	S 70° W	1.50
N 42° E	2.00	N 77° W	1.00	S 73° E	1.50	S 73° E	1.50
N 42° E	2.00	N 77° W	1.00	S 77° E	1.50	S 77° E	1.50
N 30° E	3.50	N 77° W	1.50	S 81° E	1.50	S 81° E	1.50
N 30° E	3.50	N 77° W	1.50	S 84° E	1.50	S 84° E	1.50
N 16° W	2.00	N 77° W	1.00	S 87° E	1.50	S 87° E	1.50
N 16° W	2.00	N 77° W	1.00	S 90° E	1.50	S 90° E	1.50
N 16° W	2.00	N 77° W	1.00	S 93° E	1.50	S 93° E	1.50
N 16° W	2.00	N 77° W	1.00	S 96° E	1.50	S 96° E	1.50
N 16° W	2.00	N 77° W	1.00	S 99° E	1.50	S 99° E	1.50
N 16° W	2.00	N 77° W	1.00	S 102° E	1.50	S 102° E	1.50
N 16° W	2.00	N 77° W	1.00	S 105° E	1.50	S 105° E	1.50
N 16° W	2.00	N 77° W	1.00	S 108° E	1.50	S 108° E	1.50
N 16° W	2.00	N 77° W	1.00	S 111° E	1.50	S 111° E	1.50
N 16° W	2.00	N 77° W	1.00	S 114° E	1.50	S 114° E	1.50
N 16° W	2.00	N 77° W	1.00	S 117° E	1.50	S 117° E	1.50
N 16° W	2.00	N 77° W	1.00	S 120° E	1.50	S 120° E	1.50
N 16° W	2.00	N 77° W	1.00	S 123° E	1.50	S 123° E	1.50
N 16° W	2.00	N 77° W	1.00	S 126° E	1.50	S 126° E	1.50
N 16° W	2.00	N 77° W	1.00	S 129° E	1.50	S 129° E	1.50
N 16° W	2.00	N 77° W	1.00	S 132° E	1.50	S 132° E	1.50
N 16° W	2.00	N 77° W	1.00	S 135° E	1.50	S 135° E	1.50
N 16° W	2.00	N 77° W	1.00	S 138° E	1.50	S 138° E	1.50
N 16° W	2.00	N 77° W	1.00	S 141° E	1.50	S 141° E	1.50
N 16° W	2.00	N 77° W	1.00	S 144° E	1.50	S 144° E	1.50
N 16° W	2.00	N 77° W	1.00	S 147° E	1.50	S 147° E	1.50
N 16° W	2.00	N 77° W	1.00	S 150° E	1.50	S 150° E	1.50

220 ND

PAGE 41

Sec 34 Sec 35
Sec 3 Sec 2

The field notes of the Rancho Ulistac, and from which this Plat has been made out, have been examined and approved and are on file in this office

U. S. Surveyor General's Office
San Francisco, California
August 20th 1866

Platyrrhina ulista Ronches (photostat)

Photostat.

220 N.D

P. #1

"Embarcadero de SANTA CLARA"
Barcelia Berreal, Unit

SANTA CLARA Co

474 R.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

-o-

UNITED STATES OF AMERICA,

Appellant,

vs.

Case No. 220.

BARCILIA BERNAL,

Appellee.

MEMORANDUM OF POINTS AND AUTHORITIES.

The making of a nunc pro tunc order directing the entry of a decree of confirmation in such a case as this is a proper act of the Court and fully authorized by the law.

Reference is made to the repeated action of District Judge Hoffman in entering nunc pro tunc decrees in eight companion cases to U. S. v. Bissell & Aspinwall. In eight of the list of cases in which on March 2, 1857, a minute entry was made to the effect that a decree of confirmation was entered by consent of the United States Attorney, nunc pro tunc decrees were entered,

one as of October 18, 1878, or twenty-one years thereafter, and seven in 1880, or twenty-three years thereafter.

Reference is also made to similar action in the case of

U. S. v. Gomez, 1 Wall. 690.

The inherent power of courts of law to order the entry of judgments nunc pro tunc is a practical application of the maxim "actus curiae neminem gravabit" (an act of the court shall prejudice no man). The following are the leading federal cases standing for the proposition that judgment nunc pro tunc may be entered in cases where a judgment has been made or rendered at a previous time but not entered on record for any cause such as neglect on the part of the court or the clerk of the court:

- In re Wight, Petitioner, 134 U. S. 136;
- Gray v. Brignardello, 68 U. S. 627;
- U. S. v. Chicago & Alton R. Co., 250 Fed. 101;
- International Harvester Co. of America v. Carlson, 217 Fed. 736.

In Gray v. Brignardello, supra, at p. 636, the court say:

"If the court had said, that on the 7th day of April, the report of the Commissioner was approved, and the sale ordered, but through inadvertence or neglect on the part of the court or its officers proper entries were not made, then it might well be argued that a nunc pro tunc decree could be made. A nunc pro tunc order is always admissible when a delay has arisen from an act of court."

In International Harvester Co. v. Carlson, supra, the court say, at p. 738:

"In the motion it was pointed out that the original order had never been entered of record and had been lost or mislaid. We think the court had power to supply this record at a subsequent term. Its authority to do so is supported by decisions of the Supreme Court and of this court."

1 In U. S. v. Chicago & Alton Ry. Co., supra, the court
2 say, at p. 102:

3 "While it is extremely doubtful whether what
4 appears in the transcript as a judgment amounts
5 to a judgment, there was presented to this court a
6 supplemental record showing that subsequent to the
7 suing out of the writ of error the District Court
8 made an order for entry of judgment nunc pro tunc
9 as of the date of the purported judgment which the
10 transcript shows. It is evident to us that failure
11 of the clerk to enter judgment in the first place
12 in accordance with the court's direction therefor at
13 that time minuted, was an omission which in the
14 interest of justice may and ought to be supplied,
15 and that it has been in this manner properly supplied.
16 Judgment thus appearing, the contention in that
17 respect fails."

18 In Marshall v. Taylor, 97 Cal. 422, 426-27, the court say:

19 "The rule is, that where the court has
20 actually rendered a judgment, but the same has not
21 been entered on the record, whether in consequence
22 of neglect of the court or the neglect or misprision
23 of the clerk, an order may be made that the judgment
24 rendered may be entered nunc pro tunc, and this may
25 be done after the expiration of the term,- in this
26 state after the expiration of six months. Such an
27 order was made in a case although nearly eight years
28 had elapsed, it appearing that the third persons
29 would not be injured thereby. In such a case the
30 effect of the order is simply to supply matters of
evidence. The record is merely amended by inserting
in the memorial of the proceedings that which has
been improperly omitted therefrom. I Black on
Judgments, sections 128-133."

1 In Mitchell v. Overman, 103 U. S. 62, 64, a decree nunc pro
2 tunc was rendered as of the term in which the case was heard and
3 submitted, the plaintiff having died while the case was under
4 advisement. The Supreme Court said:

5 "We content ourselves with saying that the
6 rule established by the general concurrence of the
7 American and English courts is that where the delay
8 in rendering a judgment or a decree arises from the
9 act of the court, that is, where the delay has been
10 caused either for its convenience, or by the multi-
11 plicity or press of business, either the intricacy of
12 the questions involved or of any other cause not
13 attributable to the laches of the parties, the judg-
14 ment or the decree may be entered retrospectively,
15 as of a time when it should or might have been entered

1 up. In such cases, upon the maxim of actus curiae
2 neminem gravabit,- which has been well said to be
3 founded in right and good sense, and to afford a safe
4 and certain guide for the administration of justice,-
5 it is the duty of the court to see that the parties
6 shall not suffer by the delay. A nunc pro tunc order
7 should be granted or refused, as justice may require
8 in view of the circumstances of the particular case."

9 To the same effect is Citizens' Bank v. Brooks, 23 Fed. 21,
10 in which it was held that when the whole case is in the hands of
11 the court and before its decision is rendered the defendant dies,
12 a judgment may be rendered as of the date in the term when the
13 last of the evidence was submitted.

14 Under the rule of Fox v. Hale & Norcross Co., 108 Cal. 478,
15 it becomes unnecessary for us to speculate as to whether or not,
16 in this case, the District Court ever did actually render
17 judgment, for judgment nunc pro tunc may be rendered as well as
18 entered as of a date in the past, providing the cause was in
19 condition for judgment at that date and the delay in rendering
20 judgment was attributable to the court or its officers and not
21 to the parties.

22 In In re Wight, Petitioner, 134 U. S. 136, a judgment nunc
23 pro tunc was entered although the previous rendition of judgment
24 was substantiated only by the recollection of the judge. In
25 this case there is no doubt whatever but that entries in the
26 Clerk's minute book are amply sufficient on which to base the
27 entry of a judgment nunc pro tunc.

28 Freeman on Judgments, 5th Ed., Sec. 127;
29 Black on Judgments, 2d Ed., Sec. 135;
30 In re Cook, 77 Cal. 220;
Rodgers v. Brey, 51 S. W. 191.

Freeman on Judgments, 2nd Ed., Sec. 127, says:

"If the fact that the rendition of the
judgment sufficiently appears from the minutes of
the court, it may be ordered nunc pro tunc, although

1 no written decision was filed and no final judgment
2 was signed by the judge or prepared by the attorneys.
3 * * * Entries in minute books in the judge's notes
4 and endorsements of the clerk on papers filed in the
5 case may be sufficient. The motion docket being a
6 book required by law to be kept, the memorandum there
7 made are competent evidence to show the rendition of
8 judgment."

9 In *Monarch v. Brey*, supra, 51 S. W. at 192, the court say:

10 "Third. That there was not sufficient evidence
11 upon which to enter the judgment nunc pro tunc.
12 The clerk's minutes showed an entry as follows:

13 'Brey
14 12,435 v. Judgt.
15 Thomas.'

16 This entry gives the style of the case, the case
17 number, and abbreviation for 'judgment', is quite
18 as full as such entries in the minutes usually are,
19 and we think sufficient upon which to base the entry
20 of the judgment nunc pro tunc."

21 The following cases show that judgment nunc pro tunc have
22 been entered after long periods of years:

23 In re Cook, 77 Cal. 220 (5 years);
24 Vaughn v. Fitzgerald, 112 Ga. 517 (9 years);
25 Zahorka v. Geith, 129 Wis. 498 (14 years);
26 Reed v. Morton, 119 Ill. 118 (16 years);
27 Downe v. Lewis, 11 Ves. (England) 601, (18 years);
28 Lawrence v. Richmond, Jacob and W., (England)
29 241, (23 years);
30 Rogers v. Bigstaff's Executor, 176 Ky. 413,
(55 years).

In this case no third party was or could be prejudiced by
the entry nunc pro tunc because by the special terms of the Land
Commission Act of 1850, the judgments therein rendered are con-
clusive only on the parties, to-wit, the claimant and the United
States, and all persons claiming by, under or through either.

California Powder Works v. Davis, 151 U. S. 389.

And see

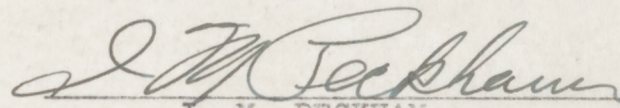
U. S. v. Garcia, 1 Sawyer 383; 25 Fed. Cas. No.
15, 186.

In *Bouldin v. Phelps*, 30 Fed. 564, (1889), the court con-
ceded that there was nothing to hinder the United States "from
having the decree entered in pursuance of the order" in that
case.

1 This Court is the successor of the District Court for
2 the Northern District of California, that made the order of
3 February 23, 1857. 14 Stats. 300, abolished the Southern
4 District of California, but did not change the jurisdiction of
5 the court of the Northern District as to pending proceedings.
6 In 24 Stats. 308, (1886) the District Court for the Southern
7 District of California was re-created, but section 4 of that act
8 retains the power of the District Court of the Northern District
9 of California over cases then pending in that court.

10 Judicial Code, section 59, retains the jurisdiction in
11 this court. (28 U. S. C. A. 121, 122.)

12 Before we could make a homestead entry on the lands we
13 occupy, our grants will be declared invalid by the Supreme
14 Court of the United States. (R. S. 2280.)

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I. M. PECKHAM.
Attorney for Petitioner.

21 *Creeker + McClellan*
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THE NOTICE OF APPEAL.

Letterhead

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Office of the Attorney General of the United States
Washington, 29 June 1855

516-J "Embarcadero de Santa Clara" Barcilia Bernal, Claimant

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.

Reverse side: No. 220 United States District Court Northern District of California - United States v. Barcilia Bernal - Notice of Appeal in case No. 516 - Filed September 6, 1855, by Chevirs, Deputy.

(With Record - on file)

THE PETITION FOR REVIEW.

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TO THE HONORABLE DISTRICT COURT OF THE UNITED STATES IN AND
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE UNITED STATES,

Appellants,

vs.

BARCILIA BERNAL,

Appellee.

)
Case No. 220

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 20th day of June, A. D. 1855; that a notice of appeal was filed on the 6th day of September, 1855, and that the land claim 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,

S. W. Inge,

United States District Attorney.

Reverse Side: Case No. 220, The United States v. Barcilia Bernal,
Petition Filed September 14, 1855 by Chevirs,
Deputy.
Glassell.

(With Record on file)

ANSWER OF BARCILIA BERNAL, CLAIMANT.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

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-o-

BARCILIA BERNAL,

Appellee,

ads.

THE UNITED STATES,

Appellants.

Case. No. 220

Barcilia Bernal, the appellee in the above cause, by her attorneys denies the allegations in the petition of the appellants. She alleges that her claim set out in the petition filed before the Board of the United States Land Commissioners and by said Board of Commissioners confirmed, is a valid claim, and that her title is a valid and equitable title to the land claimed. Wherefore, the appellee prays that the said decision of the said Board of Commissioners be affirmed and that her title be decreed by the court to be valid.

Wallace & Ryland,
Attorneys for Appellee.

Reverse side: Case No. 220, Barcilia Bernal ads. The United States Answer. Filed September 14, 1855 by Chevirs, Deputy. Wallace & Ryland, attorneys for appellee.

(With record - on file)

MINUTE ORDER.

Min. Book. U. S. Dist. Ct. N. D. Cal.
"Feb. 23, 1857.

* * *

"The United States vs. Barcilia Bernal, No. 220."

* * *

"In each of these cases a Decree confirming the claim
was entered by consent of the U. S. Dist. Attorney."

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TRANSCRIPT OF PROCEEDINGS BEFORE
LAND COMMISSION.

(Title Page)

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Transcript of the Proceedings in Case No. 516.

Barcelia Bernal, Claimant,

vs.

The United States, Defendant,

For the place named

"Embarcadero de Santa Clara"

Office of the Board of Commissioners,

To ascertain and settle the private land claims
in the State of California.

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BE IT REMEMBERED, that on this seventeenth day of January, Anno Domini one thousand eight hundred and fifty-three, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit;

The petition of Barcellia Bernal for the place named "Embarcadero de Santa Clara" was presented and ordered to be filed and docketed with No. 516 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 November 14, 1853

In Case No. 516 Barcellia Bernal for the place named "Embarcadero de Santa Clara" the deposition of Antonio Maria Pico, a witness in behalf of the claimant taken before Commissioner Thompson Campbell, with document marked "A", annexed thereto, was filed:

(Vide page 4 of this Transcript.)

San Francisco December 5, 1854.

Case No. 516 was submitted on briefs and taken under advisement by the Board.

San Francisco December 12, 1854.

In the same case Commission Alpheus Felch delivered the opinion of the board confirming the claim;

(Vide page 17 of this Transcript.)

And the following order was made, to wit:

(Vide page 19 of this Transcript.)

(End p. 1 Transcript, p. 3 Tr. Blank)

PETITION.

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To the Board of Commissioners for the purpose of ascertaining and settling private Land Claims in the State of California.

The petition of Barcellia Bernal, otherwise Barcelisa Bernal, respectfully showeth:

That on the 18th day of June, 1845, Pio Pico then exercising the powers of Governor of the Department of Upper California and as such duly authorized to make grants of lands within said Department and belonging to the Republic of Mexico by virtue of the decree of the 18th of August, 1824, and the regulations of the 21st November, 1828, conceded and granted to your Petitioner a certain tract of land situate in upper California and now lying in the County of Santa Clara in the State of California and called the "Embarcadero de Santa Clara" containing one thousand varas square a little more or less; that the said Grant so made by said Governor by virtue of the authority aforesaid was afterwards to wit

On the third day of September, 1845, confirmed by the Departmental Assembly of said Department and that all the conditions in said grant contained have been faithfully fulfilled on the part of your Petitioner

And your Petitioner further states that there are no conflicting or adverse claims to said land so far as known to your Petitioner and that the Expediente issued to your petitioner has been lost and cannot be found after a diligent search in all places where it was likely to be found but that a copy of all the papers relating to said land is on file in the Surveyor General's Office at San Francisco at San Francisco.

Your Petitioner

(End p. 3 Tr.)

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therefore prays your Honorable Board to confirm her title to the said tract of land and hereby refers to a certified copy of the Espediente herewith filed marked (A) and made a part of this petition and to such other documentary evidence and Testimony of witnesses as she may be able hereafter to produce.

Peter H. Burnett
Attorney for Claimant

Filed in office January 17th, 1853.

Signed

Geo. Fisher.

Sec'y.

Deposition of A. M. Pico.

Office of the Board of Commissioners, etc., etc.

This day before Commissioner Thompson Campbell came Antonio Ma. Pico, a witness in behalf of the claimant Barcelia Bernal, No. 516, who after being duly sworn deposed as follows: His evidence was given in the Spanish language and interpreted by the secretary.

What is your name, age and place of residence.

My name is Antonio Ma. Pico. I am forty-three years of age and reside in San Jose.

Look on the paper now shown you and marked "A" and state whether the signatures to the same are the fac simile signatures of Micheltoarena, Moreno Jimino, Antonio Maria Pico, Pio Pico and Agustin Ahearn and if so state your means of knowledge.

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Associate Law Agent objects to this Question on the Ground that it is not competent to prove a signature from a heap.

In my opinion those fac similes are the similitude or the sameness of those persons signatures. My means of knowledge is derived from my official correspondence with the parties whose names are shown me. Those original signatures are known to me in the manner above stated.

In what capacity did you Pio Pico and Agustin Ahearn act in the year 1845 in the Territory of California.

Pio Pico was the Governor of the Territory of California, Agustin was the secretary of the Territorial Government and I was the Alcalde of San Jose in said year.

Do you know the Embarcadero of Santa Clara and if so how long have you known it.

I know it and have known it since the year 1832.

Do you know of any improvements having been made upon it and if so by whom and at what time.

In 1844 the present claimant Barcilia Bernal had a house on it at that time and lived in it with her family, had a corral and fences, a stock of cattle and horses, and cultivated a portion of the land and lives there at this time.

Do you know that judicial possession was ever given her and if so by whom and when.

I gave her judicial possession of the same as Alcalde in 1845 and marked out the boundaries. I gave possession by measuring it with a cord in the presence of witnesses com-

mencing at the north side of the river at a point where the same enters into the bay of San Francisco and running south measured one thousand varas at which point a stake was placed and I marked a tree on the bank of the Guadalupe River as land marks.

From that wire a square was measured containing one thousand varas on each side.

The house heretofore referred to was near the bank of the river and was within said square.

Anto. Ma. Pico

Sworn and scribed to before me this 14 day of November A. D. 1853.

Thompson Campbell,
Commissioner.

Filed in office November 14, 1853.

Signed Geo. Fisher, Sec'y.

Recorded in Ex. B, Volume 3, page 406.

Signed Geo. Fisher, Sec'y.

LAND COMMISSION TRANSCRIPT PAGE 7.

(Exhibit annexed to the Deposition of Antonio Ma. Pico taken before Comr. A. Felch.)

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1 S. DK.

1845

Espediente

Promovido por Da Vacilia Bernal duena contidad
de mil Vs. de Terreno En el Embarcadero de Sta Clara

(End p. 7 Tr.)

p. 8, p. 9 and part p. 10 Tr. Espediente (in Spanish)

p. 10 cont. Tr. see ff.

LAND COMMISSION TRANSCRIPT PAGE 10.

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

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I, Samuel D. King, Surveyor General of the United States for the State of California and as such now having in my office and under my charge

(End p. 10 Tr.)

LAND COMMISSION TRANSCRIPT PAGE 11.

and Custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby Certify that the seven preceding and hereunto attached pages of tracing paper numbered from one to seven inclusive, and each of which is verified by my initials S.D.K., are true and accurate copies of certain documents on file and forming a part of the said archives in this office.

(SEAL) 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 Francisco, Cal., this tenth day of March, A. D. 1852.

Samuel D. King
Surveyor General California.

Filed in office January 10th, 1853.

Geo. Fisher, Secretary.

(End p. 11 Tr.; p. 12 Tr. Blank)

B

Translation of Expediente

Translation

Fifth seal - half a real

authorized provisionally by the Maritime Custom House of the Port of Monterey in the Department of the Californias for the years 1844 and 1845.

Micheltorena

Pablo dela Guerra

To his Excellency the Governor

Monterey, November 18 - 1844.

Barcelia Bernal, a native born of this department and a resident of the jurisdiction of the Pueblo of San Jose Guadalupe before your Excellency with the most profound respect as my rights entitle me I set forth.

That there being inappropriated a tract of land containing a thousand varas (yds), a little more or less, at the Embarcadero of Santa Clara, which land was occupied formerly by William Fisher, Esq. English Consul and who from a desire to serve me has given up his right, I desire to solicit from the well known generosity of your Excellency that you will be pleased to concede to me the proprietorship of the aforesaid land to establish thereon my house, garden, cultivated fields, etc. in order to gain in some way the necessary subsistence for my increased family. By favor of your Excellency I ask and petition extend to me the justice which I have solicited as I hope for grace and mercy swearing that I have no malicious designs and the necessary requirements, etc.

Pueblo de San Jose
October 20, 1844.
Signed B. Bernal.

Endorsed:

Monterey, Nov. 10th, 1844.

Pass to the Senior Secretary of the office previously taking the steps thought necessary. Micheltorena. (End p.13 Tr.)

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His Excellency, the Governor, thus disposed reference of this petition to the Juez of the Pueblo of San Jose that he may inform himself concerning its contents.

Monterey - Oct. 20, 1844.

Sgd. Manl Jimino

As required by your Excellency I have informed myself regarding the contents of the annexed instrument and report the land of which mention is made is not claimed by any other party in interest.

And the person now soliciting has been in possession of the same for some years past and at the same time he has (appurtenances) improvements on the referred to land.

That is to say a house, a corral, cultivated lands and fields, farming utensils and stock barn on the said land and by every right I believe that the representation should be admitted and the same conceded if convenient to his Excellency

Pueblo of San Jose Guadalupe

15 May, 1845.

Signed Antonio Ma. Pico

Angeles June 18- 1845.

To Dona Basilia Bernal is granted the proprietorship of the land petitioned for in consequence the respective title be extended.

Pico

Angeles June 23rd, 1845

Passed to the Ex. Assembly of the Department for its approbation.

Pico

Angeles, June 27th- 1845

Presented to the Excellent Departmental Assembly in Session and this

(End p. 14 Tr.)

Espediente passed to the Committee on vacant lands.

Signed Pio Pico

Signed Agustin Ahearn, Secretary.

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PAGE 62

Excellent Sir:

The Committee on vacant lands having carefully considered the Espediente applied for by Dona Basilia Bernal petitioning for one thousand varas of land a little more or less at the Embarcadero de Santa Clara have found that the enquiries resorted to in said Espediente were sufficient grounds upon which the Departmental Government may legally have granted said land from which the Committee submit to the approbation of your Excellency the following proposition.

That the Committee approve the concession of one thousand varas of land a little more or less made by the Supreme Departmental Government in title endorsed with the date 18th of June of the present year in favor of Dona Basilisa Bernal in conformity with the law of the 18th of August, 1824, and Article 9th of the Regulation of the 21st November, 1828.

Committee Room City of Los Angeles August 27, 1845

Signed F. de la Guerra

Signed Narciso Botillo

Angeles September 3rd - 1845

In Session this day the Excellent Departmental Assembly approved the aforesaid proposition in the preceding terms commanding

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that the Expediente be returned to his Excellency the Governor for the objects consequent thereto.

Signed Agustin Ahearn

On the date of the approbation a copy of this shall be entered in the (proper) book for the Government.

Signed Pio Pico

Recorded in the Corresponding book

Filed in office January 17th, 1853, Signed Geo. Fisher, Secy.

Recorded in Evidence B. Vol. 17, page 78, Signed Geo. Fisher, Secy.

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Opinion of the Board

Barcilia Bernal
vs.
The United States

For the place called Embarcadero de
Santa Clara in Santa Clara Co. being
1000 varas square.

The petitioner claims under grant alleged to have been made to her by Governor Pio Pico on the 18th day of June, 1845. The grant is not proved but the documentary evidence in the archives traced copies of which are produced, her petition for the land, the usual proceedings to obtain information, the decree of the Governor making the concession and the approval thereof by the Departmental Assembly under date of September 3rd, 1845, are established.

The claimant has also produced and proved the original certificate of Governor Pico of said approval which document was evidently intended as the evidence of her title.

The proof shows that she lived upon and cultivated the lot before she obtained her grant and has since continued her occupancy of the same and that judicial possession was given to her and the boundaries duly marked out by an alcalde in 1845.

The claim seems to be meritorious and will be confirmed.

Confirmed.

Filed in office December 12th, 1854.

Geo. Fisher, Sec'y.

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DECREE OF CONFIRMATION

PAGE 65

Barcilia Bernal,)
 (
vs. (
The United States.)

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

The land of which confirmation is hereby made is situated in Santa Clara County and is the same occupied by said claimant and known by the name of Embarcadero de Santa Clara and is bounded and described as follows to wit.

Commencing at the north side of the River Guadalupe at a point where the same enters into the Bay of San Francisco and running thence south one thousand varas at which point a stake was placed by Anto Maria Pico when as Alcalde he gave judicial possession of said premises to said claimant in 1845 he having also marked a tree on the bank of said Guadalupe River as a land mark.

Thence west one thousand varas, thence north one thousand varas and thence East one thousand varas to the place of beginning.

Alpheus Felch

R. Aug. Thompson

Commissioners

Filed in office December 13th, 1854

Geo. Fisher, Sec'y.

(End p. 19 Tr.)

Recorded in Records of Decisions Vol. 2, page 390.

Signed Geo. Fisher, Sec'y.

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

Certificate of Secretary to Transcript.

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

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I, George Fisher, Secretary to the Board of
Commifisioners to ascertain and settle the Private Land Claims
in the State of California, do hereby certify the foregoing
twenty pages, numbered from 1 to 20, 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 Witnefses,
upon which the same is founded, on file in this Office, in
Case No. 516 on the Docket of the said Board wherein

Barcelia Bernal is the claimant
against the United States, for the place known by the name of
"Embarcadero de Santa Clara".

In Testimony Whereof, I hereunto set my hand and
affix my private Seal (not having a Seal of Office) at
San Francisco, California, this twentieth day of June A. D.
1855, and of the independence of the United States of America
the seventy-ninth.

(Seal)

Geo. Fisher, Sec'y.

(Appended at close transcript.)

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

-o-

UNITED STATES OF AMERICA,	}	
Appellant,		
vs.		Case No. 220.
BARCILIA BERNAL,	}	
Appellee.		

DECREE OF CONFIRMATION NUNE PRO TUNC.

ON APPEAL FROM THE FINAL DECISION OF THE BOARD OF
LAND COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE
LAND CLAIMS IN CALIFORNIA.

This case came on regularly to be heard at a stated term of
this Court, on said appeal from the said final decision of the
Board of Land Commissioners to ascertain and settle private land
claims in 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 Board, and the papers and evidence upon which
said decision was founded; and it appearing to the Court here,

1 that the said transcript was filed according to law, and counsel
2 for both parties having been heard, and the United States of
3 America, by its United States Attorney, having consented to the
4 entry of a decree confirming the claim of appellants herein, it
5 is by the Court hereby ordered, adjudged and decreed that the said
6 decision be and the same is hereby affirmed, and it is likewise
7 further ordered, adjudged and decreed that the claim of the said
8 appellee is a good and valid claim, and the same is confirmed to
9 the extent of the following boundaries, reference being had to the
10 grant and the papers filed herein; and it is ordered, adjudged
11 and decreed that the said appellee shall be and she hereby is
12 authorized and entitled to proceed as upon a final judgment
13 herein.

14 The land of which confirmation is hereby given is
15 situated in the County of Santa Clara, and is the same occupied by
16 the said appellee, and known by the name of Embarcadero de Santa
17 Clara, and is bounded and described as follows, to-wit:

18 Commencing at the north side of the River
19 Guadalupe at a point where the same enters the Bay
20 of San Francisco, and running thence south one
21 thousand varas at which point a stake was placed
22 by Anto. Maria Pico when as Alcalde he gave
23 judicial possession of said premises to said claim-
24 ant in 1845, he having also marked a tree on the
25 bank of the said Guadalupe River as a land mark.

26 Thence west one thousand varas, thence north
27 one thousand varas, and thence east one thousand
28 varas to the place of beginning.

29 It was the intention of said Land Commission, and it is
30 the intention of this Court, to confirm to the said appellee
31 BARCILIA BERNAL, her heirs, successors and assigns, the very land
32 of which she was given judicial possession by Antonio Maria Pico
33 as Alcalde of San Jose in 1845, and the very land occupied and
34 possessed by said appellee at the time of the confirmation of

1 said land by the said Board of Land Commissioners.

2 It further appearing by the minutes, records and proceed-
3 ings of this Court that on February 23, 1857, the District Court
4 of the United States for the Northern District of California,
5 made its order duly entered in the minutes of said Court,
6 directing the entry of a decree of confirmation in the above-
7 entitled matter by consent of the United States District Attorney,
8 and that by accident, oversight, inadvertence and/or excusable
9 neglect no decree in conformity with said order and judgment has
10 as yet ever been entered herein, and that the records and files
11 of the Clerk of this Court contain no signed decree confirming
12 the said decision of the said Board of Land Commissioners, and
13 that, according to said records, this case is therefore still
14 pending and undecided herein;

15 And it further appearing that all persons claiming by,
16 under or through the appellant or the appellee or any of them
17 are chargeable with notice of this action, and of everything that
18 has been done herein, and that no rights of third persons have
19 intervened or could intervene; that no claim to said land is now
20 made by the appellant or anyone claiming by, under or through
21 said appellant adversely to the appellee, her heirs, successors
22 or assigns; and that ever since said grant and said confirmation
23 by said Land Commission, appellee, her heirs, successors and
24 assigns have been and now are in open, notorious, quiet, peace-
25 able, adverse and exclusive possession of said land; and that
26 this is a proper case for the entry of a decree nunc pro tunc
27 confirming the said grant and the said land;

28 Now, Therefore, on motion of I. M. Peckham, Esq.,
29 attorney for Gallagher Fruit Co., a corporation incorporated in
30 California, successor in interest of Barcilia Bernal, appellee,

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and now owner of all her right, title and interest in, and in
exclusive possession of, said lands, made on the _____ day of
_____, 1935, that a decree be entered nunc pro tunc in
conformity with said order, and the Court being now fully advised
in the premises, the said motion is hereby granted, and it is
hereby ordered that this decree of confirmation in said cause
confirming in all particulars the decision of the said Board of
Land Commissioners be entered nunc pro tunc as of February 23rd,
in the year 1857.

DONE IN OPEN COURT this _____ day of _____, 1935.

UNITED STATES DISTRICT JUDGE.

No. 220-(N.D.)

IN THE District COURT OF THE UNITED STATES

FOR THE

Northern of California

United States

vs.

Barcilia Bernal

Petition for entry of Decree of Confirmation Nunc Pro Tunc

Filed _____, 19____

_____, Clerk.

By _____, Deputy.

FILED

AUG 23 1935 3 25 PM

WALTER B. MALING
CLERK

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

-o-

UNITED STATES OF AMERICA,

Appellant,

vs.

Case No. 220.

BARCILIA BERNAL,

Appellee.

ORDER TO SHOW CAUSE.

On reading and filing the petition of GALLAGHER FRUIT CO.,
successor of BARCILIA BERNAL, the appellee in the above-entitled
matter, and good cause appearing therefor,

IT IS ORDERED that the United States of America, appellant
in the above matter, be and appear before this Court on
September 16, 1935, at the hour of 10 o'clock A. M. of said
day, then and there to show cause, if any there be, why the
petition of GALLAGHER FRUIT CO. should not be granted, and a
judgment confirming the grant of the Rancho Embarcadero de Santa.

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Clara to BARCILIA BERNAL should not be confirmed, and confirmation thereof entered as of February 23, 1857.

FURTHER ORDERED that a copy of this order to show cause, and a copy of the petition of GALLAGHER FRUIT CO., be served on Hon. H. H. McPike, United States Attorney for the Northern District of California, successor as such United States Attorney to S. W. Inge, United States District Attorney at the time of the filing of the appeal in the above-entitled matter.

Dated, August 23, 1935.


United States District Judge.

No. 220- (N.D.)

IN THE District COURT
OF THE UNITED STATES

FOR THE

Nor. of California

United States

vs.

Barcilia Bernal

Order to show cause

Filed _____, 19____

_____, Clerk.

By _____, Deputy.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

-o-

UNITED STATES OF AMERICA,

Appellant,

vs.

Case No. 220.

BARCILIA BERNAL,

Appellee.

DECREE OF CONFIRMATION NUNC PRO TUNC.

ON APPEAL FROM THE FINAL DECISION OF THE BOARD OF
LAND COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE
LAND CLAIMS IN CALIFORNIA.

This case came on regularly to be heard at a stated term of
this Court, on said appeal from the said final decision of the
Board of Land Commissioners to ascertain and settle private land
claims in 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 Board, and the papers and evidence upon which
said decision was founded; and it appearing to the Court here,

1 that the said transcript was filed according to law, and counsel
2 for both parties having been heard, and the United States of
3 America, by its United States Attorney, having consented to the
4 entry of a decree confirming the claim of appellants herein, it
5 is by the Court hereby ordered, adjudged and decreed that the said
6 decision be and the same is hereby affirmed, and it is likewise
7 further ordered, adjudged and decreed that the claim of the said
8 appellee is a good and valid claim, and the same is confirmed to
9 the extent of the following boundaries, reference being had to the
10 grant and the papers filed herein; and it is ordered, adjudged
11 and decreed that the said appellee shall be and she hereby is
12 authorized and entitled to proceed as upon a final judgment
13 herein.

14 The land of which confirmation is hereby given is
15 situated in the County of Santa Clara, and is the same occupied by
16 the said appellee, and known by the name of Embarcadero de Santa
17 Clara, and is bounded and described as follows, to-wit:

18 Commencing at the north side of the River
19 Guadalupe at a point where the same enters the Bay
20 of San Francisco, and running thence south one
21 thousand varas at which point a stake was placed
22 by Anto. Maria Pico when as Alcalde he gave
judicial possession of said premises to said claim-
ant in 1845, he having also marked a tree on the
bank of the said Guadalupe River as a land mark.

23 Thence west one thousand varas, thence north
24 one thousand varas, and thence east one thousand
varas to the place of beginning.

25 It was the intention of said Land Commission, and it is
26 the intention of this Court, to confirm to the said appellee
27 BARCILIA BERNAL, her heirs, successors and assigns, the very land
28 of which she was given judicial possession by Antonio Maria Pico
29 as Alcalde of San Jose in 1845, and the very land occupied and
30 possessed by said appellee at the time of the confirmation of

1 said land by the said Board of Land Commissioners.

2 It further appearing by the minutes, records and proceed-
3 ings of this Court that on February 23, 1857, the District Court
4 of the United States for the Northern District of California,
5 made its order duly entered in the minutes of said Court,
6 directing the entry of a decree of confirmation in the above-
7 entitled matter by consent of the United States District Attorney,
8 and that by accident, oversight, inadvertence and/or excusable
9 neglect no decree in conformity with said order and judgment has
10 as yet ever been entered herein, and that the records and files
11 of the Clerk of this Court contain no signed decree confirming
12 the said decision of the said Board of Land Commissioners, and
13 that, according to said records, this case is therefore still
14 pending and undecided herein;

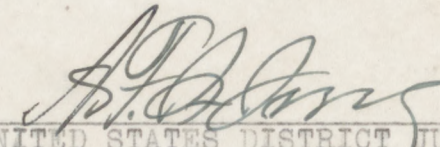
15 And it further appearing that all persons claiming by,
16 under or through the appellant or the appellee or any of them
17 are chargeable with notice of this action, and of everything that
18 has been done herein, and that no rights of third persons have
19 intervened or could intervene; that no claim to said land is now
20 made by the appellant or anyone claiming by, under or through
21 said appellant adversely to the appellee, her heirs, successors
22 or assigns; and that ever since said grant and said confirmation
23 by said Land Commission, appellee, her heirs, successors and
24 assigns have been and now are in open, notorious, quiet, peace-
25 able, adverse and exclusive possession of said land; and that
26 this is a proper case for the entry of a decree nunc pro tunc
27 confirming the said grant and the said land;

28 Now, Therefore, on motion of I. M. Peckham, Esq.,
29 attorney for Gallagher Fruit Co., a corporation incorporated in
30 California, successor in interest of Barcilia Bernal, appellee,

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and now owner of all her right, title and interest in, and in exclusive possession of, said lands, made on the 20th day of September, 1935, that a decree be entered nunc pro tunc in conformity with said order, and the Court being now fully advised in the premises, the said motion is hereby granted, and it is hereby ordered that this decree of confirmation in said cause confirming in all particulars the decision of the said Board of Land Commissioners be entered nunc pro tunc as of February 23rd, in the year 1857.

DONE IN OPEN COURT this 21st day of September, 1935.


UNITED STATES DISTRICT JUDGE.

Case No. 220.
IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
NORTHERN DISTRICT OF
CALIFORNIA. SOUTHERN
DIVISION.

UNITED STATES OF AMERICA,
Appellant,
vs.
BARCILIA BERNAL,
Appellee.

DECREE OF CONFIRMATION
NUNC PRO TUNC.

ENTERED IN VOL. *24* JUDG.
AND DECREES AT PAGE *671-672*

FILED
nunc pro tunc as of February
23, 1857

SEP 21 1935

WALTER B. MALING, Clerk
By *W. Malin*
DEPUTY CLERK

I. M. PECKHAM
ATTORNEY AT LAW
68 POST STREET - ROOM 714
SAN FRANCISCO, CAL.
SUTTER 1081
ATTORNEY FOR Petitioner.

220 ND
PAGE 80

Office of the Board of Commissioners,

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

San Francisco, June 20th 1853

J. A. Monroe Esq.

Clerk of the U. S. District Court for the

Northern District of California.

Sir;

I herewith transmit you, pursuant to the requirements of the Act of Congress, approved August 31st, 1852, a Transcript of the Record of the Proceedings and of the Decision of this Board, of the Documentary Evidence and of the Testimony of the witnesses upon which the same is founded in Case No. 376 on the Docket of the said Board, wherein

Barcelia Bernal is

the Claimant against the United States, for the place known by the name of "Embarcadero de Santa Clara"

and request your receipt for the same.

I am, Respectfully,

Your Obedt Servant,

Geo. Fisher

220 ND